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1 A bill to be entitled

2 An act relating to pawnbrokers and secondhand dealers;  
3 creating s. 943.0546, F.S.; requiring the Department of  
4 Law Enforcement to administer a statewide database of  
5 pawnshop transactions and acquisitions of secondhand  
6 goods; requiring local law enforcement agencies to submit  
7 records of such transactions to the department;  
8 authorizing a law enforcement agency to access the  
9 database only for investigative purposes and subject to  
10 specified conditions; requiring the department to submit  
11 an annual report to the Legislature; requiring the  
12 Department of Law Enforcement to adopt rules; amending s.  
13 539.001, F.S., relating to the Florida Pawnbroking Act;  
14 specifying the form of a petition under which a claimant  
15 may bring an action to recover possession of  
16 misappropriated property; providing for a court to  
17 determine the disposition of misappropriated property as  
18 part of a criminal case; requiring the Department of  
19 Agriculture and Consumer Services to prescribe a pamphlet  
20 to describe a claimant's rights to recover misappropriated  
21 property from a pawnbroker; requiring that the department  
22 prescribe by rule a disclosure form; requiring that such  
23 form be provided to any person demanding the return of  
24 property from a pawnbroker; providing rulemaking  
25 authority; providing an effective date.

26  
27 Be It Enacted by the Legislature of the State of Florida:

28  
29 Section 1. Section 943.0546, Florida Statutes, is created  
30 to read:



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31 943.0546 Database of records of pawnshop transactions and  
32 secondhand goods acquisitions.--

33 (1) The department shall establish and maintain a  
34 statewide database of records of pawnshop transactions and  
35 secondhand goods acquisitions which are submitted to the  
36 department from local law enforcement agencies.

37 (2) Each local law enforcement agency that collects  
38 records of pawnshop transactions or secondhand goods  
39 acquisitions under chapter 538 or chapter 539 shall, as soon as  
40 practicable, transfer the information contained in the records  
41 to the department in a format and manner established by the  
42 department after consultation with the Florida Sheriffs  
43 Association and the Florida Police Chiefs Association.

44 (3) Notwithstanding the requirements of ss. 538.04(1) and  
45 539.001(9) to deliver the transaction forms to the local law  
46 enforcement agency, a secondhand dealer or pawnbroker shall  
47 deliver or electronically transfer the transaction forms to the  
48 department upon authorization of the local law enforcement  
49 agency responsible for receiving the transaction forms and after  
50 the department and local law enforcement agency have entered  
51 into an agreement.

52 (4) The database may not be used for research or  
53 statistical purposes that are unrelated to official criminal  
54 investigative purposes.

55 (5) A law enforcement agency may access the database for  
56 official criminal investigative purposes, subject to the  
57 following conditions:

58 (a) Names of persons submitted to the statewide database  
59 may only be compared against the names of persons who are the  
60 subject of an active warrant or capias for a felony offense



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61 enumerated in s. 775.087 or an offense that involves theft and  
62 that has been entered into the information system of the Florida  
63 Crime Information Center or the National Crime Information  
64 Center.

65 (b) Any property identified in transaction records  
66 submitted to the database may be compared against information  
67 contained in the information system of the Florida Crime  
68 Information Center or the National Crime Information Center.

69 (c) Any other inquiry into the database by a law  
70 enforcement agency must be for an official criminal  
71 investigative purpose that is related to an offense enumerated  
72 in s. 775.087, or a similar offense in another jurisdiction, or  
73 that is related to an offense that involves theft.

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

77 (7) Beginning February 1, 2004, the department shall  
78 submit to the President of the Senate and the Speaker of the  
79 House of Representatives an annual report that includes an  
80 analysis of the stolen property identified through the database  
81 during the previous calendar year. The annual report must  
82 include a separate analysis of transaction information submitted  
83 by pawnbrokers and transaction information submitted by  
84 secondhand dealers.

85 (8) The department shall adopt rules to administer this  
86 section.

87 Section 2. Paragraph (h) of subsection (12) and subsection  
88 (15) of section 539.001, Florida Statutes, are amended, present  
89 subsections (16), (17), (18), (19), and (20) of that section are  
90 renumbered as subsections (18), (19), (20), (21), and (22),



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91 respectively, present subsection (21) of that section is  
92 renumbered as subsection (23) and amended, and new subsections  
93 (16) and (17) are added to that section, to read:

94 539.001 The Florida Pawnbroking Act.--

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

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

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

104 (a) To obtain possession of purchased or pledged goods  
105 held by a pawnbroker which a claimant claims to be  
106 misappropriated, the claimant must notify the pawnbroker by  
107 certified mail, return receipt requested, or in person evidenced  
108 by signed receipt, of the claimant's claim to the purchased or  
109 pledged goods. The notice must contain a complete and accurate  
110 description of the purchased or pledged goods and must be  
111 accompanied by a legible copy of the applicable law enforcement  
112 agency's report on the misappropriation of such property. If the  
113 claimant and the pawnbroker do not resolve the matter within 10  
114 days after the pawnbroker's receipt of the notice, the claimant  
115 may petition the court to order the return of the property,  
116 naming the pawnbroker as a defendant, and must serve the  
117 pawnbroker with a copy of the petition. The pawnbroker shall  
118 hold the property described in the petition until the right to  
119 possession is resolved by the parties or by a court of competent  
120 jurisdiction. The court shall waive any filing fee for the



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121 petition to recover the property, and the sheriff shall waive  
 122 the service fees.

123 (b) The claimant may bring an action in a court of  
 124 competent jurisdiction by petition in substantially the  
 125 following form:

- 126
- 127 Plaintiff A. B., sues defendant C. D., and alleges:
- 128 1. This is an action to recover possession of personal  
 129 property in \_\_\_\_\_ County, Florida.
- 130 2. The description of the property is: . . . (list  
 131 property) . . . . To the best of plaintiff's knowledge,  
 132 information, and belief, the value of the property is  
 133 \$\_\_\_\_\_.
- 134 3. Plaintiff is entitled to the possession of the  
 135 property.
- 136 4. To plaintiff's best knowledge, information, and belief,  
 137 the property is located at\_\_\_\_\_.
- 138 5. The property is wrongfully detained by defendant.  
 139 Defendant came into possession of the property by: . . .  
 140 (describe method of possession) . . . . To plaintiff's best  
 141 knowledge, information, and belief, defendant detains the  
 142 property because: . . . (give reasons) . . . .
- 143 6. The property has not been taken under an execution or  
 144 attachment against the plaintiff's property.

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

- 148 1. The claimant may recover from the pawnbroker the cost  
 149 of the action, including the claimant's reasonable attorney's  
 150 fees; and



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151           2. If the conveying customer is convicted of theft, a  
152 violation of this section, or dealing in stolen property, the  
153 court shall order the conveying customer to repay the pawnbroker  
154 the full amount the conveying customer received from the  
155 pawnbroker for the property, plus all applicable pawn service  
156 charges. As used in this paragraph, the term "convicted of"  
157 includes a plea of nolo contendere to the charges or any  
158 agreement in which adjudication is withheld; and

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

164           (d) In addition to the civil petition to recover the  
165 property, the state attorney may file a motion as part of a  
166 pending criminal case related to the property. The criminal  
167 court has jurisdiction to determine ownership of the property,  
168 to order the return of the property or other disposition, and to  
169 order any appropriate restitution to any person. Such order  
170 shall be entered following a hearing and after proper notice to  
171 the pawnbroker, the victim, and the defendant in the criminal  
172 case.

173           ~~(e)~~ If the court finds that the claimant failed to  
174 comply with the requirements in paragraph (a) or otherwise finds  
175 against the claimant, the claimant is liable for the defendants'  
176 costs, including reasonable attorney's fees.

177           ~~(f)~~ The sale, pledge, or delivery of tangible personal  
178 property to a pawnbroker by any person in this state is  
179 considered to be:



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

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

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

193 (16) PAMPHLET.--

194 (a) The agency shall publish a pamphlet describing a  
195 claimant's rights to recover property under subsection (15) and  
196 specifying that the claimant is not obligated to reimburse or  
197 otherwise pay the pawnbroker to recover misappropriated  
198 property. The pamphlet must also contain the form of the  
199 petition prescribed in paragraph (15)(b). In developing the  
200 pamphlet, the agency shall consult with the Attorney General,  
201 the Department of Law Enforcement, the Florida Sheriffs  
202 Association, the Florida Police Chiefs Association, the Florida  
203 Pawnbrokers Association, and any other interested party.

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

208 (17) DISCLOSURES.--



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209        (a) The agency shall prescribe, by rule, a disclosure form  
210 that contains substantially the following statement:

211  
212 IF YOU BELIEVE THAT PROPERTY STOLEN FROM YOU HAS BEEN PAWNED OR  
213 SOLD TO THIS PAWNSHOP, YOU ARE UNDER NO LEGAL OBLIGATION TO  
214 REIMBURSE OR OTHERWISE PAY THIS PAWNSHOP IN ORDER TO RECOVER THE  
215 PROPERTY. FLORIDA LAW PROVIDES THAT YOU HAVE THE FOLLOWING  
216 RIGHTS AND RESPONSIBILITIES:

217        1. To obtain possession of the property, you must provide  
218 notice of your claim to the pawnbroker by certified mail, return  
219 receipt requested, or in person evidenced by signed receipt. The  
220 notice must contain a complete and accurate description of the  
221 purchased or pledged goods and must be accompanied by a legible  
222 copy of the applicable law enforcement agency's report on the  
223 misappropriation of such property.

224        2. If you and the pawnbroker do not resolve the matter  
225 within 10 days after the pawnbroker's receipt of the notice, you  
226 may petition a court to order the return of the property, naming  
227 the pawnbroker as a defendant, and you must serve the pawnbroker  
228 with a copy of the petition.

229        3. The pawnbroker shall hold the property described in the  
230 petition until the right to possession is resolved by the  
231 parties or by a court.

232        4. The court shall waive any filing fee for the petition  
233 to recover the property, and the sheriff shall waive the service  
234 fees.

235        (b) The agency shall distribute the disclosure forms to  
236 all pawnbrokers. When a person enters a pawnshop and demands the  
237 return of property that he or she claims has been  
238 misappropriated, the pawnbroker shall provide the person with





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239 the disclosure form and the form shall be signed by both  
 240 parties.

241 (23)~~(21)~~ RULEMAKING AUTHORITY.--The agency may ~~has~~  
 242 ~~authority to~~ adopt rules pursuant to chapter 120 to administer  
 243 ~~implement the provisions of~~ this section.

244 Section 3. This act shall take effect July 1, 2003.