

STORAGE NAME: h1937.brc

DATE: April 12, 2000

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
BUSINESS REGULATION & CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 1937

RELATING TO: Pawned and Secondhand Property/ Statewide Database

SPONSOR(S): Representative Bense

TIED BILL(S):

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

- (1) LAW ENFORCEMENT & CRIME PREVENTION YEAS 7 NAYS 0
 - (2) JUDICIARY YEAS 8 NAYS 0
 - (3) BUSINESS REGULATION & CONSUMER AFFAIRS (W/D)
 - (4) CRIMINAL JUSTICE APPROPRIATIONS
 - (5)
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I.

The bill provides for the creation of a statewide database of pawnshop transactions and secondhand goods acquisitions to be maintained by the Florida Department of Law Enforcement (FDLE). The bill requires local law enforcement agencies responsible for the collection of records for pawnshop transactions and secondhand goods acquisitions, to transfer the information contained in these records to FDLE. FDLE's database containing these transactions may only be accessed by local law enforcement agencies and only for official investigative purposes.

The bill also provides for a form petition by which a person may bring a court action for the recovery of stolen property in the possession of a pawnbroker. The bill clarifies that a criminal court judge is authorized to determine ownership and order the return of property and appropriate restitution. The bill requires the Division of Consumer Services of the Department of Agriculture and Consumer Services to develop a pamphlet explaining a victim's right to stolen property which is in a pawnbroker's possession and to adopt by rule a disclosure form which explains a victim's rights and responsibilities under the pawnbrokering laws.

FDLE estimates that the provisions would result in a total expenditure over three years of \$1,444,856 with approximately \$155,232 recurring.

The Committee on Law Enforcement & Crime Prevention adopted a strike everything amendment which is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

This bill will require that FDLE create and maintain a database of information on transactions of secondhand dealers and pawnbrokers. Inclusion of FDLE in the record keeping process for pawnbrokers and secondhand dealers will require a state agency not currently involved in this system to become a participant.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

4. Personal Responsibility Yes No N/A

5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Pawnbrokers - Record keeping Requirements

The provisions of Chapter 539, F.S., regulate pawnbrokers through the Florida 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, Florida Statutes, 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 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 telephone 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 Florida 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 DACS and 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.

Chapter 812, F.S.

Chapter 812, F.S., relates to theft, robbery, and related crimes. 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.

C. EFFECT OF PROPOSED CHANGES:

Section 1 of the bill provides for the creation of a statewide database of pawnshop transactions and secondhand goods acquisitions, which will be maintained by FDLE. Local law enforcement agencies responsible for the collection of records for all pawnshop transactions and secondhand goods acquisitions will transfer the information contained in these records to FDLE as soon as practicable. FDLE's database containing these transactions may only be accessed by local law enforcement agencies and only for official investigative purposes.

Section 2 of 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 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 bill creates s. 539.01(16), F.S., to require DACS 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 bill creates s. 539.001(17), F.S., to require DACS 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.

Section 3 of the bill provides an effective date of July 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

FDLE has indicated that there will be a significant fiscal impact associated with the bill. First year impact, non-recurring effects, is estimated at \$878,528, which includes \$278,528 for system development, programming, testing and implementation, \$575,000 for central site hardware and \$25,000 for expenses (travel for systems development, and training). First year recurring expenses are estimated at \$161,232 for salary and benefits of 3 full time staff members. Second year total non-recurring cost is estimated at \$94,632, with \$69,632 for system development and related costs and \$25,000 for expenses. Second year recurring effects is estimated at \$155,232. Third and all subsequent years cost is estimated at \$155,232 for staffing.

The total expenditure for three years is \$1,444,856 with approximately \$155,232 recurring yearly.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

Local government is expected to incur a minimal cost to implement the requirements of the bill. Local law enforcement currently receives the pawn and secondhand forms from dealers in their jurisdictions. These can be paper or automated format. There is no requirement that law enforcement do anything with the information, although many either check FCIC or maintain local pawnshop databases. The bill places no explicit new requirements on local law enforcement. However, it is anticipated that these agencies will be the collection point for any data going into the statewide property recovery database. Those agencies with automated systems could program their systems with an automatic upload of data into the state system.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any municipality or county.

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

The bill does not reduce the amount of state tax shared with any municipality or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The bill provides that FDLE shall adopt rules pursuant to chapter 120, F.S., to administer the provisions of the bill. The bill further provides that DACS adopt by rule a pamphlet explaining a claimant's rights to property recovery, and a disclosure form to be distributed to all pawnbrokers.

C. OTHER COMMENTS:

Committee on Business Regulation & Consumer Affairs

The bill was amended in the Committee on Law Enforcement & Crime Prevention and the strike everything amendment is traveling with the bill. The bill and the amendment authorize the FDLE to implement a statewide system for the collection of pawnshop and secondhand dealer information received from local law enforcement agencies. The bill and amendment allow the release of otherwise confidential information as authorized by the Legislature. The strike everything amendment provides on page 2, lines 26-28, "The department may not, without legislative authority, sell or otherwise provide to any private entity the information supplied to the department under this section."

It appears the confidentiality requirement of the bill and the amendment would require a separate bill on public records exemptions pursuant to s. 119.07, F.S. and s. 24(a), Art. I of the State Constitution.

Committee on Judiciary

DACS is concerned about the provision of the bill that requires the department to create a pamphlet by administrative rule (page 6, line 17). If the pamphlet is created in a rule, the department will have to amend the rule pursuant to chapter 120 to make changes in the pamphlet.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 4th, 2000, the Committee on Law Enforcement & Crime Prevention adopted one amendment to HB 1937. The amendment provides for a "statewide" database of records of pawnshop and secondhand - goods acquisitions.

The amendment to HB 1937 also provides for the delivery of the transaction forms by electronic transfer to the Florida Department of Law Enforcement from the local law enforcement agencies.

The amendment further provides conditions under which a law enforcement official may access the database of pawnshop and secondhand goods transaction forms. The following conditions are set forth in the amendment :

- (a) The database may not be used for research or statistical purposes that are unrelated to an official criminal investigation.
- (b) Names of persons submitted to the statewide database may only be compared against the names of persons who are the subject of an active warrant for a felony offense or an offense that involves theft
- (c) An inquiry into the database by a law enforcement agency must be for an official criminal investigative purpose that is related to an offense enumerated in s. 775.087, or a similar offense in another jurisdiction, or that is related to any offense that involves theft.

The amendment also provides for an annual report to the President of the Senate and the Speaker of the House that includes an analysis of the stolen property identified through the database during the previous calender year. The amendment requires that a separate report be submitted by the pawnbrokers and the secondhand dealers.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT & CRIME PREVENTION:

Prepared by:

Staff Director:

Kurt E. Ahrendt

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON JUDICIARY:

Prepared by:

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AS FURTHER REVISED BY THE COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

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