

STORAGE NAME: h1433s1.brc

DATE: March 30, 2000

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

BILL #: CS/HB 1433

RELATING TO: Pawnbrokers and Secondhand Dealers

SPONSOR(S): Committee on Business Regulation & Consumer Affairs, Reps. Levine, Bloom, Bense and others

TIED BILL(S): HB 2003

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

- (1) BUSINESS REGULATION & CONSUMER AFFAIRS YEAS 8 NAYS 0
- (2) CRIME & PUNISHMENT
- (3) COMMUNITY AFFAIRS
- (4) CRIMINAL JUSTICE APPROPRIATIONS
- (5)

I. SUMMARY:

The bill authorizes the Florida Department of Law Enforcement (FDLE) to implement a statewide system for the collection of pawnshop and secondhand dealer information received from local law enforcement agencies. This information is to be stored in a database to allow law enforcement officials access to the information for criminal investigation purposes.

The bill is also designed to facilitate the procedures for a person to regain possession of stolen property which has been pawned or acquired by a secondhand dealer. It provides for the filing of a claims petition in court by the person seeking possession of the property and clarifies a criminal court judge's authority to determine ownership and order return of property and the payment of restitution for costs. The bill requires the Department of Agriculture and Consumer Services (DACS) to develop and distribute a pamphlet and a disclosure form explaining the claim procedures for stolen property under the pawnbroker statutes.

The FDLE estimates the fiscal impact to total \$1,001,824 from general revenue with \$670,000 being non-recurring expenditures.

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 local law enforcement agencies to provide pawn and secondhand dealer transaction records to the FDLE. The FDLE is further required to develop a database of these transactions and make the information available for criminal investigations. The DACS is required to develop and distribute a pamphlet and a disclosure form explaining the claim procedures for stolen property under the pawnbroker statutes.

B. PRESENT SITUATION:

Pawnbrokers

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.

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.

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. Secondhand dealers must register with the Department of Revenue for purposes of tax collection. Section 538.03(2), F.S., provides for a number of exceptions to the regulations imposed by the chapter.

Exceptions include garage sale operators, flea markets, 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, F.S., does not require regulations for transactions in used goods, such as, furniture, pianos, costume jewelry, clothing, compact discs, video tapes, and coins.

A secondhand dealer must, within 24 hours of the acquisition of any secondhand good, 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:

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 FDLE.

The secondhand dealer must further maintain a statement by the seller verifying that the seller is the rightful owner of the goods.

C. EFFECT OF PROPOSED CHANGES:

The bill establishes a database of information within the FDLE relating to pawnshop transactions and secondhand goods acquisitions. Local law enforcement agencies which are responsible for collecting pawnshop transaction or secondhand-goods acquisitions records are required to transfer the information contained in the records to the FDLE. A system for direct transmittal of the information is also provided for when authorized by the local law enforcement agency and the FDLE.

The database is to be made available to law enforcement agencies for criminal investigations. The bill specifies the database may be accessed for information relating to persons with active felony warrants or theft offenses. The database may also be accessed in a criminal investigation for an enumerated offense in s. 775.087, F.S., (murder, etc.) or a similar offense in another jurisdiction, or a theft offense.

The bill amends s. 539.001(15), F.S., to statutorily provide an outline of the format for a petition which a person may file to initiate recovery of stolen property which is in the possession of a pawnbroker. The form is substantially similar to the petition language outlined in s. 538.08, F.S., which may be used to recover stolen property from a secondhand dealer.

The bill further amends s. 539.001(15), F.S., to specify that a criminal court judge is authorized to determine ownership and order return of stolen property and appropriate restitution after proper notice of hearing is given to all parties. This provision is substantially similar to s. 538.08(4), F.S., allowing the state to file such a motion where the property is in the possession of a secondhand dealer.

The bill requires the Division of Consumer Services of the Department of Agriculture and Consumer Services to develop a pamphlet explaining a victim's rights to recover stolen property under the pawnbroker statute. The bill requires the division to distribute the pamphlets to local law enforcement agencies for distribution to a victim of a crime who believes that stolen property belonging to the victim is in the possession of a pawnbroker.

The division is further required to develop a disclosure statement which details statutory rights and procedures regarding stolen property under the pawnbroker statutes. The form must include a statement that the person claiming ownership of property is under no legal obligation to reimburse or otherwise pay the pawnshop in order to recover stolen property. The division is required to distribute the disclosure forms to all pawnbrokers. The pawnbroker is required to provide the disclosure form to a person who enters a pawnshop and demands the return of stolen property. The bill provides that the form be signed by both parties.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 943.0546, F.S., to authorize the FDLE to implement a statewide system for the collection of pawnshop and secondhand dealer information received from local law enforcement agencies throughout the state and to store the information in a database for access by law enforcement personnel.

Section 2. Amends s. 539.001, F.S., to provide for: a petition which may be filed to initiate recovery of stolen property; guidelines for determining ownership of stolen property and the return of the property to the owner; an information pamphlet and a disclosure statement to be developed and distributed regarding property rights under the pawnbroker statutes.

Section 3. Provides the bill shall take effect July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

	General Revenue	Non-recurring
Department of Law Enforcement		
Salary and Benefits (3 FTEs)	\$101,824	
OPS	\$340,000	\$145,000
Expenses - Travel and Training	\$ 35,000	
Computer operations	\$525,000	\$525,000
Total:	\$1,001,824	\$670,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None anticipated - See fiscal comments section below.

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 could be incurred by pawnbrokers relating to the distribution of notices which explain the pawnbroker stolen property statutes to customers.

D. FISCAL COMMENTS:

According to the DACS, the fiscal impact on the Division of Consumer Services for developing and distributing the pawnbroker pamphlet and disclosure form would be minimal. The division anticipates that the requirements of the bill could be carried out with existing resources.

The FDLE fiscal analysis states in part, "Local law enforcement currently receives the pawn and secondhand transaction forms from dealers in their jurisdictions. These can be paper or automated formats. There is no requirement that law enforcement do anything with the information.... The proposed bill places no explicit new requirements on local law enforcement. However, it is anticipated that these agencies will be the collection point for any data going into the statewide property recovery database. Those with automated systems could program an automatic upload of data into the state system."

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.

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:

The bill creates s. 943.0546, F.S., to authorize the creation of a database of information relating to pawnshop transactions and secondhand goods acquisitions for purposes of allowing access during certain criminal investigations. It specifically allows the FDLE to adopt rules to administer the provisions relating to the creation and operation of the database.

The bill requires the Department of Agriculture and Consumer Services to develop an information pamphlet describing a person's rights and procedures to recover stolen property under the pawnbroker statutes. The DACS is specifically authorized to adopt rules to prescribe the contents of the pamphlet.

The bill requires DACS to develop a disclosure form relating to the rights and responsibilities of a person regarding the claim procedure for stolen property under the

STORAGE NAME: h1433s1.brc

DATE: March 30, 2000

PAGE 7

pawnbroker statute. The bill authorizes the DACS to adopt rules to prescribe the form and content of the disclosure document.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 28, 2000, the Committee on Business Regulation and Consumer Affairs adopted a strike everything amendment, as amended, to HB 1433 and reported the bill as a committee substitute. The CS removed the entirety of the provisions of the original bill which would have: increased the criminal penalty for falsifying information on a pawn transaction form; created a penalty of a third degree felony for anyone to knowingly pawn stolen property; required the posting on the premises of a pawnshop of information regarding statutory procedures relating to pawn transactions and the claim procedures for stolen property; allowed a person to regain possession of stolen and pawned property by providing evidence of the purchase of the property; and deleted the preemptive authority of the state to regulate pawnbrokers and authorized local governments to enact more restrictive requirements than the provisions of the pawnbroker statute.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

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