CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 27, 2005
Date

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 757 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Senator Ken Armbrister

Representative Burt Solomons

Senator Kim Brimer

Representative Brian McCall

Senator Troy Fraser

Representative Rob Orr

Senator Eddie Lucio, Jr.

Representative Ryan Guillen

On the part of the Senate

Senator Craig Estes

On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 757

A BILL TO BE ENTITLED

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

goods.

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

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

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

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

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

(1) the name of the pawnbroker;

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

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

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

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

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

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

(e) The hold order and any extension of the hold order must 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. The chief law enforcement officer shall provide at no cost to the pawnbroker an executed copy of the hold order for the pawnbroker's records.

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

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

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

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

(2) furnishes a written receipt for the goods.

(i) 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 interest in the goods. Goods in the custody of the chief law enforcement officer are subject to Chapter 47, Code of Criminal Procedure.

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

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

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

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

Sec. 371.351. DEFINITIONS. In this subchapter:

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

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

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

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

personal property:

(A) the name and address of the pawnshop;

(B) the date of the transaction;

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

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

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

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

(A) the name and address of the pawnshop;

(B) the date of the transaction;

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

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

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

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

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

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

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

(2) 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) A pawnbroker may transmit transaction data to the chief law enforcement officer. A pawnbroker and the chief law enforcement officer may agree to another means of transferring transaction data to a law enforcement agency.

(c) A pawnbroker who reports information under this subchapter shall 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) If the chief law enforcement officer requires a pawnbroker to submit reportable data to the law enforcement agency, the law enforcement agency shall maintain a secure database using a minimum of 128-bit encryption for all electronic transmissions under this subchapter that occur through the Internet. The law enforcement agency shall implement appropriate security measures to ensure that its database of reportable data may be accessed only by the chief law enforcement officer.

(e) A law enforcement agency may not charge 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. (a) A provider may establish a repository for the purpose of providing law enforcement agencies with access to transaction data to facilitate the investigation of alleged property crimes.

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

(c) A provider shall implement appropriate security measures and data recovery measures necessary to ensure the integrity of the data. A provider shall 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. (a) A provider may charge a law enforcement agency a fee to access the repository. The fee must be reasonable in relation to the provider's costs in establishing and maintaining the repository.

(b) A provider may not charge 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. A repository must:

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

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

reportable data contained in the repository over the Internet;

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

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

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

(B) present:

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

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

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

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

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

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

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

Sec. 371.356. CONFIDENTIALITY. (a) 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 commissioner for administrative purposes.

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

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

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

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

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

Sec. 371.359. COMPUTER-RELATED MALFUNCTIONS AND ERRORS.

(a) A pawnbroker who electronically reports information under this subchapter may not be 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, if:

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

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

(b) A pawnbroker who electronically reports information under this subchapter may not be held responsible for a delay in submitting data that results from a computer-related malfunction or error that is the responsibility of a provider or a law enforcement agency. A pawnbroker and a chief law enforcement officer shall 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.

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

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

(b) 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, except as provided by Subsection (c) and for evidentiary purposes for which a law enforcement officer makes a specific request related to a specific transaction.

(c) For a reasonable period following the repair of a computer-related malfunction or error, a pawnbroker shall 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 the period beginning when the malfunction or error occurs and ending when the chief law enforcement officer is reasonably certain the malfunction or error has been corrected.

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

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

Senate Bill 757
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION	HOUSE VERSION	CONFERENCE
SECTION 1. Adds Section 371.1821, Finance Code, to establish law enforcement hold procedures relating to the pledge or sale of misappropriated property in the custody of a pawnbroker. Establishes that these provisions do not affect the authority of a *chief law enforcement officer* to seize *contraband* under Chapter 59, Code of Criminal Procedure.	SECTION 1. Same as Senate version, except provides that these provisions do not affect the authority of a *peace officer* to seize *property* under *Chapter 18 or* Chapter 59, Code of Criminal Procedure. (A1, A2)	SECTION 1. Same as Senate version, except includes the authority provided under *Chapter 18* as added in the House version.
SECTION 2. Adds Subchapter H, Chapter 371, Finance Code, to set out procedures for pawnbrokers to provide certain data to law enforcement agencies by electronic means.	SECTION 2. Same as Senate version.	SECTION 2. Same as Senate version.
SECTION 3. Effective date.	SECTION 3. Same as Senate version.	SECTION 3. Same as Senate version.