

Pawnbrokers, Police, and Property Rights—A Proposed Constitutional Balance

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Imagine being a legitimate businessperson providing the valuable service of extending credit to individuals in the community who would not customarily receive credit. Further, imagine complying with all state laws regarding the business including a provision that requires you to maintain a detailed record noting all of the inventory of your business. Finally, suppose one day the police seize, retain, and ultimately dispose of a good portion of your inventory without providing you any compensation for the disposition. Life in the former Soviet Union or some Third World country? Unfortunately not. Events such as this are commonplace in many states; the unfortunate victims are pawnbrokers, who before the disposition had merely extended credit in the course of their business in return for taking an interest in the items which the police later seize and sell for their own benefit.

Indeed, just as detailed above, in many jurisdictions state law requires “each and every pawnshop and pawnbroker . . . to keep a record showing in detail all property pawned with them.”¹ The police often have access to these records² and can require the pawnbroker to report all of the

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1. ARK. CODE ANN. § 12-12-103(a) (Michie Supp. 1993). For a complete list of the applicable pawnbroker statute(s) in each state, see the appendix.

2. See, e.g., ARK. CODE ANN. § 12-12-103(c)(1) (Michie Supp. 1993). See also ALA. CODE § 5-19A-8(4) (1981 & Supp. 1994); ARIZ. REV. STAT. ANN. § 44-1625 A (1994); CAL. FIN. CODE § 21206(a) (West 1991 & Supp. 1994); COLO. REV. STAT. ANN. § 12-56-103(3) (West 1990); DEL. CODE ANN. tit. 24, § 2313(b) (1987); GA. CODE ANN. § 44-12-137(4) (1982 & Supp. 1994); ILL. ANN. STAT. ch. 205, para. 510/6 (Smith-Hurd 1993); KAN. STAT. ANN. § 16-712 (1988); LA. REV. STAT. ANN. § 37:1797 (West Supp. 1994); MASS. ANN. LAWS ch. 140, § 81 (Law. Co-op. 1981); MISS. CODE ANN. § 75-67-315(d) (Supp. 1993); MO. ANN. STAT. § 367.031(2)

pawnbroker's transactions directly to them.³ The alleged purpose for this is "to assist law enforcement authorities in tracking down stolen goods, and to minimize the use of pawnbrokers as 'fences.'" ⁴

The police compare the pawnbroker's reports with reports of stolen property. When a property match is found in these records, the police summarily take the property from the pawnbroker. There is no hearing or other procedural safeguard to insure against a wrongful taking.

Usually, the purpose of taking the property is to return it to the victim—the "true owner" from whom the property was stolen. The true owner's interest in stolen property ordinarily prevails over a pawnbroker's claim to the property,⁵ and state statutory law obligates the pawnbroker to return the personal property to the true owner upon her request and a document corroborating the ownership claim.⁶ Yet, the police can err in taking property from the

(Vernon Supp. 1994); NEV. REV. STAT. § 646.020(3) (1993); N.J. REV. STAT. § 45:22-11 (West 1978); NEB. REV. STAT. § 69-204 (1990); N.M. STAT. ANN. § 56-12-9E (Michie 1986); N.C. GEN. STAT. § 91A-7(d) (1989); OHIO REV. CODE ANN. § 4727.08 (Anderson 1994); OKLA. STAT. ANN. tit. 59, § 1508A (West 1989 & Supp. 1994); OR. REV. STAT. § 726.130 (Supp. 1994); R.I. GEN. LAWS § 19-26-5 (1989); S.C. CODE ANN. § 40-39-90 (Law. Co-op. 1986 & Supp. 1993); TENN. CODE ANN. § 45-6-209(d), (e) (1993 & Supp. 1994); TEX. REV. CIV. STAT. ANN. art. 5069-51.08 (West 1987 & Supp. 1994); UTAH CODE ANN. § 11-6-1 (1992); VT. STAT. ANN. tit. 9, § 3865 (1993); VA. CODE ANN. § 54.1-4011 (Michie 1991); WASH. REV. CODE ANN. § 19.60.020(2) (West 1987 & Supp. 1993); WIS. STAT. ANN. § 134.71(8)(e) (West Supp. 1993); WYO. STAT. § 33-6-106 (1987).

3. ARK. CODE ANN. § 12-12-103(c)(2) (Michie Supp. 1993); ARIZ. REV. STAT. ANN. § 44-1625 A (1994); CAL. FIN. CODE § 21208 (West 1991 & Supp. 1994); COLO. REV. STAT. ANN. § 12-56-103(7) (West 1990); DEL. CODE ANN. tit. 24, § 2313(c) (1987); ILL. ANN. STAT. ch. 205, para. 510/7 (Smith-Hurd 1993); LA. REV. STAT. ANN. § 37:1798 (West Supp. 1994); ME. REV. STAT. ANN. tit. 30-A, § 3962(3) (West Supp. 1993); NEB. REV. STAT. § 69-205 (1990); N.C. GEN. STAT. § 91A-7(d) (1989); TENN. CODE ANN. § 45-6-209(d) (1993 & Supp. 1994).

4. Jarret C. Oeltjen, *Pawnbroking on Parade*, 37 BUFF. L. REV. 751, 756 (1988-89).

5. See, e.g., *In re Two (2) Bose Speakers*, 835 P.2d 1385 (Kan. Ct. App. 1992)(pawnbroker's rights to possess stolen property is inferior to that of either true owner or her insurer). Indeed, the pawnbroker usually takes subject to every preexisting interest in the property.

6. ARK. CODE ANN. § 18-27-202 (Michie 1987)(execution of affidavit of possession); LA. REV. STAT. ANN. § 37:1805 (West Supp. 1994)("certified copy of the police report in which the item was reported stolen"); OHIO REV. CODE ANN. § 4727.12 (Anderson 1994)(police, acting on owner's behalf, informs the pawn-

pawnbroker. Identifications of the property in the two sets of reports can be mismatched; the stolen property report might be mistaken; the pawnbroker can have acquired the property under extraordinary circumstances that cut off the true owner's rights;⁷ or the police can act arbitrarily.

Moreover, often the true owner does not even want the property returned. She instead claims the proceeds of insurance. The insurer is subrogated to the true owner's rights but does not itself claim the property because the transaction costs of retrieving and disposing of it are too high. The property is not, however, returned to the pawnbroker. The police dispose of the property and keep the proceeds for their own purposes. The pawnbroker gets nothing—neither process nor payment. There is no accounting of any kind to the pawnbroker even though, beyond the true owner or any subrogee, the pawnbroker is generally entitled to possession of the property as against the whole world.⁸

This common scenario implicates important due process concerns. To address these concerns, this article offers a solution to the due process issues raised by summary police seizure of pawnbrokers' property. In brief, this article suggests that a pawnbroker's interest in property disposed of by the police after their seizure should be preserved against everyone but a true owner who does not claim the proceeds of her insurance policy. Police departments should not profit from the seizure and disposition of property in a pawnbroker's possession. In formulating this solution, part I of this article asserts that present police practices involving the disposition of property from pawnbrokers are inherently unconstitutional. Part II, in turn, contends that police officers are personally liable for disposing of the property of pawnbrokers without due process.

broker that the item is stolen and of the owner's name); TENN. CODE ANN. § 45-6-213(b) (1993)(owner provides police with proof of ownership).

7. See, e.g., U.C.C. § 2-403(1) (1990)(when applied in the case of goods that are resold after having been purchased with a hot check); National Pawn Brokers Unlimited v. Osterman, Inc., 500 N.W.2d 407 (Wis. Ct. App. 1993)(rights of seller of ring for hot check are inferior to rights of pawnbroker who as pledgee was good faith purchaser under section 2-403(1)).

8. In re 1973 John Deere 4030 Tractor, 816 P.2d 1126, 1133 (Okla. 1991).

Finally, part III advocates a novel statutory solution which, as detailed below, accommodates the interests of the relevant parties.

I. WHY ARE THESE POLICE PRACTICES UNCONSTITUTIONAL?

The Fourteenth Amendment prohibits a state from depriving a pawnbroker or any other person of property without due process of law.⁹ Fundamentally, due process forbids seizing a person's property without prior notice and an opportunity to be heard in a meaningful manner at a meaningful time¹⁰—ordinarily before the seizure.¹¹ For purposes of the Due Process Clause, the "state" includes state, county, and municipal police.¹² As noted above, the usual practice of the police involves no prior notice or hearing at any time before the seizure and disposition of the allegedly stolen property from a pawnbroker. These police practices therefore violate the pawnbroker's federal (and probably state) constitutional due process rights.¹³

The range of interests protected by procedural due process is wide and includes a pawnbroker's rights with respect to stolen property.¹⁴ It is true that a pawnbroker is bound by the principle of derivative title and thus acquires,

9. U.S. CONST. amend. XIV, § 1.

10. *United States v. James Daniel Good Real Estate*, 114 S. Ct. 492, 498 (1993).

11. *Id.* at 501. Exceptions to the general rule requiring predeprivation notice and hearing are possible only in "extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." *Id.* See also *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976) (determining the constitutionality of a predeprivation seizure requires application of a three-part test—the private interest affected by the official action; the risk of an erroneous deprivation of that interest through the procedures used, as well as the probable value of additional safeguards; and the Government's interest, including the administrative burden that additional procedural requirements would impose).

12. *Soldal v. Cook County*, 113 S. Ct. 538, 549 (1992).

13. *Id.* at 549; *Wolfenbarger v. Williams*, 774 F.2d 358, 365 (10th Cir. 1985), *appeal after remand*, 826 F.2d 930 (10th Cir. 1987), *abrogated on other grounds*, *Horton v. California*, 496 U.S. 128 (1990).

14. *Wolfenbarger*, 774 F.2d at 365. See also *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478, 485 (1988); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430-32 (1982) (cause of action is a right protected by procedural due process); *Connell v. Higginbotham*, 403 U.S. 207 (1971) (state employee has a legitimate claim of entitlement and may demand the procedural protections of due process).

whether through sale or pawn, only the transferor's title.¹⁵ From a thief, therefore, the pawnbroker acquires nothing as against the true owner.¹⁶ Yet, as against the rest of the world, the pawnbroker acquires a right to possession,¹⁷ even an insurable interest.¹⁸ As reported by the Arkansas Supreme Court, the ancient common law doctrine is that even though " 'a sale by the thief . . . does not vest any title in the purchaser *as against the owner,*' " " 'such a purchaser may [nevertheless] be treated as having title and the right

15. "[Courts universally] follow the elementary common law rule that one cannot convey a better title than that which he has; a corollary to the general common law rule is that a purchaser cannot acquire a title better than that of his vendor. In recognition of this principle . . . one who purchases from a thief acquires no title as against the true owner absent exigent circumstances." *Beverage Products Corp. v. Robinson*, 769 S.W.2d 424, 425 (Ark. Ct. App. 1989)(citing *Superior Iron Works v. McMillan*, 357 S.W.2d 524 (Ark. 1962) and RALPH BOYER, *SURVEY OF THE LAW OF PROPERTY* (3d ed. 1981)); see also *Eureka Springs Sales Co. v. Ward*, 290 S.W.2d 434, 436-37 (Ark. 1956)("The general rule—as regards all personal property except money and negotiable paper—is, that a purchaser from a thief acquires no title against the true owner, in the absence of limitations and estoppel. . . . '[A] sale by the thief or by any person claiming under the thief does not vest any title in the purchaser as against the owner, though the sale was made in the ordinary course of trade and the purchaser acted in good faith.' ").

16. *In re Two (2) Bose Speakers*, 835 P.2d 1385, 1388 (Kan. Ct. App. 1992).

17. *G & G Jewelry, Inc. v. City of Oakland*, 989 F.2d 1093, 1098 (9th Cir. 1993)(pawnbroker who is pledgee of stolen property has a legitimate possessory interest in the property as against the rest of the world except the person having title to the property); *Wolfenbarger*, 774 F.2d at 361 (pawnbroker who took from a thief had a special property interest that supports replevin and a right to possession good against the world)(applying Oklahoma law and citing numerous cases); *Justice v. Fabey*, 541 F. Supp. 1019, 1023 (E.D. Pa. 1982)(possession of a chattel is deemed to be *prima facie* evidence of ownership so that any person claiming property which is in the possession of another bears the burden of proving facts essential to his claim of ownership); *Wacksman v. Harrell*, 189 N.E.2d 146, 148 (Ohio 1963)("It is well established that one who purchases or acquires property from a thief in good faith has a right to the possession thereof against everyone except the rightful owner. . . . Pawned articles alleged to have been stolen may be taken from the pawnbroker through lawful procedure, if necessary, to be used in evidence against the thief in the criminal trial, but, when that purpose is served, the pawnbroker is entitled to their return.").

18. *Riley v. Mid-Century Ins. Exch.*, 173 Cal. Rptr. 257 (Cal. Ct. App. 1981); *Howard v. State Farm Mut. Auto. Ins. Co.*, 496 N.W.2d 862, 867 (Neb. 1993); *Lindner v. Hartford Fire Ins. Co.*, 294 N.Y.S.2d 422 (N.Y. Sup. Ct. 1968); *Phillips v. Cincinnati Ins. Co.*, 398 N.E.2d 564 (Ohio 1979); *Treit v. Oregon Auto. Ins. Co.*, 499 P.2d 335 (Or. 1972); *Shockley v. Harleyville Mut. Ins. Co.*, 553 A.2d 973, 975 (Pa. Super. Ct. 1988).

to their possession *as against every one but the rightful owner.*'¹⁹

Other courts have echoed similar sentiments. In *New England Box Co. v. C. & R. Constr. Co.*, the court held that a person in possession of goods has good title as against everyone, except the true owner, which cannot be defeated by a "showing that there was title in some third person."²⁰ More recently, the Supreme Court of Oklahoma has stated that "while a good faith purchaser under a defective title cannot hold against the true owner, he does have lawful possession against all the rest of the world."²¹

This right to possession as against the rest of the world—even if worthless against the true owner—is nevertheless property that enjoys constitutional due process protection.²² An explanation is given by the Federal District

19. *Eureka Springs Sales Co. v. Ward*, 290 S.W.2d 434, 436-37 (Ark. 1956)(quoting 42 Am. Jur. 227)(emphasis added).

It might be argued that statutory law changes this rule by entitling the state to keep and sell unclaimed stolen property. See, e.g., ARK. CODE ANN. § 16-80-103(g) (Michie 1987). This argument is flawed. First, the property is not unclaimed. The property is claimed by the pawnbroker who, because of her possession, is the (or "a") presumptive owner. Second, the state cannot lawfully keep property on the basis of the state's possession of the property and the absence of any claim to it when the state's possession was acquired, in the first instance, by illegal seizure from a person who, before the state got the property, enjoyed the right to possession as against everyone except a true owner. To argue otherwise would amount to illogical and illegal bootstrapping—basing the state's claim on the state's own illegal conduct.

20. *New England Box Co. v. C. & R. Constr. Co.*, 49 N.E.2d 121, 129 (Mass. 1943). See also *Gissel v. State*, 727 P.2d 1153, 1155-56 (Idaho 1986)(citing RESTATEMENT (SECOND) OF TORTS § 895 (1965))(a person who is otherwise liable to another for harm or interference with land or chattel cannot raise the defense that a third person has superior title to that of the other).

21. *In re 1973 John Deere 4030 Tractor*, 816 P.2d 1126, 1133 (Okla. 1991)(quoting *Snethen v. Oklahoma State Union of the Farmers Educ. & Coop. Union of Am.*, 664 P.2d 377 (Okla. 1983))(that person has a "qualified possessory right" in the property which in some jurisdictions is sufficient to create an insurable interest in the property). See, e.g., *Granite State Ins. Co. v. Lowe*, 362 So. 2d 240, 241 (Ala. Civ. App. 1978); *Skaff v. United States Fidelity and Guar. Co.*, 215 So. 2d 35, 36 (Fla. Dist. Ct. App. 1968).

22. *G & G Jewelry, Inc. v. City of Oakland*, 989 F.2d 1093, 1098 (9th Cir. 1993)(pawnbroker who is pledgee of stolen property has a legitimate possessory interest in the property that triggers procedural protections of the Fourteenth Amendment so that police would act wrongly in seizing the property for return to person who reported it stolen); *Wolfenbarger v. Williams*, 774 F.2d 358, 361-62 (10th Cir. 1985)(pawnbroker had constitutionally protected property interest in stolen items

Court in *Justice v. Fabey*,²³ a case in which the police seized a stolen truck from the plaintiff who had innocently purchased the property.

[W]hile plaintiff may not be able ultimately to establish good title to the seized truck under Pennsylvania law, this does not conclusively determine whether the police were required under the due process clause to afford him some kind of hearing when they sought to take possession of the truck. It is clear that the Fourteenth Amendment not only safeguards rights of undisputed ownership, but also extends to any other significant property interest. *See, e.g., Fuentes v. Shevin*, 407 U.S. 67, 92, 92 S. Ct. 1983, 2000, 32 L. Ed. 2d 556 (1972). The fact that a possessor's claim of ownership may be disputed does not negate the existence of a property interest or his right to procedural safeguards mandated by the Fourteenth Amendment. *Davis v. Fowler*, 504 F. Supp. 502, 505 (D. Md. 1980). As the Supreme Court has stated, "It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined." *Board of Regents v. Roth, supra*, 408 U.S. at 577, 92 S. Ct. at 2709.

It is settled . . . that possession of a chattel is deemed to be *prima facie* evidence of ownership. *Leitch v. Sanford Motor Truck Co.*, 279 Pa. 160, 123 A.

sufficient to support claim of violation of due process as a result of police's release of items to true owner), *appeal after remand*, 826 F.2d 930 (10th Cir. 1987), *abrogated on other grounds*, *Horton v. California*, 496 U.S. 128 (1990); *Florida Pawnbrokers and Secondhand Dealers Ass'n, Inc. v. City of Fort Lauderdale*, 699 F. Supp. 888 (S.D. Fla. 1988)(pawnbroker seizure statute, which authorized police to seize property from pawnbroker upon *ex parte* application of putative lawful owner, violates due process); *Justice v. Fabey*, 541 F. Supp. 1019 (E.D. Pa. 1982)(mediate purchaser of truck from thief had constitutionally cognizable property interest sufficient to impose upon government officials a due process obligation not to terminate purchaser's possession without according him a hearing to adjudicate his claim of ownership); *Newman v. Stuart*, 597 So. 2d 609, 615 (Miss. 1992)(highway patrol had no authority on its own to deliver seized vehicle to alleged true owner absent court approval without giving purchaser notice and opportunity to contest matter); *Wacksman v. Harrell*, 189 N.E.2d 146, 148 (Ohio 1963)(civil rules were invalid because they provided (1) for arbitrary seizure and sequestration, even in good faith, of allegedly stolen pawned articles from a pawnbroker without a proper and valid warrant and (2) for determination of true ownership of property by judge in criminal prosecution of a person charged with theft of the property).

23. 541 F. Supp. 1019 (E.D. Pa. 1982).

658 (1924). Thus, any person claiming ownership of property which is in the possession of another bears the burden of proving facts essential to his claim of ownership. *In Re Carr's Estate*, 371 Pa. 520, 92 A.2d 213 (1952). And while there appears to be no clear Pennsylvania authority on the matter, it would seem that one's earlier possession of property, which has subsequently been seized, is *prima facie* evidence of one's entitlement to the property. *United States v. Wright*, 610 F.2d 930, 939 (D.C. Cir. 1979); *Davis v. Fowler, supra*, 504 F. Supp. at 505.

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Therefore, in light of [the] . . . law which attaches a presumption of entitlement to one in possession, and the broad protection afforded by the Fourteenth Amendment, I find that plaintiff's complaint alleges facts constituting a property interest in the truck sufficient to impose upon government officials a due process obligation not to terminate plaintiff's possession of the truck without according him a hearing to adjudicate his claim of ownership.²⁴

An even more basic, truer explanation is that *bare possession* of property so often corresponds to a lawful *right to possession* that the former is strong, reliable evidence of the latter and, on balance, justifies procedural safeguards to guard against wrongful dispossession by the state. This rationale also buttresses the more fundamental notion that possession alone—in and of itself—is “property” that the Fourteenth Amendment protects.²⁵

Judicial decisions overwhelmingly support this broad conceptual notion of property.²⁶ Property rights are not created by the Constitution.²⁷ Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as

24. *Id.* at 1022-23.

25. *United States v. James Daniel Good Real Property*, 114 S. Ct. 492, 500-01 (1993); *Soldal v. Cook County, Ill.*, 113 S. Ct. 538, 543 (1992).

26. *Groenendyke v. Fowler*, 215 N.W. 718, 719 (Iowa 1927)(the term “property” includes everything—“corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal . . .”).

27. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

state²⁸ or common law,²⁹ which cannot be ignored except for cause.³⁰ Regardless of the source, the standard for defining "property" is whether a person has a legitimate claim or right of entitlement to it.³¹

The common law emphasized bare possession of anything of value under a color of right.³² This possessory interest was based upon common law principles of contract and consideration. For example, a possessory right of a preemtor who died intestate passed to the administrator of his estate. The court determined that the purchaser had a property interest in such a right because the executed promissory note was held to be valuable consideration.³³

The doctrine of mutually explicit understandings expanded the traditional common law contract analysis and afforded constitutional protection to rights stemming from implied contracts.³⁴ The Court in *Bishop v. Wood* held that a constitutionally protected property interest in employment arose from an implied contract between employer and employee.³⁵ Courts, however, have restricted the use of mutually explicit understandings to the creation of property interests and rejected the notion that it can create liberty interests under the Fourteenth Amendment.³⁶

Moreover, as the relationship between society and government has become more complex, courts have shifted their focus from contract to entitlement as a basis for property rights. Accordingly, a state employee has a legitimate claim of entitlement to continued employment absent suffi-

28. *Id.* at 577.

29. *Harris v. Johnson*, 134 P. 1048, 1050 (Wash. 1913).

30. *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 11-12 (1978); *Goss v. Lopez*, 419 U.S. 565, 573-74 (1975); *Roth*, 408 U.S. at 576-78.

31. *Roth*, 408 U.S. at 577.

32. *Harris*, 134 P. at 1050.

33. *Burch v. McDaniel*, 3 P. 586 (Wash Terr. 1881).

34. *Jago v. Van Curen*, 454 U.S. 14, 17 (1981)(quoting *Board of Regents v. Roth*, 408 U.S. 564, 601 (1972)).

35. *Bishop v. Wood*, 426 U.S. 341, 344 (1976). *See also Perry v. Sindermann*, 409 U.S. 593, 602 (1972)(explaining a second analogy which shows that the notion of "mutually explicit understandings" stems from the labor law principle that the tradition and history of an industry may modify the terms of a collective bargaining agreement).

36. *Jago*, 454 U.S. at 20 (rejecting the application of mutually explicit understandings to include liberty interests in early parole).

cient cause for discharge and may demand the procedural protections of due process.³⁷ Welfare recipients who have statutory rights to welfare may demand due process as long as they maintain the specified qualifications.³⁸ Similarly, the Fourteenth Amendment's Due Process Clause has been interpreted as preventing the states from denying potential litigants use of established adjudicatory procedures when such an action would be "the equivalent of denying them an opportunity to be heard upon their claimed rights."³⁹

Pawnbroking is a *legitimate* business. In this context, it is important to note that the rights of pawnbrokers are created and protected by state law. Pawnbroking is also an *important* business, economically and socially. It fills a special and necessary financial, even cultural, niche.

[P]awnshops deserve neither to be characterized as the scoundrels of the lending industry nor legislated out of existence. They perform a useful, and probably necessary function in our economic system, just as they have for centuries.

Pawnshops are frequented by persons from all strata of society, from Beverly Hills to the Bowery. There are as many reasons to use pawnshops as there are needs to borrow money. Pawnshops serve several distinct types of clients: persons of some economic wealth in urgent need of short term funds; persons operating on the fringes of legality with property to pledge but no other source of credit; artisans, petty traders, and persons periodically unemployed; and the ever present urban poor.

Consider the case of Mary. Mary is an elderly woman who lives on a fixed monthly income in Bradenton, Florida. Her limited monthly income stretches just so far, and often her money runs out before the end of the

37. *Connell v. Higginbotham*, 403 U.S. 207, 209 (1971).

38. *Goldberg v. Kelly*, 397 U.S. 254, 261-64 (1970). See also *Barry v. Barchi*, 443 U.S. 55, 64 (1979)(horse trainer's license protected); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 11-12 (1978)(utility service protected); *Mathews v. Eldridge*, 424 U.S. 319, 332-33 (1976)(disability benefits protected); *Goss v. Lopez*, 419 U.S. 565, 574-75 (1975)(high school education protected); *Bell v. Burson*, 402 U.S. 535 (1971)(driver's license protected).

39. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982)(quoting *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971)).

month. When it does, she visits her local pawnshop to pawn some of her jewelry for a little extra money to see her through until the next check. When it finally arrives, she redeems her jewelry, keeping it in reserve for the next tight squeeze. Another example involves a woman, all alone in a strange city, who loses her purse. Stranded with no money, she is able to pawn her watch and thus raise enough money to return home.

While most of the sums loaned on pawns are small, usually less than fifty dollars, some are relatively large—one Chicago pawnbroker loaned a business executive \$65,000 to clinch a fast-breaking business deal; presumably, there was no time for this individual to follow more conventional loan procedures. For years in New York City, just across Fifth Avenue from Tiffany's, there existed a pawnshop for the well-to-do.

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Pawnshops are a ready source for quick cash to remedy a short term liquidity crisis: for example, when the student loan check will not arrive for three more weeks, but the textbooks are needed now. The loan is immediate and relatively anonymous; there is no credit investigation and there is none of the embarrassment or chiding that comes when parents or friends are asked for money. There is not even a requirement that the loan be paid back—no harassing phone calls or letters, and no danger of a ruined credit rating.

“If a pawn loan on a watch goes bad, we sell the watch, and we're glad to see the customer next time If a bank loan goes bad, they sue the guy, ruin his credit rating for life and call him a deadbeat the next time. You tell me which is more humane.”⁴⁰

Indeed, not only is the business of pawnbrokers legitimate and useful, but more importantly, virtually all of a pawnbroker's business transactions involve the true owners of the property who transfer their property—their ownership interests—to the pawnbroker. Pawnbrokers, therefore, deserve the *same presumption* every other person enjoys that possession of property implies legal right to the

40. Jarret C. Oeltjen, *Pawnbroking on Parade*, 37 BUFF. L. REV. 751, 752-53 (1988-89)(quoting Daniel Pedersen, *Pawnshops Strike Gold*, NEWSWEEK, March 16, 1987, at 53).

property. Pawnbrokers deserve the *same procedural due process* that safeguards possession and presumptive ownership.

Even in the rare case in which a pawnbroker's transferor is not the true owner and acts wrongfully toward the true owner, the pawnbroker can sometimes acquire good title to the property *even as against the true owner*. A good example is the case in which the pawnbroker buys goods that were purchased with a bad or hot check—that is, a check that is dishonored for insufficient funds or for some other reason. The buyer's title to the goods is voidable, and the buyer's transferee generally gets no better title. The result is that the original seller can reclaim the goods from the buyer or the buyer's transferee or recover damages for conversion of the property.⁴¹ The transferee keeps the property, however, and is not liable for its value if the transferee is a good faith purchaser for value. In this event the transferee gets good title—that is, the transferee acquires the original seller's title.⁴²

To illustrate, suppose that S sells a diamond ring to B. The parties intend a cash transaction, and B pays the price with a check. The check bounces. S is entitled to recover the ring from B, but B has resold it to T. T paid good money for the ring without any notice of S's claim. S cannot recover the property or its value from T. T equally prevails against S's insurer or anyone else derivatively asserting S's interest. S's interest in the property now belongs to T as against the whole world. The result is equal—exactly the same—when T is an innocent pawnbroker.⁴³ Nothing inherent in status or circumstances prevents a pawnbroker from being a good faith purchaser for value.

A pawnbroker also acquires the true owner's title to goods in the different case in which the true owner authorizes a person to act as agent for sale of the property and

41. See U.C.C. §§ 2-507, 2-511 (1990); *Burk v. Emmick*, 637 F.2d 1172 (8th Cir. 1980).

42. U.C.C. § 2-403(1) (1990); *Farm Bureau Mut. Ins. Co. v. Wright*, 686 S.W.2d 778, 782 (Ark. 1985)(subsequent buyer of grain prevailed when grain was resold after check for price was dishonored).

43. *National Pawn Brokers Unlimited v. Osterman, Inc.*, 500 N.W.2d 407, 411 (Wis. Ct. App. 1993).

this person sells the property to the pawnbroker. The sale is effective against the true owner—and her interest passes to the pawnbroker—even if the agent absconds with the proceeds.⁴⁴

These cases illustrate occasions when a pawnbroker's possession of property corresponds to an absolute right to possession or absolute legal ownership—a claim good against the true owner as well as the rest of the world—even when the transferor of the property acted wrongfully toward the true owner. That these occasions arise bolsters the strength of possession as evidence of ownership and justifies even more the need for due process when the state takes property from a pawnbroker.

The taking that is constitutionally offensive is not only a police sale of property that has been seized from a pawnbroker.⁴⁵ Equally offensive is the seizure itself when the purpose is to return the property to its “true owner.” Protecting against the possibility of mistake is an important reason for due process. “[T]he procedural protections of the Fourteenth Amendment apply . . . regardless of the ultimate outcome of a hearing on the final entitlement to the possession and ownership of the property.”⁴⁶ As explained by the Federal District Court in Florida, a true owner's interest in property prevails over the pawnbroker's claim

44. See RESTATEMENT (SECOND) OF AGENCY § 307(1)(a) (1958).

45. This taking certainly violates procedural due process. Additionally or alternatively, it may also amount to an unconstitutional taking of private property without just compensation. U.S. CONST. amend. V. The Fifth Amendment Takings Clause applies to the states through the Fourteenth Amendment. *Chicago, Burlington & Quincy R.R. Co. v. Chicago*, 166 U.S. 226, 236 (1897) (the Due Process Clause enjoined by the Fourteenth Amendment requires compensation to be made or adequately secured to the owner of private property taken for public use under the authority of a state). The Supreme Court has recently given teeth to the Takings Clause by analyzing state regulations under a “rough proportionality” test. In order to pass constitutional muster, state and local governments must make an individualized determination that land use regulations relate both in nature and extent to the impact of the property development. *Dolan v. City of Tigard*, 114 S. Ct. 2309, 2319-20 (1994).

46. *G & G Jewelry, Inc. v. City of Oakland*, 989 F.2d 1093, 1098 (9th Cir. 1993). Moreover, “[t]he right to be heard does not depend upon an advance showing that one will surely prevail at the hearing. ‘To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.’” *Fuentes v. Shevin*, 407 U.S. 67, 87 (1972).

only after there has been a judicial determination of property rights. Until the lawful owner can judicially establish his superior rights, the possessory interest held by the pawnbroker entitles him to continued retention of the property. The issue is the pawnbroker's right, or lack thereof, to have his claim to the pawned property tested prior to the forced surrender of the goods.⁴⁷

Accordingly, it is constitutionally essential beforehand—prior to the taking—for an impartial decisionmaker to determine if the property actually belonged to the putative true owner and, even so, to decide further if the pawnbroker acquired the true owner's interest by force of estoppel or other law.⁴⁸ As the Ohio Supreme Court opined more than 30 years ago: “[i]t may be supposed that a reputable pawnbroker would voluntarily surrender pawned articles in his possession, where there is plain proof of their theft with a clear identification of the real owner; nevertheless, the pawnbroker is entitled to test ownership and possessory rights . . . if he so elects.”⁴⁹

It is no answer that the pawnbroker can appeal to the police and make her case to them as they are deciding whether to seize the property. Undeniably, the police generally act in good faith and fairly. They are skilled and competent in their jobs, but they are not impartial decisionmakers for constitutional purposes. “[T]he pawnbroker's opportunity of a ‘hearing’ before the police officer” does not satisfy due process because “a police official seizing pawned property is [not] an impartial deci-

47. *Florida Pawnbrokers and Secondhand Dealers Ass'n, Inc. v. City of Fort Lauderdale*, 699 F. Supp. 888, 891 (S.D. Fla. 1988)(emphasis added).

48. State law provides for judicial involvement in disposing of stolen property that has come into the possession of police. See ARK. CODE ANN. § 16-80-103(c), (d) (Michie 1987). This law, however, does not regulate the seizure of such property in the first instance. Moreover, the police commonly break the law by acting on their own, summarily, to return property seized from a pawnbroker to its putative true owner. The law preliminarily requires a finding of ownership by the magistrate, and this procedure is constitutionally lacking by failing to provide any notice to or other involvement by the pawnbroker who claims an interest and right to possession.

49. *Wacksman v. Harrell*, 189 N.E.2d 146, 150 (Ohio 1963).

sionmaker of the legal training sufficient to resolving conflicting claims to property."⁵⁰

A pawnbroker must be given the opportunity to present her case for ownership on the merits regardless of the likelihood for success.⁵¹ The fundamental question is not true ownership but whether adequate due process is afforded.⁵² The pawnbroker's constitutional rights are not protected by being offered an opportunity to be heard after the police seize the property.⁵³ A post-deprivation remedy relieves due process concerns only for random and unauthorized deprivations of property.⁵⁴ In *Wolfenbarger*, the court held that police pre-deprivation procedures pursuant to statute were neither random nor unauthorized.⁵⁵

II. WHY ARE POLICE OFFICERS PERSONALLY LIABLE FOR PURSUING THESE PRACTICES?

Federal law creates a cause of action for anyone whose constitutional rights have been violated by persons acting under color of state law. As section 1 of the Civil Rights Act of 1871, codified as 42 U.S.C. § 1983, provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the Dis-

50. *Florida Pawnbrokers and Secondhand Dealers Ass'n, Inc. v. City of Fort Lauderdale*, 699 F. Supp. 888, 893 (S.D. Fla. 1988).

51. *Winters v. Board of County Comm'rs*, 4 F.3d 848, 852 (10th Cir. 1993).

52. *Id.* at 856.

53. *Lavicky v. Burnett*, 758 F.2d 468, 473 (10th Cir. 1985).

54. *Hudson v. Palmer*, 468 U.S. 517, 531-33 (1984); *Parrat v. Taylor*, 451 U.S. 527, 541-44 (1981). Because a state cannot precisely predict when the loss will occur in a random or unauthorized deprivation of property, it would be impossible to provide a meaningful hearing beforehand.

55. *Wolfenbarger v. Williams*, 774 F.2d 358, 364 (10th Cir. 1985), *appeal after remand*, 826 F.2d 930 (10th Cir. 1987), *abrogated on other grounds*, *Horton v. California*, 496 U.S. 128 (1990).

trict of Columbia shall be considered to be a statute of the District of Columbia.⁵⁶

This action can be applied to local governments if “the action alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body’s officers,”⁵⁷ or if the action results from a governmental policy or custom which is so well settled as to have the force of law—“even though such a custom has not received formal approval through the body’s official decision making channels.”⁵⁸ In other words, local governments are liable under § 1983 when constitutional rights are violated as a result of “execution of a government’s policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy”⁵⁹ Sometimes, local governments can also be liable because the conduct of certain policymakers is attributed to government or because of failure to train officials.⁶⁰

Moreover, state and local government officials may be personally liable, in their individual capacities, under § 1983 for enforcing unconstitutional law, custom, or policy. They are “persons” within the meaning of § 1983 and, by such

56. 42 U.S.C. § 1983 (1988). For general reference regarding § 1983 actions, see IVAN E. BODENSTEINER & ROSALIE BERGER LEVINSON, *STATE & LOCAL GOVERNMENT CIVIL RIGHTS LIABILITY* (1987); ROBERT H. FREILICH & RICHARD G. CARLISLE, *SECTION 1983—SWORD AND SHIELD (CIVIL RIGHTS VIOLATIONS: THE LIABILITY OF URBAN, STATE AND LOCAL GOVERNMENT)* (1983); SHELDON H. NAHMOD, *CIVIL RIGHTS AND CIVIL LIBERTIES LITIGATION: THE LAW OF SECTION 1983* (3d ed. 1991).

57. *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 690-91 (1978). The United States Supreme Court has held that a § 1983 action against a state is not possible because § 1983 does not include the states within its scope. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989). State officials, however, can be sued personally under § 1983 in either state or federal court. For a detailed discussion of local government liability under § 1983, see Karen M. Blum, *Monell, DeShaney, and Zinermon: Official Policy, Affirmative Duty, Established State Procedure, and Local Government Liability Under Section 1983*, 24 CREIGHTON L. REV. 1 (1990); Michael J. Gerhardt, *The Monell Legacy: Balancing Federalism Concerns and Municipal Accountability Under Section 1983*, 62 S. CAL. L. REV. 539 (1989).

58. *Monell*, 436 U.S. at 691.

59. *Id.* at 694.

60. *Collins v. Harker Heights*, 112 S. Ct. 1061, 1068 (1992); *City of Canton v. Harris*, 489 U.S. 378, 388 (1989).

enforcement, are themselves guilty of depriving citizens of their constitutional rights in violation of § 1983. Thus, in *Wolfenbarger v. Williams*⁶¹ a pawnbroker sued the city, city police officers, chief of police, district attorney, and assistant district attorney under § 1983 because the police seized allegedly stolen property from the pawnbroker and returned the property to its putative true owner. The district court dismissed the action but the United States Court of Appeals for the Tenth Circuit reversed, finding that the conduct in this case “is precisely the abuse of official power that 42 U.S.C. § 1983 was designed to remedy.”⁶²

It is not a sufficient answer in cases such as these to say that the police act for the true owner. The Ninth Circuit has flatly declared that “[a] police officer acting as an agent for the alleged owner [in seizing stolen property from a pawnbroker] . . . would be inconsistent with United States and [state] constitutional due process precepts.”⁶³

Significantly, as to remedies, the court in *Wolfenbarger* added that:

[the pawnbroker] does not claim that her right to own the property was violated but rather, that her right to due process was violated. Although she may not recover the actual value of the items once she assumed the business risk of erroneously dealing with a thief, she may recover other damages for the violation of her right to due process. She may be entitled to nominal damages, punitive damages against some of the defendants, or injunctive or declaratory relief. The fact that she does not have all the remedies available to a true owner with legal title is therefore irrelevant to the threshold issue of whether she has some constitutionally protected property interest.⁶⁴

In a later opinion in the same case the Tenth Circuit decided that police officers summarily taking property from a

61. 774 F.2d 358 (10th Cir. 1985), *appeal after remand*, 826 F.2d 930 (10th Cir. 1987), *abrogated on other grounds*, *Horton v. California*, 496 U.S. 128 (1990).

62. *Wolfenbarger*, 774 F.2d at 365; *see also* *G & G Jewelry, Inc. v. City of Oakland*, 989 F.2d 1093 (9th Cir. 1993); *Florida Pawnbrokers and Secondhand Dealers Ass'n, Inc. v. City of Fort Lauderdale*, 699 F. Supp. 888 (S.D. Fla. 1988); *Justice v. Fabey*, 541 F. Supp. 1019 (E.D. Pa. 1982).

63. *G & G Jewelry, Inc.*, 989 F.2d at 1098.

64. *Wolfenbarger*, 774 F.2d at 362 (citations omitted).

pawnbroker do not enjoy qualified immunity from liability.⁶⁵ Moreover, even though a local government is itself generally immune from liability for punitive damages in a § 1983 action,⁶⁶ this immunity does not spread to the local government's officials. Therefore, government officials individually, including the police, can be personally liable for punitive damages.⁶⁷

III. A STATUTORY SOLUTION TO THE CURRENT POLICE PRACTICE

Legislation is required that addresses the interests of the relevant parties described above. The following proposed bill preserves a pawnbroker's interest in property seized by the police against everyone but a true owner who fails to claim the proceeds of her insurance policy. Where the true owner claims her property, the pawnbroker's interest is protected by a requirement that mandates that the convicted person's sentence or other sanction shall include restitution to the pawnbroker of any value that the pawnbroker gave for the property plus appropriate interest calculated from the time the value was given. Under the proposed statutory formulation, moreover, police departments may not profit from the seizure of property in a pawnbroker's possession nor may the pawnbroker interfere with the rights of the true owner unless the true owner recovers any loss she sustains from her insurance carrier. Importantly, this legislation does not ignore the need for police departments to seize and retain property for use in a criminal investigation or prosecution. It carefully prescribes a methodology for the use of stolen property by

65. *Wolfenbarger v. Williams*, 826 F.2d 930 (10th Cir. 1987), *abrogated in part on other grounds*, *Horton v. California*, 496 U.S. 128 (1990).

66. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).

67. *Smith v. Wade*, 461 U.S. 30 (1983)(guards and correctional officials); *Angarita v. St. Louis County*, 981 F.2d 1537 (8th Cir. 1992)(county police officials); *Larez v. City of Los Angeles*, 946 F.2d 630 (9th Cir. 1991)(police); *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553 (1st Cir. 1989)(police); *Melear v. Spears*, 862 F.2d 1177 (5th Cir. 1989)(deputy sheriff); *Guzman v. Western State Bank*, 540 F.2d 948 (8th Cir. 1976)(creditors who acted with police in seizing plaintiff-debtor's property); *Lewis v. Goodie*, 798 F. Supp. 382 (W.D. La. 1992)(police); *Farris v. Moeckel*, 664 F. Supp. 881 (D. Del. 1987)(sheriff and police chief).

the police, but prevents their long-term retention of it for their own financial gain in direct contravention of constitutional due process.

The proposed legislation provides as follows:

(a) Whenever any law enforcement officer has probable cause to believe that property held by a pawnbroker is stolen, the officer may place a hold on the property until the investigation or prosecution is completed, but not to exceed one (1) year.

(b) To place a hold on such property the officer shall give the pawnbroker verbal notice followed by written notice within forty-eight (48) hours at the time the hold is imposed that describes with specificity the item or items to be held. During the hold the pawnbroker shall not release or dispose of the property except upon court order or when needed by the appropriate authorities for purposes of criminal investigation or prosecution. In taking the property for such purpose the authorities shall give the pawnbroker a written receipt for the property that describes the property and records the time of the taking.

(c) Whenever property in possession of a pawnbroker is required for purposes of criminal investigation or prosecution, the pawnbroker upon reasonable notice shall produce the property and surrender possession of it to the appropriate authorities who request the property for such purposes. Whenever the property is no longer required for these purposes it shall be returned to the pawnbroker.

(d) If any prosecution results in the conviction of a person with respect to a wrongful taking of the property and if the pawnbroker returns the property to the victim or someone claiming through the victim, the convicted person's sentence or other sanction shall include restitution to the pawnbroker of any value that the pawnbroker gave for the property plus appropriate interest calculated from the time the value was given.

(e) A pawnbroker may acquire good title to property acquired for value in the ordinary course of business, except the pawnbroker's title is subject to the rights of any person having an interest in the property before the pawnbroker acquired it. The pawnbroker nevertheless is not required to return the property to

such a person, and is not otherwise liable to him, unless the person is entitled to possession as against the pawnbroker and the person provides an affidavit to the effect that the person:

(1) has not and will not claim insurance or other compensation for loss of the property,

(2) has sought a warrant for the arrest and prosecution of persons who wrongfully took the property, and

(3) will cooperate fully in any investigation and prosecution with respect to the taking.

The proposed legislation recognizes that it is not enough to say that current police practices are unconstitutional without also recognizing the necessity of legislation. If certain police practices are unconstitutional, the remedy is usually through courts by means of commencing legal action. This presents two major hurdles for enforcing one's rights. First, only merchants sophisticated in the areas of constitutional law will realize that their rights were violated. Second, even if one realizes an action exists, the miniscule dollar value of an illegal seizure often does not merit bringing a legal action. Merely recognizing the unconstitutionality of current practices without providing statutory standards by which to judge the actions of policing authorities essentially leaves the pawnbroker in a position with a legal cause of action but often without being able to obtain a remedy in a practical manner.

The proposed law balances the interests of law enforcement, the person who has their goods stolen, and the pawnbroker. Section (a) codifies and applies the familiar "probable cause" standard that police must use in a variety of other situations such as searches. Section (b) balances the interests of law enforcement and the pawnbroker by requiring notice in order to place a hold while also being flexible by allowing verbal notice to be sufficient during the first forty-eight (48) hours. Section (c) requires the pawnbroker to comply with criminal proceedings. Section (d) provides a remedy to the pawnbroker in the form of restitution. Section (e) codifies the concept that a pawnbroker can have good title so long as the property was acquired for value and in good faith.

The law will reduce the amount of property confiscated and never returned. Correspondingly, this will lower a pawnbroker's costs and risk in an overall pawn transaction. The law fosters an environment in which the pawnbroker is able to charge less on each transaction and still achieve the same profit margin while recognizing and protecting the interests of a person whose property is stolen and finds its way into a pawnshop.

CONCLUSION

It is a frequent police practice to seize, retain, and dispose of the property of pawnbrokers without prior notice and an opportunity to be heard. This article contends that a pawnbroker's interest in property disposed of by the police should be preserved against everyone but a true owner who does not claim the proceeds of her insurance policy. Police departments may not profit from the disposition of property in a pawnbroker's possession. To effectuate such a practice, this article formulates a novel statutory solution which accommodates the interests of all the relevant parties by specifically providing that a pawnbroker has a superior property interest in goods in her possession with regard to everyone but the true owner.

APPENDIX

Listed below are the pawnbroker statutes in all fifty states and the District of Columbia.

- ALA. CODE §§ 5-19A-1 to -20 (Supp. 1994)
ALASKA STAT. §§ 08.76.010 to .040 (1991)
ARIZ. REV. STAT. ANN. § 6-652 (1994); §§ 44-1621 to -1629 (1994)
ARK. CODE ANN. § 12-12-103 (Michie Supp. 1993); § 14-54-103 (Michie 1987); §§ 18-27-201 to -204 (Michie 1987 & Supp. 1993)
CAL. FIN. CODE §§ 21000 to 21306 (West Supp. 1994)
COLO. REV. STAT. ANN. §§ 12-56-101 to -104 (West 1990)
CONN. GEN. STAT. ANN. §§ 21-39 to -47 (West 1985 & Supp. 1994)
DEL. CODE ANN. tit. 24, §§ 2301 to 2318 (1987)
D.C. CODE ANN. §§ 2-1901 to -1919 (1994)
FLA. STAT. ANN. §§ 538.03 to .17 (West Supp. 1994)
GA. CODE ANN. §§ 44-12-130 to -137 (1982); §§ 44-14-403, 44-14-408 (Supp. 1994)
HAW. REV. STAT. §§ 445-131 to -136 (Supp. 1992)
IDAHO CODE § 63-2313 to -2314 (1989)
ILL. ANN. STAT. ch. 205, para. 510/0.01 to /11 (Smith-Hurd 1993)
IND. CODE ANN. §§ 28-7-5-1 to -38 (Burns 1986 & Supp. 1994)
IOWA: No applicable statute
KAN. STAT. ANN. §§ 16-706 to -722 (1988 & Supp. 1993)
KY. REV. STAT. ANN. §§ 226.010 to .990 (Michie/Bobbs-Merrill 1991)
LA. REV. STAT. ANN. §§ 37:1781 to :1809 (West Supp. 1994)
ME. REV. STAT. ANN. tit. 30-A, §§ 3960 to 3964-A (West Supp. 1993)
MD. CODE ANN., BUS. REG. §§ 12-101 to -601 (1992 & Supp. 1994)
MASS. ANN. LAWS ch. 140, §§ 70-85 (Law. Co-op. 1986 & Supp. 1994)
MICH. COMP. LAWS ANN. §§ 446.201 to .209 (West 1989)
MINN. STAT. ANN. § 471.924 (West 1994); § 609.81 (West 1987)

- MISS. CODE ANN. §§ 75-67-301 to -343 (Supp. 1993)
MO. ANN. STAT. §§ 367.011 to .050 (Vernon Supp. 1994);
§ 568.070 (Vernon 1979)
MONT. CODE ANN. §§ 31-1-401 to -407, § 7-21-2120, § 7-21-4201, §§ 7-21-4207 to -4208, § 45-5-623 (1993)
NEB. REV. STAT. §§ 69-201 to -210 (1990)
NEV. REV. STAT. §§ 646.010 to .060 (1991)
N.H. REV. STAT. ANN. §§ 398:1 to :14 (Repl. 1983)
N.J. REV. STAT. ANN. §§ 45:22-1 to :22-34 (West 1978 & Supp. 1994)
N.M. STAT. ANN. §§ 56-12-1 to -16 (Michie 1986)
N.Y. GEN. BUS. LAW §§ 40 to 55 (McKinney 1988 & Supp. 1994)
N.C. GEN. STAT. §§ 91A-1 to -14 (1989)
N.D. CENT. CODE § 40-05-01(26) (Supp. 1993)
OHIO REV. CODE ANN. §§ 4727.01 to .99 (Anderson 1994)
OKLA. STAT. ANN. tit. 59 §§ 1501 to 1515 (West 1989 & Supp. 1994)
OR. REV. STAT. §§ 726.010 to .990 (1989)
PA. STAT. ANN. tit. 63, §§ 281-1 to -32 (1968 & Supp. 1994)
R.I. GEN. LAWS §§ 19-26-1 to -19 (1989)
S.C. CODE ANN. §§ 40-39-10 to -160 (Law. Co-op Supp. 1993)
S.D. CODIFIED LAWS ANN. §§ 37-16-1 to -5 (1994)
TENN. CODE ANN. §§ 45-6-201 to -221 (1993 & Supp. 1994)
TEX. REV. CIV. STAT. ANN. art. 5069-51.01 to -51.19 (West 1987 & Supp. 1994)
UTAH CODE ANN. §§ 11-6-1 to -4 (1992)
VT. STAT. ANN. tit. 9, §§ 3861 to 3871 (1993)
VA. CODE ANN. §§ 54.1-4000 to -4014 (Michie 1991)
WASH. REV. CODE ANN. §§ 19.60.010 to .901 (West 1989 & Supp. 1994)
WEST VIRGINIA: No applicable statute
WIS. STAT. ANN. § 134.71 (West Supp. 1993)
WYO STAT. §§ 40-14-359 to -361 (1993)

