

HB 739

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1 A bill to be entitled
2 An act relating to secondhand dealers; amending s.
3 538.04, F.S.; requiring that the record of a
4 secondhand dealer transaction include digital photos
5 of the items; amending s. 538.06, F.S.; increasing the
6 required holding period for certain goods acquired by
7 a dealer; amending s. 538.08, F.S.; specifying that a
8 secondhand dealer has a duty to return stolen goods to
9 their lawful owner or to a lienor who has a right of
10 possession; revising the form for a complaint for
11 return of possession; providing for the award of
12 damages for loss of use in certain circumstances;
13 providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

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

21 538.04 Recordkeeping requirements; penalties.—

22 (1) A secondhand dealer shall complete a secondhand
23 dealers transaction form at the time of the actual transaction.
24 A secondhand dealer shall maintain a copy of a completed
25 transaction form on the registered premises for at least 1 year
26 after the date of the transaction. However, the secondhand

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27 dealer shall maintain a copy of the transaction form for not
28 less than 3 years. Unless other arrangements are agreed upon by
29 the secondhand dealer and the appropriate law enforcement
30 official, the secondhand dealer shall, within 24 hours after
31 acquiring any secondhand goods, deliver to such official a
32 record of the transaction on a form approved by the Department
33 of Law Enforcement. Such record shall contain:

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

37 Section 2. Subsection (1) of section 538.06, Florida
38 Statutes, is amended to read:

39 538.06 Holding period.—

40 (1) A secondhand dealer shall not sell, barter, exchange,
41 alter, adulterate, use, or in any way dispose of any secondhand
42 goods within 30 ~~15~~ calendar days of the date of acquisition of
43 the goods. Such holding periods are not applicable when the
44 person known by the secondhand dealer to be the person from whom
45 the goods were acquired desires to redeem, repurchase, or
46 recover the goods, provided the dealer can produce the record of
47 the original transaction with verification that the customer is
48 the person from whom the goods were originally acquired.

49 Section 3. Subsections (1) and (3) of section 538.08,
50 Florida Statutes, are amended to read:

51 538.08 Stolen goods; petition for return.—

52 (1) A secondhand dealer has a duty to return stolen goods

53 to their lawful owner or to a lienor who has a right of
 54 possession. If the secondhand dealer contests the identification
 55 or ownership or right of possession of the property, the person
 56 alleging ownership or right of possession of the property may,
 57 provided that a timely report of the theft of the goods was made
 58 to the proper authorities, bring an action for replevin in the
 59 county or circuit court. The complaint may be ~~by petition~~ in
 60 substantially the following form:

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

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

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

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

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

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

78 6. The property has not been taken under an execution or

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79 attachment against plaintiff's property.

80 (3) Upon the filing of the complaint ~~petition~~, the court
81 shall set a hearing to be held at the earliest possible time.
82 The claimant is entitled to the summary procedure provided in s.
83 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a writ~~
84 by a ~~secondhand~~ dealer, the secondhand dealer shall hold the
85 property at issue until the court determines the respective
86 interests of the parties. If the owner makes a written demand to
87 the secondhand dealer for return of the property 5 or more days
88 before the filing of the action, the court shall additionally
89 award damages to the owner for loss of use of the property;
90 however, the secondhand dealer is not liable for loss-of-use
91 damages when there are conflicting claims to the property and
92 the dealer files an action for interpleader.

93 Section 4. This act shall take effect July 1, 2016.