

By: Representative Smith

To: Judiciary B

HOUSE BILL NO. 940
(As Sent to Governor)

1 AN ACT TO PROVIDE THAT IT IS UNLAWFUL TO TAKE, USE, SELL OR
2 DISPOSE OF CONSIGNED MOTOR FUELS WITHOUT THE CONSENT OF THE
3 CONSIGNOR; TO PROVIDE A DEFINITION FOR CONSIGNED MOTOR FUELS; TO
4 REQUIRE A WRITTEN AGREEMENT BETWEEN CONSIGNORS AND CONSIGNEES OF
5 MOTOR FUELS THAT STATES TITLE TO THE CONSIGNED MOTOR FUELS IS
6 VESTED IN THE CONSIGNOR; TO PROVIDE PENALTIES FOR THE THEFT OF
7 CONSIGNED MOTOR FUELS; TO AMEND SECTION 99-19-71, MISSISSIPPI CODE
8 OF 1972, TO PROVIDE FOR EXPUNGEMENT OF A CONVICTION OF LARCENY
9 UNDER THIS ACT ON THE SAME BASIS AS IS PROVIDED FOR LARCENIES
10 GENERALLY; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** As used in this act, the term "consigned motor
13 fuels" means all grades of gasoline including gasohol or any
14 gasoline blend, any grade of diesel or kerosene and all aviation
15 fuels that are delivered or caused to be delivered by one (1)
16 merchant, hereinafter designated the consignor, to another
17 merchant who deals in goods of that kind for the purpose of sale,
18 hereinafter designated the consignee, and which are not owned by
19 the consignee, but remain the property of the consignor.

20 **SECTION 2.** (1) There shall be a written agreement between
21 the consignor and the consignee, reflecting not only the
22 consignment agreement between the parties, but that title to the



23 consigned motor fuels and to the proceeds from the sale of the
24 consigned motor fuels is always vested in the consignor and never
25 the consignee.

26 (2) Nothing in this section shall be construed to create a
27 new or additional element necessary to prove the commission of
28 theft of property in any degree.

29 **SECTION 3.** It shall be unlawful for any person to take, use,
30 sell or dispose of consigned motor fuels, or the proceeds from the
31 sale of consigned motor fuels, without the consent of the
32 consignor and in violation of the written agreement required in
33 Section 2 of this act.

34 **SECTION 4.** A person who violates this act shall be guilty of
35 larceny of consigned motor fuels and subject to those penalties
36 provided in Section 97-17-41 or 97-17-43 based on value of the
37 property taken.

38 **SECTION 5.** Section 99-19-71, Mississippi Code of 1972, is
39 amended as follows:

40 99-19-71. (1) Any person who has been convicted of a
41 misdemeanor that is not a traffic violation, and who is a first
42 offender, may petition the justice, county, circuit or municipal
43 court in which the conviction was had for an order to expunge any
44 such conviction from all public records.

45 (2) (a) Any person who has been convicted of one (1) of the
46 following felonies may petition the court in which the conviction
47 was had for an order to expunge one (1) conviction from all public



48 records five (5) years after the successful completion of all
49 terms and conditions of the sentence for the conviction: a bad
50 check offense under Section 97-19-55; possession of a controlled
51 substance or paraphernalia under Section 41-29-139(c) or (d);
52 false pretense under Section 97-19-39; larceny under Section
53 97-17-41; larceny of consigned motor fuels under Section 4 of this
54 act; malicious mischief under Section 97-17-67; or shoplifting
55 under Section 97-23-93. A person is eligible for only one (1)
56 felony expunction under this paragraph.

57 (b) Any person who was under the age of twenty-one (21)
58 years when he committed a felony may petition the court in which
59 the conviction was had for an order to expunge one (1) conviction
60 from all public records five (5) years after the successful
61 completion of all terms and conditions of the sentence for the
62 conviction; however, eligibility for expunction shall not apply to
63 a felony classified as a crime of violence under Section 97-3-2
64 and any felony that, in the determination of the circuit court, is
65 related to the distribution of a controlled substance and in the
66 court's discretion it should not be expunged. A person is
67 eligible for only one (1) felony expunction under this paragraph.

68 (c) The petitioner shall give ten (10) days' written
69 notice to the district attorney before any hearing on the
70 petition. In all cases, the court wherein the petition is filed
71 may grant the petition if the court determines, on the record or
72 in writing, that the applicant is rehabilitated from the offense



73 which is the subject of the petition. In those cases where the
74 court denies the petition, the findings of the court in this
75 respect shall be identified specifically and not generally.

76 (3) Upon entering an order of expunction under this section,
77 a nonpublic record thereof shall be retained by the Mississippi
78 Criminal Information Center solely for the purpose of determining
79 whether, in subsequent proceedings, the person is a first
80 offender. The order of expunction shall not preclude a district
81 attorney's office from retaining a nonpublic record thereof for
82 law enforcement purposes only. The existence of an order of
83 expunction shall not preclude an employer from asking a
84 prospective employee if the employee has had an order of
85 expunction entered on his behalf. The effect of the expunction
86 order shall be to restore the person, in the contemplation of the
87 law, to the status he occupied before any arrest or indictment for
88 which convicted. No person as to whom an expunction order has
89 been entered shall be held thereafter under any provision of law
90 to be guilty of perjury or to have otherwise given a false
91 statement by reason of his failure to recite or acknowledge such
92 arrest, indictment or conviction in response to any inquiry made
93 of him for any purpose other than the purpose of determining, in
94 any subsequent proceedings under this section, whether the person
95 is a first offender. A person as to whom an order has been
96 entered, upon request, shall be required to advise the court, in
97 camera, of the previous conviction and expunction in any legal



98 proceeding wherein the person has been called as a prospective
99 juror. The court shall thereafter and before the selection of the
100 jury advise the attorneys representing the parties of the previous
101 conviction and expunction.

102 (4) Upon petition therefor, a justice, county, circuit or
103 municipal court shall expunge the record of any case in which an
104 arrest was made, the person arrested was released and the case was
105 dismissed or the charges were dropped or there was no disposition
106 of such case.

107 (5) No public official is eligible for expunction under this
108 section for any conviction related to his official duties.

109 **SECTION 6.** This act shall take effect and be in force from
110 and after July 1, 2019.

