

STORAGE NAME: h0555s1.lecp

DATE: March 10, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND CRIME PREVENTION
ANALYSIS**

BILL #: CS/HB 555

RELATING TO: Secondhand Dealers/Stolen Property

SPONSOR(S): Committee on Law Enforcement and Crime Prevention and Representative Bloom

COMPANION BILL(S): SB 1820(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 8 NAYS 1
 - (2) BUSINESS REGULATION AND CONSUMER AFFAIRS
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

Committee Substitute for House Bill 555 amends s. 539.001, F.S., making the sheriff's department, or the chief law enforcement agency of the county where there is no sheriff's department, the designated repository of all pawnbroker information as provided in subsections (8)(b) 1., 2. and 4. It also provides for the sheriff, or director of law enforcement where there is no sheriff to designate an appropriate law enforcement agency, to submit pawnbroker information in subsections (8)(b) 1., 2. and 4. to the Florida Sheriff's Task Force. It further provides that all law enforcement agencies must submit copies of all pawnbroker transactions on a transaction form approved by the sheriff or director of public safety. The time of submission and content of the form shall be determined in consultation with appropriate law enforcement agencies.

Committee Substitute for House Bill 555 adds a new subsection (c) to s. 539.001, F.S., which institutes a statewide system for collecting and accessing pawnshop tickets and secondhand dealer information. The Florida Sheriff's Association Statewide Task Force will be responsible for the collection of all pawnshop tickets and secondhand dealer information, and input into their property recovery database. Information initially transferred to the Florida Sheriff's Task Force shall be information required in subsections (8)(b) 1., 2. and 4. Law enforcement officers can, based upon probable cause that an item has been misappropriated, request and receive any additional information pertaining to such item contained in subsections (8) (b) 3., 5. And 6. The county sheriff's department, the director of the Department for Public Safety where there is no sheriff, or the designate of the county sheriff will be the central repository for all pawnshop tickets and secondhand dealers in that county.

The bill also amends s. 538.04, F.S., providing that when an appropriate law enforcement agency supplies appropriate software to a secondhand dealer, the transactions of secondhand goods shall be electronically transmitted to the appropriate law enforcement agency. If the secondhand dealer does not have computer capabilities, the appropriate law enforcement agency may supply the secondhand dealer a computer and software for the purpose of electronic transfers, provided the secondhand dealer maintains the equipment. If transactions are electronically transferred, the secondhand dealer is not required to deliver the original copy of the transaction form to the appropriate law enforcement agency but must retain the original form and deliver it to the agency within 24 hours, if a criminal investigation is underway.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Pawnbrokers and Secondhand Dealers

Chapter 538, F.S., regulates secondhand dealers which are defined in s. 538.03, F.S., to include pawnbrokers, secondhand stores, and consignment shops. Section 538.03(2), F.S., provides for a number of exceptions to the regulations imposed by the chapter. One of the exceptions for flea markets is listed as follows:

Any person purchasing, consigning, or pawning secondhand goods at a flea market regardless of whether at a temporary or permanent business location at the flea market. Section 538.03(2)(k).

Other exceptions to the regulations provided for by the chapter include garage sale operators, motor vehicle dealers, and persons purchasing, consigning, or pawning secondhand goods ordered by mail, or computer assisted shopping.

Also, excluded from the regulations of Chapter 538, F.S., are items that are not specifically listed as "secondhand goods" or that are specifically excluded from the definition. Chapter 538 does not require any regulations for transactions in the following used goods: furniture, pianos, costume jewelry, clothing, compact discs, video tapes, and coins.

Record keeping Requirements for Pawnbrokers

Chapter 539, F.S., requires a pawnbroker to complete a pawnbroker transaction form and retain the form on the premises of the business for at least one year. Before the end of the business day, the pawnbroker must deliver to the appropriate law enforcement agency, the original transaction form for each transaction that occurred the previous day. In those instances where the pawnbroker has computer equipment and the law enforcement agency provided appropriate software, the transaction may be electronically transmitted. When the transaction is electronically transmitted, the pawnbroker must retain the original form but, if a criminal investigation occurs, the form must be delivered to the appropriate agency within 24 hours. The pawnbroker transaction form, which is established pursuant to s. 539.001(8), F.S., and requires over 30 items relating to the pawnbroker, the goods, and the pledgor or seller, must be approved by the Division of Consumer Services of the Department of Agriculture and Consumer Affairs.

Record keeping Requirements for Secondhand Dealers

Within 24 hours of the acquisition of any secondhand good, a secondhand dealer shall deliver to the local law enforcement agency a record of the transaction on a form approved by the Department of Law Enforcement. The record must contain the following:

1. The time, date, and place of the transaction;
2. A complete and accurate description of the goods acquired, including any serial numbers, or other identifying marks; and
3. A description of the person from whom the goods were acquired including:
 - a. Full name, address, workplace, and home and work phone numbers;
 - b. Height, weight, date of birth, race, gender, hair color, eye color, and any other identifying marks; and
 - c. Any other information required by the form approved by the Department.

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The secondhand dealer must further maintain the following:

1. A description of the government photo I.D. shown to the secondhand dealer; and
2. A statement by the seller verifying that the seller is the rightful owner of the goods.

As required by s. 539.001(8)(b)(3), F.S., reporting forms for pawn shops require the initial seller to give name, address, home telephone number, place of employment, date of birth, physical description and right thumbprint.

Holding Period Required and Registration for Secondhand Dealers

A secondhand dealer may not dispose of any goods within 15 days of the date of acquisition, unless the person from whom the goods were obtained desires to redeem or repurchase the goods. Secondhand dealers must also register with the Department of Revenue.

Holding Period Required and Registration for Pawnbrokers

A pawnbroker may not dispose of any goods within 60 days of the date of acquisition, unless the person from whom the goods were obtained desire to redeem or repurchase the goods. Pawnbrokers must register with both the Department of Agriculture Consumer Affairs and the Department of Revenue.

Penalties for Violations of Chapter 538

Any person who gives false verification of ownership or gives false identification to a secondhand dealer or pawnbroker and receives less than \$300 commits a misdemeanor. The offense is a third-degree felony if the person receives more than \$300.

A secondhand dealer or pawnbroker who violates any of the requirements of Chapter 538, F.S., including the reporting, holding, or registration requirements, commits a misdemeanor of the first degree punishable by a maximum of a year in jail.

Section 538.08, F.S., provides that a person may petition for the return of stolen goods from a secondhand dealer or pawnbroker and the filing fees are to be waived by the clerk, and the service fees are to be waived by the sheriff. The court shall award the prevailing party attorney's fees and costs. When the filing party wins, the court shall order payment of filing fees to the clerk and service fees to the sheriff. This provision provides a strong financial incentive for secondhand dealers and pawnbrokers to return contested items.

B. EFFECT OF PROPOSED CHANGES:

Committee Substitute House Bill 555 would amend s. 539.001, F.S., establishing the sheriff's agency, the chief law enforcement agency of the county where there is no sheriff's agency, or the sheriffs designate, as the designated repository of all pawnbroker information in subsection (8)(b) 1., 2. and 4. It would further provide that all law enforcement agencies must submit copies of all pawnbroker information on a transaction form approved by the sheriff or director of public safety. The time of submission and content of the form shall be determined in consultation with the other law enforcement agencies.

Committee Substitute for House Bill 555 would further amend s. 539.001 F.S., to create a statewide system for the collection of pawnshop tickets and secondhand dealers information, to be administered by the Florida Sheriffs' Association. This information would be stored in the Florida Sheriffs' Property Data Base. This database will be the officially recognized statewide database for all pawnshop information and secondhand dealer information collected by law in subsections (8)(b) 1., 2. and 4. All law enforcement officials authorized by law and approved by the Florida Sheriffs' Association shall have access to information in subsections (8)(b) 1., 2. and 4. in the database in a manner prescribed by the Florida Sheriffs' Association. Based upon a showing of probable cause, information in subsections (8)(b) 3., 4. and 6, may be requested and received by appropriate law enforcement. The Florida Sheriffs' Association shall also establish the standards and requirements for transmitting and transferring information into the system.

The bill would also amend s. 538.04, F.S., providing that when an appropriate law enforcement agency supplies appropriate software to a secondhand dealer, the transactions of secondhand goods shall be electronically transmitted. If the secondhand dealer does not have computer capabilities, the appropriate law enforcement agency may supply the secondhand dealer a computer and software for the purpose of electronic transfers, provided the secondhand dealer maintain the equipment. If transactions are electronically transmitted, the secondhand dealer is not required to deliver the original copy of the transaction form to the appropriate law enforcement agency but must retain the original form and deliver it to the agency within 24 hours if a criminal investigation is underway.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 538.04, and 539.001

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

A cost could be incurred if the Sheriff provides a computer to the pawnbroker or second hand dealer.

2. Recurring Effects:

A transmission cost could be incurred when the pawnbroker or secondhand dealer electronically transmit the forms to the Sheriff. The Sheriff's Department, the director of the Department of Public Safety where there is no sheriff or the sheriffs designate could also incur cost related to the transmission and recording of the data

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

If an appropriate law enforcement agency provides the secondhand dealer with a computer, then the secondhand dealer must maintain it which could result in a maintenance cost.

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At the meeting on March 9, 1999, the Committee on Law Enforcement and Crime Prevention adopted two amendments, as follows:

Committee Substitute #1: On page 6, lines 15 through 26 remove from bill: all of said lines and insert in lieu thereof:

Pawnbroker and the appropriate law enforcement official. The sheriff, as chief law enforcement officer of the county, or the director of the department of public safety when there is no sheriff, is designated as the central repository for pawn tickets information collected by the appropriate law enforcement official in the county as provided in subsection (8) (b) 1., 2. And 4. Upon request by the sheriff or public safety director, the appropriate law enforcement official shall submit the pawn ticket information as provided in subsection (8) (b) 1., 2. and 4. to the sheriff or public safety director within a time and in such form as is determined by the sheriff or public safety director after consultation with the appropriate law enforcement official. The sheriff or public safety director, based upon a showing of probable cause that a reported item has been

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misappropriated, may request and shall receive any additional information pertaining to such item as provided in subsection (8) (b) 3., 5. And 6. Or may request and receive a copy of the transaction form. If

Committee Substitute #2: On page 8, line 28, after the period insert :

Pawn ticket information initially transferred to the Florida Sheriff's Association Property Recovery Data Base shall be the information as contained in subsection (8) (b) 1., 2. And 4. The Florida Sheriff's Task Force, based upon a showing of probably cause that a reported item has been misappropriated, may request and shall receive any additional information pertaining to such items as contained in subsection (8) (b) 3., 5. And 6.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

Allen Mortham Jr.

Kurt E. Ahrendt