HOUSE BILL NO. 1500

AN ACT TO AMEND SECTION 75-67-303, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERMS "RECORDS/DOCUMENTS" FOR THE PURPOSES OF THE PAWNSHOP LICENSURE ACT; TO AMEND SECTION 75-67-321, MISSISSIPPI CODE OF 1972, TO REVISE THE FEE FOR A PAWNSHOP LICENSE; TO AMEND SECTION 75-67-323, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE INITIAL APPLICATION AND BOND FOR A PAWNSHOP LICENSE SHALL BE FILED WITH THE COMMISSIONER OF BANKING, INSTEAD OF THE LOCAL AUTHORITIES; TO AMEND SECTION 75-67-333, MISSISSIPPI CODE OF 1972, TO PROVIDE THE COMMISSIONER OF BANKING SHALL PROVIDE NOTICE AND HEARING BEFORE IMPOSING A CIVIL PENALTY FOR VIOLATIONS OF THE PAWNSHOP LICENSURE ACT; TO AMEND SECTION 75-67-341, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER OF BANKING TO CHARGE PAWNSHOP LICENSEES AN EXAMINATION FEE; TO CREATE A NEW CODE SECTION TO BE CODIFIED WITHIN ARTICLE 7 OF CHAPTER 67 OF TITLE 75, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER OF BANKING TO EXAMINE PERSONS REASONABLY SUSPECTED OF CONDUCTING BUSINESS WHICH REQUIRES A PAWNSHOP LICENSE; TO AMEND SECTION 75-67-305, MISSISSIPPI CODE OF 1972, TO REVISE THE INFORMATION REQUIRED TO BE RECORDED ON PAWN TICKETS; TO AMEND SECTION 75-67-309, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE USE OF ELECTRONIC TRANSMISSION FOR PAWNSHOP RECORDS; TO AMEND SECTION 75-67-315, MISSISSIPPI CODE OF 1972, TO REVISE THE LIST OF PROHIBITED ACTS OF PAWNBROKERS; TO AMEND SECTION 75-67-329, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE CONFIscATION OF PLEDGED OR PURCHASED GOODS WITHOUT AN ARREST WARRANT; TO AMEND SECTION 75-67-335, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR RESTITUTION TO PAWNBROKERS; AND FOR RELATED PURPOSES.

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

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

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

(a) "Pawnbroker" means any person engaged in whole or in part in the business of lending money on the security of pledged goods left in pawn, or in the business of purchasing tangible personal property to be left in pawn on the condition that it may be redeemed or repurchased by the seller for a fixed
price within a fixed period of time; provided, however, that the
following are exempt from the definition of "pawnbroker" and from
the provisions of this act: any bank which is regulated by the
State Department of Banking and Consumer Finance, the Comptroller
of the Currency of the United States, the Federal Deposit
Insurance Corporation, the Board of Governors of the Federal
Reserve System or any other federal or state authority and all
affiliates of such bank, and additionally any bank or savings and
loan association whose deposits or accounts are eligible for
insurance by the Bank Insurance Fund or the Savings Association
Insurance Fund or other fund administered by Federal Deposit
Insurance Corporation or any successor thereto, and all affiliates
of such banks and savings and loan associations, any state or
federally chartered credit union and any finance company subject
to licensing and regulation by the State Department of Banking and
Consumer Finance.

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

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

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

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

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

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

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

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

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

75-67-321. (1) A person may not engage in business as a
pawnbroker or otherwise portray himself as a pawnbroker unless the
person has a valid license authorizing engagement in the business.
A separate license is required for each place of business under
this article. The commissioner may issue more than one (1)
license to a person if that person complies with this article for
each license. A new license or application to transfer an
existing license is required upon a change, directly or
beneficially, in the ownership of any licensed pawnshop and an
application shall be made to the commissioner in accordance with
this article.

(2) When a licensee wishes to move a pawnshop to another
location, the licensee shall give thirty (30) days prior written
each license shall remain in full force and effect until
relinquished, suspended, revoked or expired. With each initial
application for a license, the applicant shall pay the
commissioner a license fee of Five Hundred Dollars ($500.00), and
on or before December 1 of each year thereafter, an annual renewal
fee of Three Hundred Dollars ($300.00). If the annual fee remains
unpaid thirty (30) days after December 1, the license shall
thereupon expire, but not before December 31 of any year for which
the annual fee has been paid. If any person engages in business
as provided for in this article without paying the license fee
provided for in this article commencing business or before the
expiration of the person's current license, as the case may be,
then the person shall be liable for the full amount of the license
fee, plus a penalty in an amount not to exceed Twenty-five Dollars
($25.00) for each day that the person has engaged in such business
without a license or after the expiration of a license. All
licensing fees and penalties shall be paid into the Consumer
Finance Fund of the Department of Banking and Consumer Finance.

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

(5) Notwithstanding other provisions of this article,
neither a new license nor an application to transfer an existing
license shall be required upon any change, directly or
beneficially, in the ownership of any licensed pawnshop
incorporated under the laws of this state or any other state so

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long as the licensee continues to operate as a corporation doing a pawnshop business under the license. The commissioner may, however, require the licensee to provide such information as he deems reasonable and appropriate concerning the officer and directors of the corporation and persons owning in excess of twenty-five percent (25%) of the outstanding shares of the corporation.

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

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

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

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

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

(d) File with the commissioner an application accompanied by the initial license fee required in this article.
(e) Submit a set of fingerprints from any local law enforcement agency. In order to determine the applicant's suitability for license, the commissioner shall forward the fingerprints to the Department of Public Safety; and if no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

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

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

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

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

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

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

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

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

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

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

75-67-341. (1) The Commissioner of Banking shall develop and provide any necessary forms to carry out the provisions of this article.
(2) To assure compliance with the provisions of this article, the commissioner may examine the books and records of any licensee without notice during normal business hours. The commissioner may charge the licensee an examination fee in an amount not less than Two Hundred Dollars ($200.00) nor more than Three Hundred Dollars ($300.00) per examination of each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a three-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

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

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

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

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

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

   (i) Brand name;

   (ii) Model number;

   (iii) Serial number;

   (iv) Size;

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

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

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

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

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

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

(c) Date of pawn or purchase transaction;

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

(e) Description of the pledgor including approximate height, sex and race, and a right or left inked thumbprint recorded on the original receipt;

(f) Amount of cash advanced;

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

(h) The monthly rate and pawn charge.
SECTION 8. Section 75-67-309, Mississippi Code of 1972, is amended as follows:

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

(2) The pawnbroker shall maintain a record of all transactions of pledged or purchased goods on the premises. A pawnbroker shall upon request provide to the appropriate law enforcement agency a complete record of all transactions. These records shall be a correct copy of the entries made of the pawn or purchase transaction, except as to the amount of cash advanced or paid for the goods and monthly pawnshop charge. If the appropriate law enforcement agency supplies the appropriate computer software and the pawnbroker has the appropriate computer hardware, all transactions shall be made available by means of electronic transmission through a modem or similar device or by providing a computer disc to the appropriate law enforcement agency within seventy-two (72) hours of the transaction. A pawnbroker shall not cease or alter the use of their computer hardware unless authorized by the appropriate law enforcement agency.

(3) All goods purchased across the counter by the pawnbroker shall be maintained on the premises by the pawnbroker for at least fourteen (14) calendar days if the pawnbroker makes available all transactions either electronically or on computer disc to the appropriate law enforcement agency as provided in subsection (2) above. Otherwise, the pawnbroker shall maintain on the premises the purchased goods for twenty-one (21) calendar days.

SECTION 9. Section 75-67-315, Mississippi Code of 1972, is amended as follows:
75-67-315. A pawnbroker and any clerk, agent or employee of such pawnbroker shall not:

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

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

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

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

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

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

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

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

and

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

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

(3) Confiscated merchandise shall be returned to the pawnbroker by the law enforcement authorities as soon as possible when determined that the merchandise has no rightful owner.
SECTION 11. Section 75-67-335, Mississippi Code of 1972, is amended as follows:

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

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