

CHAPTER 97-304

Committee Substitute for Senate Bill No. 1420

An act relating to the Florida Pawnbroking Act; amending s. 539.001, F.S.; providing substantive and procedural changes to the act; modifying definitions; providing criminal penalties; modifying requirements for eligibility for license; requiring the Division of Consumer Services of the Department of Agriculture and Consumer Services to adopt a standardized pawnbroker transaction form; modifying recordkeeping and reporting requirements; requiring pawnbrokers to insure pledged goods in an amount not less than the actual value of the pledged goods; prohibiting a pawnbroker from refusing to allow a claimant who seeks to obtain pledged or purchased goods claimed to be misappropriated to inspect pawnbroker transaction forms or receipts under certain conditions; increasing criminal penalties for persons who willfully violate s. 539.001, F.S.; amending s. 539.003, F.S., relating to confidentiality of records relating to pawnbroker transactions delivered to law enforcement officers; authorizing release of confidential information under specified circumstances; providing an effective date.

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

Section 1. Paragraphs (b), (c), (d), (e), (i), and (q) of subsection (2), paragraph (a) of subsection (4), paragraphs (a) and (b) of subsection (8), subsection (9), paragraphs (b) and (d) of subsection (11), subsections (12) and (13), paragraphs (a) and (b) of subsection (15), and subsections (16), and (17) of section 539.001, Florida Statutes, 1996 Supplement, are amended to read:

539.001 The Florida Pawnbroking Act.—

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

(b) “Appropriate law enforcement official” means the sheriff of the county in which a pawnshop is located or, in case of a pawnshop located within a municipality, the police chief of the municipality in which the pawnshop is located; however, any sheriff or police chief may designate as the appropriate law enforcement official for the county or municipality, as applicable, any law enforcement officer working within the county or municipality for the department headed by that sheriff or police chief. Nothing in this subsection limits the power and responsibilities of the sheriff.

(c) “Claimant” means a person who claims that his or her property was misappropriated ~~and delivered into the possession of a pawnbroker.~~

(d) “Conveying customer” means a person who delivers property into the custody of a pawnbroker, either by pawn, sale, consignment, or trade, ~~which property is later claimed to be misappropriated.~~

(e) “Identification” means a government-issued photographic identification or an electronic image taken from a government-issued photographic identification.

(i) “Pawnbroker” 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.

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

(4) ELIGIBILITY FOR LICENSE.—

(a) To be eligible for a pawnbroker’s license, an applicant must:

1. Be of good moral character;

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

3. Not have been convicted of, entered a plea of guilty or nolo contendere to, or had an adjudication withheld for a felony within the last 10 years and not be acting as a beneficial owner for someone who has been convicted of, entered a plea of guilty or nolo contendere to, or had adjudication withheld for a felony within the last 10 years; and

4. Not have been convicted of, entered a plea of guilty or nolo contendere to, or had adjudication withheld for, and not be acting as a beneficial owner for someone who has been convicted, of, entered a plea of guilty or nolo contendere to, or had adjudication withheld for, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing the agency finds directly relates to the duties and responsibilities of a pawnbroker within the last 10 years.

(8) PAWNBROKER TRANSACTION FORM.—

(a) At the time the pawnbroker enters into any pawn or purchase transaction, the pawnbroker shall complete a pawnbroker transaction form for such transaction, including an indication of whether the transaction is a pawn or a purchase, and the pledgor or seller shall sign such completed form. The agency must approve the design and format of the pawnbroker transaction form, which must be 8 1/2 inches x 11 inches in size and elicit the information required under this section. In completing the pawnbroker transaction form, the pawnbroker shall record the following information, which must be typed or written indelibly and legibly in English.

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

1. The name and address of the pawnshop.
2. A complete and accurate description of the pledged goods or purchased goods, including the following information, if applicable:
 - a. Brand name.
 - b. Model number.
 - c. Manufacturer's serial number.
 - d. Size.
 - e. Color, as apparent to the untrained eye.
 - f. Precious metal type, weight, and content, if known.
 - g. Gemstone description, including the number of stones.
 - h. In the case of firearms, the type of action, caliber or gauge, number of barrels, barrel length, and finish.
 - i. Any other unique identifying marks, numbers, names, or letters.

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

3. The name, address, home telephone number, place of employment, date of birth, physical description, and right thumbprint of the pledgor or seller.

4. The date and time of the transaction.

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

6. In the case of a pawn:

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

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

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

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

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

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

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

(I) 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 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;

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

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

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

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

8. A statement that the pledgor or seller of the item represents and warrants that it is not stolen, that it has no liens or encumbrances against

it, and that the pledgor or seller is the rightful owner of the goods and has the right to enter into the transaction.

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

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

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

9.—Immediately above the signature of the pledgor or seller, a statement that the pledgor or seller of the item declares: “Under penalty of perjury, I have read the foregoing document, and the facts stated in it are true.”

(9) RECORDKEEPING; REPORTING; HOLD PERIOD.—

(a) A pawnbroker must maintain a the original copy of each completed pawnbroker transaction form on the pawnshop premises for at least 1 year 180 days after the date of the transaction. On or before the end of each business day, the pawnbroker must deliver to the appropriate law enforcement official the original a copy of pawnbroker transaction forms for each of the transactions occurring during the previous business day, unless other arrangements have been agreed upon between the pawnbroker and the appropriate law enforcement official. If the original transaction form is lost or destroyed by the appropriate law enforcement official, a copy may be used by the pawnbroker as evidence in court. When an electronic image of a pledgor or seller identification is accepted for a transaction, the pawnbroker must maintain the electronic image in order to meet the same recordkeeping requirements as for the original transaction form. If a criminal investigation occurs, the pawnbroker shall, upon request, provide a clear and legible copy of the image to the appropriate law enforcement official.

(b) If the appropriate law enforcement agency supplies the appropriate software and the pawnbroker presently has the computer ability, pawn transactions shall be electronically transferred. If a pawnbroker does not presently have the computer ability, the appropriate law enforcement agency may provide the pawnbroker with a computer and all necessary equipment for the purpose of electronically transferring pawn transactions. The appropriate law enforcement agency shall retain ownership of the computer, unless otherwise agreed upon. The pawnbroker shall maintain the computer in good working order, ordinary wear and tear excepted. In the event the pawnbroker transfers pawn transactions electronically, the pawnbroker is not required to also deliver to the appropriate law enforcement official, the original or copies of the pawnbroker transaction forms. The appropriate law enforcement official may, for the purposes of a criminal investigation, request that the pawnbroker produce an original of a transaction form that has been electronically transferred. The pawnbroker shall deliver this form to the appropriate law enforcement official within 24 hours of the request.

(c)(b) All goods delivered to a pawnbroker in a pawn or purchase transaction must be securely stored and maintained in an unaltered condition within the jurisdiction of the appropriate law enforcement official for a period of 30 15 calendar days after the transaction. Those goods delivered to a pawnbroker in a purchase transaction may not be sold or otherwise disposed of before the expiration of such period. The pawnbroker shall make all pledged and purchased goods and all records relating to such goods available for inspection by the appropriate law enforcement official during normal business hours throughout such period. The pawnbroker must store and maintain pledged goods for the period prescribed in subsection (10) unless the pledged goods are redeemed earlier; provided, however, that within the first 30 15 days after the original pawn, the pledged goods may be redeemed only by the pledgor or the pledgor's attorney in fact.

(11) PAWN SERVICE CHARGES.—

(b) The default date of any pawn may be extended to a subsequent date by mutual agreement, between the pledgor and the pawnbroker except the pawnbroker may not impose a minimum duration of more than 30 days, evidenced by a written memorandum, a copy of which must be supplied to the pledgor, which must clearly specify the new default date, ~~the pawn service charges paid for the extension,~~ and the pawn service charges owed on the new default date. In this event, the daily pawn service charge for the extension shall be equal to the pawn service charge for the original 30-day period divided by 30 days (i.e., one-thirtieth of the original total pawn service charge). There is no limit on the number of extensions that the parties may agree to.

(d) Pledged goods may be redeemed by mail by agreement between the pledgor and the pawnbroker. The pledgor must pay in advance all moneys due and a reasonable charge assessed by the pawnbroker to recover its cost and expenses involved in the packaging, insuring, and shipping of the pledged goods. ~~If The pawnbroker shall insure insures the pledged goods in an amount acceptable to the pledgor, not less than the amount advanced to the pledgor in the pawn transaction,~~ The pawnbroker's liability for loss or damage in connection with the shipment of such pledged goods is limited to the amount of the insurance coverage obtained.

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

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

(b) Refuse to allow the agency, the appropriate law enforcement official, or the state attorney, or any of their designated representatives having appropriate jurisdiction, to inspect completed pawnbroker transaction forms or pledged or purchased goods during the ordinary hours of the pawnbroker's business or other time acceptable to both parties. The appropriate law enforcement official shall disclose to a claimant the name and address of the pawnbroker, the name and address of the conveying customer, and a description of pawned, purchased, or consigned goods that the claimant claims to be misappropriated.

(c) Obliterate, discard, or destroy a completed pawnbroker transaction form sooner than 3 ~~2~~ years after the date of the transaction.

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

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

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

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

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

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

(j) Engage in title loan transactions at, within, or adjoining a licensed pawnshop location.

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

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

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

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

(a) Only a pledgor or a pledgor's authorized representative ~~Any person presenting the pledgor's copy of the pawnbroker transaction form to the pawnbroker is presumed to be entitled to redeem the pledged goods described in the pawnbroker transaction form; however, if the pawnbroker determines that the person is not the original pledgor, or the pledgor's authorized representative,~~ the pawnbroker is not required to allow the redemption of the pledged goods by such person. The person redeeming the pledged goods must sign the pledgor's copy of the pawnbroker transaction

form, which the pawnbroker may retain as evidence of the person's receipt of the pledged goods. If the person redeeming the pledged goods is the pledgor's authorized representative ~~not the original pledgor~~, that person must present notarized authorization from the original pledgor and show identification to the pawnbroker and the pawnbroker shall record that person's name and address on the pawnbroker transaction form retained by the pawnshop. It is the pawnbroker's responsibility to verify that the person redeeming the pledged goods is either the pledgor or the pledgor's authorized representative ~~The pawnbroker is not liable to the original pledgor for allowing the redemption of the pledged goods by another person under this paragraph.~~

(b) If a pledgor's copy of the pawnbroker transaction form is lost, destroyed, or stolen, the pledgor must notify the pawnbroker in writing by certified or registered mail, return receipt requested, or in person evidenced by a signed receipt, and receipt of this notice invalidates the pawnbroker transaction form if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawnbroker transaction form, the pawnbroker must require the pledgor to make a written statement of the loss, destruction, or theft of the pledgor's copy of the pawnbroker transaction form. The pawnbroker must record on the written statement the type of identification and the identification number accepted from the pledgor, the date the statement is given, and the number of the pawnbroker transaction form that was lost, destroyed, or stolen. The statement must be signed by the pawnbroker or the pawnshop employee who accepts the statement from the pledgor. A pawnbroker is entitled to a fee not to exceed \$2 in connection with each lost, destroyed, or stolen pawnbroker transaction form and the taking of a properly prepared written statement.

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

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

(15) CLAIMS AGAINST PURCHASED GOODS OR PLEDGED GOODS HELD BY PAWNBROKERS.—

(a) To obtain possession of purchased or pledged goods held by a pawnbroker which a claimant claims to be misappropriated, 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 20 days after the pawnbroker's receipt of the notice, ~~and if the pledged goods are not under a hold order under subsection (16), the~~

claimant may petition the court to order the return of the property, naming the pawnbroker ~~and the conveying customer~~ as a defendant, and must serve the pawnbroker ~~and the conveying customer~~ 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. The filing of a petition to recover allegedly misappropriated property must be accepted as a criminal complaint by the state attorney or court. A judgment in favor of a claimant to recover property constitutes the claimant's sworn testimony and must be accepted as evidence in any criminal prosecution.

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

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

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

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

(16) HOLD ORDERS; ISSUANCE; REQUIRED INFORMATION; PROCEDURES.—

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

(b) Upon the expiration of the holding period, the pawnbroker shall may notify, in writing, the appropriate 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 appropriate law enforcement official, the pawnbroker has not received from a court an extension of the hold order on the property and the property is not the subject of a proceeding under subsection (15), title to the property shall vest in and be deemed conveyed by operation of law 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 this section.

(c) A hold order must specify:

1. The name and address of the pawnbroker.
2. The name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order.
3. If applicable, the name and address of the appropriate law enforcement official or court to which such representative is attached and the number, if any, assigned to the claim regarding the property.
4. A complete description of the property to be held, including model number and serial number if applicable.
5. The name of the person reporting the property to be misappropriated unless otherwise prohibited by law.
6. The mailing address of the pawnbroker where the property is held.
7. The expiration date of the holding period.

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

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

2. While a hold order is in effect, the pawnbroker must upon request may release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation. The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker's property rights or interest in the property. Upon completion of the criminal proceeding investigation, the property must be returned to the pawnbroker unless the court orders other disposition. When such other disposition is ordered, the court shall additionally order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property together with reasonable attorney's fees and costs.

~~(f) If property is the subject of a lease or rental transaction between a claimant and a conveying customer at the time it is delivered to the pawnbroker, the property may not be considered misappropriated unless the property has a conspicuous permanent label or mark identifying it as the claimant's property. Property subject to a lease or rental transaction which is not marked as provided in this paragraph may be recovered by the claimant upon payment to the pawnbroker of all moneys paid or advanced by the pawnbroker in the pawn or purchase transaction and upon producing evidence identifying the property as the claimant's property that was leased or~~

rented at the time the property was placed in the pawnbroker's possession. The pawnbroker is not liable for the recovery of leased or rental property under this paragraph.

(17) CRIMINAL PENALTIES.—

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

(b) In addition to any other penalty, any person, who willfully violates this section or who willfully makes a false entry in any record specifically required by this section commits a misdemeanor of the ~~first~~ second degree, punishable as provided in s. 775.082 ~~or~~, s. 775.083, ~~or s. 775.084.~~

~~(c) Any conveying customer who fraudulently pledges or sells misappropriated property to a pawnbroker commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

Section 2. Section 539.003, Florida Statutes, 1996 Supplement, is amended to read:

539.003 Confidentiality.—

(1) All records relating to pawnbroker transactions delivered to appropriate law enforcement officials pursuant to s. 539.001 are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for official law enforcement purposes. This section does not prohibit the disclosure by the appropriate law enforcement officials of the name and address of the pawnbroker, the name and address of the conveying customer, or a description of pawned property to the alleged owner of pawned property.

(2) This section exemption is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2001, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. This act shall take effect upon becoming a law, except that the amendments to subsection (8) of section 539.001, Florida Statutes, 1996 Supplement, take effect January 1, 1998.

Became a law without the Governor's approval June 4, 1997.

Filed in Office Secretary of State June 3, 1997.