

OVERVIEW
PAWN BROKER LAW

SSG

SCHIRMER, SUTER & GAW

ATTORNEYS & COUNSELORS AT LAW

WAYNE E. SCHIRMER
CYNTHIA A. SUTER
R. STEVEN GAW

COMMUNITY OFFICE PARK
SUITE 110 A
630 NORTH MORLEY
MOBERLY, MISSOURI 65270
TELEPHONE (660) 263-9000
TELECOPIER (660) 263-4103

February 10, 1999

Mr. Kenneth C. Steiner, Ph.D., CMP
Administrative Assistant
Missouri Rental Dealers Association
101 Corporate Lake Dr., #B-2
Columbia, MO 65203

Re: **HB 1526 – Changes to Pawn Broker Law**

Dear Mr. Steiner:

I am in receipt of your January 13, 1999 letter in reference to my scheduled appearance, which is February 24, 1999 at 1:00 p.m.

Attached is a copy of **HB 1526** signed by the governor on July 10, 1998 and effective August 28, 1998. A brief "Overview" of the Bill is as follows:

1. Increased the maximum penalty a person faces for misdemeanor violations of pawnbroker statues from \$1,000 to \$5,0200, 6 months imprisonment, or both. The person's pawnshop license will be permanently revoked upon a second conviction.
2. Allows law enforcement officers to inspect property held by a pawnbroker, without a warrant, if they make a request of the pawnbroker and proceed in a manner that minimized interference with regular business operation;
3. Requires pawnbrokers to release to law enforcement, upon written request, property in possession of the pawnbroker and subject to a hold order that is needed in furtherance of a criminal investigation. At the close of the criminal investigation, the property will be returned to the pawnbroker. If the criminal investigation is not completed in 120 days, the police must return the property to the pawnbroker or must provide a warrant for its continued custody.
4. Establishes procedures for law enforcement to obtain a hold order on property held by a pawnbroker that an officer has probable cause to believe has been stolen. Law enforcement officers may place a renewable written hold order, not to exceed 2 months, but the hold order may be extended 2 additional one month periods.

February 10, 1999

Page – 2 –

5. Make a person guilty of the crime of fraudulently pledging stolen goods, if the person fails to repay the pawnbroker within 10 days of formal notification that stolen property was involved in the transaction. The crime is a Class B misdemeanor, a Class A misdemeanor, or a Class C felony depending on the amount of money involved in the transaction.
6. Establishes procedures for restoring stolen property to the rightful owner. A person may recover stolen property held by a pawnbroker by filing a petition in a circuit or small claims court. The pawnbroker may simultaneously bring an action against the person who pledged or sold the stolen property. If the property is found to be stolen, the court will restore it to the original owner who may recover legal costs from the pawnbroker who may, in turn, recover all costs associated with the action from the person who brought the property to the pawnbroker. The bill establishes a similar procedure for reimbursing customers who unknowingly purchase stolen merchandise from a pawnbroker.
7. Prohibits items subject to a rental transaction or a retail installment contract from being considered misappropriated unless the property bears a permanent label identifying it as the claimant's property; and
8. Prohibits any court or municipality from enacting any ordinances, which are inconsistent with or more restrictive than the provisions of the bill.

Please pay strict attention to **367.044 (7)** – “conspicuous permanent label or marking of leased or rented property”. It should be noted that this particular phrase is not defined in the bill but in my opinion would mean at the least the following:

1. “Conspicuous” – requires affixing of a marker label in plain sight. Such to be obvious to a pawnbroker or any other prudent person (i.e. not hidden in the undercasing of appliance).
2. “Permanent” – of course nothing is permanent in this world, however, the label or marker must be affixed in a manner that cannot be easily removed without conspicuous damage to the item. If a marking or label is placed in a manner whereby removal would put a reasonable pawnbroker on notice that a label or marking has been removed defacing the item of property, I believe a Court would find compliance if the dealer's other inventory is so marked.
3. “Identifying the Property”, i.e. in bold face and/or color, something to the effect “this appliance is owned by “XYZ Rental” giving the address and telephone number.

February 10, 1999

Page – 3 –

The caveat to the above is that if, a rent-to-own operation fails to comply with the letter of **House Bill 1526**, it cannot be considered “misappropriated” and therefore disqualifies the claimant in triggering the judicial process in recovering the misappropriated article.

As to “obtaining possession of tangible property held by a pawnbroker” (See **367.044 (3)**) – it appears the new statute authorizes filing a Petition in Small Claims Court (or any other Court of competent jurisdiction). This may be advantageous to most rent to own dealerships since it will not require such dealership to retain an attorney in order to file a Petition to obtain possession of misappropriated property.

I am attaching a sample “Petition” which I have drafted that may be used in attempting to reclaim misappropriated property in either the Small Claims Court or the Associate Division of the Circuit Court. (See attached)

I believe the new law is pretty straight forward as to the progression of litigation:

1. Rent-to-Own files a Petition in a form similar to what I have prepared and attached.
2. The Petition should be filed in the court where the pawnbroker carries on business or where the property was misappropriated.
3. Thereafter, a copy of the Petition should be personally served upon the pawnbroker who may do one of the following:
 - A. The pawnbroker may return the property voluntarily premised upon the Rent-To-Own dealership withdrawing the Petition filed with the Court seeking disposition of said property.
 - B. Or the pawnbroker can request a hearing on the merits wherein it will be the burden of the rental dealership to “prove up” the allegations of the Petition.
 - C. Or the pawnbroker, if he has collected any principal, interest or service charge, on the property bring in the conveying customer.

Thereafter, if the property in the possession of the pawnbroker is found to be the Plaintiff’s property, and the property is awarded to Plaintiff, then the Court may order the Plaintiff recover from the pawnbroker the cost of the action including attorney’s fees.

Further the conveying customer will be liable to the pawnbroker for the full amount received from the pawnbroker from the pawn or sales transaction including costs and attorney’s fees incurred.

SSG

SCHIRMER, SUTER & GAW

ATTORNEYS & COUNSELORS AT LAW

WAYNE E. SCHIRMER
email: schirmer@missvalley.com
CYNTHIA A. SUTER
email: suter@misvalley.com

JAY W. KIMMONS, Associate

COMMUNITY OFFICE PARK
SUITE 110 A
630 NORTH MORLEY
MOBERLY, MISSOURI 65270
TELEPHONE (660) 263-9000
TELECOPIER (660) 263-4103

February 21, 2003

Chuck Kuluva
MISSOURI Rental Dealers Association
833 Minnesota
Kansas City, KS 66101

Re: Pawnbroker Law Update/**House Bill 1888** passed 2002

Dear Chuck:

Since my February 10, 1999 letter to Ken Steiner, a copy enclosed, **House Bill 1888** was passed and became effective August 28, 2002.

House Bill 1888 amended two existing sections of the law – **RSMo. 367.031** and **367.044** and further created a new **Section 367.055 RSMo.**

The following is a brief review of each Section relative to the changes effected by the passage of **House Bill 1888**:

1. **367.031 RSMo.** - - - Requires the pawnbroker to execute and deliver to the conveying customer a receipt describing the property pawned. The receipt to contain the following:
 - (1) The name and address of the pawnshop;
 - (2) The name and address of the pledgor, the pledgor's description, and the driver's license number, military identification number, identification certificate number, or the official number capable of identifying the pledgor;
 - (3) The date of the transaction;

February 21, 2003

Page – 2 –

- (4) An identification and description of the pledged goods, including serial numbers if reasonably available;
- (5) The amount of cash advanced or credit extended to the pledgor;
- (6) The amount of the pawn service charge;
- (7) The total amount which must be paid to redeem the pledged goods on the maturity date;
- (8) The maturity date of the pawn transaction; and
- (9) A statement to the effect that the pledgor is not obligated to redeem the pledged goods, and that the pledged goods may be forfeited to the pawnbroker sixty days after the specified maturity date.

The Statute then authorizes enactment of local ordinances requiring the Pawnbroker to furnish to appropriate law enforcement authorities copies of information contained in paragraphs 1 through 4 above. The Pawnbroker is allowed to satisfy this requirement by transmitting such information electronically to a database. The Statute does not mandate transmitting such information electronically if the Pawnbroker was licensed prior to August 28, 2002. Please note that the Pawnbroker need only comply with furnishing information to law enforcement if the local municipality passes an ordinance requiring the same. Any Pawnbroker licensed after August 28, 2002 is required under law to provide all reportable data through the internet to the database.

2. **367.044 RSMo.** - - Primarily repeals that portion of **367.044** adopted by House Bill 1528 in 1998 which established procedures for obtaining possession of property held by a Pawn Broker which is claimant claims to be misappropriated. The old law authorized filing of a Petition in the Court of competent jurisdiction naming the Pawnbroker as Defendant and seeking return of the misappropriated property. (See my February 10, 1999 letter - - pages 2 and 3).

The new law specified a simplified procedure in obtaining possession of property held by a Pawnbroker. The steps are as follows:

1. The claimant shall provide the pawnbroker with a written demand for the return of such property, a copy of a police or sheriff's report wherein claimant reported the misappropriation or theft of said property and which contains a particularized description of the property or applicable serial number.

February 21, 2003

Page – 3 –

2. Along with the written demand a signed affidavit made under oath setting forth they are the true owner of the property, the name and address of the claimant, a description of the property being claimed, the fact that such property was taken from the claimant without the claimant's consent, permission or knowledge, the fact that the claimant has reported the theft to the police, the fact that the claimant will respond to court process in any criminal prosecution relating to said property and will testify truthfully as to all facts within the claimant's knowledge and not claim any testimonial privilege with respect to said facts.
 3. Upon being served with a proper demand by a claimant for the return of property, the pawnbroker shall return the property to the claimant, in the presence of a law enforcement officer, within seven days unless the pawnbroker has good reason to believe that any of the matters set forth in the claimant's affidavit are false or if there is a hold order on the property pursuant to **Section 367.055**.
 4. If a pawnbroker refuses to deliver property to a claimant upon a proper demand as described in subsection 5 of this section, the claimant may file a petition in a court of competent jurisdiction seeking the return of said property.
 5. The non prevailing party shall be responsible for the costs of said action and the attorney fees of the prevailing party. The provisions of **Section 482.305, RSMO** to the contrary notwithstanding.
 6. 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.
 7. If a pawnbroker returns property to a claimant relying on the veracity of the affidavit described in subsection 5 of this section, and later learns that the information contained in said affidavit is false or that the claimant has failed to assist in prosecution or otherwise testify truthfully with respect to the facts within the claimant's knowledge, the pawnbroker shall have a cause of action against the claimant for the value of the property. The non prevailing party shall be responsible for the costs of said action and the attorney fees of the prevailing party.
3. **367.055 RSMo** – allows a law enforcement officer to inspect pawn property without prior notice or without obtaining a search warrant. When law enforcement has

February 21, 2003

Page – 4 -

probable cause to believe that goods or property in the pawnbrokers possession is misappropriated, it can place a hold order on the property for an initial holding period of up to two months, which holding period can be extended for up to two successive one month period.

The primary benefit to rent-to-own dealers of the new amended laws is the non-judicial provisions of **367.044 RSMo**, which allows dealers to make a written demand on the pawnbroker with required affidavit to secure their property. The pawnbroker is required to return the property and if he refuses forcing the dealer to file a petition in “a Court of competent jurisdiction” and the dealer is successful in securing its property then the pawnbroker must pay the dealer’s cost of maintaining the action plus attorney’s fees. It is extremely important that dealers fulfill each and every requirement as setforth in steps 1 and 2 earlier set out in this letter. I would highly recommend that the written Notice and Affidavit be sent “certified mail, return receipt requested”. I have drafted a “sample” demand for possession, which I enclosed for your consideration.

I am enclosing copies of the respective Statues for your further perusal.

If you need anything further let me know.

Very truly yours,

Wayne E. Schirmer

WES:bab

DEMAND FOR POSSESSION OF MISAPPROPRIATED PROPERTY
(367.044 RSMo)

Claimant: _____ Name _____ Address _____

DESCRIPTION OF PROPERTY CLAIMED MISAPPROPRIATED:

_____, hereinafter referred to as Claimant and being duly sworn upon

his/her oath represents and covenants as follows:

1. That Claimant is the true owner of the above described property.
2. That the above described property was rented/leased to _____ and that _____ has defaulted on said Rental Contract and has failed and refused to return said property to Claimant's possession. A copy of said Rental Contract is attached hereto and by reference made a part hereof.
3. That the above described property was taken from Claimant without Claimant's consent, permission or knowledge.
4. That Claimant has reported the theft of the property to law enforcement. A copy of said Police/Sheriff's report is attached hereto and by reference made a part hereof.
5. That Claimant agrees to assist in any prosecution relating to said property and promises to respond to Court process in any criminal prosecution relating to said property and will testify truthfully to all facts within the Claimant's knowledge and not claim any testimonial privilege with respect to said facts.

Claimant

STATE OF _____)
)ss.
COUNTY OF _____)

On this _____ day of _____, 2003 before me a Notary Public in and for said County and State, personally appeared _____ me known to be known the person described in and who executed the foregoing instrument and acknowledged the he/she executed the same as his/her free act and deed.

Witness my hand and Notarial Seal the day and year first above written.

Notary Public

My Commission Expires:

IN THE CIRCUIT COURT OF _____ COUNTY,
SMALL CLAIMS DIVISION

XYZ RENT-TO-OWN)
Plaintiff)
)
VS) Case NO.
)
PAWNBROKER)
Defendant)

PETITION TO OBTAIN POSSESSION OF MISAPPROPRIATED PROPERTY
HELD BY PAWNBROKER
(367.044 V.A.M.S.)

COMES NOW, Plaintiff pursuant to **367.044 V.A.M.S.** and in support of its Petition states as follows:

1. That Plaintiff/Claimant is a (Missouri Corporation and/or proprietorship) having its principal business located at _____.

2. That Defendant is operating a pawnbroker business at _____

3. That Plaintiff verily believes that certain tangible personal property, to-wit:

owned by Plaintiff and rented to _____ (name of renter

has been misappropriated and wrongfully pledged; said property presently located at

_____.

4. The Plaintiff has complied with 367.044(7) by affixing to said property a conspicuous permanent label or marking identifying the above described property as Plaintiff's property.

WHEREFORE, Plaintiff prays as follows:

1. That the Court order Defendant to hold the above described property until the right of possession is resolved by this Court or until Defendant voluntarily returns said property.

2. That after a hearing on the merits, Plaintiff be found to be the rightful owner and rightful possessor of said property and that the Court order redelivery of said property from Defendant to Plaintiff.

3. That Plaintiff be further awarded costs of this action including attorney's fees, if applicable, as set forth in 367.044(5).

Plaintiff