

By Representatives Davis, Bense and Spratt

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
22 Department of Agriculture and Consumer Services
23 to prescribe a pamphlet to describe a
24 claimant's rights to recover misappropriated
25 property from a pawnbroker; requiring that the
26 division prescribe by rule a disclosure form;
27 requiring that such form be provided to any
28 person demanding the return of property from a
29 pawnbroker; providing rulemaking authority;
30 providing an effective date.
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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) Names of persons submitted to the statewide
30 database may only be compared against the names of persons who
31 are the subject of an active warrant or capias for a felony

1 offense enumerated in s. 775.087 or an offense that involves
2 theft and that has been entered into the Florida Crime
3 Information Center system or the National Crime Information
4 Center.

5 (b) Any property identified in transaction records
6 submitted to the database may be compared against information
7 contained in the Florida Crime Information Center system or
8 the National Crime Information Center.

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

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15 The database may not be used for research or statistical
16 purposes that are unrelated to official criminal investigative
17 purposes.

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

21 (6) Beginning February 1, 2002, the department shall
22 submit to the President of the Senate and the Speaker of the
23 House of Representatives an annual report that includes an
24 analysis of the stolen property identified through the
25 database during the previous calendar year. The annual report
26 must include a separate analysis of transaction information
27 submitted by pawnbrokers and transaction information submitted
28 by secondhand dealers.

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

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1 Section 2. Paragraph (a) of subsection (2), paragraph
2 (h) of subsection (12), and subsection (15) of section
3 539.001, Florida Statutes, are amended, and present
4 subsections (16), (17), (18), (19), and (20) of said section
5 are redesignated as subsections (18), (19), (20), (21), and
6 (22), respectively, present subsection (21) of said section is
7 redesignated as subsection (23) and amended, and new
8 subsections (16) and (17) are added to said section, to read:
9 539.001 The Florida Pawnbroking Act.--
10 (2) DEFINITIONS.--As used in this section, the term:
11 (a) "Agency" means ~~the Division of Consumer Services~~
12 ~~of~~ the Department of Agriculture and Consumer Services.
13 (12) PROHIBITED ACTS.--A pawnbroker, or an employee or
14 agent of a pawnbroker, may not:
15 (h) Fail to return or replace pledged goods to a
16 pledgor upon payment of the full amount due the pawnbroker,
17 unless the pledged goods have been placed under a hold order
18 under subsection (18)~~(16)~~, or taken into custody by a court
19 or otherwise disposed of by court order.
20 (15) CLAIMS AGAINST PURCHASED GOODS OR PLEDGED GOODS
21 HELD BY PAWNBROKERS.--
22 (a) To obtain possession of purchased or pledged goods
23 held by a pawnbroker which a claimant claims to be
24 misappropriated, the claimant must notify the pawnbroker by
25 certified mail, return receipt requested, or in person
26 evidenced by signed receipt, of the claimant's claim to the
27 purchased or pledged goods. The notice must contain a complete
28 and accurate description of the purchased or pledged goods and
29 must be accompanied by a legible copy of the applicable law
30 enforcement agency's report on the misappropriation of such
31 property. If the claimant and the pawnbroker do not resolve

1 the matter within 10 days after the pawnbroker's receipt of
2 the notice, the claimant may petition the court to order the
3 return of the property, naming the pawnbroker as a defendant,
4 and must serve the pawnbroker with a copy of the petition. The
5 pawnbroker shall hold the property described in the petition
6 until the right to possession is resolved by the parties or by
7 a court of competent jurisdiction. The court shall waive any
8 filing fee for the petition to recover the property, and the
9 sheriff shall waive the service fees.

10 (b) The claimant may bring an action in a court of
11 competent jurisdiction by petition in substantially the
12 following form:

13
14 Plaintiff A. B., sues defendant C. D., and alleges:

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

17 2. The description of the property is: ...(list
18 property).... To the best of plaintiff's knowledge,
19 information, and belief, the value of the property is
20 \$.....

21 3. Plaintiff is entitled to the possession of the
22 property.

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

25 5. The property is wrongfully detained by defendant.
26 Defendant came into possession of the property by:
27 ...(describe method of possession).... To plaintiff's best
28 knowledge, information, and belief, defendant detains the
29 property because: ...(give reasons)....

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

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

4 1. The claimant may recover from the pawnbroker the
5 cost of the action, including the claimant's reasonable
6 attorney's fees; and

7 2. If the conveying customer is convicted of theft, a
8 violation of this section, or dealing in stolen property, the
9 court shall order the conveying customer to repay the
10 pawnbroker the full amount the conveying customer received
11 from the pawnbroker for the property, plus all applicable pawn
12 service charges. As used in this paragraph, the term
13 "convicted of" includes a plea of nolo contendere to the
14 charges or any agreement in which adjudication is withheld;
15 and

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

21 (d) In addition to the civil petition to recover the
22 property, the state attorney may file a motion as part of a
23 pending criminal case related to the property. The criminal
24 court has jurisdiction to determine ownership of the property,
25 to order the return of the property or other disposition, and
26 to order any appropriate restitution to any person. Such order
27 shall be entered following a hearing and after proper notice
28 to the pawnbroker, the victim, and the defendant in the
29 criminal case.

30 ~~(e)(c)~~ If the court finds that the claimant failed to
31 comply with the requirements in paragraph (a) or otherwise

1 finds against the claimant, the claimant is liable for the
2 defendants' costs, including reasonable attorney's fees.

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

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

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

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

19 (16) PAMPHLET.--

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

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

5 (17) DISCLOSURES.--

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

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

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.

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

11 ~~(23)~~~~(21)~~ RULEMAKING AUTHORITY.--The agency ~~department~~
12 has authority to adopt rules pursuant to chapter 120 to
13 implement the provisions of this section.

14 Section 3. This act shall take effect July 1, 2001.

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17 HOUSE SUMMARY

18 Requires that the Department of Law Enforcement establish
19 and maintain a database of pawnshop transactions and
20 secondhand-goods acquisitions. Requires that records of
21 such transactions be submitted to the department by local
22 law enforcement agencies and included in the database.
23 Provides for law enforcement agencies to have access to
24 the database for investigative purposes only. Specifies
25 the form for a claimant to use in petitioning the court
26 for recovery of misappropriated property from a
27 pawnbroker. Requires that the form be included in a
28 pamphlet developed by the Department of Agriculture and
29 Consumer Services which pamphlet describes a claimant's
30 rights to recover property from a pawnbroker.
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