

By: Solomons

H.B. No. 635

Substitute the following for H.B. No. 635:

By: Chavez

C.S.H.B. No. 635

A BILL TO BE ENTITLED

AN ACT

1
2 relating to property in the custody of a pawnbroker; providing
3 criminal penalties.

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

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

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

9 (1) "Chief law enforcement officer" means:

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

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

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

22 (b) If a chief law enforcement officer has reasonable
23 suspicion to believe that goods in the possession of a pawnbroker
24 are misappropriated, the officer may place a hold order on the

1 goods.

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

5 (1) the chief law enforcement officer delivers a
6 written release to the pawnbroker;

7 (2) the hold order and any extension of the hold order
8 expire; or

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

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

12 (1) the name of the pawnbroker;

13 (2) the name and mailing address of the pawnshop where
14 the goods are located;

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

17 (4) the case number of the criminal proceeding or
18 investigation involving the goods to be held;

19 (5) a complete description of the goods to be held,
20 including any available model number and serial number, and the
21 related pawn or purchase ticket number;

22 (6) the expiration date of the hold order; and

23 (7) the name of the law enforcement agency that
24 prepared the investigative report and the associated number of the
25 report.

26 (e) The hold order and any extension of the hold order must
27 be signed and dated by the chief law enforcement officer and the

1 pawnbroker or the pawnbroker's designee, as evidence of the hold
2 order's issuance by the chief law enforcement officer, the
3 pawnbroker's receipt of the hold order, and the beginning of the
4 holding period. The chief law enforcement officer shall provide at
5 no cost to the pawnbroker an executed copy of the hold order for the
6 pawnbroker's records.

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

16 (g) Notwithstanding Subsection (e) or (f), the chief law
17 enforcement officer may place a verbal hold order on property, or
18 may verbally extend a hold order, for up to 10 days while a written
19 hold order or extension is being prepared. A verbal hold order must
20 include the information required by Subsection (d).

21 (h) Goods subject to a hold order may be released to the
22 custody of the chief law enforcement officer for use in a criminal
23 investigation if the officer:

24 (1) has probable cause to believe that the goods
25 subject to a hold order are misappropriated; and

26 (2) furnishes a written receipt for the goods.

27 (i) The release of the goods to the custody of the chief law

1 enforcement officer is not considered a waiver or release of the
2 pawnbroker's rights or interest in the goods. Goods in the custody
3 of the chief law enforcement officer are subject to Chapter 47, Code
4 of Criminal Procedure.

5 (j) A person commits an offense if the person pledges with
6 or sells to a pawnbroker misappropriated property. An offense
7 under this subsection is a Class B misdemeanor. If conduct that
8 constitutes an offense under this subsection also constitutes an
9 offense under any other law, the person may be prosecuted under this
10 subsection or the other law.

11 (k) This section does not affect the authority of a peace
12 officer to seize property under Chapter 18 or 59, Code of Criminal
13 Procedure.

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

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

18 Sec. 371.351. DEFINITIONS. In this subchapter:

19 (1) "Chief law enforcement officer" has the meaning
20 assigned by Section 371.1821.

21 (2) "Law enforcement agency" means the department of
22 the chief law enforcement officer.

23 (3) "Provider" means a commercial enterprise
24 primarily engaged in the business of establishing and maintaining
25 one or more Internet repositories.

26 (4) "Reportable data" means the following information
27 from a transaction in which a pawnshop customer pledges or sells

1 personal property:

2 (A) the name and address of the pawnshop;

3 (B) the date of the transaction;

4 (C) an identification and complete description
5 of the goods pledged or sold, including any available model numbers
6 and serial numbers, and other identifying characteristics; and

7 (D) the pawn or purchase ticket number related to
8 the transaction.

9 (5) "Repository" means an electronic storage of
10 transaction data.

11 (6) "Transaction data" means information from a
12 transaction in which a pawnshop customer pledges or sells personal
13 property, including:

14 (A) the name and address of the pawnshop;

15 (B) the date of the transaction;

16 (C) an identification and complete description
17 of the goods pledged or sold, including any available model numbers
18 and serial numbers, and other identifying characteristics;

19 (D) the customer's name, address, and physical
20 description;

21 (E) a driver's license number, military
22 identification number, identification certificate number, or other
23 official number that identifies the customer; and

24 (F) the pawn or purchase ticket number related to
25 the transaction.

26 Sec. 371.352. ELECTRONIC REPORTING TO LAW ENFORCEMENT
27 AGENCY OR PROVIDER. (a) A pawnbroker who generates computerized

1 pawn and purchase tickets shall, as required by the chief law
2 enforcement officer, transmit all:

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

6 (2) transaction data electronically in the format used
7 by the pawnbroker's computer software directly to the provider of
8 the repository system approved by the commissioner under Section
9 371.358.

10 (b) A pawnbroker may transmit transaction data to the chief
11 law enforcement officer. A pawnbroker and the chief law
12 enforcement officer may agree to another means of transferring
13 transaction data to a law enforcement agency.

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

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

27 (e) A law enforcement agency may not charge a fee to a

1 pawnbroker or customer of a pawnbroker for the preparation,
2 compilation, conversion, or transmission of data under this
3 section.

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

8 (b) A provider shall collect and maintain the transaction
9 data and shall update the repository at least daily.

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

15 Sec. 371.354. CHARGES FOR USE OF REPOSITORY. (a) A
16 provider may charge a law enforcement agency a fee to access the
17 repository. The fee must be reasonable in relation to the
18 provider's costs in establishing and maintaining the repository.

19 (b) A provider may not charge a pawnbroker or customer of a
20 pawnbroker a fee for the compilation or transmission of reportable
21 data or for the creation, maintenance, or use of any repository.

22 Sec. 371.355. REPOSITORY REQUIREMENTS. A repository must:

23 (1) enable reporting pawnbrokers to transmit data for
24 each pawn and purchase transaction over the Internet in the format
25 used by the pawnbroker's computer software;

26 (2) enable authorized chief law enforcement officers
27 who provide a secure identification or access code to access the

1 reportable data contained in the repository over the Internet;

2 (3) prevent unauthorized persons from accessing the
3 data contained in the repository;

4 (4) require authorized chief law enforcement officers
5 seeking access to the identity of the customer in a pawn or purchase
6 transaction to:

7 (A) represent that the information is sought in
8 connection with the investigation of a crime involving the goods
9 delivered by the customer in that transaction; and

10 (B) present:

11 (i) a valid case number of a criminal
12 proceeding or investigation for which the customer's identity is
13 needed; or

14 (ii) if a case number is not available, the
15 name and badge number of the chief law enforcement officer seeking
16 access to the customer's identity;

17 (5) record the following information for each search
18 of the repository:

19 (A) the identity of the law enforcement personnel
20 searching the repository;

21 (B) the pawn or purchase transaction involved in
22 the search; and

23 (C) the identity of any customer whose
24 information was accessed through the search; and

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

27 Sec. 371.356. CONFIDENTIALITY. (a) The data in the

1 repository is confidential and may be released or disclosed only to
2 a law enforcement agency for the investigation of a crime or to the
3 commissioner for administrative purposes.

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

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

11 Sec. 371.358. COMMISSIONER APPROVAL AND OVERSIGHT. (a)
12 The commissioner, after receiving and evaluating competitive
13 proposals from potential providers, may approve the repository
14 system of a provider for use under this subchapter. If the
15 commissioner approves the repository system of a provider under
16 this subsection, the commissioner shall receive and evaluate
17 competitive proposals from the provider and other potential
18 providers at least once every two years.

19 (b) The commissioner may require appropriate documentation
20 demonstrating that a provider or a law enforcement agency that
21 collects reportable data meets the requirements of this subchapter.

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

1 Sec. 371.359. COMPUTER-RELATED MALFUNCTIONS AND ERRORS.

2 (a) A pawnbroker who electronically reports information under this
3 subchapter may not be held responsible for a delay in submitting
4 data that results from a computer-related malfunction or error
5 caused by the pawnbroker's equipment or software, if:

6 (1) the pawnbroker makes a bona fide effort to repair
7 the malfunction or correct the error; and

8 (2) the pawnbroker and the chief law enforcement
9 officer arrange a mutually acceptable alternative method by which
10 the pawnbroker provides the data to the law enforcement agency.

11 (b) A pawnbroker who electronically reports information
12 under this subchapter may not be held responsible for a delay in
13 submitting data that results from a computer-related malfunction or
14 error that is the responsibility of a provider or a law enforcement
15 agency. A pawnbroker and a chief law enforcement officer shall
16 arrange a mutually acceptable alternative method by which the
17 pawnbroker provides the data to the law enforcement agency until
18 the malfunction or error is corrected.

19 (c) The Finance Commission of Texas may adopt rules to
20 establish procedures to address computer-related malfunctions and
21 errors under this subchapter.

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

27 (b) After the 180th day after the date a pawnbroker

1 transmits data under this subchapter, the pawnbroker is not
2 required to make available to any law enforcement personnel paper
3 copies of the pawnbroker's information related to the pawnbroker's
4 pawn or purchase transactions, except as provided by Subsection (c)
5 and for evidentiary purposes for which a law enforcement officer
6 makes a specific request related to a specific transaction.

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

15 (d) The Finance Commission of Texas may adopt rules to
16 implement this section.

17 SECTION 3. This Act takes effect January 1, 2006.