

Council Substitute for  
Committee Substitute for House Bill No. 339

An act relating to secondhand dealers and secondary metals recyclers; amending s. 538.03, F.S.; excluding specified equipment from the definition of “secondhand goods”; amending s. 538.21, F.S.; preempting certain local government ordinances relating to hold notices for secondary metals recyclers; creating part III of ch. 538, F.S.; providing definitions; providing exceptions; providing for registration; providing for recordkeeping; providing for the tendering of payments; providing for the inspection of records and business premises by a law enforcement agency; providing for a holding period; providing electronic access to transaction files by law enforcement agencies; providing for written notification to seller of transaction deficiencies; providing a method of relinquishment of abandoned property; providing for restitution; providing for replevin; prohibiting certain acts; providing penalties; providing for powers and duties of the Department of Revenue; providing an effective date.

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

Section 1. Paragraph (f) of subsection (1) of section 538.03, Florida Statutes, is amended to read:

538.03 Definitions; applicability.—

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

(f) “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. 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. For purposes of this paragraph, “secondhand sports equipment” does not include golf clubs.

Section 2. Subsection (4) is added to section 538.21, Florida Statutes, to read:

538.21 Hold notice.—

(4) This section provides a uniform statewide process and preempts municipal or county ordinances enacted after December 31, 2008, relating specifically to secondary metals recyclers holding such metals.

Section 3. Part III of chapter 538, Florida Statutes, consisting of sections 538.31, 538.32, 538.33, 538.34, 538.35, 538.36, and 538.37, is created to read:

PART III  
MAIL-IN SECONDHAND PRECIOUS METALS DEALERS

538.31 Definitions; applicability.—

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

(a) “Department” means the Department of Revenue.

(b) “Jewelry” means a personal ornament that contains precious metals and may contain gemstones.

(c) “Mail-in secondhand precious metals dealer” means 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.

(d) “Precious metals” means any item containing any gold, silver, or platinum, or any combination thereof.

(e) “Seller” means any person or entity offering precious metals or jewelry for purchase which belong solely to that person or entity and has absolute authority to sell such goods.

(f) “Transaction” includes any event relating to the purchase of secondhand precious metals or jewelry by a mail-in secondhand precious metals dealer.

(2) This part does not apply to:

(a) Any person or entity that is available to the public for walk-in business and regulated under part I.

(b) The purchase, consignment, or trade of secondhand precious metals or jewelry with another mail-in secondhand precious metals dealer or secondhand dealer regulated under part I.

538.32 Registration, transaction, and recordkeeping requirements; penalties.—

(1) A mail-in secondhand precious metals dealer may not conduct business under this part without registering with the department and complying with all registration regulations as set forth in s. 538.09.

(2) A mail-in secondhand precious metals dealer may not remit payment to a seller unless the seller has provided the following information:

(a) The seller’s name, address, telephone number, and e-mail address, if available.

(b) The seller's driver's license number and issuing state or other government-issued identification number.

(c) A sworn statement made by the seller that the seller is of lawful age and that the driver's license number or other government-issued identification number and 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. The statement must include the following language: "I declare under penalty of perjury that the foregoing is true and correct."

(3) For every transaction, the secondhand dealer must keep a record of the following:

(a) A complete and accurate description of the seller's goods, including:

1. Precious metal type, or, if jewelry, the type of jewelry.
2. Any other unique identifying marks, numbers, or letters. The description must be in an electronic format agreed upon by the dealer and the appropriate law enforcement agency.

(b) The date that the seller's goods were received by the mail-in secondhand precious metals dealer.

This information must be provided to the appropriate law enforcement agency within 24 hours after entering into the contract unless other arrangements are made between the business and the law enforcement agency.

(4) For every transaction, pictures of the secondhand goods which are the subject of the transaction must be available online for electronic viewing, via a website accessible by username and password only, by a law enforcement agency at no charge. In addition, the electronic files must be searchable by a law enforcement agency for queries concerning property descriptions, secondhand dealer transaction information, and the seller's personal identification including address, state of residence and zip code.

(5) The mail-in secondhand precious metals dealer must maintain, for a period of not less than 2 years, all information under subsections (2) and (3) and all records of any transaction between the dealer and seller in a form that is easily retrievable upon request by a law enforcement agency.

(6) The mail-in secondhand precious metals dealer must provide the appropriate law enforcement agency with an electronic copy of the name, address, phone number, driver's license number, or government-issued identification number, and issuing state of the person from whom the dealer purchased or acquired the precious metals or jewelry.

(7)(a) If the seller fails to provide the information required under s. 538.32(2)(a) and (b), the secondhand dealer may verify the identity and information of the seller through a national provider of personal identification verification services. Evidence from the personal identification verifica-

tion service must be maintained by the secondhand dealer and available for review by a law enforcement agency upon request.

(b) Alternatively, a secondhand dealer must give written notice to the seller, by United States mail or e-mail if an e-mail address is provided by the seller, that information otherwise required to be given by seller under s. 538.32(2) has not been provided by the seller to the secondhand dealer. Notice of the deficient information must be sent by the secondhand dealer no later than 10 days after the transaction is received by the secondhand dealer. The secondhand dealer must specify in the notice that:

1. The seller must provide the missing information or must request the return of the property from the secondhand dealer within 30 days after receiving the notice from the secondhand dealer; and

2. The failure of the seller to provide the missing information or request return of the property within the applicable 30-day time period shall result in abandonment of the seller's property to the Bureau of Unclaimed Property of the Department of Financial Services pursuant to chapter 717.

(c) If the seller fails to remedy the deficiency in information or request return of the property within 30 days after receiving the notice, the seller's property is deemed abandoned and is relinquished to the Bureau of Unclaimed Property pursuant to chapter 717 if the property's true market value is greater than \$50 as defined in chapter 717.

(d) Within 24 hours after the expiration of the 30-day hold period for the property, the secondhand dealer must notify the appropriate law enforcement agency of the abandonment of the property by electronic transmission or by sending a copy of the completed form authorized by chapter 717 to the Department of Financial Services, Bureau of Unclaimed Property.

(8)(a) If there is probable cause that goods held by a secondhand dealer are stolen, the law enforcement agency with jurisdiction over the secondhand dealer may place a 90-day written hold order on the goods and may take possession of the goods from the dealer during the 90-day hold period. The 90-day hold period may be extended beyond 90 days by a court of competent jurisdiction upon a finding of probable cause that the property is stolen and further holding is necessary for the purpose of trial or to safeguard the property.

(b) If the secondhand dealer maintains possession of the goods during any hold period, the secondhand dealer assumes all responsibility, civil and criminal, for the safekeeping of the property or evidence in question, including responsibility for the actions of any employee of the dealer.

(c) While a hold order is in effect, the secondhand dealer must, if in possession of the goods, release the property subject to the hold order to the custody of a law enforcement agency for use in a criminal investigation. Release of the property to the law enforcement agency is not considered a waiver or release of the secondhand dealer's rights or interest in the property unless the secondhand dealer is not owed restitution for the property.

(d) The property must be returned to the secondhand dealer upon completion of the criminal proceeding unless the court orders an alternative disposition or the secondhand dealer is not due restitution for the property. When another disposition is ordered, the court shall additionally order the person from whom the secondhand dealer acquired the property to pay restitution to the secondhand dealer in the amount that the secondhand dealer paid for the property together with reasonable attorney's fees and costs.

(9) If a secondhand dealer contests the identification or ownership of the property, the person alleging ownership of the property may, if 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 by petition in substantially the following form:

(a) 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 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.

(b) 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's fees and costs. In addition, if 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.

(c) Upon the filing of the petition, the court shall set a hearing to be held at the earliest possible time. Upon receipt of a petition for a writ by a secondhand dealer, the dealer shall hold the property at issue until the court determines the respective interests of the parties.

(d) In addition to the civil 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. The order must be entered upon hearing after proper notice has been given to the secondhand dealer, the victim, and the defendant in the criminal case.

538.33 Tendering payment.—Any payment by the mail-in secondhand precious metals dealer resulting from the sale, purchase, consignment, or trade of precious metals must be made to the person or entity by check to a lawful bank account or via a money services business licensed under part II of chapter 560.

538.34 Inspection of records and premises.—The dealer must allow a law enforcement agency to inspect its business records, inventory, and premises during normal business hours to ensure compliance with this part.

538.35 Holding period.—

(1) The dealer may not sell, barter, exchange, alter, adulterate, use, or in any way dispose of any goods purchased from a seller within 10 calendar days after the date payment is issued for acquisition of the goods.

(2) Records of the sale, purchase, consignment, or trade of precious metals or jewelry must be maintained by the business for at least 2 years after the date of the transaction.

538.36 Acts and practices prohibited; penalties.—

(1) Any dealer not registered with the department as a mail-in secondhand precious metals dealer, or who fails to comply with this part, commits a felony of the third degree for each completed transaction, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If an officer or corporation is convicted or found guilty of, or pleads nolo contendere to, any such offense, the officer or corporation may not operate thereafter for 1 year as a mail-in secondhand precious metals dealer within the state.

(2) Any person who knowingly gives false personal identifying information to the dealer, who provides a driver's license number or government-issued identification number that does not belong to him or her, or who makes any false statement with respect to being of lawful age or his or her ownership of goods, and who receives payment from the dealer commits:

(a) If the value of the money received is less than \$300, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the value of the money received is \$300 or more, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) The penalty provisions of s. 538.07 apply to any dealer who knowingly violates any provision of this part.

538.37 Powers and duties of department.—The department has the authority provided under s. 538.11.

Section 4. This act shall take effect October 1, 2009.

Approved by the Governor June 11, 2009.

Filed in Office Secretary of State June 11, 2009.