

By: Senator(s) Flowers

To: Judiciary, Division B

SENATE BILL NO. 2840

1 AN ACT TO AMEND SECTION 97-17-64, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE OFFENSE FOR FAILURE TO RETURN LEASED OR RENTED VIDEO
3 TAPS, COMPACT DISCS, DIGITAL VERSATILE DISCS AND SIMILAR RENTED
4 ITEMS; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 97-17-64, Mississippi Code of 1972, is
7 amended as follows:

8 97-17-64. (1) A person who obtains personal property of
9 another under a lease or rental agreement is guilty of theft if he
10 exercises unlawful or unauthorized control over the property with
11 purpose to deprive the owner thereof. As used in this section,
12 the word "deprive" means to withhold property of another
13 permanently or for so extended a period that a significant portion
14 of its economic value, or the use or benefit thereof, is lost to
15 the owner; or to withhold the property with intent to restore it
16 to the owner only upon payment of a reward or other compensation;
17 or to conceal, abandon or dispose of the property so as to make it
18 unlikely that the owner will recover it; or to sell, give, pledge,
19 or otherwise transfer any interest in the property.

20 (2) It shall be prima facie evidence of purpose to deprive
21 when a person:

22 (a) In obtaining such property presents identification
23 or information which is materially false, fictitious, misleading
24 or not current, with respect to such person's name, address, place
25 of employment, or any other material matter; or

26 (b) Fails to return such property to the owner or his
27 representative within ten (10) days after proper notice following

28 the expiration of the term for which such person's use, possession
29 or control of the property is authorized; or

30 (c) Fails to contact the owner or his representative to
31 make arrangements to return such property within ten (10) days
32 after proper notice following the expiration of the term for which
33 such person's use, possession or control of such property is
34 authorized.

35 (3) For the purpose of this section, "proper notice" means
36 either actual notification as may be otherwise proven beyond a
37 reasonable doubt or a written demand for return of the property
38 mailed to the defendant, which satisfies the following procedure:

39 (a) The written demand must be mailed to the defendant
40 by certified or registered mail with return receipt attached,
41 which return receipt by its terms must be signed by the defendant
42 personally and not by his representative;

43 (b) The written demand must be mailed to the defendant
44 at either the address given at the time he obtained the property
45 or the defendant's last known address if later furnished in
46 writing by the defendant to the owner or his representative; and

47 (c) The return receipt bearing the defendant's
48 signature must be returned to the owner or his representative.

49 (4) It shall be an affirmative defense to prosecution under
50 this section that:

51 (a) The defendant was unaware that the property was
52 that of another; or

53 (b) The defendant acted under an honest claim of right
54 to the property involved or that he had a right to acquire or
55 dispose of it as he did; or

56 (c) The defendant was physically incapacitated and
57 unable to request or obtain permission of the owner to retain the
58 property; or

59 (d) The property was in such a condition, through no
60 fault of the defendant, that it could not be returned within the
61 requisite time after receipt of proper notice.

62 (5) Any person convicted of the offense of theft under this
63 section shall be:

64 (a) When the personal property involved is a video
65 tape, compact disc, digital versatile disc or other electronic
66 medium obtained under a lease or rental agreement, guilty of a
67 civil offense and punished by a civil fine of not more than
68 Twenty-five Dollars (\$25.00) per item not returned.

69 (b) Guilty of a misdemeanor when the value of the
70 personal property is less than Two Hundred Fifty Dollars (\$250.00)
71 and punished by a fine of not more than Two Hundred Fifty Dollars
72 (\$250.00), or by imprisonment in the county jail for a term of not
73 more than six (6) months, or by both such fine and imprisonment;
74 or

75 (c) Guilty of a felony when the value of the personal
76 property is Two Hundred Fifty Dollars (\$250.00) or more and
77 punished by a fine of not more than One Thousand Dollars
78 (\$1,000.00), or by imprisonment in the State Penitentiary for a
79 term of not more than three (3) years, or by both such fine and
80 imprisonment.

81 **SECTION 2.** This act shall take effect and be in force from
82 and after July 1, 2005.