

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 695 w/CS Pawnbroking
SPONSOR(S): Antone, and Adams
TIED BILLS: none **IDEN./SIM. BILLS:** SB 2942 (c)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture	15 Y, 0 N w/CS	Reese	Reese
2) State Administration		Bond	Everhart
3) Local Government & Veterans' Affairs			
4) Agriculture & Environment Appro. Sub.			
5) Appropriations			

SUMMARY ANALYSIS

This bill amends the Florida Pawnbroking Act to:

- Require a local occupational license.
- Add additional required information to the pawnbroker transaction form.
- Require a pawnbroker to maintain a property tag on every item.
- Specify a form complaint for a lawsuit against a pawnbroker to recover stolen goods.
- Require that a pawnbroker return stolen property without charge to the rightful owner, so long as the victim has not agreed to drop the criminal charges against the thief.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0695b.sa.doc
DATE: April 5, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Background

Adopted in 1996, The Florida Pawnbroking Act¹ provides for state licensure of pawnbrokers through the Department of Agriculture and Consumer Services (department). Eligibility requirements and procedures for issuing, suspending, revoking and surrendering a license are provided, as well as prohibitions against certain acts. Also included are provisions for criminal penalties and injunctive remedies. The act created a right to redeem pledged goods, a pawnbroker’s lien, and a procedure for obtaining pledged goods allegedly misappropriated.

The act also contains minimum record-keeping requirements. At the time of a pawn, the pawnbroker must complete a transaction form that includes specific 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.

A 1996 *Sun-Sentinel* newspaper investigative report series² conducted a computer analysis of the nearly 70,000 pawn transactions that took place in 1995 in Fort Lauderdale. The analysis’ major findings were detailed as follows:

- Of the city’s 50 most frequent pawners, 39 have criminal records in Florida – 19 have been arrested for burglary, theft, or related crimes, another 14 have faced drug charges.
- Pawnshops routinely accept merchandise that workers suspect is stolen. Shop owners say it’s not their job to determine who owns property being pawned – their clients sign pawn slips swearing the property is theirs, and police get copies of the forms.
- Thieves brazenly pawn stolen goods, sometimes only hours after a burglary, then leave their names, addresses, and thumb prints behind on pawn slips they know are being sent to the police. They get away with it, police say, because [officers] don’t pay much attention to the forms. In fact, fewer than half the pawn slips forwarded to Fort Lauderdale police are entered into the department’s computer, severely hampering efforts to detect suspicious activity or patterns.

In January 2000, the Florida Senate Criminal Justice Committee released an interim report reviewing Florida’s Pawnbroking Law.³ Included in the Senate report were the following three recommendations:

¹ Chapter 539, Florida Statutes

² Fort Lauderdale Sun-Sentinel, Nov. 24, 1996.

³ The Florida Senate Committee on Criminal Justice Interim Project Report 2000-26.

1. *The Legislature should require the creation and distribution of a “victim rights brochure” to inform victims of their rights under Florida Law to recover stolen property from a pawnshop.*
2. *The Legislature should publish a form petition in chapter 539, F.S., which could be used by victims in order to initiate a court action to recover their property from a pawnbroker.*
3. *The Legislature should clarify that a criminal court judge is authorized to determine ownership of property and order any appropriate restitution in addition to the civil petition remedy already provided for in chapter 539.*

According to proponents, the purpose of this bill is to enact procedures that fulfill recommendations of the Senate report and provide more protection and recourse to victims whose stolen property has been pawned, as well as to pawnbrokers.

Effect of Bill

This bill includes 2 of the 3 suggested changes,⁴ together with others, related to pawnbrokers. Specifically:

Local Occupational License

Current law requires local governments to obtain proof that a person holds a state pawnbroker license before issuing a local occupational license. Current law does not give the state grounds to discipline a pawnbroker that fails to maintain a local occupational license.

This bill adds a requirement to the state pawnbroker licensure process to require that a person show that he or she has obtained a local occupational license before the state will issue a pawnbroker license. This bill also provides that if a pawnbroker fails to obtain or renew a local license, the department may suspend or revoke the pawnbroker's license. A pawnbroker operating without a valid state pawnbroker's license commits a 3rd degree felony for each completed transaction.

Pawnbroker Transaction Form - Changes

Current law requires a pawnbroker to obtain certain information about persons that pawn or sell items to the pawnbroker on the Pawnbroker Transaction Form. The purpose of such information is to assist in law enforcement should the item pawned or sold be stolen goods. This bill adds that such form must contain a unique transaction form number, specifies that the address of the person pawning or selling the goods must be a current local residential address, adds work telephone number, and requires that the fingerprint be legible.

Current law requires a pawnbroker to maintain a copy of a Pawnbroker Transaction Form for 1 year after the transaction. This bill provides that the form must be kept for 1 year after the transaction or until such time as all of the property on the form is removed from the premises, whichever is later.

Pawnbroker Transaction Form - Permitted Vendors

A pawnbroker may, however, purchase goods from persons that would not normally be expected to be selling stolen goods, in which case the requirements of the Pawnbroker Transaction Form, and the collection of information necessary to complete that form, may be considered excessive.⁵ This bill

⁴ The suggestion regarding a victim rights brochure is not included.

⁵ For instance, a pawnbroker selling firearms would typically also sell new ammunition and new firearm accessories such as cleaning supplies.

provides that a pawnbroker need not use the Pawnbroker Transaction Form when purchasing goods from a permitted vendor.⁶

Property Tags

Current law does not require that goods in a pawnshop be labeled or tagged. This bill requires that all property in a pawnshop must be labeled with the related form number from the Pawnbroker Transaction Form, or the related invoice number regarding property purchased from a permitted vendor.

Returning Stolen Property to Rightful Owner

Currently, some pawnbrokers voluntarily return property to victims of property crimes without compensation, then turn to the court in hopes that restitution will be ordered. After receiving property back without charge, however, victims will sometimes sign a "waiver of prosecution" the case never is tried, and the pawnbroker is left without recourse. Other pawnbrokers refuse to return property without payment of the pawn ticket. Current law provides that a person who files a replevin lawsuit may do so without paying the court costs or sheriff's service fee, although it is claimed that many individuals are unaware of how to file such a suit. Corporations whose property is stolen and pawned also assert that they are required to employ an attorney for these relatively small suits because there is no statutory form.⁷

This bill creates a statutory form for a replevin lawsuit against a pawnbroker holding stolen property. This bill also provides that a criminal court has jurisdiction to hear and decide the civil matter of ownership of the stolen property, and may award possession of such property together with restitution to any person. Additionally, if the pawnbroker does not contest the rightful owner's title to the property, and if the rightful owner has not signed a waiver of prosecution, the pawnbroker must give the property to the rightful owner without charge.

This bill provides a definition for the term "waiver of prosecution" and allows the pawnbroker to seek restitution via criminal court, thus allowing the criminal court trying the suspect to return property or order restitution.

C. SECTION DIRECTORY:

Section 1 amends s. 539.001, F.S., to revise and add definitions, to revise application requirements, to provide for suspension or revocation of a license, to require certain labeling of property, to prohibit certain activity relating to title loans, to revise requirements relating to return of misappropriated property, to provide a petition form, to authorize criminal proceedings, to clarify provisions relating to hold orders, and to provide penalties.

Section 2 provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁶ A permitted vendor is defined by statute, as amended by this bill, as: a vendor who furnishes a pawnbroker with a uniquely numbered invoice specifying the vendor's name and address, the date of the sale, a description of the items sold, and the sale price, and who has an established place of business, or in the case of a secondhand dealer as defined in s. 538.03, F.S., has represented in writing that such dealer has complied with all applicable recordkeeping, reporting, and retention requirements pertaining to goods sold or otherwise delivered to a pawnbroker.

⁷ In general, a corporation cannot represent itself in court. That is considered the unauthorized practice of law by a non-lawyer.

None. This bill does not affect a state government revenue source.

2. Expenditures:

None. This bill does not require a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect a local government revenue source.

2. Expenditures:

None. This bill does not require a local government expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires pawnbrokers to revise their transaction forms and to label each item purchased or pawned. The cost associated with meeting these requirements is unknown, but expected to be minimal, as is the cost for complying with the requirement for record retention.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its March 10, 2004, meeting, the House Committee on Agriculture adopted two amendments to the original bill.

Amendment 1 reinstates language in s. 539.001(15) relating to claims against purchased goods or pledged goods held by pawnbrokers.

Amendment 2 removed language stating that the provisions of chapter 537, F.S., relating to title loans does not apply to pawnbrokers licensed under the Florida Pawnbroking Act.