

STORAGE NAME: h0903.lec

DATE: March 24, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND CRIME PREVENTION
ANALYSIS**

BILL #: HB 903

RELATING TO: Pawnshop Transactions / State Database

SPONSOR(S): Representative Bloom

TIED BILL(S): HB 2003

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

- (1) LAW ENFORCEMENT AND CRIME PREVENTION
 - (2) BUSINESS REGULATION AND CONSUMER AFFAIRS
 - (3) GOVERNMENTAL OPERATIONS
 - (4) CRIMINAL JUSTICE APPROPRIATIONS
 - (5)
-

I. SUMMARY:

House Bill 903 provides for the creation of a database to be maintained by the Florida Department of Law Enforcement (FDLE) for the collection of all transactions by pawnshops and secondhand dealers in the State of Florida. Local law enforcement and sheriffs agencies shall be required to transfer all information contained on pawn and second hand dealer forms to FDLE.

The bill provides that the statewide pawnbroking/secondhand dealer database may only be accessed by law enforcement agencies solely for official investigative purposes. The sale of any portion of the data base including, names, addresses, or phone numbers is prohibited.

This act shall take effect July 1, 2000

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

This bill will require that the Florida Department of Law Enforcement 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

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

A. 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, F.S., 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, F.S., 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 the DACS and the 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.

Florida Sheriffs' Association

The Florida Sheriffs' Association is a private, not-for-profit, statewide association which is supported by dues of its membership.

Chapter 812, F.S.

Chapter 812, F.S., relates to "Theft, Robbery, and Related Crimes", generally. 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.

B. EFFECT OF PROPOSED CHANGES:

House Bill 903 would require the Florida Department of Law Enforcement to implement a statewide system for the collection of pawnshop and secondhand dealer information. This information would be stored in the "Florida Property Recovery Database" and would be the statewide database for pawnshop and secondhand dealer information. Law enforcement agencies would have access to information in the database, as needed, for legitimate investigations. Based upon a need in an investigation, information relating to the person pawning the goods may be requested and received by a law enforcement agency.

Local law enforcement agencies that collect records of pawnshops and secondhand under the requirements of Chapter 538, F.S., or Chapter 539, F.S., shall be required to transfer the information contained in the records to the Florida Department of Law Enforcement in a format established by the department after consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association.

House Bill 2003 is identical to sections two and three in HB 903. Section two in HB 903 states that all records relating to secondhand goods acquisitions delivered to a police department or sheriff's department pursuant to s. 538.04, F.S., are exempt from the provisions of section 119.07 (1), F.S. This section does not prohibit the disclosure by a police department or sheriffs department receiving the records, or by the Florida Department of Law Enforcement, of the name and address of the secondhand dealer or pawnbroker, the name and address of the conveying customer, or a description of the property acquired by the secondhand dealer or pawn broker.

Section 3 of HB 903 states that the above section is subject to the Open Government Sunset Review Act of 1995, in accordance with section 119.15, F.S., and shall stand repealed on October 2, 2005, unless reviewed and saved from repeal by the Legislature. Section 3 of HB 903 makes a legislative finding that the exemption from public records law relating to secondhand goods acquisition delivered to a police or sheriff's department serves a legitimate purpose. The release of information would cause an unwarranted invasion into the life of the previous owner of the secondhand goods and that there is no overriding public interest to be served in allowing such information to be made public. House Bill 903 also states that the Legislature finds that such an exemption is needed in order for law enforcement agencies to carry out their duties.

This act shall take effect on July 1, 2000.

C. 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:

The Florida Department of Law Enforcement has indicated that there will be a significant fiscal impact associated with HB 903. First year impact is estimated at \$1,039,706, which includes \$278,528 for system development, \$161,232 for salary and benefits of 3 full time staff members, \$575,000 for the central site hardware, and \$25,000 for expenses due to travel, system development, and training. Second year total cost is estimated at \$249,864, and third and all subsequent years cost is estimated at \$155,232 for staff.

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 HB 903. 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 if not most either check FCIC and / or maintain local pawnshop databases. The proposed 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

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D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

House Bill 903 provides that the Florida Department of Law Enforcement shall adopt rules pursuant to chapter 120, F.S., to administer the provisions of this act.

C. OTHER COMMENTS:

Article I, section 24 (c), of Florida Constitution requires that the legislature approve any exemption to s. 119.07 (1), F.S. It further requires that the legislative action that exempts a section from the requirements in s. 119.07 (1) F.S. be "no broader than necessary to accomplish the stated purpose of the law." House bill 2003 fulfills the requirements in Article I, section 24 (c) pertaining to the "Narrow Tailoring" of a bill that exempts legislation from section 119.07 (1), F.S. Because the language set forth in sections 2 and 3 of HB 903 is more appropriately set forth in a separate bill, HB 2003, committee staff would suggest that the language be removed from the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

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