

STORAGE NAME: h1415.brc
DATE: March 31, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1415
RELATING TO: Florida Pawnbroking Act
SPONSOR(S): Representatives Silver, Lacasa, Lippman and others
STATUTE(S) AFFECTED: Chapter 539, F.S., 1996 Supplement
COMPANION BILL(S): CS/SB 1420 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS REGULATION AND CONSUMER AFFAIRS
(2) GENERAL GOVERNMENT APPROPRIATION
(3)
(4)
(5)

I. SUMMARY:

This bill amends the Florida Pawnbroking Act established by the 1996 Legislature. It encompasses many of the changes recommended by the Florida Law Enforcement Property Recovery Unit, a statewide association of law enforcement pawn units, private investigators and insurance investigators.

The bill:

- Modifies definitions;
- Limits licensure eligibility for certain persons;
- Modifies pawnbroker transaction forms;
- Authorizes claimants to inspect transaction forms;
- Provides for recovery of costs and attorney's fees by claimants;
- Modifies criminal penalties;
- Authorizes more restrictive local ordinances; and
- Removes public record exemption for certain information.

The Department of Agriculture and Consumer Services reports a minimal fiscal impact from these provisions.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Florida Pawnbroking Act, chapter 539, F.S., was enacted by the 1996 Legislature to separate pawnbroking regulations from secondhand dealer and title loan regulations found in ch. 538, F.S. After enactment, the Florida Law Enforcement Property Recovery Unit, a statewide association of law enforcement pawn units, private investigators and insurance investigators, recommended changes to various provisions to strengthen the regulatory aspects of the law.

Definitions

Four definitions do not appropriately describe the terms : (1) "Appropriate law enforcement official" prevents jurisdictional cross-over of sheriff and police deputies; (2) "Claimant" must know their stolen property was pawned and that is not always the case; (3) "Conveying customer" pawns property that is later identified as stolen; all pawns do not involve stolen property; and (4) "Pawnbroker" gives money based on property left as security; many pawnbrokers actually purchase property for resale.

Licensure eligibility

Anyone convicted of a felony or any crime directly relating to pawnbroking within the preceding 10 years may not become a licensed pawnbroker. Entering pleas or having adjudication withheld is not a basis for denying a license.

Pawnbroker Transaction Form

The Department of Agriculture and Consumer Services (DACS) approves the transaction form each pawnbroker uses to obtain the information required by law, including a fingerprint of the pawn customer. Law enforcement inputs that information into a data base to assist in recovering stolen goods. However, the forms vary making data entry difficult.

Additional information is needed on the forms either to assist law enforcement or to protect the pawn customer. Pawns mature after 30 days, however, there is an additional 30-day grace period before the pawn defaults. Pawnbrokers are not required currently to tell customers of this additional time. The section also considers it perjury for the pawn customer to give false information.

Recordkeeping

Pawnbrokers must keep transaction records for 180 days, give law enforcement a copy of the record, and keep pawned goods for 15 days. Law enforcement must have the original fingerprint, not a copy, for investigations. The law does not prohibit pawnbrokers from replacing stones in rings, buffing out engraving or otherwise altering pawned goods.

Pawn Service Charges

- Pawnbrokers may extend pawns for additional 30-day periods and must give pawn customers a written statement showing the new default date, the service charges paid for the extension and the services charges owed on the default date. Law enforcement representatives believe requiring disclosure of the service charges paid for the extension could be construed to allow pawnbrokers to charge fees exceeding those expressly limited by paragraphs (a), (c), and (e) of this section.

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- A pawnbroker's liability for property redeemed by mail and lost or damaged in shipment is limited to the amount advanced to the customer, and only if the pawnbroker chose to insure the goods. The pawn customer has little recourse to obtain the full value of the item.

Prohibited Acts

The section does not prohibit:

- Refusing to allow a person attempting to determine whether personal property was pawned to inspect pawn transaction records.
- Refusing to replace lost or damaged goods even if a customer pays the full amount due.
- Conducting title loan transactions at an adjoining location, though they are prohibited at the same location.
- Operating pawnshops on a 24 hour basis. Law enforcement officials state that required night closures would prevent some unscrupulous or illegal activity.
- Employing felons in a pawnshop, though there is a prohibition against felons owning pawnshops.

Right to Redeem Property

- A presumption is given to any person presenting the transaction form that the goods actually belong to that person, are redeemable by that person and the pawnshop is not liable to the original pawn customer if someone else redeems the customer's property. Section 539.001(8) requires pawnbrokers to place a physical description, thumb print and other identifying information about the pawn customer on the transaction form. Allowing virtually anyone to redeem property could open the door to unscrupulous pawnbroking activity.
- A pawn customer who loses the transaction form must notify the pawnbroker in writing, by certified or return receipt mail. Requiring a hand written statement, which could be hand delivered, would be less costly to the pawn customer.
- A pawnbroker's offer to replace lost or damaged goods is a defense in a prosecution initiated by a harmed pawn customer. This provision does not require a pawnbroker to actually replace the goods. It also refers to the legal action as a prosecution, which is an incorrect term when the section speaks to civil suits.

Claims Against Purchased or Pledged Goods (stolen property)

A person attempting to obtain the return of stolen property that was pawned and in the possession of a pawnbroker, may petition the court for return of the property: (1) 20 days after notifying the pawnbroker that the property is stolen; (2) including a law enforcement's stolen property report; and (3) providing the property is not under a hold order. These provisions create a catch-22: law enforcement places a hold order on property reported stolen, however, a person cannot petition for its return if the property is under a hold order. Additionally, the person who pawned the stolen property (possibly the thief) is responsible for repaying the property owner's and the pawnbroker's court costs and attorney's fees.

Hold Orders

- Hold orders on stolen property must include the owner's name. A person victimized by another crime, i.e., rape, that occurred in conjunction with the theft could have their name become public under this requirement.
- A pawnbroker is not required to release stolen property to law enforcement for use in court proceedings.

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- Rented or leased property that does not contain a permanent label is not considered stolen. A thief or unscrupulous pawnbroker could buff out or scrap off a label.

Criminal Penalties

- Unlicensed pawnbroking property is a third degree felony punishable by imprisonment of up to 5 years, paying a fine of up to \$5,000, or imprisonment of up to 10 years for an habitual offender. Law enforcement officials state that these penalties are too stringent for unlicensed activities, and s. 812.019, F.S., provides for trafficking in stolen property.
- Willful violations of the chapter constitute a second degree misdemeanor punishable by up to one year in prison, paying a fine of up to \$500, or the appropriate habitual offender penalty. Law enforcement officials stated that this penalty is too lenient.
- Pawning stolen property is a third degree felony under this section and a first degree felony under s. 812.019, F.S., Dealing in Stolen Property.

Conflicting Ordinances

Local governments may not enact more restrictive ordinances, except to restrict hours of operation between midnight and 6 A.M.

Confidentiality

All pawn transaction records given to law enforcement officials are confidential and exempt from the open records provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

B. EFFECT OF PROPOSED CHANGES:

This bill encompasses the changes recommended by the Florida Law Enforcement Property Recovery Unit.

Definitions

Four definitions are amended to better describe the terms: (1) "Appropriate law enforcement official" allows cross-over in jurisdictions; (2) "Claimant" does not require knowing stolen property was pawned; (3) "Conveying customer" does not restrict to stolen property; and (4) "Pawnbroker" includes purchasing property for resale.

Licensure Eligibility

Prohibits licensure of anyone pleading guilty or nolo contendere to a felony, or having adjudication withheld for a felony or a crime involving specific illegal activities, within the preceding 10 years.

Pawnbroker Transaction Form

- DACS must adopt a standardized form that includes required information on the front, including the pawn customer's home and work telephone numbers and work address to assist law enforcement in tracing stolen property.
- The default date of the pawn must appear on the form to ensure full financial disclosure to the customer. The customer must attest to ownership of the property.
- The perjury penalty is deleted and new penalties are added for pawn customers who give false information or identification: (1) 1st degree misdemeanor if received less than \$300 from the pawnbroker; or (2) 3rd degree misdemeanor if received \$300 or more.

Recordkeeping

Extends requirement for pawnbrokers to keep transaction forms to one year; requires pawnbrokers to give law enforcement the original forms that include the fingerprint of the pawn customer; provides that the pawnbroker's copy is sufficient for court proceedings; and requires pawnbrokers to maintain property in its original state.

Pawn Service Charges

- Deletes requirement for pawnbrokers to disclose the transaction fees paid when extending a pawn.
- Requires pawnbrokers to insure pawned property for its full value when the property is redeemed by mail.

Prohibited Acts

A pawnbroker is prohibited from:

- Refusing to give access to records to those attempting to locate stolen property. The new language gives very broad access.
- Claiming property was lost or damaged and not replacing it.
- Engaging in title loans at adjoining locations.
- Operating between 10 p.m. and 7 a.m.
- Employing felons convicted within the preceding 10 years, or persons pleading guilty or nolo contendere to or having adjudication withheld for certain crimes committed during the preceding 10 years.

Right to Redeem Property

- Restricts redemption to the pawn customer or the customer's authorized representative, to prevent unscrupulous pawnbrokers from selling pawned property.
- Customers no longer must use certified mail to notify the pawnbroker of a lost transaction receipt.
- Pawnbrokers must actually replace damaged or lost goods to use as a defense in a civil action.

Claims Against Purchased or Pledged Goods (Stolen property)

Corrects the problem relating to stolen property by deleting the reference to hold orders. It also requires the court to waive the filing fees for any petition to recover stolen property and provides that the pawnbroker is responsible for paying the property owner's costs and attorney's fees.

Hold Orders

- Recognizes the right of anonymity of certain crime victims in s. 119.07, F.S.
- Requires pawnbrokers to release property to requesting law enforcement officials for criminal investigations and court proceedings.
- Deletes the provision requiring rented or leased property to have a permanent label for consideration as stolen.

Criminal Penalties

- Reduces the criminal penalty for operating as an unlicensed pawnbroker from a 3rd degree felony to a 1st degree misdemeanor.
- Increases the criminal penalty for willfully violating the provisions of the chapter from a 2nd degree misdemeanor to a 1st degree misdemeanor.

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- Deletes the penalties for selling stolen property; law enforcement will then rely on s. 812.019, F.S., Dealing in Stolen Property, which carries penalties of 1st and 2nd degree felonies.

Conflicting Ordinances

Amends the section to allow local governments to enact more restrictive ordinances.

Confidentiality

Makes pawnshop records held by law enforcement officials subject to public records provisions.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 539.001, F.S., 1996 Supp., by modifying definitions; limiting further those who may not receive licensure; modifying pawnbroker transaction forms; allowing claimants to inspect transaction forms; providing for recovery of costs and attorney's fees by claimants; modifying criminal penalties; and authorizing more restrictive local ordinances.

Section 2. Repeals s. 539.003, F.S., 1996 Supp., removing exemption from public records provisions.

Section 3. Provides an effective date of October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The Department of Agriculture and Consumer Services reports that the fiscal impact is minimal.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take any action requiring fund expenditure.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

In the aggregate, this bill does not reduce county or municipality authority to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

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VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Legislative Research Director:

Rebecca R. Everhart

Lucretia Shaw Collins