

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 757
By: Armbrister
Business & Commerce
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 757 provides guidelines by which pawnshops will electronically transfer detailed descriptions of pawned and purchased items to a repository or directly to law enforcement in order to expedite the process of searching for stolen property. S.B. 757 defines the process by which law enforcement officers can place holds on any items in dispute and further aids by defining a "chief law enforcement officer" to each pawnshop.

Furthermore, if a person pledges with or sells to a pawnbroker misappropriated property, S.B. 757 defines such action as a Class B misdemeanor.

C.S.S.B. 757 grants oversight to the consumer credit commissioner (commissioner) for evaluation of competitive proposals from potential repository providers and requires reports to be provided to the Finance Commission of Texas at no cost to the commissioner.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 2 (Sections 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."

(b) Authorizes a chief law enforcement officer, if that officer has reasonable suspicion to believe that goods in the possession of a pawnbroker are misappropriated, to place a hold order on the goods.

(c) Requires goods subject to a hold order to be physically retained by the pawnbroker in a secure area and prohibits those goods from being released, sold, redeemed, or disposed of unless certain actions occur.

(d) Provides that a hold order is effective only if it contains specific 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 if certain notification requirements are met. 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 to be 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, notwithstanding Subsection (e) or (f), to place a verbal hold order on property or to verbally extend a hold order, for up to 10 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 if the officer has probable cause to believe that the goods are misappropriated and furnishes a written receipt for the goods.

(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 interests in the goods and that goods in the custody of the chief law enforcement officer are subject to Chapter 47 (Disposition of Stolen Property), Code of Criminal Procedure.

(j) Provides that a person commits an offense if the person pledges with or sells to a pawnbroker misappropriated property and that an offense under this section is a Class B misdemeanor. Authorizes a person, if conduct that constitutes an offense under this subsection also constitutes an offense under any other law, to be prosecuted under this subsection or the other law.

(k) Provides that this section does not affect the authority of a chief law enforcement officer to seize contraband under Chapter 59, Code of Criminal Procedure.

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, as required by the chief law enforcement officer, to transmit all reportable data to the law enforcement agency electronically in a format used by the pawnbroker's computer software or transaction data electronically in the format used by the pawnbroker's computer software directly to a provider of a repository system approved by the commissioner under Section 371.358.

(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 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, if the chief law enforcement officer requires a pawnbroker to submit reportable data to the agency, to maintain a specific, secure database for all electronic transmissions under this subchapter that occur through the Internet. 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. 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. Requires a provider to collect and maintain the transaction data, and update the repository at least daily, implement appropriate security and data recovery measures necessary to ensure the integrity of the data, and 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. Authorizes a provider to charge a law enforcement agency a fee to access the repository and requires the fee to be reasonable in relation to the provider's costs in establishing and maintaining the repository. 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. Sets forth requirements for the repository.

Sec. 371.356. CONFIDENTIALITY. 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 (commissioner) for administrative purposes; that a person who releases or discloses data in violation of this section commits an offense; and 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 and that an offense under this section is a Class A misdemeanor.

Sec. 371.358. COMMISSIONER APPROVAL AND OVERSIGHT. Authorizes the commissioner, after ensuring compliance with this subchapter, to approve repository systems of providers for use under this subchapter. Requires the commissioner, if the commissioner approves repository systems under this section, to evaluate the compliance of approved repository systems with this subchapter at least once every two years. Authorizes the commissioner to require appropriate documentation demonstrating that a provider or a law enforcement agency that collects reportable data meets the requirements of this subchapter. Requires a provider or law enforcement agency that collects reportable data electronically under this subchapter, on or before January 31 of each year, to report to the commissioner the total number of transactions reported by each reporting pawnbroker in the preceding calendar year and to provide the required report at no cost to the commissioner.

Sec. 371.359. COMPUTER-RELATED MALFUNCTIONS AND ERRORS. 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, in certain circumstances, or that is the responsibility of a provider or 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. Authorizes the Finance Commission of Texas 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, with certain exceptions.

(c) Requires a pawnbroker, for a reasonable period of time following the repair of a computer-related malfunction or error, 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 a specified period of time.

(d) Authorizes the Finance Commission of Texas to adopt rules to implement this section.

SECTION 3. Effective date: January 1, 2006.