

By: Ellis

S.B. No. 341

A BILL TO BE ENTITLED

AN ACT

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

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

5 SECTION 1. Section 371.005, Finance Code, is amended to  
6 read as follows:

7 Sec. 371.005. REGULATORY AND ENFORCEMENT AUTHORITY. (a)  
8 The legislature has exclusive authority regarding the operation of  
9 pawnshops, except for a matter delegated by this chapter to the  
10 commissioner. The commissioner has the authority to regulate only  
11 a business practice that requires a pawnshop license.

12 (b) The governing body of a municipality may adopt an  
13 ordinance to enforce a provision of this chapter, other than a  
14 provision relating to licensing, against an individual who holds a  
15 pawnshop license issued by this state or an employee of a person who  
16 holds a pawnshop license issued by this state. An ordinance adopted  
17 under this subsection may not provide a penalty greater than a Class  
18 C misdemeanor.

19 SECTION 2. Section 371.177, Finance Code, is amended to  
20 read as follows:

21 Sec. 371.177. PURCHASE OF USED PERSONAL PROPERTY. A  
22 pawnbroker may not purchase used personal property from a person  
23 other than another pawnbroker unless a record is established that  
24 contains:

1 (1) the seller's name, address, and physical  
2 description and a driver's license number, military identification  
3 number, identification certificate number, or other official  
4 number that can identify the seller;

5 (2) a complete description of the property, including  
6 the serial number, if reasonably available, or other identifying  
7 characteristics; ~~and~~

8 (3) the seller's signed statement that the seller has  
9 the right to sell the property;

10 (4) the seller's legibly recorded thumbprint; and

11 (5) an electronic photograph of the seller.

12 SECTION 3. Subchapter D, Chapter 371, Finance Code, is  
13 amended by adding Section 371.1821 to read as follows:

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

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

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

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

25 (2) "Misappropriated" means stolen, embezzled,  
26 converted, or otherwise wrongfully appropriated, or pledged  
27 against the will of the owner of the goods or a person holding a

1 perfected security interest in the goods.

2 (b) If a chief law enforcement officer has reasonable  
3 suspicion to believe that goods in the possession of a pawnbroker  
4 are misappropriated, the officer may place a hold order on the  
5 goods.

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

9 (1) the chief law enforcement officer delivers a  
10 written release to the pawnbroker;

11 (2) the hold order and any extension of the hold order  
12 expire; or

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

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

16 (1) the name of the pawnbroker;

17 (2) the name and mailing address of the pawnshop where  
18 the goods are located;

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

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

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

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

27 (7) the name of the law enforcement agency that

1 prepared the investigative report and the associated number of the  
2 report.

3 (e) The hold order and any extension of the hold order must  
4 be signed and dated by the chief law enforcement officer and the  
5 pawnbroker or the pawnbroker's designee, as evidence of the hold  
6 order's issuance by the chief law enforcement officer, the  
7 pawnbroker's receipt of the hold order, and the beginning of the  
8 holding period. The chief law enforcement officer shall provide at  
9 no cost to the pawnbroker an executed copy of the hold order for the  
10 pawnbroker's records.

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

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

25 (h) A receipt must be provided to the pawnbroker for goods  
26 released to the custody of the chief law enforcement officer for use  
27 in a criminal investigation.

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

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

12       (k) This section does not affect the authority of a chief  
13 law enforcement officer to seize contraband under Chapters 18 and  
14 59, Code of Criminal Procedure.

15       SECTION 4. Chapter 371, Finance Code, is amended by adding  
16 Subchapter H to read as follows:

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

19       Sec. 371.351. DEFINITIONS. In this subchapter:

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

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

24       (3) "Transaction data" means information from a  
25 transaction in which a pawnshop customer pledges or sells personal  
26 property. The term:

27       (A) includes:

1                   (i) the name and address of the pawnshop;  
2                   (ii) the date of the transaction;  
3                   (iii) an identification and complete  
4 description of the goods pledged or sold, including any available  
5 model numbers and serial numbers, and other identifying  
6 characteristics;

7                   (iv) the name, address, and physical  
8 description of the person pledging or selling goods;

9                   (v) a driver's license number, military  
10 identification number, identification certificate number, or other  
11 official number that identifies the person pledging or selling  
12 goods; and

13                   (vi) the pawn or purchase ticket number  
14 related to the transaction; and

15                   (B) does not include financial information  
16 regarding terms of the transaction.

17           Sec. 371.352. ELECTRONIC REPORTING TO LAW ENFORCEMENT  
18 AGENCY. (a) A pawnbroker who generates computerized pawn and  
19 purchase tickets or has the capability to generate computerized  
20 pawn and purchase tickets shall, if required by the chief law  
21 enforcement officer, transmit all transaction data to the law  
22 enforcement agency electronically in a format used by the  
23 pawnbroker's computer software.

24           (b) A pawnbroker and the chief law enforcement officer may  
25 agree to another means of transferring transaction data to a law  
26 enforcement agency.

27           (c) A pawnbroker who reports information under this

1 subchapter shall transmit the data pertaining to a transaction not  
2 later than the seventh day after the date of the transaction, or  
3 within a shorter period as agreed to by the chief law enforcement  
4 officer and the pawnbroker.

5 (d) If the chief law enforcement officer requires a  
6 pawnbroker to submit transaction data to the law enforcement  
7 agency, the law enforcement agency shall maintain a secure database  
8 using a minimum of 128-bit encryption for all electronic  
9 transmissions under this subchapter that occur through the  
10 Internet. The law enforcement agency shall implement appropriate  
11 security measures to ensure that its database of transaction data  
12 may be accessed only by law enforcement officials and for official  
13 law enforcement purposes.

14 (e) A law enforcement agency may not charge a fee to a  
15 pawnbroker or customer of a pawnbroker for the preparation,  
16 compilation, conversion, or transmission of data under this  
17 section.

18 Sec. 371.353. CONFIDENTIALITY. (a) The data in the law  
19 enforcement database is confidential and may be released or  
20 disclosed only to a law enforcement agency for the investigation of  
21 a crime or to the commissioner for administrative purposes.

22 (b) A person who releases, discloses, or uses data in  
23 violation of this section commits an offense. An offense under this  
24 section is a Class B misdemeanor.

25 Sec. 371.354. COMPUTER-RELATED MALFUNCTIONS AND ERRORS.

26 (a) A pawnbroker who electronically reports information under this  
27 subchapter may not be held responsible for a delay in submitting

1 data that results from a computer-related malfunction or error  
2 caused by the pawnbroker's equipment or software, if:

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

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

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

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

19 Sec. 371.355. PAPER COPIES. (a) A pawnbroker who  
20 electronically reports information under this subchapter shall  
21 make available for on-site inspection, to any appropriate law  
22 enforcement officer on request, paper copies of pawn or purchase  
23 transaction documents, including the thumbprint and photograph  
24 that the pawnbroker must record under Section 31.03(c)(3)(A), Penal  
25 Code.

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 5. Section 31.03(c), Penal Code, is amended to read  
17 as follows:

18 (c) For purposes of Subsection (b):

19 (1) evidence that the actor has previously  
20 participated in recent transactions other than, but similar to,  
21 that which the prosecution is based is admissible for the purpose of  
22 showing knowledge or intent and the issues of knowledge or intent  
23 are raised by the actor's plea of not guilty;

24 (2) the testimony of an accomplice shall be  
25 corroborated by proof that tends to connect the actor to the crime,  
26 but the actor's knowledge or intent may be established by the  
27 uncorroborated testimony of the accomplice;

1           (3) an actor engaged in the business of buying and  
2 selling used or secondhand personal property, or lending money on  
3 the security of personal property deposited with the actor, is  
4 presumed to know upon receipt by the actor of stolen property (other  
5 than a motor vehicle subject to Chapter 501, Transportation Code)  
6 that the property has been previously stolen from another if the  
7 actor pays for or loans against the property \$25 or more (or  
8 consideration of equivalent value) and the actor knowingly or  
9 recklessly:

10                   (A) fails to:

11                           (i) record the name, address, and ~~physical~~  
12 ~~description or~~ identification number of the seller or pledgor, if  
13 the actor is not a pawnbroker as defined by Section 371.003, Finance  
14 Code; or

15                           (ii) record the name, address, and  
16 identification number of the seller or pledgor, take and record a  
17 photograph of the seller or pledgor by electronic means, obtain and  
18 legibly record the seller's or pledgor's thumbprint, and provide  
19 transaction data to a law enforcement agency as required by Section  
20 371.352, Finance Code, if the actor is a pawnbroker as defined by  
21 Section 371.003, Finance Code;

22                   (B) fails to record a complete description of the  
23 property, including the serial number, if reasonably available, or  
24 other identifying characteristics; or

25                   (C) fails to obtain a signed warranty from the  
26 seller or pledgor that the seller or pledgor has the right to  
27 possess the property. It is the express intent of this provision

1 that the presumption arises unless the actor complies with each of  
2 the numbered requirements;

3 (4) for the purposes of Subdivision (3)(A),  
4 "identification number" means driver's license number, military  
5 identification number, identification certificate, or other  
6 official number capable of identifying an individual;

7 (5) stolen property does not lose its character as  
8 stolen when recovered by any law enforcement agency;

9 (6) an actor engaged in the business of obtaining  
10 abandoned or wrecked motor vehicles or parts of an abandoned or  
11 wrecked motor vehicle for resale, disposal, scrap, repair,  
12 rebuilding, demolition, or other form of salvage is presumed to  
13 know on receipt by the actor of stolen property that the property  
14 has been previously stolen from another if the actor knowingly or  
15 recklessly:

16 (A) fails to maintain an accurate and legible  
17 inventory of each motor vehicle component part purchased by or  
18 delivered to the actor, including the date of purchase or delivery,  
19 the name, age, address, sex, and driver's license number of the  
20 seller or person making the delivery, the license plate number of  
21 the motor vehicle in which the part was delivered, a complete  
22 description of the part, and the vehicle identification number of  
23 the motor vehicle from which the part was removed, or in lieu of  
24 maintaining an inventory, fails to record the name and certificate  
25 of inventory number of the person who dismantled the motor vehicle  
26 from which the part was obtained;

27 (B) fails on receipt of a motor vehicle to obtain

1 a certificate of authority, sales receipt, or transfer document as  
2 required by Chapter 683, Transportation Code, or a certificate of  
3 title showing that the motor vehicle is not subject to a lien or  
4 that all recorded liens on the motor vehicle have been released; or

5 (C) fails on receipt of a motor vehicle to  
6 immediately remove an unexpired license plate from the motor  
7 vehicle, to keep the plate in a secure and locked place, or to  
8 maintain an inventory, on forms provided by the Texas Department of  
9 Transportation, of license plates kept under this paragraph,  
10 including for each plate or set of plates the license plate number  
11 and the make, motor number, and vehicle identification number of  
12 the motor vehicle from which the plate was removed;

13 (7) an actor who purchases or receives a used or  
14 secondhand motor vehicle is presumed to know on receipt by the actor  
15 of the motor vehicle that the motor vehicle has been previously  
16 stolen from another if the actor knowingly or recklessly:

17 (A) fails to report to the Texas Department of  
18 Transportation the failure of the person who sold or delivered the  
19 motor vehicle to the actor to deliver to the actor a properly  
20 executed certificate of title to the motor vehicle at the time the  
21 motor vehicle was delivered; or

22 (B) fails to file with the county tax  
23 assessor-collector of the county in which the actor received the  
24 motor vehicle, not later than the 20th day after the date the actor  
25 received the motor vehicle, the registration license receipt and  
26 certificate of title or evidence of title delivered to the actor in  
27 accordance with Subchapter D, Chapter 520, Transportation Code, at

1 the time the motor vehicle was delivered;

2 (8) an actor who purchases or receives from any source  
3 other than a licensed retailer or distributor of pesticides a  
4 restricted-use pesticide or a state-limited-use pesticide or a  
5 compound, mixture, or preparation containing a restricted-use or  
6 state-limited-use pesticide is presumed to know on receipt by the  
7 actor of the pesticide or compound, mixture, or preparation that  
8 the pesticide or compound, mixture, or preparation has been  
9 previously stolen from another if the actor:

10 (A) fails to record the name, address, and  
11 physical description of the seller or pledgor;

12 (B) fails to record a complete description of the  
13 amount and type of pesticide or compound, mixture, or preparation  
14 purchased or received; and

15 (C) fails to obtain a signed warranty from the  
16 seller or pledgor that the seller or pledgor has the right to  
17 possess the property; and

18 (9) an actor who is subject to Section 409, Packers and  
19 Stockyards Act (7 U.S.C. Section 228b), that obtains livestock from  
20 a commission merchant by representing that the actor will make  
21 prompt payment is presumed to have induced the commission  
22 merchant's consent by deception if the actor fails to make full  
23 payment in accordance with Section 409, Packers and Stockyards Act  
24 (7 U.S.C. Section 228b).

25 SECTION 6. The change in law made by this Act to Section  
26 31.03, Penal Code, applies only to an offense committed on or after  
27 the effective date of this Act. An offense committed before the

1 effective date of this Act is covered by the law in effect when the  
2 offense was committed, and the former law is continued in effect for  
3 that purpose. For purposes of this section, an offense was  
4 committed before the effective date of this Act if any element of  
5 the offense was committed before that date.

6 SECTION 7. This Act takes effect January 1, 2008.