BILL ANALYSIS

BACKGROUND 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. Having a law enforcement agency sort through these paper records when searching for specific stolen items is an inefficient means of identifying stolen property.

S.B. 757 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.

RULEMAKING AUTHORITY

It is the committee=s opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 2 (Section 371.359 and 371.360, Finance Code) of this bill.

ANALYSIS

S.B. 757 permits a Achief law enforcement officer@ (the sheriff or the sheriff=s designee, or the police chief or the police chief=s designee) to place a hold order on goods the officer has reasonable suspicion to believe were misappropriated. A pawnbroker must keep any good subject to a hold order in a secure area and may not release, sell, redeem, or dispose of it unless:
$ the officer delivers a written release to the pawnbroker;
$ the hold order and any extensions expire;
$ a court order requires its release; or
$ the officer takes custody of the good and provides a written receipt to the pawnbroker.
The bill specifies the information that must be contained in a hold order and requires that it be signed by the officer and the pawnbroker, or the pawnbroker=s designee, to be properly executed. A copy shall be provided to the pawnbroker at no cost.

Initially, a hold order may not exceed 60 days. A hold order may be extended for up to three successive 60-day periods, if the extension is provided in writing prior to the expiration of the hold order. The bill permits the officer to place a verbal hold order on a good, or verbally extend a hold order, for up to ten days while a written hold order or extension is prepared.

Goods subject to a hold order may be released to the custody of the officer if the officer has probable cause to believe that the goods are stolen and the officer issues a written receipt to the pawnbroker. Any good taken by the officer is subject to Chapter 47, Code of Criminal Procedure (Disposition of Stolen Property). The bill provides that the Act does not prohibit seizures under Chapter 18 (Search Warrants) or 59 (Forfeiture of Contraband), Code of Criminal Procedure.

The bill makes it an offense for a person to pledge or sell misappropriated property to a pawnbroker. Such an offense is a Class B misdemeanor. If conduct that constitutes an offense under any other law, the person may be prosecuted under this subsection or the other law.

The bill requires pawnbrokers who generate computerized pawn and purchase tickets to provide data from those tickets to a law enforcement agency, as directed by the chief law enforcement officer. The bill establishes three methods of achieving this requirement. First, the pawnbroker may transmit Areportable data@ (pawnshop name and address, transaction date, item description, and pawn ticket identification number) directly to the law enforcement agency in a mutually agreed upon format. Second, the pawnbroker may transmit Atransaction data@ (all reportable data plus the customer=s identifying information) to a third party. Finally, a pawnbroker may provide transaction data to the chief law enforcement officer by any other agreed upon means. Pawnbrokers must transmit data within one week of the transaction the pawn ticket relates to, but a shorter period may be agreed upon between the pawnbroker and the officer.

The bill permits a commercial enterprise (Aprovider@) to establish an electronic repository of pawn ticket information and make this information available to authorized law enforcement personnel to facilitate criminal investigations. Authorized personnel may access reportable data simply upon the provision of a secure identification or access code. An officer must present additional information, including the applicable case number, to obtain the customer=s identifying information. A provider may charge a reasonable fee to a law enforcement agency to access the data, but neither a provider nor a law enforcement agency may charge a fee to pawnbrokers or their customers. The bill enumerates technical specifications for the repository and for any database operated by a law enforcement agency. The consumer credit commissioner may require appropriate documentation from a provider or a law enforcement agency regarding compliance with these specifications. The bill requires providers and law enforcement agencies maintaining their own databases to report annually to the commissioner the total number of pawn transaction reported by each pawnbroker. The commissioner may approve repository system after receiving and evaluating competitive proposals from potential providers.

The bill establishes that a pawnbroker is not responsible for problems arising from computer-related malfunctions and errors if the pawnbroker makes a bona fide effort to repair any problem with the pawnbroker=s equipment. In case of error or malfunction, the pawnbroker and the chief law enforcement officer shall arrange a mutually acceptable alternative method of transferring data. The bill permits the Finance Commission to adopt rules to establish formal procedures in case of computer-related malfunctions and errors.

The bill makes confidential the information contained in a provider=s repository and permits its release or disclosure only for a law enforcement investigation of a crime or for the consumer credit commissioner=s administrative purposes. The bill makes it an offense to violate the bill's confidentiality provisions or fraudulently access a repository. Such an offense is a Class A misdemeanor.

The bill requires a pawnbroker to maintain paper copies of pawn tickets and make them available for on-site inspection for 180 days after transmitting data and following a computer-related malfunction or error. The Finance Commission may adopt rules to implement this requirement.

EFFECTIVE DATE

January 1, 2006

EXPLANATION OF AMENDMENTS

Committee Amendment No. 1 provides that seizures of contraband in pawnshops will not supersede current seizure law contained in Chapter 18, Code of Criminal Procedure.