

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/CS/SB 1598

SPONSOR: Judiciary and Criminal Justice Committees and Senator Campbell

SUBJECT: Pawnbrokers and Secondhand Dealers

DATE: March 28, 2000 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gomez</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill establishes a database of pawnshop transactions and secondhand-goods acquisitions within the Department of Law Enforcement (FDLE). The local law enforcement agency responsible for collecting pawnshop transaction or secondhand-goods acquisitions records shall, as soon as practicable, transfer the information contained in the records to FDLE. A local law enforcement agency may access the database only for official criminal investigative purposes, subject to specified conditions. The bill requires FDLE to make an annual report to the Legislature regarding the database.

In addition, the bill codifies the 3 recommendations contained in the Senate Criminal Justice Committee’s Interim Project Report on Florida’s pawnbroking laws, as follows:

- ▶ This bill amends s. 539.001(15), F.S., to provide a form petition which a claimant may file to initiate recovery of misappropriated property in the possession of a pawnbroker.
- ▶ This bill amends s. 539.001(15), F.S., to clarify that a criminal court judge is authorized to determine ownership and order return of property and appropriate restitution after proper notice of hearing is given to all parties, including the pawnbroker.
- ▶ This bill creates subsection (16), of s. 539.01, F.S., to require the Division of Consumer Services to develop a pamphlet explaining a victim’s rights to property recovery under s. 539.01(15), F.S.

The bill also creates subsection (17) of s. 539.001, F.S., to require the Division of Consumer Services to adopt by rule a disclosure form that contains various statements which explain a victim’s rights and responsibilities under the pawnbroking laws.

This bill creates section 943.0546, Florida Statutes, and amends the following section of the Florida Statutes: 539.001.

II. Present Situation:

The 1996 Legislature substantially revised the pawnbroking laws when it enacted the Florida Pawnbroking Act in chapter 539, F.S. Chapter 539, F.S., was subsequently amended in 1997 and 1999. There is no federal law regulating pawnshops.

Florida Pawnbroking Act regulates pawnshops. Chapter 539, F.S., contains numerous provisions, including:

- ▶ Pawnbrokers are required to obtain a license, for each pawnshop, from the Division of Consumer Services of the Department of Agriculture,
- ▶ Pawnbrokers must pay a \$300 license fee, which must be renewed annually; the fee substantially subsidizes the Division's pawnbroking activities,
- ▶ The Division is authorized to suspend or revoke a licence and to levy administrative fines; criminal penalties are authorized for certain violations,
- ▶ Pawn service charges are limited to a total of 25 percent per month,
- ▶ Victims who believe that a pawnbroker is in possession of property stolen from him or her may file a petition in civil court (court filing and process service fees are waived) and,
- ▶ Local governments are prohibited from enacting ordinances that are more restrictive than the Act.

In addition, chapter 539, F.S., contains record-keeping requirements. The pawnbroker must complete a transaction form at the time of a pawn, specifying detailed information about the item pawned, identifying information about the person pawning the item, including a thumbprint. The transaction form must also disclose pawn finance terms.

Database bill did not pass 1999 Legislature; interim study conducted. The pawnbroker must maintain a copy of the transaction forms for 1 year and deliver the forms on a daily basis to the appropriate local law enforcement official. s. 539.001(9), F.S. Chapter 538, F.S., which regulates secondhand dealers, provides an analogous provision requiring the completion of transaction forms and the delivery on a daily basis to the local law enforcement official. s. 538.04, F.S.

Chapter 539, F.S., provides for electronic transferring of pawn transactions when a local law enforcement agency supplies the appropriate software and the pawnbroker owns or is provided the necessary computer hardware. The 1999 Legislature considered but failed to pass a bill creating a statewide database for certain pawn transaction information to be accessed by law enforcement.

During the 1999-2000 interim, the Criminal Justice Committee led an interim study which reviewed the Florida Pawnbroker Act and considered whether reports that Florida's pawnbroking laws were too lax and placed unfair burdens on the victims of stolen property were well founded.

See Fla. Sen. Crim J. Comm., A REVIEW OF FLORIDA'S PAWNBROKING LAW, Interim Project Report 2000-26, <http://www.leg.state.fl.us/session/2000/Senate/workprogram/pdf/00-26cj.pdf>.

Chapter 539 provides a procedure for recovery of stolen property from pawnshops. When a property crime victim is able to locate items stolen from him or her in a pawnshop, chapter 539, F.S., provides a procedure for recovering the property. See s. 539.001(15), F.S.

A person (claimant) who believes property stolen from him or her has been sold or pledged to a pawnbroker is entitled to the following process:

- ▶ First, the claimant must notify the pawnbroker by either certified mail or in person of the claim. The notice must contain a description of the property.
- ▶ Next, if the claimant and pawnbroker do not resolve the matter within 10 days from notice, the claimant may petition the court to order return of the property. The pawnbroker is required to hold the property until the dispute is settled.
- ▶ The court is required to waive the filing fee for the petition to recover property and the sheriff shall waive the service fees.
- ▶ If the court rules in favor of the claimant, he or she may recover costs from the pawnbroker, including reasonable attorney's fees.
- ▶ If the conveying customer is convicted, the court shall order the conveying customer to repay the pawnbroker the full amount the conveying customer received, plus all applicable pawn service charges. The conveying customer is also liable for paying the pawnbroker's attorney's fees and costs.
- ▶ The claimant is liable for the pawnbroker's costs if the court finds against the claimant or finds the claimant failed to comply with the notice provisions described above.

Section 539.001(10), F.S., provides that all items delivered to a pawnbroker in a pawn *or* purchase transaction must be securely stored and maintained for 30 days after the transaction. The pawnbroker must hold a *pawned* item for an additional 30 days after the maturity date, unless the item has been redeemed earlier.

Consequently, if an item is pawned immediately after it has been stolen, that item will be held by the pawnbroker for a minimum of 60 days before it is placed on the floor for resale. A victim who decides to search local area pawnshops for property recently stolen from him or her will not see it unless the pawnshop owner offers to show him the newly pawned goods which he or she is required to hold. However, a law enforcement officer may inspect all pledged or purchased goods. See s. 539.001(12)(b), F.S.

In addition, s. 539.001 (16), F.S., authorizes a law enforcement official who has probable cause to believe that property in the possession of a pawnbroker is misappropriated, to place a written hold order on the property. The order may be up to 90 days, unless extended by court order.

Due process requires notice and hearing to pawnbroker when ownership is disputed. The civil petition process contained in chapter 539, F.S., is the result of a federal court case holding a prior Florida statute unconstitutional. This statute, s. 715.041(2), F.S. (1988), allowed an officer to recover property a victim claimed was in possession of the pawnbroker and return it directly to the victim. In striking down this statute, a federal court found that pawnbrokers have a possessory interest in goods pawned and until lawful ownership can be established, “the possessory interest held by the pawnbroker entitles him to continued retention of the property.” *Florida Pawnbrokers and Secondhand Dealers Association, Inc. v. City of Ft. Lauderdale*, 699 F. Supp. 888, 891 (S.D. Fla. 1988). The statute violated the procedural due process guarantees in the Fourteenth Amendment because it required forced surrender of property without notice and hearing by an impartial decision maker.

Consequently, a pawnbroker has a right to ownership determined through a hearing process. As one court has commented: “[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 in a civil action if he so elects.” *Wacksman v. Harrell*, 189 N.E.2d 146, 150 (Ohio 1963).

Form petition. The secondhand dealers statute, chapter 538, F.S., contains a form petition which a victim may use to initiate a court action to recover stolen property from a secondhand dealer. See s. 538.08, F.S. However, chapter 539, F.S., which regulates pawnbrokers does not contain an analogous form. The interim project report found that victims are unaware of what form to file in order to initiate the pawnbroker property recovery process. See Interim Project Report 2000-26, at 8. The report included a recommendation to publish a form petition in chapter 539, F.S., in order to make it more convenient for victims to initiate the process on their own, if they choose not to hire a lawyer. *Id.*

State attorney motion. The secondhand dealers statute, chapter 538, F.S., provides that in addition to the civil petition for return of property, the state may file a motion as part of a pending criminal case related to the property to determine ownership and award appropriate restitution. See s. 538.08(4), F.S. However, chapter 539, F.S., which regulates pawnbrokers does not contain an analogous provision. Although s. 539.001(16)(e)2., F.S., appears to authorize it, the interim project report found that some criminal court judges and prosecutors have read chapter 539, F.S., to restrict the return of property remedy to civil courts through the civil petition process. See Interim Project Report 2000-26, at 8.

As a result, some victims have to go through a separate proceeding before a different judge in order to recover property from a pawnshop even though the criminal court judge has the case before him or her. The report included a recommendation that the Legislature clarify that a criminal court judge is authorized to determine ownership and order return of property and appropriate restitution after proper notice of hearing is given to all parties, including the pawnbroker.

Pamphlet explaining victim’s rights. As described above, a theft or burglary victim who believes property stolen from him or her was pawned has the right to recover the property from a pawnshop *without cost* pursuant to s. 539.01(15), F.S. In some cases victims are unaware that

Florida law provides a procedure for recovery of stolen property. The statute provides that after a victim notifies a pawnshop of a claim, the parties have 10 days to resolve the matter. If they do not resolve the matter within this time, victims have the right to a court hearing in which filing and service fees are waived. The interim project report found that a lack of knowledge about these procedures places victims at a disadvantage when they enter a pawnshop in search of stolen property. The report included a recommendation that the Legislature require the Division of Consumer Services to develop a pamphlet explaining a victim's rights to property recovery under s. 539.01(15), F.S. See Interim Project Report 2000-26, at 7.

III. Effect of Proposed Changes:

FDLE database established. This bill establishes a database of pawnshop transactions and secondhand-goods acquisitions within the Department of Law Enforcement. The bill provides as follows:

- ▶ The local law enforcement agency responsible for collecting pawnshop transaction or secondhand-goods acquisitions records shall, as soon as practicable, transfer the information contained in the records to the department.
- ▶ The format and manner of this information transfer will be established by the department in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association.
- ▶ Notwithstanding the requirements on pawnbrokers and secondhand dealers to deliver transaction records to the local law enforcement agency, a secondhand dealer or pawnbroker shall deliver or electronically transfer the transaction form to the department when authorized by the local law enforcement agency and after FDLE and the local law enforcement agency have entered into an agreement.
- ▶ A local law enforcement agency may access the database only for official criminal investigative purposes, subject to the following conditions:
 - ▶ a) The database may not be used for research or statistical purposes unrelated to official criminal investigative purposes.
 - ▶ b) The database may be checked for persons with active felony warrants or theft offenses.
 - ▶ c) The database may also be checked in a criminal investigation for an enumerated offense in s. 775.087, F.S., (murder, sexual battery, etc.) or a similar offense in another jurisdiction, or a theft offense.
- ▶ The department is prohibited from selling or otherwise providing to private entities the information supplied for the database.
- ▶ Requires the FDLE to make an annual report to the Legislature regarding the database.

- ▶ FDLE is authorized to adopt rules to administer these provisions.

Publication of form petition. This bill amends s. 539.001(15), F.S., to provide a form petition which a claimant may file to initiate recovery of misappropriated property in the possession of a pawnbroker. The form is substantially similar to a form petition contained in s. 538.08, F.S., which may be used to recover stolen property from a secondhand dealer. This provision codifies one of the recommendations contained in the interim project report. *See* Interim Project Report 2000-26, at 8.

State attorney motion. This bill amends s. 539.001(15), F.S., to clarify that a criminal court judge is authorized to determine ownership and order return of property and appropriate restitution after proper notice of hearing is given to all parties, including the pawnbroker. This provision is substantially similar to s. 538.08(4), F.S., allowing the state to file such a motion where the property is in the possession of a secondhand dealer. This provision codifies one of the recommendations contained in the interim project report. *See* Interim Project Report 2000-26, at 8.

Pamphlet explaining victim's rights. This bill creates subsection (16), of s. 539.01, F.S., to require the Division of Consumer Services to develop a pamphlet explaining a victim's rights to property recovery under s. 539.01(15), F.S. The bill requires the division to distribute the pamphlets to local law enforcement agencies for distribution to any victim of a crime who believes that misappropriated property belonging to the victim is in the possession of a pawnbroker.

The interim project report found that a lack of knowledge about the procedures is s. 539.001(15), F.S., places victims at a disadvantage when they enter a pawnshop in search of stolen property. This provision codifies one of the recommendations contained in the interim project report. *See* Interim Project Report 2000-26, at 7.

Disclosures. The bill creates subsection (17) of s. 539.001, F.S., to require the Division of Consumer Services to adopt by rule a disclosure form that contains various statements, explaining a victim's rights and responsibilities under the pawnbroking laws. The bill provides that the disclosure form shall explain that the victim is under no legal obligation to reimburse or otherwise pay the pawnshop in order to recover stolen property. The bill provides that the form shall explain the procedures contained in s. 539.001(15), F.S.

The bill states that the division shall distribute the disclosure forms to all pawnbrokers. The pawnbroker is required to provide the disclosure form to a person who enters a pawnshop and demands the return of property. The bill provides that the form shall be signed by both parties.

Revision of agency definition and rulemaking provisions. The bill amends subsection (2) of s. 539.001, F.S., to delete the reference to the Division of Consumer Services from the definition of "agency." The effect is to define "agency" by reference to the division's parent agency, the Department of Agriculture and Consumer Services. The bill further amends subsection (22) of s. 539.001, F.S., to insert the term "agency" and delete the term "department" to the existing provision authorizing the Department of Agriculture and Consumer Services to rulemake.

The bill's effective date is July 1, 2000.

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

None.

B. Public Records/Open Meetings Issues:

Section 539.003, F.S., provides records relating to pawnbroker transactions delivered to local law enforcement officials pursuant to s. 539.001, F.S., are confidential and exempt from the public records law. Section 539.003, F.S., authorizes disclosure by the local law enforcement officials of the names and address of the pawnbroker, the name and address of the conveying customer, or a description of pawned property to the alleged owner of pawned property.

This bill does not reference s. 539.003, F.S. However, the bill authorizes FDLE to receive transaction forms directly from pawnbrokers, bypassing the local law enforcement agency. A question may arise over whether the confidential and exempt nature of pawn transaction information will be maintained when records are transferred to the FDLE database, especially in cases where the local law enforcement agency is completely bypassed. In such a case, questions may also arise over how an alleged owner of pawned property may access this information from FDLE. To maintain the current policy expressed in s. 539.003, F.S., the Florida Statutes should be amended to specify that pawnbroker transaction forms delivered to FDLE are confidential and exempt and to allow for disclosure of this information to the alleged owner of pawned property. To meet the requirement of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, this should be done in a separate bill.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill establishes a database of pawnbroker and secondhand dealer transactions within the Florida Department of Law Enforcement. In July, 1997, an FDLE Survey of local law enforcement agencies revealed that each agency receives over 1 million pawn transaction

forms annually. Each transaction form lists 3 to 5 pieces of property. Based on the 30 local agencies sampled, FDLE estimated that between 15 to 20 million pieces of property statewide are pawned each year. Each local law enforcement agency maintains their data separately and it is not easily accessible to other law enforcement agencies.

FDLE requested funding at \$900,000, broken down as follows:

- ▶ \$525,000 for operating capital outlays to include 2 servers and 30 workstations for local law enforcement.
- ▶ \$340,000 for other personal services (OPS) to include 3 programmers to develop the database and 2 individuals to maintain the system.
- ▶ \$35,000 for expenses to include training for local law enforcement, software licensing and software/hardware maintenance.

The Senate's Budget currently funds this issue at \$650,000 from trust funds (Line # 736).

According to the Division of Consumer Services the provisions of this bill will have a minimal fiscal impact on the division. Its analysis states: "This bill will have a small fiscal impact to the Department associated with the developing, printing, and distributing of the pamphlets and disclosure forms."

VI. Technical Deficiencies:

On page 2, line 26, the bill provides that the database may be accessed subject to 3 conditions, identified as "a," "b" and "c." It is not clear whether conditions b and c are intended to stand alone or whether both conditions must be met in order to access the database. Read strictly, it appears the intent is to allow database access when either conditions b or c are met. However, the intent may be to allow for a check of felony warrants (condition b) only for those offenses enumerated in s. 775.087, F.S. (condition c). Also, the intent may be to allow the database to be checked for any criminal investigation for an offense enumerated in s. 775.087, F.S. (condition c), without the requirement that a warrant be outstanding (condition b). This issue may be clarified by inserting the word "or" after condition b and specifying whether the ability to search the database in the case of an active felony warrant applies to all felony offense or only to those felonies enumerated in s. 775.087, F.S.

VII. Related Issues:

None.

VIII. Amendments:

None.