

By: Guice

To: Judiciary B

HOUSE BILL NO. 743

1 AN ACT TO AMEND SECTION 75-67-303, MISSISSIPPI CODE OF 1972,
2 TO DEFINE THE TERMS "RECORDS/DOCUMENTS" FOR THE PURPOSES OF THE
3 PAWNSHOP LICENSURE ACT; TO AMEND SECTION 75-67-321, MISSISSIPPI
4 CODE OF 1972, TO REVISE THE FEE FOR A PAWNSHOP LICENSE; TO AMEND
5 SECTION 75-67-323, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE
6 INITIAL APPLICATION AND BOND FOR A PAWNSHOP LICENSE SHALL BE FILED
7 WITH THE COMMISSIONER OF BANKING, INSTEAD OF THE LOCAL
8 AUTHORITIES; TO AMEND SECTION 75-67-333, MISSISSIPPI CODE OF 1972,
9 TO PROVIDE THE COMMISSIONER OF BANKING SHALL PROVIDE NOTICE AND
10 HEARING BEFORE IMPOSING A CIVIL PENALTY FOR VIOLATIONS OF THE
11 PAWNSHOP LICENSURE ACT; TO AMEND SECTION 75-67-341, MISSISSIPPI
12 CODE OF 1972, TO AUTHORIZE THE COMMISSIONER OF BANKING TO CHARGE
13 PAWNSHOP LICENSEES AN EXAMINATION FEE; TO CREATE A NEW CODE
14 SECTION TO BE CODIFIED WITHIN ARTICLE 7 OF CHAPTER 67 OF TITLE 75,
15 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER OF BANKING
16 TO EXAMINE PERSONS REASONABLY SUSPECTED OF CONDUCTING BUSINESS
17 WHICH REQUIRES A PAWNSHOP LICENSE; TO AMEND SECTION 75-67-305,
18 MISSISSIPPI CODE OF 1972, TO REVISE THE INFORMATION REQUIRED TO BE
19 RECORDED ON PAWN TICKETS; TO AMEND SECTION 75-67-309, MISSISSIPPI
20 CODE OF 1972, TO AUTHORIZE THE USE OF ELECTRONIC TRANSMISSION FOR
21 PAWNSHOP RECORDS; TO AMEND SECTION 75-67-315, MISSISSIPPI CODE OF
22 1972, TO REVISE THE LIST OF PROHIBITED ACTS OF PAWNBROKERS; TO
23 AMEND SECTION 75-67-329, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
24 THE CONFISCATION OF PLEDGED OR PURCHASED GOODS WITHOUT AN ARREST
25 WARRANT; TO AMEND SECTION 75-67-335, MISSISSIPPI CODE OF 1972, TO
26 PROVIDE FOR RESTITUTION TO PAWNBROKERS; AND FOR RELATED PURPOSES.

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

28 SECTION 1. Section 75-67-303, Mississippi Code of 1972, is
29 amended as follows:

30 75-67-303. The following words and phrases used in this act
31 shall have the following meanings unless the context clearly
32 indicates otherwise:

33 (a) "Pawnbroker" means any person engaged in whole or
34 in part in the business of lending money on the security of
35 pledged goods left in pawn, or in the business of purchasing
36 tangible personal property to be left in pawn on the condition
37 that it may be redeemed or repurchased by the seller for a fixed
38 price within a fixed period of time; provided, however, that the

39 following are exempt from the definition of "pawnbroker" and from
40 the provisions of this act: any bank which is regulated by the
41 State Department of Banking and Consumer Finance, the Comptroller
42 of the Currency of the United States, the Federal Deposit
43 Insurance Corporation, the Board of Governors of the Federal
44 Reserve System or any other federal or state authority and all
45 affiliates of such bank, and additionally any bank or savings and
46 loan association whose deposits or accounts are eligible for
47 insurance by the Bank Insurance Fund or the Savings Association
48 Insurance Fund or other fund administered by Federal Deposit
49 Insurance Corporation or any successor thereto, and all affiliates
50 of such banks and savings and loan associations, any state or
51 federally chartered credit union and any finance company subject
52 to licensing and regulation by the State Department of Banking and
53 Consumer Finance.

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

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

65 (d) "Person" means an individual, partnership,
66 corporation, joint venture, trust, association, or any legal
67 entity however organized.

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

73 (f) "Commissioner" means the Mississippi Commissioner of
74 Banking and Consumer Finance, or his designee, as the designated
75 official for the purpose of enforcing this article.

76 (g) "Appropriate law enforcement agency" means the
77 sheriff of each county in which the pawnbroker maintains an
78 office, or the police chief of the municipality or law enforcement
79 officers of the Department of Public Safety in which the
80 pawnbroker maintains an office.

81 (h) "Attorney General" means the Attorney General of the
82 State of Mississippi.

83 (i) "Records" or "documents" means any item in hard
84 copy or produced in a format of storage commonly described as
85 electronic, imaged, magnetic, microphotographic or otherwise, and
86 any reproduction so made shall have the same force and effect as
87 the original thereof and be admitted in evidence equally with the
88 original.

89 SECTION 2. Section 75-67-321, Mississippi Code of 1972, is
90 amended as follows:

91 75-67-321. (1) A person may not engage in business as a
92 pawnbroker or otherwise portray himself as a pawnbroker unless the
93 person has a valid license authorizing engagement in the business.

94 A separate license is required for each place of business under
95 this article. The commissioner may issue more than one (1)
96 license to a person if that person complies with this article for
97 each license. A new license or application to transfer an
98 existing license is required upon a change, directly or
99 beneficially, in the ownership of any licensed pawnshop and an
100 application shall be made to the commissioner in accordance with
101 this article.

102 (2) When a licensee wishes to move a pawnshop to another
103 location, the licensee shall give thirty (30) days prior written
104 notice to the commissioner who shall amend the license
105 accordingly.

106 (3) Each license shall remain in full force and effect until
107 relinquished, suspended, revoked or expired. With each initial
108 application for a license, the applicant shall pay the

109 commissioner a license fee of Five Hundred Dollars (\$500.00), and
110 on or before December 1 of each year thereafter, an annual renewal
111 fee of Three Hundred Dollars (\$300.00). If the annual fee remains
112 unpaid thirty (30) days after December 1, the license shall
113 thereupon expire, but not before December 31 of any year for which
114 the annual fee has been paid. If any person engages in business
115 as provided for in this article without paying the license fee
116 provided for in this article commencing business or before the
117 expiration of the person's current license, as the case may be,
118 then the person shall be liable for the full amount of the license
119 fee, plus a penalty in an amount not to exceed Twenty-five Dollars
120 (\$25.00) for each day that the person has engaged in such business
121 without a license or after the expiration of a license. All
122 licensing fees and penalties shall be paid into the Consumer
123 Finance Fund of the Department of Banking and Consumer Finance.

124 (4) Notwithstanding other provisions of this article, the
125 commissioner may issue a temporary license authorizing the
126 operator of a pawnshop on the receipt of an application to
127 transfer a license from one person to another or on the receipt of
128 an application for a license involving principals and owners that
129 are substantially identical to those of an existing licensed
130 pawnshop. The temporary license is effective until the permanent
131 license is issued or denied.

132 (5) Notwithstanding other provisions of this article,
133 neither a new license nor an application to transfer an existing
134 license shall be required upon any change, directly or
135 beneficially, in the ownership of any licensed pawnshop
136 incorporated under the laws of this state or any other state so
137 long as the licensee continues to operate as a corporation doing a
138 pawnshop business under the license. The commissioner may,
139 however, require the licensee to provide such information as he
140 deems reasonable and appropriate concerning the officer and
141 directors of the corporation and persons owning in excess of

142 twenty-five percent (25%) of the outstanding shares of the
143 corporation.

144 SECTION 3. Section 75-67-323, Mississippi Code of 1972, is
145 amended as follows:

146 75-67-323. To be eligible for a pawnbroker license, an
147 applicant shall:

148 (a) Operate lawfully and fairly within the purposes of
149 this article;

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

153 (c) File with the commissioner a bond with good
154 security in the penal sum of Ten Thousand Dollars (\$10,000.00),
155 payable to the State of Mississippi for the faithful performance
156 by the licensee of the duties and obligations pertaining to the
157 business so licensed and the prompt payment of any judgment which
158 may be recovered against such licensee on account of damages or
159 other claim arising directly or collaterally from any violation of
160 the provisions of this article; such bond shall not be valid until
161 it is approved by the commissioner; such applicant may file, in
162 lieu thereof, cash, a certificate of deposit, or government bonds
163 in the amount of Ten Thousand Dollars (\$10,000.00); such deposit
164 shall be filed with the commissioner and is subject to the same
165 terms and conditions as are provided for in the surety bond
166 required herein; any interest or earnings on such deposits are
167 payable to the depositor.

168 (d) File with the commissioner an application
169 accompanied by the initial license fee required in this article.

170 (e) Submit a set of fingerprints from any local law
171 enforcement agency. In order to determine the applicant's
172 suitability for license, the commissioner shall forward the
173 fingerprints to the Department of Public Safety; and if no
174 disqualifying record is identified at the state level, the

175 fingerprints shall be forwarded by the Department of Public Safety
176 to the FBI for a national criminal history record check.

177 SECTION 4. Section 75-67-333, Mississippi Code of 1972, is
178 amended as follows:

179 75-67-333. (1) In addition to any other penalty which may
180 be applicable, any licensee or employee who willfully violates any
181 provision of this article, or who willfully makes a false entry in
182 any record specifically required by this article, shall be guilty
183 of a misdemeanor and upon conviction thereof, shall be punishable
184 by a fine not in excess of One Thousand Dollars (\$1,000.00) per
185 violation or false entry.

186 (2) (a) In addition to any other penalty which may be
187 applicable, any licensee or employee who fails to make a record of
188 a pawnshop transaction and subsequently sells or disposes of the
189 pledged goods from such transaction shall be punished as follows:

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

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

201 (b) Any licensee convicted in the manner provided in
202 this subsection (2) shall forfeit the surety bond or deposit
203 required in Section 75-67-323 and the amount of such bond or
204 deposit shall be credited to the budget of the state or local
205 agency, which directly participated in the prosecution of such
206 licensee, for the specific purpose of increasing law enforcement
207 resources for that specific state or local agency. Such bond or

208 deposit shall be used to augment existing state and local law
209 enforcement budgets and not to supplant them.

210 (3) Compliance with the criminal provisions of this article
211 shall be enforced by the appropriate law enforcement agency who
212 may exercise for such purpose any authority conferred upon such
213 agency by law.

214 (4) When the commissioner has reasonable cause to believe
215 that a person is violating any provision of this article, the
216 commissioner, in addition to and without prejudice to the
217 authority provided elsewhere in this article, may enter an order
218 requiring the person to stop or to refrain from the violation. The
219 commissioner may sue in any circuit court of the state having
220 jurisdiction and venue to enjoin the person from engaging in or
221 continuing the violation or from doing any act in furtherance of
222 the violation. In such an action, the court may enter an order or
223 judgment awarding a preliminary or permanent injunction.

224 (5) The commissioner may, after notice and a hearing, impose
225 a civil penalty against any licensee adjudged by the commissioner
226 to be in violation of the provisions of this article. Such civil
227 penalty shall not exceed Five Hundred Dollars (\$500.00) per
228 violation and shall be deposited into the Consumer Finance Fund of
229 the Department of Banking and Consumer Finance.

230 SECTION 5. Section 75-67-341, Mississippi Code of 1972, is
231 amended as follows:

232 75-67-341. (1) The Commissioner of Banking shall develop
233 and provide any necessary forms to carry out the provisions of
234 this article.

235 (2) To assure compliance with the provisions of this
236 article, the commissioner may examine the books and records of any
237 licensee without notice during normal business hours. The
238 commissioner may charge the licensee an examination fee in an
239 amount not less than Two Hundred Dollars (\$200.00) nor more than
240 Three Hundred Dollars (\$300.00) per examination of each office or

241 location within the State of Mississippi, plus any actual expenses
242 incurred while examining the licensee's records or books that are
243 located outside the State of Mississippi. However, in no event
244 shall a licensee be examined more than once in a three-year period
245 unless for cause shown based upon consumer complaint and/or other
246 exigent reasons as determined by the commissioner.

247 SECTION 6. The following section shall be codified as a
248 separate Code section within Article 7 of Chapter 67 of Title 75,
249 Mississippi Code of 1972:

250 75-67-_____. The commissioner, or his duly authorized
251 representative, for the purpose of discovering violations of this
252 article and for the purpose of determining whether persons are
253 subject to the provisions of this article, may examine persons
254 licensed under this article and persons reasonably suspected by
255 the commissioner of conducting business that requires a license
256 under this article, including all relevant books, records and
257 papers employed by those persons in the transaction of their
258 business, and may summon witnesses and examine them under oath
259 concerning matters relating to the business of those persons, or
260 such other matters as may be relevant to the discovery of
261 violations of this article, including without limitation the
262 conduct of business without a license as required under this
263 article.

264 SECTION 7. Section 75-67-305, Mississippi Code of 1972, is
265 amended as follows:

266 75-67-305. At the time of making the pawn or purchase
267 transaction, the pawnbroker shall enter upon the pawn ticket a
268 record of the following information which shall be recorded on the
269 receipt:

270 (a) A clear and accurate description of the property,
271 including the following:

272 (i) Brand name;

273 (ii) Model number;

274 (iii) Serial number;
275 (iv) Size;
276 (v) Color, as apparent to the untrained eye;
277 (vi) Precious metal type, weight and content, if
278 known;
279 (vii) Gemstone description, including the number
280 of stones;
281 (viii) In the case of firearms, the type of
282 action, caliber or gauge, number of barrels, barrel length and
283 finish; and
284 (ix) Any other unique identifying marks, numbers,
285 names or letters;
286 (b) The name, residence address and date of birth of
287 pledgor or seller;
288 (c) Date of pawn or purchase transaction;
289 (d) Driver's license number or social security number or
290 Mississippi identification card number, as defined in Section
291 45-35-1, of the pledgor or seller or identification information
292 verified by at least two (2) forms of identification, one (1) of
293 which shall be a photographic identification;
294 (e) Description of the pledgor including approximate
295 height, sex and race, and a right or left inked thumbprint
296 recorded on the original receipt;
297 (f) Amount of cash advanced;
298 (g) The maturity date of the pawn transaction and the
299 amount due; and
300 (h) The monthly rate and pawn charge.

301 SECTION 8. Section 75-67-309, Mississippi Code of 1972, is
302 amended as follows:

303 75-67-309. (1) The pledgor or seller shall sign a statement
304 verifying that the pledgor or seller is the rightful owner of the
305 goods or is entitled to sell or pledge the goods and shall receive
306 an exact copy of the pawn ticket which shall be signed or

307 initialed by the pawnbroker or any employee of the pawnbroker.

308 (2) The pawnbroker shall maintain a record of all
309 transactions of pledged or purchased goods on the premises. A
310 pawnbroker shall upon request provide to the appropriate law
311 enforcement agency a complete record of all transactions. These
312 records shall be a correct copy of the entries made of the pawn or
313 purchase transaction, except as to the amount of cash advanced or
314 paid for the goods and monthly pawnshop charge. If the
315 appropriate law enforcement agency supplies the appropriate
316 software, all transactions shall be delivered by means of
317 electronic transmission through a modem or similar device or by
318 delivery of a computer disk to the appropriate law enforcement
319 agency within seventy-two (72) hours of the transaction.

320 (3) All goods purchased across the counter by the pawnbroker
321 shall be maintained on the premises by the pawnbroker for at least
322 thirty (30) calendar days before such goods can be offered for
323 resale.

324 SECTION 9. Section 75-67-315, Mississippi Code of 1972, is
325 amended as follows:

326 75-67-315. A pawnbroker and any clerk, agent or employee of
327 such pawnbroker shall not:

328 (a) Fail to make an entry of any material matter in his
329 record book;

330 (b) Make any false entry therein;

331 (c) Falsify, obliterate, destroy or remove from his
332 place of business such records, books or accounts relating to the
333 licensee's pawn transaction;

334 (d) Refuse to allow the commissioner, the appropriate
335 law enforcement agency, the Attorney General or any other duly
336 authorized state or federal law enforcement officer to inspect his
337 pawn records or any pawn goods in his possession during the
338 ordinary hours of business or other acceptable time to both
339 parties;

340 (e) Fail to maintain a record of each pawn transaction
341 for four (4) years;

342 (f) Accept a pledge or purchase property from a person
343 under the age of eighteen (18) years;

344 (g) Make any agreement requiring the personal liability
345 of a pledgor or seller, or waiving any of the provisions of this
346 act or providing for a maturity date less than thirty (30) days
347 after the date of the pawn transaction;

348 (h) Fail to return or replace pledged goods to a
349 pledgor or seller upon payment of the full amount due the
350 pawnbroker unless the pledged goods have been taken into custody
351 by a court or a law enforcement officer or agency;

352 (i) Sell or lease, or agree to sell or lease, pledged
353 or purchased goods back to the pledgor or back to the seller in
354 the same or related transaction;

355 (j) Sell or otherwise charge for insurance in
356 connection with a pawn transaction;

357 (k) Remove pledged goods from the premises within
358 thirty (30) days following the originally fixed maturity date;

359 (l) Accept pledged or purchased property from a person
360 obviously under the influence of intoxicants at the time;

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

364 (n) All merchandise which has been pledged or purchased
365 by the pawnbroker shall be recorded on a receipt at the time of
366 resale which lists the purchaser. The purchaser shall be
367 identified on receipt by the means set forth in Section 75-67-305,
368 as well as an accurate description of the property as set forth in
369 Section 75-67-305, as well as the resale amount paid by the
370 purchaser.

371 SECTION 10. Section 75-67-329, Mississippi Code of 1972, is
372 amended as follows:

373 75-67-329. (1) No pledged or purchased goods can be
374 confiscated without specifically accomplishing the following
375 actions:

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

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

379 (c) A theft report, or a National Crime Information
380 Center (NCIC) report, identifying the merchandise to be
381 confiscated along with a request for restitution, pursuant to law;
382 and

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

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

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

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

394 75-67-335. If any pledged goods from a pawn transaction are
395 found to be stolen goods and are returned to the rightful owner by
396 law enforcement authorities and if the licensee who accepted such
397 pledged goods has complied with all of the duties and
398 responsibilities as specified in this article during such
399 transaction, then the rightful owner of such pledged goods shall
400 be liable to the licensee for the pledged amount if the rightful
401 owner fails to prosecute or cooperate in the criminal prosecution
402 related to such pawn transaction, provided that the rightful owner
403 can prove that the stolen goods are his. It shall also be the
404 responsibility of the licensee to assist or cooperate in the
405 criminal prosecution related to such pawn transaction. Upon

406 successful criminal prosecution, restitution shall be awarded to
407 the pawnbroker by the criminal court at the time of the
408 defendant's sentencing. If the identity of a person who pawned
409 stolen goods can be determined, the district attorney may
410 prosecute such person for any applicable criminal violations.

411 SECTION 12. This act shall take effect and be in force from
412 and after its passage.