

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 Commerce and Tourism

BILL: SB 314

INTRODUCER: Senator Boyd

SUBJECT: Business Transactions

DATE: January 12, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 314 requires the Department of Law Enforcement to contract with a private vendor to supply a statewide reporting system for law enforcement agencies to use in the reporting of transactions by secondhand dealers and pawnbrokers, and requires secondhand dealers and pawnbrokers that have computer capability to electronically transmit required transactions to the statewide reporting system. The system is also for law enforcement agencies to use for investigations.

The bill clarifies that the sheriff may provide a secondhand dealer or pawnbroker with a computer and all necessary equipment for the purpose of electronically transferring secondhand dealer or pawn transactions using the statewide reporting system.

The bill clarifies that an “automated kiosk” must provide verification of a seller’s identity by a United States Government-issued photographic identification card or an electronic image taken from a United States Government-issued photographic identification or other verifiable government issued identification.

The bill takes effect July 1, 2024.

II. Present Situation:

Secondhand Dealers

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

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

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.³ The term also includes gift certificates and credit memos⁴ 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; gold, silver, platinum, palladium, or rhodium bullion that has been assayed and is properly marked as to its weight and fineness; 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.⁵

A secondhand dealer must annually register his or her business with the Department of Revenue (DOR).⁶

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.⁷ 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.⁸

If the appropriate law enforcement official supplies a secondhand dealer with appropriate software and the secondhand dealer has computer capability, the secondhand dealer must electronically transmit the required transaction records.⁹ Additionally, if a secondhand dealer

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 538.03(1)(i), F.S.

⁴ 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.

⁵ Section 538.03(1)(i), F.S.

⁶ See generally s. 538.09, F.S. (providing for registration).

⁷ Section 538.04(1), F.S.

⁸ *Id.*

⁹ Section 538.04(6), F.S.

does not have the computer capability, the appropriate law enforcement official may provide a computer and all of the equipment necessary to electronically transmit transactions.¹⁰

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,¹¹ gemstone, jewelry; antique furnishings, fixtures, or decorative objects; or an item of art as defined in s. 686.501, F.S.,¹² for 30 days after they acquire the property.¹³ Additionally, a secondhand good must be held for 30 days if the secondhand dealer uses an automated kiosk.¹⁴

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.¹⁵ 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.¹⁶

Law enforcement agencies having 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

Mail-in Secondhand Precious Metals Dealers

A mail-in secondhand precious metals dealer¹⁹ must register with the DOR and comply with all of the regulation requirements provided in s. 538.09, F.S., which is the section that regulates the registration of secondhand dealers. Additionally, a mail-in secondhand precious metals dealer may only remit payment to a seller if the seller has provided the following information:

- The seller's name, address, telephone number, and e-mail address, if available;

¹⁰ *Id.*

¹¹ 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.

¹² 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.

¹³ Section 538.06(1), F.S.

¹⁴ *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.

¹⁵ Section 538.06(3), F.S.

¹⁶ *Id.*

¹⁷ Section 538.05, F.S.

¹⁸ Section 538.07(1), F.S.

¹⁹ Section 538.31(c), F.S., defines a "mail-in secondhand precious metals dealer" as any person or entity that: (1) conducts business within this state and that contracts with other persons or entities to buy precious metals or jewelry through an Internet website, the United States mail, or telemarketing; or (2) conducts business within this state and regularly engages in the business of purchasing jewelry or precious metals through the mail or Internet-based transactions.

- The seller's driver license number and issuing state or other government-issued identification number; and
- A sworn statement made by the seller that the seller is of lawful age and that the driver license number or other government-issued identification number, as well as other identifying information provided by the seller is true and correct and that the seller is the lawful owner of the goods with absolute authority to sell the goods.²⁰

The Department of Agriculture and Consumer Services

In addition to regulating agriculture in Florida, the Department of Agriculture and Consumer Services (DACS) protects consumers from unfair and deceptive business practices and provides consumer information.

The DACS achieves this, in part, through licensing and registering various professionals, including:

- Professional Surveyors and Mappers (ch. 472, F.S.);
- Private Investigative, Private Security, and Repossession Services (ch. 493, F.S.);
- Health Studios (ch. 501, pt. I, F.S.);
- Telemarketing Services (ch. 501, pt. IV, F.S.);
- Intrastate Movers and Brokers (ch. 507, F.S.);
- Sellers of Liquefied Petroleum Gas (ch. 527, F.S.);
- Pawnbroking (ch. 539, F.S.);
- Motor Vehicle Repair Shops (ch. 559, pt. IX, F.S.); and
- Sellers of Travel (ch. 559, pt. XI, F.S.).

The DACS provides licenses and regulates each of the above professionals in accordance with that profession's practice act. Generally, applicants must meet specific statutory requirements and must pay all applicable fees.

Pawnbroking

The Florida Pawnbroking Act requires pawnshops to obtain an annual license with the DACS.²¹ To be eligible for a pawnbroker's license, an applicant must:

- Be of good moral character;
- Maintain a net worth of at least \$50,000 or file security in the form of a bond, letter of credit, or certificate of deposit in the amount of \$10,000 with the DACS; and
- Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing within the last 10 years.²²

²⁰ Section 538.32(2), F.S.

²¹ Section 539.001(3), F.S. *See also* The Florida Department of Agriculture and Consumer Services, *Pawnbroking*, available at <https://www.fdacs.gov/Business-Services/Pawnbroking> (last visited Jan. 12, 2024).

²² Section 539.001(4), F.S.

Pawnbroker Transaction Forms

At the time a pawnbroker enters into any pawn or purchase transaction, the pawnbroker is required to complete a pawnbroker transaction form.²³ The form must include an indication of whether the transaction is a pawn or a purchase, and the seller must also sign the form.²⁴

A pawnbroker is required to maintain a copy of each completed pawnbroker transaction form on the pawnshop premises for at least 1 year after the date of the transaction.²⁵ On or before the end of each business day, the pawnbroker must deliver the original pawnbroker transaction forms for each of the transactions occurring during the previous business day to the appropriate law enforcement official.²⁶ Additionally, an electronic image that is accepted for a transaction, must be maintained electronically in order to meet the same recordkeeping requirements.²⁷

If the appropriate law enforcement agency supplies adequate software and the pawnbroker presently has the computer capability, pawn transactions are required to be electronically transferred.²⁸

All goods delivered to a pawnbroker in a pawn or purchase transaction must be securely stored and maintained in an unaltered condition within the jurisdiction of the appropriate law enforcement official for a period of 30 calendar days after the transaction.²⁹

III. Effect of Proposed Changes:

Secondhand Dealers

The bill amends s. 538.03, F.S., to provide that “automated kiosk,” means 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 operating hours;
- Verification of a seller’s identity by a *United States* Government-issued photographic identification card *or an electronic image taken from a United States Government-issued photographic identification or other verifiable government-issued identification*;
- Automated reading and recording of item serial numbers;
- Ability to compare item serial numbers against databases of stolen items;

²³ Section 593.001(8)(a), F.S.

²⁴ *Id.*

²⁵ Section 593.001(9)(a), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 593.001(9)(b), F.S. If a pawnbroker does not presently have the computer ability, the appropriate law enforcement agency may provide the pawnbroker with a computer and all necessary equipment for the purpose of electronically transferring pawn transactions. The appropriate law enforcement agency must retain ownership of the computer, unless otherwise agreed upon. Additionally, the pawnbroker must maintain the computer in good working order. If the pawnbroker transfers pawn transactions electronically, the pawnbroker is not required to also deliver to the appropriate law enforcement official the original or copies of the pawnbroker transaction forms. The appropriate law enforcement official may, for the purposes of a criminal investigation, request that the pawnbroker produce an original of a transaction form that has been electronically transferred. The pawnbroker shall deliver this form to the appropriate law enforcement official within 24 hours of the request.

²⁹ Section 593.001(9)(c), F.S.

- Secure storage of goods accepted by the kiosk, and
- Capture and storage of images during the transaction.

The bill defines “statewide reporting system” as software that the Department of Law Enforcement shares with law enforcement agencies in Florida for all pawnbrokers, secondhand dealers, and secondary metals recyclers in Florida to use to report transactions to law enforcement and for law enforcement agencies to use for investigations.

The bill amends s. 538.04(6), F.S., to require the Department of Law Enforcement to supply a statewide reporting system to law enforcement agencies on or before July 1, 2027. The system must be developed and maintained pursuant to s. 790.335(5), F.S.,³⁰ through a department contract with a third-party private provider that is exclusively incorporated, owned, and operated in the United States and that restricts access to such transaction information to appropriate law enforcement agencies for legitimate law enforcement purposes only. The system must have the ability to provide daily exports of the transaction data, in compliance with s. 790.335, F.S., to the Department of Law Enforcement for use in law enforcement data-sharing systems.

The bill requires a secondhand dealer that has computer capability to electronically transmit the required secondhand dealer transactions to the statewide reporting system. If a secondhand dealer does not have computer capability, the sheriff may provide the secondhand dealer with a computer and all of the necessary equipment to electronically transmit secondhand dealer transactions using the statewide reporting system. Additionally, the sheriff retains ownership of the computer, unless otherwise agreed upon, and the secondhand dealer must maintain the computer in good working order.

Mail-in Precious Metals Dealers

The bill amends s. 538.32, F.S., to provide that a mail-in secondhand precious metals dealer may only remit payment to a seller if the seller has provided the following information:

- The seller’s name, address, telephone number, and e-mail address, if available;
- The seller’s driver license number and issuing state or other *United States* government-issued identification number *or other verifiable government issued identification*; and
- A sworn statement made by the seller that the seller is of lawful age and that the driver license number or other government-issued identification number, as well as other identifying information provided by the seller is true and correct and that the seller is the lawful owner of the goods with absolute authority to sell the goods.

Pawnbroking

The bill amends s. 539.001, F.S., to clarify that “identification” means a *United States* Government-issued photographic identification or an electronic image taken from a *United States* Government-issued photographic identification *or other verifiable government-issued identification*.

³⁰ Section 790.335(5), F.S., provides that secondhand dealers and pawnbrokers who electronically submit firearms transaction records to the appropriate law enforcement agencies as required by chapters 538 and 539, F.S., are required to submit the name of the manufacturer and caliber information of each firearm in Florida Crime Information Center coding, and also must include the model and serial number of each firearm.

The bill provides that “statewide reporting system” means software that the Department of Law Enforcement shares with law enforcement agencies in Florida for all pawnbrokers, secondhand dealers, and secondhand metals recyclers in Florida to use to report transactions to law enforcement and for law enforcement agencies to use for investigations.

The bill amends s. 539.001(9), F.S., to require the Department of Law Enforcement to supply a statewide reporting system to law enforcement agencies. The system must be developed and maintained pursuant to s. 790.335(5), F.S.,³¹ through a department contract with a third-party private provider that is exclusively incorporated, owned, and operated in the United States and that restricts access to such transaction information to appropriate law enforcement agencies for legitimate law enforcement purposes only. The system must have the ability to provide daily exports of the transaction data, in compliance with s. 790.335, F.S., to the Department of Law Enforcement for use in law enforcement data-sharing systems.

The bill requires a pawnbroker that has computer capability to electronically transmit pawn transactions. If a pawnbroker does not currently have computer capability, the sheriff having jurisdiction over the pawnshop location may provide the pawnbroker with a computer and all equipment necessary to electronically transfer pawn transactions using the statewide reporting system. Additionally, the sheriff retains ownership of the computer, unless otherwise agreed upon.

Effective Date

The bill takes effect July 1, 2024.

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.

³¹ Section 790.335(5), F.S., provides that secondhand dealers and pawnbrokers who electronically submit firearms transaction records to the appropriate law enforcement agencies as required by chapters 538 and 539, F.S., are required to submit the name of the manufacturer and caliber information of each firearm in Florida Crime Information Center coding, and also must include the model and serial number of each firearm.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Secondhand dealers and pawnbrokers will be required to use the statewide reporting system to report transactions.

C. Government Sector Impact:

The Florida Department of Law Enforcement will be required to supply a statewide reporting system for all secondhand dealers and pawnbrokers to report transactions. The bill requires the Florida Department of Law Enforcement to contract with a private provider to supply the statewide reporting system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill amends s. 538.04(6), F.S., which is the section of law regulating the recordkeeping of secondhand dealers, to require the Department of Law Enforcement to supply a statewide reporting system to law enforcement agencies on or before July 1, 2027. The bill also amends s. 539.001(9), F.S., which is the section of law regulating the recordkeeping of pawnbrokers, to require the Department of Law Enforcement to supply a statewide reporting system to law enforcement agencies. However, the bill does not indicate when the statewide reporting system must be supplied in s. 539.001(9), F.S.

The bill creates a definition of “statewide reporting system” in s. 538.03, F.S., which is applicable to Part I of Chapter 538 – Secondhand Dealers. The definition references secondary metals recyclers, but secondary metals recyclers are regulated by Part II of Chapter 538. The bill creates the same definition in s. 539.001, F.S., but this definition section is applicable to The Florida Pawnbroking Act in s. 539.001, F.S. If the intent of the bill is to require secondary metals recyclers to use the statewide system, the bill should impose that duty in Part II of Chapter 538.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 538.03, 538.04, 538.32, and 539.001.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
