

By Senator Campbell

32-1223B-04

1                                   A bill to be entitled  
2           An act relating to pawnbrokers; amending s.  
3           539.001, F.S.; requiring an applicant for a  
4           state license to have a local license;  
5           providing additional grounds for discipline;  
6           requiring the pledgor or seller to sign the  
7           required pawnbroker transaction form;  
8           clarifying provisions regarding personal  
9           information on the form; requiring a pawnbroker  
10          to maintain such forms while the property  
11          remains on the pawnshop premises; requiring  
12          pawned or purchased property to be labeled with  
13          a form number; revising methods of making  
14          claims against a pawnbroker; providing an  
15          effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19           Section 1. Paragraph (f) of subsection (3), paragraph  
20          (a) of subsection (6), and subsections (8), (9), (15), and  
21          (16) of section 539.001, Florida Statutes, are amended to  
22          read:

23           539.001 The Florida Pawnbroking Act.--

24           (3) LICENSE REQUIRED.--

25           (f) Any person applying for or renewing a state ~~local~~  
26          ~~occupational license to engage in business as a pawnbroker~~  
27          license must first procure a local occupational pawnbroker's  
28          license, if applicable, and must supply proof of procurement  
29          to the agency ~~exhibit a current license from the agency~~ before  
30          a state ~~the local occupational~~ pawnbroker's license may be  
31          issued or reissued.

1           (6) SUSPENSION, REVOCATION, AND SURRENDER OF LICENSE;  
2 NET WORTH REQUIREMENT.--

3           (a) The agency may, after notice and a hearing,  
4 suspend or revoke any license upon a finding that:

5           1. The licensee, either knowingly or without the  
6 exercise of due care, has violated this section or has aided  
7 or conspired with another person to violate this section;

8           2. A condition exists that, had it existed when the  
9 license was issued, would have justified the agency's refusal  
10 to issue a license;

11           3. The licensee or its applicable agents or employees  
12 who are subject to the eligibility requirements no longer meet  
13 the eligibility requirements to hold a pawnbroker's license;

14 ~~or~~

15           4. The licensee has through gross negligence or  
16 willful noncompliance failed to comply with a written hold  
17 order; ~~or-~~

18           5. The licensee failed to obtain or renew any license  
19 that is required by the local government with appropriate  
20 jurisdiction.

21           (8) PAWNBROKER TRANSACTION FORM.--

22           (a) At the time the pawnbroker enters into any pawn or  
23 purchase transaction, the pawnbroker shall complete and have  
24 the pledgor or seller sign a pawnbroker transaction form for  
25 such transaction, including an indication of whether the  
26 transaction is a pawn or a purchase, unless the conveying  
27 customer is a permitted vendor ~~and the pledgor or seller shall~~  
28 ~~sign such completed form.~~ The agency must approve the design  
29 and format of the pawnbroker transaction form, which must be 8  
30 1/2 inches x 11 inches in size and elicit the information  
31 required under this section. In completing the pawnbroker

1 transaction form, the pawnbroker shall record the following  
2 information, which must be typed or written indelibly and  
3 legibly in English.

4 (b) The front of the pawnbroker transaction form must  
5 include:

6 1. The name and address of the pawnshop and a unique  
7 transaction form number that shall also be used for inventory  
8 tracking purposes.

9 2. A complete and accurate description of the pledged  
10 goods or purchased goods, including the following information,  
11 if applicable:

12 a. Brand name.

13 b. Model number.

14 c. Manufacturer's serial number.

15 d. Size.

16 e. Color, as apparent to the untrained eye.

17 f. Precious metal type, weight, and content, if known.

18 g. Gemstone description, including the number of  
19 stones.

20 h. In the case of firearms, the type of action,  
21 caliber or gauge, number of barrels, barrel length, and  
22 finish.

23 i. Any other unique identifying marks, numbers, names,  
24 or letters.

25  
26 Notwithstanding sub-subparagraphs a.-i., in the case of  
27 multiple items of a similar nature delivered together in one  
28 transaction which do not bear serial or model numbers and  
29 which do not include precious metal or gemstones, such as  
30 musical or video recordings, books, and hand tools, the  
31 description of the items is adequate if it contains the

1 quantity of items and a description of the type of items  
2 delivered.

3 3. The name, current residential address, home  
4 telephone number, place of employment and business telephone  
5 number, date of birth, physical description, and legible right  
6 thumbprint of the pledgor or seller.

7 4. The date and time of the transaction.

8 5. The type of identification accepted from the  
9 pledgor or seller, including the issuing agency and the  
10 identification number.

11 6. In the case of a pawn:

12 a. The amount of money advanced, which must be  
13 designated as the amount financed;

14 b. The maturity date of the pawn, which must be 30  
15 days after the date of the pawn;

16 c. The default date of the pawn and the amount due on  
17 the default date;

18 d. The total pawn service charge payable on the  
19 maturity date, which must be designated as the finance charge;

20 e. The amount financed plus the finance charge that  
21 must be paid to redeem the pledged goods on the maturity date,  
22 which must be designated as the total of payments;

23 f. The annual percentage rate, computed according to  
24 the regulations adopted by the Federal Reserve Board under the  
25 federal Truth in Lending Act; and

26 g. The front or back of the pawnbroker transaction  
27 form must include a statement that:

28 (I) Any personal property pledged to a pawnbroker  
29 within this state which is not redeemed within 30 days  
30 following the maturity date of the pawn, if the 30th day is  
31 not a business day, then the following business day, is

1 automatically forfeited to the pawnbroker, and absolute right,  
2 title, and interest in and to the property vests in and is  
3 deemed conveyed to the pawnbroker by operation of law, and no  
4 further notice is necessary;

5 (II) The pledgor is not obligated to redeem the  
6 pledged goods; and

7 (III) If the pawnbroker transaction form is lost,  
8 destroyed, or stolen, the pledgor must immediately advise the  
9 issuing pawnbroker in writing by certified or registered mail,  
10 return receipt requested, or in person evidenced by a signed  
11 receipt.

12 (IV) A pawn may be extended upon mutual agreement of  
13 the parties.

14 7. In the case of a purchase, the amount of money paid  
15 for the goods or the monetary value assigned to the goods in  
16 connection with the transaction.

17 8. A statement that the pledgor or seller of the item  
18 represents and warrants that it is not stolen, that it has no  
19 liens or encumbrances against it, and that the pledgor or  
20 seller is the rightful owner of the goods and has the right to  
21 enter into the transaction.

22

23 Any person who knowingly gives false verification of ownership  
24 or gives a false or altered identification and who receives  
25 money from a pawnbroker for goods sold or pledged commits:

26 a. If the value of the money received is less than  
27 \$300, a felony of the third degree, punishable as provided in  
28 s. 775.082, s. 775.083, or s. 775.084.

29 b. If the value of the money received is \$300 or more,  
30 a felony of the second degree, punishable as provided in s.  
31 775.082, s. 775.083, or s. 775.084.

1 (c) A pawnbroker transaction form must provide a space  
2 for the imprint of the right thumbprint of the pledgor or  
3 seller and a blank line for the signature of the pledgor or  
4 seller.

5 (d) At the time of the pawn or purchase transaction,  
6 the pawnbroker shall deliver to the pledgor or seller an exact  
7 copy of the completed pawnbroker transaction form.

8 (9) RECORDKEEPING; REPORTING; HOLD PERIOD.--

9 (a) A pawnbroker must maintain a copy of each  
10 completed pawnbroker transaction form on the pawnshop premises  
11 for at least 1 year after the date of the transaction or until  
12 the property listed on the form is removed from the premises,  
13 whichever is later. On or before the end of each business day,  
14 the pawnbroker must deliver to the appropriate law enforcement  
15 official the original pawnbroker transaction forms for each of  
16 the transactions occurring during the previous business day,  
17 unless other arrangements have been agreed upon between the  
18 pawnbroker and the appropriate law enforcement official. If  
19 the original transaction form is lost or destroyed by the  
20 appropriate law enforcement official, a copy may be used by  
21 the pawnbroker as evidence in court. When an electronic image  
22 of a pledgor or seller identification is accepted for a  
23 transaction, the pawnbroker must maintain the electronic image  
24 in order to meet the same recordkeeping requirements as for  
25 the original transaction form. If a criminal investigation  
26 occurs, the pawnbroker shall, upon request, provide a clear  
27 and legible copy of the image to the appropriate law  
28 enforcement official.

29 (b) If the appropriate law enforcement agency supplies  
30 the appropriate software and the pawnbroker presently has the  
31 computer ability, pawn transactions shall be electronically

1 transferred. If a pawnbroker does not presently have the  
2 computer ability, the appropriate law enforcement agency may  
3 provide the pawnbroker with a computer and all necessary  
4 equipment for the purpose of electronically transferring pawn  
5 transactions. The appropriate law enforcement agency shall  
6 retain ownership of the computer, unless otherwise agreed  
7 upon. The pawnbroker shall maintain the computer in good  
8 working order, ordinary wear and tear excepted. In the event  
9 the pawnbroker transfers pawn transactions electronically, the  
10 pawnbroker is not required to also deliver to the appropriate  
11 law enforcement official the original or copies of the  
12 pawnbroker transaction forms. The appropriate law enforcement  
13 official may, for the purposes of a criminal investigation,  
14 request that the pawnbroker produce an original of a  
15 transaction form that has been electronically transferred. The  
16 pawnbroker shall deliver this form to the appropriate law  
17 enforcement official within 24 hours of the request.

18 (c) All goods delivered to a pawnbroker in a pawn or  
19 purchase transaction must be securely stored and maintained in  
20 an unaltered condition within the jurisdiction of the  
21 appropriate law enforcement official for a period of 30  
22 calendar days after the transaction. Those goods delivered to  
23 a pawnbroker in a purchase transaction may not be sold or  
24 otherwise disposed of before the expiration of such period.  
25 The pawnbroker shall make all pledged and purchased goods and  
26 all records relating to such goods available for inspection by  
27 the appropriate law enforcement official during normal  
28 business hours throughout such period. The pawnbroker must  
29 store and maintain pledged goods for the period prescribed in  
30 subsection (10) unless the pledged goods are redeemed earlier;  
31 provided, however, that within the first 30 days after the

1 original pawn, the pledged goods may be redeemed only by the  
2 pledgor or the pledgor's attorney in fact.

3 (d) Property in a pawnshop which is pawned or  
4 purchased from an individual must be labeled with the  
5 transaction form number. Property that is acquired from a  
6 permitted vendor must be labeled with an inventory number.

7 (15) MISAPPROPRIATED PROPERTY; PETITION FOR RETURN.--

8 (a) If a pawnbroker contests the identification or  
9 ownership of the property, the person alleging ownership of  
10 the property may, if a timely report of the misappropriated  
11 property was made to the proper authorities, bring an action  
12 for replevin in the county or circuit court by petition in  
13 substantially the following form:

14  
15 Plaintiff (\_\_\_\_), sues defendant (\_\_\_\_), and alleges:

16  
17 1. This is an action to recover possession of personal  
18 property in \_\_\_\_\_ County, Florida.

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

23  
24 3. Plaintiff is entitled to the possession of the property  
25 under a security agreement dated \_\_\_\_\_, (year), or other  
26 evidence of ownership, a copy of which is attached.

27  
28 4. To plaintiff's best knowledge, information, and belief,  
29 the property is located at \_\_\_\_\_.

30  
31



1 5. The property is wrongfully detained by defendant.  
2 Defendant came into possession of the property by (describe  
3 method of possession). To plaintiff's best knowledge,  
4 information, and belief, defendant detains the property  
5 because (give reasons).

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

9 (b) The filing fees shall be waived by the clerk of  
10 the court, and the service fees shall be waived by the  
11 sheriff. The court shall award the prevailing party attorney's  
12 fees and costs. If the plaintiff prevails in the replevin  
13 action, the court shall order payment of filing fees to the  
14 clerk and service fees to the sheriff.

15 (c) Upon receipt of the petition, the court shall set  
16 a hearing to be held at the earliest possible time. Upon the  
17 receipt of a petition for a writ by a pawnbroker, the  
18 pawnbroker shall hold the property at issue until the court  
19 determines the respective interests of the parties.

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

28 (e) If a pawnbroker does not contest the  
29 identification or ownership of misappropriated property and  
30 the plaintiff has not signed a waiver of prosecution with the  
31 appropriate law enforcement official, the pawnbroker shall

1 return the property to the plaintiff without compensation. The  
2 pawnbroker may provide the court a copy of the pawnbroker  
3 transaction form and request restitution from the defendant in  
4 the criminal proceeding.~~CLAIMS AGAINST PURCHASED GOODS OR~~  
5 ~~PLEDGED GOODS HELD BY PAWNBROKERS.--~~

6       (a) ~~To obtain possession of purchased or pledged goods~~  
7 ~~held by a pawnbroker which a claimant claims to be~~  
8 ~~misappropriated, the claimant must notify the pawnbroker by~~  
9 ~~certified mail, return receipt requested, or in person~~  
10 ~~evidenced by signed receipt, of the claimant's claim to the~~  
11 ~~purchased or pledged goods. The notice must contain a complete~~  
12 ~~and accurate description of the purchased or pledged goods and~~  
13 ~~must be accompanied by a legible copy of the applicable law~~  
14 ~~enforcement agency's report on the misappropriation of such~~  
15 ~~property. If the claimant and the pawnbroker do not resolve~~  
16 ~~the matter within 10 days after the pawnbroker's receipt of~~  
17 ~~the notice, the claimant may petition the court to order the~~  
18 ~~return of the property, naming the pawnbroker as a defendant,~~  
19 ~~and must serve the pawnbroker with a copy of the petition. The~~  
20 ~~pawnbroker shall hold the property described in the petition~~  
21 ~~until the right to possession is resolved by the parties or by~~  
22 ~~a court of competent jurisdiction. The court shall waive any~~  
23 ~~filing fee for the petition to recover the property, and the~~  
24 ~~sheriff shall waive the service fees.~~

25       (b) ~~If, after notice and a hearing, the court finds~~  
26 ~~that the property was misappropriated and orders the return of~~  
27 ~~the property to the claimant:~~

28           1. ~~The claimant may recover from the pawnbroker the~~  
29 ~~cost of the action, including the claimant's reasonable~~  
30 ~~attorney's fees; and~~

31

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

10           ~~3. The conveying customer shall be responsible to pay~~  
11 ~~all attorney's fees and taxable costs incurred by the~~  
12 ~~pawnbroker in defending a replevin action or any other civil~~  
13 ~~matter wherein it is found that the conveying customer was in~~  
14 ~~violation of this paragraph.~~

15           ~~(c) If the court finds that the claimant failed to~~  
16 ~~comply with the requirements in paragraph (a) or otherwise~~  
17 ~~finds against the claimant, the claimant is liable for the~~  
18 ~~defendants' costs, including reasonable attorney's fees.~~

19           ~~(d) The sale, pledge, or delivery of tangible personal~~  
20 ~~property to a pawnbroker by any person in this state is~~  
21 ~~considered to be:~~

22           ~~1. An agreement by the person who sells, pledges, or~~  
23 ~~delivers the tangible personal property that the person is~~  
24 ~~subject to the jurisdiction of the court in all civil actions~~  
25 ~~and proceedings arising out of the pledge or sale transaction~~  
26 ~~filed by either a resident or nonresident plaintiff;~~

27           ~~2. An appointment of the Secretary of State by any~~  
28 ~~nonresident of this state as that person's lawful attorney and~~  
29 ~~agent upon whom may be served all process in suits pertaining~~  
30 ~~to the actions and proceedings arising out of the sale,~~  
31 ~~pledge, or delivery; and~~

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

4           (16) HOLD ORDERS; ISSUANCE; REQUIRED INFORMATION;  
5 PROCEDURES.--

6           (a) When an appropriate law enforcement official has  
7 probable cause to believe that property in the possession of a  
8 pawnbroker is misappropriated, the official may place a  
9 written hold order on the property. The written hold order  
10 shall impose a holding period not to exceed 90 days unless  
11 extended by court order. The appropriate law enforcement  
12 official may rescind, in writing, any hold order. An  
13 appropriate law enforcement official may place only one hold  
14 order on property.

15           (b) Upon the expiration of the holding period, the  
16 pawnbroker shall notify, in writing, the ~~appropriate~~ law  
17 enforcement official who placed the hold order by certified  
18 mail, return receipt requested, that the holding period has  
19 expired. If, on the 10th day after the written notice has  
20 been received by the ~~appropriate~~ law enforcement official who  
21 placed the hold order, the pawnbroker has not received from a  
22 court an extension of the hold order on the property and the  
23 property is not the subject of a proceeding under subsection  
24 (15), title to the property shall vest in and be deemed  
25 conveyed by operation of law to the pawnbroker, free of any  
26 liability for claims but subject to any restrictions contained  
27 in the pawn transaction contract and subject to the provisions  
28 of this section.

29           (c) A hold order must specify:

30           1. The name and address of the pawnbroker.

31

1           2. The name, title, and identification number of the  
2 representative of the appropriate law enforcement official or  
3 the court placing the hold order.

4           3. If applicable, the name and address of the  
5 appropriate law enforcement official or court to which such  
6 representative is attached and the number, if any, assigned to  
7 the claim regarding the property.

8           4. A complete description of the property to be held,  
9 including model number and serial number if applicable.

10          5. The name of the person reporting the property to be  
11 misappropriated unless otherwise prohibited by law.

12          6. The mailing address of the pawnbroker where the  
13 property is held.

14          7. The expiration date of the holding period.

15          (d) The pawnbroker or the pawnbroker's representative  
16 must sign and date a copy of the hold order as evidence of  
17 receipt of the hold order and the beginning of the 90-day  
18 holding period.

19          (e)1. Except as provided in subparagraph 2., a  
20 pawnbroker may not release or dispose of property subject to a  
21 hold order except pursuant to a court order, a written release  
22 from the appropriate law enforcement official, or the  
23 expiration of the holding period of the hold order.

24          2. While a hold order is in effect, the pawnbroker  
25 must upon request release the property subject to the hold  
26 order to the custody of the appropriate law enforcement  
27 official for use in a criminal investigation. The release of  
28 the property to the custody of the appropriate law enforcement  
29 official is not considered a waiver or release of the  
30 pawnbroker's property rights or interest in the property. Upon  
31 completion of the criminal proceeding, the property must be

1 returned to the pawnbroker unless the court orders other  
2 disposition. When such other disposition is ordered, the court  
3 shall additionally order the conveying customer to pay  
4 restitution to the pawnbroker in the amount received by the  
5 conveying customer for the property together with reasonable  
6 attorney's fees and costs.

7 Section 2. This act shall take effect July 1, 2004.

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SENATE SUMMARY

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Revises provisions regulating pawnbrokers. Requires an applicant for a state license to first have a local occupational license. Requires persons who pawn or sell merchandise to a pawnbroker to sign a transaction form; revises information required on the form and requires the pawnbroker to maintain such form for 1 year or as long as the merchandise remains on the property. Requires all merchandise to be labeled. Revises the method of making a claim against a pawnbroker.