

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1820

SPONSOR: Banking and Insurance Committee and Senator Campbell

SUBJECT: Pawnbroking

DATE: March 23, 1999 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Woodham</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill modifies the contents required in the pawnbroker transaction forms, and states that the sheriff, or the director of the department of public safety when there is no sheriff, is designated as the central repository for copies of all pawnbroker transaction forms collected in the county. It further provides that all law enforcement agencies must submit copies of all pawnbroker transactions on a transaction form approved by the sheriff or director of public safety if there is no sheriff. The time of submission and content of the form shall be determined in consultation with appropriate law enforcement agencies. The bill provides a definition for “amount financed” under the Florida Pawnbroking Act.

The bill requires that all pawnbrokers computerize their transaction records no later than July 1, 2005, regardless of whether a law enforcement agency has provided the pawnbroker with the computer hardware necessary for the electronic transfer of information. The computerized records must provide for the export of pawn transaction data in the format and manner specified by the sheriff for the inclusion in the statewide database. For audit purposes, the appropriate law enforcement official may manually collect the original or copy of the completed transaction forms for review, but must return the forms to the pawnbroker within 15 business days.

The bill provides for a statewide system for collecting and accessing pawnshop ticket and secondhand dealer information. The sheriffs will be responsible for the collection of all pawnshop tickets and secondhand dealer information and input it into their property recovery database. Approved law enforcement officials shall have access to the database. The county sheriff's department, or director of the department of public safety where there is no sheriff, including Dade County, will be the central repository for all pawnshop tickets and secondhand dealers in that county and the information shall be transferred into the Florida Sheriffs' Property Recovery Database and may be accessed through the Florida Sheriffs' Statewide Computer Networking System. Any costs or fees to be incurred by the Florida Department of Law Enforcement or Florida police chiefs must be approved jointly by FDLE and the Florida Police Chiefs' Association. The sheriffs, in consultation with FDLE and the Florida Police Chiefs' Association,

shall establish standards and requirements for transmitting and transferring the information into the statewide system and for access approval.

The bill deletes the requirement that pawnbrokers make all pledged and purchased goods and records relating to those goods available for inspection by the appropriate law enforcement official during normal business hours during the 30-day period after the pawn or purchase transaction.

Under the bill, a law enforcement official shall disclose to the alleged owner or claimant of disputed property, the name and address of the conveying customer and a description of the disputed property which has been pawned. The pawnbroker may not refuse to allow access to any records, including computer records, of pawnbroking transactions. The pawnbroker may not refuse to allow access to any area of the licensed business where pledged or purchased property is stored. Locations used for storage, other than the licensed premises, must be disclosed to the appropriate law enforcement officer.

The bill extends from 90 to 120 days, the period of time a law enforcement official may place a written hold order on the property he or she has probable cause to believe has been misappropriated.

The bill amends s. 538.04, F.S., to provide instructions for the electronic transfer of information regarding the transactions of secondhand goods. If the law enforcement agency provides the computer equipment and software to the secondhand dealer, the law enforcement agency retains ownership of the computer. If the transactions are electronically transferred, the dealer need not also submit the original secondhand goods transaction form. A law enforcement official may request the secondhand dealer to produce the original transaction form for purposes of a criminal investigation, and the secondhand dealer must produce this form within 24 hours of the request.

This bill substantially amends the following sections of the Florida Statutes: 539.001, 539.003, and 538.04.

II. Present Situation:

Pawnbrokers

Chapter 539, F.S., is the Florida Pawnbrokers Act. Pawnbrokers are regulated by the Division of Consumer Services of the Department of Agriculture and Consumer Services (defined as the “agency”). Section 539.001, F.S., provides for the application process and eligibility requirements for pawnbrokers. There are also provisions for the agency to suspend, revoke or demand surrender of a pawnbroker's license. The agency may also impose penalties for certain violations by the pawnbroker.

The pawnbroker transaction form, which is established pursuant to s. 539.001(8), F.S., and requires over 30 items relating to the pawnbroker, the goods, and the pledgor or seller, must be approved by the agency.

Section 539.001, F.S., sets forth the recordkeeping requirements for pawnbrokers. A pawnbroker is required to complete a pawnbroker transaction form and retain the form on the premises of the business for at least 1 year. Before the end of the business day, the pawnbroker must deliver to the appropriate law enforcement agency, the original transaction form for each transaction which occurred the previous day.

In those instances where the pawnbroker has computer equipment and the law enforcement agency provided appropriate software, the transaction may be electronically transmitted. If the transaction is electronically transmitted, the pawnbroker may retain the original form but, if a criminal investigation occurs, the original form must be delivered to the appropriate agency within 24 hours of a request.

Under s. 539.001, F.S., a pawnbroker or his agent may not refuse to allow the agency, an appropriate law enforcement official or the state attorney to inspect completed pawnbroker transaction forms during the ordinary hours of the pawnbroker's business. As defined by this chapter, an "appropriate law enforcement official" is the sheriff of the county in which the pawnshop is located, or if the pawnshop is in a municipality, the police chief of that municipality. A "claimant" is an individual who claims his or her property was misappropriated. This section states that the appropriate law enforcement official shall disclose to a claimant the name and address of the pawnbroker and the conveying customer, and a description of the pawned, purchased or consigned goods the claimant claims to be misappropriated.

Current law allows an appropriate law enforcement official to place a written hold order of 90 days on a piece of property in the possession of a pawnbroker, which the law enforcement official has probable cause to believe has been misappropriated. There are specific requirements regarding what must be included in a hold order and procedures are in place for removal or extension of the hold. There are criminal provisions for pawnbrokers who willfully violate s. 539.001, F.S.

Section 539.003, F.S., exempts records relating to pawnbroker transactions which have been delivered to appropriate law enforcement officials pursuant to s. 539.001, F.S., from public records requests under chapter 119. However, this does not prohibit the disclosure by the appropriate law enforcement officials of the name and address of the pawnbroker and conveying customer, or a description of the pawned property to the alleged owner of pawned property.

Secondhand Dealers

Section 538.04, F.S., sets forth the recordkeeping requirements for secondhand dealers, and the penalties for failure to comply with those requirements. Secondhand dealers must be registered with the Department of Revenue.

Within 24 hours of the acquisition of any secondhand good, a secondhand dealer shall deliver to the local law enforcement agency a record of the transaction on a form approved by the Department of Law Enforcement. The record must contain the following:

1. The time, date, and place of the transaction;

2. A complete and accurate description of the goods acquired, including any serial numbers, or other identifying marks; and
3. A description of the person from whom the goods were acquired including:
 - a. Full name, address, workplace, and home and work phone numbers;
 - b. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks; and
4. Any other information required by the form approved by the department.

The secondhand dealer must require verification of identification, and the record must contain the type of identification exhibited, the issuing agency, and the identification number. The dealer must also obtain a statement from the seller verifying that the seller is the rightful owner of the goods or entitled to sell them. This section provides that any person who gives false verification of ownership or gives false identification to a secondhand dealer or pawnbroker and receives less than \$300 commits a first degree misdemeanor. The offense is a third-degree felony if the person receives more than \$300. Also, under s. 538.05, F.S., the records of a secondhand dealer are subject to inspection by any state or local law enforcement agency who has jurisdiction over the dealer.

III. Effect of Proposed Changes:

Section 1. Amends s. 539.001, F.S., the Florida Pawnbroking Act. The definition section of the act is amended to include the term “amount financed,” to be used interchangeably with “amount of money advanced” or “principal amount.” The subsection allowing for the imposition of penalties by the agency (Department of Agriculture and Consumer Services) is amended to remove the term “intent” from the subsection relating to fraud, as intent is a necessary element of fraud; therefore, the term “intentionally” is superfluous language.

The bill also requires several minor technical changes to be made to the pawnbroker transaction form, including the requirement that the seller or pledgor's thumbprint must be placed on each copy of the pawnbroker transaction form. The pawnbroker is not required to verify any information given verbally by the pledgor or seller. The clerk completing the pawnbroker transaction form must include his or her name, initials or employee identification number on the transaction form.

This bill amends the recordkeeping, reporting and holding period requirements for pawnbrokers under s. 539.001, F.S. The bill provides that the sheriff, as the chief law enforcement officer of the county, or the director of the department of public safety, when there is no sheriff (as in Dade County), is designated as the central repository for certain information from the pawnbroker transaction forms specified in s. 539.001(8)(b)1., 2., and 4., F.S., collected by law enforcement officials in the county. Such information includes the name and address of the pawnshop, a complete and accurate printed description of the pledged goods or purchased goods, and the date and time of the transaction. The sheriff or public safety director will determine a time frame and manner for collection of the information from the transaction forms.

The bill provides that the sheriff or public safety director, “based upon a showing of probable cause that a reported item has been misappropriated” may request and shall receive from the pawnbroker any additional information specified in s. 539.001(8)(b)3., 5., and 6., which includes

information related to the individual, such as name, address, phone number, date of birth, fingerprint, type of I.D. accepted, the amount of money advanced, and other related information. However, it is not clear under the bill to whom the sheriff or public safety director must make this showing of probable cause that a reported item has been misappropriated in order to obtain such additional information.

Regardless of whether the local law enforcement agency has provided the pawnbroker with the computer hardware needed to electronically transfer transaction form information, all pawnbrokers must computerize their records by July 1, 2005. The sheriff is to specify the file format and manner of export of the pawn transaction data for inclusion into the statewide database.

In the event of an audit, the appropriate law enforcement official may collect the original or a copy of the completed pawnbroker transaction forms for review, but they must be returned to the pawnbroker within 15 business days.

The bill provides that a statewide system be set up for collecting and accessing pawnshop ticket and secondhand dealer information. The system is to be administered by the sheriffs, and shall include the database known as the Florida Sheriff's Property Recovery Database. This database will be the officially recognized statewide database for all pawnshop ticket and secondhand dealer information required by law to be reported. Only authorized law enforcement officials shall have access to the database.

The bill specifies that the pawnbroker transaction form information initially transferred to the central database shall be the information specified in s. 539.001(8)(b)1., 2., and 4. Such information includes the name and address of the pawnshop, a complete and accurate printed description of the pledged goods or purchased goods, and the date and time of the transaction. The bill provides that the Florida Sheriffs Task Force, "based upon a showing of probable cause that a reported item has been misappropriated" may request and shall receive any additional information specified in s. 539.001(8)(b)3., 5., and 6., which includes information related to the individual, such as name, address, phone number, date of birth, fingerprint, type of I.D. ACCEPTED, the amount of money advanced, and other related information. However, it is not clear under the bill to whom the Task Force must make this showing of probable cause that a reported item has been misappropriated in order to obtain such additional information.

The bill provides that the sheriff is the designated central repository for pawnshop ticket and secondhand dealer information in the county. Any other law enforcement agency in the county who collects this information shall deliver it to the sheriff, in the manner prescribed by the sheriff. Upon receipt, the sheriff shall transfer the information into the Florida Sheriffs' Property Recovery Database. This database may be accessed through "FLASH," the Florida Sheriffs' Statewide Computer Networking System, or any other avenue approved by the sheriffs. If there are costs or fees to be incurred by FDLE or the Florida police chiefs, these must be approved by those entities. Together with FDLE and the Florida Police Chiefs' Association, the sheriffs shall establish the standards and requirements for transmitting and transferring the information into the statewide system and access approval. Data that is supplied to the sheriffs may not be resold or used to generate revenue for the sheriffs, who shall act only in the capacity of a repository for the data.

The bill would delete from subsection (9), "Recordkeeping; Reporting; Hold Period," the requirement that the pawnbroker make all pledged and purchased goods and records relating to the goods available for inspection by law enforcement during the 30-day holding period. However, this language has been modified and moved to subsection (12), "Prohibited Acts." Upon request of the alleged owner or claimant of the disputed property, the appropriate law enforcement official shall disclose to a claimant or alleged owner, the name and address of the pawnbroker and conveying customer, as well as a description of the disputed property that has been pawned, purchased or consigned. The pawnbroker may not refuse to allow access to any area of the licensed business location or any other location where pledged or purchased property is stored. The bill does not clearly state whether this unlimited access applies strictly to an appropriate law enforcement official or if it also applies to a claimant or alleged owner but appears to allow all such persons access. Any other location used for storage must be disclosed to the law enforcement officer.

Currently, and under the bill, any person who willfully violates s. 539.001, F.S., or makes a false entry in any transaction record, commits a misdemeanor of the first degree. The bill specifies that clerical or recordkeeping errors regarding any document or record required by this section do not constitute a willful violation subject to criminal penalties, but are subject to administrative remedies as provided in this act.

Section 2. Amends s. 539.003, F.S. This section clarifies and possibly narrows the current public records exemption and confidentiality provisions to specify that it does not prohibit the disclosure of a description of pawned, "purchased or conveyed" property to the alleged owner of pawned property.

Section 3. Amends s. 538.04, F.S., relating to the recordkeeping requirements of the Secondhand Dealers Act. The bill provides for secondhand dealers with computer capability, who have the appropriate software provided by the appropriate law enforcement agency, to electronically transfer transactions of secondhand goods. If the secondhand dealer does not have the necessary equipment for electronically transferring the information, the appropriate law enforcement agency may provide it to the secondhand dealer, but retain ownership of the computer. If the secondhand dealer transfers transaction information electronically, the dealer need not also deliver the original or copies of the secondhand goods transaction forms. During a criminal investigation, a law enforcement official may request that the secondhand dealer produce the original or a copy of the transaction form which was electronically transferred. The secondhand dealer is required to deliver this form to the appropriate law enforcement official within 24 hours of the request.

Section 4. The act shall take effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Requires the sheriff, as the chief law enforcement officer of the county, to be the central repository for pawn ticket and secondhand dealer transaction information. The bill also requires the sheriffs to set up a uniform database, called the Florida Sheriffs' Property Recovery Database.

B. Public Records/Open Meetings Issues:

The bill in Section 2 clarifies and possibly narrows, but does not expand, a current public records and confidentiality provision. (See Section 2, above.) Therefore, this does not constitutionally require a separate bill.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Initially, there will be a fiscal impact on the pawnbrokers, as they will be required to computerize their business transactions prior to July 1, 2005. The pawnbrokers will be required to keep written copies of their records, and enter the information into the computer system to be transferred to the database.

C. Government Sector Impact:

Startup costs of implementing a statewide sheriffs' database for property recovery are estimated to be minimal, according to the Florida Sheriff's Association Task Force, who has been developing the statewide database for the sheriffs. There are no initial costs estimated for the sheriffs. The Task Force received money from Lee County, which the county sheriff received in a forfeiture. This money is being used to pay for the hardware to house the information from the pawn transaction forms submitted to the sheriffs. The Task Force has not determined costs for upkeep of the system once it is implemented.

The bill provides that data that is supplied to the sheriffs may not be resold or used to generate revenue for the sheriffs, who shall act only in the capacity of a repository for the data. Therefore, there will be no user fees for sheriffs or police departments, and the cities and counties will not have to expend funds to implement this act. All of the sheriffs departments currently input pawn transaction data into their systems, as do many police

departments. Other police departments turn over their pawn transaction information to their local sheriff's department for input in their database. The Task Force asserts that having this information centralized will assist sheriffs and police departments in recovery of misappropriated pawned property.

The Task Force is building a statewide system, which will also house other databases in addition to the property recovery database. Some of these other databases may be used to generate revenue for the property recovery database. The Task Force has been building its system for 2 years.

The Task Force estimates that it will require six months to get the program set forth in the bill up and running. The Task Force has received hardware quotes and has selected a vendor for the hardware, but not the software.

Having a centralized database for use by all sheriffs, police departments, and other law enforcement agencies will help trace and track stolen property.

VI. Technical Deficiencies:

The bill provides that the sheriff, public safety director, or Task Force “based upon a showing of probable cause that a reported item has been misappropriated” may request and shall receive from the pawnbroker any additional information specified in s. 539.001(8)(b)3., 5., and 6., which includes information related to the individual, such as name, address, phone number, date of birth, fingerprint, type of I.D. ACCEPTED, the amount of money advanced, and other related information. However, it is not clear under the bill to whom the sheriff or public safety director must make this showing of probable cause that a reported item has been misappropriated in order to obtain such additional information.

VII. Related Issues:

None.

VIII. Amendments:

None.