

STORAGE NAME: h2389a.go

DATE: April 24, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 2389

RELATING TO: Public Records/Secondhand Goods

SPONSOR(S): Representative Bense

TIED BILL(S): HB 1937

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

(1) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0

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I. SUMMARY:

This bill creates a public record exemption for all records relating to pawnbroker transactions delivered to the Department of Law Enforcement (FDLE) by local law enforcement agencies or by pawnbrokers, as described in Section 1 of HB 1937, the tied bill. Such records are confidential and can be used only for law enforcement purposes, however, FDLE can disclose certain information contained in these records to the alleged owner of the pawned property. This exemption is identical to that for pawnbroker transaction records delivered to local law enforcement in s. 539.003, F.S.

This exemption is subject to the Open Government Sunset review Act of 1995, and shall be repealed on October 5, 2005, unless reviewed and reenacted by the Legislature. This bill also contains a statement of public necessity justifying the exemption, as required by Art. 1, sec. 24, Fla. Const.

The effective date of this bill is contingent upon enactment of HB 1937 or similar legislation.

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 Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides 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.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure 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 also addressed in the Florida Statutes. Section 119.07, F.S., provides:

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 a 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., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public

policy of open government and that such purpose cannot be accomplished without 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 information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; 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 information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

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.

Under s. 539.003, F.S., all records relating to pawnbroker transactions are confidential and exempt from the public records laws.

HB 1937 by Rep. Bense -- Pawned and Secondhand Property/ Statewide Database

HB 1937, the tied bill, provides for the creation of a statewide database of pawnshop transactions and secondhand goods acquisitions which will be maintained by the Florida Department of Law Enforcement (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.

The tied bill also provides for a form petition by which a person may bring a court action for the recovery of misappropriated 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 after proper notice of hearing is given to all

parties, including the pawnbroker. The bill further requires the Division of Consumer Services to develop a pamphlet explaining a victim's right to misappropriated 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 pawnbroking 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 bill provides an effective date of July 1, 2000.

C. EFFECT OF PROPOSED CHANGES:

This bill creates a public record exemption for all records relating to pawnbroker transactions delivered to the Department of Law Enforcement (FDLE) by local law enforcement agencies or by pawnbrokers, as described in Section 1 of HB 1937. Such records are confidential and can be used only for law enforcement purposes, however, FDLE can disclose certain information contained in these records to the alleged owner of the pawned property. This exemption is identical to that for pawnbroker transaction records delivered to local law enforcement in s. 539.003, F.S.

This exemption is subject to the Open Government Sunset review Act of 1995, and shall be repealed on October 5, 2005, unless reviewed and reenacted by the Legislature. This bill also contains a statement of public necessity justifying the exemption, as required by Art. 1, sec. 24, Fla. Const.

The effective date of this bill is contingent upon enactment of HB 1937 or similar legislation.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city 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 city 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 city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Douglas Pile

Russell J. Cyphers, Jr.