

By Senator Campbell

33-517-01

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          department 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.  
31

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

2

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) The database may not be used for research or  
27 statistical purposes that are unrelated to official criminal  
28 investigative purposes.

29 (5) A law enforcement agency may access the database  
30 for official criminal investigative purposes, subject to the  
31 following conditions:

1           (a) 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 or capias for a felony  
4 offense enumerated in s. 775.087 or an offense that involves  
5 theft and that has been entered into the information system of  
6 the Florida Crime Information Center or the National Crime  
7 Information Center.

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

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

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

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

28           (8) The department shall adopt rules to administer  
29 this section.

30           Section 2. Paragraph (a) of subsection (2), paragraph  
31 (h) of subsection (12), and subsection (15) of section

1 539.001, Florida Statutes, are amended, and present  
2 subsections (16), (17), (18), (19), (20) of that section are  
3 redesignated as subsections (18), (19), (20), (21), (22),  
4 respectively, present subsection (21) of that section is  
5 redesignated as subsection (23) and amended, and new  
6 subsections (16) and (17) are added to that section, to read:

7 539.001 The Florida Pawnbroking Act.--

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

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

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

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

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

20 (a) To obtain possession of purchased or pledged goods  
21 held by a pawnbroker which a claimant claims to be  
22 misappropriated, the claimant must notify the pawnbroker by  
23 certified mail, return receipt requested, or in person  
24 evidenced by signed receipt, of the claimant's claim to the  
25 purchased or pledged goods. The notice must contain a complete  
26 and 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. If the claimant and the pawnbroker do not resolve  
30 the matter within 10 days after the pawnbroker's receipt of  
31 the notice, the claimant may petition the court to order the

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

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

11  
12 Plaintiff A. B., sues defendant C. D., and alleges:

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

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

19 3. Plaintiff is entitled to the possession of the  
20 property.

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

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

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

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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: pawnbroker by any person in this state is  
6 considered to be:

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

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

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

20 (16) PAMPHLET.--

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

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 prescribe, by rule, a disclosure  
7 form that contains substantially the following statement:

8  
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.



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.

4  
5           (b) The agency shall distribute the disclosure forms  
6 to all pawnbrokers. When a person enters a pawnshop and  
7 demandes 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 may  
12 ~~department has authority to~~ adopt rules pursuant to chapter  
13 120 to administer ~~implement the provisions of~~ this section.

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

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17           SENATE 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 describes a claimant's rights to  
30 recover property from a pawnbroker. (See bill for  
31 details.)