

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 695 w/CS Pawnbroking
SPONSOR(S): Antone, and Adams
TIED BILLS: none **IDEN./SIM. BILLS:** SB 2942 (c)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture	15 Y, 0 N w/CS	Reese	Reese
2) State Administration	6 Y, 0 N w/CS	Bond	Everhart
3) Local Government & Veterans' Affairs			
4) Agriculture & Environment Appro. Sub.			
5) Appropriations			

SUMMARY ANALYSIS

This bill amends the Florida Pawnbroking Act to:

- Provide that a pawnbroker's state license may be suspended or revoked should the pawnbroker fail to obtain or keep a local occupational license.
- Add and modify information required to be provided by a Pawnbroker Transaction Form.
- Require a pawnbroker to maintain a property transaction and tracking system.
- Clarify that a pawnbroker may not engage in title loan agreements.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0695c.sa.doc
DATE: April 19, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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:

This bill with CS imposes additional recordkeeping requirements on licensed pawnbrokers.

B. EFFECT OF PROPOSED CHANGES:

Background

Adopted in 1996, The Florida Pawnbroking Act¹ provides for state licensure of pawnbrokers through the Department of Agriculture and Consumer Services (department). 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.

The act also contains minimum 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 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.*

Effect of Bill

Local Occupational License

Current law requires local governments to obtain proof that a person holds a state pawnbroker license before issuing a local occupational license. Current law does not give the state grounds to discipline a pawnbroker that fails to maintain a local occupational license.

This bill with CS provides that a state pawnbroker license may be suspended or revoked for failure to obtain or renew a local license.

Pawnbroker Transaction Form - Changes

Current law requires a pawnbroker to obtain certain information about persons that pawn or sell items to the pawnbroker on a Pawnbroker Transaction Form. Information required to be on the form is prescribed. The purpose of the information collected on the form is to assist law enforcement if an item pawned or sold to the pawnbroker is later discovered to be stolen.

This bill with CS amends the requirements for the Pawnbroker Transaction Form to add that the form must contain a unique transaction form number⁴ and the person’s work telephone number. The requirement to collect an address is modified to require a residential address. Also, the fingerprint requirement is qualified by a requirement that the fingerprint be free of smudges and smears.

Pawnbroker Transaction Form - Permitted Vendors

A pawnbroker may purchase goods from persons that would not normally be expected to be selling stolen goods, in which case the requirements of the Pawnbroker Transaction Form, and the collection of information necessary to complete that form, may be considered excessive.⁵

This bill with CS provides that a pawnbroker need not use the Pawnbroker Transaction Form when purchasing goods from a permitted vendor.⁶

⁴ The unique transaction form number must be used for inventory tracking purposes. See section entitled Recordkeeping Requirements.

⁵ For instance, a pawnbroker selling firearms may also sell new ammunition and new firearm accessories such as cleaning supplies. A pawnbroker selling tools may sell new accessories such as saw blades and drill bits.

⁶ A permitted vendor is defined as: “a vendor who furnishes a pawnbroker with an invoice specifying the vendor’s name and address, the date of the sale, a description of the items sold, and the sales price, and who has an established place of business, or, in the case of a secondhand dealer as defined in s. 538.03, has represented in writing that such dealer has complied with all applicable recordkeeping, reporting, and retention requirements pertaining to goods sold or otherwise delivered to a pawnbroker.”

Recordkeeping Requirements

A pawnbroker must keep a copy of the Pawnbroker Transaction Form for at least three years after the transaction.⁷ No other recordkeeping requirements are found in s. 539.001, F.S.

This bill with CS provides that a pawnbroker's recordkeeping and merchandise tracking system must be able to accurately reflect the location or disposition of all items obtained by the pawnbroker by either pawn or purchase. Such location and disposition information must be made available for inspection by appropriate law enforcement officials during normal business hours.

Title Loans

A title loan transaction is similar to a pawn of goods, except that where a pawn transaction has the lender holding the actual property, the lender in a title loan transaction merely holds the legal title to the property. Title loan transactions typically involve motor vehicles. A pawnbroker is prohibited from engaging in title loan "transactions".⁸ This prohibition was part of the initial enactment regulating pawnshops enacted in 1996.⁹ In 2000, the state first regulated title loans, referring to the regulated transactions as a title loan "agreement" in s. 537.003, F.S. It is arguable that a pawnbroker could obtain a separate license to conduct title loan agreements from the pawnshop location.

This bill with CS specifies that a pawnbroker may not engage in either title loan agreements or title loan transactions.

C. SECTION DIRECTORY:

Section 1 amends s. 539.001, F.S., to amend laws regulating pawnbrokers.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not affect a state government revenue source.

2. Expenditures:

None. This bill does not require a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect a local government revenue source.

2. Expenditures:

None. This bill does not require a local government expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

⁷ Section 539.001(9)(a), F.S., requires that a copy of a Pawnbroker Transaction Form must be kept at the pawnshop for one year after the transaction. Section 539.001(12)(c), F.S., however, provides that it is an offense to discard the form sooner than 3 years after the transaction.

⁸ Section 539.001(12)(j), F.S.

⁹ Chapter 96-242, L.O.F.

The bill with CS may require a pawnbroker to revise his or her Pawnbroker Transaction Forms, and may require a pawnbroker to institute an inventory system. The cost associated with meeting these requirements is unknown.

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.

On April 14, 2004, the Committee on State Administration adopted one amendment to this bill. The amendment removes the requirement of uniquely numbered invoices from permitted vendors, removes the provision that would have required a pawnbroker to obtain a local occupational license before obtaining a state license, modifies the change to the fingerprint requirement from requiring a "legible" fingerprint to a requirement that the fingerprint be "absent of smudges and smears", removes new language extending on-site recordkeeping requirements beyond the one year, removes new language that would have required individual labeling of every item in a pawnshop, removes new language that would have provided a replevin form for victims to recover their stolen property from a pawnbroker, removes new language that would have allowed a criminal court to adjudicate ownership of stolen property, removes new language that would have required a pawnshop to return stolen goods to the rightful owner without charge, and re-words awkward language. The bill with CS was then reported favorably with a committee substitute.¹⁰

¹⁰ The bill with CS as it came to the committee addressed two of the three suggestions of the Senate report, the bill with CS as amended by the Committee on State Administration addresses none of the suggestions.