

By: Lewis

H.B. No. 1144

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

(1) "Chief law enforcement officer" means:

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

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

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

(b) If a chief law enforcement officer has probable cause to believe that goods in the possession of a pawnbroker are misappropriated, the officer may place a hold order on the goods.

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

4 (1) the chief law enforcement officer placing the hold
5 order delivers a written release to the pawnbroker;

6 (2) the hold order expires; or

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

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

10 (1) the name of the pawnbroker;

11 (2) the name and mailing address of the pawnshop where
12 the goods are located;

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

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

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

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

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

1 holding period. The chief law enforcement officer shall provide at
2 no cost to the pawnbroker an executed copy of the hold order for the
3 pawnbroker's records.

4 (f) The initial holding period of the hold order may not
5 exceed 60 days. A hold order may be extended for up to two
6 successive 30-day periods on written notification to the pawnbroker
7 before the expiration of the immediately preceding holding period
8 or extension. A hold order may be released before the expiration of
9 the holding period or extension by written release from the chief
10 law enforcement officer who placed the initial hold order. A hold
11 order is considered expired on the expiration date stated on the
12 hold order if the holding period is not extended under this
13 subsection.

14 (g) Goods subject to a hold order may be released to the
15 custody of the chief law enforcement officer for use in a criminal
16 investigation if the officer furnishes a written receipt for the
17 goods. The release of the goods to the custody of the chief law
18 enforcement officer is not considered a waiver or release of the
19 pawnbroker's rights or interest in the goods. The chief law
20 enforcement officer shall return the goods to the pawnbroker on the
21 completion of the criminal investigation or on the expiration of
22 the hold order and any extensions.

23 (h) A person commits an offense if the person pledges with
24 or sells to a pawnbroker misappropriated property. An offense
25 under this subsection is a Class B misdemeanor.

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

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

3 Sec. 371.351. DEFINITIONS. In this subchapter:

4 (1) "Database" means an Internet repository of
5 reportable data.

6 (2) "Provider" means a commercial enterprise
7 primarily engaged in the business of establishing and maintaining
8 one or more Internet databases.

9 (3) "Reportable data" means the information recorded
10 by a pawnbroker under Sections 371.157(1)-(4) and 371.177.

11 Sec. 371.352. ELECTRONIC REPORTING. (a) A pawnbroker who
12 generates computerized pawn and purchase tickets and has access to
13 Internet service on September 1, 2003, shall provide reportable
14 data to a law enforcement agency by transmitting the reportable
15 data electronically, in the format used by the pawnbroker's
16 computer software, to a database as provided by this subchapter. A
17 pawnbroker who is licensed after September 1, 2003, who generates
18 computerized pawn and purchase tickets and has access to Internet
19 service shall provide reportable data to a law enforcement agency
20 by transmitting the reportable data electronically, in the format
21 used by the pawnbroker's computer software, to a database as
22 provided by this subchapter.

23 (b) A pawnbroker who electronically reports information
24 under this subchapter shall transmit reportable data to a law
25 enforcement agency before the seventh day after the date of the
26 transaction to which the data relates, or within a shorter period as
27 agreed on by the pawnbroker and the sheriff or chief of the law

1 enforcement agency. The transmission must be completed before the
2 end of the next business day after the date the reporting period
3 under this subsection ends.

4 Sec. 371.353. DATABASE OF REPORTABLE DATA. (a) A provider
5 may establish a database for the purposes of providing law
6 enforcement agencies with useful information to facilitate the
7 investigation of alleged property crimes and protecting the privacy
8 rights of pawn customers and pawnbrokers.

9 (b) The provider shall collect and maintain the reportable
10 data and shall update the database at least daily. The database
11 shall contain the security features necessary to ensure that the
12 reportable data maintained in the database can be accessed only by
13 law enforcement personnel in accordance with this subchapter.

14 Sec. 371.354. CHARGES FOR USE OF DATABASE. (a) A provider
15 may charge a law enforcement agency directly for access to the
16 database. The charge for the use of the database may be based on the
17 number of users within a particular law enforcement jurisdiction
18 and must be reasonable in relation to the provider's costs in
19 establishing and maintaining the database.

20 (b) A person may not charge a pawnbroker or customer of a
21 pawnbroker a fee for the compilation or transmission of reportable
22 data or for the creation, maintenance, or use of the database.

23 Sec. 371.355. DATA ESCROW SERVICE. A provider must use a
24 data escrow service to store a copy of the most recently updated
25 version of the database and the source code for the database system.

26 Sec. 371.356. INSURANCE. A provider shall maintain a
27 general liability insurance policy of at least \$1 million.

1 Sec. 371.357. DATABASE REQUIREMENTS. (a) A database must:

2 (1) enable reporting pawnbrokers to transmit to the
3 database reportable data for each pawn and purchase transaction
4 over the Internet in the format used by the pawnbroker's computer
5 software;

6 (2) enable appropriate law enforcement personnel who
7 provide a secure identification or access code to access the
8 information contained in the database and prevent others from
9 accessing the information;

10 (3) require law enforcement personnel seeking access
11 to the identity of the customer in a pawn or purchase transaction to
12 provide a valid case number of a criminal proceeding for which the
13 customer's identity is needed and to represent that the information
14 is sought in connection with the investigation of a crime involving
15 the goods delivered by the customer in that transaction;

16 (4) record, for each search, the identity of the law
17 enforcement personnel searching the database, the pawn or purchase
18 transaction involved in the search, and the identity of any
19 customer whose information was accessed through the search; and

20 (5) use a minimum of 128-bit encryption for all
21 transmissions to and from the database.

22 (b) A database server must be housed in a nationally
23 recognized data storage facility with security measures that are
24 adequate to protect the data.

25 Sec. 371.358. COMMISSIONER OVERSIGHT. (a) The
26 commissioner may take appropriate measures to ensure that a
27 provider and its database meet the requirements of Sections

1 371.355, 371.356, and 371.357.

2 (b) On or before January 31 of each year, a provider shall
3 report to the commissioner the total number of transactions
4 reported by each reporting pawnbroker in the preceding calendar
5 year. The provider shall provide the report at no cost to the
6 commissioner. The report must be in a format prescribed by the
7 commissioner if the provider can use the prescribed format.

8 Sec. 371.359. CONFIDENTIALITY. (a) The information in the
9 database is confidential and may be released or disclosed only for a
10 law enforcement investigation of a property crime or to the
11 commissioner for administrative purposes.

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

15 Sec. 371.360. FRAUDULENT ACCESS OF DATABASE. (a) A person
16 who gains access to the information in the database through fraud or
17 false pretenses commits an offense.

18 (b) An offense under this section is a Class A misdemeanor.

19 Sec. 371.361. COMPUTER-RELATED MALFUNCTIONS AND ERRORS.

20 (a) A pawnbroker who electronically reports information under this
21 subchapter may not be held responsible for a delay in making
22 available reportable data that results from a malfunction in the
23 database or Internet service.

24 (b) A provider shall correct an error in reportable data
25 before the seventh day after the earlier of:

26 (1) the date the provider discovered the error; or

27 (2) the date the provider received notice from the

1 reporting pawnbroker or the law enforcement officer who discovered
2 the error.

3 (c) If a pawnbroker who electronically reports information
4 under this subchapter experiences a computer malfunction, the
5 pawnbroker shall repair the malfunction before the 30th day after
6 the date the malfunction began. If a pawnbroker's computer
7 experiences a software malfunction, the pawnbroker may not be
8 considered to be in violation of a reporting requirement if the
9 pawnbroker is making a bona fide effort to repair the malfunction.

10 (d) If there is an error in reportable data or a malfunction
11 in a database, Internet service, or pawnbroker's computer, the
12 pawnbroker and the appropriate law enforcement agency shall arrange
13 a mutually acceptable alternative method by which the pawnbroker
14 provides the reportable data to the appropriate law enforcement
15 agency.

16 Sec. 371.362. PAPER COPIES. (a) A pawnbroker who
17 electronically reports information under this subchapter shall
18 make available for on-site inspection, to any appropriate law
19 enforcement officer on request, paper copies of pawn or purchase
20 transaction documents.

21 (b) After the 90th day after the date a pawnbroker transmits
22 reportable data to the database under this subchapter, the
23 pawnbroker is not required to make available to any law enforcement
24 personnel paper copies of the pawnbroker's information related to
25 the pawnbroker's pawn or purchase transactions, except for
26 evidentiary purposes for which a law enforcement officer makes a
27 specific request related to a specific transaction.

1 Sec. 371.363. COSTS. A pawnbroker who electronically
2 reports information under this subchapter is not required to incur
3 any cost, other than Internet service costs, in preparing,
4 converting, or delivering its reportable data to the database.

5 SECTION 3. This Act takes effect September 1, 2003.