

## CHAPTER 2016-59

### Committee Substitute for Committee Substitute for House Bill No. 739

An act relating to secondhand dealers; amending s. 538.03, F.S.; revising definitions; amending s. 538.04, F.S.; requiring that the record of a secondhand dealer transaction include digital photographs of the items; requiring a different method of identification when certain numbers are not available; requiring secondhand dealers to notify a law enforcement official under certain circumstances; providing that certain holding requirements do not begin until certain reports are submitted to the appropriate law enforcement official; amending s. 538.06, F.S.; revising the required holding period for certain goods acquired by a dealer; defining the term “antique”; amending s. 538.08, F.S.; authorizing an action in replevin against a secondhand dealer based on a right of possession to stolen goods; revising the form for a complaint for return of stolen goods; providing that a plaintiff in a replevin action is entitled to a certain summary procedure; providing that a secondhand dealer commits a noncriminal violation under certain circumstances; providing a penalty; amending s. 538.09, F.S.; revising the period of time a secondhand dealer must hold secondhand goods at a registered location; authorizing a secondhand dealer to store secondhand goods outside the appropriate law enforcement official’s jurisdiction under certain circumstances; providing an effective date.

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

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

538.03 Definitions; applicability.—

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

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

1. Remotely monitored by a live representative during all business operating hours;

2. Verification of a seller’s identity by government-issued photographic identification card;

3. Automated reading and recording of item serial numbers;

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

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

6. Capture and storage of images during the transaction.

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

~~(i)~~(h) “Secondhand goods” means personal property previously owned or used; which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. The term includes gift certificates and credit memos as defined in s. 501.95 which are purchased, consigned, or traded by a secondhand dealer. The term does ~~Such 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. As used in~~ For purposes of this paragraph, the term “secondhand sports equipment” does not include golf clubs.

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

538.04 Recordkeeping requirements; penalties.—

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

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

(8) When secondhand goods are purchased by means of an automated kiosk, the serial number reported pursuant to this section may be the International Mobile Station Equipment Identity (IMEI), the mobile equipment identifier (MEID), or another unique identifying number

assigned to the device by the manufacturer. If the IMEI, MEID, or other unique identifying number is not available at the time of receipt or purchase, the report filed pursuant to this section must be updated with the IMEI, MEID, or other unique identifying number as soon as possible, but no later than 10 business days after the date of acquisition. If such identifying numbers are not available at the time of the transaction, the business shall assign another unique identifier to the item which directly associates the item to the transaction that it was purchased in. Upon entering or updating any information on the transaction form, a law enforcement official, as designated by the sheriff or the chief of police of the jurisdiction in which the item was purchased, must be timely notified in writing or by electronic means, as required by the sheriff or chief of police of the jurisdiction. If, upon receiving the device and correcting the missing information, the company finds that the item was misappropriated or stolen, the appropriate law enforcement official must be notified. The holding requirements of ss. 538.06 and 538.09(3) do not begin until all required reports are complete and submitted to the appropriate law enforcement official.

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

538.06 Holding period.—

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

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

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

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

Such holding periods are not applicable 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.

(b) For purposes of this subsection, the term “antique” means the item is at least 30 years old and has special value because of its age.

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

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

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

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

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

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

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

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

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

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

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

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

(4) In addition to the civil complaint petition for return remedy, the state may file a motion as part of a pending criminal case related to the property. The criminal court has jurisdiction to determine ownership, to order return or other disposition of the property, and to order any appropriate restitution to any person. Such order shall be entered upon hearing after proper notice

has been given to the secondhand dealer, the victim, and the defendant in the criminal case.

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

(a) An owner or a 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 calendar days before filing a replevin action.

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

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

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

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

538.09 Registration.—

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

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

Approved by the Governor March 10, 2016.

Filed in Office Secretary of State March 10, 2016.