

By Senator Campbell

33-1406A-00

1 A bill to be entitled
2 An act relating to pawnbrokers and secondhand
3 dealers; requiring the Department of Law
4 Enforcement to administer a database of
5 pawnshop transactions and acquisitions of
6 secondhand goods; requiring local law
7 enforcement agencies to submit records of such
8 transactions to the department; authorizing a
9 local law enforcement agency to access the
10 database only for investigative purposes;
11 requiring the Department of Law Enforcement to
12 adopt rules; amending s. 539.001, F.S.,
13 relating to the Florida Pawnbroking Act;
14 specifying the form of a petition under which a
15 claimant may bring an action to recover
16 possession of misappropriated property;
17 providing for a court to determine the
18 disposition of misappropriated property as part
19 of a criminal case; requiring the Division of
20 Consumer Services of the Department of
21 Agriculture and Consumer Services to prescribe
22 a pamphlet to describe a claimant's rights to
23 recover misappropriated property from a
24 pawnbroker; specifying the form; requiring that
25 such form be provided to any person demanding
26 the return of property from a pawnbroker;
27 providing an effective date.
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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. (1) The Department of Law Enforcement
2 shall establish and maintain a database of pawnshop
3 transactions and secondhand-goods acquisitions submitted to
4 the department from local law enforcement agencies.

5 (2) Each local law enforcement agency that collects
6 records of pawnshop transactions or secondhand-goods
7 acquisitions under chapter 538, Florida Statutes, or chapter
8 539, Florida Statutes, shall, as soon as practicable, transfer
9 the information contained in the records to the department in
10 a format and manner established by the department after
11 consultation with the Florida Sheriffs Association and the
12 Florida Police Chiefs Association.

13 (3) Notwithstanding sections 538.04(1) and 539.001(9),
14 Florida Statutes, a secondhand dealer or pawnbroker shall
15 deliver the transaction form to the Department of Law
16 Enforcement upon authorization of the local law enforcement
17 agency responsible for receiving the transaction form.

18 (4) A local law enforcement agency may access the
19 database established by the Department of Law Enforcement only
20 for official investigative purposes. The Department of Law
21 Enforcement may not, without legislative authority, sell or
22 otherwise provide to private entities the information supplied
23 to the department under this section.

24 (5) The Department of Law Enforcement shall adopt
25 rules to administer this section.

26 Section 2. Paragraph (h) of subsection (12) and
27 subsection (15) of section 539.001, Florida Statutes, are
28 amended, and present subsections (16), (17), (18), (19), (20),
29 (21), and (22) are redesignated as subsections (18), (19),
30 (20), (21), (22), (23), and (24), respectively, and new
31 subsections (16) and (17) are added to that section, to read:

1 539.001 The Florida Pawnbroking Act.--

2 (12) PROHIBITED ACTS.--A pawnbroker, or an employee or
3 agent of a pawnbroker, may not:

4 (h) Fail to return or replace pledged goods to a
5 pledgor upon payment of the full amount due the pawnbroker,
6 unless the pledged goods have been placed under a hold order
7 under subsection (18)~~(16)~~, or taken into custody by a court
8 or otherwise disposed of by court order.

9 (15) CLAIMS AGAINST PURCHASED GOODS OR PLEDGED GOODS
10 HELD BY PAWNBROKERS.--

11 (a) To obtain possession of purchased or pledged goods
12 held by a pawnbroker which a claimant claims to be
13 misappropriated, the claimant must notify the pawnbroker by
14 certified mail, return receipt requested, or in person
15 evidenced by signed receipt, of the claimant's claim to the
16 purchased or pledged goods. The notice must contain a complete
17 and accurate description of the purchased or pledged goods and
18 must be accompanied by a legible copy of the applicable law
19 enforcement agency's report on the misappropriation of such
20 property. If the claimant and the pawnbroker do not resolve
21 the matter within 10 days after the pawnbroker's receipt of
22 the notice, the claimant may petition the court to order the
23 return of the property, naming the pawnbroker as a defendant,
24 and must serve the pawnbroker with a copy of the petition. The
25 pawnbroker shall hold the property described in the petition
26 until the right to possession is resolved by the parties or by
27 a court of competent jurisdiction. The court shall waive any
28 filing fee for the petition to recover the property, and the
29 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:

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

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

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

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

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

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

22 6. The property has not been taken under an execution
23 or attachment against the plaintiff's property.

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

27 1. The claimant may recover from the pawnbroker the
28 cost of the action, including the claimant's reasonable
29 attorney's fees; and

30 2. If the conveying customer is convicted of theft, a
31 violation of this section, or dealing in stolen property, the

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

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

13 (d) In addition to the civil petition to recover the
14 property, the state attorney may file a motion as part of a
15 pending criminal case related to the property. The criminal
16 court has jurisdiction to determine ownership of the property,
17 to order the return of the property or other disposition, and
18 to order any appropriate restitution to any person. Such order
19 shall be entered following a hearing and after proper notice
20 to the pawnbroker, the victim, and the defendant in the
21 criminal case.

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

26 (e)(d) The sale, pledge, or delivery of tangible
27 personal property to a pawnbroker by any person in this state
28 is considered to be:

29 1. An agreement by the person who sells, pledges, or
30 delivers the tangible personal property that the person is
31 subject to the jurisdiction of the court in all civil actions

1 and proceedings arising out of the pledge or sale transaction
2 filed by either a resident or nonresident plaintiff;

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

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

11 (16) PAMPHLET.--

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

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

27 (17) DISCLOSURES.--

28 (a) The agency shall adopt, by rule, a disclosure form
29 that contains substantially the following statement:
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1 IF YOU BELIEVE THAT PROPERTY STOLEN FROM YOU HAS BEEN PAWNED
2 OR SOLD TO THIS PAWNSHOP, YOU ARE UNDER NO LEGAL OBLIGATION TO
3 REIMBURSE OR OTHERWISE PAY THIS PAWNSHOP IN ORDER TO RECOVER
4 THE PROPERTY. FLORIDA LAW PROVIDES THAT YOU HAVE THE FOLLOWING
5 RIGHTS AND RESPONSIBILITIES:

6 1. To obtain possession of the property, you must
7 provide notice of your claim to the pawnbroker by certified
8 mail, return receipt requested, or in person evidenced by
9 signed receipt. The notice must contain a complete and
10 accurate description of the purchased or pledged goods and
11 must be accompanied by a legible copy of the applicable law
12 enforcement agency's report on the misappropriation of such
13 property.

14 2. If you and the pawnbroker do not resolve the matter
15 within 10 days after the pawnbroker's receipt of the notice,
16 you may petition a court to order the return of the property,
17 naming the pawnbroker as a defendant, and you must serve the
18 pawnbroker with a copy of the petition.

19 3. The pawnbroker shall hold the property described in
20 the petition until the right to possession is resolved by the
21 parties or by a court.

22 4. The court shall waive any filing fee for the
23 petition to recover the property, and the sheriff shall waive
24 the service fees.

25 5. You will not be liable for the pawnbroker's costs
26 or attorney's fees.

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28 (b) The agency shall distribute the disclosure forms
29 to all pawnbrokers. When a person enters a pawnshop and
30 demand the return of property that he or she claims has been
31 misappropriated, the pawnbroker shall provide the person with

1 the disclosure form and the form shall be signed by both
2 parties.

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

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6 SENATE SUMMARY

7 Requires that the Department of Law Enforcement establish
8 and maintain a database of pawnshop transactions and
9 secondhand-goods acquisitions. Requires that records of
10 such transactions be submitted to the department by local
11 law enforcement agencies and included in the database.
12 Provides for law enforcement agencies to have access to
13 the database for investigative purposes only. Specifies
14 the form for a claimant to use in petitioning the court
15 for recovery of misappropriated property from a
16 pawnbroker. Requires that the form be included in a
17 pamphlet developed by the Division of Consumer Services
18 of the Department of Agriculture and Consumer Services
19 which pamphlet describes a claimant's rights to recover
20 property from a pawnbroker. (See bill for details.)
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