

By the Committee on Business Regulation & Consumer Affairs
and Representatives Levine, Bloom, Bense, Jacobs and Argenio

1 A bill to be entitled
2 An act relating to pawnbrokers and secondhand
3 dealers; creating s. 943.0546, F.S.; requiring
4 the Department of Law Enforcement to administer
5 a statewide database of pawnshop transactions
6 and acquisitions of secondhand goods; requiring
7 local law enforcement agencies to submit
8 records of such transactions to the department;
9 authorizing a law enforcement agency to access
10 the database only for investigative purposes
11 and subject to specified conditions; requiring
12 the department to submit an annual report to
13 the Legislature; requiring the department to
14 adopt rules; amending s. 539.001, F.S.;
15 revising a definition; specifying the form of a
16 petition under which a claimant may bring an
17 action to recover possession of misappropriated
18 property; providing for a court to determine
19 the disposition of misappropriated property as
20 part of a criminal case; requiring the
21 Department of Agriculture and Consumer Services
22 to prescribe a pamphlet describing a claimant's
23 rights to recover misappropriated property from
24 a pawnbroker; requiring that the division
25 prescribe by rule a disclosure form; requiring
26 that such form be provided to any person
27 demanding the return of property from a
28 pawnbroker; clarifying agency for rulemaking
29 purposes; providing an effective date.

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

1 Section 1. Section 943.0546, Florida Statutes, is
2 created to read:

3 943.0546 Database of records of pawnshop transactions
4 and secondhand goods acquisitions.--

5 (1) The department shall establish and maintain a
6 statewide database of records of pawnshop transactions and
7 secondhand goods acquisitions which are submitted to the
8 department from local law enforcement agencies.

9 (2) Each local law enforcement agency that collects
10 records of pawnshop transactions or secondhand goods
11 acquisitions under chapter 538 or chapter 539 shall, as soon
12 as practicable, transfer the information contained in the
13 records to the department in a format and manner established
14 by the department after consultation with the Florida Sheriffs
15 Association and the Florida Police Chiefs Association.

16 (3) Notwithstanding the requirements of ss. 538.04(1)
17 and 539.001(9) to deliver the transaction forms to the local
18 law enforcement agency, a secondhand dealer or pawnbroker
19 shall deliver or electronically transfer the transaction forms
20 to the department upon authorization of the local law
21 enforcement agency responsible for receiving the transaction
22 forms and after the department and local law enforcement
23 agency have entered into an agreement.

24 (4) A law enforcement agency may access the database
25 for official criminal investigative purposes, subject to the
26 following conditions:

27 (a) The database may not be used for research or
28 statistical purposes that are unrelated to official criminal
29 investigative purposes.

30 (b) Names of persons submitted to the statewide
31 database may only be compared against the names of persons who

1 are the subject of an active warrant for a felony offense or
2 an offense that involves theft and that has been entered into
3 the Florida Crime Information System.

4 (c) An inquiry into the database by a law enforcement
5 agency must be for an official criminal investigative purpose
6 that is related to an offense enumerated in s. 775.087, or a
7 similar offense in another jurisdiction, or that is related to
8 any offense that involves theft.

9 (5) The department may not sell or otherwise provide
10 to any private entity the information supplied to the
11 department under this section and the department shall
12 maintain the confidentiality of records pursuant to s.
13 539.003.

14 (6) Beginning February 1, 2001, the department shall
15 submit to the President of the Senate and the Speaker of the
16 House of Representatives an annual report that includes an
17 analysis of the stolen property identified through the
18 database during the previous calendar year. The annual report
19 must include a separate analysis of transaction information
20 submitted by pawnbrokers and transaction information submitted
21 by secondhand dealers.

22 (7) The department shall adopt rules to administer
23 this section.

24 Section 2. Paragraph (a) of subsection (2), paragraph
25 (h) of subsection (12), subsection (15), and subsection (22)
26 of section 539.001, Florida Statutes, are amended, subsections
27 (16) through (21) are renumbered as subsections (18) through
28 (23), respectively, and new subsections (16) and (17) are
29 added to said section, to read:

30 539.001 The Florida Pawnbroking Act.--

31 (2) DEFINITIONS.--As used in this section, the term:

1 (a) "Agency" means the ~~Division of Consumer Services~~
2 ~~of the~~ Department of Agriculture and Consumer Services.
3 (12) PROHIBITED ACTS.--A pawnbroker, or an employee or
4 agent of a pawnbroker, may not:
5 (h) Fail to return or replace pledged goods to a
6 pledgor upon payment of the full amount due the pawnbroker,
7 unless the pledged goods have been placed under a hold order
8 under subsection (18)~~(16)~~, or taken into custody by a court
9 or otherwise disposed of by court order.
10 (15) CLAIMS AGAINST PURCHASED GOODS OR PLEDGED GOODS
11 HELD BY PAWNBROKERS.--
12 (a) To obtain possession of purchased or pledged goods
13 held by a pawnbroker which a claimant claims to be
14 misappropriated, the claimant must notify the pawnbroker by
15 certified mail, return receipt requested, or in person
16 evidenced by signed receipt, of the claimant's claim to the
17 purchased or pledged goods. The notice must contain a complete
18 and accurate description of the purchased or pledged goods and
19 must be accompanied by a legible copy of the applicable law
20 enforcement agency's report on the misappropriation of such
21 property. If the claimant and the pawnbroker do not resolve
22 the matter within 10 days after the pawnbroker's receipt of
23 the notice, the claimant may petition the court to order the
24 return of the property, naming the pawnbroker as a defendant,
25 and must serve the pawnbroker with a copy of the petition. The
26 pawnbroker shall hold the property described in the petition
27 until the right to possession is resolved by the parties or by
28 a court of competent jurisdiction. The court shall waive any
29 filing fee for the petition to recover the property, and the
30 sheriff shall waive the service fees.
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1 (b) The claimant may bring an action in a court of
2 competent jurisdiction by petition in substantially the
3 following form:

4
5 Plaintiff A. B., sues defendant C. D., and
6 alleges:

7 1. This is an action to recover possession of
8 personal property in.....County,
9 Florida.

10 2. The description of the property is:
11 ...(list property).... To the best of
12 plaintiff's knowledge, information, and belief,
13 the value of the property is \$.....

14 3. Plaintiff is entitled to the possession of
15 the property under a security agreement
16 dated....., ...(year)..., a copy of which is
17 attached.

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

20 5. The property is wrongfully detained by
21 defendant. Defendant came into possession of
22 the property by: ...(describe method of
23 possession).... To plaintiff's best knowledge,
24 information, and belief, defendant detains the
25 property because: ...(give reasons)....

26 6. The property has not been taken under an
27 execution or attachment against the plaintiff's
28 property.

29 (c)~~(b)~~ If, after notice and a hearing, the court finds
30 that the property was misappropriated and orders the return of
31 the property to the claimant:

1 1. The claimant may recover from the pawnbroker the
2 cost of the action, including the claimant's reasonable
3 attorney's fees; and
4 2. If the conveying customer is convicted of theft, a
5 violation of this section, or dealing in stolen property, the
6 court shall order the conveying customer to repay the
7 pawnbroker the full amount the conveying customer received
8 from the pawnbroker for the property, plus all applicable pawn
9 service charges. As used in this paragraph, the term
10 "convicted of" includes a plea of nolo contendere to the
11 charges or any agreement in which adjudication is withheld;
12 and
13 3. The conveying customer shall be responsible to pay
14 all attorney's fees and taxable costs incurred by the
15 pawnbroker in defending a replevin action or any other civil
16 matter wherein it is found that the conveying customer was in
17 violation of this paragraph.
18 (d) In addition to the civil petition to recover the
19 property, the state attorney may file a motion as part of a
20 pending criminal case related to the property. The criminal
21 court has jurisdiction to determine ownership of the property,
22 to order the return of the property or other disposition, and
23 to order any appropriate restitution to any person. Such order
24 shall be entered following a hearing and after proper notice
25 to the pawnbroker, the victim, and the defendant in the
26 criminal case.
27 (e)~~(e)~~ If the court finds that the claimant failed to
28 comply with the requirements in paragraph (a) or otherwise
29 finds against the claimant, the claimant is liable for the
30 defendants' costs, including reasonable attorney's fees.
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1 ~~(f)(d)~~ The sale, pledge, or delivery of tangible
2 personal property to a pawnbroker by any person in this state
3 is considered to be:

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

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

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

17 (16) PAMPHLET.--

18 (a) The agency shall prescribe, by rule, a pamphlet
19 describing a claimant's rights to recover property under
20 subsection (15) and specifying that the claimant is not
21 obligated to reimburse or otherwise pay the pawnbroker to
22 recover misappropriated property. The pamphlet must also
23 contain the form of the petition in paragraph (15)(b). In
24 developing the pamphlet, the agency shall consult with the
25 Attorney General, the Department of Law Enforcement, the
26 Florida Sheriffs Association, the Florida Police Chiefs
27 Association, the Florida Pawnbrokers Association, and any
28 other interested party.

29 (b) The agency shall distribute the pamphlets to local
30 law enforcement agencies for distribution to any victim of a
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1 crime who believes that misappropriated property belonging to
2 the victim is in the possession of a pawnbroker.

3 (17) DISCLOSURES.--

4 (a) The agency shall adopt, by rule, a disclosure form
5 that contains substantially the following statement:

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7 IF YOU BELIEVE THAT PROPERTY STOLEN FROM YOU
8 HAS BEEN PAWNED OR SOLD TO THIS PAWNSHOP, YOU
9 ARE UNDER NO LEGAL OBLIGATION TO REIMBURSE OR
10 OTHERWISE PAY THIS PAWNSHOP IN ORDER TO RECOVER
11 THE PROPERTY. FLORIDA LAW PROVIDES THAT YOU
12 HAVE THE FOLLOWING RIGHTS AND RESPONSIBILITIES:

13
14 1. To obtain possession of the property, you must
15 provide notice of your claim to the pawnbroker by certified
16 mail, return receipt requested, or in person evidenced by
17 signed receipt. The notice must contain a complete and
18 accurate description of the purchased or pledged goods and
19 must be accompanied by a legible copy of the applicable law
20 enforcement agency's report on the misappropriation of such
21 property.

22 2. If you and the pawnbroker do not resolve the matter
23 within 10 days after the pawnbroker's receipt of the notice,
24 you may petition a court to order the return of the property,
25 naming the pawnbroker as a defendant, and you must serve the
26 pawnbroker with a copy of the petition.

27 3. The pawnbroker shall hold the property described in
28 the petition until the right to possession is resolved by the
29 parties or by a court.

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1 4. The court shall waive any filing fee for the
2 petition to recover the property, and the sheriff shall waive
3 the service fees.

4 (b) The agency shall distribute the disclosure forms
5 to all pawnbrokers. When a person enters a pawnshop and
6 demands the return of property that he or she claims has been
7 misappropriated, the pawnbroker shall provide the person with
8 the disclosure form and the form shall be signed by both
9 parties.

10 ~~(24)~~~~(22)~~ RULEMAKING AUTHORITY.--The agency ~~department~~
11 has authority to adopt rules pursuant to chapter 120 to
12 implement the provisions of this section.

13 Section 3. This act shall take effect July 1, 2000.
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