

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 737 Secondhand Goods
SPONSOR(S): Commerce Committee, Barnaby and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 442

FINAL HOUSE FLOOR ACTION: 108 Y's 1 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 737 passed the House on April 28, 2023, and subsequently passed the Senate on May 1, 2023.

Chapter 538, F.S., regulates secondhand dealers and secondary metal recyclers in the trade of secondhand goods. A secondhand dealer is a person, corporation, or other business organization or entity, that is not a secondary metals recycler, engaged in the business of purchasing, consigning, or trading secondhand goods. Secondhand goods are previously owned or used personal property that is purchased, consigned, or traded as used property.

The bill amends the definition of "secondhand goods" to exclude 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. Thus, persons dealing with these various forms of bullion are no longer considered secondhand dealers and no longer subject to the secondhand goods regulations, such as the 30-day holding period.

The bill does not appear to impact state or local governments.

The bill was approved by the Governor on May 24, 2023, ch. 2023-127, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Chapter 538, F.S., regulates secondhand dealers and secondary metal recyclers in the trade of secondhand goods. A secondhand dealer¹ 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” means personal property previously owned or used which is not regulated metals property regulated under part II of ch. 538, and which is purchased, consigned, or traded as used property. The term includes gift certificates and credit memos³ as defined in s. 501.95 which are purchased, consigned, or traded by a secondhand dealer.

The term **does 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
 - The term “secondhand sports equipment” does not include golf clubs.

Secondary metals recyclers may not sell “regulated metals property” without obtaining proof of ownership or permission from the owner if the person is an employee of such owner. Regulated metals property means any item composed primarily of any nonferrous metals. The term does not include aluminum beverage containers, used beverage containers, or similar beverage containers; however, the term includes stainless steel beer kegs and items made of ferrous metal obtained from any restricted regulated metals property.

Restricted regulated metals property is subject to restrictions and includes the following:

- A manhole cover.
- An electric light pole or other utility structure and its fixtures, wires, and hardware that are readily identifiable as connected to the utility structure.
- A guard rail.
- A street sign, traffic sign, or traffic signal and its fixtures and hardware.

¹ A pawnbroker is different than a secondhand dealer. “Pawn” means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained in this section. See s. 539.001, F.S.; Pawnshops must be registered and are regulated by the Florida Department of Agriculture and Consumer Services. *Pawnshops*, Florida Department of Agriculture & Consumer Services, <https://www.fdacs.gov/Consumer-Resources/Consumer-Rights-and-Responsibilities/Pawnshops> (last March 24, 2023).

² S. 538.03(1)(h), F.S.

³ S. 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 S. 538.03(1)(i), F.S.

- Communication, transmission, distribution, and service wire from a utility, including copper or aluminum bus bars, connectors, grounding plates, or grounding wire.
- A funeral marker or funeral vase.
- A historical marker.
- Railroad equipment, including, but not limited to, a tie plate, signal house, control box, switch plate, E clip, or rail tie junction.
- Any metal item that is observably marked upon reasonable inspection with any form of the name, initials, or logo of a governmental entity, utility company, cemetery, or railroad.
- A copper, aluminum, or aluminum-copper condensing or evaporator coil, including its tubing or rods, from an air-conditioning or heating unit, excluding coils from window air-conditioning or heating units and motor vehicle air-conditioning or heating units.
- An aluminum or stainless-steel container or bottle designed to hold propane for fueling forklifts.
- A stainless-steel beer keg.
- A catalytic converter or any nonferrous part of a catalytic converter unless purchased as part of a motor vehicle.
- Metallic wire that has been burned in whole or in part to remove insulation.
- A brass or bronze commercial valve or fitting, referred to as a “fire department connection and control valve” or an “FDC valve,” that is commonly used on structures for access to water for the purpose of extinguishing fires.
- A brass or bronze commercial potable water backflow preventer valve that is commonly used to prevent backflow of potable water from commercial structures into municipal domestic water service systems.
- A shopping cart.
- A brass water meter.
- A storm grate.
- A brass sprinkler head used in commercial agriculture.
- More than two lead-acid batteries, or any part or component thereof, in a single purchase or from the same individual in a single day.

Regulation of Secondhand Dealers and Secondary Metals Recyclers

Local law enforcement and three state agencies have statutory obligations regarding Florida's secondhand dealers, mail-in secondhand dealers, and secondary metals recyclers.

The three state agencies include:⁵

- Florida Department of Revenue- Maintains the statewide registration system for secondhand dealers, mail-in secondhand dealers, and secondary metals recyclers.
- Florida Department of Highway Safety & Motor Vehicles (DHSMV) - Oversees recordkeeping, proof of ownership, reporting, and enforcement of state laws related to the dismantling or destruction of motor vehicles, recreational vehicles, and mobile homes by salvage motor vehicle dealers and secondary metals recyclers (Chapter 319, F.S.). Depending on the type of materials obtained, certain businesses may be required to register as a salvage motor vehicle dealer in addition to registration as a secondary metals recycler. (Section 320.27, F.S).
- Florida Department of Law Enforcement (FDLE) -Approves transaction forms that document the sale/purchase of secondary metals. Secondary metals recyclers must complete and maintain these forms for specified time periods (Chapter 538, F.S.).

Records and Reporting Requirements

A secondhand dealer must annually register his or her business with the Department of Revenue.⁶ Examples of businesses that must register as a secondhand dealer include:

⁵ *Secondary Metal Information*, Florida Department of Law Enforcement, <https://www.fdle.state.fl.us/SMI> (last visited March 24, 2023).

⁶ S. 538.09, F.S.; *What Businesses Are Required to Register as Secondhand Dealers?*, Florida Department of Revenue, <https://floridarevenue.com/faq/Pages/FAQSearch.aspx?Cat=4&Subcat=59> (last visited March 24, 2023).

- consignment stores (excluding stores that consign only clothes);
- secondhand stores;
- music stores that buy or trade used music CDs;
- used tire dealers; and
- used furniture stores (other than office furniture).

Upon each acquisition of secondhand goods, a secondhand dealer must complete a transaction form that details the goods purchased and the seller's identity.

A "transaction" is defined as "any purchase, consignment, or trade of secondhand goods by a secondhand dealer."⁷ The secondhand dealer must retain this document for at least three years and forward a copy to the appropriate law enforcement agency within 24 hours after the acquisition of the secondhand goods.⁸ The secondhand dealer must also must keep copies on the registered secondhand dealer premises for at least one year after the transaction.⁹

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.¹⁰

Holding Period

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 certain items for 30 days:¹¹

- a precious metal,¹²
- gemstone,
- jewelry;
- antique furnishings,
- fixtures, or decorative objects; or
- an item of art as defined in s. 686.501, F.S.¹³

Additionally, a secondhand good must be held for 30 days if the secondhand dealer uses an automated kiosk.¹⁴

⁷ S. 538.03(1)(j), F.S.

⁸ S. 538.04(1), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ S. 538.06(1), F.S.

¹² S. 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.

¹³ S. 686.501, 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.

¹⁴ S. 538.03(1)(c), F.S., defines an "automated kiosk" as 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.

Such holding period is not applicable, however, when the person known by the secondhand dealer to be the person from whom the goods were acquired desires to redeem, repurchase, or recover the goods, provided the dealer can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.¹⁵

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. This prevents the secondhand dealer from selling the goods and preserves them for use as evidence in a criminal trial.¹⁶ Additionally, this allows for the possibility of the goods to be returned to their rightful owner.

Law enforcement agencies with jurisdiction enforce compliance with registration, record keeping, holding periods, and inspection requirements.¹⁷ 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.¹⁸

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.¹⁹ 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.²⁰
- A victim may file a civil action for replevin against the secondhand dealer.²¹

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.²² 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.²³

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.²⁴ 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.²⁵

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

¹⁵ S. 538.06(1), F.S.

¹⁶ S. 538.06(3), F.S.

¹⁷ S. 538.05, F.S.

¹⁸ S. 538.07(1), F.S.

¹⁹ S. 538.07(2), F.S.

²⁰ S. 538.06(4), F.S.

²¹ S. 538.08, F.S.

²² BLACK'S LAW DICTIONARY (10th ed. 2014) (defining the term "replevin"); see also, ch. 78, F.S., "Replevin."

²³ Ss. 78.055 and 538.08, F.S.

²⁴ S. 538.08(2), F.S. Otherwise, the filing and services fees are waived.

²⁵ *Foresight Enterprises, Inc. v. Leisure Time Properties, Inc.*, 466 So.2d 283, 286 (Fla. 5th DCA 1985). The plaintiff is also entitled to the summary procedure provided in s. 51.011, F.S.

- 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 five 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 interpleader²⁶ to determine conflicting claims to the property; and
- The owner or lienor prevails in the replevin action against the secondhand dealer.²⁷

Currently, there appears to be ambiguity about whether products, such as precious metals, or coins²⁸ are considered securities and potentially subject a retailer of such to a variety of other laws outside the secondhand goods regulatory scheme.²⁹

Effect of Bill

The bill amends s. 538.03, F.S., to revise the definition of “secondhand goods” to exclude:

- gold bullion³⁰,
- silver bullion,
- platinum bullion,
- palladium bullion, or
- rhodium bullion
 - If such bullion has been assayed³¹ and is properly marked as to its weight and fineness.

Thus, the holding period of 30 days for certain bullion as described above is eliminated. These kinds of bullion are no longer subject to secondhand goods regulations.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
The bill does not appear to have an impact on state revenues.
2. Expenditures:
The bill does not appear to have an impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
The bill does not appear to have an impact on local government revenues.

²⁶ Generally, interpleader is 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 (10th ed. 2014) (defining the term “interpleader”).

²⁷ S. 538.08(5), F.S.

²⁸ “Coins” is not defined in the Florida Statutes. The dictionary defines “coins” as “usually flat piece of metal issued by governmental authority as money.” *Coin Definition & Meaning*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/coin> (last visited March 26, 2023).

²⁹ David Cosgrove, *Retail Precious Metals Dealers Beware*, Cosgrove Law Group, <https://www.cosgrovelawllc.com/12-02-13-retail-precious-metals-dealers-beware.html> (last visited March 26, 2023).

³⁰ “Bullion is a physical precious metal in the form of a bar, coin, or round that is almost entirely valued by its precious metal melt value alone.” What Is Bullion?, SD Bullion, <https://sdbullion.com/what-is-bullion> (last visited March 25, 2023).

³¹ For example, “a gold assay is a process to measure the purity of items containing gold. It helps to ensure that gold coins or bullion bars produced by a mint meet the correct purity and content standards.” Will Kenton, *What Is Assay?*, Investopedia, Investopedia, Nov. 21, 2022, <https://www.investopedia.com/terms/a/assay.asp#:~:text=A%20gold%20assay%20is%20a.correct%20purity%20and%20content%20standards> (last visited March 25, 2023).

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Secondhand dealers who purchase bullion may see a cost benefit because these items are expressly excluded from the definition of a secondhand goods and therefore, are no longer required to be held for 30 days.

D. FISCAL COMMENTS:

None.