

By: Guice

To: Judiciary B

HOUSE BILL NO. 668

1 AN ACT TO AMEND SECTIONS 75-67-303, 75-67-321, 75-67-323,
2 75-67-325, 75-67-327 AND 75-67-333, MISSISSIPPI CODE OF 1972, TO
3 TRANSFER THE AUTHORITY FOR REGULATION OF PAWNSHOPS UNDER THE
4 PAWNSHOP ACT FROM THE COMMISSIONER OF BANKING AND CONSUMER FINANCE
5 TO THE SHERIFFS AND POLICE CHIEFS OF THE COUNTIES AND
6 MUNICIPALITIES IN WHICH THE PAWNBROKERS MAINTAIN THEIR OFFICES; TO
7 AMEND SECTION 75-67-305, MISSISSIPPI CODE OF 1972, TO REVISE THE
8 INFORMATION REQUIRED TO BE RECORDED ON PAWN TICKETS; TO AMEND
9 SECTION 75-67-309, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE USE
10 OF ELECTRONIC TRANSMISSION FOR PAWNSHOP RECORDS; TO AMEND SECTION
11 75-67-315, MISSISSIPPI CODE OF 1972, TO REVISE THE LIST OF
12 PROHIBITED ACTS OF PAWNBROKERS; TO AMEND SECTION 75-67-329,
13 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE CONFISCATION OF PLEDGED
14 OR PURCHASED GOODS WITHOUT AN ARREST WARRANT; TO AMEND SECTION
15 75-67-335, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR RESTITUTION TO
16 PAWNBROKERS; TO REPEAL SECTION 75-67-341, MISSISSIPPI CODE OF
17 1972, WHICH DIRECTS THE COMMISSIONER OF BANKING TO DEVELOP AND
18 PROVIDE ANY NECESSARY FORMS TO CARRY OUT THE PROVISIONS OF
19 PAWNBROKER ACT; AND FOR RELATED PURPOSES.

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

21 SECTION 1. Section 75-67-303, Mississippi Code of 1972, is
22 amended as follows:[RF1]

23 75-67-303. The following words and phrases used in this
24 article shall have the following meanings unless the context
25 clearly indicates otherwise:

26 (a) "Pawnbroker" means any person engaged in whole or
27 in part in the business of lending money on the security of
28 pledged goods left in pawn, or in the business of purchasing
29 tangible personal property to be left in pawn on the condition
30 that it may be redeemed or repurchased by the seller for a fixed
31 price within a fixed period of time; * * * however, * * * the
32 following are exempt from the definition of "pawnbroker" and from
33 the provisions of this article: any bank which is regulated by the
34 State Department of Banking and Consumer Finance, the Comptroller

35 of the Currency of the United States, the Federal Deposit
36 Insurance Corporation, the Board of Governors of the Federal
37 Reserve System or any other federal or state authority and all
38 affiliates of such bank, and additionally any bank or savings and
39 loan association whose deposits or accounts are eligible for
40 insurance by the Bank Insurance Fund or the Savings Association
41 Insurance Fund or other fund administered by Federal Deposit
42 Insurance Corporation or any successor thereto, and all affiliates
43 of such banks and savings and loan associations, any state or
44 federally chartered credit union and any finance company subject
45 to licensing and regulation by the State Department of Banking and
46 Consumer Finance.

47 (b) "Pawnshop" means the location at which or premises
48 in which a pawnbroker regularly conducts business.

49 (c) "Pawn transaction" means any loan on the security
50 of pledged goods or any purchase of pledged goods on the condition
51 that the pledged goods are left with the pawnbroker and may be
52 redeemed or repurchased by the seller for a fixed price within a
53 fixed period of time. A "pawn transaction" does not include the
54 pledge to or the purchase by a pawnbroker of real or personal
55 property from a customer followed by the sale of the leasing of
56 that same property back to the customer in the same or a related
57 transaction and such is not permitted by this article.

58 (d) "Person" means an individual, partnership,
59 corporation, joint venture, trust, association, or any legal
60 entity however organized.

61 (e) "Pledged goods" means tangible personal property
62 other than choses in action, securities, or printed evidence of
63 indebtedness, which property is purchased by, deposited with, or
64 otherwise actually delivered into the possession of a pawnbroker
65 in connection with a pawn transaction.

66 * * *

67 (f) "Appropriate law enforcement agency" means the
68 sheriff of each county in which the pawnbroker maintains an
69 office, or the police chief of the municipality or law enforcement
70 officers of the Department of Public Safety in which the
71 pawnbroker maintains an office.

72 (g) "Attorney General" means the Attorney General of
73 the State of Mississippi.

74 SECTION 2. Section 75-67-305, Mississippi Code of 1972, is
75 amended as follows:

76 75-67-305. At the time of making the pawn or purchase
77 transaction, the pawnbroker shall enter upon the pawn ticket a
78 record of the following information which shall be recorded on the
79 receipt:

80 (a) A clear and accurate description of the property,
81 including the following:

82 (i) Brand name;

83 (ii) Model number;

84 (iii) Serial number;

85 (iv) Size;

86 (v) Color, as apparent to the untrained eye;

87 (vi) Precious metal type, weight and content, if
88 known;

89 (vii) Gemstone description, including the number
90 of stones;

91 (viii) In the case of firearms, the type of
92 action, caliber or gauge, number of barrels, barrel length and
93 finish; and

94 (ix) Any other unique identifying marks, numbers,
95 names or letters;

96 (b) The name, residence address and date of birth of
97 pledgor or seller;

98 (c) Date of pawn or purchase transaction;

99 (d) Driver's license number or social security number or
100 Mississippi identification card number, as defined in Section
101 45-35-1, * * * of the pledgor or seller or identification
102 information verified by at least two (2) forms of identification,
103 one (1) of which shall be a photographic identification;

104 (e) Description of the pledgor including approximate

105 height, sex and race, and a right or left inked thumbprint
106 recorded on the original receipt;

107 (f) Amount of cash advanced;

108 (g) The maturity date of the pawn transaction and the
109 amount due; and

110 (h) The monthly rate and pawn charge.

111 SECTION 3. Section 75-67-309, Mississippi Code of 1972, is
112 amended as follows:

113 75-67-309. (1) The pledgor or seller shall sign a statement
114 verifying that the pledgor or seller is the rightful owner of the
115 goods or is entitled to sell or pledge the goods and shall receive
116 an exact copy of the pawn ticket which shall be signed or
117 initialed by the pawnbroker or any employee of the pawnbroker.

118 (2) The pawnbroker shall maintain a record of all
119 transactions of pledged or purchased goods on the premises. A
120 pawnbroker shall upon request provide to the appropriate law
121 enforcement agency a complete record of all transactions. These
122 records shall be a correct copy of the entries made of the pawn or
123 purchase transaction, except as to the amount of cash advanced or
124 paid for the goods and monthly pawnshop charge. If the
125 appropriate law enforcement agency supplies the appropriate
126 software, all transactions shall be delivered by means of
127 electronic transmission through a modem or similar device or by
128 delivery of a computer disk to the appropriate law enforcement
129 agency within seventy-two (72) hours of the transaction.

130 (3) All goods purchased across the counter by the pawnbroker
131 shall be maintained on the premises by the pawnbroker for at least
132 thirty (30) calendar days before such goods can be offered for
133 resale.

134 SECTION 4. Section 75-67-315, Mississippi Code of 1972, is
135 amended as follows:[RF2]

136 75-67-315. A pawnbroker and any clerk, agent or employee of
137 such pawnbroker shall not:

- 138 (a) Fail to make an entry of any material matter in his
139 record book;
- 140 (b) Make any false entry therein;
- 141 (c) Falsify, obliterate, destroy or remove from his
142 place of business such records, books or accounts relating to the
143 licensee's pawn transaction;
- 144 (d) Refuse to allow * * * the appropriate law
145 enforcement agency, the Attorney General or any other duly
146 authorized state or federal law enforcement officer to inspect his
147 pawn records or any pawn goods in his possession during the
148 ordinary hours of business or other acceptable time to both
149 parties;
- 150 (e) Fail to maintain a record of each pawn transaction
151 for four (4) years;
- 152 (f) Accept a pledge or purchase property from a person
153 under the age of eighteen (18) years;
- 154 (g) Make any agreement requiring the personal liability
155 of a pledgor or seller, or waiving any of the provisions of this
156 act or providing for a maturity date less than thirty (30) days
157 after the date of the pawn transaction;
- 158 (h) Fail to return or replace pledged goods to a
159 pledgor or seller upon payment of the full amount due the
160 pawnbroker unless the pledged goods have been taken into custody
161 by a court or a law enforcement officer or agency;
- 162 (i) Sell or lease, or agree to sell or lease, pledged
163 or purchased goods back to the pledgor or back to the seller in
164 the same or related transaction;
- 165 (j) Sell or otherwise charge for insurance in
166 connection with a pawn transaction;
- 167 (k) Remove pledged goods from the premises within
168 thirty (30) days following the originally fixed maturity date;
- 169 (l) Accept pledged or purchased property from a person
170 obviously under the influence of intoxicants at the time;

171 (m) Accept a pledge or purchase property when such
172 property has manufacturer's serial numbers which have been removed
173 and or obliterated;

174 (n) All merchandise which has been pledged or purchased
175 by the pawnbroker shall be recorded on a receipt at the time of
176 resale which lists the purchaser. The purchaser shall be
177 identified on receipt by the means set forth in Section 75-67-305,
178 as well as an accurate description of the property as set forth in
179 Section 75-67-305, as well as the resale amount paid by the
180 purchaser.

181 SECTION 5. Section 75-67-321, Mississippi Code of 1972, is
182 amended as follows:[RF3]

183 75-67-321. (1) A person may not engage in business as a
184 pawnbroker or otherwise portray himself as a pawnbroker unless the
185 person has a valid license from the appropriate law enforcement
186 agency authorizing engagement in the business. A separate license
187 is required for each place of business under this article. The
188 appropriate law enforcement agency may issue more than one (1)
189 license to a person if that person complies with this article for
190 each license. A new license or application to transfer an
191 existing license is required upon a change, directly or
192 beneficially, in the ownership of any licensed pawnshop and an
193 application shall be made to the appropriate law enforcement
194 agency in accordance with this article.

195 (2) When a licensee wishes to move a pawnshop to another
196 location, the licensee shall give thirty (30) days prior written
197 notice to the appropriate law enforcement agency who shall amend
198 the license accordingly.

199 (3) Each license shall remain in full force and effect until
200 relinquished, suspended, revoked or expired. Every licensee, on
201 or before each December 1st, shall pay the appropriate law
202 enforcement agency One Hundred Fifty Dollars (\$150.00) for each
203 license held by him as an annual fee for the succeeding calendar

204 year. If the annual fee remains unpaid thirty (30) days after
205 written notice of delinquency has been given to the licensee by
206 the appropriate law enforcement agency, the license shall
207 thereupon expire, but not before December 31st of any year for
208 which the annual fee has been paid. * * *

209 (4) Notwithstanding other provisions of this article, the
210 appropriate law enforcement agency may issue a temporary license
211 authorizing the operator of a pawnshop on the receipt of an
212 application to transfer a license from one person to another or on
213 the receipt of an application for a license involving principals
214 and owners that are substantially identical to those of an
215 existing licensed pawnshop. The temporary license is effective
216 until the permanent license is issued or denied.

217 (5) Notwithstanding other provisions of this article,
218 neither a new license nor an application to transfer an existing
219 license shall be required upon any change, directly or
220 beneficially, in the ownership of any licensed pawnshop
221 incorporated under the laws of this state or any other state so
222 long as the licensee continues to operate as a corporation doing a
223 pawnshop business under the license. The appropriate law
224 enforcement agency may, however, require the licensee to provide
225 such information as it deems reasonable and appropriate concerning
226 the officer and directors of the corporation and persons owning in
227 excess of twenty-five percent (25%) of the outstanding shares of
228 the corporation.

229 SECTION 6. Section 75-67-323, Mississippi Code of 1972, is
230 amended as follows:[RF4]

231 75-67-323. To be eligible for a pawnbroker license, an
232 applicant shall:

233 (a) Operate lawfully and fairly within the purposes of
234 this article;

235 (b) Not have been convicted of a felony in the last ten
236 (10) years or be active as a beneficial owner for someone who has

237 been convicted of a felony in the last ten (10) years;

238 (c) File with the appropriate law enforcement agency of
239 the county or * * * municipality in which the pawnshop is to be
240 located, a bond with good security in the penal sum of Ten
241 Thousand Dollars (\$10,000), payable to the appropriate law
242 enforcement agency of the county or municipality in which such
243 pawnshop is to be located, * * * for the faithful performance by
244 the licensee of the duties and obligations pertaining to the
245 business so licensed and the prompt payment of any judgment which
246 may be recovered against such licensee on account of damages or
247 other claim arising directly or collaterally from any violation of
248 the provisions of this article; such bond shall not be valid until
249 it is approved by the appropriate law enforcement agency of the
250 county or municipality in which the pawnshop is to be located;
251 such applicant may file, in lieu thereof, cash, a certificate of
252 deposit, or government bonds in the amount of Ten Thousand Dollars
253 (\$10,000); such deposit shall be filed with the appropriate law
254 enforcement agency of the county or municipality in which the
255 pawnshop is to be located, and is subject to the same terms and
256 conditions as are provided for in the surety bond required herein;
257 any interest or earnings on such deposits are payable to the
258 depositor.

259 (d) File with the appropriate law enforcement agency of
260 the county or * * * municipality in which the pawnshop is to be
261 located, an application accompanied by an investigation fee of One
262 Hundred Dollars (\$100.00) to be paid to the appropriate law
263 enforcement agency if the applicant is unlicensed at the time of
264 applying for the pawnbroker license, or One Hundred Dollars
265 (\$100.00) if the application involves a second license to an
266 applicant for a separate location or involves substantially
267 identical principals and owners of a licensed pawnshop at a
268 separate location * * *.

269 (e) Submit a set of fingerprints from any local law

270 enforcement agency.

271 SECTION 7. Section 75-67-325, Mississippi Code of 1972, is
272 amended as follows:[RF5]

273 75-67-325. (1) The appropriate law enforcement agency may,
274 after notice and hearing, suspend or revoke any license if it
275 finds that:

276 (a) The licensee, either knowingly, or without the
277 exercise of due care to prevent the same, has violated any
278 provision of this article;

279 (b) Any fact or condition exists which, if it had
280 existed or had been known to exist at the time of the original
281 application for such license, clearly would have justified the
282 appropriate law enforcement agency in refusing such license;

283 (c) The licensee has aided, abetted or conspired with
284 an individual or person to circumvent or violate the requirement
285 of the article;

286 (d) The licensee, or a legal or beneficial owner of the
287 license, has been convicted of a crime that the appropriate law
288 enforcement agency finds directly relates to the duties and
289 responsibilities of the occupation of pawnbroker.

290 (2) The appropriate law enforcement agency may conditionally
291 license or place on probation a person whose license has been
292 suspended or may reprimand a licensee for a violation of this
293 article.

294 * * *

295 (3) Any licensee may surrender any license by delivering it
296 to the appropriate law enforcement agency with written notice of
297 its surrender, but such surrender shall not affect the licensee's
298 civil or criminal liability for acts committed prior thereto.

299 (4) No revocation, suspension or surrender of any license
300 shall impair or affect the obligation of any pre-existing lawful
301 contract between the licensee and any pledgor. Any pawn
302 transaction made without benefit of license is void.

303 (5) The appropriate law enforcement agency may reinstate
304 suspended licenses or issue new licenses to a person whose license
305 or licenses have been revoked if no fact or condition then exists
306 which clearly would have justified the appropriate law enforcement
307 agency in refusing originally to issue a license under this
308 article.

309 * * *

310 (6) The appropriate law enforcement agencies shall enforce
311 the provisions of this section.

312 SECTION 8. Section 75-67-327, Mississippi Code of 1972, is
313 amended as follows:[RF6]

314 75-67-327. (1) An application for a new pawnshop license,
315 the transfer of an existing pawnshop license or the approval of a
316 change in the ownership of a licensed pawnshop shall be under oath
317 and shall state the full name and place of residence of the
318 applicant, the place where the business is to be conducted and
319 other relevant information required by the appropriate law
320 enforcement agency. If the applicant is a partnership, the
321 application shall state the full name of each partner. If the
322 applicant is a corporation, the application shall state the full
323 name and address of each officer, shareholder and director.

324 (2) Notwithstanding the provision of this article, the
325 application need not state the full name and address of each
326 shareholder, if the applicant is owned directly or beneficially by
327 a person which as an issuer has a class of securities registered
328 pursuant to Section 12 of the Securities Exchange Act of 1934 or
329 is an issuer of securities which is required to file reports with
330 the Securities and Exchange Commission pursuant to Section 15(d)
331 of the Securities Exchange Act, provided that such person files
332 with the appropriate law enforcement agency such information,
333 documents and reports as are required by the provision of the
334 Securities Exchange Act to be filed by such issuer with the
335 Securities and Exchange Commission.

336 SECTION 9. Section 75-67-329, Mississippi Code of 1972, is
337 amended as follows:

338 75-67-329. (1) No pledged or purchased goods can be
339 confiscated without specifically accomplishing the following
340 actions:

341 (a) A police report being made in a timely manner;

342 (b) A warrant sworn out for the person who pledged or
343 sold the goods to the pawnbroker; * * *

344 (c) A theft report, or a National Crime Information
345 Center (NCIC) report, identifying the merchandise to be
346 confiscated along with a request for restitution, pursuant to law;
347 and

348 (d) Pledged or purchased goods may also be confiscated
349 without an arrest warrant because of time limitations if listed by
350 NCIC as stolen property. Restitution in these cases shall be paid
351 by the pledgor to the pawnbroker.

352 (2) Pledged or purchased goods can be put on a one-time
353 seven-day hold by the authorized law enforcement authorities.

354 (3) Confiscated merchandise shall be returned to the
355 pawnbroker by the law enforcement authorities as soon as possible
356 when determined that the merchandise has no rightful owner.

357 SECTION 10. Section 75-67-333, Mississippi Code of 1972, is
358 amended as follows:[RF7]

359 75-67-333. (1) In addition to any other penalty which may
360 be applicable, any licensee or employee who willfully violates any
361 provision of this article, or who willfully makes a false entry in
362 any record specifically required by this article, shall be guilty
363 of a misdemeanor and upon conviction thereof, shall be punishable
364 by a fine not in excess of One Thousand Dollars (\$1,000.00) per
365 violation or false entry.

366 (2) (a) In addition to any other penalty which may be
367 applicable, any licensee or employee who fails to make a record of
368 a pawnshop transaction and subsequently sells or disposes of the

369 pledged goods from such transaction shall be punished as follows:

370 (i) For a first offense, the licensee or employee
371 shall be guilty of a misdemeanor and upon conviction thereof,
372 shall be punishable by a fine not in excess of One Thousand
373 Dollars (\$1,000.00) or by imprisonment in the county jail for not
374 more than one (1) year, or both fine and imprisonment;

375 (ii) For a second offense, the licensee or
376 employee shall be guilty of a felony and upon conviction thereof,
377 shall be punishable by a fine not in excess of Five Thousand
378 Dollars (\$5,000.00) or by imprisonment in the custody of the State
379 Department of Corrections for a term not less than one (1) year
380 nor more than five (5) years, or by both fine and imprisonment.

381 (b) Any licensee convicted in the manner provided in
382 this subsection (2) shall forfeit the surety bond or deposit
383 required in Section 75-67-323 and the amount of such bond or
384 deposit shall be credited to the budget of the state or local
385 agency, which directly participated in the prosecution of such
386 licensee, for the specific purpose of increasing law enforcement
387 resources for that specific state or local agency. Such bond or
388 deposit shall be used to augment existing state and local law
389 enforcement budgets and not to supplant them.

390 (3) Compliance with the * * * provisions of this article
391 shall be enforced by the appropriate law enforcement agency who
392 may exercise for such purpose any authority conferred upon such
393 agency by law.

394 (4) When the appropriate law enforcement agency has
395 reasonable cause to believe that a person is violating any
396 provision of this article, the appropriate law enforcement agency,
397 in addition to and without prejudice to the authority provided
398 elsewhere in this article, may enter an order requiring the person
399 to stop or to refrain from the violation. The appropriate law
400 enforcement agency may sue in any circuit court of the state
401 having jurisdiction and venue to enjoin the person from engaging

402 in or continuing the violation or from doing any act in
403 furtherance of the violation. In such an action, the court may
404 enter an order or judgment awarding a preliminary or permanent
405 injunction.

406 (5) The appropriate law enforcement agency may impose a
407 civil penalty against any licensee adjudged by the appropriate law
408 enforcement agency to be in violation of the provisions of this
409 article. Such civil penalty shall not exceed Five Hundred Dollars
410 (\$500.00) per violation * * *.

411 SECTION 11. Section 75-67-335, Mississippi Code of 1972, is
412 amended as follows:

413 75-67-335. If any pledged goods from a pawn transaction are
414 found to be stolen goods and are returned to the rightful owner by
415 law enforcement authorities and if the licensee who accepted such
416 pledged goods has complied with all of the duties and
417 responsibilities as specified in this article during such
418 transaction, then the rightful owner of such pledged goods shall
419 be liable to the licensee for the pledged amount if the rightful
420 owner fails to prosecute or cooperate in the criminal prosecution
421 related to such pawn transaction, provided that the rightful owner
422 can prove that the stolen goods are his. It shall also be the
423 responsibility of the licensee to assist or cooperate in the
424 criminal prosecution related to such pawn transaction. Upon
425 successful criminal prosecution, restitution shall be awarded to
426 the pawnbroker by the criminal court at the time of the
427 defendant's sentencing. If the identity of a person who pawned
428 stolen goods can be determined, the district attorney may
429 prosecute such person for any applicable criminal violations.

430 SECTION 12. Section 75-67-341, Mississippi Code of 1972,
431 which directs the Commissioner of Banking to develop and provide
432 any necessary forms to carry out the provisions of Pawnbroker Act,
433 is repealed.

434 SECTION 13. This act shall take effect and be in force from

435 and after its passage.