

**STORAGE NAME:** h1107.cpcs.doc

**DATE:** March 23, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME PREVENTION, CORRECTIONS & SAFETY  
ANALYSIS**

**BILL #:** HB 1107

**RELATING TO:** Pawnbrokers and Secondhand Dealers

**SPONSOR(S):** Representatives Davis, Bense and Spratt

**TIED BILL(S):**

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

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY
  - (2) CRIMINAL JUSTICE APPROPRIATIONS
  - (3) COUNCIL FOR COMPETITIVE COMMERCE
  - (4)
  - (5)
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I. SUMMARY:

This bill creates section 943.0546, F.S., and establishes a database of pawnshop transactions and secondhand-goods acquisitions within the Florida Department of Law Enforcement (FDLE). Local law enforcement agencies responsible for collecting pawnshop transaction or secondhand-goods acquisitions records shall, as soon as practicable, transfer the information contained in the records to FDLE. A local law enforcement agency may access the database only for official criminal investigative purposes, subject to specified conditions. The bill requires FDLE to make an annual report, including an analysis of stolen property identified through the database, to the Legislature and authorizes FDLE to adopt rules to administer this section.

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. This bill further 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 bill creates subsection (16), of s. 539.01, F.S., to require the Department of Agriculture and Consumer Services to develop a pamphlet explaining a victim's rights to property recovery under s. 539.01(15), F.S. This bill also creates subsection (17) of s. 539.001, F.S., to require the Department of Agriculture and Consumer Services to adopt by rule a disclosure form that contains various statements which explain a victim's rights and responsibilities under the pawnbroking laws.

House Bill 1107 provides for an effective date of July 1, 2001.

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"/> |

B. PRESENT SITUATION:

Pawnbroking laws were substantially revised by the 1996 Legislature when it enacted the Florida Pawnbroking Act in Chapter 539, F.S.; this chapter was subsequently amended in 1997 and 1999. There is no federal law regulating pawnshops.

The Florida Pawnbroking Act contains numerous provisions for the regulation of pawnshops including:

- Pawnbrokers are required to obtain a license, for each pawnshop, from the Division of Consumer Services of the Department of Agriculture and Consumer Services.
- 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 license 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).
- Local governments are prohibited from enacting ordinances that are more restrictive than the Act.

In addition, ch. 539, F.S., contains record-keeping requirements. The pawnbroker must complete a transaction form at the time of a pawn, specifying detailed information about the item pawned, and 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. Secondhand dealers are also required to complete transaction forms and deliver the forms daily to the local law enforcement official under Chapter 538, F.S., which regulates secondhand dealers. Chapter 539, F.S., 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.

**1999 database bill; Senate interim study conducted.** The 1999 Legislature considered but failed to pass a bill creating a statewide database for certain pawn transaction information to be accessed by law enforcement. During the 1999-2000 interim, the Senate Criminal Justice Committee led an interim study which reviewed the Florida Pawnbroker Act and considered whether reports that Florida's pawnbroking laws were too lax and placed unfair burdens on the victims of stolen property were well founded. See *Florida Senate Committee on Criminal Justice, A Review of Florida's Pawnbroking Law, Interim Project Report 2000-26*, at:

[http://www.leg.state.fl.us/data/Publications/2000/Senate/reports/interim\\_reports/pdf/00-26cj.pdf](http://www.leg.state.fl.us/data/Publications/2000/Senate/reports/interim_reports/pdf/00-26cj.pdf)

**Procedure for recovery of stolen property from pawnshops.** When a property crime victim is able to locate items stolen from him or her in a pawnshop, s. 539.001(15), F.S., provides a procedure for recovering the property.

A person (claimant) who believes property stolen from him or her has been sold or pledged to a pawnbroker is entitled to the following process:

- First, the claimant must notify the pawnbroker by either certified mail or in person of the claim. The notice must contain a description of the property.
- Next, if the claimant and pawnbroker do not resolve the matter within 10 days from notice, the claimant may petition the court to order return of the property. The pawnbroker is required to hold the property until the dispute is settled.
- The court is required to waive the filing fee for the petition to recover property and the sheriff shall waive the service fees.
- If the court rules in favor of the claimant, he or she may recover costs from the pawnbroker, including reasonable attorney's fees.
- If the conveying customer is convicted, the court shall order the conveying customer to repay the pawnbroker the full amount the conveying customer received, plus all applicable pawn service charges. The conveying customer is also liable for paying the pawnbroker's attorney's fees and costs.
- The claimant is liable for the pawnbroker's costs if the court finds against the claimant or finds the claimant failed to comply with the notice provisions described above.

Section 539.001(10), F.S., provides that all items delivered to a pawnbroker in a pawn *or* purchase transaction must be securely stored and maintained for 30 days after the transaction. The pawnbroker must hold a *pawned* item for an additional 30 days after the maturity date, unless the item has been redeemed earlier.

Consequently, if an item is pawned immediately after it has been stolen, that item will be held by the pawnbroker for a minimum of 60 days before it is placed on the floor for resale. A victim who decides to search local area pawnshops for property recently stolen from him or her will not see it unless the pawnshop owner offers to show him the newly pawned goods which he or she is required to hold. However, a law enforcement officer may inspect all pledged or purchased goods, s. 539.001(12)(b), F.S.

In addition, s. 539.001(16), F.S., authorizes a law enforcement official who has probable cause to believe that property in the possession of a pawnbroker is misappropriated, to place a written hold order on the property. The order may be up to 90 days, unless extended by court order.

**Due process requires notice and hearing to pawnbroker when ownership is disputed.** The civil petition process contained in ch. 539, F.S., is the result of a federal court case holding a prior Florida

statute unconstitutional. This statute, s. 715.041(2), F.S. (1988), allowed an officer to recover property a victim claimed was in possession of the pawnbroker and return it directly to the victim. In striking down this statute, a federal court found that pawnbrokers have a possessory interest in goods pawned and until lawful ownership can be established, "the possessory interest held by the pawnbroker entitles him to continued retention of the property." *Florida Pawnbrokers and Secondhand Dealers Association, Inc. v. City of Ft. Lauderdale*, 699 F. Supp. 888, 891 (S.D. Fla. 1988). The statute violated the procedural due process guarantees in the Fourteenth Amendment because it required forced surrender of property without notice and hearing by an impartial decision maker.

Consequently, a pawnbroker has a right to ownership determined through a hearing process. As one court has commented: "[i]t may be supposed that a reputable pawnbroker would voluntarily surrender pawned articles in his possession, where there is plain proof of their theft with a clear identification of the real owner; nevertheless, the pawnbroker is entitled to test ownership and possessory rights in a civil action if he so elects." *Wacksman v. Harrell*, 189 N.E.2d 146, 150 (Ohio 1963).

**Form petition for return of property.** The secondhand dealers statute, ch. 538, F.S., contains a form petition which a victim may use to initiate a court action to recover stolen property from a secondhand dealer. See s. 538.08, F.S. However, ch. 539, F.S., which regulates pawnbrokers, does not contain an analogous form. The Senate Criminal Justice Committee interim project report found that victims are unaware of what form to file in order to initiate the pawnbroker property recovery process. See Senate Criminal Justice Committee Interim Project Report 2000-26, at 8. The report included a recommendation to publish a form petition in ch. 539, F.S., in order to make it more convenient for victims to initiate the process on their own, if they choose not to hire a lawyer. *Id.*

**State attorney motion.** The secondhand dealers statute, ch. 538, F.S., provides that in addition to the civil petition for return of property, the state may file a motion as part of a pending criminal case related to the property to determine ownership and award appropriate restitution. See s. 538.08(4), F.S. However, ch. 539, F.S., which regulates pawnbrokers, does not contain an analogous provision. Although s. 539.001(16)(e)2., F.S., appears to authorize it, the interim project report found that some criminal court judges and prosecutors have read ch. 539, F.S., to restrict the return of property remedy to civil courts through the civil petition process. See *Senate Criminal Justice Committee Interim Project Report 2000-26, at 8.*

As a result, some victims have to go through a separate proceeding before a different judge in order to recover property from a pawnshop even though the criminal court judge has the case before him or her. The report included a recommendation that the Legislature 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.

**Pamphlet explaining victim's rights.** As described above, a theft or burglary victim who believes property stolen from him or her was pawned has the right to recover the property from a pawnshop without cost pursuant to s. 539.01(15), F.S. In some cases victims are unaware that Florida law provides a procedure for recovery of stolen property. The statute provides that after a victim notifies a pawnshop of a claim, the parties have 10 days to resolve the matter. If they do not resolve the matter within this time, victims have the right to a court hearing in which filing and service fees are waived. The interim project report found that a lack of knowledge about these procedures places victims at a disadvantage when they enter a pawnshop in search of stolen property. The report included a recommendation that the Legislature require the Division of Consumer Services to develop a pamphlet explaining a victim's rights to property recovery under s. 539.01(15), F.S. See *Senate Criminal Justice Committee Interim Project Report 2000-26, at 7.*

**The database bill did not pass during 2000 Legislative Session, but funds were allocated and a database pilot project was begun.** There was substantive legislation filed and considered during the

2000 Session which was a comprehensive package addressing the creation and implementation of the database and restrictions on the use of the information gathered for the database, as well as an effort to make the court system more "user friendly" for victims of property crimes whose property is located in a pawnshop, as outlined above. Although the substantive legislation passed out of the Senate Criminal Justice Committee and Judiciary Committee, it died on the Calendar. Proviso language in the budget provided funds (\$1,050,748) for FDLE to use to develop and implement the statewide database contemplated by the substantive bill.

Because the substantive legislation did not pass, there was some discomfort among the pawnbroker industry spokespeople about the database being implemented without the restrictions on the use of the information gathered set forth in the 2000 bill. Industry officials had concerns about the privacy rights of their clientele which were protected by the proposed restrictions on the use of the information gathered. Commissioner Moore has met with industry officials and law enforcement during the interim and those concerns were allayed through a Memorandum of Understanding, signed by all parties.

This Memorandum of Understanding set forth the intention of all parties to seek the passage of substantive legislation during the 2001 Session, and to work together in the interim to go forward with the creation and implementation of the database, with the restrictions to the use of the information gathered as set forth in the 2000 bill in place.

A database has been created by FDLE, with the advice and assistance of the interested parties, which provides a statewide system for collecting and accessing pawnshop ticket and secondhand dealer information on items pawned, bought, sold, or traded. The database has been dubbed "SPARS" (Statewide Property Automated Recovery System). It is a collection point of data received from law enforcement agencies to be used to identify, track, and recover stolen or misappropriated property.

The database has not yet been implemented. At a workshop in mid-February, FDLE officials demonstrated a prototype of the system to law enforcement agency personnel and other interested parties who provided ideas for modifying the system before it is implemented.

#### C. EFFECT OF PROPOSED CHANGES:

##### **Section 1:**

***FDLE database restrictions and uses established.*** This bill establishes a database of pawnshop transactions and secondhand-goods acquisitions within the Florida Department of Law Enforcement (FDLE). 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 FDLE 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.

- The database may not be used for research or statistical purposes unrelated to official criminal investigative purposes.
- A local law enforcement agency may access the database only for official criminal investigative purposes, subject to the following conditions:
  - a) The names of persons submitted to the database may only be compared against the names of persons with either an active felony warrant or capias for an offense enumerated in s. 775.087<sup>1</sup>, F.S., or an offense that involves theft, that has been entered in FCIC/NCIC.
  - b) The database may also be checked in a criminal investigation for an enumerated offense in s. 775.087, F.S., or a similar offense in another jurisdiction, or a theft offense.
  - c) Any property identified in the transaction records submitted to the database may be compared to information in FCIC/NCIC.
- The department is prohibited from selling or otherwise providing to private entities the information supplied for the database.
- Requires the FDLE to make an annual report to the Legislature regarding the database.
- FDLE is authorized to adopt rules to administer these provisions.

**Section 2:**

***Publication of form petition for return of property.*** 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.

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<sup>1</sup> Section 775.087(2)(a)(1), F.S.

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated assault;
- g. Aggravated battery;
- h. Kidnapping;
- i. Escape;
- j. Aircraft piracy;
- k. Aggravated child abuse;
- l. Aggravated abuse of an elderly person or disabled adult;
- m. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- n. Carjacking;
- o. Home-invasion robbery;
- p. Aggravated stalking;
- q. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1); or
- r. Possession of a firearm by a felon

**State attorney motion.** This bill amends s. 539.001(15), F.S., providing that, in addition to the civil petition for property recovery, a state attorney may file a motion as part of a pending criminal case. The bill clarifies 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.

**Pamphlet explaining victim's rights.** This bill creates subsection (16), of s. 539.01, F.S., to require the Department of Agriculture and Consumer Services to prescribe, by rule, a pamphlet explaining a victim's rights to property recovery under s. 539.01(15), F.S. The bill requires the department 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.

**Disclosures.** The bill creates subsection (17) of s. 539.001, F.S., to require the Division of Consumer Services 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 states that the agency 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.

**Revision of agency definition and rulemaking provisions.** The bill amends subsection (2) of s. 539.001, F.S., to delete the reference to the Division of Consumer Services from the definition of "agency." The effect is to define "agency" by reference to the division's parent agency, the Department of Agriculture and Consumer Services. The bill further amends subsection (21) of s. 539.001, F.S., (renumbered as subsection (23) by the bill) to insert the term "agency" and delete the term "department" to the existing provision authorizing the Department of Agriculture and Consumer Services to make rules to implement the provisions of this section.

### **Section 3:**

This bill provides an effective date of July 1, 2001.

#### D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

### III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to officials at FDLE, the recurring funds in the 2000 budget are sufficient to implement the statewide database.

According to the Department of Agriculture and Consumer Services, the provisions of this bill will have a minimal fiscal impact on the agency.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

**Public Records.** Section 539.003, F.S., provides records relating to pawnbroker transactions delivered to local law enforcement officials pursuant to s. 539.001, F.S., are confidential and exempt from the public records law. Section 539.003, F.S., authorizes disclosure by the local law enforcement officials of the names and address of the pawnbroker, the name and address of the conveying customer, or a description of pawned property to the alleged owner of pawned property.

This bill does not reference s. 539.003, F.S. However, the bill authorizes FDLE to receive transaction forms directly from pawnbrokers or secondhand dealers, only with the authorization of the local law enforcement agency, after an agreement for such a transmission arrangement has been agreed to by FDLE and the local agency. In such a case, questions may arise over how an alleged owner of pawned property may access this information from FDLE. To maintain the current



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policy expressed in s. 539.003, F.S., the agreement between the parties should specify that pawnbroker transaction forms delivered to FDLE are confidential and exempt, and provide a plan by the parties for the required disclosure of this information to the alleged owner of pawned property.

**B. RULE-MAKING AUTHORITY:**

This bill authorizes the Florida Department of Law Enforcement the authority to adopt rules to administer the provisions of s. 943.0546, F.S.

This bill authorizes the Florida Department of Agriculture and Consumer Services the authority to adopt rules to administer the provisions of s. 539.001, F.S.

**C. OTHER COMMENTS:**

The Florida Department of Law Enforcement (FDLE) supports passage of this legislation to ensure that all pawnshops submit the information for inclusion in the database. FDLE advised that, absent passage, the pawnbroker system will be voluntary and likely to remain incomplete. This legislation also imposes limitations on the use of the data by law enforcement agencies. According to FDLE, these limitations are important to the pawn industry and key to cooperation, and the law enforcement community is comfortable with these limitations in exchange for the mandated contribution of data by all of Florida's pawnshops.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

None.

**VII. SIGNATURES:**

**COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:**

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