

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2942

SPONSOR: Senator Campbell

SUBJECT: Pawnbrokers

DATE: April 9, 2004

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kruse</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RI</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

## I. Summary:

Senate Bill 2942 revises the regulation of pawnbrokers and pawnbroking transactions by revising requirements for pawnbroker licensure, pawnbroking transaction forms, the dispute process for ownership of pawned property, pawnbroker recordkeeping, and law enforcement notification. The bill requires a pawnbroker to obtain a local license prior to applying for a state license. The bill requires a pledgor or seller of property to provide additional items of personal information on the pawnbroking transaction form, and also requires that the form indicate a unique transaction form number for inventory tracking purposes. The bill provides that, if a pawnbroker disputes identification or ownership of property, the person alleging ownership may file an action for replevin in a circuit or county court using a standard form provided for in the bill. The bill changes the recordkeeping requirements for a pawnbroker by allowing the pawnbroker to dispose of a transaction form if the property listed on the form is removed from the premises after one year. The bill also requires a pawnbroker to inform the law enforcement official who placed a hold order on a piece of property that the hold order has expired. If after 10 days the pawnbroker has not received a court extension of the hold order, the bill provides that the pawnbroker takes title to the property free of any claims.

This bill substantially amends section 539.001, Florida Statutes.

## II. Present Situation:

### Pawnbroking Report

A Florida Senate interim project report from 1999-2000, initiated to review Florida's pawnbroking law, quoted that "[p]awnbroking is the oldest method of lending money in history,

so old, in fact, that there has been no time in recorded history when a loan of money on a pledge has not been available.”<sup>1</sup>

A typical pawn transaction:

begins when the borrower attempts to pawn a personal item, (the most common being jewelry). The pawnbroker will appraise the product based on his or her valuation of “current market demand, the condition of the property, and probable resale value in a few months if the property is not redeemed.” If the borrower accepts the valuation, the pawnbroker pays the amount and writes a pawn ticket describing the loan terms and the amount the borrower must pay to redeem the property.<sup>2</sup>

After reviewing Florida’s pawnbroking law and describing some media investigations into pawnshops and the pawning of stolen property, the interim report made the following three recommendations to the Legislature to seek to improve the current law on victim recovery of stolen property from pawnshops:

1. The Legislature should require the creation and distribution of a “victim rights brochure,” to inform victims of their rights under Florida law to recover stolen property from a pawnshop.
2. The Legislature should publish a form petition in ch. 539, F.S., which could be used by victims in order to initiate a court action to recover their property from a pawnbroker.
3. The Legislature should clarify that a criminal court judge is authorized to determine ownership of property and order any appropriate restitution in addition to the civil petition remedy already provided for in ch. 539, F.S.<sup>3</sup>

### **Pawnbroking Law**

The Legislature in 1996 substantially revised the law governing pawnbroking when it enacted the Florida Pawnbroking Act in ch. 539, F.S. The act provides for the licensing and regulation of pawnbrokers by the Department of Agriculture and Consumer Services. Federal law does not regulate pawnshops.

### ***Licensure***

A person must obtain a license from the Department of Agriculture and Consumer Services for \$300 to engage in the business of pawnbroking. A license is valid for one year and must be renewed.<sup>4</sup> If a person applies for or is renewing a local occupational license, the person must

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<sup>1</sup> Senate Committee on Criminal Justice, Interim Project Report 2000-26, *A Review of Florida’s Pawnbroking Law* (January 2000), at 2, available at [http://www.flsenate.gov/data/Publications/2000/Senate/reports/interim\\_reports/pdf/00-26cj.pdf](http://www.flsenate.gov/data/Publications/2000/Senate/reports/interim_reports/pdf/00-26cj.pdf) (last visited April 5, 2004), quoting J. Oeltjen, “Pawnbroking on Parade,” 37 *Buff. L. Rev.* 751, 758 (1989).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 7 & 8.

<sup>4</sup> Section 539.001(3)(a) & (c), F.S.

show proof of a current license from the department before the local occupational license may be issued or reissued.<sup>5</sup>

### ***Definitions***

The Pawnbroking Act prescribes several definitions, including:

- “Pawnbroker,” which means any person who is engaged in the business of making pawns; who makes a public display containing the term “pawn,” “pawnbroker,” or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.
- “Conveying customer,” which means a person who delivers property into the custody of a pawnbroker, either by pawn, sale, consignment, or trade.
- “Misappropriated,” which means stolen, embezzled, converted, or otherwise wrongfully appropriated against the will of the rightful owner.
- “Pawnbroker transaction form,” which means the instrument on which a pawnbroker records pawns and purchases.
- “Permitted vendor,” which means a vendor who furnishes a pawnbroker with an invoice specifying the vendor’s name and address, the date of the sale, a description of the items sold, and the sales price, and who has an established place of business, or, in the case of a secondhand dealer as defined in s. 538.03, F.S., has represented in writing that such dealer has complied with all applicable recordkeeping, reporting, and retention requirements pertaining to goods sold or otherwise delivered to a pawnbroker.<sup>6</sup>

### ***Pawnbroking Transaction Form***

A pawn or a purchase transaction must be drawn-up on a form, approved by the department,<sup>7</sup> which includes, among other things, the following:

- The name and address of the pawnshop;
- A complete and accurate description of the pledged goods or purchased goods;
- The name, address, home telephone number, place of employment, date of birth, physical description, and right thumbprint of the pledgor or seller;
- The date and time of the transaction; and
- The type of identification accepted from the pledgor or seller, including the issuing agency and the identification number.<sup>8</sup>

In addition, the front or back of the form must include a statement that:

- Any personal property pledged to a pawnbroker within this state which is not redeemed within 30 days following the maturity date of the pawn, if the 30th day

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<sup>5</sup> *Id.* at (3)(f).

<sup>6</sup> *Id.* at (2).

<sup>7</sup> *Id.* at (8)(a).

<sup>8</sup> *Id.* at (8)(b)1.-5., & 6.g.(I).

is not a business day, then the following business day, is automatically forfeited to the pawnbroker, and absolute right, title, and interest in and to the property vests in and is deemed conveyed to the pawnbroker by operation of law, and no further notice is necessary.

If a person knowingly gives false verification of ownership or gives a false or altered identification and receives money from a pawnbroker for goods sold or pledged, if the value of the money received is less than \$300, that person commits a felony of the third degree. If the value of the money received is \$300 or more, that person commits a felony of the second degree.<sup>9</sup>

The pawnbroker transaction form must provide a space for the imprint of the right thumbprint of the pledgor or seller and a blank line for the signature of the pledgor or seller.<sup>10</sup>

### ***Misappropriated Property***

To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated, the claimant must use the following procedure:

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

If the court finds in favor of the claimant that the property was misappropriated, and orders the return of the property, the claimant may recover from the pawnbroker the cost of the action, including the claimant's reasonable attorney's fees. If the conveying customer is convicted of theft, dealing in stolen property, or of violating the Pawnbroking Act, the conveying customer must repay the pawnbroker the full amount received from the pawnbroker for the property.<sup>12</sup>

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<sup>9</sup> *Id.* at (8)(b)8.

<sup>10</sup> *Id.* at (8)(c).

<sup>11</sup> *Id.* at (15)(a).

<sup>12</sup> *Id.* at (15)(b)1. & 2.

### ***Hold Orders***

If, during an investigation, a law enforcement official places a hold order on a piece of property held by a pawnbroker, the holding period may not exceed 90 days, unless extended by court order. The hold order may be rescinded by the law enforcement official in writing. When the holding period expires, the pawnbroker must notify, in writing, the law enforcement official by certified mail, return receipt requested, that the holding period has expired. If, on the 10th day after the written notice has been received by the law enforcement official, the pawnbroker has not received a court extension of the hold order and the property is not the subject of a claim proceeding under the Pawnbroking Act, title to the property vests to the pawnbroker free of any liability for claims, but subject to any restrictions contained in the pawn transaction contract and subject to the provisions of the Pawnbroking Act.<sup>13</sup>

### ***Recordkeeping***

A copy of each completed pawnbroker transaction form must be kept by a pawnbroker on the pawnshop premises for at least one year after the date of the transaction.<sup>14</sup> A pawnbroker must securely store and maintain in an unaltered condition all goods delivered to a pawnbroker in a pawn or purchase transaction within the jurisdiction of the appropriate law enforcement official for a period of 30 calendar days after the transaction.<sup>15</sup>

## **III. Effect of Proposed Changes:**

This bill revises the regulation of pawnbrokers and pawnbroking transactions by altering pawnbroker licensure requirements, transaction form requirements, and recordkeeping requirements. The bill also changes the dispute process for ownership of pawned property, and revises law enforcement notification procedures.

### **Licensure**

The bill requires a pawnbroker, who is applying for or renewing a pawnbroker license with the Department of Agriculture and Consumer Services, to provide proof that the pawnbroker has obtained a local occupational pawnbroker's license. If the pawnbroker fails to obtain or renew a local license, the department may suspend or revoke the state license.

### **Pawnbroker Transaction Form**

The bill provides for several changes in the pawnbroker transaction form, including:

- Requiring a unique transaction form number for inventory tracking purposes; and
- Requiring the current residential address, business telephone number, and a legible right thumb print of the pledgor or seller.

A permitted vendor is exempt from having to sign the form.

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<sup>13</sup> *Id.* at (16)(a) & (b).

<sup>14</sup> *Id.* at (9)(a).

<sup>15</sup> *Id.* at (9)(c).

### **Misappropriated Property**

The bill provides that if a pawnbroker contests the identification or ownership of property, the person alleging ownership of the property may, if a timely report of the misappropriated property was made to the proper authorities, bring an action for replevin in a county or circuit court using a standard form provided for in the bill.

The bill provides for a waiver of the court and service filing fees, and if the plaintiff prevails in the replevin action, requires that the court order payment of filing fees to the clerk and service fees to the sheriff. Additionally, the court must award the prevailing party attorney's fees and costs.

The procedures for the replevin action require that, upon receipt of the replevin petition, the court must set a hearing to be held at the earliest possible time. If a pawnbroker requests a court determine ownership of property, the pawnbroker must hold the property at issue until the court determines the respective interests of the parties.

In addition to the replevin action, the state attorney may file a motion as part of a pending criminal case related to the property. The court in the criminal case has jurisdiction to determine ownership, to order return or other disposition of the property, and to order any appropriate restitution to any person. The order must be entered after a hearing that was properly noticed to the pawnbroker, the victim, and the defendant in the criminal case.

The bill provides that, if a pawnbroker does not contest the identification or ownership of misappropriated property and the plaintiff has not signed a waiver of prosecution with the appropriate law enforcement official, the pawnbroker must return the property to the plaintiff without compensation. The pawnbroker may provide the court a copy of the pawnbroker transaction form and request restitution from the defendant in the criminal proceeding.

### **Hold Orders**

The bill provides that upon the expiration of a holding period on a piece of property, the pawnbroker must notify, in writing by certified mail, return receipt requested, the law enforcement official who placed the hold order. If, on the tenth day after the notification has been received by the law enforcement official who placed the hold order, the pawnbroker has not received a court extension of the hold order and the property is not a subject of a replevin action, title to the property vests in the pawnbroker, free of any liability for claims but subject to any restrictions contained in the pawnbroker transaction form.

### **Recordkeeping**

The bill provides an option to a pawnbroker to dispose of a pawnbroker transaction form if the property that is the subject of the form is removed from the premises. However, as required under current law, a pawnbroker must still maintain the form on the pawnshop premises for a minimum of one year. This option is only available if the property is removed from the premises after the one-year period has expired.

The bill also requires that if an individual pawns property, the property must be labeled with the transaction form number, and, if a permitted vendor pawns property, the property must be labeled with an inventory number.

#### **Effective Date**

This bill takes effect July 1, 2004.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

- A pawnbroker must obtain a local license before applying for a state license.
- A pawnbroker must use a pawnbroker transaction form, approved by the Department of Agriculture and Consumer Services, with a unique transaction form number for inventory tracking purposes, and will have to ensure that the thumbprint made by a pledgor or seller on the form is legible.
- A pawnbroker must maintain a copy of the pawnbroker transaction form for at least one year, but may dispose of the form if the subject property is removed from the pawnbroker's premises after one year.
- If a pawnbroker contests ownership of a piece of property, the person claiming ownership may use a form petition to file an action for replevin in a circuit or county court.
- If a law enforcement official has placed a hold order through a court on a piece of property that is the subject of an investigation, a pawnbroker must notify the actual official who placed the hold order when the holding period expires. The required written notification to the law enforcement official will begin the process of rescinding the hold order so the pawnbroker may obtain title to the piece of property once the hold order is rescinded.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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