

By: Representative Guice

To: Banks and Banking

## HOUSE BILL NO. 1500

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

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

notice to the commissioner who shall amend the license accordingly.

(3) 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

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;

(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

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.

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;

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

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

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

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

380           75-67-329. (1) No pledged or purchased goods can be  
381 confiscated without specifically accomplishing the following  
382 actions:

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

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

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

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

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

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

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

401           75-67-335.   If any pledged goods from a pawn transaction are  
402 found to be stolen goods and are returned to the rightful owner by  
403 law enforcement authorities and if the licensee who accepted such  
404 pledged goods has complied with all of the duties and  
405 responsibilities as specified in this article during such  
406 transaction, then the rightful owner of such pledged goods shall  
407 be liable to the licensee for the pledged amount if the rightful  
408 owner fails to prosecute or cooperate in the criminal prosecution  
409 related to such pawn transaction, provided that the rightful owner  
410 can prove that the stolen goods are his.   It shall also be the  
411 responsibility of the licensee to assist or cooperate in the  
412 criminal prosecution related to such pawn transaction.   Upon  
413 successful criminal prosecution, restitution shall be awarded to  
414 the pawnbroker by the criminal court at the time of the  
415 defendant's sentencing.   If the identity of a person who pawned  
416 stolen goods can be determined, the district attorney may  
417 prosecute such person for any applicable criminal violations.

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