

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background and present situation

Adopted in 1996, The Florida Pawnbroking Act¹ authorizes the Department of Agriculture and Consumer Services (department) to license and regulate pawnbrokers. Eligibility requirements and procedures for issuing, suspending, revoking and surrendering a license are provided, as well as prohibitions against certain acts. Also included are provisions for criminal penalties and injunctive remedies. The act created a right to redeem pledged goods, a pawnbroker’s lien, and a procedure for obtaining pledged goods allegedly misappropriated.

In addition, the act contains record-keeping requirements. At the time of a pawn, the pawnbroker must complete a transaction form that includes specific detailed information about the item pawned and identifying information about the person pawning the item, including a thumbprint. The transaction form must also disclose pawn finance terms.

A 1996 *Sun-Sentinel* newspaper investigative report series² conducted a computer analysis of the nearly 70,000 pawn transactions that took place in 1995 in Fort Lauderdale. The analysis’ major findings were detailed as follows:

- Of the city’s 50 most frequent pawners, 39 have criminal records in Florida – 19 have been arrested for burglary, theft, or related crimes, another 14 have faced drug charges.
- Pawnshops routinely accept merchandise that workers suspect is stolen. Shop owners say it’s not their job to determine who owns property being pawned – their clients sign pawn slips swearing the property is theirs, and police get copies of the forms.
- Thieves brazenly pawn stolen goods, sometimes only hours after a burglary, then leave their names, addresses, and thumb prints behind on pawn slips they know are being sent to the police. They get away with it, police say, because [officers] don’t pay much attention to the forms. In fact, fewer than half the pawn slips forwarded to Fort Lauderdale police are entered into the department’s computer, severely hampering efforts to detect suspicious activity or patterns.

In January 2000, the Florida Senate Criminal Justice Committee released an interim report reviewing Florida’s Pawnbroking Law.³ An impetus for the report was the findings of the *Sun-Sentinel* review. Included in the Senate report were the following three recommendations:

¹ Chapter 539, Florida Statutes

² Fort Lauderdale Sun-Sentinel, Nov. 24, 1996.

³ The Florida Senate Committee on Criminal Justice Interim Project Report 2000-26.

1. *The Legislature should require the creation and distribution of a “victim rights brochure” to inform victims of their rights under Florida Law to recover stolen property from a pawnshop.*
2. *The Legislature should publish a form petition in chapter 539, F.S., which could be used by victims in order to initiate a court action to recover their property from a pawnbroker.*
3. *The Legislature should clarify that a criminal court judge is authorized to determine ownership of property and order any appropriate restitution in addition to the civil petition remedy already provided for in chapter 539.*

According to proponents, the purpose of this bill is to enact procedures that fulfill recommendations of the Senate report and provide more protection and recourse to victims whose stolen property has been pawned, as well as to pawnbrokers.

Proposed changes

Currently, some pawnbrokers voluntarily return property to victims of property crimes without compensation, then turn to the court in hopes that restitution will be ordered. After receiving property back without charge, however, victims will sometimes sign a “waiver of prosecution” and the case never is tried. The bill provides a definition for the term “waiver of prosecution” and allows the pawnbroker to seek restitution via criminal court, thus allowing the criminal court trying the suspect to return property or order restitution.

The bill also changes the way pawnbrokers obtain or renew licenses by requiring applicants to show proof of having all required city and/or county licenses prior to obtaining a pawnbroker’s license. If the pawnbroker loses the local license, the department may suspend or revoke the pawnbroker’s license. A pawnbroker operating without a valid state pawnbroker’s license commits a felony of the 3rd degree for each completed transaction.

Regarding transaction forms used by pawnbrokers, the bill requires that the number on a form be unique to a particular pawnbroker. If a transaction number is used more than one time, it is difficult for law enforcement officers to track and conduct inspections as allowed by law. Each item on the form must also be numbered with the unique number on the form completed at the time of the transaction. The bill also requires more current, accurate customer information on transaction forms and clarifies that the required thumbprint must be legible. In addition, the bill provides that a pawnbroker transaction form for any property must remain on or within the pawnshop until such time as all the property listed on that particular transaction form is removed from the premises.

To assist victims of theft in recovering their stolen property, the bill includes form language similar to that found in the law relating to secondhand dealers⁴. The language provides format, options, and information needed to petition for the return of misappropriated property.

C. SECTION DIRECTORY:

Section 1. Amends s. 539.001, F.S., to revise and add definitions, to revise application requirements, to provide for suspension or revocation of a license, to require certain labeling of property, to prohibit certain activity relating to title loans, to revise requirements relating to return of misappropriated property, to provide a petition form, to authorize criminal proceedings, to clarify provisions relating to hold orders, and to provide penalties.

Section 2. Provides an effective date of July 1, 2004.

⁴ Chapter 538, Florida Statutes.

II. 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 requires pawnbrokers to revise their transaction forms and to label each item purchased or pawned. The cost associated with meeting these requirements is unknown, but expected to be minimal, as is the cost for complying with the requirement for record retention.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

At its March 10, 2004, meeting, the House Committee on Agriculture adopted two amendments to the original bill.

Amendment 1 reinstates language in s. 539.001(15) relating to claims against purchased goods or pledged goods held by pawnbrokers.

Amendment 2 removed language stating that the provisions of chapter 537, F.S., relating to title loans does not apply to pawnbrokers licensed under the Florida Pawnbroking Act.