

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 685 Victim Assistance  
**SPONSOR(S):** Slosberg  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 360

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee			

### SUMMARY ANALYSIS

Reports frequently surface about people using pawnbrokers to sell stolen jewelry and other goods. A "pawnbroker" is a person who is engaged in the business of making pawns; who makes a public display using the term "pawn," "pawnbroker," or "pawnshop" or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.

Florida law currently provides for notifying victims regarding a variety of matters that affect them, such as when hearings in the underlying criminal case are scheduled or when a defendant gets released. Such victim notification requirements are not currently required for any entity to notify a victim that his or her property has been located in the possession of a pawnbroker.

The bill amends s. 960.001(1)(h), F.S., to require a law enforcement agency to promptly make reasonable efforts to notify the victim if the victim's property is determined to be in the possession of a pawnbroker. The agency is also required to give the victim the following information:

- The name and location of the pawn shop;
- Instructions outlining the process for an action of replevin; and
- Procedures specified in s. 539.001(15), F.S., for obtaining the property.

The bill requires law enforcement agencies to comply with new victim notice requirements. To the extent that state and local law enforcement agencies must carry out the new notification requirements, the bill may have a minimal fiscal impact on local government expenditures.

The bill is effective July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### Pawnbrokers

Reports frequently surface about people using pawnbrokers to sell stolen jewelry and other goods.<sup>1</sup> A “pawnbroker” is a person engaged in the business of making pawns; who makes a public display using the term “pawn,”<sup>2</sup> “pawnbroker,” or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.<sup>3</sup>

Chapter 539, F.S., governs pawnbrokers and provides a specific procedure for a person to make claims against goods held by pawnbrokers when the ownership or rightful possession of the goods is contested.<sup>4</sup> The procedure provides:

- The claimant must notify the pawnbroker by certified mail or in person of the claim to the goods and must be accompanied by the law enforcement report concerning the misappropriation of the goods.<sup>5</sup>
- If the claim isn’t settled within 10 days of the notice, the claimant may file a lawsuit, and must serve the pawnbroker with a copy of the petition.<sup>6</sup>
- If the court finds that the claimant failed to comply with the above procedures,<sup>7</sup> or finds against the claimant on any basis, the claimant is liable for the defendant’s costs,<sup>8</sup> including attorney fees.<sup>9</sup>

##### Victim Notification Statutes

Florida law currently provides for notifying victims regarding a variety of matters that affect them. Section 944.605(1), F.S., requires the state attorney or Department of Corrections to notify victims within six months before the release of an inmate from the Department of Corrections, a private correctional facility, a release program, or parole. Additionally, s. 394.926(1), F.S., requires the Department of Children and Families to notify the victim as soon as practicable when a person is released from involuntary civil commitment under Chapter 394, F.S.

Section 960.001, F.S., places a number of requirements on various government entities to ensure that victims are treated fairly and notified of important matters. For example:

- Victims are generally provided the right to be informed, be present,<sup>10</sup> and be heard when relevant, at all crucial stages of criminal and juvenile proceedings.<sup>11</sup>
- In cases involving specified offenses,<sup>12</sup> the arresting law enforcement officer or victim assistance personnel must request the victim or the victim’s next of kin to complete a victim

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<sup>1</sup> See Highlands Today Staff, *Woman Stole \$20,000 in Jewelry, Deputies Say*, HIGHLANDS TODAY (Dec. 15, 2015), <http://www.highlandstoday.com/hi/local-news/woman-stole-20000-in-jewelry-deputies-say-20151215/> (last visited Jan. 13, 2016); Staff, *ECISO: Pawnbroker Dealt in Stolen Goods*, PENSACOLA NEWS JOURNAL (Aug. 11, 2015), <http://www.pnj.com/story/news/crime/2015/08/11/ecso-pawnbroker-dealt-stolen-goods/31453783/> (last visited Jan 13, 2016); Deanna Bettineschi, *Over 200 Stolen Items Recovered in Pawn Shop Raid*, ACTION NEWS JAX (July 17, 2015), <http://www.actionnewsjax.com/news/news/local/over-200-stolen-items-recovered-pawn-shop-raid/nm2jh/> (last visited Jan. 13, 2015).

<sup>2</sup> “‘Pawn’ means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained in this section.” s. 539.001(2)(h), F.S.

<sup>3</sup> s. 539.001(2)(i), F.S.

<sup>4</sup> s. 539.001(15), F.S.

<sup>5</sup> s. 539.001(15)(a), F.S.

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

<sup>7</sup> The procedures that must be complied with are described in detail in s. 539.001(15)(a), F.S.

<sup>8</sup>

<sup>9</sup> s. 539.001(15)(c), F.S.

<sup>10</sup> Victims who are incarcerated are provided the right to be informed and to submit written statements. s. 960.001(1)(a)6., F.S.

<sup>11</sup> s. 960.001(1)(a)5., F.S.

notification card with various contact information.<sup>13</sup> The appropriate party<sup>14</sup> shall make a reasonable attempt to notify the alleged victim or next of kin of the alleged victim within four hours following the defendant's release.<sup>15</sup>

- A victim or witness must be provided information explaining the steps available to law enforcement officers and state attorneys to shield the victim or witness from intimidation.<sup>16</sup>
- Law enforcement agencies and the state attorney shall promptly return the victim's property when there is no compelling law enforcement reason for retaining it.<sup>17</sup>

While Florida requires victim notification for a variety of circumstances, it is not currently required for any entity to notify a victim that his or her property has been located in the possession of a pawnbroker.

### **Effect of the Bill**

The bill amends s. 960.001(1)(h), F.S., to require a law enforcement agency to promptly make reasonable efforts to notify a victim if the victim's property is determined to be in the possession of a pawnbroker. The agency is also required to give the victim the following information:

- The name and location of the pawn shop;
- Instructions outlining the process for an action of replevin; and
- Procedures specified in s. 539.001(15), F.S., for obtaining the property.

The bill is effective July 1, 2016.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 960.001, F.S., relating to guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.

Section 2. Provides an effective date of July 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The bill requires law enforcement agencies to comply with new victim notification requirements. To the extent that state law enforcement agencies must carry out the notification requirements, the bill may have a minimal fiscal impact on state expenditures.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

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<sup>12</sup> This requirement applies in the case of a homicide, pursuant to ch. 782, F.S.; a sexual offense, pursuant to ch. 794, F.S.; an attempted murder or sexual offense, pursuant to ch. 777, F.S.; stalking, pursuant to s. 784.048, F.S.; or domestic violence, pursuant to s. 25.385, F.S.

<sup>13</sup> s. 960.001(1)(b)1., F.S.

<sup>14</sup> The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility is the appropriate party to provide notice under this subparagraph. s. 960.001(1)(b)3., F.S.

<sup>15</sup> s. 960.001(1)(b)3., F.S.

<sup>16</sup> s. 960.001(1)(c), F.S.

<sup>17</sup> s. 960.001(1)(h), F.S.

2. Expenditures:

The bill requires law enforcement agencies to comply with new victim notice requirements. To the extent that local law enforcement agencies must carry out the new notification requirements, the bill may have a minimal fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the requirement on law enforcement to “immediately notify” a victim and replaces it with “promptly make reasonable efforts to notify” a victim;
- Adds a statutory reference to the definition of “pawnbroker;” and
- Creates consistent terms throughout the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.