

By: Senator(s) Mettetal

To: Business and Financial
Institutions

SENATE BILL NO. 2720
(As Sent to Governor)

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 REQUIRE THE COMMISSIONER OF BANKING TO 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 RECORD-KEEPING
19 REQUIREMENTS FOR PAWNSHOP TRANSACTIONS; TO AMEND SECTION
20 75-67-309, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE USE OF
21 ELECTRONIC TRANSMISSION FOR PAWNSHOP RECORDS; TO AMEND SECTION
22 75-67-315, MISSISSIPPI CODE OF 1972, TO REVISE THE LIST OF
23 PROHIBITED ACTS OF PAWNBROKERS; TO AMEND SECTION 75-67-335,
24 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR RESTITUTION TO
25 PAWNBROKERS; AND FOR RELATED PURPOSES.

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

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

29 75-67-303. The following words and phrases used in this act
30 shall have the following meanings unless the context clearly
31 indicates otherwise:

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

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

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

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

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

67 (e) "Pledged goods" means tangible personal property
68 other than choses in action, securities, or printed evidence of
69 indebtedness, which property is purchased by, deposited with, or

70 otherwise actually delivered into the possession of a pawnbroker
71 in connection with a pawn transaction.

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

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

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

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

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

90 75-67-321. (1) A person may not engage in business as a
91 pawnbroker or otherwise portray himself as a pawnbroker unless the
92 person has a valid license authorizing engagement in the business.
93 A separate license is required for each place of business under
94 this article. The commissioner may issue more than one (1)
95 license to a person if that person complies with this article for
96 each license. A new license or application to transfer an
97 existing license is required upon a change, directly or
98 beneficially, in the ownership of any licensed pawnshop and an
99 application shall be made to the commissioner in accordance with
100 this article.

101 (2) When a licensee wishes to move a pawnshop to another
102 location, the licensee shall give thirty (30) days prior written

103 notice to the commissioner who shall amend the license
104 accordingly.

105 (3) Each license shall remain in full force and effect until
106 relinquished, suspended, revoked or expired. With each initial
107 application for a license, the applicant shall pay the
108 commissioner a license fee, which includes premiums for
109 examinations, of Five Hundred Dollars (\$500.00), and on or before
110 December 1 of each year thereafter, an annual renewal fee, which
111 includes premiums for examinations, of Three Hundred Fifty Dollars
112 (\$350.00). However, when more than one (1) license to an
113 applicant is issued, the commissioner, for each subsequent
114 license, may only impose a fee, which includes premiums for
115 examinations, of Three Hundred Fifty Dollars (\$350.00) at the time
116 of application, and an annual renewal fee, which includes premiums
117 for examinations, of Three Hundred Fifty Dollars (\$350.00) on or
118 before December 1 of each year thereafter. If the annual fee
119 remains unpaid thirty (30) days after December 1, the license
120 shall thereupon expire, but not before December 31 of any year for
121 which the annual fee has been paid. If any person engages in
122 business as provided for in this article without paying the
123 license fee provided for in this article commencing business or
124 before the expiration of the person's current license, as the case
125 may be, then the person shall be liable for the full amount of the
126 license fee, plus a penalty in an amount not to exceed Twenty-five
127 Dollars (\$25.00) for each day that the person has engaged in such
128 business without a license or after the expiration of a license.
129 All licensing fees and penalties authorized in this section shall
130 be paid into the Consumer Finance Fund of the Department of
131 Banking and Consumer Finance.

132 (4) Notwithstanding other provisions of this article, the
133 commissioner may issue a temporary license authorizing the
134 operator of a pawnshop on the receipt of an application to
135 transfer a license from one person to another or on the receipt of

136 an application for a license involving principals and owners that
137 are substantially identical to those of an existing licensed
138 pawnshop. The temporary license is effective until the permanent
139 license is issued or denied.

140 (5) Notwithstanding other provisions of this article,
141 neither a new license nor an application to transfer an existing
142 license shall be required upon any change, directly or
143 beneficially, in the ownership of any licensed pawnshop
144 incorporated under the laws of this state or any other state so
145 long as the licensee continues to operate as a corporation doing a
146 pawnshop business under the license. The commissioner may,
147 however, require the licensee to provide such information as he
148 deems reasonable and appropriate concerning the officer and
149 directors of the corporation and persons owning in excess of
150 twenty-five percent (25%) of the outstanding shares of the
151 corporation.

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

154 75-67-323. To be eligible for a pawnbroker license, an
155 applicant shall:

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

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

161 (c) File with the commissioner a bond with good
162 security in the penal sum of Ten Thousand Dollars (\$10,000.00),
163 payable to the State of Mississippi for the faithful performance
164 by the licensee of the duties and obligations pertaining to the
165 business so licensed and the prompt payment of any judgment which
166 may be recovered against such licensee on account of damages or
167 other claim arising directly or collaterally from any violation of
168 the provisions of this article; such bond shall not be valid until

169 it is approved by the commissioner; such applicant may file, in
170 lieu thereof, cash, a certificate of deposit, or government bonds
171 in the amount of Ten Thousand Dollars (\$10,000.00); such deposit
172 shall be filed with the commissioner and is subject to the same
173 terms and conditions as are provided for in the surety bond
174 required herein; any interest or earnings on such deposits are
175 payable to the depositor.

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

178 (e) Submit a set of fingerprints from any local law
179 enforcement agency. In order to determine the applicant's
180 suitability for license, the commissioner shall forward the
181 fingerprints to the Department of Public Safety; and if no
182 disqualifying record is identified at the state level, the
183 fingerprints shall be forwarded by the Department of Public Safety
184 to the FBI for a national criminal history record check.

185 (2) Every licensee shall post his license in a conspicuous
186 place at each place of business.

187 (3) Every licensee shall post and display a sign which
188 measures at least twenty (20) inches by twenty (20) inches in a
189 conspicuous place and in easy view of all persons who enter the
190 place of business. The sign shall display bold, blocked letters,
191 easily readable, with the following information: "This pawnshop
192 is licensed and regulated by the Mississippi Department of Banking
193 and Consumer Finance. If you encounter any unresolved problem
194 with a transaction at this location, you are entitled to
195 assistance. Please call or write: Mississippi Department of
196 Banking and Consumer Finance, Post Office Drawer 23729, Jackson,
197 MS 39225-3729; Phone 1-800-844-2499."

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

200 75-67-333. (1) In addition to any other penalty which may
201 be applicable, any licensee or employee who willfully violates any

202 provision of this article, or who willfully makes a false entry in
203 any record specifically required by this article, shall be guilty
204 of a misdemeanor and upon conviction thereof, shall be punishable
205 by a fine not in excess of One Thousand Dollars (\$1,000.00) per
206 violation or false entry.

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

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

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

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

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

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

245 (5) The commissioner may, after notice and a hearing, impose
246 a civil penalty against any licensee adjudged by the commissioner
247 to be in violation of the provisions of this article. Such civil
248 penalty shall not exceed Five Hundred Dollars (\$500.00) per
249 violation and shall be deposited into the State General Fund.

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

252 75-67-341. (1) The Commissioner of Banking shall develop
253 and provide any necessary forms to carry out the provisions of
254 this article.

255 (2) To assure compliance with the provisions of this
256 article, the commissioner may examine the pawn books and records
257 of any licensee without notice during normal business hours.

258 Any expenses incurred for such examinations are included in
259 the licensee's application fee; however, the commissioner may
260 charge the licensee any actual expenses incurred while examining
261 the licensee's pawn records or books which are located outside of
262 the State of Mississippi.

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

266 75-67-___. The commissioner, or his duly authorized
267 representative, for the purpose of discovering violations of this

268 article and for the purpose of determining whether persons are
269 subject to the provisions of this article, may examine persons
270 licensed under this article and persons reasonably suspected by
271 the commissioner of conducting business that requires a license
272 under this article, including all relevant books, records and
273 papers employed by those persons in the transaction of their
274 business, and may summon witnesses and examine them under oath
275 concerning matters relating to the business of those persons, or
276 such other matters as may be relevant to the discovery of
277 violations of this article, including without limitation the
278 conduct of business without a license as required under this
279 article.

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

282 75-67-305. (1) At the time of making the pawn or purchase
283 transaction, the pawnbroker shall enter upon the pawn ticket a
284 record of the following information which shall be typed or
285 written in ink and in the English language:

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

288 (i) Brand name;

289 (ii) Model number;

290 (iii) Serial number;

291 (iv) Size;

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

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

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

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

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

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

304 (c) Date of pawn or purchase transaction;

305 (d) Driver's license number or social security number
306 or Mississippi identification card number, as defined in Section
307 45-35-1, Mississippi Code of 1972, of the pledgor or seller or
308 identification information verified by at least two (2) forms of
309 identification, one (1) of which shall be a photographic
310 identification;

311 (e) Description of the pledgor including approximate
312 height, sex and race;

313 (f) Amount of cash advanced;

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

316 (h) The monthly rate and pawn charge. Such rates and
317 charges shall be disclosed using the requirements prescribed in
318 Regulation Z (Truth in Lending) of the rules and regulations of
319 the Board of Governors of the Federal Reserve.

320 (2) Each pawn or purchase transaction document shall be
321 consecutively numbered and entered in a corresponding log or
322 record book. Separate logs or record books for pawn and purchase
323 transactions shall be kept.

324 (3) Records may be in the form of traditional hard copies,
325 computer printouts or magnetic media if readily accessible for
326 viewing on a screen with the capability of being promptly printed
327 upon request.

328 (4) Every licensee shall maintain a record which indicates
329 the total number of accounts and the total dollar value of all
330 pawn transactions outstanding as of December 31 of each year.

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

333 75-67-309. (1) The pledgor or seller shall sign a statement
334 verifying that the pledgor or seller is the rightful owner of the
335 goods or is entitled to sell or pledge the goods and shall receive
336 an exact copy of the pawn ticket which shall be signed or
337 initialed by the pawnbroker or any employee of the pawnbroker.

338 (2) The pawnbroker shall maintain a record of all
339 transactions of pledged or purchased goods on the premises. A
340 pawnbroker shall upon request provide to the appropriate law
341 enforcement agency a complete record of all transactions. These
342 records shall be a correct copy of the entries made of the pawn or
343 purchase transaction, except as to the amount of cash advanced or
344 paid for the goods and monthly pawnshop charge. If the law
345 enforcement agency supplies the appropriate computer software and
346 the pawnbroker has the appropriate computer hardware, all
347 transactions shall be made available by means of electronic
348 transmission through a modem or similar device or by providing a
349 computer disc to the law enforcement agency within seventy-two
350 (72) hours of the transaction. Any pawnbroker who is recording
351 transactions through the use of computer hardware on the effective
352 date of this act and is provided such appropriate software shall
353 not cease or alter the use of his computer hardware unless
354 authorized by the law enforcement agency.

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

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

364 75-67-315. A pawnbroker and any clerk, agent or employee of
365 such pawnbroker shall not:

- 366 (a) Fail to make an entry of any material matter in his
367 record book;
- 368 (b) Make any false entry therein;
- 369 (c) Falsify, obliterate, destroy or remove from his
370 place of business such records, books or accounts relating to the
371 licensee's pawn transaction;
- 372 (d) Refuse to allow the commissioner, the appropriate
373 law enforcement agency, the Attorney General or any other duly
374 authorized state or federal law enforcement officer to inspect his
375 pawn records or any pawn goods in his possession during the
376 ordinary hours of business or other acceptable time to both
377 parties;
- 378 (e) Fail to maintain a record of each pawn transaction
379 for four (4) years;
- 380 (f) Accept a pledge or purchase property from a person
381 under the age of eighteen (18) years;
- 382 (g) Make any agreement requiring the personal liability
383 of a pledgor or seller, or waiving any of the provisions of this
384 act or providing for a maturity date less than thirty (30) days
385 after the date of the pawn transaction;
- 386 (h) Fail to return or replace pledged goods to a
387 pledgor or seller upon payment of the full amount due the
388 pawnbroker unless the pledged goods have been taken into custody
389 by a court or a law enforcement officer or agency;
- 390 (i) Sell or lease, or agree to sell or lease, pledged
391 or purchased goods back to the pledgor or back to the seller in
392 the same or related transaction;
- 393 (j) Sell or otherwise charge for insurance in
394 connection with a pawn transaction;
- 395 (k) Remove pledged goods from the premises within
396 thirty (30) days following the originally fixed maturity date;

397 (1) Accept a pledge or purchase property when such
398 property has manufacturer's serial numbers which have been
399 obviously removed and/or obliterated.

400 SECTION 10. Section 75-67-335, Mississippi Code of 1972, is
401 amended as follows:

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

420 SECTION 11. This act shall take effect and be in force from
421 and after its passage.