

1 A bill to be entitled
2 An act relating to mail-in secondhand dealers of jewelry
3 and precious metals; creating part III of ch. 538, F.S.;
4 defining terms; excluding certain persons and businesses
5 from applicability of the act; providing registration and
6 recordkeeping requirements; providing for verification of
7 a seller's identification; requiring the seller to present
8 a notarized statement to the secondhand dealer that the
9 photographic identification is true and accurate under
10 certain circumstances; requiring the seller to provide a
11 sworn statement that the seller is the lawful owner of the
12 jewelry or precious metals that are offered for sale and
13 has the authority to sell the jewelry or precious metals;
14 prescribing procedures for deficiencies in information
15 required to be provided by a seller; providing holding
16 periods for jewelry and precious metals; providing
17 procedures for returning a seller's jewelry and precious
18 metals; providing procedures for notifying a law
19 enforcement agency of transactions; prescribing procedures
20 for tendering payments; requiring the dealer to remit
21 payment to the seller within 2 business days and for the
22 seller to acknowledge receipt of payment within 30-
23 calendar days; providing for the inspection of records and
24 premises by law enforcement agencies; providing holding
25 periods for jewelry and precious metals purchased by a
26 secondhand dealer; providing requirements for the storage
27 of jewelry and precious metals; describing prohibited acts
28 and practices; providing criminal penalties; providing for

29 a cause of action for stolen jewelry and precious metals;
 30 providing for a petition for the return of jewelry and
 31 precious metals; providing for filing fees and award of
 32 attorney's fees and costs; providing an effective date.

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

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 36 Section 1. Part III of chapter 538, Florida Statutes,
 37 consisting of sections 538.31, 538.32, 538.33, 538.34, 538.35,
 38 538.36, 538.37, and 538.38, is created to read:

39 Part III

40 MAIL-IN SECONDHAND JEWELRY AND PRECIOUS METAL DEALERS

41 538.31 Definitions.--As used in this part, the term:

42 (1) "Department" means the Department of Revenue.

43 (2) "Jewelry" means a personal ornament that contains
 44 precious metals and may contain gemstones.

45 (3) "Precious metals" means any item containing any gold,
 46 silver, or platinum, or any combination thereof.

47 (4) "Secondhand dealer" means any person or business
 48 within this state that regularly engages in the business of
 49 purchasing jewelry or precious metals only through the mail or
 50 package delivery service.

51 (5) "Seller" means any person or business that offers
 52 jewelry or precious metals that belong solely to that person or
 53 business for sale to another and that person or business has the
 54 authority to sell the jewelry or precious metals to another.

55 (6) "Transaction" means the purchase of jewelry or
 56 precious metals by a secondhand dealer.

57 538.32 Applicability.--This part does not apply to:
 58 (1) Any person or business that is open to the public for
 59 walk-in business at a secondhand store and is regulated under
 60 part I.
 61 (2) The purchase, consignment, or trade of jewelry or
 62 precious metals with another mail-in secondhand jewelry and
 63 precious metals dealer or secondhand dealer regulated under part
 64 I.
 65 538.33 Registration and recordkeeping requirements.--
 66 (1) A secondhand dealer may not conduct business under
 67 this part without registering with the department and complying
 68 with all registration requirements as set forth in s. 538.09.
 69 (2) A secondhand dealer may not pay a seller for jewelry
 70 or precious metals until the seller has provided, on a
 71 transaction form provided by the secondhand dealer and approved
 72 by the Department of Law Enforcement, the following information:
 73 (a) The seller's name, address of primary residence,
 74 telephone number, and e-mail address, if available.
 75 (b) The seller's thumbprint, free of smudges and smears,
 76 affixed to a form provided by the secondhand dealer.
 77 (c) The seller's driver's license number and issuing
 78 state.
 79 (d) Any other information required by the form approved by
 80 the Department of Law Enforcement.
 81 (3) The seller of jewelry or precious metals shall give
 82 the secondhand dealer a notarized statement confirming that the
 83 identification information supplied on the transaction form is
 84 the same that appears on the seller's driver's license or other

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85 government-issued identification for which the seller has been
86 photographed and that the photo identification presented to the
87 notary belongs to the person from whom the secondhand dealer has
88 received precious metals or jewelry in exchange for payment if
89 any of the following conditions apply:

90 (a) The secondhand dealer has not received a notarized
91 statement from the seller in any previous transaction;

92 (b) For any transaction that the seller has evaluated will
93 be worth at least \$300; or

94 (c) The identification or contact information provided to
95 the secondhand dealer by the seller has been altered or changed
96 since the seller's most recent transaction with the dealer.

97 (4) The seller must provide a sworn statement made by the
98 seller that the seller is the lawful owner of the jewelry or
99 precious metals that are offered for sale and has the authority
100 to sell the jewelry or precious metals.

101 (5) Before tendering any payment, a secondhand dealer
102 shall verify the seller's address of primary residence or
103 telephone number by matching the information with the United
104 States Postal Service database or a commercial telephone
105 directory. If the secondhand dealer is unable to match the
106 seller's name and address of primary residence or name and
107 telephone number, the secondhand dealer may not complete the
108 purchase of the seller's jewelry or precious metals and may
109 perform only those transactions that are required to return the
110 jewelry or precious metals to the seller.

111 (6) (a) If the seller fails to provide the information
112 required on the transaction form under subsection (2), the

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113 secondhand dealer must give written notice to the seller of the
114 deficient information within 15 days after the secondhand dealer
115 receives the seller's transaction form. The secondhand dealer
116 must request in the notice that the seller provide the missing
117 information within 30 days after receiving the secondhand
118 dealer's notice. The notice must state that if the seller does
119 not provide the missing information within the allotted 30 days,
120 the seller's jewelry or precious metals will be held for an
121 additional 30 days before they are deemed abandoned and
122 relinquished to the state under chapter 717. The same
123 notification requirements must apply to any transaction in which
124 the seller has failed to acknowledge receipt of funds within 30-
125 calendar days after the secondhand dealer's recorded date of
126 remittance, as required by s. 538.34(2).

127 (b) If the seller fails to remedy the deficiency in the
128 transaction form within 30 days after receiving the notice, the
129 secondhand dealer must hold the seller's property for an
130 additional 30 days.

131 (c) If the secondhand dealer continues to hold the
132 seller's jewelry or precious metals at the end of the 30-day
133 holding period required under paragraph (b), the seller's
134 property is deemed to be abandoned and must be relinquished to
135 the state under chapter 717.

136 (d) After the expiration of the 30-day holding period
137 under paragraph (a) or upon abandonment of the seller's
138 property, the secondhand dealer must notify the local law
139 enforcement agency within 24 hours and the law enforcement
140 agency of competent jurisdiction nearest to the seller's address

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141 of the expiration of the 30-day holding period or the
142 abandonment of the property, as applicable. The secondhand
143 dealer must provide copies of all written transactions between
144 the seller and the secondhand dealer to each law enforcement
145 agency in electronic form.

146 (e) During the period in which the secondhand dealer is in
147 possession of the seller's jewelry or precious metals, the
148 seller may request in writing, or by a consensually recorded
149 telephone call, the return of his or her jewelry or precious
150 metals. The secondhand dealer must comply with seller's request
151 and return the seller's jewelry or precious metals, unless the
152 sale of the items is being investigated by a law enforcement
153 agency.

154 (7) For every transaction, the secondhand dealer must keep
155 a record of:

156 (a) A complete and accurate description of the seller's
157 jewelry or precious metals, including:

158 1. The type, weight, and content of the precious metal, if
159 known.

160 2. A description of the gemstones, including the number
161 and size of each stone, if applicable.

162 3. Any unique identifying marks, numbers, or letters.

163 (b) The date that the seller's jewelry or precious metals
164 was received by the secondhand dealer.

165 (c) The date and time of each communication from the
166 seller.

167 (d) The telephone number of the seller, as captured by
168 caller ID, when communication is made by telephone.

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169 (e) A recording of all telephone communication, if
170 consented to by the seller.

171 (f) The Internet Protocol (IP) address, date, and time
172 when communication is made by e-mail.

173 (g) The date and method of disposition of the jewelry or
174 precious metals, as well as a photograph of the jewelry or
175 precious metals.

176 (h) A digital photograph of the item sold and of any
177 unique identifying mark.

178 (8) The secondhand dealer must maintain, for at least 3
179 years, all information collected pursuant to subsections (2) and
180 (7) and all records of any transaction between the dealer and
181 the seller in a form that is easily retrievable upon request by
182 a law enforcement agency. Any information maintained pursuant to
183 this section shall be grouped by each seller's county of primary
184 residence and shall be organized in ascending order according to
185 the dates on which each transaction occurred.

186 (9) Unless other arrangements have been agreed upon by the
187 secondhand dealer and the appropriate law enforcement agency,
188 the secondhand dealer shall, within 24 hours after acquiring any
189 secondhand goods, deliver to the police department of the
190 municipality in which the secondhand dealer is registered or, if
191 the secondhand dealer is located outside of a municipality, to
192 the sheriff's department of the county in which the secondhand
193 dealer is registered, a record of the transaction on a form
194 approved by the Department of Law Enforcement.

195 538.34 Tendering payment.--

196 (1) Except as provided in subsection (3), the secondhand

197 dealer shall make payment to the seller by check, payable to the
 198 seller using only the seller's name and mailed to the seller's
 199 address of primary residence, as submitted by the seller and
 200 verified by the dealer under s. 538.33.

201 (2) Upon receipt of all documentation required by the
 202 seller in s. 538.33(2), the secondhand dealer shall remit
 203 payment to the seller within 2 business days and shall provide
 204 written notification to the seller that he or she must
 205 acknowledge receipt of funds within 30-calendar days by
 206 depositing or cashing the check issued by the dealer, after
 207 which the property remitted to the dealer shall be treated as
 208 provided in s. 538.33(6).

209 (3) Upon request by the seller, a secondhand dealer may
 210 make payment by wire transfer into a bank account rather than
 211 payment by check. Before completing a wire transfer, the
 212 secondhand dealer must obtain a copy of a voided bank check from
 213 the seller which contains the seller's name, address of primary
 214 residence, or mailing address, if different from the seller's
 215 address of primary residence, and bank account number and the
 216 name of his or her banking institution. The secondhand dealer
 217 must verify the address on the check through the United States
 218 Postal Service database, using the same method as set forth in
 219 s. 538.33, and may make a wire transfer only to the bank account
 220 that has been verified as the seller's account.

221 (4) The secondhand dealer must make wire transfers only
 222 through a money transmitter licensed under part II of chapter
 223 560.

224 538.35 Inspection of records and premises.--The secondhand

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225 dealer must allow a law enforcement agency to inspect its
226 business records, inventory, and premises during normal business
227 hours to ensure compliance with this part. The secondhand
228 dealer, upon request, must provide to the law enforcement agency
229 any transaction form and all items listed on a transaction form,
230 unless the jewelry or precious metals are no longer in the
231 possession of the secondhand dealer.

232 538.36 Holding period.--

233 (1) The secondhand dealer may not sell, barter, exchange,
234 alter, adulterate, use, or in any way dispose of any jewelry or
235 precious metals purchased from a seller until the seller has
236 acknowledged receipt of funds issued to him or her by the dealer
237 in exchange for jewelry or precious metals remitted to the
238 dealer, or if payment has been wired electronically, within 15-
239 calendar days after the dealer has remitted payment to the
240 seller in exchange for jewelry or precious metals, except that
241 this holding period may be extended for purposes of complying
242 with s. 538.33(4) and (6)(e). This holding period terminates if
243 the seller demands in writing, or during a consensually recorded
244 telephone conversation, the return of the seller's jewelry or
245 precious metals and has reimbursed the secondhand dealer for any
246 payment paid to the seller for his or her jewelry or precious
247 metals.

248 (2) The secondhand dealer must store all precious metals
249 and jewelry in a secure location during holding periods and make
250 the items available for inspection at the request of a law
251 enforcement agency.

252 (3) The secondhand dealer assumes all responsibility of

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253 any property or evidence in question, including responsibility
254 for the actions of his or her employees.

255 538.37 Acts and practices prohibited; penalties.--

256 (1) A secondhand dealer who is not registered with the
257 department as a mail-in secondhand dealer of jewelry and
258 precious metals commits a felony of the third degree, punishable
259 as provided in s. 775.082, s. 775.083, or s. 775.084, for each
260 completed transaction. The officers and corporation, if
261 convicted or found guilty of or pled nolo contendere to a
262 violation of this section, may not operate thereafter for 1 year
263 as a secondhand dealer of jewelry or precious metals within this
264 state.

265 (2) A seller who knowingly gives false personal
266 identifying information to a secondhand dealer, provides a
267 driver's license number that does not belong to him or her,
268 provides a thumbprint that is not his or her own, or makes a
269 false statement with respect to his or her age or ownership of
270 the jewelry or precious metals, and who receives payment from
271 the secondhand dealer commits:

272 (a) If the value of the money received is less than \$300,
273 a felony of the third degree, punishable as provided in s.
274 775.082, s. 775.083, or s. 775.084.

275 (b) If the value of the money received is \$300 or greater,
276 a felony of the second degree, punishable as provided in s.
277 775.082, s. 775.083, or s. 775.084.

278 (3) Except as otherwise provided in this section, the
279 penalty provisions of s. 538.07 apply to any secondhand dealer
280 who knowingly violates this part.

281 538.38 Stolen goods; petition for return.--
 282 (1) If a person other than the seller alleges ownership of
 283 jewelry or precious metals sold to a secondhand dealer, he or
 284 she may bring an action for replevin in the county or circuit
 285 court if a timely report of the theft of the secondhand jewelry
 286 or precious metals was made to the proper authorities. An action
 287 may be initiated by filing a petition in substantially the
 288 following form:

289 Plaintiff A. B., sues defendant C. D., and alleges:
 290 1. This is an action to recover possession of personal
 291 property in County, Florida.
 292 2. The description of the property is: ...(list and
 293 describe property)....
 294 3. Plaintiff is entitled to the possession of the property
 295 as evidenced by ...(indicate evidence such as a receipt or
 296 contract and attach evidence to petition as Exhibit A)....
 297 4. To plaintiff's best knowledge, information, and belief,
 298 the property is located at
 299 5. The property is wrongfully detained by defendant.
 300 Defendant came into possession of the property by ...(describe
 301 method of possession).... To plaintiff's best knowledge,
 302 information, and belief, defendant detains the property because
 303 ...(give reasons)....
 304 6. The property has not been taken under an execution or
 305 attachment against plaintiff's property.
 306 (2) The filing fees shall be waived by the clerk of the
 307 court, and the service fees shall be waived by the sheriff. The
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309 court shall award to the prevailing party attorney's fees and
310 costs. In addition, if the filing party prevails in the replevin
311 action, the court shall order payment of filing fees to the
312 clerk and service fees to the sheriff.

313 (3) Upon the filing of the petition, the court shall set a
314 hearing to be held at the earliest possible time. Upon the
315 receipt of a petition for a writ by a secondhand dealer of
316 jewelry and precious metals, the secondhand dealer must hold the
317 jewelry or precious metals at issue until the court determines
318 the respective interests of the parties.

319 (4) In addition to the civil petition for return remedy,
320 the state may file a motion as part of a pending criminal case
321 related to the jewelry or precious metals. The criminal court
322 has jurisdiction to determine ownership, to order return or
323 other disposition of the jewelry or precious metals, and to
324 order any appropriate restitution to any person. The order must
325 be entered upon hearing after proper notice has been given to
326 the secondhand dealer, the victim, and the defendant in the
327 criminal case.

328 Section 2. This act shall take effect July 1, 2009.