

1 SB531
2 140925-1
3 By Senator Taylor
4 RFD: Banking and Insurance
5 First Read: 17-APR-12

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8 SYNOPSIS: Under existing law, the Alabama Pawnshop Act
9 governs pawn transactions.

10 This bill would clarify that vehicle and
11 manufactured home titles, land deeds, and real
12 estate are not pledged goods; require certain
13 conditions regarding renewed pawn transactions;
14 clarify prohibited acts regarding maintaining
15 pledged goods; increase the license and
16 investigation fees; provide for regulations;
17 clarify the procedures related to the confiscation
18 of property by local law enforcement; and clarify
19 that no additional fees relating to the reporting
20 of a pawn transaction may be imposed.

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22 A BILL
23 TO BE ENTITLED
24 AN ACT

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26 To amend Sections 5-19A-2, 5-19A-7, 5-19A-8,
27 5-19A-11, 5-19A-15, and 5-19A-19 of the Code of Alabama 1975,

1 relating to the Alabama Pawnshop Act; to clarify that vehicle
2 and manufactured home titles, land deeds, and real estate are
3 not pledged goods; to require certain conditions regarding
4 renewed pawn transactions; to clarify the prohibited acts
5 regarding maintaining pledged goods; to increase the license
6 and investigation fees; to provide for regulations; to clarify
7 the procedures related to the confiscation of property by
8 local law enforcement; and to clarify that no additional fees
9 relating to the reporting of a pawn transaction may be
10 imposed.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 5-19A-2, 5-19A-7, 5-19A-8,
13 5-19A-11, 5-19A-15, and 5-19A-19 of the Code of Alabama 1975,
14 are amended to read as follows:

15 "§5-19A-2.

16 "The following words and phrases shall have the
17 following meanings:

18 "(1) APPROPRIATE LAW ENFORCEMENT AGENCY. The sheriff
19 of each county in which the pawnbroker maintains an office, or
20 the police chief of the municipality in which the pawnbroker
21 maintains an office.

22 "(2) ATTORNEY GENERAL. The Attorney General of the
23 State of Alabama.

24 "(3) PAWN TRANSACTION. Any loan on the security of
25 pledged goods or any purchase of pledged goods on condition
26 that the pledged goods are left with the pawnbroker and may be
27 redeemed or repurchased by the seller for a fixed price within

1 a fixed period of time. A "pawn transaction" does not include
2 the pledge to, or the purchase by, a pawnbroker of real or
3 personal property from a customer followed by the sale or the
4 leasing of that property back to the customer in the same or a
5 related transaction. A "pawn transaction" does not include a
6 title to a manufactured home. A "pawn transaction" does not
7 include a vehicle title pledge which is subject to the Alabama
8 Title Pledge Act.

9 "(4) PAWNBROKER. Any person engaged in the business
10 of lending money on the security of pledged goods left in
11 pawn, or in the business of purchasing tangible personal
12 property to be left in pawn on the condition that it may be
13 redeemed or repurchased by the seller for a fixed price within
14 a fixed period of time. Notwithstanding the foregoing, the
15 following are exempt from the definition of the term
16 "pawnbroker" and from this chapter: any bank which is
17 regulated by the State Banking Department of Alabama; the
18 Comptroller of the Currency of the United States; the Federal
19 Deposit Insurance Corporation; the Board of Governors of the
20 Federal Reserve System or any other federal or state
21 authority; and all affiliates thereof and any bank or savings
22 and loan association whose deposits or accounts are eligible
23 for insurance by the Bank Insurance Fund or the Savings
24 Association Insurance Fund or other fund administered by the
25 Federal Deposit Insurance Corporation all affiliates thereof,
26 any state or federally chartered credit union, and any finance
27 company subject to licensing and regulation by the State

1 Banking Department pursuant to Sections 5-19-1 to 5-19-19,
2 inclusive.

3 "(5) PERSON. An individual, partnership,
4 corporation, joint venture, trust, association, or any legal
5 entity.

6 "(6) PLEDGED GOODS. Tangible personal property other
7 than choses in action, securities, or printed evidences of
8 indebtedness, which property is purchased by, deposited with,
9 or otherwise actually delivered into the possession of, a
10 pawnbroker in connection with a pawn transaction.

11 "(7) SUPERVISOR. The Supervisor of the Bureau of
12 Loans of the State Banking Department.

13 "§5-19A-7.

14 "(a) A pawnbroker may contract for and receive a
15 pawnshop charge in lieu of interest or other charges for all
16 services, expenses, costs, and losses of every nature but not
17 to exceed 25 percent of the principal amount, per month,
18 advanced in the pawn transaction.

19 "(b) Any interest, charge, or fees contracted for or
20 received, directly or indirectly, in excess of the amount
21 permitted under subsection (a) shall be uncollectible and the
22 pawn transaction shall be void. The pawnshop charge allowed
23 under subsection (a) shall be deemed earned, due, and owing as
24 of the date of the pawn transaction and a like sum shall be
25 deemed earned, due, and owing on the same day of the
26 succeeding month.

1 "(c) A pawnbroker may renew a pawn transaction, but
2 the pawnshop fee shall be prorated if renewed prior to the
3 maturity date. The new maturity date for renewals shall be 30
4 days from the date of the renewal.

5 "§5-19A-8.

6 "A pawnbroker, any clerk, agent, or employee of a
7 pawnbroker shall not do any of the following:

8 "(1) Fail to make an entry of any material matter in
9 the record book.

10 "(2) Make any false entry therein.

11 "(3) Falsify, obliterate, destroy, or remove from
12 the place of business records, books, or accounts relating to
13 the licensee's pawn transactions.

14 "(4) Refuse to allow the supervisor, the appropriate
15 law enforcement agency, the Attorney General, or any other
16 duly authorized state or federal law enforcement officer to
17 inspect the pawn records or any pawn goods during the ordinary
18 hours of business or other acceptable time to both parties.

19 "(5) Fail to maintain a record of each pawn
20 transaction for at least four years.

21 "(6) Accept a pledge or purchase property from a
22 person under the age of 19 years.

23 "(7) Make any agreement requiring the personal
24 liability of a pledgor or seller or waiving any of the
25 provisions of this section or providing for a maturity date
26 less than 30 days after the date of the pawn transaction.

1 "(8) Fail to return or replace pledged goods to a
2 pledgor or seller upon payment of the full amount due the
3 pawnbroker unless the pledged goods have been taken into
4 custody by a court or by a law enforcement officer or agency.

5 "(9) Sell, lease, or agree to sell or lease pledged
6 or purchased goods back to the pledgor or back to the seller
7 and the same or related transaction.

8 "(10) Sell or otherwise charge for insurance in
9 connection with a pawn transaction.

10 "(11) Fail to maintain pledged goods on the premises
11 until redeemed or forfeited by the pledgor. Large pledged
12 items such as boats, motorcycles, riding lawnmowers, and
13 similar large items may be stored at an off-site storage area
14 that is under the control of the pawnshop.

15 "§5-19A-11.

16 "(a) A person may not engage in business as a
17 pawnbroker unless the person has a valid license authorizing
18 engagement in the business. A separate license is required for
19 each place of business. The supervisor may issue more than one
20 license to a person if that person complies with this chapter
21 for each license. A new license or application to transfer an
22 existing license is required upon any change, directly or
23 beneficially, in the ownership of any licensed pawnshop and an
24 application must be made to the supervisor in accordance with
25 this chapter.

26 "(b) When a licensee wishes to move a pawnshop to
27 another location, the licensee shall give 30 days written

1 notice to the supervisor, who shall then amend the license
2 accordingly.

3 "(c) Each license shall remain in full force and
4 effect until relinquished, suspended, revoked, or expired.
5 Every licensee, on or before each December 1st, shall pay the
6 supervisor ~~\$100.00~~ five hundred dollars (\$500) for each
7 license as the annual fee for the succeeding calendar year. ~~If~~
8 ~~the annual fee remains unpaid 30 days after written notice of~~
9 ~~delinquency has been given to the licensee by the supervisor,~~
10 ~~the~~ The license shall ~~thereupon~~ expire, ~~but not before~~
11 December 31st of any year for which the annual fee has been
12 paid. All licensing and investigation fees shall be paid into
13 the special fund established under Section 5-2A-20. The annual
14 license fee required shall be delinquent on January 1 of each
15 year and there shall be a penalty of 10 percent for each month
16 or portion thereof that the licensee is delinquent in the
17 payment of the license fee.

18 "(d) The license shall be in the form prescribed by
19 the supervisor, posted conspicuously in the place of business
20 of the licensee, and shall not be assignable or transferable
21 or removed to another location without the permission of the
22 supervisor.

23 "~~(d)~~ (e) The supervisor may issue a temporary
24 license authorizing the operation of a pawnshop upon receipt
25 of an application to transfer a license from one person to
26 another, or upon the receipt of an application for a license
27 involving principals and owners that are substantially

1 identical to those of an existing licensed pawnshop. The
2 temporary license shall be effective until the permanent
3 license is issued or denied.

4 ~~"(e)~~ (f) A new license or an application to transfer
5 an existing license shall not be required upon any change,
6 directly or beneficially, in the ownership of a licensed
7 pawnshop incorporated under the laws of this state or any
8 other state if the licensee continues to operate as a
9 corporation doing a pawnbroking business under the license.
10 The supervisor may require the licensee to provide information
11 deemed reasonable and appropriate concerning the officers and
12 directors of the corporation and persons owning in excess of
13 25 percent of the outstanding shares of the corporation.

14 "(g) The supervisor may adopt reasonable
15 regulations, not inconsistent with law, for the enforcement of
16 this chapter. Prior to the adoption, amendment, or repeal of
17 any regulation, the supervisor shall give at least 35 days'
18 notice of his or her intended action by filing notice of
19 intended action with the Legislative Reference Service for
20 publication in the Alabama Administrative Monthly. All
21 interested persons shall have a reasonable opportunity to
22 submit data, views, or arguments, orally or in writing. The
23 supervisor shall consider all written and oral submissions
24 respecting the proposed regulation. Upon adoption of a
25 regulation, the supervisor, if conflicting views are submitted
26 on the proposed regulation and if requested in writing to do
27 so by an interested person prior to adoption, shall issue a

1 concise statement of the principal reasons for and against its
2 adoption, incorporating therein his or her reasons for
3 overruling any considerations urged against its adoption.
4 Notwithstanding any other provision of this chapter to the
5 contrary, if the supervisor finds that an immediate danger to
6 the public health, safety, or welfare requires adoption of a
7 regulation upon fewer than 35 days' notice or that action is
8 required by or to comply with a federal statute or regulation
9 which requires adoption of a regulation upon fewer than 35
10 days' notice and states in writing his or her reasons for that
11 finding, he or she may proceed without prior notice or hearing
12 or upon any abbreviated notice and hearing that he or she
13 finds practicable, to adopt an emergency regulation. The
14 regulation shall become effective immediately, unless
15 otherwise stated. The regulation may be effective for a period
16 of 120 days or less. A person who has exhausted all
17 administrative remedies available within the department, other
18 than rehearing, and who is aggrieved by a final decision of
19 the supervisor with respect to a regulation, shall be entitled
20 to judicial review under this chapter. All proceedings for
21 review shall be instituted by filing a notice of appeal or
22 review and a cost bond with the supervisor to cover the
23 reasonable costs of preparing the transcript of the proceeding
24 under review, unless waived by the supervisor or the court on
25 a showing of substantial hardship. The notice of appeal and
26 cost bond shall be filed within 42 days after the date the
27 supervisor issued his or her final regulation. The appeal

1 shall be filed in the Circuit Court of Montgomery County. The
2 regulation shall be in effect pending the outcome of any
3 appeal unless the supervisor stays the effective date of the
4 regulation. Interpretations, opinion, and approvals shall
5 protect, to the extent provided in subsection (c), as
6 applicable, both the licensee at whose request they were
7 issued and any other licensee in a materially like
8 circumstance.

9 "(h) For the purpose of determining compliance with
10 this chapter, the supervisor, at any reasonable time, may
11 cause an examination to be made at the licensee's place of
12 business of the records and transactions of the licensee. As
13 cost of examination, the licensee shall pay the supervisor an
14 examination fee as provided by Section 5-2A-24 which shall be
15 collected and paid into the special fund provided in Section
16 5-2A-20 and used in the supervision and examination of
17 licensees.

18 "§5-19A-15.

19 "(a) ~~No pledged or purchased goods may be~~
20 ~~confiscated if the property pledged to, or purchased by, a~~
21 ~~pawnbroker may be put on a seven-day hold by the authorized~~
22 ~~law enforcement authorities, but the pledged or purchased~~
23 ~~property may not be placed on hold unless: When an appropriate~~
24 ~~law enforcement official has probable cause to believe that~~
25 ~~property in the possession of a pawnbroker is misappropriated,~~
26 ~~the official may place a written hold order on the property.~~
27 The written hold order shall impose a holding period not to

1 exceed 90 days unless extended by court order. The appropriate
2 law enforcement official may rescind, in writing, any hold
3 order. An appropriate law enforcement official may place only
4 one hold order per property.

5 ~~"(1) A police report is made in a timely manner.~~

6 ~~"(2) A warrant is sworn out for the person who~~
7 ~~pledged or sold the goods to the pawnbroker or for alias if~~
8 ~~the person is unknown.~~

9 ~~"(3) A warrant or writ is issued for the merchandise~~
10 ~~to be confiscated along with a request for restitution,~~
11 ~~pursuant to law.~~

12 ~~"(b) This section shall not affect the right of any~~
13 ~~person who has an ownership interest or prior lien in the~~
14 ~~pledged or purchased goods. Upon the expiration of the holding~~
15 ~~period, the pawnbroker shall notify, in writing, the~~
16 ~~appropriate law enforcement official by certified mail, return~~
17 ~~receipt requested, that the holding period has expired. If, on~~
18 ~~the 10th day after the written notice has been received by the~~
19 ~~appropriate law enforcement official, the pawnbroker has not~~
20 ~~received from a court an extension of the hold order on the~~
21 ~~property, title to the property shall vest in and be deemed~~
22 ~~conveyed by operation of law to the pawnbroker, free of any~~
23 ~~liability for claims but subject to any restrictions contained~~
24 ~~in the pawn transaction contract and subject to this section.~~

25 "(c) A hold order shall specify all of the
26 following:

27 "(1) The name and address of the pawnbroker.

1 "(2) The name, title, and identification number of
2 the representative of the appropriate law enforcement official
3 or the court placing the hold order.

4 "(3) If applicable, the name and address of the
5 appropriate law enforcement official or court to which such
6 representative is attached and the number, if any, assigned to
7 the claim regarding the property.

8 "(4) A complete description of the property to be
9 held, including model number and serial number if applicable.

10 "(5) The name of the person reporting the property
11 to be misappropriated unless otherwise prohibited by law.

12 "(6) The mailing address of the pawnbroker where the
13 property is held.

14 "(7) The expiration date of the holding period.

15 "(d) The pawnbroker or the pawnbroker's
16 representative shall sign and date a copy of the hold order as
17 evidence of receipt of the hold order and the beginning of the
18 90-day holding period.

19 "(e) (1) Except as provided in subdivision (2), a
20 pawnbroker may not release or dispose of property subject to a
21 hold order except pursuant to a court order, a written release
22 from the appropriate law enforcement official, or the
23 expiration of the holding period of the hold order.

24 "(2) While a hold order is in effect, the pawnbroker
25 shall upon request release the property subject to the hold
26 order to the custody of the appropriate law enforcement
27 official for use in a criminal investigation. The release of

1 the property to the custody of the appropriate law enforcement
2 official shall not be considered a waiver or release of the
3 pawnbroker's property rights or interest in the property. Upon
4 completion of the criminal proceeding, the property shall be
5 returned to the pawnbroker unless the court orders other
6 disposition. When such other disposition is ordered, the court
7 shall additionally order the conveying customer to pay
8 restitution to the pawnbroker in the amount received by the
9 conveying customer for the property together with reasonable
10 attorney's fees and costs.

11 "(f) This section shall not affect the right of any
12 person who has ownership interest or prior lien in the pledged
13 or purchased goods.

14 "§5-19A-19.

15 "Any municipality may enact ordinances which are in
16 compliance with but not more restrictive than this chapter
17 however, no municipality, county, or local government may
18 enact local laws or ordinances that require the payment of any
19 fee or tax related to a pawn transaction or purchase or
20 relating to the reporting of any pawn transaction or purchase
21 information to any law enforcement agency or to any agent of a
22 state or local department or an independent party who
23 receives, stores, or disseminates information from any pawn or
24 purchase transaction. Any existing or future order,
25 ordinances, or regulation which conflicts with this provision
26 shall be null and void."

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.