

STORAGE NAME: h0555s2.brc

DATE: March 22, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: CS/CS/HB 555

RELATING TO: Secondhand Dealers/Stolen Property

SPONSOR(S): Committee on Business Regulation and Consumer Affairs and Committee and Law Enforcement and Crime Prevention and Representative Bloom

COMPANION BILL(S): SB 1820(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 8 NAYS 1
 - (2) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 10 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

The bill would authorize the Florida Sheriff's Association (association) to implement a statewide system for the collection of pawnshop and secondhand dealer information received from the local sheriff's offices throughout the state. This information would be stored in the "Florida Sheriffs' Property Recovery Database" and would be the statewide database for pawnshop and secondhand dealer information. Law enforcement officials approved by the Florida Sheriffs' Association would have access to information in the database as prescribed by the Florida Sheriffs' Association.

The bill also provides that when law enforcement supplies software to a secondhand dealer, the transactions of secondhand goods shall be electronically transmitted to the law enforcement agency. If the dealer does not have computer capabilities, the law enforcement agency may supply a computer and software for the purpose of electronic transfers, provided the secondhand dealer maintains the equipment.

The bill repeals the exemption for rental/purchase agreements from the provisions which provide remedies for the failure to make payments or to return rental property or equipment.

The Florida Department of Law Enforcement (FDLE) estimates that the provisions would create a non-recurring negative impact of (\$173,000) for programming costs to the agency.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Pawnbrokers - Record keeping Requirements

The provisions of chapter 539, F.S., regulate pawnbrokers through the Department of Agriculture and Consumer Services (DACS). These provisions require a pawnbroker to complete a pawnbroker transaction form and retain the form on the premises of the business for at least one 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 that occurred the previous day. In those instances where the pawnbroker has computer equipment and the law enforcement agency has provided appropriate software, the transaction may be electronically transmitted. When the transaction is electronically transmitted, the pawnbroker must retain the original form but, if a criminal investigation occurs, the form must be delivered to the appropriate agency within 24 hours. The pawnbroker transaction form must be approved by the DACS for design and formatting. The pawnbroker transaction form 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.

Secondhand Dealers

Chapter 538, F.S., regulates secondhand dealers which are defined in s. 538.03, F.S., to include pawnbrokers, secondhand stores, and consignment shops. Section 538.03(2), F.S., provides for a number of exceptions to the regulations imposed by the chapter.

Exceptions include garage sale operators, flea markets, motor vehicle dealers, and persons purchasing, consigning, or pawning secondhand goods ordered by mail, or computer assisted shopping.

Also, excluded from the regulations of Chapter 538, F.S., are items that are not specifically listed as "secondhand goods" or that are specifically excluded from the definition. Chapter 538 does not require any regulations for transactions in used goods, such as, furniture, pianos, costume jewelry, clothing, compact discs, video tapes, and coins.

Secondhand Dealers - Record keeping Requirements

A secondhand dealer must, within 24 hours of the acquisition of any secondhand good, 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:

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
 - c. Any other information required by the form approved by FDLE.

The secondhand dealer must further maintain the following:

1. A description of the government photo I.D. shown to the secondhand dealer; and
2. A statement by the seller verifying that the seller is the rightful owner of the goods.

Holding Period Required and Registration for Secondhand Dealers

A secondhand dealer may not dispose of any goods within 15 days of the date of acquisition, unless the person from whom the goods were obtained desires to redeem or repurchase the goods. Secondhand dealers must also register with the Department of Revenue (DOR) for purposes of tax collection.

Holding Period Required and Registration for Pawnbrokers

A pawnbroker may not dispose of any goods within 60 days of the date of acquisition, unless the person from whom the goods were obtained desires to redeem or repurchase the goods. Pawnbrokers must register with both the DACS and the DOR.

Penalties for Violations of Chapter 538

Any person who gives false verification of ownership or gives false identification to a secondhand dealer and receives less than \$300 commits a misdemeanor. The offense is a third-degree felony if the person receives more than \$300.

A secondhand dealer who violates any of the requirements of Chapter 538, F.S., including the reporting, holding, or registration requirements, commits a misdemeanor of the first degree punishable by a maximum of a year in jail.

Florida Sheriffs' Association

The Florida Sheriffs Association is a private, not-for-profit, statewide association which is supported by dues of it's membership.

Chapter 812, F.S.

Chapter 812, F.S., relates to "Theft, Robbery, and Related Crimes", generally. Section 812.155, F.S., addresses remedies for the failure to make payments for or return rental property or equipment. These provisions outline several evidentiary presumptions regarding fraudulent intent. Penalties include misdemeanors of the second degree for goods valued under \$300 and felonies of the third degree for goods valued at \$300 or more. Section 512.155(7), F.S., excludes property and equipment from these provisions if the goods are subject to a rental/purchase agreement which allows the lessee to acquire ownership of the goods.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 555 would amend s. 539.001, F.S., to designate the sheriff, as the chief law enforcement officer of a county or the director of the Department of Public Safety, when there is no sheriff, as the repository of certain "pawn ticket"¹ information collected or received by other law enforcement personnel located in the same county. The information would be limited to records identifying the pawnbroker and the goods that have been pawned. The bill would further require, upon the request of the sheriff or director, law enforcement personnel to submit copies of pawnbroker information relating to the person pawning the goods.

The bill would authorize the association to implement a statewide system for the collection of pawnshop and secondhand dealer information. This information would be stored in the "Florida Sheriffs' Property Recovery Database" and would be the statewide database for pawnshop and secondhand dealer information. Law enforcement officials approved by the association would have access to information in the database as prescribed by the association.

Based upon a showing of probable cause, information relating to the person pawning the goods may be requested and received by the association. The association would be authorized to establish the standards and requirements for transmitting and transferring information into the system, as well as , the establishment of fees.

¹The term "pawn ticket" is not used in chapter 539, F.S., and the only reference to the term in the statutes is in s. 538.16, F.S. The term is not defined. The term "pawnbroker transaction form" is defined in s. 539.001(1)(j), as "the instrument on which a pawnbroker records pawns and purchases as provided in subsection (8)." A "ticket" is required to disclose rights for redeeming goods. A "form" is requires to include detailed information identifying the pawn transaction. As a common practice in the industry, the two terms are used interchangeably. As a statutory requirement, there may be a distinct difference between the terms.

The bill would amend provisions relating to secondhand dealers in chapter 538, F.S., to provide that when an law enforcement agency supplies software to a secondhand dealer, the transactions of secondhand dealer be electronically transmitted to local law enforcement. If the secondhand dealer does not have computer capabilities, local law enforcement may supply the secondhand dealer a computer and software for the purpose of electronic transfers, provided the secondhand dealer maintains the equipment in working order. If transactions are electronically transmitted, the secondhand dealer is not required to deliver the original copy of the transaction form to the appropriate law enforcement agency but must retain the original form.

The bill repeals the exemption for rental/purchase agreements from the provisions which provide remedies for the failure to make payments or to return rental property or equipment.

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. The bill requires a county sheriff to transmit pawnbroker information to the Florida Sheriffs' Association. The association is authorized to determine the method for transmitting the information. The accumulation and transmission of this information would create additional administrative burdens for the sheriffs' office. Other law enforcement agencies in the county would incur the costs associated with the transmission of pawnbroker and secondhand dealer information to the sheriffs' office.

(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?

No.

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. STATUTE(S) AFFECTED:

Sections 538.04, 539.001 and 812.155, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s.539.001, F.S., authorizing the Florida Sheriff's Association to implement a statewide system for the collection of pawnshop and secondhand dealer information received from the local sheriff's offices throughout the state and to store the information in the "Florida Sheriffs' Property Recovery Database." Providing that when law enforcement supplies computer software to a secondhand dealer, the transactions of secondhand goods shall be electronically transmitted to the law enforcement agency.

Section 2. Repeals s. 812.155(7), F.S., removing the exemption for rental/purchase agreements from the provisions which provide remedies for the failure to make payments or to return rental property or equipment.

Section 3. Provides that the act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

FDLE estimates a non-recurring cost for programming in the amount of <\$173,000>.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

<\$173,000>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

A cost could be incurred if the Sheriff provides a computer to a secondhand dealer.

2. Recurring Effects:

A transmission cost could be incurred when the pawnbroker or secondhand dealer electronically transmit the forms to the Sheriff. The Sheriff's Department or could also incur cost related to the transmission and recording of the data. Other law enforcement agencies in the county would incur the costs associated with the transmission of pawnbroker and secondhand dealer information to the sheriffs' office.

3. Long Run Effects Other Than Normal Growth:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

If an appropriate law enforcement agency provides the secondhand dealer with a computer, then the secondhand dealer must maintain it which could result in a maintenance cost.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

Fiscal comments provided by FDLE indicate that "FDLE's cost would be \$173,000 for programming. FDLE would provide a search of FCIC/NCIC [Florida Crime Information Center/National Crime Information Center] prior to storage on all pawned property dealing with guns."

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill requires a county sheriff to transmit pawnbroker and secondhand dealer information to the Florida Sheriffs' Association. The association is authorized to determine the method for transmitting the information. The accumulation and transmission of this information would create additional administrative burdens for personnel in the sheriffs' office. Other law enforcement agencies in the county would incur the costs associated with the transmission of the pawnbroker and secondhand dealer information to the sheriffs' office.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of counties or municipalities to raise revenues.

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

The bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Business Regulation and Consumer Affairs

At the meeting on March 22, 1999, the Committee on Business Regulation and Consumer Affairs adopted a committee substitute to the committee substitute which was adopted by the Committee on Law Enforcement and Crime Prevention.

The CS for CS differs by repealing subsection (7) of s. 812.155, F.S. This provision currently excludes property and equipment which are subject to a rental/purchase agreement from the penalty provisions for nonpayment or the failure to return the property to the lessor.

Committee on Law Enforcement and Crime Prevention

At the meeting on March 9, 1999, the Committee on Law Enforcement and Crime Prevention adopted two amendments, as follows:

Committee Substitute #1: On page 6, lines 15 through 26 remove from bill: all of said lines and insert in lieu thereof:

Pawnbroker and the appropriate law enforcement official. The sheriff, as chief law enforcement officer of the county, or the director of the department of public safety when there is no sheriff, is designated as the central repository for pawn tickets information collected by the appropriate law enforcement official in the county as provided in subsection (8) (b) 1., 2. And 4. Upon request by the sheriff or public safety director, the appropriate law enforcement official shall submit the pawn ticket information as provided in subsection (8) (b) 1., 2. and 4. to the sheriff or public safety director within a time and in such form as is determined by the sheriff or public safety director after consultation with the appropriate law enforcement official. 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 any additional information pertaining to such item as provided in subsection (8) (b) 3., 5. And 6. Or may request and receive a copy of the transaction form.

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Committee Substitute #2: On page 8, line 28, after the period insert :

Pawn ticket information initially transferred to the Florida Sheriff's Association Property Recovery Data Base shall be the information as contained in subsection (8) (b) 1., 2. And 4. The Florida Sheriff's Task Force, based upon a showing of probably cause that a reported item has been misappropriated, may request and shall receive any additional information pertaining to such items as contained in subsection (8) (b) 3., 5. And 6.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Allen Mortham Jr.

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

Staff Director:

Alan W. Livingston

Rebecca R. Everhart