

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	6 Y, 0 N, w/CS	Reese	Reese
2) Finance & Tax Committee	8 Y, 0 N	Rice	Diez-Arguelles
3) State Resources Council			
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, the cities of Miami and Fort Lauderdale have a \$1.50 transaction fee that is assessed by ordinance against all pawn transactions. Although not prohibited, this fee is not explicitly authorized in the Florida Pawnbroking Act.

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 in current law.

The bill will reduce the revenues of Miami and Fort Lauderdale.

This bill may be a mandate requiring a two-thirds vote of each house.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill limits the types of ordinances that local governments can enact regarding pawnbroking.

Ensure lower taxes – The bill prohibits local government ordinances requiring fees or taxes that are not explicitly authorized in the Florida Pawnbroking Act.

B. EFFECT OF PROPOSED CHANGES:

Background

The Florida Legislature created Chapter 539, F.S., in 1996 to outline the provisions of the Florida Pawnbroking Act (act). The act provides for state licensure of pawnbrokers through the Department of Agriculture and Consumer Services and regulation by the local sheriffs or police department.

Pawnbrokers are stringently regulated and as such are required to keep records of all transactions. As outlined under s. 539.001(9), F.S., pawnbrokers are required to maintain a copy of each completed pawnbroker transaction form on the pawnshop premises for one year after the date of transaction. Also, on or before the end of each business day, the pawnbroker must deliver to the appropriate law enforcement official the original pawnbroker transaction forms for each of the transactions occurring during the previous business day.

Pawnbrokers are subject to any applicable local occupational license taxes and are obligated to collect and remit sales taxes including any local discretionary sales taxes on sales transactions.

Transaction Fee Ordinance

Both Miami (in 1996) and Fort Lauderdale (in 2004) have enacted local ordinances assessing a transaction fee of \$1.50 on every pawn loan and purchase in those municipalities. The charge was imposed to cover the cost of police inspections and the processing of transaction forms.

Following adoption of the ordinance, some pawnbrokers 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. The third district court of appeals reversed this decision reaffirming that a fee imposed by the city to cover the cost of law enforcement services to pawn shops is a valid user fee and not an unconstitutional tax.¹

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

Current law does not explicitly prohibit the enactment of an ordinance imposing a fee on pawnbroker transactions, it only requires that any ordinances enacted be in compliance with the Florida Pawnbroking Act.

¹ City of Miami v. Quik Cash Jewelry and Pawn Inc., 811 So.2d 756 (FL 3 DCA 2002)

Effect of Bill

The bill prohibits counties and municipalities from enacting local ordinances requiring the payment of any fee related to a pawn transaction or purchase unless explicitly authorized under the Florida Pawnbroking Act.

C. SECTION DIRECTORY:

Section 1. Amends s. 539.001, F.S., relating to the Florida Pawnbroking Act, restricting the authority of counties and municipalities to enforce a fee or tax.

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:

The revenues of the cities of Miami and Ft. Lauderdale will be reduced.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

For local FY 2004-2005, the City of Fort Lauderdale reported having charged \$82,446 in transaction fees and has received \$52,824 in transaction fee payments. Miami did not respond to the survey.²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the revenue raising authority of cities and counties. While only two cities currently levy this fee, all cities and counties have authority to levy this fee. Therefore, this authority appears to be significant. No mandate exemptions apply. Therefore, the bill may be a mandate requiring a two-thirds vote majority of each house.

² Survey conducted by Legislative Committee on Intergovernmental Relations

B. RULE-MAKING AUTHORITY:

None

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 the bill. The amendment clarified that local ordinances are not permitted to require payment of any fee or tax related to any pawn transaction including purchases.