

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1031 CS                      Pawnbroking  
**SPONSOR(S):** Kyle  
**TIED BILLS:**                                **IDEN./SIM. BILLS:** SB 1870

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	6 Y, 0 N, w/CS	Reese	Reese
2) Finance & Tax Committee			
3) State Resources Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The bill amends the Florida Pawnbroking Act (act) to prohibit local governments, counties or municipalities, from enacting ordinances requiring the payment of any fee related to a pawn transaction or purchase unless authorized by the act.

The bill will have a fiscal impact on those counties and municipalities that have ordinances requiring pawn transaction fees. There appears to be no impact to state government.

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government and ensure lower taxes** – The bill prohibits local government ordinances requiring assessment of pawn transaction fees.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

Adopted in 1996, The Florida Pawnbroking Act<sup>1</sup> (act) 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 creates a right to redeem pledged goods, a pawnbroker's lien, and a procedure for obtaining pledged goods allegedly misappropriated.

The act establishes strict licensing requirements, provides for detailed forms to be completed for each pawn transaction, requires strict record keeping and reporting procedures, and establishes procedures for the holding and recovering of stolen goods. As part of the record keeping process, pawnbrokers are required to deliver to the appropriate law enforcement official, on a daily basis, the original pawnbroker transaction forms for each transaction which occurred on the previous day.<sup>2</sup> Failure to comply can cost a pawnbroker his/her license.<sup>3</sup>

Over the past several years, the cities of Miami and Fort Lauderdale have enacted local ordinances assessing a pawn transaction fee of \$1.50 on every pawn loan and purchase in those municipalities. According the City of Fort Lauderdale Police Department, the fee brings in approximately \$80,000 annually. The funds are used to pay for pawn investigations by the police.

The City of Miami enacted its ordinance no. 11425 in 1996, setting forth administrative fees to cover the cost of review and processing of all transaction forms submitted by the "pawn shop detail." As noted in a Florida Third District Court of Appeals' opinion,<sup>4</sup> there are approximately 300 pawnshops in the city, averaging 600 transaction forms a day. On-site inspections are conducted monthly by the Pawn Shop Police Detail.

Following adoption of the ordinance, some pawn shops in Miami sued the city, and the trial court declared the city's pawnshop fees unconstitutional, finding them to be a tax, and not, as contended by the city, user fees.<sup>5</sup> The trial court believed that the city's pawnshop fees are a tax (and thus unconstitutional) for two reasons.<sup>6</sup> First the court concluded that the fees primarily benefit the general public as they are expended on city police services, including the criminal investigations made possible by the transaction reports. Next the court concluded that the city's pawnshop fees are involuntary in nature.

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<sup>1</sup> Chapter 539, Florida Statutes

<sup>2</sup> s. 539.001(9), F.S.

<sup>3</sup> s. 530.001(6), F.S.

<sup>4</sup> City of Miami, appellant, vs. Quick Cash Jewelry & Pawn, Inc., et al., appellees (Fla. 3d DCA 2002)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

On appeal, the trial court's decision was overturned by the Florida Third District Court of Appeals, which stated in its decision: "As the City's pawnshop fees are voluntary and benefit pawnshop owners in a manner not shared by others, they are not a tax, but are constitutional user fees."<sup>7</sup>

A pawn transaction fee ordinance was recently proposed for pawn transactions in the city of Ocala. The city, however, did not enact the ordinance.

### **Effect of Bill**

The bill addresses the conflicting ordinances subsection of the law to prohibit counties and municipalities from enacting local ordinances requiring the payment of any fee related to a pawn transaction or purchase unless authorized by state law.

#### **C. SECTION DIRECTORY:**

Section 1. Amends s. 539.001, F.S., to provide that local ordinances shall not require the payment of any fee related to a pawn transaction or purchase unless authorized by state law.

Section 2. Provides an effective date of July 1, 2006.

## **II. 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:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Proponents of the bill state that costs incurred resulting from the regulatory requirements set forth in chapter 539, F.S., have been absorbed by the pawnbroking industry. The majority of pawn business owners have computerized their transaction systems in order to report electronically, rather than through use of paper forms, to law enforcement. The additional fee of \$1.50 per transaction adds an additional cost to the business owners.

#### **D. FISCAL COMMENTS:**

The City of Fort Lauderdale receives approximately \$80,000 annually from pawn transaction fees. The funds help pay for two police personnel who conduct pawn investigations.

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<sup>7</sup> *Id.*

With approximately 300 pawnshops in the city (in 2002)<sup>8</sup>, averaging 600 transaction forms a day, the City of Miami can receive approximately \$328,000 annually in pawn transaction fees.

### 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; however, the bill does reduce the authority that counties or municipalities have to raise revenues. The bill does not reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

See Effect of Proposed Changes – Background

#### B. RULE-MAKING AUTHORITY:

The bill contains no grant of rule-making authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Committee on Agriculture adopted one amendment to HB 1031. The amendment clarified that:

“...local ordinances **shall** not require the payment of any fee or tax related to a pawn transaction **or purchase...**”

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<sup>8</sup> *Id.*