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DATE: February 9, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 403 (PCB SA 01-11)
RELATING TO: Public Records Exemption for Records Relating to Pawnbroker Transactions
SPONSOR(S): Committee on State Administration and Representative(s) Brummer
TIED BILL(S): None

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The Open Government Sunset Review Act of 1995 provides that an exemption from the requirements of the public records or public meetings laws may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves.

Further, the Open Government Sunset Review Act of 1995 sets forth a review process which requires that on October 2nd in the fifth year after enactment of a new exemption or "substantial amendment" of an existing exemption, the exemption is to repeal, unless the Legislature reenacts the exemption. By June, of the year before the repeal of an exemption, the Division of Statutory Revision of the Office of Legislative Services must certify, to the President of the Senate and the Speaker of the House of Representatives, the language that will repeal and the statutory citation for each exemption scheduled for repeal.

Section 539.003, F.S., provides that certain records relating to pawnbroker transactions delivered to law enforcement officials are confidential and exempt from public disclosure. Such records include: the name, address, and thumbprint of the seller; a description of the goods; the amount of money exchanged for the goods; and the date and time of the transaction. This section was certified by the Division of Statutory Revision and will repeal on October 2, 2001, unless otherwise reenacted by the Legislature.

This bill reenacts s. 539.003, F.S. Given the rise of identity theft crimes in our country the release of such information invites potential crime against the pawnbroker, seller, or pledgor. The stigma that is sometimes attached to pawning property could also hurt such persons. Also, the release of this personal information could cause unwarranted damage to such persons' reputations. Also, the release of the details of the transactions, such as the date and time of the transactions, and the value of the goods, could invite potential crime against the pawnbroker or customer transacting with the pawnbroker. The other pawnbroker businesses would also have access to inventory and monetary information.

This bill does not appear to have a fiscal impact on state or local governments.

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

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Article I, s. 24, Florida Constitution, does not set forth any repeal or review requirements.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), 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.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. 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 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.

Section 119.15, F.S., sets forth a review process which requires that on October 2nd in the fifth year after enactment of a new exemption or "substantial amendment"¹ of an existing exemption, the exemption is to repeal, unless the Legislature reenacts the exemption. By June, of the year before the repeal of an exemption, the Division of Statutory Revision of the Office of Legislative Services must certify, to the President of the Senate and the Speaker of the House of Representatives, the language that will repeal and the statutory citation for each exemption scheduled for repeal. s. 119.15(3)(d), F.S.

Section 539.003, F.S., was certified by the Division of Statutory Revision and will repeal on October 2, 2001, unless otherwise reenacted by the Legislature.

Analytical Framework

The Florida Constitution does not require the repeal, review, or reenactment of exemptions; the Open Government Sunset Review Act (s. 119.15, F.S.) does. However, the Open Government Sunset Review Act is a Florida statutory provision created by the Legislature. Accordingly, because one Legislature cannot bind another, the requirements of s. 119.15, F.S., do not have to be met.² Nonetheless, because the certified exemption as found in the Florida Statutes actually contains language that repeals the exemption as of October 2nd, 2001, that exemption *will* repeal unless the legislature reenacts the exemption.³

¹ An exemption is "substantially amended" if the amendment **expands** the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption. s. 119.15(3)(b), F.S.

² The requirements of Article 1, s. 24(c), Florida Constitution, must, however, be met with regard to any exemption created on or after July 1, 1993. See *infra* Florida Constitution.

³ Please note that the effective date of this bill is prior to the repeal date of October 2, 2001.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Article 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the exempt records), then a public necessity statement is not required. Article 1, s. 24, Florida Constitution, only requires a public necessity statement when creating an exemption, and also requires that the exemption be in a separate bill.⁴

Exemption from Public Records for Pawnbroker Transaction Information

During the 1996 Legislative Session, the Legislature enacted the Florida Pawnbroking Act (Act). Chapter 96-242, L.O.F., Chapter 539, F.S. The Act authorized the Division of Consumer Services of the Department of Agriculture and Consumer Services to license and regulate pawnbrokers.

The Act requires pawnbrokers to submit a pawnbroker transaction form to the appropriate law enforcement official for every pawn or purchase transaction. "Appropriate law enforcement official" means the sheriff of the county in which a pawnshop is located or, if the pawnshop is located within a municipality, the police chief of that municipality, unless the sheriff or chief has designated another local law enforcement officer to receive the forms. s. 539.001(2)(b), F.S.

The Division of Consumer Services must approve the design and format of the pawnbroker transaction form, and the form must contain the following information:

- The name and address of the pawnshop;
- Complete description of the pledged or purchased goods including brand name; model number; serial number; size, color; precious metal type, weight and content; gemstone description; firearm caliber or gauge, type of action, number of barrels and length, and finish; and any other unique identifying marks, numbers, letters or names;
- The name, address, home telephone number, place of employment, date of birth, physical description, and right thumbprint of the pledgor or seller;
- Date and time of the transaction;
- Type of identification accepted from the pledgor or seller;
- In the case of a pawn, the amount of money advanced; maturity date of the pawn; default date and amount due on that date; total pawn service charge; total of payments; annual percentage rate; automatic forfeiture and conveyance information; a statement of pledgor obligations; a statement regarding extension of the time period of the pawn agreement;
- In the case of a purchase, the amount of money paid for the goods or monetary value assigned to the goods; and
- A statement that the pledgor or seller represents and warrants that the item is not stolen, that it has no liens or encumbrances against it, and that the pledgor or seller is the rightful owner and has the right to enter into the transaction.

s. 539.001(8), F.S.

During the same Legislative Session in which the Florida Pawnbroking Act was enacted, an exemption from the public records law for records relating to pawnbroker transactions delivered to appropriate law enforcement officials was created. Chapter 96-241, L.O.F., s. 539.003, F.S. The exemption requires that the records only be used for official law enforcement purposes. Although

⁴ If various exemptions are reenacted that do not expand the exemption, then there is no requirement that the exemptions be in separate bills; provided however, that the bill containing the reenactments meets the single subject requirement.

the exemption was amended during the 1997 Legislative Session to include a provision that allows law enforcement officials to disclose the name and address of the pawnbroker, the name and address of the conveying customer, or a description of the pawned property to the alleged owner of the property, the basic exemption from the public records law remains in effect. s. 2, Chapter 97-304, L.O.F. This exemption is repealed on October 2, 2001, unless reviewed and saved from repeal through reenactment.

In enacting the exemption, the Legislature stated that “[t]he Legislature...has determined that information relating to pawnbroker transactions is of a sensitive and personal nature to the pledgor or seller of pledged goods. The Legislature finds that it is a public necessity that such information be held confidential and exempt from the public records law.” s. 2, Chapter 96-241, L.O.F.

In Interim Project Report 2001—037, the Senate Committee on Criminal Justice determined that the public records exemption for the information in the pawnbroker transaction forms was necessary to allow the agencies affected to effectively administer their programs. The Florida Department of Law Enforcement is working with the pawnbroker industry to develop a database, which would contain statewide information regarding pawn transactions and which could be accessed by law enforcement throughout the state for certain investigative functions. There seems to be a concern among the interested parties that without the exemption, individuals who normally might pawn property may choose another avenue for disposing of the property which is not regulated, or if they choose to pawn the property, would not provide accurate identification information to the pawnbroker. This result would certainly impair law enforcement’s ability to track stolen property which may be pawned, and to return that property to its rightful owner.

The Legislature, in its public necessity statement for the exemption, found that this exemption was necessary to protect the sensitive personal information concerning pawnbrokers, sellers, or pledgors. The personal information contained in the pawnbroker transaction forms, which are forwarded to law enforcement, identify the individual by name, address, identification number, telephone number, date of birth, place of employment and thumbprint. Given the rise of identity theft crimes in our country the release of this information invites potential crime against the pawnbroker, seller, or pledgor. The stigma that is sometimes attached to pawning property could also hurt such persons. The release of this personal information could be defamatory or cause unwarranted damage to such persons’ reputation. Also, the release of the details of the transactions, such as the date and time of the transactions, and the value of the goods, could invite potential crime against the pawnbroker or individuals transacting with the pawnbroker. The other pawnbroker businesses would also have access to inventory and value information that could provide an unfair advantage.

All of the information on the pawnbroker transaction form is not confidential. For example, the type of property pawned or purchased and the financial arrangements would not be confidential. Accordingly, the exemption does not appear to be broader than necessary to accomplish the public purpose of keeping the sensitive personal information confidential.

C. EFFECT OF PROPOSED CHANGES:

This bill reenacts verbatim the public records exemption in s. 539.003, F.S., which provides that records relating to pawnbroker transactions delivered to law enforcement officials pursuant to s. 539.001, F.S., are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, and that those records may be used only for official law enforcement purposes. This bill also amends s. 539.003, F.S., to remove the sentence that requires its repeal.

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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities 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.

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

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