

1 HB689  
2 140582-1  
3 By Representative Todd  
4 RFD: Financial Services  
5 First Read: 12-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.

21  
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25  
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.