

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1888

91ST GENERAL ASSEMBLY

Reported from the Committee on Civil and Criminal Jurisprudence, April 25, 2002, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4223S.06C

AN ACT

To repeal sections 367.031, 367.044 and 367.055, RSMo, relating to stolen property, and to enact in lieu thereof three new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 367.031, 367.044 and 367.055, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 367.031, 367.044 and
3 367.055, to read as follows:

367.031. 1. At the time of making any secured personal credit loan, the lender
2 shall execute and deliver to the borrower a receipt for and describing the tangible
3 personal property subjected to the security interest to secure the payment of the
4 loan. The receipt shall contain the following:

5 (1) The name and address of the pawnshop;

6 (2) The name and address of the pledgor, the pledgor's description, and the
7 driver's license number, military identification number, identification certificate number,
8 or other official number capable of identifying the pledgor;

9 (3) The date of the transaction;

10 (4) An identification and description of the pledged goods, including serial
11 numbers if reasonably available;

12 (5) The amount of cash advanced or credit extended to the pledgor;

13 (6) The amount of the pawn service charge;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 (7) The total amount which must be paid to redeem the pledged goods on the
15 maturity date;

16 (8) The maturity date of the pawn transaction; and

17 (9) A statement to the effect that the pledgor is not obligated to redeem the
18 pledged goods, and that the pledged goods may be forfeited to the pawnbroker sixty days
19 after the specified maturity date.

20 2. The pawnbroker may be required, in accordance with local ordinances, to
21 furnish [local] **appropriate** law enforcement authorities with copies of information
22 contained in subdivisions (1) to (4) of subsection 1 of this section **and information**
23 **contained in subdivision (6) of subsection 4 of section 367.040. The**
24 **pawnbroker may satisfy such requirements by transmitting such information**
25 **electronically to a database in accordance with this section.**

26 3. As used in this section, the following terms mean:

27 (1) "Database", a computer database established and maintained by a
28 third party engaged in the business of establishing and maintaining one or
29 more databases;

30 (2) "Reportable data", the information required to be recorded by
31 pawnbrokers for pawn transactions pursuant to subdivisions (1) to (4) of
32 subsection 1 of this section and the information required to be recorded by
33 pawnbrokers for purchase transactions pursuant to subdivision (6) of
34 subsection 4 of section 367.040;

35 (3) "Reporting pawnbroker", a pawnbroker who chooses to transmit
36 reportable data electronically to the database;

37 (4) "Search", the accessing of a single database record;

38 (5) "User", law enforcement personnel specifically authorized to access
39 the database.

40 4. The database shall provide appropriate law enforcement officials
41 with useful information to facilitate the investigation of alleged property
42 crimes while protecting the privacy rights of pawnbrokers and pawnshop
43 customers with regard to their transactions.

44 5. The database shall contain the pawn and purchase transaction
45 information recorded by reporting pawnbrokers pursuant to this section and
46 section 367.040 and shall be updated daily. The database shall also contain
47 such security features and protections as may be necessary to ensure that the
48 reportable data maintained in the database can only be accessed by permitted
49 users in accordance with the provisions of this section.

50 6. The third party's charge for the database shall be based on the

51 **number of authorized database users. Law enforcement agencies shall be**
52 **charged directly for access to the database, and the charge shall be**
53 **reasonable in relation to the costs of the third party in establishing and**
54 **maintaining the database. No reporting pawnbroker or customer of a**
55 **reporting pawnbroker shall be charged any costs for the creation or**
56 **utilization of the database.**

57 **7. (1) The information in the database shall only be accessible through**
58 **the Internet to appropriate users who have provided a secure identification**
59 **or access code to the database but shall allow such users to access database**
60 **information from any jurisdiction transmitting such information to that**
61 **database. Such users shall provide the database with a case number of a**
62 **criminal action for which the identity of the pawn or purchase transaction**
63 **customer is needed and a representation that the information is connected to**
64 **the investigation of a crime involving goods delivered by that customer in**
65 **that transaction. The database shall record, for each search, the identity of**
66 **the user, the pawn or purchase transaction involved in the search, and the**
67 **identity of any customer accessed through the search. Each search record**
68 **shall be made available to other users regardless of their jurisdiction. The**
69 **database shall enable reporting pawnbrokers to transmit to the database**
70 **through the Internet reportable data for each pawn and purchase transaction.**

71 **(2) Any person who gains access to information in the database through**
72 **fraud or false pretenses shall be guilty of a class C felony.**

73 **8. Any pawnbroker licensed after August 28, 2002, shall meet the**
74 **following requirements:**

75 **(1) Provide all reportable data to appropriate users by transmitting it**
76 **through the Internet to the database;**

77 **(2) Transmit all reportable data for one business day to the database**
78 **prior to the end of the following business day;**

79 **(3) Make available for on-site inspection to any appropriate law**
80 **enforcement official, upon request, paper copies of any pawn or purchase**
81 **transaction documents.**

82 **9. If a reporting pawnbroker or user discovers any error in the**
83 **reportable data, notice of such error shall be given to the database, which**
84 **shall have a period of at least thirty but no more than sixty days in which to**
85 **correct the error. Any reporting pawnbroker experiencing a computer**
86 **malfunction preventing the transmission of reportable data or receipt of**
87 **search requests shall be allowed a period of at least thirty but no more than**

88 **sixty days to repair such malfunction, and during such period such**
89 **pawnbroker shall not be deemed to be in violation of this section if good faith**
90 **efforts are made to correct the malfunction. During the periods specified in**
91 **this subsection, the reporting pawnbroker and user shall arrange an**
92 **alternative method or methods by which the reportable data shall be made**
93 **available.**

94 **10. No reporting pawnbroker shall be obligated to incur any cost, other**
95 **than Internet service costs, in preparing, converting, or delivering its**
96 **reportable data to the database.**

97 [3.] **11.** If the pawn ticket is lost, destroyed, or stolen, the pledgor may so notify
98 the pawnbroker in writing, and receipt of such notice shall invalidate such pawn ticket,
99 if the pledged goods have not previously been redeemed. Before delivering the pledged
100 goods or issuing a new pawn ticket, the pawnbroker shall require the pledgor to make
101 a written affidavit of the loss, destruction or theft of the ticket. The pawnbroker shall
102 record on the written statement the identifying information required, the date the
103 statement is given, and the number of the pawn ticket lost, destroyed, or stolen. The
104 affidavit shall be signed by a notary public appointed by the secretary of state pursuant
105 to section 486.205, RSMo, to perform notarial acts in this state.

2 367.044. 1. As used in sections 367.044 to 367.055, the following terms mean:

3 (1) "Claimant", a person who claims that property in the possession of a
4 pawnbroker is misappropriated from the claimant and fraudulently pledged or sold to
5 the pawnbroker;

6 (2) "Conveying customer", a person who delivers property into the possession of
7 a pawnbroker, either through a pawn transaction, a sale or trade, which property is later
8 claimed to be misappropriated;

9 (3) **"Designee", any person or entity designated by a claimant to present**
10 **proof of ownership to a pawnbroker and to demand return of misappropriated**
11 **property from a pawnbroker, including, but not limited to, law enforcement**
12 **officers;**

13 [(3)] (4) "Hold order", a written legal instrument issued to a pawnbroker by a
14 law enforcement officer commissioned by the law enforcement agency of the municipality
15 or county that licenses and regulates the pawnbroker, ordering the pawnbroker to retain
16 physical possession of pledged goods in the possession of a pawnbroker or property
17 purchased by and in the possession of a pawnbroker and not to return, sell or otherwise
18 dispose of such property as such property is believed to be misappropriated goods;

19 [(4)] (5) "Law enforcement officer", the sheriff or sheriff's deputy designated by

20 the sheriff of the county in which the pawnbroker's pawnshop is located, or when the
21 pawnbroker's pawnshop is located within a municipality, the police chief or police officer
22 designated by the police chief of the municipality in which the pawnbroker's pawnshop
23 is located;

24 [(5)] (6) "Misappropriated", stolen, embezzled, converted, or otherwise
25 wrongfully appropriated or pledged against the will of the rightful owner or party
26 holding a perfected security interest;

27 [(6)] (7) "Pledgor", a person who pledges property to the pawnbroker;

28 (8) **"Proof of ownership", a bill of sale or other proper evidence of**
29 **ownership;**

30 [(7)] (9) "Purchaser", a person who purchases property from a pawnbroker; and

31 [(8)] (10) "Seller", a person who sells property to a pawnbroker.

32 2. A pawnbroker shall have no recourse against the pledgor for payment on a
33 pawn transaction except the pledged goods themselves, unless the goods are found to
34 have been misappropriated.

35 3. [To obtain possession of tangible personal property held by a pawnbroker
36 which a claimant claims to be misappropriated, the claimant may file a petition in a
37 court of competent jurisdiction in the county where the theft occurred or where the
38 pawnbroker's pawnshop is located, requesting the return of the property, naming the
39 pawnbroker as a defendant and serving the pawnbroker with the petition. The
40 provisions of section 482.305, RSMo, to the contrary notwithstanding, a court of
41 competent jurisdiction shall include a small claims court, even if the value of the
42 property named in the petition is greater than three thousand dollars. Upon receiving
43 notice that a petition has been filed by a claimant for the return of property in the
44 pawnbroker's possession, the pawnbroker shall hold the property identified in the
45 claimant's petition until the right to possession is resolved by the parties or by a court
46 of competent jurisdiction.

47 4. Upon being served notice that a petition has been filed pursuant to this
48 section, the pawnbroker may, after determining the validity of the claimant's claim,
49 return the property to the claimant prior to a decision being rendered on the claimant's
50 petition by the court. The pawnbroker shall return the property to the claimant free of
51 any principal, interest and service charges, conditioned only upon the claimant
52 withdrawing the petition filed with a court of competent jurisdiction seeking the
53 disposition of said property. Property voluntarily returned by a pawnbroker to a
54 claimant subject to this subsection shall be returned:

55 (1) Immediately when the property is not subject to a pawn transaction contract;

56 and

57 (2) When the property is subject to a pawn transaction contract, the pawnbroker
58 shall deliver the property to the claimant immediately upon the termination of the pawn
59 transaction contract, except that if the pledgor of the property subject to a claimant's
60 claim attempts to redeem the property as provided for by the pawn transaction contract,
61 the pawnbroker may collect any principal, interest or service charges due and shall hold
62 the property until the right to possession is resolved by the parties or by a court of
63 competent jurisdiction.

64 The provisions of this section to the contrary notwithstanding, the pawnbroker shall not
65 be required to pay any costs incurred by the claimant and the claimant shall not be
66 required to pay any costs incurred by the pawnbroker when the property subject to the
67 claimant's petition is returned to the claimant pursuant to this subsection.

68 5. When a claimant files a petition pursuant to this section, the pawnbroker may
69 bring the conveying customer of the alleged misappropriated property into that action
70 as a third-party defendant. When a claimant files a petition pursuant to this section,
71 the pawnbroker shall bring the conveying customer of the alleged misappropriated
72 property into that action as a third-party defendant if the pawnbroker has collected any
73 principal, interest or service charges pursuant to subdivision (2) of subsection 4 of this
74 section. If after notice to the pawnbroker and an opportunity to add the conveying
75 customer as a defendant, the property in the possession of the pawnbroker is found by
76 a court of competent jurisdiction to be the claimant's property and the property is
77 awarded to the claimant by the court, then:

78 (1) The prevailing claimant may recover from the pawnbroker the cost of the
79 action, including attorney's fees;

80 (2) The conveying customer shall be liable to repay the pawnbroker the full
81 amount received from the pawnbroker from the pawn or sales transaction, including all
82 applicable fees and interest charged and the costs incurred by the pawnbroker in
83 pursuing the procedure described in this section, including attorney's fees.] **A**
84 **pawnbroker shall require of every person from whom the pawnbroker**
85 **receives sold or pledged property the following:**

86 **(1) Proof of identification; and**

87 **(2) A signed statement that the seller or pledgor is the legal owner of**
88 **the property and stating when, where, and in what manner such property was**
89 **acquired by the seller or pledgor.**

90 **4. If any seller or pledgor fails to provide a pawnbroker with proof of**
91 **ownership of the property sold or pledged to the pawnbroker, the pawnbroker**

92 shall hold such property for a period of ninety days prior to selling or
93 otherwise transferring such property, provided, a pledgor may redeem the
94 pledged property at any time upon performance of the contract with the
95 pawnbroker.

96 5. Any claimant whose property was misappropriated and subsequently
97 pledged or sold to a pawnbroker may, personally or by designee, demand
98 return of the misappropriated property upon proof of ownership, and the
99 production of a police or sheriff report indicating said property was stolen.

100 6. If a pawnbroker refuses to deliver property to a claimant or designee
101 upon proof of ownership, and the production of a police or sheriff report
102 indicating said property was stolen, or if a pawnbroker relinquishes
103 possession but still claims an ownership interest in the property, either the
104 claimant or the pawnbroker may file a petition in a court of competent
105 jurisdiction requesting return of the property, provided, the non-prevailing
106 party shall be responsible for costs of the action and the reasonable attorney's
107 fees of the prevailing party.

108 7. The filing of a petition pursuant to the provisions of this section
109 shall be in the county where the theft occurred or where the pawnbroker's
110 pawnshop is located. The provisions of section 482.305, RSMo, to the contrary
111 notwithstanding, a court of competent jurisdiction shall include a small
112 claims court, even if the value of the property named in the petition is greater
113 than three thousand dollars. Upon receiving notice that a petition has been
114 filed, the party with possession of the property shall hold the property
115 identified in the petition until the right to possession is resolved by the
116 parties or the court.

117 8. Nothing contained in this section shall limit a pawnbroker from
118 bringing the conveying customer into a suit as a third-party, nor limit a
119 pawnbroker from recovering from a conveying customer repayment of the full
120 amount received from the pawnbroker from the pawn or sales transaction,
121 including all applicable fees and interest charged, attorney's fees and the cost
122 of the action.

367.055. 1. Upon request of a law enforcement officer to inspect property that
2 is described in information furnished by the pawnbroker pursuant to subdivisions (1) to
3 (4) of subsection 1 of section 367.031, the law enforcement officer shall be entitled to
4 inspect the property described, without prior notice or the necessity of obtaining a search
5 warrant during regular business hours in a manner so as to minimize interference with
6 or delay to the pawnbroker's business operation. When a law enforcement officer has

7 probable cause to believe that goods or property in the possession of a pawnbroker are
8 misappropriated, the officer may place a hold order on the property. The hold order
9 shall contain the following:

- 10 (1) The name of the pawnbroker;
- 11 (2) The name and mailing address of the pawnshop where the property is held;
- 12 (3) The name, title and identification number of the law enforcement officer
13 placing the hold order;
- 14 (4) The name and address of the agency to which the law enforcement officer is
15 attached and the claim or case number, if any, assigned by the agency to the claim
16 regarding the property;
- 17 (5) A complete description of the property to be held including model and serial
18 numbers;
- 19 (6) The expiration date of the holding period.

20 The hold order shall be signed and dated by the issuing officer and signed and dated by
21 the pawnbroker or the pawnbroker's designee as evidence of the hold order's issuance by
22 the officer, receipt by the pawnbroker and the beginning of the initial holding
23 period. The officer issuing the hold order shall provide an executed copy of the hold
24 order to the pawnbroker for the pawnbroker's record-keeping purposes at no cost to the
25 pawnbroker.

26 2. Upon receiving the hold order, and subject to the provisions of section 367.047,
27 the pawnbroker shall retain physical possession of the property subject to the order in
28 a secured area. The initial holding period of the hold order shall not exceed two months,
29 except that the hold order may be extended for up to two successive one-month holding
30 periods upon written notification prior to the expiration of the immediately preceding
31 holding period. A hold order may be released prior to the expiration of any holding
32 period or extension thereof by written release from the agency placing the initial hold
33 order. The initial hold order shall be deemed expired upon the expiration date if the
34 holding period is not extended pursuant to this subsection.

35 3. Upon the expiration of the initial holding period or any extension thereof, the
36 pawnbroker shall deliver written notice to the law enforcement officer issuing the hold
37 order that such order has expired and that title to the property subject to the hold order
38 will vest in the pawnbroker in ten business days. Ownership shall only vest in the
39 pawnbroker upon the expiration of the ten-day waiting period subject to any restriction
40 contained in the pawn contract and subject to the provisions of sections 367.044 to
41 367.053.

42 4. In addition to the penalty provisions contained in section 367.050, gross

43 negligence or willful noncompliance with the provisions of this section by a pawnbroker
44 shall be cause for the licensing authority to suspend or revoke the pawnbroker's
45 license. Any imposed suspensions or revocation provided for by this subsection may be
46 appealed by the pawnbroker to the licensing authority or to a court of competent
47 jurisdiction.

48 5. A county or municipality may enact orders or ordinances to license or regulate
49 the operations of pawnbrokers which are consistent with and not more restrictive than
50 the provisions of sections [367.044] **367.011** to 367.055, **except that municipalities**
51 **located in any county with a charter form of government having a population**
52 **greater than one million inhabitants may regulate the number of pawn shop**
53 **licensees.**

54 6. All records and information that relate to a pawnbroker's pawn, purchase or
55 trade transactions and that are delivered to or otherwise obtained by an appropriate law
56 enforcement officer pursuant to sections 367.031 and 367.040 are confidential and may
57 be used only by such appropriate law enforcement officer and only for the following
58 official law enforcement purposes:

59 (1) The investigation of a crime specifically involving the item of property
60 delivered to the pawnbroker in a pawn, purchase or trade transaction;

61 (2) The investigation of a pawnbroker's possible specific violation of the
62 record-keeping or reporting requirements of sections 367.031 and 367.040, but only when
63 the appropriate law enforcement officer, based on a review of the records and the
64 information received, has probable cause to believe that such a violation occurred; and

65 (3) The notification of property crime victims of where property that has been
66 reported misappropriated can be located.

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