

SECOND REGULAR SESSION

SENATE BILL NO. 730

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS DePASCO AND McKENNA.

Read 1st time January 14, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S3160.011

AN ACT

To repeal sections 367.044, 367.045, 367.047, 367.048, 367.050, RSMo 1994, relating to pawnbroker regulations, and to enact in lieu thereof six 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Section A. Sections 367.044, 367.045, 367.047, 367.048, 367.050, RSMo 1994, are repealed and six new sections enacted in lieu thereof, to be known as sections 367.044, 367.045, 367.047, 367.048, 367.050 and 367.051, to read as follows:

367.044. 1. **As used in sections 367.044 to 367.051, the following terms mean:**

(1) **"Appropriate 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;**

(2) **"Claimant", a person who claims that pledged goods in the possession of a pawnbroker or goods purchased by and in the possession of a pawnbroker were misappropriated from the claimant and fraudulently pledged or sold to the pawnbroker;**

(3) **"Conveying customer", a pledgor 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;**

(4) **"Hold order", a written legal instrument issued to a pawnbroker by the appropriate law enforcement officer employed 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 goods purchased by and in the possession of a pawnbroker and not to return, sell or otherwise dispose such goods as they are believed to be misappropriated goods;

(5) "Misappropriated", stolen, embezzled, converted, or otherwise wrongfully appropriated against the will of the rightful owner;

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

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

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

2. A pawnbroker shall have no recourse [when a customer has pledged goods for the receipt of money] against the pledgor for payment on a pawn transaction except the pledged goods themselves, unless the [pledged] goods are found to [be stolen, embezzled, mortgaged or otherwise pledged or encumbered] have been misappropriated.

[2. When a customer is officially notified by a peace officer that the goods he pledged or sold to a pawnbroker were stolen or embezzled, the customer shall be liable to repay the pawnbroker the full amount the customer received from the pawn or buy transaction.]

3. To obtain possession of tangible personal property held by a pawnbroker which a claimant claims to be misappropriated, the claimant shall 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 as a defendant and serving the pawnbroker 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. At least ten business days prior to filing a petition requesting return of the property, the claimant shall give actual notice to the pawnbroker in writing of the claimant's claim to the property and shall provide the pawnbroker the opportunity to investigate and resolve the claim. Actual notice in writing shall include a complete description of the property and shall include a legible copy of the report from a law enforcement agency on the misappropriation of the property. Failure to give such notice to the pawnbroker shall prohibit the claimant from recovering the property or attorney fees. The pawnbroker shall hold the property claimed by the claimant upon receiving notice of the claimant's claim until the right to possession is resolved by the parties or by a court of competent jurisdiction.

4. Upon receiving notice from a claimant that property in the possession of the pawnbroker is alleged to be misappropriated from the claimant, the pawnbroker shall investigate the claim. When a pawnbroker determines that the claim is valid, and the property is not subject to a pawn transaction contract, the pawnbroker shall deliver

the property to the claimant. When a pawnbroker determines that the claim is valid, and the property is subject to a pawn transaction contract, the pawnbroker shall deliver the property to the claimant 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 shall be entitled to collect the amount of the loan and any applicable charges as stated by the pawn transaction contract from the pledgor, and hold the property until the right to possession is resolved by the parties or by a court of competent jurisdiction.

5. When a claimant files a petition alleging that certain property held by a pawnbroker has been misappropriated from the claimant, the pawnbroker has the right to bring the conveying customer of the alleged misappropriated property into that action as a third-party defendant. If after notice to the pawnbroker and an opportunity to add the conveying customer as a third-party defendant, the property held by 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 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;

(3) The conveying customer shall be liable to indemnify the pawnbroker for the costs of the action paid by the pawnbroker to the claimant, including attorney's fees; and

(4) The conveying customer shall be liable to pay the pawnbroker for the cost of the action incurred by the pawnbroker in pursuing the procedure described in this section, including attorney's fees.

6. When a purchaser purchases tangible personal property from a pawnbroker and the tangible personal property is later claimed to have been misappropriated and a petition for the return of the property is filed by a claimant in a court of competent jurisdiction and served on the purchaser, the purchaser shall notify the pawnbroker and give the pawnbroker the opportunity to defend against the petition, including the right to bring the conveying customer of the alleged misappropriated property into that action as a third-party defendant. If after notice to the pawnbroker and an opportunity to add the third-party defendant, the property purchased by the purchaser 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 purchaser may recover from the pawnbroker only the money paid by the

purchaser to the pawnbroker for the property;

(2) The conveying customer shall be liable to repay the pawnbroker the full amount the conveying customer received from the pawnbroker from the pawn or sales transaction, including all applicable fees and interest charged;

(3) The conveying customer shall be liable to indemnify the pawnbroker for the costs of the action paid by the pawnbroker to the purchaser, including attorney fees; and

(4) The conveying customer shall be liable to pay the pawnbroker the cost of the action incurred by the pawnbroker in pursuing the procedure described in this section, including attorney's fees.

7. The sale or pledge of tangible personal property by any person shall be deemed:

(1) An agreement by the person who sells or pledges that the person shall be subject to the jurisdiction of the courts of this state in all civil actions and proceedings, arising out of the pledge or sale transaction, filed either by a resident or nonresident plaintiff;

(2) An appointment by any nonresident of the secretary of state as the person's lawful attorney and agent upon whom may be served all process in suits pertaining to the actions and proceedings arising out of the pledge or sale; and

(3) An agreement by any nonresident that any process in any suit so served shall be of the same legal force and validity as if personally served in this state.

8. Any title, license or permit for pledged goods shall remain in effect during the period of the pawn transaction and shall remain valid if such pledged goods are redeemed by the pledgor, and shall be voided if the pledged goods are redeemed by someone other than the pledgor or when title to the pledged goods passes to the pawnbroker.

9. When an item of property is the subject of a lease or rental transaction between the claimant's lease or rental customer at the time it is delivered into the possession of the pawnbroker, the property shall not be deemed misappropriated unless it bears a conspicuous permanent label or marking identifying it as the claimant's property. Evidence of defacing or the removal of identification marking of leased or rented property shall be treated as marked and identified and therefore deemed to be misappropriated. Property subject to a lease or rental transaction which is not marked as provided in this subsection may be recovered by the claimant upon payment to the pawnbroker of all moneys owing to or advanced by the pawnbroker in the pawn or purchase transaction, including accrued pawn service charges in pawn transactions and upon producing evidence identifying the property as having been the property of the claimant and leased or rented at the time the property was placed in the

pawnbroker's possession. The pawnbroker shall be free from liability in connection with the recovery of leased or rental property pursuant to this subsection.

367.045. [A customer is guilty of a class B misdemeanor if such customer fails to repay the pawnbroker the full amount received from the pawn or buy transaction after being officially notified by a peace officer that the goods the customer pledged or sold in the transaction were stolen or embezzled.] **1. When the tangible personal property subject to the pawn or sales transaction has been delivered or awarded to a claimant pursuant to section 367.044, and within ten business days after a written demand for payment and notice is deposited by the pawnbroker as certified or registered mail in the United States mail and addressed to the conveying customer, the conveying customer fails to repay the pawnbroker the full amount incurred by the pawnbroker in connection with such property and the procedure described in section 367.044, the conveying customer shall have committed the crime of fraudulently pledging or selling misappropriated property.**

2. Fraudulently pledging or selling property is a class B misdemeanor if the amount received by the conveying customer from the pawnbroker was less than fifty dollars. Fraudulently pledging or selling property is a class A misdemeanor if the amount received by the conveying customer from the pawnbroker was more than fifty dollars and less than one hundred fifty dollars. Fraudulently pledging or selling property is a class C felony if the amount received by the conveying customer from the pawnbroker was one hundred fifty dollars or more.

367.047. 1. [While] **Upon written notice from a law enforcement officer indicating that property in the possession of a pawnbroker and subject to a hold order is [in effect] needed for the purpose of furthering a criminal investigation and prosecution,** the pawnbroker [may consent to] **shall** release[, upon written receipt, the stolen or embezzled property] **the property subject to the hold order** to the custody of the [local] law enforcement [agency to which the peace] officer [placing the hold order is attached] **for such purpose and the officer shall provide a written acknowledgment that the property has been released to the officer.** The [consent to] release **of** the [stolen or embezzled] property to the custody of the law enforcement officer shall not be considered a waiver or release of the pawnbroker's property rights or interest in the property. **Upon completion of the criminal investigation, the property shall be returned to the pawnbroker who consented to its release; except that if the law enforcement officer has not completed the criminal investigation within one hundred twenty days after its release, the officer shall immediately return the property to the pawnbroker or obtain and furnish to the pawnbroker a warrant for the continued custody of the property.**

2. Except as provided in subsection 1 of this section, the pawnbroker shall not release or dispose of the property except pursuant to a court order or the expiration of the holding period of the hold order, including all extensions.

367.048. 1. The prosecuting [attorney's office] **attorney or the circuit attorney** shall notify the pawnbroker in writing in cases where criminal charges have been filed and the property may be needed as evidence. The notice shall contain the case number, the style of the case and a description of the property.

2. The pawnbroker shall hold such property until receiving notice of the disposition of the case from the prosecuting [attorney's office] **attorney or the circuit attorney**. The prosecuting [attorney's office] **attorney or the circuit attorney** shall notify the pawnbroker **and claimant** in writing within fifteen days of the disposition of the case.

[3. Willful noncompliance by a pawnbroker to a written hold order shall be cause for the pawnbroker's license to either be suspended or revoked. A hold order may be released prior to the expiration of any thirty-day holding period by written release from the agency placing the initial hold order.]

367.050. 1. In addition to any other penalty which may be applicable, any person who **operates a pawnshop pursuant to the provisions of sections 367.011 to 367.060, or is required to be licensed pursuant to section 367.043 who willfully violates any provision of sections 367.011 to 367.060 or who willfully makes a false entry in any records specifically required by sections 367.011 to 367.060 shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not in excess of [one] **five** thousand dollars, [except that] **or by confinement in the county jail for not more than six months, or by both such fine and imprisonment. Upon the second conviction of the offense described in this section, in addition to being punishable by fine or imprisonment, the person's pawnshop license shall be permanently revoked; except that** there shall be no penalty for a violation resulting from an accidental and bona fide error, where such error is corrected upon discovery.**

2. Except as provided in subsection 6 of section 367.043, any person who engages in the business of operating a pawnshop without first securing a license shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not in excess of ten thousand dollars or by confinement in the county jail for not more than one year, or **by both such fine and imprisonment. Any person who violates the provisions of this subsection shall be permanently prohibited from securing or holding a valid pawnshop license.**

367.051. 1. **Upon request of the appropriate law enforcement officer to inspect property that is described in information furnished by the pawnbroker pursuant to subdivisions (1) to (4) of subsection 1 of section 367.031, the appropriate law enforcement officer shall be entitled to inspect the property described, without prior notice or the necessity of obtaining a search warrant during regular business hours in a manner so as to minimize interference with or delay the pawnbroker's business operation. When the appropriate law enforcement officer has probable cause to believe that goods or property in the possession of a pawnbroker are misappropriated, the**

officer may place a hold order on the property. The hold order shall contain the following:

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

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

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

3. Upon the expiration of the initial holding period or any extension thereof, the pawnbroker shall deliver written notice to the law enforcement officer issuing the hold order that such order has expired and that title to the property subject to the hold order will vest in the pawnbroker in ten business days. Title shall vest in the pawnbroker upon the expiration of the ten-day waiting period subject to any restriction contained in the pawn contract and subject to the provisions of section 367.044.

4. In addition to the penalty provisions contained in section 367.050, gross negligence or willful noncompliance with the provisions of this section by a pawnbroker shall be cause for the licensing authority to suspend or revoke the pawnbroker's license. Any imposed suspensions or revocation provided for by this

subsection may be appealed by the pawnbroker to the licensing authority or to a court of competent jurisdiction.

5. A county or municipality may enact orders or ordinances to license or regulate the operations of pawnbrokers which are consistent with and not more restrictive than the provisions of sections 367.044 to 367.051.

6. All records or information reported to law enforcement officials pursuant to sections 367.011 to 367.051 shall be deemed confidential and shall be used by such appropriate law enforcement officials only for the purpose of investigation and prosecution of crimes.

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

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

(2) The investigation of a pawnbroker's possible specific violation of the recordkeeping or reporting requirements of sections 367.031 and 367.040, but only when the appropriate law enforcement officer, based on a review of the records and the information received, as probable cause to believe that such a violation occurred.

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