

By the Committee on Commerce and Tourism; and Senator Richter

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1 A bill to be entitled
2 An act relating to secondhand dealers; amending s.
3 538.04, F.S.; requiring that the record of a
4 secondhand dealer transaction include digital photos
5 of the items; amending s. 538.06, F.S.; increasing the
6 required holding period for certain goods acquired by
7 a dealer; defining the term "antique"; amending s.
8 538.08, F.S.; authorizing an action in replevin
9 against a secondhand dealer based on a right of
10 possession to stolen goods; revising the form for a
11 complaint for return of stolen goods; providing that a
12 claimant in a replevin action is entitled to a certain
13 summary procedure; providing that a secondhand dealer
14 commits a noncriminal violation when an owner or
15 lienor prevails in a replevin action under certain
16 circumstances; providing a penalty; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:
20

21 Section 1. Paragraphs (c) and (d) of subsection (1) of
22 section 538.04, Florida Statutes, are redesignated as paragraphs
23 (d) and (e), respectively, and a new paragraph (c) is added to
24 that subsection, to read:

25 538.04 Recordkeeping requirements; penalties.—

26 (1) A secondhand dealer shall complete a secondhand dealers
27 transaction form at the time of the actual transaction. A
28 secondhand dealer shall maintain a copy of a completed
29 transaction form on the registered premises for at least 1 year
30 after the date of the transaction. However, the secondhand
31 dealer shall maintain a copy of the transaction form for not
32 less than 3 years. Unless other arrangements are agreed upon by

577-02272-16

2016948c1

33 the secondhand dealer and the appropriate law enforcement
34 official, the secondhand dealer shall, within 24 hours after
35 acquiring any secondhand goods, deliver to such official a
36 record of the transaction on a form approved by the Department
37 of Law Enforcement. Such record shall contain:

38 (c) Digital photos of the goods, clearly showing the items
39 required to be included on the record as provided in paragraph
40 (b).

41 Section 2. Subsection (1) of section 538.06, Florida
42 Statutes, is amended to read:

43 538.06 Holding period.—

44 (1) (a) A secondhand dealer may ~~shall~~ not sell, barter,
45 exchange, alter, adulterate, use, or in any way dispose of any
46 secondhand good that is:

47 1. A precious metal, a gemstone, jewelry, an antique
48 furnishing, fixture, or decorative object, or an item of art as
49 defined in s. 686.501 within 30 calendar days after the date on
50 which the good was acquired.

51 2. Not described in subparagraph 1. ~~goods~~ within 15
52 calendar days after ~~of~~ the date on which the good was acquired
53 ~~of acquisition of the goods.~~

54
55 Such holding periods are not applicable when the person known by
56 the secondhand dealer to be the person from whom the goods were
57 acquired desires to redeem, repurchase, or recover the goods,
58 provided the dealer can produce the record of the original
59 transaction with verification that the customer is the person
60 from whom the goods were originally acquired.

61 (b) As used in this subsection, the term "antique" means

577-02272-16

2016948c1

62 the item is at least 30 years old and has special value because
 63 of its age.

64 Section 3. Section 538.08, Florida Statutes, is amended to
 65 read:

66 538.08 Stolen goods; complaint ~~petition~~ for return.—

67 (1) If the secondhand dealer contests the identification,
 68 ~~or~~ ownership, or right of possession of the property, the person
 69 alleging ownership or right of possession of the property may,
 70 provided that a timely report of the theft of the goods was made
 71 to the proper authorities, bring an action for replevin in the
 72 county or circuit court. The complaint may be ~~by petition~~ in
 73 substantially the following form:

74
 75 Plaintiff A. B. sues defendant C. D., and alleges:

76 1. This is an action to recover possession of personal
 77 property in County, Florida.

78 2. The description of the property is: ...(list
 79 property).... To the best of plaintiff's knowledge, information,
 80 and belief, the value of the property is \$.....

81 3. Plaintiff is the lawful owner of the property or is
 82 entitled to ~~the~~ possession of the property under a security
 83 agreement dated, ...(year)...., a copy of which is
 84 attached.

85 4. To plaintiff's best knowledge, information, and belief,
 86 the property is located at

87 5. The property is wrongfully detained by defendant.
 88 Defendant came into possession of the property by ...(describe
 89 method of possession).... To plaintiff's best knowledge,
 90 information, and belief, defendant detains the property because

577-02272-16

2016948c1

91 ... (give reasons)....

92 6. The property has not been taken under an execution or
93 attachment against plaintiff's property.

94
95 (2) The filing fees shall be waived by the clerk of the
96 court, and the service fees shall be waived by the sheriff. The
97 court shall award the prevailing party attorney ~~attorney's~~ fees
98 and costs. In addition, when the filing party prevails in the
99 replevin action, the court shall order payment of filing fees to
100 the clerk and service fees to the sheriff.

101 (3) Upon the filing of the complaint ~~petition~~, the court
102 shall set a hearing to be held at the earliest possible time.
103 The claimant is entitled to the summary procedure provided in s.
104 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a writ~~
105 ~~by a secondhand dealer~~, the secondhand dealer shall hold the
106 property at issue until the court determines the respective
107 interests of the parties.

108 (4) In addition to the civil complaint ~~petition~~ for return
109 remedy, the state may file a motion as part of a pending
110 criminal case related to the property. The criminal court has
111 jurisdiction to determine ownership, ~~to~~ order return or other
112 disposition of the property, and ~~to~~ order ~~any~~ appropriate
113 restitution to any person. Such order shall be entered upon
114 hearing after proper notice has been given to the secondhand
115 dealer, the victim, and the defendant in the criminal case.

116 (5) A secondhand dealer commits a noncriminal violation,
117 punishable pursuant to s. 775.083 by a fine of up to \$2,500, if:

118 (a) The owner or lienor who prevailed in the replevin
119 action made a written demand for return of the property and

577-02272-16

2016948c1

120 provided proof of ownership or proof of the right of possession
121 to the secondhand dealer at least 5 calendar days before filing
122 the replevin action;

123 (b) The secondhand dealer knew or should have known based
124 on the proof provided under paragraph (a) that the property
125 belonged to the owner or lienor; and

126 (c) The secondhand dealer did not file an action for
127 interpleader to determine conflicting claims to the property.

128 Section 4. This act shall take effect July 1, 2016.