

By Representative Healey

1 A bill to be entitled
2 An act relating to pawnbrokers; amending s.
3 539.001, F.S.; providing additional eligibility
4 requirements for licensure; requiring
5 electronic recordkeeping and transactions
6 transfer; requiring notification of
7 transactions to law enforcement agencies under
8 certain circumstances; requiring pawnbrokers to
9 install video surveillance equipment; providing
10 requirements relating to such equipment and
11 video tapes; requiring revocation of a
12 pawnbroker's license under certain
13 circumstances; requiring a pawnbroker to convey
14 certain goods to a claimant under certain
15 circumstances; clarifying pawnbroker remedies
16 relating to misappropriated property; providing
17 additional criminal penalties under certain
18 circumstances; providing an effective date.

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

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22 Section 1. Paragraph (a) of subsection (4), paragraph
23 (b) of subsection (7), subsection (9), subsection (15), and
24 subsection (17) of section 539.001, Florida Statutes, are
25 amended to read:

26 539.001 The Florida Pawnbroking Act.--

27 (4) ELIGIBILITY FOR LICENSE.--

28 (a) To be eligible for a pawnbroker's license, an
29 applicant must:

30 1. Be of good moral character;

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1 2. Have a net worth of at least \$50,000 or file with
2 the agency a bond issued by a surety company qualified to do
3 business in this state in the amount of \$10,000 for each
4 license. In lieu of the bond required in this section, the
5 applicant may establish a certificate of deposit or an
6 irrevocable letter of credit in a Florida banking institution
7 in the amount of the bond. The original bond, certificate of
8 deposit, or letter of credit shall be filed with the agency,
9 and the agency shall be the beneficiary to said document. The
10 bond, certificate of deposit, or letter of credit shall be in
11 favor of the agency for the use and benefit of any consumer
12 who is injured by the fraud, misrepresentation, breach of
13 contract, financial failure, or violation of any provision of
14 this section by the pawnbroker. Such liability may be enforced
15 either by proceeding in an administrative action or by filing
16 a judicial suit at law in a court of competent jurisdiction.
17 However, in such court suit, the bond, certificate of deposit,
18 or letter of credit posted with the agency shall not be
19 amenable or subject to any judgment or other legal process
20 issuing out of or from such court in connection with such
21 lawsuit, but such bond, certificate of deposit, or letter of
22 credit shall be amenable to and enforceable only by and
23 through administrative proceedings before the agency. It is
24 the intent of the Legislature that such bond, certificate of
25 deposit, or letter of credit shall be applicable and liable
26 only for the payment of claims duly adjudicated by order of
27 the agency. The bond, certificate of deposit, or letter of
28 credit shall be payable on a pro rata basis as determined by
29 the agency, but the aggregate amount may not exceed the amount
30 of the bond, certificate of deposit, or letter of credit;
31

1 3. Not have been convicted of, or found guilty of, or
2 pled guilty or nolo contendere to, regardless of adjudication,
3 a felony within the last 10 years and not be acting as a
4 beneficial owner for someone who has been convicted of, or
5 found guilty of, or pled guilty or nolo contendere to,
6 regardless of adjudication, a felony within the last 10 years;
7 and

8 4. Not have been convicted of, or found guilty of, or
9 pled nolo contendere to, regardless of adjudication, a crime
10 that the agency finds directly relates to the duties and
11 responsibilities of a pawnbroker within the last 10 years, and
12 not be acting as a beneficial owner for someone who has been
13 convicted, of, or found guilty of, or pled guilty or nolo
14 contendere to, regardless of adjudication, a crime that the
15 agency finds directly relates to the duties and
16 responsibilities of a pawnbroker within the last 10 years.

17 5. Have and maintain a computer and the necessary
18 equipment required to electronically transfer pawn
19 transactions to the appropriate law enforcement agency on a
20 software program approved by the agency.

21 6. Install, maintain, and operate during business
22 hours a surveillance camera capable of videotaping every pawn
23 and sell transaction, including the clear facial identity of
24 the pledgor or seller.

25 (7) ORDERS IMPOSING PENALTIES.--

26 (a) The agency may enter an order imposing one or more
27 of the penalties set forth in paragraph (b) if the agency
28 finds that a pawnbroker:

29 1. Violated or is operating in violation of any of the
30 provisions of this section or of the rules adopted or orders
31 issued thereunder;

1 2. Made a material false statement in any application,
2 document, or record required to be submitted or retained under
3 this section;

4 3. Refused or failed, or any of its principal officers
5 has refused or failed, after notice, to produce any document
6 or records or disclose any information required to be produced
7 or disclosed under this section or the rules of the agency;

8 4. Made a material false statement in response to any
9 request or investigation by the agency, the Department of
10 Legal Affairs, or the state attorney; or

11 5. Has intentionally defrauded the public through
12 dishonest or deceptive means.

13 (b)1. Upon a finding as set forth in paragraph (a),
14 the agency may enter an order doing one or more of the
15 following:

16 ~~a.1.~~ Issuing a notice of noncompliance pursuant to s.
17 120.695.

18 ~~b.2.~~ Imposing an administrative fine not to exceed
19 \$5,000 for each act which constitutes a violation of this
20 section or a rule or an order.

21 ~~c.3.~~ Directing that the pawnbroker cease and desist
22 specified activities.

23 ~~d.4.~~ Refusing to license or revoking or suspending a
24 license.

25 ~~e.5.~~ Placing the licensee on probation for a period of
26 time, subject to such conditions as the agency may specify.

27 2. Upon a third finding as set forth in paragraph (a),
28 the agency shall revoke the pawnbroker's license.

29 (9) RECORDKEEPING; REPORTING; HOLD PERIOD.--

30 (a) A pawnbroker must maintain a copy of each
31 completed pawnbroker transaction form on the pawnshop premises

1 for at least 1 year after the date of the transaction. On or
2 before the end of each business day, the pawnbroker must
3 deliver to the appropriate law enforcement official the
4 original pawnbroker transaction forms for each of the
5 transactions occurring during the previous business day,
6 unless other arrangements have been agreed upon between the
7 pawnbroker and the appropriate law enforcement official. If
8 the original transaction form is lost or destroyed by the
9 appropriate law enforcement official, a copy may be used by
10 the pawnbroker as evidence in court. When an electronic image
11 of a pledgor or seller identification is accepted for a
12 transaction, the pawnbroker must maintain the electronic image
13 in order to meet the same recordkeeping requirements as for
14 the original transaction form. If a criminal investigation
15 occurs, the pawnbroker shall, upon request, provide a clear
16 and legible copy of the image to the appropriate law
17 enforcement official.

18 (b) The pawnbroker shall have and maintain a computer
19 in good working order and shall on or before the end of each
20 business day electronically transfer pawn transactions for
21 each of the transactions occurring during the previous
22 business day to the appropriate law enforcement agency on a
23 software program approved by the agency. The pawn transaction
24 records shall be electronically recorded and stored by the
25 pawnbroker on an approved magnetic tape or as otherwise
26 approved by the agency, on a daily basis and maintained for a
27 period of not less than 3 years after the date of the
28 transaction.~~If the appropriate law enforcement agency~~
29 ~~supplies the appropriate software and the pawnbroker presently~~
30 ~~has the computer ability, pawn transactions shall be~~
31 ~~electronically transferred. If a pawnbroker does not presently~~

1 ~~have the computer ability, the appropriate law enforcement~~
2 ~~agency may provide the pawnbroker with a computer and all~~
3 ~~necessary equipment for the purpose of electronically~~
4 ~~transferring pawn transactions. The appropriate law~~
5 ~~enforcement agency shall retain ownership of the computer,~~
6 ~~unless otherwise agreed upon. The pawnbroker shall maintain~~
7 ~~the computer in good working order, ordinary wear and tear~~
8 ~~excepted.~~In the event the pawnbroker transfers pawn
9 transactions electronically, the pawnbroker is not required to
10 also deliver to the appropriate law enforcement official the
11 original or copies of the pawnbroker transaction forms. The
12 appropriate law enforcement official may, for the purposes of
13 a criminal investigation, request that the pawnbroker produce
14 an original of a transaction form that has been electronically
15 transferred. The pawnbroker shall deliver this form to the
16 appropriate law enforcement official within 24 hours of the
17 request.

18 (c) All goods delivered to a pawnbroker in a pawn or
19 purchase transaction must be securely stored and maintained in
20 an unaltered condition within the jurisdiction of the
21 appropriate law enforcement official for a period of 30
22 calendar days after the transaction. Those goods delivered to
23 a pawnbroker in a purchase transaction may not be sold or
24 otherwise disposed of before the expiration of such period.
25 The pawnbroker shall make all pledged and purchased goods and
26 all records relating to such goods available for inspection by
27 the appropriate law enforcement official during normal
28 business hours throughout such period. The pawnbroker must
29 store and maintain pledged goods for the period prescribed in
30 subsection (10) unless the pledged goods are redeemed earlier;
31 provided, however, that within the first 30 days after the

1 original pawn, the pledged goods may be redeemed only by the
2 pledgor or the pledgor's attorney in fact.

3 (d) The pawnbroker shall be required to notify the
4 appropriate law enforcement agency in writing or by electronic
5 report within 24 hours after the latest pawn or sell
6 transaction, in a form approved by the agency, of a pledgor or
7 seller who conducts five or more pawn or sell transactions in
8 any calendar month. The report shall include copies of all
9 transaction forms for pawns or sales conducted within that
10 month by that person.

11 (e) A pawnbroker must install, maintain, and operate
12 during business hours a surveillance camera capable of
13 videotaping every pawn or sell transaction and the clear
14 facial identity of the pledgor or seller, as approved by the
15 agency. The pawnbroker shall maintain the video tapes for a
16 calendar month and shall make those video tapes available to
17 the appropriate law enforcement agency within 24 hours after
18 the agency's request.

19 (15) CLAIMS AGAINST PURCHASED GOODS OR PLEDGED GOODS
20 HELD BY PAWNBROKERS.--

21 (a) To obtain possession of purchased or pledged goods
22 held by a pawnbroker which a claimant claims to be
23 misappropriated, the claimant must notify the pawnbroker by
24 certified mail, return receipt requested, or in person
25 evidenced by signed receipt, of the claimant's claim to the
26 purchased or pledged goods. The notice must contain a complete
27 and accurate description of the purchased or pledged goods and
28 must be accompanied by a legible copy of the applicable law
29 enforcement agency's report on the misappropriation of such
30 property. The claimant shall provide a proper receipt
31 evidencing proof of purchase of the misappropriated purchased

1 or pledged goods. Upon presentation of such proof, the
2 pawnbroker shall immediately convey such goods to the
3 claimant. If the claimant does not have a proper receipt and
4 if the claimant and the pawnbroker do not resolve the matter
5 within 10 days after the pawnbroker's receipt of the notice,
6 the claimant may petition the court to order the return of the
7 property, naming the pawnbroker as a defendant, and must serve
8 the pawnbroker with a copy of the petition. The pawnbroker
9 shall hold the property described in the petition until the
10 right to possession is resolved by the parties or by a court
11 of competent jurisdiction. The court shall waive any filing
12 fee for the petition to recover the property, and the sheriff
13 shall waive the service fees.

14 (b) If, after notice and a hearing, the court finds
15 that the property was misappropriated and orders the return of
16 the property to the claimant:

17 1. The claimant may recover from the pawnbroker the
18 cost of the action, including the claimant's reasonable
19 attorney's fees; and

20 2. The pawnbroker may petition the court for
21 restitution from the conveying customer, naming the conveying
22 customer as defendant, and must serve the pledgor or seller
23 with a copy of the petition. The pawnbroker may recover from
24 the conveying customer the cost of the action, including the
25 pawnbroker's reasonable attorney's fees, the claimant's
26 reasonable attorney's fees if they were paid by the pawnbroker
27 and the full amount the conveying customer received from the
28 pawnbroker for the property plus all applicable pawn service
29 charges.~~If the conveying customer is convicted of theft, a~~
30 ~~violation of this section, or dealing in stolen property, the~~
31 ~~court shall order the conveying customer to repay the~~

1 ~~pawnbroker the full amount the conveying customer received~~
2 ~~from the pawnbroker for the property, plus all applicable pawn~~
3 ~~service charges. As used in this paragraph, the term~~
4 ~~"convicted of" includes a plea of nolo contendere to the~~
5 ~~charges or any agreement in which adjudication is withheld;~~
6 ~~and~~

7 3. ~~The conveying customer shall be responsible to pay~~
8 ~~all attorney's fees and taxable costs incurred by the~~
9 ~~pawnbroker in defending a replevin action or any other civil~~
10 ~~matter wherein it is found that the conveying customer was in~~
11 ~~violation of this paragraph.~~

12 ~~(c) If the court finds that the claimant failed to~~
13 ~~comply with the requirements in paragraph (a) or otherwise~~
14 ~~finds against the claimant, the claimant is liable for the~~
15 ~~defendants' costs, including reasonable attorney's fees.~~

16 (c)(d) The sale, pledge, or delivery of tangible
17 personal property to a pawnbroker by any person in this state
18 is considered to be:

19 1. An agreement by the person who sells, pledges, or
20 delivers the tangible personal property that the person is
21 subject to the jurisdiction of the court in all civil actions
22 and proceedings arising out of the pledge or sale transaction
23 filed by either a resident or nonresident plaintiff;

24 2. An appointment of the Secretary of State by any
25 nonresident of this state as that person's lawful attorney and
26 agent upon whom may be served all process in suits pertaining
27 to the actions and proceedings arising out of the sale,
28 pledge, or delivery; and

29 3. An agreement by any nonresident that any process in
30 any suit so served has the same legal force and validity as if
31 personally served in this state.

1 (17) CRIMINAL PENALTIES.--
2 (a) Any person who engages in business as a pawnbroker
3 without first securing a license commits a felony of the third
4 degree, punishable as provided in s. 775.082, s. 775.083, or
5 s. 775.084.
6 (b) In addition to any other penalty, any person, who
7 willfully violates this section or who willfully makes a false
8 entry in any record specifically required by this section
9 commits a misdemeanor of the first degree, punishable as
10 provided in s. 775.082 or s. 775.083.
11 (c) Any person who has been convicted three times of
12 the offense described in paragraph (b) shall upon the third
13 conviction, be deemed to have committed a felony of the third
14 degree, punishable as provided in s. 775.082, s. 775.083, or
15 s. 775.084.

16 Section 2. This act shall take effect October 1, 1999.
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19 HOUSE SUMMARY

20 Requires pawnbrokers to install and maintain computer
21 equipment to electronically transfer pawn transactions to
22 law enforcement agencies and to install, operate, and
23 maintain videotape surveillance equipment and to make
videotapes available to law enforcement. Increases a
penalty for multiple convictions.
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