

SECOND REGULAR SESSION

SENATE BILL NO. 662

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR WESTFALL.

Pre-filed December 1, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2894S.011

AN ACT

To repeal section 367.044, RSMo, relating to pawnbrokers, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 367.044, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 367.044, to read as follows:

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

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

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

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

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

(4) "Law enforcement officer", the sheriff or sheriff's deputy designated by the sheriff of the county in which the pawnbroker's pawnshop is located, or when the pawnbroker's pawnshop is located within a municipality, the police chief or police officer designated by the police chief of the municipality in which the pawnbroker's pawnshop is located;

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

(6) "Pledgor", a person who pledges property to the pawnbroker;

(7) "Purchaser", a person who purchases property from a pawnbroker; and

(8) "Seller", a person who sells property to a pawnbroker.

2. Any law enforcement officer may seize property held by a pawnbroker if the law enforcement officer receives a report from a claimant claiming the property was misappropriated and the property is reasonably identifiable as the property of the claimant. The seized property will be immediately transferred from the sheriff to the claimant.

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

[3.] **4.** To obtain possession of tangible personal property held by a [pawnbroker] **claimant** which a [claimant] **pawnbroker** claims [to be] **was not** misappropriated, the [claimant] **pawnbroker** may file a petition in a court of competent jurisdiction in the county where the theft occurred or where the pawnbroker's pawnshop is located, requesting the return of the property, naming the [pawnbroker] **claimant** as a defendant and serving the [pawnbroker] **claimant** with the petition. The provisions of section 482.305, RSMo, to the contrary notwithstanding, a court of competent jurisdiction shall include a small claims court, even if the value of the property named in the petition is greater than three thousand dollars. Upon receiving notice that a petition has been filed by a [claimant] **pawnbroker** for the return of property in the [pawnbroker's] **claimant's** possession, the [pawnbroker] **claimant** shall hold the property identified in the [claimant's] **pawnbroker's** petition until the right to possession is resolved by the parties or by a court of competent jurisdiction.

[4. Upon being served notice that a petition has been filed pursuant to this section, the pawnbroker may, after determining the validity of the claimant's

claim, return the property to the claimant prior to a decision being rendered on the claimant's petition by the court. The pawnbroker shall return the property to the claimant free of any principal, interest and service charges, conditioned only upon the claimant withdrawing the petition filed with a court of competent jurisdiction seeking the disposition of said property. Property voluntarily returned by a pawnbroker to a claimant subject to this subsection shall be returned:

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

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

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

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

(1) The prevailing [claimant] **party** may recover from the pawnbroker the cost of the action, including attorney's fees;

(2) The conveying customer shall be liable to repay the pawnbroker the

full amount received from the pawnbroker from the pawn or sales transaction, including all applicable fees and interest charged and the costs incurred by the pawnbroker in pursuing the procedure described in this section, including attorney's fees.

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