BILL ANALYSIS

Senate Research Center   C.S.H.B. 1839

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Business & Commerce

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Committee Report (Substituted)

DIGEST AND PURPOSE

Current law requires pawnbrokers to watch for goods that might be stolen and assist law enforcement officers in the recovery of stolen property. There are no standardized procedures that all law enforcement personnel must follow when requesting pawnbrokers to hold items which are suspected of being stolen. Instead, pawnbrokers and law enforcement agencies use informal procedures which vary widely from municipality to municipality. Pawnbrokers share information from paper pawn tickets with relevant law enforcement officials according to rules adopted by the consumer credit commissioner. Law enforcement sorting through paper records when searching for specific stolen items is an inefficient means of identifying stolen property. C.S.H.B. 1839 establishes a uniform hold procedure for goods that are suspected of being stolen and requires pawnbrokers to provide data to law enforcement agencies in an electronic or otherwise mutually acceptable format. C.S.H.B. 1839 provides criminal penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Finance Commission of Texas in SECTION 2 (Section 371.359 and 371.360, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 371, Finance Code, by adding Section 371.1821, as follows:

> Sec. 371.1821. LAW ENFORCEMENT HOLD PROCEDURE; PLEDGE OR SALE OF MISAPPROPRIATED PROPERTY. (a) Defines "chief law enforcement officer" and "misappropriated."
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> (b) Authorizes the officer to place a hold order on the goods, if a chief law enforcement officer has reasonable suspicion to believe that goods in the possession of a pawnbroker are misappropriated.
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> (c) Requires goods subject to a hold order to be physically retained by the pawnbroker in a secure area and prohibits them from being released, sold, redeemed, or disposed of unless:
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>> (1) the chief law enforcement officer delivers a written release to the pawnbroker;
>> (2) the hold order and any extension of the hold order expires; or
>> (3) a court order, including a search warrant, requires the release, sale, or disposal of the property.
>
> (d) Provides that a hold order is effective only if it contains certain information.
>
> (e) Requires the hold order and any extension of the hold order to 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. Requires the chief law enforcement officer to provide at no

cost to the pawnbroker an executed copy of the hold order for the pawnbroker's records.

(f) Prohibits the initial holding period of the hold order from exceeding 60 days. Authorizes a hold order to 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. Authorizes a hold order to be released before the expiration of the holding period or extension by written release from the chief law enforcement officer. Provides that 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) Authorizes the chief law enforcement officer to place a verbal hold order on property, or verbally extend a hold order, for up to seven days while a written hold order or extension is being prepared. Requires a verbal hold order to include the information required by Subsection (d).

(h) Authorizes goods subject to a hold order to be released to the custody of the chief law enforcement officer for use in a criminal investigation under certain circumstances.

(i) Provides that the release of the goods to the custody of the chief law enforcement officer is not considered a waiver or release of the pawnbroker's rights or interest in the goods. Provides that goods in the custody of the chief law enforcement officer are subject to Chapter 47, Code of Criminal Procedure.

(j) Provides that a person commits an offense if the person pledges with or sells to a pawnbroker misappropriated property. Provides that an offense under this subsection is a Class B misdemeanor.

SECTION 2. Amends Chapter 371, Finance Code, by adding Subchapter H, as follows:

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

Sec. 371.351. DEFINITIONS. Defines "chief law enforcement officer," "law enforcement agency," "provider," "reportable data," "repository," and "transaction data."

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

(1) reportable data to the law enforcement agency electronically in a format used by the pawnbroker's computer software; or
(2) transaction data electronically in the format used by the pawnbroker's computer software directly to a provider.

(b) Authorizes a pawnbroker to transmit transaction data to the chief law enforcement officer. Authorizes a pawnbroker and the chief law enforcement officer to agree to another means of transferring transaction data to a law enforcement agency.

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

(d) Requires the law enforcement agency to maintain a secure database using a minimum of 128-bit encryption for all electronic transmissions under this

subchapter that occur through the Internet, if the chief law enforcement officer requires a pawnbroker to submit reportable data to the law enforcement agency Requires the law enforcement agency to implement appropriate security measures to ensure that its database of reportable data may be accessed only by the chief law enforcement officer.

(e) Prohibits a law enforcement agency from charging a fee to a pawnbroker or customer of a pawnbroker for the preparation, compilation, conversion, or transmission of data under this section.

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

(b) Requires a provider to collect and maintain the transaction data and update the repository at least daily.

(c) Requires a provider to implement appropriate security measures and data recovery measures necessary to ensure the integrity of the data. Requires a provider to ensure that the repository can be accessed only by a chief law enforcement officer in accordance with this subchapter.

Sec. 371.354. CHARGES FOR USE OF REPOSITORY. (a) Authorizes a provider to charge a law enforcement agency a fee to access the repository. Requires the fee to be reasonable in relation to the provider's costs in establishing and maintaining the repository.

(b) Prohibits a provider from charging a pawnbroker or customer of a pawnbroker a fee for the compilation or transmission of reportable data or for the creation, maintenance, or use of any repository.

Sec. 371.355. REPOSITORY REQUIREMENTS. Requires a repository to meet certain requirements.

Sec. 371.356. CONFIDENTIALITY. (a) Provides that 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 consumer credit commissioner (CCC) for administrative purposes.

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

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

Sec. 371.358. COMMISSIONER OVERSIGHT. (a) Authorizes CCC to require appropriate documentation demonstrating that a provider or a law enforcement agency that collects reportable data meets the requirements of this subchapter.

(b) Requires a provider or law enforcement agency that collects reportable data electronically under this subchapter to report to CCC the total number of transactions reported by each reporting pawnbroker in the preceding calendar year. Requires the provider or law enforcement agency to provide the report at no cost to CCC.

Sec. 371.359. COMPUTER-RELATED MALFUNCTIONS AND ERRORS. (a)

Prohibits a pawnbroker who electronically reports information under this subchapter from being held responsible for a delay in submitting data that results from a computer-related malfunction or error caused by the pawnbroker's equipment or software, if:

(1) the pawnbroker makes a bona fide effort to repair the malfunction or correct the error; and
(2) the pawnbroker and the chief law enforcement officer arrange a mutually acceptable alternative method by which the pawnbroker provides the data to the law enforcement agency.

(b) Prohibits a pawnbroker who electronically reports information under this subchapter from being held responsible for a delay in submitting data that results from a computer-related malfunction or error that is the responsibility of a provider or a law enforcement agency. Requires a pawnbroker and a chief law enforcement officer to arrange a mutually acceptable alternative method by which the pawnbroker provides the data to the law enforcement agency until the malfunction or error is corrected.

(c) Authorizes the State Finance Commission of Texas (SFC) to adopt rules to establish procedures to address computer-related malfunctions and errors under this subchapter.

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

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

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

(d) Authorizes SFC to adopt rules to implement this section.

SECTION 3. Effective date: January 1, 2004.