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Interim Project Report 2001-037

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Committee on Criminal Justice

Senator Ginny Brown-Waite, Chairman

OPEN GOVERNMENT SUNSET REVIEW OF SECTION 539.003, FLORIDA STATUTES

SUMMARY

Chapter 539, F.S., regulates the pawnbroker industry in Florida. Section 539.001(9), F.S., requires pawnbrokers to provide local law enforcement with copies of every pawnbroker transaction form generated by the business, which includes the name and address of the pawnshop, a complete description of the pledged or purchased goods, the name, address, home telephone number, place of employment, date of birth, physical description, personal identification number and right thumbprint of the pledgor or seller, the date and time of the transaction, and the financial arrangements made between the pledgor or seller and the pawnbroker. Although the local law enforcement agency is allowed to disclose a limited amount of information from the pawnbroker transaction form to the alleged owner of stolen property that may have been pawned, the Legislature exempted the information contained on the form from the public records law in 1996 by finding that "information relating to pawnbroker transactions is of a sensitive and personal nature to the pledgor or seller of pledged goods...it is a public necessity that such information be held confidential and exempt from public records laws." Chapter 96-241, Section 2, L.O.F., s. 539.003, F.S. The section will expire October 1, 2001, unless the Legislature reviews and reenacts it.

It is recommended that s. 539.003, F.S., be reenacted.

branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissioners or entities created pursuant to law or the State Constitution.

The State Constitution authorizes exemptions to open records and meetings requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

The Open Government Sunset Review Act of 1995 Section 119.15, F.S., the *Open Government Sunset Review Act of 1995*, establishes a review and repeal process for exemptions to public records or meetings requirements. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption. Section 119.15(3)(a), F.S., requires a law that enacts a new exemption or substantially amends a new exemption to state that the exemption is repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date.

An exemption is substantially amended if the amendment "... expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption." Section 119.15(3)(b), F.S.

BACKGROUND

Constitutional Access to Public Records and Meetings – Article I, s. 24 of the State Constitution provides every person with the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf. The section specifically includes the legislative, executive and judicial

In the year before the repeal of an exemption, the Division of Statutory Revision is required to certify to the President of the Senate and the Speaker of the House of Representatives each exemption scheduled for repeal the following year which meets the criteria of an exemption as defined in the section. Any exemption that is not identified and certified is not subject to legislative review and repeal under s. 119.15, F.S. If the division fails to certify an exemption that it subsequently determines should have been certified, it is required to include the exemption in the following year's certification after that determination.

Section 119.15(2), F.S., states that an exemption is to be maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

Further, s. 119.15(4)(a), F.S., requires as part of the review process the consideration of the following specific questions:

- (a) What specific records or meetings are affected by the exemption?
- (b) Whom does the exemption uniquely affect, as opposed to the general public?
- (c) What is the identifiable public purpose or goal of the exemption?
- (d) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Additionally, under s. 119.15(4)(b), F.S., an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meeting the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

(a) Does the exemption allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption?

(b) Does the exemption protect information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals? However, in exemptions under this paragraph, only information that would identify the individuals may be exempted.

(c) Does the exemption protect information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace?

Under s. 119.15(4)(e), F.S., notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under the section. The failure of the Legislature to comply strictly with the section does not invalidate an otherwise valid reenactment.

Exemption from Public Records for Pawnbroker Transaction Information – During the 1996 Legislative Session, the Legislature enacted the Florida Pawnbroking Act. Chapter 96-242, L.O.F., Chapter 539, F.S. The Act authorized the Division of Consumer Services of the Department of Agriculture and Consumer Services to license and regulate pawnbrokers.

In part, the Act requires pawnbrokers to submit a pawnbroker transaction form to the appropriate law enforcement official for every pawn or purchase transaction. "Appropriate law enforcement official" means the sheriff of the county in which a pawnshop is located or, if the pawnshop is located within a municipality, the police chief of that municipality, unless the sheriff or chief has designated another local law enforcement officer to receive the forms. Section 539.001(2)(b), F.S., as amended Chapter 97-304, L.O.F.

The Division of Consumer Services must approve the design and format of the pawnbroker transaction form, and the form must contain the following information:

- the name and address of the pawnshop
- complete description of the pledged or purchased goods including brand name; model number; serial number; size, color; precious metal type, weight and content; gemstone description; firearm caliber or gauge, type of action, number of barrels and length, and finish; and any other unique identifying marks, numbers, letters or names
- the name, address, home telephone number, place of employment, date of birth, physical description, and right thumbprint of the pledgor or seller
- date and time of the transaction
- type of identification accepted from the pledgor or seller
- in the case of a pawn, the amount of money advanced; maturity date of the pawn; default date and amount due on that date; total pawn service charge; total of payments; annual percentage rate; automatic forfeiture and conveyance information; a statement of pledgor obligations; a statement regarding extension of the time period of the pawn agreement
- in the case of a purchase, the amount of money paid for the goods or monetary value assigned to the goods
- a statement that the pledgor or seller represents and warrants that the item is not stolen, that it has no liens or encumbrances against it, and that the pledgor or seller is the rightful owner and has the right to enter into the transaction.

Section 539.001(8), F.S.

During the same Legislative Session in which the Florida Pawnbroking Act was enacted, an exemption from the public records law for records relating to pawnbroker transactions delivered to appropriate law enforcement officials was created. Chapter 96-241, L.O.F., s. 539.003, F.S. The statute requires that the records only be used for official law enforcement purposes. Although the statute was amended during the 1997 Legislative Session to include a provision that allows law enforcement officials to disclose the name and address of the pawnbroker, the name and address of the conveying

customer, or a description of the pawned property to the alleged owner of the property, the basic exemption from the public records law remains in effect. Chapter 97-304, Section 2, L.O.F. This exemption stands repealed on October 2, 2001, unless reviewed and saved from repeal through reenactment.

In enacting Chapter 96-241, L.O.F., the Legislature stated: "The Legislature...has determined that information relating to pawnbroker transactions is of a sensitive and personal nature to the pledgor or seller of pledged goods. The Legislature finds that it is a public necessity that such information be held confidential and exempt from the public records law." Chapter 96-241, Section 2, L.O.F.

METHODOLOGY

Staff reviewed relevant statutory provisions, surveyed various agencies and other interested entities, and reviewed relevant case law during the review process.

FINDINGS

As noted above, s. 119.15(2), F.S., provides that an exemption is to be maintained only if:

- (a) The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- (b) The exemption is necessary for the effective and efficient administration of a governmental program; or
- (c) The exemption affects confidential information concerning an entity.

Using this analysis, the information contained in the pawnbroker transaction records meets the criteria in paragraph (a), as noted by the Legislature in 1996, as well as paragraph (b), and arguably meets the criteria in paragraph (c) as well.

As previously noted, the information contained in the pawnbroker transaction form contains the name, address, home telephone number, place of employment, date of birth, physical description, driver's license or other identification number, and right thumbprint of the pledgor or seller. This information is clearly "personal," and meets the criteria set forth in s. 119.15(2)(a), F.S. The

Legislature recognized that fact when the exemption was enacted in 1996. Beyond the strictly “personal” nature of the identifying information, however, is the potentially embarrassing or defamatory information that the individual is conducting financial business by pawning property. Although the pawnbroking industry has been in existence for many years and is a legitimate way to borrow money, the industry seems to recognize that publicity concerning an individual’s pawn transactions could be mischaracterized in such a way as to injure the individual’s name and reputation.

The information contained in the pawnbroker transaction forms is currently forwarded to local law enforcement by the pawnbroker. This allows law enforcement open access to a valuable tool to investigate the misappropriation of property. For that reason, the information contained in the form is certainly helpful to the effective and efficient administration of law enforcement activities.

During the 2000 Legislative Session, the Legislature considered a comprehensive bill that would have fine-tuned the regulation of the pawnbroker industry by creating certain property crime victim assistance including the streamlining of the legal process for reclaiming stolen property from pawnbrokers and an informational pamphlet explaining the victim’s rights. This bill (SB 1598), which died on the calendar, also proposed the creation of a statewide database containing the information from all the pawn transactions conducted in the state, which would be administered by the Florida Department of Law Enforcement. Although the substantive legislation did not pass during the 2000 Session, the Florida Department of Law Enforcement received a \$1,050,748 appropriation for the purpose of creating and implementing the database.

The Florida Department of Law Enforcement is approaching the creation and implementation of the database as a partnership between law enforcement and the pawnbroker industry and believes the success of the project is dependent upon the industry’s continued participation. To that end, the department is working with the pawnbroker industry to develop the database, and will likely work with the Legislature to pass the previously considered substantive legislation which should set forth restrictions on the use of the database for legitimate law enforcement purposes. Because of the creation of the database, it is believed by both law enforcement and the pawnbroker industry that the

exemption addressed in this report is necessary for the effective and efficient administration of a government program, as required under s. 119.15(2)(b), F.S.

Arguably, the information contained in the pawnbroker transaction forms affects confidential information concerning an entity, as set forth in s. 119.15(2)(c), F.S., in that the record constitutes a list of pawnbroker customers and merchandise pricing data.

Further, s. 119.15(4)(a), F.S., requires as part of the review process the consideration of the following specific questions:

(a) What specific records or meetings are affected by the exemption? The records are the pawnbroker transaction forms required by s. 539.001(8), F.S.

(b) Whom does the exemption uniquely affect, as opposed to the general public? The exemption affects individuals transacting business with a pawnbroker, the pawnbroker, law enforcement, and victims of property crimes.

(c) What is the identifiable public purpose or goal of the exemption? As stated in Chapter 96-241, Section 2, L.O.F., the purpose is to keep private and confidential certain personal identification information which is contained in the pawnbroker transaction forms described herein. Additional public purposes, based on the findings contained in this report, could include the need to exempt the information contained in the pawnbroker transaction forms for the effective and efficient administration of the statewide pawnbroker transaction database, as well as the need to keep certain pawnbroker industry information confidential.

(d) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? No, *all* of the information contained in the pawnbroker transaction forms cannot be readily obtained by alternative means. The forms are private business records kept by the pawnbroker, a copy of which is provided to local law enforcement as required under s. 539.001(9)(a), F.S. Law enforcement is not prohibited from disclosing certain *limited* information from the form such as the name and address of the pawnbroker, the conveying customer, or a description of pawned property to the alleged

owner of the pawned property under s. 539.003(1), F.S.

Additionally, under s. 119.15(4)(b), F.S., an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meeting the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

(a) Does the exemption allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption?

(b) Does the exemption protect information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this paragraph, only information that would identify the individuals may be exempted.

(c) Does the exemption protect information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace?

In answer to the preceding questions, and as previously discussed, the information in the pawnbroker transaction forms is conveyed to local law enforcement and is used for investigative purposes at the local level. The Florida Department of Law Enforcement is working with the pawnbroker industry to develop a database which would contain statewide information regarding pawn transactions and may be accessed by law enforcement throughout the state for certain investigative functions. There seems to be a concern among the interested parties that without the exemption, individuals who normally might pawn property may choose another avenue for disposing of the property which is not regulated, or if they

choose to pawn the property, would not provide accurate identification information to the pawnbroker. These alternatives would certainly impair law enforcement's ability to track stolen property which may be pawned and return it to its rightful owner while making a case for prosecution of the law violator.

Regarding the question of whether the exemption protects sensitive personal information concerning an individual, the release of which would be defamatory or cause unwarranted damage to the individual's name or reputation, or would jeopardize the safety of the individual, as previously stated, the Legislature found this to be the identifiable public purpose in enacting the exemption in 1996. The status of this personal information has not changed. The personal information contained in the pawnbroker transaction forms which are forwarded to law enforcement is sensitive in that it identifies the individual by name, address, identification number, telephone number, date of birth, place of employment and thumbprint. Release of this information to the general public could be a safety concern to the individual. Additionally, given the rise of identity theft crimes in our country the release of this information invites potential crime against the individual. The stigma that is sometimes attached to pawning property has been previously discussed in this report. The release of this personal information would potentially be defamatory or cause unwarranted damage to a person's reputation.

As to whether the exemption is no more broad than necessary to accomplish the public purpose of keeping the sensitive personal information confidential, the entire pawnbroker transaction form would not be confidential under this limitation. Sections 119.15(4)(b) and 119.15(4)(b)2., F.S. Only that information such as name, address, identification number and so on, would be exempt. The type of property pawned or purchased and the financial arrangements would not be confidential.

Arguably the exemption of the information contained in the pawnbroker transaction form from the public records law could be maintained because it protects confidential information concerning the pawnbroker (an entity) including customer lists and merchandizing information, in addition to the reasons mentioned above.

RECOMMENDATIONS

It is recommended that s. 539.003, F.S., be reenacted.

The exemption from the public records law meets the statutory criteria for reenactment in that the personal information provided to law enforcement on the pawnbroker transaction form is sensitive in nature concerning individuals, the release of which could be defamatory or cause unwarranted damage to the good name or reputation of the individual. Additionally, in this age of identity theft crimes, the release of this personal identification information could invite such a crime.

Additional reasons to continue the exemption include the fact that the information contained in the forms constitutes confidential information

concerning the pawnbroker’s business such as customers and merchandizing information, as well as the fact that the Florida Department of Law Enforcement is working to develop a statewide database which would enable law enforcement to track stolen property which surfaces at pawnshops throughout the state. The continuation of the exemption makes it more likely that accurate information will be provided for the form by the pledgor or seller thereby allowing law enforcement to more effectively administer the database.

COMMITTEE(S) INVOLVED IN REPORT *(Contact first committee for more information.)*

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MEMBER OVERSIGHT

Senator Walter “Skip” Campbell