

1-1 By: Solomons, Lewis, et al. H.B. No. 1839  
1-2 (Senate Sponsor - Armbrister)  
1-3 (In the Senate - Received from the House May 2, 2003;  
1-4 May 6, 2003, read first time and referred to Committee on Business  
1-5 and Commerce; May 22, 2003, reported adversely, with favorable  
1-6 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-7 May 22, 2003, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 1839 By: Armbrister

1-9 A BILL TO BE ENTITLED  
1-10 AN ACT

1-11 relating to property in the custody of a pawnbroker; providing  
1-12 criminal penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter D, Chapter 371, Finance Code, is  
1-15 amended by adding Section 371.1821 to read as follows:

1-16 Sec. 371.1821. LAW ENFORCEMENT HOLD PROCEDURE; PLEDGE OR  
1-17 SALE OF MISAPPROPRIATED PROPERTY. (a) In this section:

1-18 (1) "Chief law enforcement officer" means:

1-19 (A) the sheriff of the county in which the  
1-20 pawnshop is located or an officer of the sheriff's department  
1-21 designated by the sheriff, if the pawnshop is not located in a  
1-22 municipality that maintains a police department; or

1-23 (B) the police chief of the municipality in which  
1-24 the pawnshop is located or a police officer designated by the police  
1-25 chief, if the pawnshop is located in a municipality that maintains a  
1-26 police department.

1-27 (2) "Misappropriated" means stolen, embezzled,  
1-28 converted, or otherwise wrongfully appropriated, or pledged  
1-29 against the will of the owner of the goods or a person holding a  
1-30 perfected security interest in the goods.

1-31 (b) If a chief law enforcement officer has reasonable  
1-32 suspicion to believe that goods in the possession of a pawnbroker  
1-33 are misappropriated, the officer may place a hold order on the  
1-34 goods.

1-35 (c) Goods subject to a hold order must be physically  
1-36 retained by the pawnbroker in a secure area and may not be released,  
1-37 sold, redeemed, or disposed of unless:

1-38 (1) the chief law enforcement officer delivers a  
1-39 written release to the pawnbroker;

1-40 (2) the hold order and any extension of the hold order  
1-41 expire; or

1-42 (3) a court order, including a search warrant,  
1-43 requires the release, sale, or disposal of the property.

1-44 (d) A hold order is effective only if it contains:

1-45 (1) the name of the pawnbroker;

1-46 (2) the name and mailing address of the pawnshop where  
1-47 the goods are located;

1-48 (3) the name, title, badge number, and phone number of  
1-49 the chief law enforcement officer placing the hold order;

1-50 (4) the case number of the criminal proceeding or  
1-51 investigation involving the goods to be held;

1-52 (5) a complete description of the goods to be held,  
1-53 including any available model number and serial number, and the  
1-54 related pawn or purchase ticket number;

1-55 (6) the expiration date of the hold order; and

1-56 (7) the name of the law enforcement agency that  
1-57 prepared the investigative report and the associated number of the  
1-58 report.

1-59 (e) The hold order and any extension of the hold order must  
1-60 be signed and dated by the chief law enforcement officer and the  
1-61 pawnbroker or the pawnbroker's designee, as evidence of the hold  
1-62 order's issuance by the chief law enforcement officer, the  
1-63 pawnbroker's receipt of the hold order, and the beginning of the

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

2-4 (f) The initial holding period of the hold order may not  
2-5 exceed 60 days. A hold order may be extended for up to three  
2-6 successive 60-day periods on written notification to the pawnbroker  
2-7 before the expiration of the immediately preceding holding period  
2-8 or extension. A hold order may be released before the expiration of  
2-9 the holding period or extension by written release from the chief  
2-10 law enforcement officer. A hold order is considered expired on the  
2-11 expiration date stated on the hold order if the holding period is  
2-12 not extended under this subsection.

2-13 (g) Notwithstanding Subsection (e) or (f), the chief law  
2-14 enforcement officer may place a verbal hold order on property, or  
2-15 may verbally extend a hold order, for up to seven days while a  
2-16 written hold order or extension is being prepared. A verbal hold  
2-17 order must include the information required by Subsection (d).

2-18 (h) Goods subject to a hold order may be released to the  
2-19 custody of the chief law enforcement officer for use in a criminal  
2-20 investigation if the officer:

2-21 (1) has probable cause to believe that the goods  
2-22 subject to a hold order are misappropriated; and

2-23 (2) furnishes a written receipt for the goods.

2-24 (i) The release of the goods to the custody of the chief law  
2-25 enforcement officer is not considered a waiver or release of the  
2-26 pawnbroker's rights or interest in the goods. Goods in the custody  
2-27 of the chief law enforcement officer are subject to Chapter 47, Code  
2-28 of Criminal Procedure.

2-29 (j) A person commits an offense if the person pledges with  
2-30 or sells to a pawnbroker misappropriated property. An offense  
2-31 under this subsection is a Class B misdemeanor.

2-32 SECTION 2. Chapter 371, Finance Code, is amended by adding  
2-33 Subchapter H to read as follows:

2-34 SUBCHAPTER H. PROVIDING DATA TO LAW ENFORCEMENT AGENCIES BY  
2-35 ELECTRONIC MEANS

2-36 Sec. 371.351. DEFINITIONS. In this subchapter:

2-37 (1) "Chief law enforcement officer" has the meaning  
2-38 assigned by Section 371.1821.

2-39 (2) "Law enforcement agency" means the department of  
2-40 the chief law enforcement officer.

2-41 (3) "Provider" means a commercial enterprise  
2-42 primarily engaged in the business of establishing and maintaining  
2-43 one or more Internet repositories.

2-44 (4) "Reportable data" means the following information  
2-45 from a transaction in which a pawnshop customer pledges or sells  
2-46 personal property:

- 2-47 (A) the name and address of the pawnshop;
- 2-48 (B) the date of the transaction; and
- 2-49 (C) an identification and complete description  
2-50 of the goods pledged or sold, including any available model numbers  
2-51 and serial numbers, and other identifying characteristics.

2-52 (5) "Repository" means an electronic storage of  
2-53 transaction data.

2-54 (6) "Transaction data" means information from a  
2-55 transaction in which a pawnshop customer pledges or sells personal  
2-56 property, including:

- 2-57 (A) the name and address of the pawnshop;
- 2-58 (B) the date of the transaction;
- 2-59 (C) an identification and complete description  
2-60 of the goods pledged or sold, including any available model numbers  
2-61 and serial numbers, and other identifying characteristics;
- 2-62 (D) the customer's name, address, and physical  
2-63 description; and
- 2-64 (E) a driver's license number, military  
2-65 identification number, identification certificate number, or other  
2-66 official number that identifies the customer.

2-67 Sec. 371.352. ELECTRONIC REPORTING TO LAW ENFORCEMENT  
2-68 AGENCY OR PROVIDER. (a) A pawnbroker who generates computerized  
2-69 pawn and purchase tickets shall, as required by the chief law

3-1 enforcement officer, transmit all:

3-2 (1) reportable data to the law enforcement agency  
 3-3 electronically in a format used by the pawnbroker's computer  
 3-4 software; or

3-5 (2) transaction data electronically in the format used  
 3-6 by the pawnbroker's computer software directly to a provider.

3-7 (b) A pawnbroker may transmit transaction data to the chief  
 3-8 law enforcement officer. A pawnbroker and the chief law  
 3-9 enforcement officer may agree to another means of transferring  
 3-10 transaction data to a law enforcement agency.

3-11 (c) A pawnbroker who reports information under this  
 3-12 subchapter shall transmit data pertaining to a transaction not  
 3-13 later than the seventh day after the date of the transaction, or  
 3-14 within a shorter period as agreed to by the chief law enforcement  
 3-15 officer and the pawnbroker.

3-16 (d) If the chief law enforcement officer requires a  
 3-17 pawnbroker to submit reportable data to the law enforcement agency,  
 3-18 the law enforcement agency shall maintain a secure database using a  
 3-19 minimum of 128-bit encryption for all electronic transmissions  
 3-20 under this subchapter that occur through the Internet. The law  
 3-21 enforcement agency shall implement appropriate security measures  
 3-22 to ensure that its database of reportable data may be accessed only  
 3-23 by the chief law enforcement officer.

3-24 (e) A law enforcement agency may not charge a fee to a  
 3-25 pawnbroker or customer of a pawnbroker for the preparation,  
 3-26 compilation, conversion, or transmission of data under this  
 3-27 section.

3-28 Sec. 371.353. PROVIDER REPOSITORY. (a) A provider may  
 3-29 establish a repository for the purpose of providing law enforcement  
 3-30 agencies with access to transaction data to facilitate the  
 3-31 investigation of alleged property crimes.

3-32 (b) A provider shall collect and maintain the transaction  
 3-33 data and shall update the repository at least daily.

3-34 (c) A provider shall implement appropriate security  
 3-35 measures and data recovery measures necessary to ensure the  
 3-36 integrity of the data. A provider shall ensure that the repository  
 3-37 can be accessed only by a chief law enforcement officer in  
 3-38 accordance with this subchapter.

3-39 Sec. 371.354. CHARGES FOR USE OF REPOSITORY. (a) A  
 3-40 provider may charge a law enforcement agency a fee to access the  
 3-41 repository. The fee must be reasonable in relation to the  
 3-42 provider's costs in establishing and maintaining the repository.

3-43 (b) A provider may not charge a pawnbroker or customer of a  
 3-44 pawnbroker a fee for the compilation or transmission of reportable  
 3-45 data or for the creation, maintenance, or use of any repository.

3-46 Sec. 371.355. REPOSITORY REQUIREMENTS. A repository must:

3-47 (1) enable reporting pawnbrokers to transmit data for  
 3-48 each pawn and purchase transaction over the Internet in the format  
 3-49 used by the pawnbroker's computer software;

3-50 (2) enable authorized chief law enforcement officers  
 3-51 who provide a secure identification or access code to access the  
 3-52 reportable data contained in the repository over the Internet;

3-53 (3) prevent unauthorized persons from accessing the  
 3-54 data contained in the repository;

3-55 (4) require authorized chief law enforcement officers  
 3-56 seeking access to the identity of the customer in a pawn or purchase  
 3-57 transaction to:

3-58 (A) represent that the information is sought in  
 3-59 connection with the investigation of a crime involving the goods  
 3-60 delivered by the customer in that transaction; and

3-61 (B) present:

3-62 (i) a valid case number of a criminal  
 3-63 proceeding or investigation for which the customer's identity is  
 3-64 needed; or

3-65 (ii) if a case number is not available, the  
 3-66 name and badge number of the chief law enforcement officer seeking  
 3-67 access to the customer's identity;

3-68 (5) record the following information for each search  
 3-69 of the repository:

4-1 (A) the identity of the law enforcement personnel  
 4-2 searching the repository;

4-3 (B) the pawn or purchase transaction involved in  
 4-4 the search; and

4-5 (C) the identity of any customer whose  
 4-6 information was accessed through the search; and

4-7 (6) use a minimum of 128-bit encryption for all  
 4-8 transmissions to and from the repository.

4-9 Sec. 371.356. CONFIDENTIALITY. (a) The data in the  
 4-10 repository is confidential and may be released or disclosed only to  
 4-11 a law enforcement agency for the investigation of a crime or to the  
 4-12 commissioner for administrative purposes.

4-13 (b) A person who releases or discloses data in violation of  
 4-14 this section commits an offense. An offense under this section is a  
 4-15 Class A misdemeanor.

4-16 Sec. 371.357. FRAUDULENT ACCESS OF REPOSITORY. A person  
 4-17 who gains access to the information in the repository through fraud  
 4-18 or false pretenses commits an offense. An offense under this  
 4-19 section is a Class A misdemeanor.

4-20 Sec. 371.358. COMMISSIONER OVERSIGHT. (a) The  
 4-21 commissioner may require appropriate documentation demonstrating  
 4-22 that a provider or a law enforcement agency that collects  
 4-23 reportable data meets the requirements of this subchapter.

4-24 (b) On or before January 31 of each year, a provider or law  
 4-25 enforcement agency that collects reportable data electronically  
 4-26 under this subchapter shall report to the commissioner the total  
 4-27 number of transactions reported by each reporting pawnbroker in the  
 4-28 preceding calendar year. The provider or law enforcement agency  
 4-29 shall provide the report at no cost to the commissioner.

4-30 Sec. 371.359. COMPUTER-RELATED MALFUNCTIONS AND ERRORS.  
 4-31 (a) A pawnbroker who electronically reports information under this  
 4-32 subchapter may not be held responsible for a delay in submitting  
 4-33 data that results from a computer-related malfunction or error  
 4-34 caused by the pawnbroker's equipment or software, if:

4-35 (1) the pawnbroker makes a bona fide effort to repair  
 4-36 the malfunction or correct the error; and

4-37 (2) the pawnbroker and the chief law enforcement  
 4-38 officer arrange a mutually acceptable alternative method by which  
 4-39 the pawnbroker provides the data to the law enforcement agency.

4-40 (b) A pawnbroker who electronically reports information  
 4-41 under this subchapter may not be held responsible for a delay in  
 4-42 submitting data that results from a computer-related malfunction or  
 4-43 error that is the responsibility of a provider or a law enforcement  
 4-44 agency. A pawnbroker and a chief law enforcement officer shall  
 4-45 arrange a mutually acceptable alternative method by which the  
 4-46 pawnbroker provides the data to the law enforcement agency until  
 4-47 the malfunction or error is corrected.

4-48 (c) The Finance Commission of Texas may adopt rules to  
 4-49 establish procedures to address computer-related malfunctions and  
 4-50 errors under this subchapter.

4-51 Sec. 371.360. PAPER COPIES. (a) A pawnbroker who  
 4-52 electronically reports information under this subchapter shall  
 4-53 make available for on-site inspection, to any appropriate law  
 4-54 enforcement officer on request, paper copies of pawn or purchase  
 4-55 transaction documents.

4-56 (b) After the 180th day after the date a pawnbroker  
 4-57 transmits data under this subchapter, the pawnbroker is not  
 4-58 required to make available to any law enforcement personnel paper  
 4-59 copies of the pawnbroker's information related to the pawnbroker's  
 4-60 pawn or purchase transactions, except as provided by Subsection (c)  
 4-61 and for evidentiary purposes for which a law enforcement officer  
 4-62 makes a specific request related to a specific transaction.

4-63 (c) For a reasonable period of time following the repair of  
 4-64 a computer-related malfunction or error, a pawnbroker shall make  
 4-65 available for on-site inspection, to any appropriate law  
 4-66 enforcement officer on request, paper copies of pawn or purchase  
 4-67 transaction documents for transactions that occurred during the  
 4-68 period beginning when the malfunction or error occurs and ending  
 4-69 when the chief law enforcement officer is reasonably certain the

5-1 malfunction or error has been corrected.

5-2 (d) The Finance Commission of Texas may adopt rules to  
5-3 implement this section.

5-4 SECTION 3. This Act takes effect January 1, 2004.

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