

By the Committee on Criminal Justice and Senator Campbell

307-1872-00

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 of
14 Law Enforcement to adopt rules; amending s.
15 539.001, F.S., relating to the Florida
16 Pawnbroking Act; specifying the form of a
17 petition under which a claimant may bring an
18 action to recover possession of misappropriated
19 property; providing for a court to determine
20 the disposition of misappropriated property as
21 part of a criminal case; requiring the Division
22 of Consumer Services of the Department of
23 Agriculture and Consumer Services to prescribe
24 a pamphlet to describe a claimant's rights to
25 recover misappropriated property from a
26 pawnbroker; requiring that the division
27 prescribe by rule a disclosure form; requiring
28 that such form be provided to any person
29 demanding the return of property from a
30 pawnbroker; providing rulemaking authority;
31 providing an effective date.

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

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

5 943.0546 Database of records of pawnshop transactions
6 and secondhand-goods acquisitions.--

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

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

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

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

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

1 (b) Names of persons submitted to the statewide
2 database may only be compared against the names of persons who
3 are the subject of an active warrant for a felony offense or
4 an offense that involves theft and that has been entered into
5 the Florida Crime Information System.

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

11 (5) The department may not, without legislative
12 authority, sell or otherwise provide to any private entity the
13 information supplied to the department under this section.

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

3 539.001 The Florida Pawnbroking Act.--

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

5 (a) "Agency" means ~~the Division of Consumer Services~~
6 ~~of~~ the Department of Agriculture and Consumer Services.

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

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

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

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

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

4 (b) The claimant may bring an action in a court of
5 competent jurisdiction by petition in substantially the
6 following form:

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

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

11 2. The description of the property is: ...(list
12 property).... To the best of plaintiff's knowledge,
13 information, and belief, the value of the property is
14 \$.....

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

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

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

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

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

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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)(c)~~ 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 HAS BEEN PAWNED
8 OR SOLD TO THIS PAWNSHOP, YOU ARE UNDER NO LEGAL OBLIGATION TO
9 REIMBURSE OR OTHERWISE PAY THIS PAWNSHOP IN ORDER TO RECOVER
10 THE PROPERTY. FLORIDA LAW PROVIDES THAT YOU HAVE THE FOLLOWING
11 RIGHTS AND RESPONSIBILITIES:

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

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

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

28 4. The court shall waive any filing fee for the
29 petition to recover the property, and the sheriff shall waive
30 the service fees.

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

7 ~~(24)(22)~~ RULEMAKING AUTHORITY.--The agency ~~department~~
8 has authority to adopt rules pursuant to chapter 120 to
9 implement the provisions of this section.

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

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- 1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1598
- 4 - Clarifies that pawnbrokers need only submit pawn
5 transaction forms to the Department of Law Enforcement,
6 when authorized by the local law enforcement agency to
7 do so.
 - 8 - Provides that the Department of Law Enforcement must
9 agree with the local law enforcement agency to accept
10 pawn transaction forms directly from pawnbrokers.
 - 11 - Contains specified conditions for when database may be
12 accessed by a law enforcement agency, as follows:
 - 13 - database may not be used for research or
14 statistical purposes unrelated to official
15 criminal investigative purposes.
 - 16 - database may be checked for persons with active
17 felony warrants or theft offenses.
 - 18 - database may also be checked in a criminal
19 investigation for an enumerated offense in s.
20 775.087, F.S. (murder, sexual battery, etc.), or a
21 similar offense in another jurisdiction, or a
22 theft offense.
 - 23 - Requires the Department of Law Enforcement to make an
24 annual report to the Legislature regarding the database.
 - 25 - Restores current law providing that claimant is liable
26 for pawnbroker's costs and attorney's fees when claimant
27 fails to follow procedures or loses action.
 - 28 - Revises definition of agency and provision authorizing
29 the Department of Agriculture and Consumer Services to
30 rulemake in chapter 539.
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