

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 442

INTRODUCER: Senator Gruters and others

SUBJECT: Secondhand Dealers

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 442 amends the definition of “secondhand goods” for purposes of part I, ch. 538, F.S., which regulates secondhand dealers and secondary metal recyclers in the trade of secondhand goods. The purpose of such regulations is to assist law enforcement in recovering stolen property and in solving other theft-related crimes.

Specifically, the bill revises the definition of “secondhand goods” to exclude money and gold bullion, silver bullion, platinum bullion, palladium bullion, or rhodium bullion if such bullion has been assayed and is properly marked as to its weight and fineness.

The bill also removes coins from the list of items which are expressly excluded from the definition of “secondhand goods.” However, because the bill revises the definition of “secondhand goods” to exclude money, and coins are a form of money, the effect of the bill is to exclude paper money, in addition to coins, from the regulation of secondhand goods.

By excluding money and the listed kinds of bullions from the definition of “secondhand goods,” these items will no longer be regulated as secondhand goods under state law, thus secondhand dealers will no longer be subject to transaction recordkeeping or holding period requirements in connection with them.

The bill takes effect July 1, 2023.

II. Present Situation:

Chapter 538, F.S., regulates secondhand dealers and secondary metal recyclers in the trade of secondhand goods. The purpose of such regulations is to assist law enforcement in recovering stolen property and in solving other theft-related crimes.¹

A secondhand dealer is defined as any person, corporation, or other business organization or entity that is not a secondary metals recycler and is engaged in the business of purchasing, consigning, or trading secondhand goods. The term also includes a secondhand dealer engaged in purchasing secondhand goods by means of an automated kiosk.²

Secondhand goods are previously owned or used personal property that is purchased, consigned, or traded as used property. The term also includes gift certificates and credit memos³ that are purchased, consigned, or traded by a secondhand dealer. Secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number.⁴

A secondhand dealer must annually register his or her business with the Department of Revenue.⁵

Upon each acquisition of secondhand goods, a secondhand dealer must complete a transaction form that details the goods purchased and the seller's identity. The secondhand dealer must retain this document for at least 3 years and forward a copy to the appropriate law enforcement agency within 24 hours after the acquisition of the secondhand goods.⁶ In addition to the descriptive statements of the secondhand goods and the seller's identity, the transaction record must also include:

- A statement of the date, time, and place of the transaction;
- A summary of the goods acquired, including brand name, model number, serial number, and other unique identifiers;
- Digital photographs of the goods acquired in the report that is submitted to law enforcement; and
- A description of the person from whom the goods were acquired, including his or her right thumbprint, name and address, and a physical description.⁷

¹ See ss. 538.04, 538.06, F.S. (identifying recordkeeping requirements and holding periods in connection with secondhand goods); see also Jarret C. Oeltjen, *Florida Pawnbroking: An Industry in Transition*, 23 FLA. ST. U. L. REV. 995, 1013 (Spring 1996) (noting that “[t]he main impetus behind [ch. 538, F.S.] was to confront the problem of property theft and drug-related crimes by facilitating recovery of stolen goods and apprehending those criminals who may turn to secondhand dealers for cash”).

² Section 538.03(1)(h), F.S.

³ Section 501.95, F.S., defines “credit memo” as a certificate, card, stored value card, or similar instrument issued in exchange for returned merchandise when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction.

⁴ Section 538.03(1)(i), F.S.

⁵ See generally s. 538.09, F.S. (providing for registration).

⁶ Section 538.04(1), F.S.

⁷ *Id.*

Secondhand dealers are required to hold all secondhand goods for at least 15 days after they acquire the property. However, secondhand dealers are required to hold a precious metal,⁸ gemstone, jewelry; antique furnishings, fixtures, or decorative objects; or an item of art as defined in s. 686.501, F.S.,⁹ within 30 days after they acquire the property.¹⁰ Additionally, a secondhand good must be held for 30 days if the secondhand dealer uses an automated kiosk.¹¹

If a law enforcement officer has probable cause to believe that the goods held by a secondhand dealer are stolen, the officer may place a 90-day written hold order on the goods.¹² This prevents the secondhand dealer from selling the goods and preserves them for use as evidence in a criminal trial. Additionally, this allows for the possibility of the goods to be returned to their rightful owner.¹³

Law enforcement agencies having jurisdiction enforce compliance with registration, record keeping, holding periods, and inspection requirements.¹⁴ A person who knowingly violates the requirements governing secondhand dealers in ch. 538, F.S., commits a first degree misdemeanor, punishable by up to 1 year in jail and a \$10,000 fine.¹⁵

Methods for Return of Stolen Goods held by a Secondhand Dealer

A victim of a theft may recover his or her goods, or their value, through one of three methods:

- A victim may purchase his or her items back from the secondhand dealer, and then file a civil action against the thief for reimbursement of the cost expended.
- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.¹⁶ If the court orders return of the goods or restitution to the victim, the court must also order restitution to the secondhand dealer from the person who sold the goods to the secondhand dealer.¹⁷
- A victim may file a civil action for replevin against the secondhand dealer.¹⁸

⁸ Section 538.03(1)(f), F.S., defines “precious metals” as any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.

⁹ Section 686.501(1), F.S., defines “art” as a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macramé, quilt, print, photograph, or craft work executed in materials including, but not limited to, clay, textile, paper, fiber, wood, tile, metal, plastic, or glass. The term includes a rare map which is offered as a limited edition or a map 80 years old or older; or a rare document or rare print which includes, a print, engraving, etching, woodcut, lithograph, or serigraph which is offered as a limited edition, or one 80 years old or older.

¹⁰ Section 538.06(1), F.S.

¹¹ *Id.* An “automated kiosk” is an interactive device that is permanently installed within a secure retail space and that has the following technological functions: remotely monitored by a live representative during all business hours; verification of a seller’s identity by government-issued photographic identification card; automated reading and recording of item serial numbers; ability to compare item serial numbers against databases of stolen items; secure storage of goods accepted by the kiosk; and capture and storage of images during the transaction. Section 538.03(1)(c), F.S.

¹² Section 538.06(3), F.S.

¹³ *See id.*

¹⁴ Section 538.05, F.S.

¹⁵ Section 538.07(1), F.S.

¹⁶ Section 538.07(2), F.S.

¹⁷ Section 538.06(4), F.S.

¹⁸ Section 538.08, F.S.

Replevin is an action for the repossession of personal property that was wrongfully taken or detained by the defendant, where the plaintiff secures a bond for and holds the property until the court decides the rightful owner.¹⁹ Petitions for replevin must contain the following information:

- Proof of ownership or right of possession of the property in question and a description of the property;
- A description of how, to the best of plaintiff's knowledge, the property was wrongfully taken by the defendant; and
- A statement that the property was not taken under any legal basis such as execution, tax, or fine.²⁰

In an action for replevin, a court is required to award the prevailing party attorney fees and costs. When the petitioner is the prevailing party, the court may also order payment of the filing and service fees.²¹

Victims of theft and prevailing plaintiffs in an action for replevin are entitled to damages for loss of use, which are limited to no more than the value of the property before it was taken or damaged.²²

The plaintiff is also entitled to the summary procedure provided in s. 51.011, F.S.²³

A secondhand dealer commits a noncriminal violation, punishable by a fine of up to \$2,500 if the following occurs:

- An owner or lienor makes a written demand for return of the property and provides proof of ownership or proof of the right of possession to the secondhand dealer at least 5 days before filing a replevin action;
- The secondhand dealer knows or should have known, based on the proof provided above, the property belongs to the owner or lienor;
- The secondhand dealer fails to return the property and does not file an action for interpleader²⁴ to determine conflicting claims to the property; and
- The owner or lienor prevails in the replevin action against the secondhand dealer.²⁵

III. Effect of Proposed Changes:

SB 442 amends the definition of "secondhand goods" for purposes of part I, ch. 538, F.S., which regulates secondhand dealers and secondary metal recyclers in the trade of secondhand goods. The purpose of such regulations is to assist law enforcement agencies in recovering stolen property and in solving other theft-related crimes.

¹⁹ BLACK'S LAW DICTIONARY (11th ed. 2019) (defining the term "replevin"); *see also* ch. 78, F.S. (creating a right of replevin and describing associated court procedures).

²⁰ *See generally* ss. 78.055 and 538.08, F.S.

²¹ Section 538.08(2), F.S. Otherwise, the filing and services fees are waived.

²² *Foresight Enterprises, Inc. v. Leisure Time Properties, Inc.*, 466 So. 2d 283, 286, 288-89 (Fla. 5th DCA 1985).

²³ Section 538.08(3), F.S.

²⁴ Generally, interpleader is a suit to determine a right to property held by a disinterested third party (called a stakeholder) who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership. BLACK'S LAW DICTIONARY (11th ed. 2019) (defining the term "interpleader").

²⁵ Section 538.08(5), F.S.

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IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁶ Part I, ch. 583, F.S., does not include a definition of money. However, Part II, ch. 583, F.S., does include a definition for “money” that is applicable to that part only. *See* s. 538.18(5), F.S. (defining money to mean “a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency”).

B. Private Sector Impact:

Secondhand dealers who purchase the types of bullion listed in the bill may see a cost benefit because these items are expressly excluded from the definition of a secondhand good and, therefore, are no longer subject to transaction recordkeeping or holding period requirements in connection with them. Additionally, the elimination of the holding period will reduce the risk associated with the market price volatility of the metals.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 538.03 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.