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538.03 Definitions; applicability.—

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

(a) "Acquire" means to obtain by purchase, consignment, or trade.

(b) "Appropriate law enforcement official" means the sheriff of the county in which a secondhand dealer is located or, if the secondhand dealer is located within a municipality, both the police chief of the municipality and the sheriff; however, the sheriff or police chief may designate as the appropriate law enforcement official for that county or municipality, as applicable, any law enforcement officer working within that respective county or municipality. This paragraph does not limit the authority or duties of the sheriff.

(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.

(d) "Consignment shop" means a shop engaging in the business of accepting for sale, on consignment, secondhand goods which, having once been used or transferred from the manufacturer to the dealer, are then received into the possession of a third party.

(e) "Department" means the Department of Revenue.

(f) "Precious metals" means 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.

(g) "Precious metals dealer" means a secondhand dealer who normally or regularly engages in the business of buying used precious metals for resale. The term does not include those persons involved in the bulk sale of precious metals from one secondhand or precious metals dealer to another.

(h) "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) "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 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 this paragraph, the term "secondhand sports equipment" does not include golf clubs.

(j) "Secondhand store" means the place or premises at which a secondhand dealer is registered to conduct business as a secondhand dealer or conducts business.

(k) "Transaction" means any purchase, consignment, or trade of secondhand goods by a secondhand dealer.

(2) This chapter does not apply to:

(a) Any secondhand goods transaction involving an organization or entity registered with the state as a nonprofit, religious, or charitable organization or any school-sponsored association or organization other than a secondary metals recycler subject to the provisions of part II.

(b) A law enforcement officer acting in an official capacity.

(c) A trustee in bankruptcy, executor, administrator, or receiver who has presented proof of such status to the secondhand dealer.

(d) Any public official acting under judicial process or authority who has presented proof of such status to the secondhand dealer.

(e) A sale on the execution, or by virtue of any process issued by a court, if proof thereof has been presented to the secondhand dealer.

(f) Any garage sale operator who holds garage sales less than 10 weekends per year.

(g) Any person at antique, coin, or collectible shows or sales.

(h) Any person who sells household personal property as an agent for the property owner or the property owner's representative pursuant to a written agreement at that person's residence.

(i) The purchase, consignment, or trade of secondhand goods from one secondhand dealer to another secondhand dealer when the selling secondhand dealer has complied with the requirements of this chapter.

(j) Any person accepting a secondhand good as a trade-in for a similar item of greater value.

(k) Any auction business as defined in s. 468.382 operating as an auction business in the buying and selling of estates, business inventory, surplus merchandise, or business liquidations.

(l) Any business that is registered with the Department of Revenue for sales tax purposes as an antique dealer pursuant to chapter 212 and that purchases secondhand goods from the property owner or her or his representative at the property owner's residence pursuant to a

written agreement that states the name, address, and telephone number of the property owner and the type of property purchased.

(m) A business that contracts with other persons or entities to offer its secondhand goods for sale, purchase, consignment, or trade via an Internet website, and that maintains a shop, store, or other business premises for this purpose, if all of the following apply:

1. The secondhand goods must be available on the website for viewing by the public at no charge;
2. The records of the sale, purchase, consignment, or trade must be maintained for at least 2 years;
3. The records of the sale, purchase, consignment, or trade, and the description of the secondhand goods as listed on the website, must contain the serial number of each item, if any;
4. The secondhand goods listed on the website must be searchable based upon the state or zip code;
5. The business must provide the appropriate law enforcement official with the name or names under which it conducts business on the website;
6. The business must allow the appropriate law enforcement official to inspect its business premises at any time during normal business hours;
7. Any payment by the business resulting from such a sale, purchase, consignment, or trade must be made to the person or entity with whom the business contracted to offer the goods and must be made by check or via a money services business licensed under part II of chapter 560; and

8.a. At least 48 hours after the estimated time of contracting to offer the secondhand goods, the business must verify that any item having a serial number is not stolen property by entering the serial number of the item into the Department of Law Enforcement's stolen article database located at the Florida Crime Information Center's public access system website. The business shall record the date and time of such verification on the contract covering the goods. If such verification reveals that an item is stolen property, the business shall immediately remove the item from any website on which it is being offered and notify the appropriate law enforcement official; or

b. The business must provide the appropriate law enforcement official with an electronic copy of the name, address, phone number, driver license number, and issuing state of the person with whom the business contracted to offer the goods, as well as an accurate description of the goods, including make, model, serial number, and any other unique identifying marks, numbers, names, or letters that may be on an item, in a format agreed upon by the business and the appropriate law enforcement official. This information must be provided to the appropriate law enforcement official within 24 hours after entering into the contract unless other arrangements are made between the business and the law enforcement official.

(n) Any person offering his or her own personal property for sale, purchase, consignment, or trade via an Internet website, or a person or entity offering the personal property of others for sale, purchase, consignment, or trade via an Internet website, when that person or entity does not have, and is not required to have, a local occupational or business license for this purpose.

(o) A business whose primary business is the sale, rental, or trade of motion picture videos or video games, if the business:

1. Requires the sellers of secondhand goods to have a current account with the business;
2. Has on file in a readily accessible format the name, current residential address, home and work telephone numbers, government-issued identification number, place of employment, date of birth, gender, and right thumbprint of each seller of secondhand goods;
3. Purchases secondhand goods from the property owner or his or her representative at the place of business pursuant to an agreement in writing and signed by the property owner which describes the property purchased, states the date and time of the purchase, and states that the seller is the lawful owner of the property;
4. Retains such purchase agreements for not less than 1 year; and
5. Pays for the purchased property in the form of a store credit that is issued to the seller and is redeemable solely by the seller or another authorized user of the seller's account with that business.

(p) A motor vehicle dealer as defined in s. 320.27.

(3) This part does not apply to secondary metals recyclers regulated under part II, except for s. 538.11, which applies to both secondhand dealers and secondary metals recyclers.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 1, ch. 90-318; s. 4, ch. 91-429; s. 202, ch. 92-303; s. 1, ch. 93-97; s. 1, ch. 95-287; s. 745, ch. 97-103; s. 1, ch. 98-30; ss. 17, 21, ch. 2000-138; s. 1, ch. 2006-201; s. 51, ch. 2008-177; s. 1, ch. 2009-158; s. 1, ch. 2009-162; s. 1, ch. 2012-179; s. 68, ch. 2015-2; s. 1, ch. 2016-59.

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:

(a) The time, date, and place of the transaction.

(b) A complete and accurate description of the goods acquired, including the following information, if applicable:

1. Brand name.
2. Model number.
3. Manufacturer's serial number.
4. Size.
5. Color, as apparent to the untrained eye.
6. Precious metal type, weight, and content if known.
7. Gemstone description, including the number of stones, if applicable.
8. In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.
9. Any other unique identifying marks, numbers, or letters.

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

(d) A description of the person from whom the goods were acquired, including:

1. Full name, current residential address, workplace, and home and work phone numbers.
2. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks.
3. The right thumbprint, free of smudges and smears, of the person from whom the goods were acquired.

(e) Any other information required by the form approved by the Department of Law Enforcement.

(2) The secondhand dealer shall require verification of the identification by the exhibition of a government-issued photographic identification card such as a driver license or military identification card. The record shall contain the type of identification exhibited, the issuing agency, and the number thereon.

(3) The seller shall sign a statement verifying that the seller is the rightful owner of the goods or is entitled to sell, consign, or trade the goods.

(4) Any person who knowingly gives false verification of ownership or who gives a false or altered identification, and who receives money from a secondhand dealer for goods sold, consigned, or traded 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.

(5) Secondhand dealers are exempt from the provisions of this section for all transactions involving secondhand sports equipment except secondhand sports equipment that is permanently labeled with a serial number.

(6) 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 secondhand dealer transactions required by this section to such official. If a secondhand dealer does not have computer capability, the appropriate law enforcement official may provide the secondhand dealer with a computer and all equipment necessary to electronically transmit secondhand dealer transactions. The appropriate law enforcement official shall retain ownership of the computer, unless otherwise agreed upon, and the secondhand dealer shall maintain the computer in good working order, except for ordinary wear. A secondhand dealer who transmits secondhand dealer transactions electronically is not required to also deliver the original or paper copies of the secondhand transaction forms to the appropriate law enforcement official. However, such official may, for purposes of a criminal investigation, request the secondhand dealer to deliver the original transaction form that was electronically transmitted. The secondhand dealer shall deliver the form to the appropriate law enforcement official within 24 hours after receipt of the request.

(7) If the original transaction form is lost or destroyed by the appropriate law enforcement official, a copy may be used by the secondhand dealer as evidence in court. When an electronic image of a customer's identification is accepted for a transaction, the secondhand dealer must maintain the electronic image in order to meet the recordkeeping requirements applicable to the original transaction form. If a criminal investigation occurs, the secondhand

dealer shall, upon request, provide a clear and legible copy of the image to the appropriate law enforcement official.

(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.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 2, ch. 90-318; s. 4, ch. 91-429; s. 2, ch. 98-30; s. 2, ch. 2006-201; s. 2, ch. 2012-179; s. 2, ch. 2016-59.

538.05 Inspection of records and premises of secondhand dealers.—

(1) The entire registered premises and required records of each secondhand dealer are subject to inspection during regular business hours by any law enforcement officer having jurisdiction.

(2) The inspection authorized by subsection (1) shall consist of an examination on the registered premises of the inventory and required records to determine whether the records and inventory are being maintained on the registered premises as required by s. 538.04 and whether the holding period required by s. 538.06 is being complied with.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 3, ch. 90-318; s. 4, ch. 91-429; s. 2, ch. 93-97; s. 3, ch. 2006-201.

538.06 Holding period.—

(1)(a) A secondhand dealer may 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. within 15 calendar days after the date on which the good is acquired.

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.

(2) A secondhand dealer must maintain actual physical possession of all secondhand goods throughout a transaction. It is unlawful for a secondhand dealer to accept title or any other form of security in secondhand goods in lieu of actual physical possession. A secondhand dealer who accepts title or any other form of security in secondhand goods in lieu of actual physical possession commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Upon probable cause that goods held by a secondhand dealer are stolen, a law enforcement officer with jurisdiction may place a 90-day written hold order on the goods. However, the hold 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 purposes of trial or to safeguard such property. The dealer shall assume all responsibility, civil or criminal, relative to the property or evidence in question, including responsibility for the actions of any employee with respect thereto.

(4) While a hold order is in effect, the secondhand dealer must, upon request, release the property subject to the hold order to the custody of a law enforcement officer with jurisdiction for use in a criminal investigation. The release of the property to the custody of the law enforcement officer is not considered a waiver or release of the secondhand dealer's rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the secondhand dealer unless the court orders other disposition. When such other 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.

(5) All dealers in secondhand property regulated by this chapter shall maintain transaction records for 3 years.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 90-318; s. 4, ch. 91-429; s. 3, ch. 93-97; s. 2, ch. 95-287; s. 21, ch. 2000-138; s. 4, ch. 2006-201; s. 3, ch. 2016-59.

538.07 Penalty for violation of chapter.—

(1) Except where otherwise provided herein, a person who knowingly violates any provision of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 and by a fine not to exceed \$10,000.

(2) When the lawful owner recovers stolen property from a secondhand dealer and the person who sold or pledged the stolen property to the secondhand dealer is convicted of theft, a violation of this section, or dealing in stolen property, the court shall order the defendant to make restitution to the secondhand dealer or the lawful owner, as applicable, pursuant to s. 775.089.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 3, ch. 93-37; s. 5, ch. 2006-201.

538.08 Stolen goods; complaint for return.—

(1) If the secondhand dealer contests the identification, 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 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 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, 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 receipt of the complaint, 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 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 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.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 4, ch. 93-97; s. 24, ch. 99-6; s. 4, ch. 2016-59.

538.09 Registration.—

(1) A secondhand dealer shall not engage in the business of purchasing, consigning, or trading secondhand goods from any location without registering with the Department of Revenue. A fee equal to the federal and state costs for processing required fingerprints must be submitted to the department with each application for registration. One application is required for each dealer. If a secondhand dealer is the owner of more than one secondhand store location, the application must list each location, and the department shall issue a duplicate registration for each location. For purposes of subsections (4) and (5) of this section, these duplicate registrations shall be deemed individual registrations. A dealer shall pay a fee of \$6 per location at the time of registration and an annual renewal fee of \$6 per location on October 1 of each year. All fees collected, less costs of administration, shall be transferred

into the Operating Trust Fund. The Department of Revenue shall forward the full set of fingerprints to the Department of Law Enforcement for state and federal processing, provided the federal service is available, to be processed for any criminal justice information as defined in s. 943.045. The cost of processing such fingerprints shall be payable to the Department of Law Enforcement by the Department of Revenue. The department may issue a temporary registration to each location pending completion of the background check by state and federal law enforcement agencies, but shall revoke such temporary registration if the completed background check reveals a prohibited criminal background. An applicant for a secondhand dealer registration must be a natural person who has reached the age of 18 years.

(a) If the applicant is a partnership, all the partners must apply.

(b) If the applicant is a joint venture, association, or other noncorporate entity, all members of such joint venture, association, or other noncorporate entity must make application for registration as natural persons.

(c) If the applicant is a corporation, the registration must include the name and address of such corporation's registered agent for service of process in the state and a certified copy of statement from the Secretary of State that the corporation is duly organized in the state or, if the corporation is organized in a state other than Florida, a certified copy of statement from the Secretary of State that the corporation is duly qualified to do business in this state. If the dealer has more than one location, the application must list each location owned by the same legal entity and the department shall issue a duplicate registration for each location.

(2) The secondhand dealer shall furnish with her or his registration a complete set of her or his fingerprints, certified by an authorized law enforcement officer, and a recent fullface photographic identification card of herself or himself. The Department of Law Enforcement shall report its findings to the Department of Revenue within 30 days after the date the fingerprints are submitted for criminal justice information.

(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 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.

(4) The department may impose a civil fine of up to \$10,000 for each violation of this section, which fine shall be transferred into the General Revenue Fund. If the fine is not paid within 60 days, the department may bring a civil action under s. 120.69 to recover the fine.

(5) In addition to the fine provided in subsection (4), registration under this section may be denied or any registration granted may be revoked, restricted, or suspended by the department if the department determines that the applicant or registrant:

(a) Has violated any provision of this chapter or any rule or order made pursuant to this chapter;

(b) Has made a material false statement in the application for registration;

(c) Has been guilty of a fraudulent act in connection with any purchase or sale or has been or is engaged in or is about to engage in any practice, purchase, or sale which is fraudulent or in violation of the law;

(d) Has made a misrepresentation or false statement to, or concealed any essential or material fact from, any person in making any purchase or sale;

(e) Is making purchases or sales through any business associate not registered in compliance with the provisions of this chapter;

(f) Has, within the preceding 10-year period for new registrants who apply for registration on or after October 1, 2006, been convicted of, or has entered a plea of guilty or nolo contendere to, or had adjudication withheld for, a crime against the laws of this state or any other state or of the United States which relates to registration as a secondhand dealer or which involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, any felony drug offense, any violation of s. 812.015, or any fraudulent dealing;

(g) Has had a final judgment entered against her or him in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit; or

(h) Has failed to pay any sales tax owed to the Department of Revenue.

In the event the department determines to deny an application or revoke a registration, it shall enter a final order with its findings on the register of secondhand dealers and their business associates, if any; and denial, suspension, or revocation of the registration of a secondhand dealer shall also deny, suspend, or revoke the registration of such secondhand dealer's business associates.

(6) Upon the request of a law enforcement official, the Department of Revenue shall release to the official the name and address of any secondhand dealer registered to do business within the official's jurisdiction.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 5, ch. 90-318; s. 4, ch. 91-429; s. 3, ch. 92-79; s. 16, ch. 94-353; s. 746, ch. 97-103; s. 6, ch. 2006-201; s. 4, ch. 2007-14; s. 71, ch. 2012-5; s. 49, ch. 2013-116; s. 5, ch. 2016-59.

538.11 Powers and duties of department; rules.—The same duties and privileges imposed by chapter 212 upon dealers of tangible personal property respecting the keeping of books and records and accounts and compliance with rules of the department shall apply to and be binding upon all persons who are subject to the provisions of this chapter. The department shall administer, collect, and enforce the registration authorized under this chapter pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under chapter 212, except as provided in this section. The provisions of chapter 212 regarding the keeping of records and books shall apply. The department is authorized to employ persons and incur other expenses for which funds are appropriated by the Legislature. The department is empowered to adopt such rules, and shall prescribe and publish such forms, as may be necessary to effectuate the purposes of this chapter. The Legislature hereby finds that the failure to promptly implement the provisions of this chapter would present an immediate threat to the welfare of the state. Therefore, the executive director of the department is hereby authorized to adopt emergency rules pursuant to s. 120.54(4), for purposes of implementing this chapter. Notwithstanding any other provision of law, such emergency rules shall remain effective for 6 months from the date of adoption. Other rules of the department related to and in furtherance of the orderly implementation of the chapter shall not be subject to a rule challenge under s. 120.56(2) or a drawout proceeding under s. 120.54(3)(c)2. but, once adopted, shall be subject to an invalidity challenge under s. 120.56(3). Such rules shall be adopted by the Governor and Cabinet and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. 120.54(3)(e)6.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 247, ch. 96-410; s. 35, ch. 97-99; s. 25, ch. 2001-63.

538.15 Certain acts and practices prohibited.—It is unlawful for a secondhand dealer or any employee thereof to do or allow any of the following acts:

(1) Knowingly make a transaction with:

(a) Any person who is under the influence of drugs or alcohol when such condition is visible or apparent;

(b) Any person under the age of 18 years; or

(c) Any person using a name other than her or his own name or the registered name of her or his business.

(2) Have a secondhand store open or engage in or conduct business as a secondhand dealer between the hours of 10 p.m. and 8 a.m. A secondhand dealer shall not conduct any transaction at a drive-through window or similar device.

(3) Fail to pay any sales tax owed to the Department of Revenue or fail to have a sales tax registration number.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 3, ch. 95-287; s. 747, ch. 97-103; s. 21, ch. 2000-138.

538.17 Local regulation of secondhand dealers.—Nothing in this chapter shall preclude political subdivisions of the state and municipalities from enacting laws more restrictive than the provisions of this chapter.

History.—s. 2, ch. 89-533; s. 1, ch. 90-192; s. 4, ch. 91-429.