

By: Armbrister

S.B. No. 757

A BILL TO BE ENTITLED

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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 an 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 a 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 reasonable suspicion to believe that goods in the possession of a pawnbroker 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 chief  
12 law enforcement officer to seize contraband under Chapter 59, Code  
13 of Criminal 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 a provider of a  
8 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.

12 (a) The commissioner, after ensuring compliance with this  
13 subchapter, may approve repository systems of providers for use  
14 under this subchapter. If the commissioner approves repository  
15 systems under this subsection, the commissioner shall evaluate the  
16 compliance of approved repository systems with this subchapter at  
17 least once every two years.

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

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

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

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

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

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

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

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

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

26 (b) After the 180th day after the date a pawnbroker  
27 transmits data under this subchapter, the pawnbroker is not

1 required to make available to any law enforcement personnel paper  
2 copies of the pawnbroker's information related to the pawnbroker's  
3 pawn or purchase transactions, except as provided by Subsection (c)  
4 and for evidentiary purposes for which a law enforcement officer  
5 makes a specific request related to a specific transaction.

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

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

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

COMMITTEE AMENDMENT NO. 1

1 Amend S.B. 757 as follows:

2 On Page 4, Line 12, add the following language after "under":

3 "Chapter 18 and"

4 Solomons