

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.)

Prepared By: Commerce and Consumer Services Committee

BILL: SB 1870

INTRODUCER: Senator Baker

SUBJECT: Pawnbroking

DATE: March 21, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Earlywine	Cooper	CM	Fav/1 amendment
2.			CA	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill prevents a county or a municipality from requiring a fee for pawn transaction unless otherwise authorized by ch. 539, F.S. and thereby the Legislature.

This bill substantially amends s. 539.001, F.S.

II. Present Situation:

The Florida Pawnbroking Act

The Florida Pawnbroking act provides for the regulation and licensing of pawnbrokers in Florida.¹ Among other things, the act requires forms to be completed for each pawn transaction, provides for certain record keeping and reporting procedures, and provides for holding procedures and procedures for recovering stolen goods.²

Under the act, pawnbrokers are required to file out detailed forms on pawn transactions.³ Daily, the pawnbroker must provide the original forms to the appropriate law enforcement agency for

¹ Section 539.001, F.S.

² *Id.*

³ Section 539.001(8), F.S.

the previous business day which may be submitted electronically.⁴ A pawnbroker is required to keep a copy of the form for at least 1 year after the transaction.⁵

Home Rule Fee Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.⁶ Those counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.⁷ Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes except as otherwise provided by law.⁸

Given these constitutional and statutory powers, local governments may impose a variety of fees to fund services and improvements without express statutory authorization.⁹ Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.

Pawn Transaction Fees

In *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, the city appealed a circuit court decision that held the fees imposed on pawnshop operators were unconstitutional taxes.¹⁰ The trial court rationalized that the fees primarily benefited the general public because they were expended on city police services and that the fees were involuntary.¹¹ However, the district court of appeals stated that the fee benefits only pawnbrokers in that it aids pawnbrokers in complying with the Florida Pawnbroking act and if the pawnbrokers did not want to pay the fee, they could not be in that particular business.¹²

III. Effect of Proposed Changes:

Section 1 amends s. 539.001, F.S., to provide that any county or municipality may not require a fee payment related to a pawn transaction that is not already authorized under ch. 539, F.S.

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

⁴ Section 539.001(9), F.S.

⁵ *Id.*

⁶ Art. VIII, § 1(f), Fla. Const.

⁷ Art. VIII, § 1(g), Fla. Const.

⁸ Art. VIII, § 2(b), Fla. Const. Also See s. 166.021, F.S.

⁹ However, counties and municipalities cannot levy a tax without express statutory authorization because Art. VIII, VIII, § 1(a), Fla. Const., specifically preempts this authority to the state. Again, local governments may levy special assessments and a variety of fees absent any general law prohibition provided such home rule source meets the relevant legal sufficiency tests.

¹⁰ *City of Miami v. Quik Cash Jewelry & Pawn, Inc.*, 811 So.2d 756 (3rd DCA 2002).

¹¹ *Id.*

¹² *Id.* at 758.

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

Subsection (b) of s. 18, Art. VII, State Constitution, provides that except upon approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue, as such authority exists on February 1, 1989.

This bill reduces the authority that counties have to raise revenues by restricting the imposition of payments related to pawn transactions. At this time, the impact of the bill is estimated to be insignificant and therefore exempt from the mandate restriction.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

This bill prohibits any county or municipality from imposing a fee payment related to a pawn transaction.

The Legislative Committee on Intergovernmental Relations (LCIR) all cities (407) and counties (67) in this state to identify which local governments currently impose a fee on pawn transactions. Of the 127 responses (as of March 16, 2006), only the City of Fort Lauderdale indicated that it imposes a \$1.50 fee per “unique” pawn transaction. A “unique” transaction means a person may pawn up to 20 items on the same date at the same time and it will be considered one transaction. For fiscal year 04-05, the City of Fort Lauderdale billed out a total of \$82,446 and has received back a total of \$52,824.

B. Private Sector Impact:

This bill would limit the fees cities and counties may charge for pawn transactions. Therefore, pawnshops and brokers may see a savings if the Legislature does not provide for the fee in the Florida Pawnbrokers Act.

C. Government Sector Impact:

The costs associated with receiving the daily transaction forms are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

Barcode 130988 by the Commerce and Consumer Services Committee:

This amendment provides that a county or municipality shall not require a fee or *tax* related to a pawn transaction *or purchase* unless authorized by the Legislature.

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