

STORAGE NAME: h2003s1.brc

DATE: April 7, 2000

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

BILL #: CS/HB 2003

RELATING TO: Public Records/Secondhand Goods

SPONSOR(S): Committee on Law Enforcement & Crime Prevention and Representative Bloom

TIED BILL(S): HB 903

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

- (1) LAW ENFORCEMENT & CRIME PREVENTION YEAS 9 NAYS 0
 - (2) BUSINESS REGULATION & CONSUMER AFFAIRS W/D
 - (3) GOVERNMENTAL OPERATIONS
 - (4) CRIMINAL JUSTICE APPROPRIATIONS
 - (5)
-

I. SUMMARY:

Committee Substitute for House Bill 2003 exempts from the public records law information relating to secondhand dealer transactions which are reported to law enforcement agencies. Secondhand dealer records may be used by law enforcement agencies for official purposes only. The disclosure by law enforcement officials of the name and address of the secondhand dealer, the name and address of the conveying customer, or a description of the property acquired by the secondhand dealer is not prohibited.

The exemption is subject to the Open Government Sunset Review Act of 1995 and is repealed on July 1, 2005, unless reviewed and reenacted by the Legislature.

The bill does not have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain.

B. PRESENT SITUATION:

Public Records

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, Section 24, Florida Constitution, provides:

- (a) 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.

In addition to the Florida Constitution, the Public Records Law specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., requires:

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. . . .

The Public Records Law states that, unless specifically exempted, all agency¹ records are to be available for public inspection. The term "public record" is broadly defined in s. 119.01(1), F.S., to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.² All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.³

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, Section 24, Florida Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Open Government Sunset Review Act of 1995⁴ states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. The three statutory criteria are if the exemption:

- 1) Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 2) Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- 3) Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of

¹ The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record 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 those records exempted by law or the Florida Constitution.

² *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

³ *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

⁴ Section 119.15, F.S.

information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

Article I, Section 23 of the Florida Constitution, also provides Floridians with a right of privacy. That constitutional right, however, does contain a limitation relating to public records:

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

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. Secondhand dealers must register with the Department of Revenue for purposes of tax collection. 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, F.S., does not require regulations for transactions in used goods, such as, furniture, costume jewelry, clothing, .

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.

Currently, there is no exemption from the public records law for transaction information reported to law enforcement agencies by secondhand dealers.

C. EFFECT OF PROPOSED CHANGES:

The bill makes records of secondhand dealers relating to secondhand goods acquisitions which are delivered to a police department, sheriff's department or the Florida Department of Law Enforcement exempt from the provisions of section 119.07 (1), F.S., of the public records law. The bill does not prohibit the disclosure by a police department, sheriffs department , or by the Florida Department of Law Enforcement of the name and address of the secondhand dealer, the name and address of the conveying customer, or a description of the property acquired by the secondhand dealer.

The exemption is subject to the Open Government Sunset Review Act of 1995, in accordance with section 119.15, F.S., and is repealed on July 1, 2005, unless reviewed and saved from repeal by the Legislature.

The bill includes Legislative findings which state that the exemption from the public records law serves a legitimate public purpose. The findings state that the release of information would cause an unwarranted invasion into the life of the previous owner of the secondhand goods and there is no overriding public interest to be served in allowing secondhand transaction information to be made public. The bill further states that the Legislature finds that such an exemption is needed in order for law enforcement agencies to carry out their duties.

D. SECTION-BY-SECTION ANALYSIS:

See C. Effect of Proposed Changes, above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None anticipated.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

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

This bill does not reduce the state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

The bill provides for legislative findings which includes the statement that a legitimate public purpose is served by exempting from public disclosure the secondhand dealer records which are submitted to the "police department" and the "sheriff's department." The bill also exempts secondhand dealer records which are retained by the Florida Department of Law Enforcement. It may be desirable to add to the legislative statement of public purpose a reference to those records which are submitted to FDLE.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Law Enforcement & Crime Prevention

On March 29, 2000, the Committee on Law Enforcement & Crime Prevention passed an amendment to HB 2003 to include the Florida Department of Law Enforcement to the list of law

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enforcement agencies receiving records relating to secondhand goods acquisitions which are exempt from s. 119.07 (1), F.S.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT & CRIME PREVENTION:

Prepared by:

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