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 expire; 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, and phone number of

16 the chief law enforcement officer placing the hold order;

17   (4) the case number of the criminal proceeding or

18 investigation involving the goods to be held;

19   (5) a complete description of the goods to be held,

20 including any available model number and serial number, and the

21 related pawn or purchase ticket number;

22   (6) the expiration date of the hold order; and

23   (7) the name of the law enforcement agency that

24 prepared the investigative report and the associated number of the

25 report.

26   (e) The hold order and any extension of the hold order must

27 be signed and dated by the chief law enforcement officer and the

pawnbroker or the pawnbroker's designee, as evidence of the hold

order's issuance by the chief law enforcement officer, the

pawnbroker's receipt of the hold order, and the beginning of the

holding period. The chief law enforcement officer shall provide at

no cost to the pawnbroker an executed copy of the hold order for the

pawnbroker's records.

(f) The initial holding period of the hold order may not

exceed 60 days. A hold order may be extended for up to three

successive 60-day periods on written notification to the pawnbroker

before the expiration of the immediately preceding holding period

or extension. A hold order may be released before the expiration of

the holding period or extension by written release from the chief

law enforcement officer. A hold order is considered expired on the

expiration date stated on the hold order if the holding period is

not extended under this subsection.

(g) Notwithstanding Subsection (e) or (f), the chief law

enforcement officer may place a verbal hold order on property, or

may verbally extend a hold order, for up to seven days while a

written hold order or extension is being prepared. A verbal hold

order must include the information required by Subsection (d).

(h) Goods subject to a hold order may be released to the

custody of the chief law enforcement officer for use in a criminal

investigation if the officer:

(1) has probable cause to believe that the goods

subject to a hold order are misappropriated; and

(2) furnishes a written receipt for the goods.

(i) The release of the goods to the custody of the chief law

1 enforcement officer is not considered a waiver or release of the

2 pawnbroker's rights or interest in the goods. Goods in the custody

3 of the chief law enforcement officer are subject to Chapter 47, Code

4 of Criminal Procedure.

5 (j) A person commits an offense if the person pledges with

6 or sells to a pawnbroker misappropriated property. An offense

7 under this subsection is a Class B misdemeanor.

8 SECTION 2. Chapter 371, Finance Code, is amended by adding

9 Subchapter H to read as follows:

10 SUBCHAPTER H. PROVIDING DATA TO LAW ENFORCEMENT AGENCIES BY

11 ELECTRONIC MEANS

12 Sec. 371.351. DEFINITIONS. In this subchapter:

13 (1) "Chief law enforcement officer" has the meaning

14 assigned by Section 371.1821.

15 (2) "Law enforcement agency" means the department of

16 the chief law enforcement officer.

17 (3) "Provider" means a commercial enterprise

18 primarily engaged in the business of establishing and maintaining

19 one or more Internet repositories.

20 (4) "Reportable data" means the following information

21 from a transaction in which a pawnshop customer pledges or sells

22 personal property:

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

24 (B) the date of the transaction; and

25 (C) an identification and complete description

26 of the goods pledged or sold, including any available model numbers

27 and serial numbers, and other identifying characteristics.

4

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

2   transaction data.

3   (6) "Transaction data" means information from a

4   transaction in which a pawnshop customer pledges or sells personal

5   property, including:

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

7   (B) the date of the transaction;

8   (C) an identification and complete description

9   of the goods pledged or sold, including any available model numbers

10   and serial numbers, and other identifying characteristics;

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

12   description; and

13   (E) a driver's license number, military

14   identification number, identification certificate number, or other

15   official number that identifies the customer.

16   Sec. 371.352. ELECTRONIC REPORTING TO LAW ENFORCEMENT

17   AGENCY OR PROVIDER. (a) A pawnbroker who generates computerized

18   pawn and purchase tickets shall, as required by the chief law

19   enforcement officer, transmit all:

20   (1) reportable data to the law enforcement agency

21   electronically in a format used by the pawnbroker's computer

22   software; or

23   (2) transaction data electronically in the format used

24   by the pawnbroker's computer software directly to a provider.

25   (b) A pawnbroker may transmit transaction data to the chief

26   law enforcement officer. A pawnbroker and the chief law

27   enforcement officer may agree to another means of transferring

1 transaction data to a law enforcement agency.

2 (c) A pawnbroker who reports information under this

3 subchapter shall transmit data pertaining to a transaction not

4 later than the seventh day after the date of the transaction, or

5 within a shorter period as agreed to by the chief law enforcement

6 officer and the pawnbroker.

7 (d) If the chief law enforcement officer requires a

8 pawnbroker to submit reportable data to the law enforcement agency,

9 the law enforcement agency shall maintain a secure database using a

10 minimum of 128-bit encryption for all electronic transmissions

11 under this subchapter that occur through the Internet. The law

12 enforcement agency shall implement appropriate security measures

13 to ensure that its database of reportable data may be accessed only

14 by the chief law enforcement officer.

15 (e) A law enforcement agency may not charge a fee to a

16 pawnbroker or customer of a pawnbroker for the preparation,

17 compilation, conversion, or transmission of data under this

18 section.

19 Sec. 371.353. PROVIDER REPOSITORY. (a) A provider may

20 establish a repository for the purpose of providing law enforcement

21 agencies with access to transaction data to facilitate the

22 investigation of alleged property crimes.

23 (b) A provider shall collect and maintain the transaction

24 data and shall update the repository at least daily.

25 (c) A provider shall implement appropriate security

26 measures and data recovery measures necessary to ensure the

27 integrity of the data. A provider shall ensure that the repository

1 can be accessed only by a chief law enforcement officer in

2 accordance with this subchapter.

3   Sec. 371.354. CHARGES FOR USE OF REPOSITORY. (a) A

4 provider may charge a law enforcement agency a fee to access the

5 repository. The fee must be reasonable in relation to the

6 provider's costs in establishing and maintaining the repository.

7   (b) A provider may not charge a pawnbroker or customer of a

8 pawnbroker a fee for the compilation or transmission of reportable

9 data or for the creation, maintenance, or use of any repository.

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

11   (1) enable reporting pawnbrokers to transmit data for

12 each pawn and purchase transaction over the Internet in the format

13 used by the pawnbroker's computer software;

14   (2) enable authorized chief law enforcement officers

15 who provide a secure identification or access code to access the

16 reportable data contained in the repository over the Internet;

17   (3) prevent unauthorized persons from accessing the

18 data contained in the repository;

19   (4) require authorized chief law enforcement officers

20 seeking access to the identity of the customer in a pawn or purchase

21 transaction to:

22   (A) represent that the information is sought in

23 connection with the investigation of a crime involving the goods

24 delivered by the customer in that transaction; and

25   (B) present:

26   (i) a valid case number of a criminal

27 proceeding or investigation for which the customer's identity is

1 needed; or

2 (ii) if a case number is not available, the

3 name and badge number of the chief law enforcement officer seeking

4 access to the customer's identity;

5 (5) record the following information for each search

6 of the repository:

7 (A) the identity of the law enforcement personnel

8 searching the repository;

9 (B) the pawn or purchase transaction involved in

10 the search; and

11 (C) the identity of any customer whose

12 information was accessed through the search; and

13 (6) use a minimum of 128-bit encryption for all

14 transmissions to and from the repository.

15 Sec. 371.356. CONFIDENTIALITY. (a) The data in the

16 repository is confidential and may be released or disclosed only to

17 a law enforcement agency for the investigation of a crime or to the

18 commissioner for administrative purposes.

19 (b) A person who releases or discloses data in violation of

20 this section commits an offense. An offense under this section is a

21 Class A misdemeanor.

22 Sec. 371.357. FRAUDULENT ACCESS OF REPOSITORY. A person

23 who gains access to the information in the repository through fraud

24 or false pretenses commits an offense. An offense under this

25 section is a Class A misdemeanor.

26 Sec. 371.358. COMMISSIONER OVERSIGHT. (a) The

27 commissioner may require appropriate documentation demonstrating

1 that a provider or a law enforcement agency that collects

2 reportable data meets the requirements of this subchapter.

3 (b) On or before January 31 of each year, a provider or law

4 enforcement agency that collects reportable data electronically

5 under this subchapter shall report to the commissioner the total

6 number of transactions reported by each reporting pawnbroker in the

7 preceding calendar year. The provider or law enforcement agency

8 shall provide the report at no cost to the commissioner.

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

10 (a) A pawnbroker who electronically reports information under this

11 subchapter may not be held responsible for a delay in submitting

12 data that results from a computer-related malfunction or error

13 caused by the pawnbroker's equipment or software, if:

14 (1) the pawnbroker makes a bona fide effort to repair

15 the malfunction or correct the error; and

16 (2) the pawnbroker and the chief law enforcement

17 officer arrange a mutually acceptable alternative method by which

18 the pawnbroker provides the data to the law enforcement agency.

19 (b) A pawnbroker who electronically reports information

20 under this subchapter may not be held responsible for a delay in

21 submitting data that results from a computer-related malfunction or

22 error that is the responsibility of a provider or a law enforcement

23 agency. A pawnbroker and a chief law enforcement officer shall

24 arrange a mutually acceptable alternative method by which the

25 pawnbroker provides the data to the law enforcement agency until

26 the malfunction or error is corrected.

27 (c) The Finance Commission of Texas may adopt rules to

1 establish procedures to address computer-related malfunctions and

2 errors under this subchapter.

3 　　　　Sec. 371.360.　PAPER　COPIES.　(a)　A　pawnbroker　who

4 electronically　reports　information　under　this　subchapter　shall

5 make　available　for　on-site　inspection,　to　any　appropriate　law

6 enforcement　officer　on　request,　paper　copies　of　pawn　or　purchase

7 transaction documents.

8 　　　　(b)　After　the　180th　day　after　the　date　a　pawnbroker

9 transmits　data　under　this　subchapter,　the　pawnbroker　is　not

10 required to make available to any law enforcement personnel paper

11 copies of the pawnbroker's information related to the pawnbroker's

12 pawn or purchase transactions, except as provided by Subsection (c)

13 and for evidentiary purposes for which a law enforcement officer

14 makes a specific request related to a specific transaction.

15 　　　　(c)　For a reasonable period of time following the repair of

16 a computer-related malfunction or error, a pawnbroker shall make

17 available　for　on-site　inspection,　to　any　appropriate　law

18 enforcement officer on request, paper copies of pawn or purchase

19 transaction documents for transactions that occurred during the

20 period beginning when the malfunction or error occurs and ending

21 when the chief law enforcement officer is reasonably certain the

22 malfunction or error has been corrected.

23 　　　　(d)　The　Finance　Commission　of　Texas　may　adopt　rules　to

24 implement this section.

25 　　　　SECTION 3.　This Act takes effect January 1, 2006.