

By: Senator(s) Turner

To: Business and Financial
Institutions

SENATE BILL NO. 2816

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 THAT THE COMMISSIONER OF BANKING SHALL PROVIDE NOTICE
10 AND 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 75-67-335, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
24 RESTITUTION TO PAWNBROKERS; AND FOR RELATED PURPOSES.

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

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

28 75-67-303. The following words and phrases used in this
29 article shall have the following meanings unless the context
30 clearly indicates otherwise:

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

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

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

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

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

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

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

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

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

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

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

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

89 75-67-321. (1) A person may not engage in business as a
90 pawnbroker or otherwise portray himself as a pawnbroker unless the
91 person has a valid license authorizing engagement in the business.
92 A separate license is required for each place of business under
93 this article. The commissioner may issue more than one (1)
94 license to a person if that person complies with this article for
95 each license. A new license or application to transfer an
96 existing license is required upon a change, directly or
97 beneficially, in the ownership of any licensed pawnshop and an
98 application shall be made to the commissioner in accordance with
99 this article.

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

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

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

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

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

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

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

144 75-67-323. To be eligible for a pawnbroker license, an
145 applicant shall:

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

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

151 (c) File with the commissioner a bond with good
152 security in the penal sum of Ten Thousand Dollars (\$10,000),
153 payable to the State of Mississippi for the faithful performance
154 by the licensee of the duties and obligations pertaining to the
155 business so licensed and the prompt payment of any judgment which
156 may be recovered against such licensee on account of damages or
157 other claim arising directly or collaterally from any violation of
158 the provisions of this article; such bond shall not be valid until
159 it is approved by the commissioner; such applicant may file, in
160 lieu thereof, cash, a certificate of deposit, or government bonds
161 in the amount of Ten Thousand Dollars (\$10,000.00); such deposit
162 shall be filed with the commissioner and is subject to the same
163 terms and conditions as are provided for in the surety bond
164 required herein; any interest or earnings on such deposits are
165 payable to the depositor.

166 (d) File with the commissioner an application
167 accompanied by the initial license fee * * *.

168 (e) Submit a set of fingerprints from any local law
169 enforcement agency. In order to determine the applicant's
170 suitability for license, the commissioner shall forward the
171 fingerprints to the Department of Public Safety; and if no
172 disqualifying record is identified at the state level, the
173 fingerprints shall be forwarded by the Department of Public Safety
174 to the Federal Bureau of Investigation for a national criminal
175 history record check.

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

178 75-67-333. (1) In addition to any other penalty which may
179 be applicable, any licensee or employee who willfully violates any
180 provision of this article, or who willfully makes a false entry in
181 any record specifically required by this article, shall be guilty
182 of a misdemeanor and upon conviction thereof, shall be punishable
183 by a fine not in excess of One Thousand Dollars (\$1,000.00) per
184 violation or false entry.

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

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

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

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

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

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

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

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

231 75-67-341. (1) The Commissioner of Banking shall develop
232 and provide any necessary forms to carry out the provisions of
233 this article.

234 (2) To assure compliance with the provisions of this
235 article, the commissioner may examine the books and records of any
236 licensee without notice during normal business hours. The
237 commissioner may charge the licensee an examination fee in an
238 amount not less than Two Hundred Dollars (\$200.00) nor more than
239 Three Hundred Dollars (\$300.00) per examination of each office or
240 location within the State of Mississippi, plus any actual expenses
241 incurred while examining the licensee's records or books that are
242 located outside the State of Mississippi. However, in no event
243 shall a licensee be examined more than once in a three-year period
244 unless for cause shown based upon consumer complaint and/or other
245 exigent reasons as determined by the commissioner.

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

249 75-67-___. The commissioner, or his duly authorized
250 representative, for the purpose of discovering violations of this
251 article and for the purpose of determining whether persons are
252 subject to the provisions of this article, may examine persons
253 licensed under this article and persons reasonably suspected by
254 the commissioner of conducting business that requires a license
255 under this article, including all relevant books, records and
256 papers employed by those persons in the transaction of their
257 business, and may summon witnesses and examine them under oath
258 concerning matters relating to the business of those persons, or
259 such other matters as may be relevant to the discovery of
260 violations of this article, including without limitation the
261 conduct of business without a license as required under this
262 article.

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

265 75-67-305. At the time of making the pawn or purchase
266 transaction, the pawnbroker shall enter upon the pawn ticket a
267 record of the following information which shall be recorded on the
268 receipt:

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

271 (i) Brand name;

272 (ii) Model number;

273 (iii) Serial number;

274 (iv) Size;

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

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

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

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

282 (ix) Any other unique identifying marks, numbers,
283 names or letters.

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

286 (c) Date of pawn or purchase transaction;

287 (d) Driver's license number or social security number
288 or Mississippi identification card number, as defined in Section
289 45-35-1, Mississippi Code of 1972, of the pledgor or seller or
290 identification information verified by at least two (2) forms of
291 identification, one (1) of which shall be a photographic
292 identification;

293 (e) Description of the pledgor including approximate
294 height, sex and race;

295 (f) Amount of cash advanced;

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

298 (h) The monthly rate and pawn charge.

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

301 75-67-309. (1) The pledgor or seller shall sign a statement
302 verifying that the pledgor or seller is the rightful owner of the
303 goods or is entitled to sell or pledge the goods and shall receive
304 an exact copy of the pawn ticket which shall be signed or
305 initialed by the pawnbroker or any employee of the pawnbroker.

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

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

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

324 75-67-315. A pawnbroker and any clerk, agent or employee of
325 such pawnbroker shall not:

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

328 (b) Make any false entry therein;

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

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

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

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

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

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

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

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

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

357 (l) Accept a pledge or purchase property when such
358 property has manufacturer's serial numbers which have been
359 obviously removed and/or obliterated.

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

362 75-67-335. If any pledged goods from a pawn transaction are
363 found to be stolen goods and are returned to the rightful owner by
364 law enforcement authorities and if the licensee who accepted such
365 pledged goods has complied with all of the duties and
366 responsibilities as specified in this article during such
367 transaction, then the rightful owner of such pledged goods shall
368 be liable to the licensee for the pledged amount if the rightful
369 owner fails to prosecute or cooperate in the criminal prosecution
370 related to such pawn transaction, provided that the rightful owner
371 can prove that the stolen goods are his. It shall also be the
372 responsibility of the licensee to assist or cooperate in the
373 criminal prosecution related to such pawn transaction. Upon
374 successful criminal prosecution, restitution shall be awarded to
375 the pawnbroker by the criminal court at the time of the
376 defendant's sentencing. If the identity of a person who pawned
377 stolen goods can be determined, the district attorney may
378 prosecute such person for any applicable criminal violations.

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