

By Representative Bense

1                                   A bill to be entitled  
2           An act relating to misappropriated pawned and  
3           secondhand property enforcement; requiring the  
4           Department of Law Enforcement to establish a  
5           statewide database for accessing records from  
6           pawnshop transaction forms and secondhand goods  
7           acquisition records; designating the Department  
8           of Law Enforcement as administrator of the  
9           system; providing authorized access to the  
10          database; designating agencies responsible for  
11          the transfer of information to the database in  
12          a manner approved by the Department of Law  
13          Enforcement; providing that the Department of  
14          Law Enforcement must establish standards for  
15          transmitting information into the statewide  
16          system in consultation with the Florida  
17          Sheriffs Association and the Florida Police  
18          Chiefs Association; limiting the scope of  
19          certain database searches; providing rulemaking  
20          authority; amending s. 539.001, F.S.;  
21          specifying a petition form for certain actions  
22          to recover misappropriated property; deleting a  
23          provision imposing claimant liability for  
24          certain costs under certain circumstances;  
25          authorizing the state to file a motion in a  
26          pending criminal action relating to  
27          misappropriated property; providing  
28          requirements; requiring the Division of  
29          Consumer Services of the Department of  
30          Agriculture and Consumer Services to adopt by  
31          rule a pamphlet explaining a claimant's right

1 to property recovery; providing pamphlet  
2 requirements; requiring the division to  
3 distribute the pamphlets to law enforcement  
4 agencies and law enforcement agencies to  
5 distribute the pamphlets to certain persons  
6 under certain circumstances; specifying  
7 procedures for a claimant to obtain possession  
8 of misappropriated property; providing for  
9 waiver of certain fees; specifying absence of a  
10 claimant's liability for certain costs or fees;  
11 requiring the division to adopt a disclosure  
12 form specifying a claimant's rights and  
13 responsibilities; requiring the division to  
14 distribute the disclosure form to pawnbrokers;  
15 requiring pawnbrokers to provide the disclosure  
16 form to certain persons under certain  
17 circumstances; providing an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21 Section 1. (1) The Department of Law Enforcement  
22 shall establish and maintain a database of pawnshop and  
23 secondhand goods transactions submitted to it from local law  
24 enforcement agencies.

25 (2) Local law enforcement agencies that have collected  
26 records of pawnshop transactions or secondhand goods  
27 acquisitions under chapter 538 or chapter 539, Florida  
28 Statutes, shall transfer, as soon as practicable, the  
29 information contained in the records to the department in a  
30 format and manner that are established by the department after  
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1 consultation with the Florida Sheriffs Association and the  
2 Florida Police Chiefs Association.

3 (3) The database established by the department may be  
4 accessed by a law enforcement agency for official  
5 investigative purposes only. The department may not, without  
6 legislative authority, sell or otherwise provide to private  
7 entities the information supplied to it under this section.

8 (4) The department shall adopt rules pursuant to  
9 chapter 120, Florida Statutes, to administer the provisions of  
10 this act.

11 Section 2. Subsection (15) of section 539.001, Florida  
12 Statutes, is amended, subsections (16)-(22) of said section  
13 are renumbered as subsections (18)-(24), respectively, and new  
14 subsections (16) and (17) are added to said section, to read:

15 539.001 The Florida Pawnbroking Act.--

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

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

1 pawnbroker shall hold the property described in the petition  
2 until the right to possession is resolved by the parties or by  
3 a court of competent jurisdiction. The court shall waive any  
4 filing fee for the petition to recover the property, and the  
5 sheriff shall waive the service fees.

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

9 Plaintiff, (plaintiff's name), sues defendant,  
10 (defendant's name), and alleges:

11 1. This is an action to recover possession of personal  
12 property in (name of county) County, Florida.

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

17 3. Plaintiff is entitled to the possession of the  
18 property.

19 4. To plaintiff's best knowledge, information, and  
20 belief, the property is located at (street address) .

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

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

28 (c)~~(b)~~ If, after notice and a hearing, the court finds  
29 that the property was misappropriated and orders the return of  
30 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           ~~(c) If the court finds that the claimant failed to~~  
19 ~~comply with the requirements in paragraph (a) or otherwise~~  
20 ~~finds against the claimant, the claimant is liable for the~~  
21 ~~defendants' costs, including reasonable attorney's fees.~~  
22           (d) In addition to the remedy of a civil petition for  
23 return, the state may file a motion as part of a pending  
24 criminal case related to the property. The criminal court has  
25 jurisdiction to determine ownership, to order return or other  
26 disposition of the property, and to order any appropriate  
27 restitution to any person. Such order shall be entered upon  
28 hearing after proper notice has been given to the pawnbroker,  
29 the victim, and the defendant in the criminal case.  
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1           ~~(d)~~ (e) 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)(a) The agency shall adopt by rule a pamphlet  
18 which shall explain a claimant's rights to property recovery  
19 under subsection (15) and specify that the claimant is not  
20 obligated to reimburse or otherwise pay the pawnbroker to  
21 recover misappropriated property. The pamphlet shall also  
22 contain the a copy of the form provided in paragraph (15)(b).  
23 In developing the pamphlet, the agency shall consult with the  
24 Attorney General, Florida Department of Law Enforcement,  
25 Florida Sheriffs Association, Florida Police Chiefs  
26 Association, Florida Pawnbrokers Association, and any other  
27 interested party.

28           (b) The agency shall distribute the pamphlets to law  
29 enforcement agencies which shall in turn be responsible for  
30 distributing the pamphlet to any victim of a crime who  
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1 believes that misappropriated property belonging to the victim  
2 is in a pawnbroker's possession.

3 (17)(a)1. To obtain possession of property claimed to  
4 be misappropriated, a claimant shall provide notice of the  
5 claim to the pawnbroker by certified mail, return receipt  
6 requested, or in person, evidenced by a signed receipt. The  
7 notice must contain a complete and accurate description of the  
8 purchased or pledged goods and must be accompanied by a  
9 legible copy of the applicable law enforcement agency's report  
10 on the misappropriation of such property.

11 2. If the claimant and the pawnbroker do not resolve  
12 the matter within 10 days after the pawnbroker's receipt of  
13 the notice, the claimant may petition the court to order the  
14 return of the property, naming the pawnbroker as a defendant,  
15 and shall serve the pawnbroker with a copy of the petition.

16 3. The pawnbroker shall hold the property described in  
17 the petition until the right to possession is resolved by the  
18 parties or by a court.

19 4. The court shall waive any filing fee for the  
20 petition to recover the property and the sheriff shall waive  
21 any fee for service of process.

22 5. The claimant shall not be liable for the  
23 pawnbroker's costs or attorney's fees.

24 (b) The agency shall adopt by rule a disclosure form  
25 which shall contain the following provisions:

26  
27 IF YOU BELIEVE THAT PROPERTY STOLEN FROM YOU  
28 HAS BEEN PAWNEED OR SOLD TO THIS PAWNSHOP, YOU  
29 ARE UNDER NO LEGAL OBLIGATION TO REIMBURSE OR  
30 OTHERWISE PAY THIS PAWNSHOP IN ORDER TO RECOVER  
31

1       THE PROPERTY. FLORIDA LAW PROVIDES THAT YOU  
2       HAVE THE FOLLOWING RIGHTS AND RESPONSIBILITIES:  
3  
4       To obtain possession of the property, you must  
5       provide notice of your claim to the pawnbroker  
6       by certified mail, return receipt requested, or  
7       in person, evidenced by a signed receipt. The  
8       notice must contain a complete and accurate  
9       description of the purchased or pledged goods  
10       and must be accompanied by a legible copy of  
11       the applicable law enforcement agency's report  
12       on the misappropriation of such property.  
13  
14       If you and the pawnbroker do not resolve the  
15       matter within 10 days after the pawnbroker's  
16       receipt of the notice, you may petition the  
17       court to order the return of the property,  
18       naming the pawnbroker as a defendant, and must  
19       serve the pawnbroker with a copy of the  
20       petition.  
21  
22       The pawnbroker is required to hold the property  
23       described in the petition until the right to  
24       possession is resolved by the parties or by a  
25       court.  
26  
27       You will not be liable for any filing fee for  
28       the petition to recover the property or any fee  
29       for service of process by the sheriff.  
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1           You will not be liable for the pawnbroker's  
2           costs or attorney's fees.

3  
4           (c) The agency shall distribute the disclosure forms  
5 to all pawnbrokers. When a person demands that a pawnshop  
6 return property which the person claims has been  
7 misappropriated, the pawnbroker shall provide the person with  
8 the disclosure form and the person and the pawnbroker shall  
9 sign the form.

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

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13           LEGISLATIVE SUMMARY

14           Requires the Department of Law Enforcement to establish  
15 and maintain a database of pawnshop and secondhand goods  
16 transaction information received from local law  
17 enforcement agencies. Requires agencies that have  
18 collected such information to transfer the information to  
19 the department in a format established by the department  
20 in consultation with the Florida Sheriffs Association and  
21 the Florida Police Chiefs Association. Provides for  
22 access to such information by a law enforcement officer  
23 for official investigative purposes only. Prohibits the  
24 department from selling or providing the information to  
25 private entities without legislative authority. Specifies  
26 a petition form for actions to recover misappropriated  
27 property. Authorizes the state to file a motion in a  
28 pending criminal action relating to misappropriated  
29 property. Requires the Division of Consumer Services of  
30 the Department of Agriculture and Consumer Services to  
31 adopt a pamphlet explaining a claimant's right to  
property recovery and requires the division to distribute  
the pamphlets to law enforcement agencies and law  
enforcement agencies to distribute the pamphlets to  
property claimants. Specifies procedures for a claimant  
to obtain possession of misappropriated property.  
Requires the division to adopt a disclosure form  
specifying a claimant's rights and responsibilities in  
claiming misappropriated property and requires the  
division to distribute the disclosure form to pawnbrokers  
and requires pawnbrokers to provide the disclosure form  
to persons claiming return of misappropriated property.