

CHAMBER ACTION

1 The Committee on State Administration recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to pawnbroking; amending s. 539.001, F.S.;
7 revising provisions relating to the "Florida Pawnbroking
8 Act"; defining the term "waiver of prosecution"; providing
9 for suspension or revocation of a license under certain
10 circumstances; revising requirements for completion of
11 pawnbroker transaction forms; providing requirements for
12 recordkeeping, merchandise tracking, and availability of
13 information; prohibiting certain activity with respect to
14 title loan agreements; revising requirements relating to
15 petition for return of misappropriated property;
16 authorizing criminal proceedings; clarifying provisions
17 relating to hold orders; providing penalties; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 539.001, Florida Statutes, is amended
23 to read:

24 | 539.001 The Florida Pawnbroking Act.--

25 | (1) SHORT TITLE.--This section may be cited as the

26 | "Florida Pawnbroking Act."

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

28 | (a) "Agency" means the Department of Agriculture and

29 | Consumer Services.

30 | (b) "Appropriate law enforcement official" means the

31 | sheriff of the county in which a pawnshop is located or, in case

32 | of a pawnshop located within a municipality, the police chief of

33 | the municipality in which the pawnshop is located; however, any

34 | sheriff or police chief may designate as the appropriate law

35 | enforcement official for the county or municipality, as

36 | applicable, any law enforcement officer working within the

37 | county or municipality headed by that sheriff or police chief.

38 | Nothing in this subsection limits the power and responsibilities

39 | of the sheriff.

40 | (c) "Claimant" means a person who claims that his or her

41 | property was misappropriated.

42 | (d) "Conveying customer" means a person who delivers

43 | property into the custody of a pawnbroker, either by pawn, sale,

44 | consignment, or trade.

45 | (e) "Identification" means a government-issued

46 | photographic identification or an electronic image taken from a

47 | government-issued photographic identification.

48 | (f) "Misappropriated" means stolen, embezzled, converted,

49 | or otherwise wrongfully appropriated against the will of the

50 | rightful owner.

51 | (g) "Net worth" means total assets less total liabilities.

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52 (h) "Pawn" means any advancement of funds on the security
53 of pledged goods on condition that the pledged goods are left in
54 the possession of the pawnbroker for the duration of the pawn
55 and may be redeemed by the pledgor on the terms and conditions
56 contained in this section.

57 (i) "Pawnbroker" means any person who is engaged in the
58 business of making pawns; who makes a public display containing
59 the term "pawn," "pawnbroker," or "pawnshop" or any derivative
60 thereof; or who publicly displays a sign or symbol historically
61 identified with pawns. A pawnbroker may also engage in the
62 business of purchasing goods which includes consignment and
63 trade.

64 (j) "Pawnbroker transaction form" means the instrument on
65 which a pawnbroker records pawns and purchases as provided in
66 subsection (8).

67 (k) "Pawn service charge" means a charge for investigating
68 the title, storage, and insuring of the security; closing the
69 transaction; making daily reports to appropriate law enforcement
70 officials; expenses and losses; and all other services.

71 (l) "Pawnshop" means the location at which a pawnbroker
72 conducts business.

73 (m) "Permitted vendor" means a vendor who furnishes a
74 pawnbroker with an invoice specifying the vendor's name and
75 address, the date of the sale, a description of the items sold,
76 and the sales price, and who has an established place of
77 business, or, in the case of a secondhand dealer as defined in
78 s. 538.03, has represented in writing that such dealer has
79 complied with all applicable recordkeeping, reporting, and

80 retention requirements pertaining to goods sold or otherwise
81 delivered to a pawnbroker.

82 (n) "Person" means an individual, partnership,
83 corporation, joint venture, trust, association, or other legal
84 entity.

85 (o) "Pledged goods" means tangible personal property that
86 is deposited with, or otherwise delivered into the possession of
87 a pawnbroker in connection with a pawn. "Pledged goods" does not
88 include titles or any other form of written security in tangible
89 property in lieu of actual physical possession, including, but
90 not limited to, choses in action, securities, printed evidence
91 of indebtedness, or certificates of title and other instruments
92 evidencing title to separate items of property, including motor
93 vehicles. For purposes of federal and state bankruptcy laws, a
94 pledgor's interest in his or her pledged goods during the
95 pendency of a pawn is a right of redemption only.

96 (p) "Pledgor" means an individual who delivers pledged
97 goods into the possession of a pawnbroker in connection with a
98 pawn.

99 (q) "Purchase" means the transfer and delivery of goods,
100 by a person other than a permitted vendor, to a pawnbroker by
101 acquisition for value, consignment, or trade for other goods.

102 (r) "Amount financed" is used interchangeably to mean the
103 same as "amount of money advanced" or "principal amount".

104 (s) "Default date" means that date upon which the
105 pledgor's right of redemption expires and absolute right, title,
106 and interest in and to the pledged goods shall vest in and shall
107 be deemed conveyed to the pawnbroker by operation of law.

108 (t) "Beneficial owner" means a person who does not have
109 title to property but has rights in the property which are the
110 normal incident of owning the property.

111 (u) "Operator" means a person who has charge of a
112 corporation or company and has control of its business, or of
113 its branch establishments, divisions, or departments, and who is
114 vested with a certain amount of discretion and independent
115 judgment.

116 (v) "Waiver of prosecution" means a signed instrument by
117 which a claimant knowingly and voluntarily relinquishes a legal
118 right to have continued an official law enforcement
119 investigation by an appropriate law enforcement official or to
120 have a person prosecuted regarding a criminal complaint.

121 (3) LICENSE REQUIRED.--

122 (a) A person may not engage in business as a pawnbroker
123 unless the person has a valid license issued by the agency. A
124 separate license is required for each pawnshop. The agency must
125 issue more than one license to a person if that person complies
126 with the requirements for each license.

127 (b) A licensee who seeks to move a pawnshop to another
128 location must give 30 days' prior written notice to the agency
129 by certified or registered mail, return receipt requested, and
130 the agency must then amend the license to indicate the new
131 location. The licensee must also give such written notice to the
132 appropriate law enforcement official.

133 (c) Each license is valid for a period of 1 year unless it
134 is earlier relinquished, suspended, or revoked. Each license
135 shall be renewed annually, and each licensee shall, initially

136 and annually thereafter, pay to the agency a license fee of \$300
137 for each license held.

138 (d) The agency may issue a temporary pawnbroker's license
139 for the operation of a pawnshop either upon receipt of an
140 application to transfer an existing license from one person to
141 another or upon receipt of an application for a license
142 involving principals and owners that are substantially identical
143 to those of the existing licensee. The temporary license is
144 effective until the permanent license is issued or denied by the
145 agency.

146 (e) A person must apply to the agency for a new license or
147 for a temporary license upon any change, directly or
148 beneficially, in the ownership of any pawnshop. An application
149 for a license or an application to transfer an existing license
150 is not required upon any change, directly or beneficially, in
151 the ownership of a pawnshop if one or more holders of at least
152 90 percent of the outstanding equity interest of the pawnshop
153 before the change in ownership continue to hold at least 90
154 percent of the outstanding equity interest after the change in
155 ownership.

156 (f) Any person applying for or renewing a local
157 occupational license to engage in business as a pawnbroker must
158 exhibit a current license from the agency before the local
159 occupational license may be issued or reissued.

160 (4) ELIGIBILITY FOR LICENSE.--

161 (a) To be eligible for a pawnbroker's license, an
162 applicant must:

- 163 1. Be of good moral character;

164 2. Have a net worth of at least \$50,000 or file with the
 165 agency a bond issued by a surety company qualified to do
 166 business in this state in the amount of \$10,000 for each
 167 license. In lieu of the bond required in this section, the
 168 applicant may establish a certificate of deposit or an
 169 irrevocable letter of credit in a Florida banking institution in
 170 the amount of the bond. The original bond, certificate of
 171 deposit, or letter of credit shall be filed with the agency, and
 172 the agency shall be the beneficiary to said document. The bond,
 173 certificate of deposit, or letter of credit shall be in favor of
 174 the agency for the use and benefit of any consumer who is
 175 injured by the fraud, misrepresentation, breach of contract,
 176 financial failure, or violation of any provision of this section
 177 by the pawnbroker. Such liability may be enforced either by
 178 proceeding in an administrative action or by filing a judicial
 179 suit at law in a court of competent jurisdiction. However, in
 180 such court suit, the bond, certificate of deposit, or letter of
 181 credit posted with the agency shall not be amenable or subject
 182 to any judgment or other legal process issuing out of or from
 183 such court in connection with such lawsuit, but such bond,
 184 certificate of deposit, or letter of credit shall be amenable to
 185 and enforceable only by and through administrative proceedings
 186 before the agency. It is the intent of the Legislature that such
 187 bond, certificate of deposit, or letter of credit shall be
 188 applicable and liable only for the payment of claims duly
 189 adjudicated by order of the agency. The bond, certificate of
 190 deposit, or letter of credit shall be payable on a pro rata
 191 basis as determined by the agency, but the aggregate amount may

192 | not exceed the amount of the bond, certificate of deposit, or
 193 | letter of credit;

194 | 3. Not have been convicted of, or found guilty of, or pled
 195 | guilty or nolo contendere to, or not have been incarcerated
 196 | within the last 10 years as a result of having previously been
 197 | convicted of, or found guilty of, or pled guilty or nolo
 198 | contendere to, regardless of adjudication, a felony within the
 199 | last 10 years and not be acting as a beneficial owner for
 200 | someone who has been convicted of, or found guilty of, or pled
 201 | guilty or nolo contendere to, regardless of adjudication, a
 202 | felony within the last 10 years; and

203 | 4. Not have been convicted of, or found guilty of, or pled
 204 | guilty or nolo contendere to, or not have been incarcerated
 205 | within the last 10 years as a result of having previously been
 206 | convicted of, or found guilty of, or pled guilty or nolo
 207 | contendere to, regardless of adjudication, a crime that involves
 208 | theft, larceny, dealing in stolen property, receiving stolen
 209 | property, burglary, embezzlement, obtaining property by false
 210 | pretenses, possession of altered property, or any other
 211 | fraudulent or dishonest dealing within the last 10 years, and
 212 | not be acting as a beneficial owner for someone who has been
 213 | convicted, of, or found guilty of, or pled guilty or nolo
 214 | contendere to, or has been incarcerated within the last 10 years
 215 | as a result of having previously been convicted of, or found
 216 | guilty of, or pled guilty or nolo contendere to, regardless of
 217 | adjudication, a crime that involves theft, larceny, dealing in
 218 | stolen property, receiving stolen property, burglary,
 219 | embezzlement, obtaining property by false pretenses, possession

220 of altered property, or any other fraudulent or dishonest
221 dealing within the last 10 years.

222 (b) Any applicant claiming to have a net worth of \$50,000
223 or more shall file with the agency, at the time of applying for
224 a license, the following documentation:

225 1. A current financial statement prepared by a Florida
226 certified public accountant; or

227 2. An affidavit stating the applicant's net worth is at
228 least \$50,000, accompanied by supporting documentation; or

229 3. If the applicant is a corporation, a copy of the
230 applicant's most recently filed federal tax return.

231
232 If the agency cannot verify that the applicant meets the net
233 worth requirement for a license, the agency may require a
234 finding, including the presentation of a current balance sheet,
235 by an accounting firm or individual holding a permit to practice
236 public accounting in this state, that the accountant has
237 reviewed the books and records of the applicant and that the
238 applicant meets the net worth requirement.

239 (c) If an applicant for a pawnbroker's license is not an
240 individual, the eligibility requirements of this subsection,
241 other than the requirements of subparagraph (a)2., apply to each
242 operator of the pawnshop and to each direct or beneficial owner
243 of at least 10 percent of the outstanding equity interest of the
244 pawnshop and, if the applicant is a corporation, to each officer
245 and director of the corporation.

246 (5) APPLICATION FOR LICENSE.--

247 (a) An application for a pawnbroker's license, for the
 248 transfer of an existing pawnbroker's license, or for the
 249 approval of a change in the ownership of a licensee's pawnshop
 250 must be under oath and must state the full name and place of
 251 residence of the applicant, the place where the business is to
 252 be conducted, and other relevant information required by the
 253 agency.

254 (b)1. If the applicant is not an individual, the applicant
 255 must state the full name and address of each direct or
 256 beneficial owner of at least a 10-percent equity interest in
 257 such person. If the applicant is a corporation, the application
 258 must also state the full name and address of each officer and
 259 director.

260 2. Notwithstanding the provisions of subparagraph 1., the
 261 application need not state the full name and address of each
 262 officer, director, and shareholder if the applicant is owned
 263 directly or beneficially by a person that as an issuer has a
 264 class of securities registered under s. 12 of the Securities
 265 Exchange Act of 1934, or under s. 15(d) thereof, and is an
 266 issuer of registered securities required to file reports with
 267 the Securities and Exchange Commission and if the person files
 268 with the agency the information, documents, and reports required
 269 to be filed with the Securities and Exchange Commission.

270 (c) Each initial application for a license must be
 271 accompanied by a complete set of fingerprints taken by an
 272 authorized law enforcement officer, \$300 for the first year's
 273 license fee, and the actual cost to the agency for fingerprint
 274 analysis for each person subject to the eligibility

275 requirements. The agency shall submit the fingerprints to the
 276 Department of Law Enforcement for state processing, and the
 277 Department of Law Enforcement shall forward the fingerprints to
 278 the Federal Bureau of Investigation for a national criminal
 279 history check. These fees and costs are not refundable.

280 (d) When the application and the required fees are
 281 received, the agency shall investigate the facts, approve the
 282 application, and issue a license to the applicant if the agency
 283 finds that the eligibility requirements for the license are
 284 satisfied. The license must be prominently displayed at the
 285 front desk or counter at each pawnshop.

286 (e) Fees and fines collected under this section by the
 287 agency shall be deposited into the General Inspection Trust
 288 Fund.

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

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

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

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

299 3. The licensee or its applicable agents or employees who
 300 are subject to the eligibility requirements no longer meet the
 301 eligibility requirements to hold a pawnbroker's license; ~~or~~

302 4. The licensee has through gross negligence or willful
303 noncompliance failed to comply with a written hold order; or

304 5. The licensee failed to obtain or renew any license that
305 is required by the local government with appropriate
306 jurisdiction.

307 (b) The agency may conditionally license or place on
308 probation a person whose license has been suspended or may
309 reprimand a licensee for a violation of this section.

310 (c) The manner of giving notice and conducting a hearing,
311 as required by paragraph (a), must conform to chapter 120.

312 (d) Any licensee may surrender a license by delivering it,
313 by certified or registered mail, return receipt requested, to
314 the agency with written notice of its surrender. The surrender
315 of a license does not affect the civil or criminal liability of
316 the licensee for acts committed before the surrender of the
317 license.

318 (e) The revocation, suspension, or surrender of a license
319 does not impair or affect the obligation of any preexisting
320 lawful contract between the licensee and any pledgor. Any pawn
321 transaction made by a person without benefit of a license is
322 voidable, in which case the person forfeits the right to collect
323 any moneys, including principal and any charges, from the
324 pledgor in connection with such transaction and is obligated to
325 return to the pledgor the pledged goods in connection with such
326 transaction.

327 (f) The agency may reinstate a suspended license or issue
328 a new license to a person whose license has been revoked, if
329 after a hearing it determines that no fact or condition then

330 exists that would have justified the agency in originally
331 refusing to issue a license.

332 (g) Each licensee must maintain a net worth of \$50,000 or
333 the bond specified in subsection (4).

334 (7) ORDERS IMPOSING PENALTIES.--

335 (a) The agency may enter an order imposing one or more of
336 the penalties set forth in paragraph (b) if the agency finds
337 that a pawnbroker:

338 1. Violated or is operating in violation of any of the
339 provisions of this section or of the rules adopted or orders
340 issued thereunder;

341 2. Made a material false statement in any application,
342 document, or record required to be submitted or retained under
343 this section;

344 3. Refused or failed, or any of its principal officers has
345 refused or failed, after notice, to produce any document or
346 records or disclose any information required to be produced or
347 disclosed under this section or the rules of the agency;

348 4. Made a material false statement in response to any
349 request or investigation by the agency, the Department of Legal
350 Affairs, or the state attorney; or

351 5. Has intentionally defrauded the public through
352 dishonest or deceptive means.

353 (b) Upon a finding as set forth in paragraph (a), the
354 agency may enter an order doing one or more of the following:

355 1. Issuing a notice of noncompliance pursuant to s.
356 120.695.

357 2. Imposing an administrative fine not to exceed \$5,000
358 for each act which constitutes a violation of this section or a
359 rule or an order.

360 3. Directing that the pawnbroker cease and desist
361 specified activities.

362 4. Refusing to license or revoking or suspending a
363 license.

364 5. Placing the licensee on probation for a period of time,
365 subject to such conditions as the agency may specify.

366 (c) The administrative proceedings which could result in
367 the entry of an order imposing any of the penalties specified in
368 paragraph (b) are governed by chapter 120.

369 (d)1. When the agency, if a violation of this section
370 occurs, has reasonable cause to believe that a person is
371 operating in violation of this section, the agency may bring a
372 civil action in the appropriate court for temporary or permanent
373 injunctive relief and may seek other appropriate civil relief,
374 including a civil penalty not to exceed \$5,000 for each
375 violation, restitution and damages for injured customers, court
376 costs, and reasonable attorney's fees.

377 2. The agency may terminate any investigation or action
378 upon agreement by the offender to pay a stipulated civil
379 penalty, to make restitution or pay damages to customers, or to
380 satisfy any other relief authorized herein and requested by the
381 agency.

382 (e) The remedies provided for in this subsection shall be
383 in addition to any other remedy provided by law.

384 (8) PAWNBROKER TRANSACTION FORM.--

385 (a) At the time the pawnbroker enters into any pawn or
 386 purchase transaction, the pawnbroker shall complete a pawnbroker
 387 transaction form for such transaction, including an indication
 388 of whether the transaction is a pawn or a purchase, unless the
 389 conveying customer is a permitted vendor. ~~and~~ The pledgor or
 390 seller shall sign such completed form. The agency must approve
 391 the design and format of the pawnbroker transaction form, which
 392 must be 8¹/₂ inches x 11 inches in size and elicit the
 393 information required under this section. In completing the
 394 pawnbroker transaction form, the pawnbroker shall record the
 395 following information, which must be typed or written indelibly
 396 and legibly in English.

397 (b) The front of the pawnbroker transaction form must
 398 include:

399 1. The name and address of the pawnshop and a transaction
 400 form number unique to that pawnshop location which shall also be
 401 used for inventory tracking purposes.

402 2. A complete and accurate description of the pledged
 403 goods or purchased goods, including the following information,
 404 if applicable:

- 405 a. Brand name.
- 406 b. Model number.
- 407 c. Manufacturer's serial number.
- 408 d. Size.
- 409 e. Color, as apparent to the untrained eye.
- 410 f. Precious metal type, weight, and content, if known.
- 411 g. Gemstone description, including the number of stones.

412 h. In the case of firearms, the type of action, caliber or
413 gauge, number of barrels, barrel length, and finish.

414 i. Any other unique identifying marks, numbers, names, or
415 letters.

416

417 Notwithstanding sub-subparagraphs a.-i., in the case of multiple
418 items of a similar nature delivered together in one transaction
419 which do not bear serial or model numbers and which do not
420 include precious metal or gemstones, such as musical or video
421 recordings, books, and hand tools, the description of the items
422 is adequate if it contains the quantity of items and a
423 description of the type of items delivered.

424 3. The name, current residential address, home telephone
425 number, place of employment, place of employment telephone
426 number, date of birth, physical description, and a right
427 thumbprint, absent of smudges and smears, of the pledgor or
428 seller.

429 4. The date and time of the transaction.

430 5. The type of identification accepted from the pledgor or
431 seller, including the issuing agency and the identification
432 number.

433 6. In the case of a pawn:

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

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

438 c. The default date of the pawn and the amount due on the
439 default date;

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

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

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

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

450 (I) Any personal property pledged to a pawnbroker within
451 this state which is not redeemed within 30 days following the
452 maturity date of the pawn, if the 30th day is not a business
453 day, then the following business day, is automatically forfeited
454 to the pawnbroker, and absolute right, title, and interest in
455 and to the property vests in and is deemed conveyed to the
456 pawnbroker by operation of law, and no further notice is
457 necessary;

458 (II) The pledgor is not obligated to redeem the pledged
459 goods; and

460 (III) If the pawnbroker transaction form is lost,
461 destroyed, or stolen, the pledgor must immediately advise the
462 issuing pawnbroker in writing by certified or registered mail,
463 return receipt requested, or in person evidenced by a signed
464 receipt.

465 (IV) A pawn may be extended upon mutual agreement of the
466 parties.

467 7. In the case of a purchase, the amount of money paid for
468 the goods or the monetary value assigned to the goods in
469 connection with the transaction.

470 8. A statement that the pledgor or seller of the item
471 represents and warrants that it is not stolen, that it has no
472 liens or encumbrances against it, and that the pledgor or seller
473 is the rightful owner of the goods and has the right to enter
474 into the transaction.

475
476 Any person who knowingly gives false verification of ownership
477 or gives a false or altered identification and who receives
478 money from a pawnbroker for goods sold or pledged commits:

479 a. If the value of the money received is less than \$300, a
480 felony of the third degree, punishable as provided in s.
481 775.082, s. 775.083, or s. 775.084.

482 b. If the value of the money received is \$300 or more, a
483 felony of the second degree, punishable as provided in s.
484 775.082, s. 775.083, or s. 775.084.

485 (c) A pawnbroker transaction form must provide a space for
486 the imprint of the right thumbprint of the pledgor or seller and
487 a blank line for the signature of the pledgor or seller.

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

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

492 (a) A pawnbroker must maintain a copy of each completed
493 pawnbroker transaction form on the pawnshop premises for at
494 least 1 year after the date of the transaction. On or before the

495 | end of each business day, the pawnbroker must deliver to the
496 | appropriate law enforcement official the original pawnbroker
497 | transaction forms for each of the transactions occurring during
498 | the previous business day, unless other arrangements have been
499 | agreed upon between the pawnbroker and the appropriate law
500 | enforcement official. If the original transaction form is lost
501 | or destroyed by the appropriate law enforcement official, a copy
502 | may be used by the pawnbroker as evidence in court. When an
503 | electronic image of a pledgor or seller identification is
504 | accepted for a transaction, the pawnbroker must maintain the
505 | electronic image in order to meet the same recordkeeping
506 | requirements as for the original transaction form. If a criminal
507 | investigation occurs, the pawnbroker shall, upon request,
508 | provide a clear and legible copy of the image to the appropriate
509 | law enforcement official.

510 | (b) If the appropriate law enforcement agency supplies the
511 | appropriate software and the pawnbroker presently has the
512 | computer ability, pawn transactions shall be electronically
513 | transferred. If a pawnbroker does not presently have the
514 | computer ability, the appropriate law enforcement agency may
515 | provide the pawnbroker with a computer and all necessary
516 | equipment for the purpose of electronically transferring pawn
517 | transactions. The appropriate law enforcement agency shall
518 | retain ownership of the computer, unless otherwise agreed upon.
519 | The pawnbroker shall maintain the computer in good working
520 | order, ordinary wear and tear excepted. In the event the
521 | pawnbroker transfers pawn transactions electronically, the
522 | pawnbroker is not required to also deliver to the appropriate

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523 law enforcement official the original or copies of the
524 pawnbroker transaction forms. The appropriate law enforcement
525 official may, for the purposes of a criminal investigation,
526 request that the pawnbroker produce an original of a transaction
527 form that has been electronically transferred. The pawnbroker
528 shall deliver this form to the appropriate law enforcement
529 official within 24 hours of the request.

530 (c) All goods delivered to a pawnbroker in a pawn or
531 purchase transaction must be securely stored and maintained in
532 an unaltered condition within the jurisdiction of the
533 appropriate law enforcement official for a period of 30 calendar
534 days after the transaction. Those goods delivered to a
535 pawnbroker in a purchase transaction may not be sold or
536 otherwise disposed of before the expiration of such period. The
537 pawnbroker shall make all pledged and purchased goods and all
538 records relating to such goods available for inspection by the
539 appropriate law enforcement official during normal business
540 hours throughout such period. The pawnbroker must store and
541 maintain pledged goods for the period prescribed in subsection
542 (10) unless the pledged goods are redeemed earlier; provided,
543 however, that within the first 30 days after the original pawn,
544 the pledged goods may be redeemed only by the pledgor or the
545 pledgor's attorney in fact.

546 (d) A pawnbroker's recordkeeping and merchandise tracking
547 system shall operate so that at all times the pawnbroker is able
548 to accurately reflect the location or disposition of all items
549 obtained by the pawnbroker by either pawn or purchase. Such
550 location and disposition information shall be made available for

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551 inspection by appropriate law enforcement officials during
552 normal business hours.

553 (10) PLEDGED GOODS NOT REDEEMED.--Pledged goods not
554 redeemed by the pledgor on or before the maturity date of a pawn
555 must be held by the pawnbroker for at least 30 days following
556 such date or until the next business day, if the 30th day is not
557 a business day. Pledged goods not redeemed within the 30-day
558 period following the maturity date of a pawn are automatically
559 forfeited to the pawnbroker; absolute right, title, and interest
560 in and to the goods shall vest in and shall be deemed conveyed
561 to the pawnbroker by operation of law; and no further notice is
562 necessary. A pledgor has no obligation to redeem pledged goods
563 or make any payment on a pawn.

564 (11) PAWN SERVICE CHARGES.--

565 (a) In a pawn transaction, a pawnbroker may contract for
566 and receive a pawn service charge. The interest component of the
567 pawn service charge shall be deemed to be 2 percent of the
568 amount financed for each 30-day period in a pawn transaction.
569 The pawnbroker may charge any amount of pawn service charge, so
570 long as the total amount, inclusive of the interest component,
571 does not exceed 25 percent of the amount financed for each 30-
572 day period in a pawn transaction, except that the pawnbroker is
573 entitled to receive a minimum pawn service charge of \$5 for each
574 such 30-day period.

575 (b) The default date of any pawn may be extended to a
576 subsequent date by mutual agreement, between the pledgor and the
577 pawnbroker except the pawnbroker may not impose a minimum
578 duration of more than 30 days, evidenced by a written

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579 memorandum, a copy of which must be supplied to the pledgor,
580 which must clearly specify the new default date, and the pawn
581 service charges owed on the new default date. In this event, the
582 daily pawn service charge for the extension shall be equal to
583 the pawn service charge for the original 30-day period divided
584 by 30 days (i.e., one-thirtieth of the original total pawn
585 service charge). There is no limit on the number of extensions
586 that the parties may agree to.

587 (c) The total amount of pawn service charges that a
588 pawnbroker may collect in the case of pledged goods redeemed at
589 any time within 30 days after the date of the pawn is the amount
590 provided in paragraph (a). The total amount of pawn service
591 charges that a pawnbroker may collect in the case of redemptions
592 occurring at any time more than 30 days after the date of the
593 pawn is twice the amount provided in paragraph (a), except that,
594 for redemptions occurring more than 60 days after the date of
595 the pawn, pawn service charges continue to accrue from and after
596 the 60th day at the daily rate determined as provided in
597 paragraph (b). Any unused pawn service charge paid in advance by
598 the pledgor shall be refunded by the pawnbroker.

599 (d) Pledged goods may be redeemed by mail by agreement
600 between the pledgor and the pawnbroker. The pledgor must pay in
601 advance all moneys due and a reasonable charge assessed by the
602 pawnbroker to recover its cost and expenses involved in the
603 packaging, insuring, and shipping of the pledged goods. The
604 pawnbroker shall insure the pledged goods in an amount
605 acceptable to the pledgor. The pawnbroker's liability for loss

606 | or damage in connection with the shipment of such pledged goods
607 | is limited to the amount of the insurance coverage obtained.

608 | (e) Any interest, charge, or fees contracted for or
609 | received, directly or indirectly, in excess of the amounts
610 | authorized under this section are prohibited, may not be
611 | collected, and render the pawn transaction voidable, in which
612 | case the pawnbroker shall forfeit the right to collect twice the
613 | amount of the pawn service charge contracted for in the pawn
614 | and, upon the pledgor's written request received by the
615 | pawnbroker within 30 days after the maturity date, shall be
616 | obligated to return to the pledgor the pledged goods delivered
617 | to the pawnbroker in connection with the pawn upon payment of
618 | the balance remaining due, provided that there shall be no
619 | penalty for a violation resulting from an accidental and bona
620 | fide error that is corrected upon discovery. Any action to
621 | circumvent the limitation on pawn service charges collectible
622 | under this section is voidable. In the event a pledgor makes a
623 | partial payment on a pawn that reduces the amount financed, any
624 | additional pawn service charges shall be calculated on the
625 | remaining balance of the original amount financed.

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

628 | (a) Falsify or intentionally fail to make an entry of any
629 | material matter in a pawnbroker transaction form.

630 | (b) Refuse to allow the agency, the appropriate law
631 | enforcement official, or the state attorney, or any of their
632 | designated representatives having jurisdiction, to inspect
633 | completed pawnbroker transaction forms or pledged or purchased

634 goods during the ordinary hours of the pawnbroker's business or
 635 other time acceptable to both parties. The appropriate law
 636 enforcement official shall disclose to a claimant the name and
 637 address of the pawnbroker, the name and address of the conveying
 638 customer, and a description of pawned, purchased, or consigned
 639 goods that the claimant claims to be misappropriated.

640 (c) Obliterate, discard, or destroy a completed pawnbroker
 641 transaction form sooner than 3 years after the date of the
 642 transaction.

643 (d) Accept a pledge or purchase property from a person
 644 under the age of 18 years.

645 (e) Make any agreement requiring or allowing the personal
 646 liability of a pledgor or the waiver of any of the provisions of
 647 this section.

648 (f) Knowingly enter into a pawn or purchase transaction
 649 with any person who is under the influence of alcohol or
 650 controlled substances when such condition is apparent, or with
 651 any person using the name of another or the registered name of
 652 another's business.

653 (g) Conduct any pawn or purchase transaction at a drive-
 654 through window or similar device in which the customer remains
 655 in a vehicle while conducting the transaction.

656 (h) Fail to return or replace pledged goods to a pledgor
 657 upon payment of the full amount due the pawnbroker, unless the
 658 pledged goods have been placed under a hold order under
 659 subsection (16), or taken into custody by a court or otherwise
 660 disposed of by court order.

661 (i) Sell or otherwise charge for insurance in connection
 662 with a pawn transaction, except in connection with the shipment
 663 of pledged goods redeemed by mail as provided in subsection
 664 (11).

665 (j) Engage in title loan agreements, as defined in s.
 666 537.003, or title loan transactions at, within, or adjoining a
 667 licensed pawnshop location.

668 (k) Lease pledged goods to the pledgor or any other party.

669 (l) Operate a pawnshop between the hours of 10 p.m. and 7
 670 a.m.

671 (m) Knowingly hire anyone to work in a pawnshop who has
 672 been convicted of, or entered a plea of guilty or nolo
 673 contendere to, or had adjudication withheld for a felony within
 674 the last 5 years, or been convicted of, or entered a plea of
 675 guilty or nolo contendere to, or had adjudication withheld for a
 676 crime within the last 5 years which involves theft, larceny,
 677 dealing in stolen property, receiving stolen property, burglary,
 678 embezzlement, obtaining property by false pretenses, possession
 679 of altered property, or any fraudulent, or dishonest dealing.

680 (n) Knowingly accept or receive misappropriated property
 681 from a conveying customer in a pawn or purchase transaction.

682 (13) RIGHT TO REDEEM; LOST PAWNBROKER TRANSACTION FORM.--

683 (a) Only a pledgor or a pledgor's authorized
 684 representative is entitled to redeem the pledged goods described
 685 in the pawnbroker transaction form; however, if the pawnbroker
 686 determines that the person is not the original pledgor, or the
 687 pledgor's authorized representative, the pawnbroker is not
 688 required to allow the redemption of the pledged goods by such

689 | person. The person redeeming the pledged goods must sign the
690 | pledgor's copy of the pawnbroker transaction form, which the
691 | pawnbroker may retain as evidence of the person's receipt of the
692 | pledged goods. If the person redeeming the pledged goods is the
693 | pledgor's authorized representative, that person must present
694 | notarized authorization from the original pledgor and show
695 | identification to the pawnbroker and the pawnbroker shall record
696 | that person's name and address on the pawnbroker transaction
697 | form retained by the pawnshop. It is the pawnbroker's
698 | responsibility to verify that the person redeeming the pledged
699 | goods is either the pledgor or the pledgor's authorized
700 | representative.

701 | (b) If a pledgor's copy of the pawnbroker transaction form
702 | is lost, destroyed, or stolen, the pledgor must notify the
703 | pawnbroker in writing by certified or registered mail, return
704 | receipt requested, or in person evidenced by a signed receipt,
705 | and receipt of this notice invalidates the pawnbroker
706 | transaction form if the pledged goods have not previously been
707 | redeemed. Before delivering the pledged goods or issuing a new
708 | pawnbroker transaction form, the pawnbroker must require the
709 | pledgor to make a written statement of the loss, destruction, or
710 | theft of the pledgor's copy of the pawnbroker transaction form.
711 | The pawnbroker must record on the written statement the type of
712 | identification and the identification number accepted from the
713 | pledgor, the date the statement is given, and the number of the
714 | pawnbroker transaction form that was lost, destroyed, or stolen.
715 | The statement must be signed by the pawnbroker or the pawnshop
716 | employee who accepts the statement from the pledgor. A

717 pawnbroker is entitled to a fee not to exceed \$2 in connection
 718 with each lost, destroyed, or stolen pawnbroker transaction form
 719 and the taking of a properly prepared written statement.

720 (c) Sales tax is not due or collectible in connection with
 721 the redemption of pledged goods.

722 (d) If pledged goods are lost or damaged while in the
 723 possession of the pawnbroker, the pawnbroker may satisfy the
 724 pledgor's claim by replacing the lost or damaged goods with like
 725 kinds of merchandise of equal value, with which the pledgor can
 726 reasonably replace the goods. Such replacement is a defense to
 727 any civil action based upon the loss or damage of the goods.

728 (14) PAWNBROKER'S LIEN.--A pawnbroker has a possessory
 729 lien on the pledged goods pawned as security for the funds
 730 advanced, the pawn service charge owed, and the other charges
 731 authorized under this section, but not for other debts due to
 732 the pawnbroker. A pawnbroker has no recourse against a pledgor
 733 for payment on a pawn transaction except for the pledged goods
 734 themselves. Except as otherwise provided in this section, the
 735 pawnbroker must retain possession of the pledged goods until the
 736 lien is satisfied or until the default date. The pawnbroker may
 737 be compelled to relinquish possession of the pledged goods only
 738 after receipt of the applicable funds advanced plus the accrued
 739 service charge and other authorized charges, upon court order,
 740 or as otherwise provided by law.

741 (15) CLAIMS AGAINST PURCHASED GOODS OR PLEDGED GOODS HELD
 742 BY PAWNBROKERS.--

743 (a) To obtain possession of purchased or pledged goods
 744 held by a pawnbroker which a claimant claims to be

745 misappropriated, the claimant must notify the pawnbroker by
 746 certified mail, return receipt requested, or in person evidenced
 747 by signed receipt, of the claimant's claim to the purchased or
 748 pledged goods. The notice must contain a complete and accurate
 749 description of the purchased or pledged goods and must be
 750 accompanied by a legible copy of the applicable law enforcement
 751 agency's report on the misappropriation of such property. If the
 752 claimant and the pawnbroker do not resolve the matter within 10
 753 days after the pawnbroker's receipt of the notice, the claimant
 754 may petition the court to order the return of the property
 755 through a replevin action, naming the pawnbroker as a defendant,
 756 and must serve the pawnbroker with a copy of the replevin
 757 ~~petition~~. The pawnbroker shall hold the property described in
 758 the replevin ~~petition~~ until the right to possession is resolved
 759 by the parties or by a court of competent jurisdiction. The
 760 court shall waive any filing fee for the petition to recover the
 761 property, and the sheriff shall waive the service fees.

762 (b) If, after notice and a hearing, the court finds that
 763 the property was misappropriated and orders the return of the
 764 property to the claimant:

765 1. The claimant may recover from the pawnbroker the cost
 766 of the action, including the claimant's reasonable attorney's
 767 fees; and

768 2. If the conveying customer is convicted of theft, a
 769 violation of this section, or dealing in stolen property, the
 770 court shall order the conveying customer to repay the pawnbroker
 771 the full amount the conveying customer received from the
 772 pawnbroker for the property, plus all applicable pawn service

773 | charges. As used in this paragraph, the term "convicted of"
774 | includes a plea of nolo contendere to the charges or any
775 | agreement in which adjudication is withheld; and

776 | 3. The conveying customer shall be responsible to pay all
777 | attorney's fees and taxable costs incurred by the pawnbroker in
778 | defending a replevin action or any other civil matter wherein it
779 | is found that the conveying customer was in violation of this
780 | paragraph.

781 | (c) If the court finds that the claimant failed to comply
782 | with the requirements in paragraph (a) or otherwise finds
783 | against the claimant, the claimant is liable for the defendants'
784 | costs, including reasonable attorney's fees.

785 | (d) The sale, pledge, or delivery of tangible personal
786 | property to a pawnbroker by any person in this state is
787 | considered to be:

788 | 1. An agreement by the person who sells, pledges, or
789 | delivers the tangible personal property that the person is
790 | subject to the jurisdiction of the court in all civil actions
791 | and proceedings arising out of the pledge or sale transaction
792 | filed by either a resident or nonresident plaintiff;

793 | 2. An appointment of the Secretary of State by any
794 | nonresident of this state as that person's lawful attorney and
795 | agent upon whom may be served all process in suits pertaining to
796 | the actions and proceedings arising out of the sale, pledge, or
797 | delivery; and

798 | 3. An agreement by any nonresident that any process in any
799 | suit so served has the same legal force and validity as if
800 | personally served in this state.

801 (16) HOLD ORDERS; ISSUANCE; REQUIRED INFORMATION;
802 PROCEDURES.--

803 (a) When an appropriate law enforcement official has
804 probable cause to believe that property in the possession of a
805 pawnbroker is misappropriated, the official may place a written
806 hold order on the property. The written hold order shall impose
807 a holding period not to exceed 90 days unless extended by court
808 order. The appropriate law enforcement official may rescind, in
809 writing, any hold order. An appropriate law enforcement official
810 may place only one hold order on property.

811 (b) Upon the expiration of the holding period, the
812 pawnbroker shall notify, in writing, the ~~appropriate~~ law
813 enforcement official who placed the hold order by certified
814 mail, return receipt requested, that the holding period has
815 expired. If, on the 10th day after the written notice has been
816 received by the ~~appropriate~~ law enforcement official who placed
817 the hold order, the pawnbroker has not received from a court an
818 extension of the hold order on the property and the property is
819 not the subject of a proceeding under subsection (15), title to
820 the property shall vest in and be deemed conveyed by operation
821 of law to the pawnbroker, free of any liability for claims but
822 subject to any restrictions contained in the pawn transaction
823 contract and subject to the provisions of this section.

824 (c) A hold order must specify:

- 825 1. The name and address of the pawnbroker.
- 826 2. The name, title, and identification number of the
827 representative of the appropriate law enforcement official or
828 the court placing the hold order.

829 3. If applicable, the name and address of the appropriate
830 law enforcement official or court to which such representative
831 is attached and the number, if any, assigned to the claim
832 regarding the property.

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

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

837 6. The mailing address of the pawnbroker where the
838 property is held.

839 7. The expiration date of the holding period.

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

843 (e)1. Except as provided in subparagraph 2., a pawnbroker
844 may not release or dispose of property subject to a hold order
845 except pursuant to a court order, a written release from the
846 appropriate law enforcement official, or the expiration of the
847 holding period of the hold order.

848 2. While a hold order is in effect, the pawnbroker must
849 upon request release the property subject to the hold order to
850 the custody of the appropriate law enforcement official for use
851 in a criminal investigation. The release of the property to the
852 custody of the appropriate law enforcement official is not
853 considered a waiver or release of the pawnbroker's property
854 rights or interest in the property. Upon completion of the
855 criminal proceeding, the property must be returned to the
856 pawnbroker unless the court orders other disposition. When such

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857 | other disposition is ordered, the court shall additionally order
 858 | the conveying customer to pay restitution to the pawnbroker in
 859 | the amount received by the conveying customer for the property
 860 | together with reasonable attorney's fees and costs.

861 | (17) CRIMINAL PENALTIES.--

862 | (a) Any person who engages in business as a pawnbroker
 863 | without first securing a license commits a felony of the third
 864 | degree, punishable as provided in s. 775.082, s. 775.083, or s.
 865 | 775.084.

866 | (b) In addition to any other penalty, any person, who
 867 | willfully violates this section or who willfully makes a false
 868 | entry in any record specifically required by this section
 869 | commits a misdemeanor of the first degree, punishable as
 870 | provided in s. 775.082 or s. 775.083. Clerical or recordkeeping
 871 | errors, such as typographical errors or scrivener's errors,
 872 | regarding any document or record required by this section do not
 873 | constitute a willful violation of this section, and are not
 874 | subject to criminal penalties. Clerical or recordkeeping errors
 875 | are subject to the administrative remedies, as provided in this
 876 | act.

877 | (18) INJUNCTIONS.--When the agency has reasonable cause to
 878 | believe that a person is violating this section, the agency may
 879 | enter an order requiring the person to stop the violation. The
 880 | agency may petition the court to enjoin the person from engaging
 881 | in the violation, continuing the violation, or doing any act in
 882 | furtherance of the violation. The court may order a preliminary
 883 | or permanent injunction.

884 (19) RECORDS OF THE FLORIDA DEPARTMENT OF LAW
885 ENFORCEMENT.--The Department of Law Enforcement, on request,
886 must supply to the agency any arrest and conviction records in
887 its possession of an individual applying for or holding a
888 license under this section.

889 (20) CONFLICTING ORDINANCES.--Any county or municipality
890 may enact ordinances that are in compliance with, but not more
891 restrictive than this section, except that local ordinances may
892 not restrict hours of operations other than between midnight and
893 6 a.m. Any ordinance that conflicts with this subsection is
894 void. Nothing in this section shall affect the authority of a
895 county or municipality to establish land use controls or require
896 a pawnbroker to obtain a local occupational license.

897 (21) RULEMAKING AUTHORITY.--The agency has authority to
898 adopt rules pursuant to chapter 120 to implement the provisions
899 of this section.

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