

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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3		.	
4		.	

ORIGINAL STAMP BELOW

11 The Committee on Law Enforcement & Crime Prevention offered
12 the following:

14 **Amendment (with title amendment)**

15 Remove from the bill: Everything after the enacting clause
16
17 and insert in lieu thereof:

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

20 943.0546 Database of records of pawnshop transactions
21 and secondhand-goods acquisitions.--

22 (1) The department shall establish and maintain a
23 statewide database of records of pawnshop transactions and
24 secondhand-goods acquisitions which are submitted to the
25 department from local law enforcement agencies.

26 (2) Each local law enforcement agency that collects
27 records of pawnshop transactions or secondhand-goods
28 acquisitions under chapter 538 or chapter 539 shall, as soon
29 as practicable, transfer the information contained in the
30 records to the department in a format and manner established
31 by the department after consultation with the Florida Sheriffs

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1 Association and the Florida Police Chiefs Association.
2 (3) Notwithstanding the requirements of ss. 538.04(1)
3 and 539.001(9) to deliver the transaction forms to the local
4 law enforcement agency, a secondhand dealer or pawnbroker
5 shall deliver or electronically transfer the transaction forms
6 to the department upon authorization of the local law
7 enforcement agency responsible for receiving the transaction
8 forms and after the department and local law enforcement
9 agency have entered into an agreement.
10 (4) A law enforcement agency may access the database
11 for official criminal investigative purposes, subject to the
12 following conditions:
13 (a) The database may not be used for research or
14 statistical purposes that are unrelated to official criminal
15 investigative purposes.
16 (b) Names of persons submitted to the statewide
17 database may only be compared against the names of persons who
18 are the subject of an active warrant for a felony offense or
19 an offense that involves theft and that has been entered into
20 the Florida Crime Information System.
21 (c) An inquiry into the database by a law enforcement
22 agency must be for an official criminal investigative purpose
23 that is related to an offense enumerated in s. 775.087, or a
24 similar offense in another jurisdiction, or that is related to
25 any offense that involves theft.
26 (5) The department may not, without legislative
27 authority, sell or otherwise provide to any private entity the
28 information supplied to the department under this section.
29 (6) Beginning February 1, 2001, the department shall
30 submit to the President of the Senate and the Speaker of the
31 House of Representatives an annual report that includes an

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1 analysis of the stolen property identified through the
2 database during the previous calendar year. The annual report
3 must include a separate analysis of transaction information
4 submitted by pawnbrokers and transaction information submitted
5 by secondhand dealers.

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

8 Section 2. Paragraph (a) of subsection (2), paragraph
9 (h) of subsection (12), and subsection (15) of section
10 539.001, Florida Statutes, are amended, and present
11 subsections (16), (17), (18), (19), (20), and (21) of that
12 section are redesignated as subsections (18), (19), (20),
13 (21), (22), and (23), respectively, present subsection (22) of
14 that section is redesignated as subsection (24) and amended,
15 and new subsections (16) and (17) are added to that section,
16 to read:

17 539.001 The Florida Pawnbroking Act.--

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

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

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

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

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

30 (a) To obtain possession of purchased or pledged goods
31 held by a pawnbroker which a claimant claims to be

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1 misappropriated, the claimant must notify the pawnbroker by
2 certified mail, return receipt requested, or in person
3 evidenced by signed receipt, of the claimant's claim to the
4 purchased or pledged goods. The notice must contain a complete
5 and accurate description of the purchased or pledged goods and
6 must be accompanied by a legible copy of the applicable law
7 enforcement agency's report on the misappropriation of such
8 property. If the claimant and the pawnbroker do not resolve
9 the matter within 10 days after the pawnbroker's receipt of
10 the notice, the claimant may petition the court to order the
11 return of the property, naming the pawnbroker as a defendant,
12 and must serve the pawnbroker with a copy of the petition. The
13 pawnbroker shall hold the property described in the petition
14 until the right to possession is resolved by the parties or by
15 a court of competent jurisdiction. The court shall waive any
16 filing fee for the petition to recover the property, and the
17 sheriff shall waive the service fees.

18 (b) The claimant may bring an action in a court of
19 competent jurisdiction by petition in substantially the
20 following form:

21
22 Plaintiff A. B., sues defendant C. D., and alleges:

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

25 2. The description of the property is: ...(list
26 property).... To the best of plaintiff's knowledge,
27 information, and belief, the value of the property is
28 \$.....

29 3. Plaintiff is entitled to the possession of the
30 property under a security agreement dated.....,
31 ...(year)..., a copy of which is attached.

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

3 5. The property is wrongfully detained by defendant.

4 Defendant came into possession of the property by:

5 ...(describe method of possession).... To plaintiff's best
6 knowledge, information, and belief, defendant detains the
7 property because: ...(give reasons)....

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

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

13 1. The claimant may recover from the pawnbroker the
14 cost of the action, including the claimant's reasonable
15 attorney's fees; and

16 2. If the conveying customer is convicted of theft, a
17 violation of this section, or dealing in stolen property, the
18 court shall order the conveying customer to repay the
19 pawnbroker the full amount the conveying customer received
20 from the pawnbroker for the property, plus all applicable pawn
21 service charges. As used in this paragraph, the term
22 "convicted of" includes a plea of nolo contendere to the
23 charges or any agreement in which adjudication is withheld;
24 and

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

30 (d) In addition to the civil petition to recover the
31 property, the state attorney may file a motion as part of a

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1 pending criminal case related to the property. The criminal
2 court has jurisdiction to determine ownership of the property,
3 to order the return of the property or other disposition, and
4 to order any appropriate restitution to any person. Such order
5 shall be entered following a hearing and after proper notice
6 to the pawnbroker, the victim, and the defendant in the
7 criminal case.

8 (e)~~(c)~~ If the court finds that the claimant failed to
9 comply with the requirements in paragraph (a) or otherwise
10 finds against the claimant, the claimant is liable for the
11 defendants' costs, including reasonable attorney's fees.

12 (f)~~(d)~~ The sale, pledge, or delivery of tangible
13 personal property to a pawnbroker by any person in this state
14 is considered to be:

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

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

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

28 (16) PAMPHLET.--

29 (a) The agency shall prescribe, by rule, a pamphlet
30 describing a claimant's rights to recover property under
31 subsection (15) and specifying that the claimant is not

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1 obligated to reimburse or otherwise pay the pawnbroker to
2 recover misappropriated property. The pamphlet must also
3 contain the form of the petition in paragraph (15)(b). In
4 developing the pamphlet, the agency shall consult with the
5 Attorney General, the Department of Law Enforcement, the
6 Florida Sheriffs Association, the Florida Police Chiefs
7 Association, the Florida Pawnbrokers Association, and any
8 other interested party.

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

13 (17) DISCLOSURES.--

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

16
17 IF YOU BELIEVE THAT PROPERTY STOLEN FROM YOU HAS BEEN PAWNED
18 OR SOLD TO THIS PAWNSHOP, YOU ARE UNDER NO LEGAL OBLIGATION TO
19 REIMBURSE OR OTHERWISE PAY THIS PAWNSHOP IN ORDER TO RECOVER
20 THE PROPERTY. FLORIDA LAW PROVIDES THAT YOU HAVE THE FOLLOWING
21 RIGHTS AND RESPONSIBILITIES:

22 1. To obtain possession of the property, you must
23 provide notice of your claim to the pawnbroker by certified
24 mail, return receipt requested, or in person evidenced by
25 signed receipt. The notice must contain a complete and
26 accurate description of the purchased or pledged goods and
27 must be accompanied by a legible copy of the applicable law
28 enforcement agency's report on the misappropriation of such
29 property.

30 2. If you and the pawnbroker do not resolve the matter
31 within 10 days after the pawnbroker's receipt of the notice,

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1 you may petition a court to order the return of the property,
2 naming the pawnbroker as a defendant, and you must serve the
3 pawnbroker with a copy of the petition.

4 3. The pawnbroker shall hold the property described in
5 the petition until the right to possession is resolved by the
6 parties or by a court.

7 4. The court shall waive any filing fee for the
8 petition to recover the property, and the sheriff shall waive
9 the service fees.

10

11 (b) The agency shall distribute the disclosure forms
12 to all pawnbrokers. When a person enters a pawnshop and
13 demands the return of property that he or she claims has been
14 misappropriated, the pawnbroker shall provide the person with
15 the disclosure form and the form shall be signed by both
16 parties.

17 (24)(22) RULEMAKING AUTHORITY.--The agency department
18 has authority to adopt rules pursuant to chapter 120 to
19 implement the provisions of this section.

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

21

22

23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 On page 1, line 1 through page 2, line 17

26 remove the entire title from the bill:

27

28 and insert in lieu thereof:

29 A bill to be entitled

30 An act relating to pawnbrokers and secondhand

31 dealers; creating s. 943.0546, F.S.; requiring

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

29
30 Be It Enacted by the Legislature of the State of Florida:
31