

FIRST REGULAR SESSION

# HOUSE BILL NO. 951

## 98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HURST.

2033L.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

To repeal sections 367.044, 367.046, 482.305, and 482.315, RSMo, and to enact in lieu thereof four new sections relating to small claims court.

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

Section A. Sections 367.044, 367.046, 482.305, and 482.315, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 367.044, 367.046, 482.305, and 482.315, to read as follows: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;

(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;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

26 3. A pawnbroker shall require of every person from whom the pawnbroker receives sold  
27 or pledged property proof of identification which includes a current address and, if applicable,  
28 telephone number, and a current picture identification issued by state or federal government.

29 4. If any seller fails to provide a pawnbroker with proof of identification, the pawnbroker  
30 shall hold such property for a period of thirty days prior to selling or otherwise transferring such  
31 property, provided, the seller has submitted a signed statement that the seller is the legal owner  
32 of the property and stating when or from whom such property was acquired by the seller.

33 5. To obtain possession of tangible personal property held by a pawnbroker which a  
34 claimant claims to be misappropriated, the claimant shall provide the pawnbroker with a written  
35 demand for the return of such property, a copy of a police or sheriff's report wherein claimant  
36 reported the misappropriation or theft of said property and which contains a particularized  
37 description of the property or applicable serial number, and a signed affidavit made under oath  
38 setting forth they are the true owner of the property, the name and address of the claimant, a  
39 description of the property being claimed, the fact that such property was taken from the claimant  
40 without the claimant's consent, permission or knowledge, the fact that the claimant has reported  
41 the theft to the police, the fact that the claimant will assist in any prosecution relating to such  
42 property, the promise that the claimant will respond to court process in any criminal prosecution  
43 relating to said property and will testify truthfully as to all facts within the claimant's knowledge  
44 and not claim any testimonial privilege with respect to said facts. These documents shall be  
45 presented to the pawnbroker concurrently.

46 6. Upon being served with a proper demand by a claimant for the return of property  
47 pursuant to subsection 5 of this section, the pawnbroker shall return the property to the claimant,  
48 in the presence of a law enforcement officer, within seven days unless the pawnbroker has good  
49 reason to believe that any of the matters set forth in the claimant's affidavit are false or if there  
50 is a hold order on the property pursuant to section 367.055. If a pawnbroker refuses to deliver  
51 property to a claimant upon a proper demand as described in subsection 5 of this section, the  
52 claimant may file a petition in a court of competent jurisdiction seeking the return of said

53 property. The nonprevailing party shall be responsible for the costs of said action and the  
54 attorney fees of the prevailing party. The provisions of section 482.305 to the contrary  
55 notwithstanding, a court of competent jurisdiction shall include a small claims court, even if the  
56 value of the property named in the petition [is greater than three thousand dollars] **exceeds the**  
57 **jurisdictional limit under section 482.305.**

58 7. If a pawnbroker returns property to a claimant relying on the veracity of the affidavit  
59 described in subsection 5 of this section, and later learns that the information contained in said  
60 affidavit is false or that the claimant has failed to assist in prosecution or otherwise testify  
61 truthfully with respect to the facts within the claimant's knowledge, the pawnbroker shall have  
62 a cause of action against the claimant for the value of the property. The nonprevailing party shall  
63 be responsible for the cost of said action and the attorney fees of the prevailing party.

64 8. Nothing contained in this section shall limit a pawnbroker from bringing the  
65 conveying customer into a suit as a third party, nor limit a pawnbroker from recovering from a  
66 conveying customer repayment of the full amount received from the pawnbroker from the pawn  
67 or sales transaction, including all applicable fees and interest charged, attorney's fees and the cost  
68 of the action.

367.046. 1. To obtain from a pawnbroker the amount of purchase for tangible personal  
2 property which a purchaser claims was misappropriated prior to the purchase, the purchaser shall  
3 file a petition in a court of competent jurisdiction in the county where the pawnbroker's  
4 pawnshop is located, requesting the return of the purchase amount, naming the pawnbroker as  
5 a defendant and serving the pawnbroker with the petition. The provisions of section 482.305 to  
6 the contrary notwithstanding, a court of competent jurisdiction shall include a small claims court,  
7 even if the purchase amount named in the petition [is greater than three thousand dollars]  
8 **exceeds the jurisdictional limit under section 482.305.** Upon receiving notice that a petition  
9 has been filed by a purchaser for the amount of purchase, the purchaser shall hold the purchased  
10 property until the right to possession is resolved by the parties or by a court of competent  
11 jurisdiction, unless such property is subject to a hold order for law enforcement purposes and a  
12 law enforcement officer has provided written acknowledgment that the property has been  
13 released to the officer.

14 2. Upon being served notice that a petition has been filed pursuant to this section, the  
15 pawnbroker may return the amount of purchase to the purchaser prior to a decision being  
16 rendered on the purchaser's petition by the court. The pawnbroker shall return the amount of  
17 purchase to the purchaser conditioned only upon the purchaser withdrawing the petition filed  
18 with a court of competent jurisdiction seeking the disposition of such property. The provisions  
19 of this section to the contrary notwithstanding, the pawnbroker shall not be required to pay any  
20 costs incurred by the purchaser and the purchaser shall not be required to pay any costs incurred

21 by the pawnbroker when the amount of purchase is returned to the purchaser pursuant to this  
22 subsection.

23 3. When a purchaser files a petition pursuant to this section, the pawnbroker may bring  
24 the conveying customer of the alleged misappropriated property into the action as a third-party  
25 defendant. If after notice to the pawnbroker and an opportunity to add the conveying customer  
26 as a defendant, the purchased property is found by a court to have been misappropriated and  
27 purchased by the purchaser in good faith, then:

28 (1) The prevailing purchaser may recover from the pawnbroker the cost of the action,  
29 including attorney's fees;

30 (2) The conveying customer shall be liable to repay the pawnbroker the full amount  
31 received from the pawn or sales transaction, including all applicable fees and interest charged  
32 and the costs incurred by the pawnbroker in pursuing the procedure described in this section,  
33 including attorney's fees.

482.305. When sitting as a small claims court, the judge shall have original jurisdiction  
2 of all civil cases, whether tort or contract, where the amount in controversy does not exceed  
3 [five] **fifteen** thousand **one** dollars, exclusive of interest or costs, or as provided in this chapter.  
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482.315. 1. If the amount in controversy in an action exceeds [five] **fifteen** thousand **one**  
2 dollars, a plaintiff may file and prosecute a small claims action for recovery of money, but such  
3 plaintiff waives any claim for any sum in excess of [five] **fifteen** thousand **one** dollars in that or  
4 in any subsequent proceeding involving the same parties and issues.

5 2. In an action transferred under section 482.325, the plaintiff or defendant may amend  
6 the claim or counterclaim to a dollar amount not to exceed the jurisdictional limit of the division  
7 of the circuit court to which the action was transferred.

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