

By: Solomons, Lewis, et al.

H.B. No. 1839

Substitute the following for H.B. No. 1839:

By: Paxton

C.S.H.B. No. 1839

A BILL TO BE ENTITLED

AN ACT

1
2 relating to property in the custody of a pawnbroker; providing
3 criminal penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter D, Chapter 371, Finance Code, is
6 amended by adding Section 371.1821 to read as follows:

7 Sec. 371.1821. LAW ENFORCEMENT HOLD PROCEDURE; PLEDGE OR
8 SALE OF MISAPPROPRIATED PROPERTY. (a) In this section:

9 (1) "Chief law enforcement officer" means:

10 (A) the sheriff of the county in which the
11 pawnshop is located or an officer of the sheriff's department
12 designated by the sheriff, if the pawnshop is not located in a
13 municipality that maintains a police department; or

14 (B) the police chief of the municipality in which
15 the pawnshop is located or a police officer designated by the police
16 chief, if the pawnshop is located in a municipality that maintains a
17 police department.

18 (2) "Misappropriated" means stolen, embezzled,
19 converted, or otherwise wrongfully appropriated, or pledged
20 against the will of the owner of the goods or a person holding a
21 perfected security interest in the goods.

22 (b) If a chief law enforcement officer has reasonable
23 suspicion to believe that goods in the possession of a pawnbroker
24 are misappropriated, the officer may place a hold order on the

1 goods.

2 (c) Goods subject to a hold order must be physically
3 retained by the pawnbroker in a secure area and may not be released,
4 sold, redeemed, or disposed of unless:

5 (1) the chief law enforcement officer delivers a
6 written release to the pawnbroker;

7 (2) the hold order and any extension of the hold order
8 expires; or

9 (3) a court order, including a search warrant,
10 requires the release, sale, or disposal of the property.

11 (d) A hold order is effective only if it contains:

12 (1) the name of the pawnbroker;

13 (2) the name and mailing address of the pawnshop where
14 the goods are located;

15 (3) the name, title, badge number, case number, and
16 phone number of the chief law enforcement officer placing the hold
17 order;

18 (4) a complete description of the goods to be held,
19 including any available model number and serial number, and the
20 related pawn or purchase ticket number;

21 (5) the expiration date of the hold order; and

22 (6) the name of the law enforcement agency that
23 prepared the investigative report and the associated number of the
24 report.

25 (e) The hold order and any extension of the hold order must
26 be signed and dated by the chief law enforcement officer and the
27 pawnbroker or the pawnbroker's designee, as evidence of the hold

1 order's issuance by the chief law enforcement officer, the
2 pawnbroker's receipt of the hold order, and the beginning of the
3 holding period. The chief law enforcement officer shall provide at
4 no cost to the pawnbroker an executed copy of the hold order for the
5 pawnbroker's records.

6 (f) The initial holding period of the hold order may not
7 exceed 60 days. A hold order may be extended for up to three
8 successive 60-day periods on written notification to the pawnbroker
9 before the expiration of the immediately preceding holding period
10 or extension. A hold order may be released before the expiration of
11 the holding period or extension by written release from the chief
12 law enforcement officer. A hold order is considered expired on the
13 expiration date stated on the hold order if the holding period is
14 not extended under this subsection.

15 (g) Notwithstanding Subsection (e) or (f), the chief law
16 enforcement officer may place a verbal hold order on property, or
17 may verbally extend a hold order, for up to seven days while a
18 written hold order or extension is being prepared. A verbal hold
19 order must include the information required by Subsection (d).

20 (h) Goods subject to a hold order may be released to the
21 custody of the chief law enforcement officer for use in a criminal
22 investigation if the officer:

23 (1) has probable cause to believe that the goods
24 subject to a hold order are misappropriated; and

25 (2) furnishes a written receipt for the goods.

26 (i) The release of the goods to the custody of the chief law
27 enforcement officer is not considered a waiver or release of the

1 pawnbroker's rights or interest in the goods. Goods in the custody
2 of the chief law enforcement officer are subject to Chapter 47, Code
3 of Criminal Procedure.

4 (j) A person commits an offense if the person pledges with
5 or sells to a pawnbroker misappropriated property. An offense
6 under this subsection is a Class B misdemeanor.

7 SECTION 2. Chapter 371, Finance Code, is amended by adding
8 Subchapter H to read as follows:

9 SUBCHAPTER H. PROVIDING DATA TO LAW ENFORCEMENT AGENCIES BY
10 ELECTRONIC MEANS

11 Sec. 371.351. DEFINITIONS. In this subchapter:

12 (1) "Chief law enforcement officer" has the meaning
13 assigned by Section 371.1821.

14 (2) "Law enforcement agency" means the department of
15 the chief law enforcement officer.

16 (3) "Provider" means a commercial enterprise
17 primarily engaged in the business of establishing and maintaining
18 one or more Internet repositories.

19 (4) "Reportable data" means the following information
20 from a transaction in which a pawnshop customer pledges or sells
21 personal property:

22 (A) the name and address of the pawnshop;

23 (B) the date of the transaction; and

24 (C) an identification and complete description
25 of the goods pledged or sold, including any available model numbers
26 and serial numbers, and other identifying characteristics.

27 (5) "Repository" means an electronic storage of

1 transaction data.

2 (6) "Transaction data" means information from a
3 transaction in which a pawnshop customer pledges or sells personal
4 property, including:

5 (A) the name and address of the pawnshop;

6 (B) the date of the transaction;

7 (C) an identification and complete description
8 of the goods pledged or sold, including any available model numbers
9 and serial numbers, and other identifying characteristics;

10 (D) the customer's name, address, and physical
11 description; and

12 (E) a driver's license number, military
13 identification number, identification certificate number, or other
14 official number that identifies the customer.

15 Sec. 371.352. ELECTRONIC REPORTING TO LAW ENFORCEMENT
16 AGENCY OR PROVIDER. (a) A pawnbroker who generates computerized
17 pawn and purchase tickets shall, as required by the chief law
18 enforcement officer, transmit all:

19 (1) reportable data to the law enforcement agency
20 electronically in a format mutually agreed to by the chief law
21 enforcement officer and the pawnbroker; or

22 (2) transaction data electronically in the format used
23 by the pawnbroker's computer software directly to a provider.

24 (b) A pawnbroker may transmit transaction data to the chief
25 law enforcement officer. A pawnbroker and the chief law
26 enforcement officer may agree to another means of transferring
27 transaction data to a law enforcement agency.

1 (c) A pawnbroker who reports information under this
2 subchapter shall transmit data pertaining to a transaction not
3 later than the seventh day after the date of the transaction, or
4 within a shorter period as agreed to by the chief law enforcement
5 officer and the pawnbroker.

6 (d) If the chief law enforcement officer requires a
7 pawnbroker to submit reportable data to the law enforcement agency,
8 the law enforcement agency shall maintain a secure database using a
9 minimum of 128-bit encryption for all electronic transmissions
10 under this subchapter that occur through the Internet. The law
11 enforcement agency shall implement appropriate security measures
12 to ensure that its database of reportable data may be accessed only
13 by appropriate personnel.

14 (e) A law enforcement agency may not charge a fee to a
15 pawnbroker or customer of a pawnbroker for the preparation,
16 compilation, conversion, or transmission of data under this
17 section.

18 Sec. 371.353. PROVIDER REPOSITORY. (a) A provider may
19 establish a repository for the purpose of providing law enforcement
20 agencies with access to transaction data to facilitate the
21 investigation of alleged property crimes.

22 (b) A provider shall collect and maintain the transaction
23 data and shall update the repository at least daily.

24 (c) A provider shall implement appropriate security
25 measures and data recovery measures necessary to ensure the
26 integrity of the data. A provider shall ensure that the repository
27 can be accessed only by a chief law enforcement officer in

1 accordance with this subchapter.

2 Sec. 371.354. CHARGES FOR USE OF REPOSITORY. (a) A
3 provider may charge a law enforcement agency a fee to access the
4 repository. The fee must be reasonable in relation to the
5 provider's costs in establishing and maintaining the repository.

6 (b) A provider may not charge a pawnbroker or customer of a
7 pawnbroker a fee for the compilation or transmission of reportable
8 data or for the creation, maintenance, or use of any repository.

9 Sec. 371.355. REPOSITORY REQUIREMENTS. A repository must:

10 (1) enable reporting pawnbrokers to transmit data for
11 each pawn and purchase transaction over the Internet in the format
12 used by the pawnbroker's computer software;

13 (2) enable authorized chief law enforcement officers
14 who provide a secure identification or access code to access the
15 reportable data contained in the repository over the Internet;

16 (3) prevent unauthorized persons from accessing the
17 data contained in the repository;

18 (4) require authorized chief law enforcement officers
19 seeking access to the identity of the customer in a pawn or purchase
20 transaction to:

21 (A) represent that the information is sought in
22 connection with the investigation of a crime involving the goods
23 delivered by the customer in that transaction; and

24 (B) present:

25 (i) a valid case number of a criminal
26 proceeding or investigation for which the customer's identity is
27 needed; or

1 (ii) if a case number is not available, the
2 name and badge number of the chief law enforcement officer seeking
3 access to the customer's identity;

4 (5) record the following information for each search
5 of the repository:

6 (A) the identity of the law enforcement personnel
7 searching the repository;

8 (B) the pawn or purchase transaction involved in
9 the search; and

10 (C) the identity of any customer whose
11 information was accessed through the search; and

12 (6) use a minimum of 128-bit encryption for all
13 transmissions to and from the repository.

14 Sec. 371.356. CONFIDENTIALITY. (a) The data in the
15 repository is confidential and may be released or disclosed only to
16 a law enforcement agency for the investigation of a crime or to the
17 commissioner for administrative purposes.

18 (b) A person who releases or discloses data in violation of
19 this section commits an offense. An offense under this section is a
20 Class A misdemeanor.

21 Sec. 371.357. FRAUDULENT ACCESS OF REPOSITORY. A person
22 who gains access to the information in the repository through fraud
23 or false pretenses commits an offense. An offense under this
24 section is a Class A misdemeanor.

25 Sec. 371.358. COMMISSIONER OVERSIGHT. (a) The
26 commissioner may require appropriate documentation demonstrating
27 that a provider or a law enforcement agency that collects

1 reportable data meets the requirements of this subchapter.

2 (b) On or before January 31 of each year, a provider or law
3 enforcement agency that collects reportable data electronically
4 under this subchapter shall report to the commissioner the total
5 number of transactions reported by each reporting pawnbroker in the
6 preceding calendar year. The provider or law enforcement agency
7 shall provide the report at no cost to the commissioner.

8 Sec. 371.359. COMPUTER-RELATED MALFUNCTIONS AND ERRORS.

9 (a) A pawnbroker who electronically reports information under this
10 subchapter may not be held responsible for a delay in submitting
11 data that results from a computer-related malfunction or error
12 caused by the pawnbroker's equipment or software, if:

13 (1) the pawnbroker makes a bona fide effort to repair
14 the malfunction or correct the error; and

15 (2) the pawnbroker and the chief law enforcement
16 officer arrange a mutually acceptable alternative method by which
17 the pawnbroker provides the data to the law enforcement agency.

18 (b) A pawnbroker who electronically reports information
19 under this subchapter may not be held responsible for a delay in
20 submitting data that results from a computer-related malfunction or
21 error that is the responsibility of a provider or a law enforcement
22 agency. A pawnbroker and a chief law enforcement officer shall
23 arrange a mutually acceptable alternative method by which the
24 pawnbroker provides the data to the law enforcement agency until
25 the malfunction or error is corrected.

26 (c) The Finance Commission of Texas may adopt rules to
27 establish procedures to address computer-related malfunctions and

1 errors under this subchapter.

2 Sec. 371.360. PAPER COPIES. (a) A pawnbroker who
3 electronically reports information under this subchapter shall
4 make available for on-site inspection, to any appropriate law
5 enforcement officer on request, paper copies of pawn or purchase
6 transaction documents.

7 (b) After the 180th day after the date a pawnbroker
8 transmits data under this subchapter, the pawnbroker is not
9 required to make available to any law enforcement personnel paper
10 copies of the pawnbroker's information related to the pawnbroker's
11 pawn or purchase transactions, except as provided by Subsection (c)
12 and for evidentiary purposes for which a law enforcement officer
13 makes a specific request related to a specific transaction.

14 (c) For a reasonable period of time following the repair of
15 a computer-related malfunction or error, a pawnbroker shall make
16 available for on-site inspection, to any appropriate law
17 enforcement officer on request, paper copies of pawn or purchase
18 transaction documents for transactions that occurred during the
19 period beginning when the malfunction or error occurs and ending
20 when the chief law enforcement officer is reasonably certain the
21 malfunction or error has been corrected.

22 (d) The Finance Commission of Texas may adopt rules to
23 implement this section.

24 SECTION 3. This Act takes effect January 1, 2004.