

1-1 By: Armbrister S.B. No. 757
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1-3 read first time and referred to Committee on Business and Commerce;
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 757 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to property in the custody of a pawnbroker; providing
1-11 criminal penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter D, Chapter 371, Finance Code, is
1-14 amended by adding Section 371.1821 to read as follows:

1-15 Sec. 371.1821. LAW ENFORCEMENT HOLD PROCEDURE; PLEDGE OR
1-16 SALE OF MISAPPROPRIATED PROPERTY. (a) In this section:

1-17 (1) "Chief law enforcement officer" means:

1-18 (A) the sheriff of the county in which the
1-19 pawnshop is located or an officer of the sheriff's department
1-20 designated by the sheriff, if the pawnshop is not located in a
1-21 municipality that maintains a police department; or

1-22 (B) the police chief of the municipality in which
1-23 the pawnshop is located or a police officer designated by the police
1-24 chief, if the pawnshop is located in a municipality that maintains a
1-25 police department.

1-26 (2) "Misappropriated" means stolen, embezzled,
1-27 converted, or otherwise wrongfully appropriated, or pledged
1-28 against the will of the owner of the goods or a person holding a
1-29 perfected security interest in the goods.

1-30 (b) If a chief law enforcement officer has reasonable
1-31 suspicion to believe that goods in the possession of a pawnbroker
1-32 are misappropriated, the officer may place a hold order on the
1-33 goods.

1-34 (c) Goods subject to a hold order must be physically
1-35 retained by the pawnbroker in a secure area and may not be released,
1-36 sold, redeemed, or disposed of unless:

1-37 (1) the chief law enforcement officer delivers a
1-38 written release to the pawnbroker;

1-39 (2) the hold order and any extension of the hold order
1-40 expire; or

1-41 (3) a court order, including a search warrant,
1-42 requires the release, sale, or disposal of the property.

1-43 (d) A hold order is effective only if it contains:

1-44 (1) the name of the pawnbroker;

1-45 (2) the name and mailing address of the pawnshop where
1-46 the goods are located;

1-47 (3) the name, title, badge number, and phone number of
1-48 the chief law enforcement officer placing the hold order;

1-49 (4) the case number of the criminal proceeding or
1-50 investigation involving the goods to be held;

1-51 (5) a complete description of the goods to be held,
1-52 including any available model number and serial number, and the
1-53 related pawn or purchase ticket number;

1-54 (6) the expiration date of the hold order; and

1-55 (7) the name of the law enforcement agency that
1-56 prepared the investigative report and the associated number of the
1-57 report.

1-58 (e) The hold order and any extension of the hold order must
1-59 be signed and dated by the chief law enforcement officer and the
1-60 pawnbroker or the pawnbroker's designee, as evidence of the hold
1-61 order's issuance by the chief law enforcement officer, the
1-62 pawnbroker's receipt of the hold order, and the beginning of the
1-63 holding period. The chief law enforcement officer shall provide at

2-1 no cost to the pawnbroker an executed copy of the hold order for the
2-2 pawnbroker's records.

2-3 (f) The initial holding period of the hold order may not
2-4 exceed 60 days. A hold order may be extended for up to three
2-5 successive 60-day periods on written notification to the pawnbroker
2-6 before the expiration of the immediately preceding holding period
2-7 or extension. A hold order may be released before the expiration of
2-8 the holding period or extension by written release from the chief
2-9 law enforcement officer. A hold order is considered expired on the
2-10 expiration date stated on the hold order if the holding period is
2-11 not extended under this subsection.

2-12 (g) Notwithstanding Subsection (e) or (f), the chief law
2-13 enforcement officer may place a verbal hold order on property, or
2-14 may verbally extend a hold order, for up to 10 days while a written
2-15 hold order or extension is being prepared. A verbal hold order must
2-16 include the information required by Subsection (d).

2-17 (h) Goods subject to a hold order may be released to the
2-18 custody of the chief law enforcement officer for use in a criminal
2-19 investigation if the officer:

2-20 (1) has probable cause to believe that the goods
2-21 subject to a hold order are misappropriated; and

2-22 (2) furnishes a written receipt for the goods.

2-23 (i) The release of the goods to the custody of the chief law
2-24 enforcement officer is not considered a waiver or release of the
2-25 pawnbroker's rights or interest in the goods. Goods in the custody
2-26 of the chief law enforcement officer are subject to Chapter 47, Code
2-27 of Criminal Procedure.

2-28 (j) A person commits an offense if the person pledges with
2-29 or sells to a pawnbroker misappropriated property. An offense
2-30 under this subsection is a Class B misdemeanor. If conduct that
2-31 constitutes an offense under this subsection also constitutes an
2-32 offense under any other law, the person may be prosecuted under this
2-33 subsection or the other law.

2-34 (k) This section does not affect the authority of a chief
2-35 law enforcement officer to seize contraband under Chapter 59, Code
2-36 of Criminal Procedure.

2-37 SECTION 2. Chapter 371, Finance Code, is amended by adding
2-38 Subchapter H to read as follows:

2-39 SUBCHAPTER H. PROVIDING DATA TO LAW ENFORCEMENT AGENCIES BY
2-40 ELECTRONIC MEANS

2-41 Sec. 371.351. DEFINITIONS. In this subchapter:

2-42 (1) "Chief law enforcement officer" has the meaning
2-43 assigned by Section 371.1821.

2-44 (2) "Law enforcement agency" means the department of
2-45 the chief law enforcement officer.

2-46 (3) "Provider" means a commercial enterprise
2-47 primarily engaged in the business of establishing and maintaining
2-48 one or more Internet repositories.

2-49 (4) "Reportable data" means the following information
2-50 from a transaction in which a pawnshop customer pledges or sells
2-51 personal property:

2-52 (A) the name and address of the pawnshop;

2-53 (B) the date of the transaction;

2-54 (C) an identification and complete description
2-55 of the goods pledged or sold, including any available model numbers
2-56 and serial numbers, and other identifying characteristics; and

2-57 (D) the pawn or purchase ticket number related to
2-58 the transaction.

2-59 (5) "Repository" means an electronic storage of
2-60 transaction data.

2-61 (6) "Transaction data" means information from a
2-62 transaction in which a pawnshop customer pledges or sells personal
2-63 property, including:

2-64 (A) the name and address of the pawnshop;

2-65 (B) the date of the transaction;

2-66 (C) an identification and complete description
2-67 of the goods pledged or sold, including any available model numbers
2-68 and serial numbers, and other identifying characteristics;

2-69 (D) the customer's name, address, and physical

3-1 description;

3-2 (E) a driver's license number, military
 3-3 identification number, identification certificate number, or other
 3-4 official number that identifies the customer; and

3-5 (F) the pawn or purchase ticket number related to
 3-6 the transaction.

3-7 Sec. 371.352. ELECTRONIC REPORTING TO LAW ENFORCEMENT
 3-8 AGENCY OR PROVIDER. (a) A pawnbroker who generates computerized
 3-9 pawn and purchase tickets shall, as required by the chief law
 3-10 enforcement officer, transmit all:

3-11 (1) reportable data to the law enforcement agency
 3-12 electronically in a format used by the pawnbroker's computer
 3-13 software; or

3-14 (2) transaction data electronically in the format used
 3-15 by the pawnbroker's computer software directly to a provider of a
 3-16 repository system approved by the commissioner under Section
 3-17 371.358.

3-18 (b) A pawnbroker may transmit transaction data to the chief
 3-19 law enforcement officer. A pawnbroker and the chief law
 3-20 enforcement officer may agree to another means of transferring
 3-21 transaction data to a law enforcement agency.

3-22 (c) A pawnbroker who reports information under this
 3-23 subchapter shall transmit data pertaining to a transaction not
 3-24 later than the seventh day after the date of the transaction, or
 3-25 within a shorter period as agreed to by the chief law enforcement
 3-26 officer and the pawnbroker.

3-27 (d) If the chief law enforcement officer requires a
 3-28 pawnbroker to submit reportable data to the law enforcement agency,
 3-29 the law enforcement agency shall maintain a secure database using a
 3-30 minimum of 128-bit encryption for all electronic transmissions
 3-31 under this subchapter that occur through the Internet. The law
 3-32 enforcement agency shall implement appropriate security measures
 3-33 to ensure that its database of reportable data may be accessed only
 3-34 by the chief law enforcement officer.

3-35 (e) A law enforcement agency may not charge a fee to a
 3-36 pawnbroker or customer of a pawnbroker for the preparation,
 3-37 compilation, conversion, or transmission of data under this
 3-38 section.

3-39 Sec. 371.353. PROVIDER REPOSITORY. (a) A provider may
 3-40 establish a repository for the purpose of providing law enforcement
 3-41 agencies with access to transaction data to facilitate the
 3-42 investigation of alleged property crimes.

3-43 (b) A provider shall collect and maintain the transaction
 3-44 data and shall update the repository at least daily.

3-45 (c) A provider shall implement appropriate security
 3-46 measures and data recovery measures necessary to ensure the
 3-47 integrity of the data. A provider shall ensure that the repository
 3-48 can be accessed only by a chief law enforcement officer in
 3-49 accordance with this subchapter.

3-50 Sec. 371.354. CHARGES FOR USE OF REPOSITORY. (a) A
 3-51 provider may charge a law enforcement agency a fee to access the
 3-52 repository. The fee must be reasonable in relation to the
 3-53 provider's costs in establishing and maintaining the repository.

3-54 (b) A provider may not charge a pawnbroker or customer of a
 3-55 pawnbroker a fee for the compilation or transmission of reportable
 3-56 data or for the creation, maintenance, or use of any repository.

3-57 Sec. 371.355. REPOSITORY REQUIREMENTS. A repository must:

3-58 (1) enable reporting pawnbrokers to transmit data for
 3-59 each pawn and purchase transaction over the Internet in the format
 3-60 used by the pawnbroker's computer software;

3-61 (2) enable authorized chief law enforcement officers
 3-62 who provide a secure identification or access code to access the
 3-63 reportable data contained in the repository over the Internet;

3-64 (3) prevent unauthorized persons from accessing the
 3-65 data contained in the repository;

3-66 (4) require authorized chief law enforcement officers
 3-67 seeking access to the identity of the customer in a pawn or purchase
 3-68 transaction to:

3-69 (A) represent that the information is sought in

4-1 connection with the investigation of a crime involving the goods
 4-2 delivered by the customer in that transaction; and

4-3 (B) present:

4-4 (i) a valid case number of a criminal
 4-5 proceeding or investigation for which the customer's identity is
 4-6 needed; or

4-7 (ii) if a case number is not available, the
 4-8 name and badge number of the chief law enforcement officer seeking
 4-9 access to the customer's identity;

4-10 (5) record the following information for each search
 4-11 of the repository:

4-12 (A) the identity of the law enforcement personnel
 4-13 searching the repository;

4-14 (B) the pawn or purchase transaction involved in
 4-15 the search; and

4-16 (C) the identity of any customer whose
 4-17 information was accessed through the search; and

4-18 (6) use a minimum of 128-bit encryption for all
 4-19 transmissions to and from the repository.

4-20 Sec. 371.356. CONFIDENTIALITY. (a) The data in the
 4-21 repository is confidential and may be released or disclosed only to
 4-22 a law enforcement agency for the investigation of a crime or to the
 4-23 commissioner for administrative purposes.

4-24 (b) A person who releases or discloses data in violation of
 4-25 this section commits an offense. An offense under this section is a
 4-26 Class A misdemeanor.

4-27 Sec. 371.357. FRAUDULENT ACCESS OF REPOSITORY. A person
 4-28 who gains access to the information in the repository through fraud
 4-29 or false pretenses commits an offense. An offense under this
 4-30 section is a Class A misdemeanor.

4-31 Sec. 371.358. COMMISSIONER APPROVAL AND OVERSIGHT.
 4-32 (a) The commissioner, after ensuring compliance with this
 4-33 subchapter, may approve repository systems of providers for use
 4-34 under this subchapter. If the commissioner approves repository
 4-35 systems under this subsection, the commissioner shall evaluate the
 4-36 compliance of approved repository systems with this subchapter at
 4-37 least once every two years.

4-38 (b) The commissioner may require appropriate documentation
 4-39 demonstrating that a provider or a law enforcement agency that
 4-40 collects reportable data meets the requirements of this subchapter.

4-41 (c) On or before January 31 of each year, a provider or law
 4-42 enforcement agency that collects reportable data electronically
 4-43 under this subchapter shall report to the commissioner the total
 4-44 number of transactions reported by each reporting pawnbroker in the
 4-45 preceding calendar year. The provider or law enforcement agency
 4-46 shall provide the report at no cost to the commissioner.

4-47 Sec. 371.359. COMPUTER-RELATED MALFUNCTIONS AND ERRORS.

4-48 (a) A pawnbroker who electronically reports information under
 4-49 this subchapter may not be held responsible for a delay in
 4-50 submitting data that results from a computer-related malfunction or
 4-51 error caused by the pawnbroker's equipment or software, if:

4-52 (1) the pawnbroker makes a bona fide effort to repair
 4-53 the malfunction or correct the error; and

4-54 (2) the pawnbroker and the chief law enforcement
 4-55 officer arrange a mutually acceptable alternative method by which
 4-56 the pawnbroker provides the data to the law enforcement agency.

4-57 (b) A pawnbroker who electronically reports information
 4-58 under this subchapter may not be held responsible for a delay in
 4-59 submitting data that results from a computer-related malfunction or
 4-60 error that is the responsibility of a provider or a law enforcement
 4-61 agency. A pawnbroker and a chief law enforcement officer shall
 4-62 arrange a mutually acceptable alternative method by which the
 4-63 pawnbroker provides the data to the law enforcement agency until
 4-64 the malfunction or error is corrected.

4-65 (c) The Finance Commission of Texas may adopt rules to
 4-66 establish procedures to address computer-related malfunctions and
 4-67 errors under this subchapter.

4-68 Sec. 371.360. PAPER COPIES. (a) A pawnbroker who
 4-69 electronically reports information under this subchapter shall

5-1 make available for on-site inspection, to any appropriate law
5-2 enforcement officer on request, paper copies of pawn or purchase
5-3 transaction documents.

5-4 (b) After the 180th day after the date a pawnbroker
5-5 transmits data under this subchapter, the pawnbroker is not
5-6 required to make available to any law enforcement personnel paper
5-7 copies of the pawnbroker's information related to the pawnbroker's
5-8 pawn or purchase transactions, except as provided by Subsection (c)
5-9 and for evidentiary purposes for which a law enforcement officer
5-10 makes a specific request related to a specific transaction.

5-11 (c) For a reasonable period following the repair of a
5-12 computer-related malfunction or error, a pawnbroker shall make
5-13 available for on-site inspection, to any appropriate law
5-14 enforcement officer on request, paper copies of pawn or purchase
5-15 transaction documents for transactions that occurred during the
5-16 period beginning when the malfunction or error occurs and ending
5-17 when the chief law enforcement officer is reasonably certain the
5-18 malfunction or error has been corrected.

5-19 (d) The Finance Commission of Texas may adopt rules to
5-20 implement this section.

5-21 SECTION 3. This Act takes effect January 1, 2006.

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