

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Criminal Justice Committee

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BILL: SB 520

SPONSOR: Senator Hill

SUBJECT: Pawnbroking

DATE: February 28, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Pre-meeting</b>
2.	_____	_____	CM	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill amends s. 539.001(16), F.S., creating requirements with regard to law enforcement's handling of pawned property that is subject to a hold order, and of the state attorney's office if the property is part of a criminal case or investigation. The bill also creates a third degree felony for failure by the appropriate law enforcement official to timely return the property to the pawnbroker.

This bill substantially amends section 539.001, Florida Statutes.

## II. Present Situation:

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

Chapter 539, F.S., contains numerous regulatory provisions, including:

- Pawnbrokers are required to obtain a license, for each pawnshop, from the Division of Consumer Services of the Department of Agriculture;
- 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 licence 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); and
- 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, 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. Chapter 538, F.S., which regulates secondhand dealers, provides an analogous provision requiring the completion of transaction forms and the delivery on a daily basis to the local law enforcement official. s. 538.04, F.S.

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.

Chapter 539, F.S., provides a 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, ch. 539, F.S., provides a procedure for recovering the property. See s. 539.001(15), F.S.

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.

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.

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. See 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. A written hold order is not mandatory under the current law. The order may be up to 90 days, unless extended by court order.

When the hold order expires, the pawnbroker must notify the law enforcement official of the expiration by certified mail, return receipt requested. On the 10th day after notification is received by law enforcement, if the pawnbroker has not received an extension of the hold order from the court, title to the property vests in the pawnbroker, subject to any restrictions in the pawn contract, and provided there is no civil action pending under subsection (15).

It is not unusual for law enforcement to take possession of property subject to a hold order. See s. 539.001(16)(e)2., F.S. The property, which may be evidence in a criminal case, is normally stored by the agency in such a way that the chain of custody is preserved, so that the property is admissible at trial should it become necessary.

Section 539.001(16)(e)2., F.S. currently requires that “[u]pon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders other disposition.”

**III. Effect of Proposed Changes:**

This bill amends ss. 539.001(16)(a) and (b), F.S. as follows:

- It requires a written hold order by the appropriate law enforcement official when the officer has probable cause to believe pawned property is misappropriated. A written hold order is currently permitted, but not required.
- If the property is evidence in a criminal case or investigation, the state attorney is required to notify the pawnbroker of any court proceedings involving the property.
- The law enforcement official receiving the certified mail notification of the expiration of the hold period must respond to the pawnbroker by certified mail within 10 days.
- When the property is no longer subject to the hold order, and is not the subject of a civil action under subsection (15), the appropriate law enforcement officer must return the property to the pawnbroker within 14 days.
- Failure by the law enforcement official to return the property is a felony of the third degree under the provisions of the bill.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

There may be some fiscal impact on the state attorneys because of the notification requirement in the bill, but this should be limited to the cost of postage, stationery, and the employee time involved in the notification process.

Law enforcement agencies would likely incur the same minimal fiscal impact due to the requirement of the certified mail response to the pawnbroker.

**VI. Technical Deficiencies:**

The bill could be made somewhat clearer in the provision requiring law enforcement to return certain property to the pawnbroker if the phrase “if the property is in the custody of the law enforcement official” were added. This would recognize that there are occasions when the property may be in the court’s possession subsequent to a trial in which the property was an exhibit or admitted in evidence, and has not been released by the court.

Further, it should be noted that paragraph (e) of s. 539.001, F.S., currently requires the property to be returned to the pawnbroker upon completion of a criminal proceeding, but provides an exception should the court order another disposition.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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