

**STORAGE NAME:** h1433.brc

**DATE:** March 23, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
BUSINESS REGULATION & CONSUMER AFFAIRS  
ANALYSIS**

**BILL #:** HB 1433

**RELATING TO:** Pawnbrokers

**SPONSOR(S):** Representative Levine

**TIED BILL(S):** None.

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

- (1) BUSINESS REGULATION & CONSUMER AFFAIRS
  - (2) CRIME & PUNISHMENT
  - (3) COMMUNITY AFFAIRS
  - (4) CRIMINAL JUSTICE APPROPRIATIONS
  - (5)
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**I. SUMMARY:**

This bill is designed to facilitate the procedures for a person to regain possession of stolen property which has been pawned. The bill: increases the criminal penalty for falsifying information on a pawn transaction form; creates a penalty of a third degree felony for anyone to knowingly pawn stolen property; requires the posting on the premises of a pawnshop of information regarding statutory procedures relating to pawn transactions and the claim procedures for stolen property; allows a person to regain possession of stolen and pawned property by providing evidence of the purchase of the property; and facilitates the claims procedure for stolen goods to operate in the favor of the claimant (the owner of the property).

The bill deletes the preemptive authority of the state to regulate pawnbrokers and authorizes local governments to enact more restrictive requirements than the provisions of the pawnbroker statute.

The bill does not appear to have a significant fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes  No  N/A

Any new responsibilities, obligations or work for other governmental or private organizations or individuals?

2. Lower Taxes Yes  No  N/A

3. Individual Freedom Yes  No  N/A

4. Personal Responsibility Yes  No  N/A

5. Family Empowerment Yes  No  N/A

For any principle that received a "no" above, please explain.

Less Government - The bill places new requirements on a pawnbroker to post notices on the pawnshop premises describing the statutory prohibitions and penalties regarding pawn transactions. The pawnbroker is required to provide copies of the notice to all customers.

B. PRESENT SITUATION:

Pawnbrokers must annually obtain a license from the DACS pursuant to the provisions of chapter 539, F.S., and pay an annual fee of \$300. To be eligible for a license, the applicant must:

- (1) be of good moral character.
- (2) have a net worth of at least \$50,000 or file with the department a surety bond, irrevocable letter of credit, or certificate of deposit in the amount of \$10,000;
- (3) not have been convicted of a felony within the last 10 years; and
- (4) not have been convicted of a crime and not be acting as a beneficial owner for someone who has been convicted of a crime, within the last 10 years, that the department finds directly relates to the duties and responsibilities of a pawnbroker.

A pawnbroker must keep accurate records of pawns by completing a pawnbroker transaction form. The form must contain detailed information describing the individual pawning the goods, as well as, a description of the goods that have been pawned. The pawnbroker must submit the transaction forms to local law enforcement on a daily basis and must retain a copy for one year.

As an alternative to the pawnbroker transaction form, a pawnbroker may transmit the information to law enforcement by electronic means if the pawnbroker chooses to computerize operations. A hard copy of the information still has to be maintained.

Current law establishes procedures for an individual to obtain possession of stolen property which is held by a pawnbroker. The person filing a claim is required to notify the pawnbroker by certified mail, return receipt requested, or in person, and provide a description of the property. The person filing the claim must also provide a copy of the applicable law enforcement agency's report on the stolen property. If the claimant and the

pawnbroker do not resolve the matter within 10 days after the pawnbroker's receipt of the notice, the claimant may petition the court to order the return of the property, naming the pawnbroker as a defendant. The pawnbroker is required to hold the property until the right to possession is resolved by the parties or by the court.

If after notice and hearing, the court finds that the property was misappropriated and orders the return of the property to the claimant: (a) the claimant is authorized to recover from the pawnbroker the cost of the action and reasonable attorney's fees; (b) the customer who conveyed the stolen property is required to repay the pawnbroker the full amount the conveying customer received from the pawnbroker for the property, plus all applicable pawn service charges; and (c) the conveying customer is required to pay the pawnbroker's costs incurred in the proceeding, including the pawnbroker's reasonable attorney's fee. If the court finds against the claimant, the claimant is liable for the pawnbroker's costs and reasonable attorney's fees.

Subsection 539.001 (12) lists prohibited activities and includes an act to "falsify or intentionally fail to make an entry of any material matter in a pawnbroker transaction form." Additionally, subsection (7) of s. 539.001, F.S., provides certain sanctions for 1) operating in violation of the chapter, and 2) making a material false statement in any application, document, or record. Subsection (6) provides penalties for; 1) knowingly violating the section; 2) the failure to use due care to avoid violating the section; and 3) conspiracy to violate this section.

In addition to administrative penalties, criminal penalties are currently provided for violations. Operating without an appropriate license is a third degree felony and a licensee who willfully violates the provisions, or willfully records incorrect information, is subject to a first degree misdemeanor.

#### C. EFFECT OF PROPOSED CHANGES:

The bill requires a notice to be posted on the pawnshop premises detailing statutory rights and procedures regarding stolen property. Copies of the notice are required to be provided to customers, whose property has been stolen, at the time a police report is completed. Additionally, a notice is required to be posted relating to prohibitions and penalties regarding pawn transactions. The pawnbroker is required to provide copies of the notice to all customers. See comments section.

The bill amends provisions which specify the procedures for claiming stolen property to require the pawnbroker to return property to a person claiming ownership of stolen property if the person presents a receipt of purchase of the property.

The bill amends the provisions which specify the procedure for a person to resolve disputes over ownership of pawned property if a customer does not have a receipt of evidence of purchase of the property. The bill requires the pawnbroker to file a court petition against the person who pawned the stolen property in order to be eligible to receive repayment for costs and expenses associated with the pawned property.

The bill creates a new criminal penalty of a third degree felony for any person who knowingly pawns stolen property. The bill also creates a criminal penalty of a felony of the third degree for any person to falsify any information on a pawn transaction form.

The bill authorizes local governments to enact more restrictive requirements than the provisions of the pawnbroker statute.

D. SECTION-BY-SECTION ANALYSIS:

See II. C., Effect of Proposed Changes, above.

III. 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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill addresses the procedures for the owner of stolen property to recover the property after it has been pawned and identified as being stolen. The provisions of the bill should facilitate and speed up the recovery of the property for victims who loose the property.

Minor costs will be incurred by pawnbrokers relating to the creation, posting and distribution of notices which explain the pawnbroker statutes to customers.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill merely allows local governments the option of adopting more restrictive regulations pertaining to pawnbrokers than state regulations.

**STORAGE NAME:** h1433.brc

**DATE:** March 23, 2000

**PAGE 5**

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

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

This bill does not reduce the state tax shared with counties or municipalities.

**V. COMMENTS:**

**A. CONSTITUTIONAL ISSUES:**

NONE.

**B. RULE-MAKING AUTHORITY:**

NONE.

**C. OTHER COMMENTS:**

The bill requires the posting of notices on the pawnshop premises which notify customers of the statutory requirements for processing claims to recover stolen property. Notices are also required to be posted informing customers of the statutory prohibitions and penalties regarding pawn transactions. The bill further allows local preemption relating to the regulation of pawn transactions. If local ordinances are adopted and are more restrictive than the statutory requirements, disclosure of the state regulations could cause confusion if the statutes are, in fact, not applicable.

The bill further requires a pawnbroker to provide copies of the notice relating to stolen property to any person attempting to claim possession of the stolen property or to the person whose property has been stolen. The bill requires the copies be provided at the time a "police report" is made concerning the theft. These provisions leave it unclear as to the statutory responsibilities of the pawnbroker. It may be desirable to clarify that the pawnbroker provide the notice, in person or by mail, within a reasonable time after law enforcement has identified the property as being stolen, has identified the person claiming ownership of the property and has documented their investigation by appropriate written report.

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

N/A

**STORAGE NAME:** h1433.brc

**DATE:** March 23, 2000

**PAGE 6**

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

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