

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

1 AN ACT

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

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

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

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

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

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

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

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

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

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

Sec. 371.358. COMMISSIONER OVERSIGHT. (a) The commissioner may require appropriate documentation demonstrating 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.