

By the Committees on Rules; Fiscal Policy; and 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.
3 538.03, 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; requiring a different method of identification
8 when certain numbers are not available; requiring
9 secondhand dealers to notify a law enforcement
10 official under certain circumstances; providing that
11 certain holding requirements do not begin until
12 certain reports are submitted to the appropriate law
13 enforcement official; amending s. 538.06, F.S.;
14 revising the required holding period for certain goods
15 acquired by a dealer; defining the term "antique";
16 amending s. 538.08, F.S.; authorizing an action in
17 replevin against a secondhand dealer based on a right
18 of possession to stolen goods; revising the form for a
19 complaint for return of stolen goods; providing that a
20 plaintiff in a replevin action is entitled to a
21 certain summary procedure; providing that a secondhand
22 dealer commits a noncriminal violation under certain
23 circumstances; providing a penalty; amending s.
24 538.09, F.S.; revising the period of time a secondhand
25 dealer must hold secondhand goods at a registered
26 location; authorizing a secondhand dealer to store
27 secondhand goods outside the appropriate law
28 enforcement official's jurisdiction, subject to
29 certain conditions; providing an effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

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32
33 Section 1. Present paragraphs (c) through (j) of subsection
34 (1) of section 538.03, Florida Statutes, are redesignated as
35 paragraphs (d) through (k), respectively, a new paragraph (c) is
36 added to that subsection, and present paragraphs (g) and (h) of
37 that subsection are amended, to read:

38 538.03 Definitions; applicability.—

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

40 (c) "Automated kiosk" means an interactive device that is
41 permanently installed within a secure retail space and that:

42 1. Is remotely monitored by a live representative during
43 all business operating hours;

44 2. Verifies a seller's identity by a government-issued
45 photographic identification card;

46 3. Performs automated reading and recording of item serial
47 numbers;

48 4. Compares item serial numbers against databases of stolen
49 items;

50 5. Securely stores goods accepted by the kiosk; and

51 6. Captures and stores images during the transaction.

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

59 (i)~~(h)~~ "Secondhand goods" means personal property
60 previously owned or used, which is not regulated metals property

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61 regulated under part II and which is purchased, consigned, or
62 traded as used property. The term includes gift certificates and
63 credit memos as defined in s. 501.95 which are purchased,
64 consigned, or traded by a secondhand dealer. The term does ~~Such~~
65 ~~secondhand goods~~ do not include office furniture, pianos, books,
66 clothing, organs, coins, motor vehicles, costume jewelry, cardio
67 and strength training or conditioning equipment designed
68 primarily for indoor use, and secondhand sports equipment that
69 is not permanently labeled with a serial number. As used in ~~For~~
70 ~~purposes of~~ this paragraph, the term "secondhand sports
71 equipment" does not include golf clubs.

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

77 538.04 Recordkeeping requirements; penalties.—

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

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

93 (8) When secondhand goods are purchased by means of an
94 automated kiosk, the serial number reported pursuant to this
95 section may be the International Mobile Station Equipment
96 Identity (IMEI), the mobile equipment identifier (MEID), or
97 another unique identifying number assigned to the device by the
98 manufacturer. If the IMEI, MEID, or other unique identifying
99 number is not available at the time of receipt or purchase, the
100 report filed pursuant to this section must be updated with the
101 IMEI, MEID, or other unique identifying number as soon as
102 possible, but no later than 10 business days after the date of
103 acquisition. If such identifying numbers are not available at
104 the time of the transaction, the business shall assign another
105 unique identifier to the item which directly associates the item
106 with the transaction that it was purchased in. Upon entering or
107 updating any information on the transaction form, a law
108 enforcement official, as designated by the sheriff or the chief
109 of the jurisdiction in which the item was purchased, must be
110 timely notified in writing or by electronic means, as required
111 by the sheriff or chief of the jurisdiction. If, upon receiving
112 the device and correcting the missing information, the company
113 finds that the item was misappropriated or stolen, the
114 appropriate law enforcement official must be notified. The
115 holding requirements of s. 538.06 and s. 538.09(3) do not begin
116 until all required reports are complete and submitted to the
117 appropriate law enforcement official.

118 Section 3. Subsection (1) of section 538.06, Florida

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119 Statutes, is amended to read:

120 538.06 Holding period.—

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

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

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

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

133

134 Such holding periods are not applicable when the person known by
135 the secondhand dealer to be the person from whom the goods were
136 acquired desires to redeem, repurchase, or recover the goods,
137 provided the dealer can produce the record of the original
138 transaction with verification that the customer is the person
139 from whom the goods were originally acquired.

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

143 Section 4. Section 538.08, Florida Statutes, is amended to
144 read:

145 538.08 Stolen goods; complaint ~~petition~~ for return.—

146 (1) If the secondhand dealer contests the identification,
147 ~~or~~ ownership, or right of possession of the property, the person

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148 alleging ownership or right of possession of the property may,
 149 provided that a timely report of the theft of the goods was made
 150 to the proper authorities, bring an action for replevin in the
 151 county or circuit court. The complaint may be ~~by petition~~ in
 152 substantially the following form:

- 153
- 154 Plaintiff A. B. sues defendant C. D., and alleges:
- 155 1. This is an action to recover possession of personal
 156 property in County, Florida.
 - 157 2. The description of the property is: ...(list
 158 property).... To the best of plaintiff's knowledge, information,
 159 and belief, the value of the property is \$.....
 - 160 3. Plaintiff is the lawful owner of the property or is
 161 entitled to ~~the~~ possession of the property under a security
 162 agreement dated, ...(year)...., a copy of which is
 163 attached.
 - 164 4. To plaintiff's best knowledge, information, and belief,
 165 the property is located at
 - 166 5. The property is wrongfully detained by defendant.
 167 Defendant came into possession of the property by ...(describe
 168 method of possession).... To plaintiff's best knowledge,
 169 information, and belief, defendant detains the property because
 170 ...(give reasons)....
 - 171 6. The property has not been taken under an execution or
 172 attachment against plaintiff's property.

173

174 (2) The filing fees shall be waived by the clerk of the
 175 court, and the service fees shall be waived by the sheriff. The
 176 court shall award the prevailing party attorney ~~attorney's~~ fees

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177 and costs. In addition, when the filing party prevails in the
178 replevin action, the court shall order payment of filing fees to
179 the clerk and service fees to the sheriff.

180 (3) Upon the filing of the complaint ~~petition~~, the court
181 shall set a hearing to be held at the earliest possible time.
182 The plaintiff is entitled to the summary procedure provided in
183 s. 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a~~
184 ~~writ by a secondhand dealer~~, the secondhand dealer shall hold
185 the property at issue until the court determines the respective
186 interests of the parties.

187 (4) In addition to the civil complaint ~~petition~~ for return
188 remedy, the state may file a motion as part of a pending
189 criminal case related to the property. The criminal court has
190 jurisdiction to determine ownership, to order return or other
191 disposition of the property, and to order ~~any~~ appropriate
192 restitution to any person. Such order shall be entered upon
193 hearing after proper notice has been given to the secondhand
194 dealer, the victim, and the defendant in the criminal case.

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

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

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

205 (c) The secondhand dealer fails to return the property and

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206 does not file an action in interpleader to determine conflicting
207 claims to the property.

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

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

212 538.09 Registration.—

213 (3) The secondhand dealer's registration shall be
214 conspicuously displayed at her or his registered location. A
215 secondhand dealer must hold secondhand goods at the registered
216 location for the period required by s. 538.06 ~~until 15 days~~
217 ~~after the secondhand transaction~~ or until any extension of the
218 holding period has expired, whichever is later. Storage at a
219 registered location outside the appropriate law enforcement
220 official's jurisdiction is permissible only upon agreement with
221 such law enforcement official and if the secondhand dealer
222 provides proof that he or she is able to and agrees to deliver
223 the stored secondhand goods to the appropriate law enforcement
224 official within 2 business days upon request.

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