

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 1732

SPONSOR: Banking and Insurance Committee and Senator Campbell

SUBJECT: Pawnbroker Transactions-Public Records Exemption

DATE: April 17, 2000 REVISED: _____

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

I. Summary:

Committee Substitute for Senate Bill 1732 provides that the records relating to pawnbroker transactions which are delivered to the Florida Department of Law Enforcement (FDLE) are confidential and exempt from the public records law. Such records may be used only for official law enforcement purposes, however, FDLE may disclose specified information to the alleged owner of pawned property. The bill provides for future review and contains a statement of public necessity.

Under the Public Records Law and Article I, Section 24 of the State Constitution, records of public bodies must be open to the public. An exception to these provisions is allowed only if such exception serves an identifiable public purpose.

This bill creates a yet unnumbered section of the Florida Statutes.

II. Present Situation:

Public Records Law

Article I, s. 24 of the Florida Constitution expresses Florida's public policy regarding access to government records by providing that:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Constitution does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of section 24. The general law exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is addressed under section 119.07, F.S., which provides that:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., provides that an exemption may be created or maintained only if it serves an identifiable public purpose, may be no broader than is necessary to meet the public purpose it serves, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Pawnbroking Law

The 1996 Legislature substantially revised the pawnbroking laws when it enacted the Florida Pawnbroking Act in chapter 539, F.S. This chapter was subsequently amended in 1997 and 1999 and 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, the pawnbroking law 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.

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 local law enforcement (s. 539.001(9), F.S.). The pawnbroking act further 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.

Committee Substitute for Senate Bill 1598

Committee Substitute for Committee Substitute for Senate Bill 1598 by the Criminal Justice Committee and Senator Campbell establishes a database of pawnshop transactions and secondhand-goods acquisitions within the Florida 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 FDLE to make an annual report to the Legislature regarding the database. The Florida Department of Law Enforcement is authorized to adopt rules to administer these provisions.

The companion bill to CS/CS/SB 1598 is this bill which provides for a public records exemption as to records relating to pawnbroker transactions which are delivered to FDLE.

III. Effect of Proposed Changes:

Section 1. The bill provides that the records relating to pawnbroker transactions which are delivered to the Florida Department of Law Enforcement are confidential and exempt from the public records law. Such records may be used only for official law enforcement purposes, however, FDLE may disclose specified information to the alleged owner of pawned property. The bill is subject to the Open Government Sunset Review Act of 1995 and shall stand repealed on October 2, 2005, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The bill provides a statement of public necessity in that information relating to pawnbroker transactions was originally made confidential by ch. 96-241, L.O.F., because such information was of a sensitive and personal nature to the pledgor or seller of pledged goods. The Legislature now determines that this information should remain confidential and exempt when it is delivered or electronically transferred directly to FDLE pursuant to Section 1 of CS/SB 1598. The Legislature finds that it is a public necessity that such information be held confidential and exempt from the public records law.

Section 3. Provides that the bill will take effect on the effective date of CS/CS/SB 1598.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

See discussion under Present Situation.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
