

By the Committees on Fiscal Policy; and Commerce and Tourism;
and Senator Richter

594-03756A-16

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1 A bill to be entitled

2 An act relating to secondhand dealers; amending s.
3 538.03, F.S.; revising definitions; amending s.
4 538.04, F.S.; requiring that the record of a
5 secondhand dealer transaction include digital photos
6 of the items; specifying what may be used as a serial
7 number; providing that certain holding requirements do
8 not begin until certain reports are submitted to the
9 appropriate law enforcement official; amending s.
10 538.06, F.S.; revising the required holding period for
11 certain goods acquired by a dealer; defining the term
12 "antique"; amending s. 538.08, F.S.; authorizing an
13 action in replevin against a secondhand dealer based
14 on a right of possession to stolen goods; revising the
15 form for a complaint for return of stolen goods;
16 providing that a plaintiff in a replevin action is
17 entitled to a certain summary procedure; providing
18 that a secondhand dealer commits a noncriminal
19 violation under certain circumstances; providing a
20 penalty; amending s. 538.09, F.S.; revising the period
21 of time a secondhand dealer must hold secondhand goods
22 at a registered location; authorizing a secondhand
23 dealer to store secondhand goods outside the
24 appropriate law enforcement official's jurisdiction,
25 subject to certain conditions; providing an effective
26 date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Present paragraphs (c) through (j) of subsection
31 (1) of section 538.03, Florida Statutes, are redesignated as

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32 paragraphs (d) through (k), respectively, a new paragraph (c) is
33 added to that subsection, and present paragraphs (g) and (h) of
34 that subsection are amended, to read:

35 538.03 Definitions; applicability.—

36 (1) As used in this part, the term:

37 (c) "Automated kiosk" means an interactive device that is
38 permanently installed within a secure retail space and that has
39 the following technological functions:

40 1. Remotely monitored and attended by a live representative
41 during all business operating hours;

42 2. Verification of a seller's identity by official
43 identification issued in the United States;

44 3. Automated reading and recording of item serial numbers;

45 4. Ability to compare item serial numbers against databases
46 of stolen items;

47 5. Secure storage of goods accepted by the kiosk; and

48 6. Capture and storage of images during the transaction.

49 (h) ~~(g)~~ "Secondhand dealer" means any person, corporation,
50 or other business organization or entity which is not a
51 secondary metals recycler subject to part II and which is
52 engaged in the business of purchasing, consigning, or trading
53 secondhand goods. The term includes any secondhand dealer
54 engaged in the business of purchasing secondhand goods by means
55 of an automated kiosk.

56 (i) ~~(h)~~ "Secondhand goods" means personal property
57 previously owned or used, which is not regulated metals property
58 regulated under part II and which is purchased, consigned, or
59 traded as used property. The term includes gift certificates and
60 credit memos as defined in s. 501.95 which are purchased,

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61 consigned, or traded by a secondhand dealer. The term does ~~Such~~
62 ~~secondhand goods do~~ not include office furniture, pianos, books,
63 clothing, organs, coins, motor vehicles, costume jewelry, cardio
64 and strength training or conditioning equipment designed
65 primarily for indoor use, and secondhand sports equipment that
66 is not permanently labeled with a serial number. As used in ~~For~~
67 ~~purposes of~~ this paragraph, the term "secondhand sports
68 equipment" does not include golf clubs.

69 Section 2. Paragraphs (c) and (d) of subsection (1) of
70 section 538.04, Florida Statutes, are redesignated as paragraphs
71 (d) and (e), respectively, and a new paragraph (c) is added to
72 that subsection, and subsection (8) is added to that section to
73 read:

74 538.04 Recordkeeping requirements; penalties.—

75 (1) A secondhand dealer shall complete a secondhand dealers
76 transaction form at the time of the actual transaction. A
77 secondhand dealer shall maintain a copy of a completed
78 transaction form on the registered premises for at least 1 year
79 after the date of the transaction. However, the secondhand
80 dealer shall maintain a copy of the transaction form for not
81 less than 3 years. Unless other arrangements are agreed upon by
82 the secondhand dealer and the appropriate law enforcement
83 official, the secondhand dealer shall, within 24 hours after
84 acquiring any secondhand goods, deliver to such official a
85 record of the transaction on a form approved by the Department
86 of Law Enforcement. Such record shall contain:

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

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90 (8) When secondhand goods are purchased by means of an
91 automated kiosk, the serial number reported pursuant to this
92 section may be the International Mobile Station Equipment
93 Identity (IMEI), the mobile equipment identifier (MEID), or
94 other unique identifying number assigned to the device by the
95 manufacturer. If the IMEI, MEID, or other unique identifying
96 number is not available at the time of receipt or purchase, the
97 report filed pursuant to this section must be updated with the
98 IMEI, MEID, or other unique identifying number as soon as
99 possible, but no later than 10 business days after the date of
100 acquisition. The holding requirements of s. 538.06 and s.
101 538.09(3) do not begin until all required reports are complete
102 and submitted to the appropriate law enforcement official.

103 Section 3. Subsection (1) of section 538.06, Florida
104 Statutes, is amended to read:

105 538.06 Holding period.—

106 (1) (a) A secondhand dealer may ~~shall~~ not sell, barter,
107 exchange, alter, adulterate, use, or in any way dispose of any
108 secondhand good:

109 1. That is a precious metal, a gemstone, jewelry; an
110 antique furnishing, fixture, or decorative object; or an item of
111 art as defined in s. 686.501 within 30 calendar days after the
112 date on which the good was acquired.

113 2. That is not described in subparagraph 1. ~~goods~~ within 15
114 calendar days ~~after~~ ~~of~~ the date on which the good was acquired
115 ~~of acquisition of the goods.~~

116 3. Within 30 calendar days after the date on which the good
117 is acquired if the secondhand dealer uses an automated kiosk.

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119 Such holding periods are not applicable when the person known by
 120 the secondhand dealer to be the person from whom the goods were
 121 acquired desires to redeem, repurchase, or recover the goods,
 122 provided the dealer can produce the record of the original
 123 transaction with verification that the customer is the person
 124 from whom the goods were originally acquired.

125 (b) As used in this subsection, the term "antique" means
 126 the item is at least 30 years old and has special value because
 127 of its age.

128 Section 4. Section 538.08, Florida Statutes, is amended to
 129 read:

130 538.08 Stolen goods; complaint ~~petition~~ for return.—

131 (1) If the secondhand dealer contests the identification,
 132 ~~or~~ ownership, or right of possession of the property, the person
 133 alleging ownership or right of possession of the property may,
 134 provided that a timely report of the theft of the goods was made
 135 to the proper authorities, bring an action for replevin in the
 136 county or circuit court. The complaint may be ~~by petition~~ in
 137 substantially the following form:

138
 139 Plaintiff A. B. sues defendant C. D., and alleges:

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

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

145 3. Plaintiff is the lawful owner of the property or is
 146 entitled to ~~the~~ possession of the property under a security
 147 agreement dated, ...(year)..., a copy of which is

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148 attached.

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

151 5. The property is wrongfully detained by defendant.
152 Defendant came into possession of the property by ...(describe
153 method of possession).... To plaintiff's best knowledge,
154 information, and belief, defendant detains the property because
155 ...(give reasons)....

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

158
159 (2) The filing fees shall be waived by the clerk of the
160 court, and the service fees shall be waived by the sheriff. The
161 court shall award the prevailing party attorney ~~attorney's~~ fees
162 and costs. In addition, when the filing party prevails in the
163 replevin action, the court shall order payment of filing fees to
164 the clerk and service fees to the sheriff.

165 (3) Upon the filing of the complaint ~~petition~~, the court
166 shall set a hearing to be held at the earliest possible time.
167 The plaintiff is entitled to the summary procedure provided in
168 s. 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a~~
169 ~~writ by a secondhand dealer~~, the secondhand dealer shall hold
170 the property at issue until the court determines the respective
171 interests of the parties.

172 (4) In addition to the civil complaint ~~petition~~ for return
173 remedy, the state may file a motion as part of a pending
174 criminal case related to the property. The criminal court has
175 jurisdiction to determine ownership, to order return or other
176 disposition of the property, and to order ~~any~~ appropriate

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177 restitution to any person. Such order shall be entered upon
178 hearing after proper notice has been given to the secondhand
179 dealer, the victim, and the defendant in the criminal case.

180 (5) A secondhand dealer commits a noncriminal violation,
181 punishable as provided in s. 775.083 by a fine of up to \$2,500,
182 if all of the following occur:

183 (a) An owner or a lienor makes a written demand for return
184 of the property and provides proof of ownership or proof of the
185 right of possession to the secondhand dealer at least 5 calendar
186 days before filing a replevin action.

187 (b) The secondhand dealer knows or should have known based
188 on the proof provided under paragraph (a) that the property
189 belongs to the owner or lienor.

190 (c) The secondhand dealer fails to return the property and
191 does not file an action in interpleader to determine conflicting
192 claims to the property.

193 (d) The owner or lienor prevails in the replevin action
194 against the secondhand dealer.

195 Section 5. Subsection (3) of section 538.09, Florida
196 Statutes, is amended to read:

197 538.09 Registration.—

198 (3) The secondhand dealer's registration shall be
199 conspicuously displayed at her or his registered location. A
200 secondhand dealer must hold secondhand goods at the registered
201 location for the period required by s. 538.06 ~~until 15 days~~
202 ~~after the secondhand transaction~~ or until any extension of the
203 holding period has expired, whichever is later. Storage at a
204 registered location outside the appropriate law enforcement
205 official's jurisdiction is permissible only upon agreement with

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206 such law enforcement official and if the secondhand dealer
207 provides proof that he or she is able to and agrees to deliver
208 the stored secondhand goods to the appropriate law enforcement
209 official within 2 business days upon request.

210 Section 6. This act shall take effect July 1, 2016.

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