

motie 5



Draft Motion
on Pawn shop Legislation

Presented by Romain Laville on behalf of the United People's Party
Faction in Parliament of Country St. Maarten in its meeting of today March
19th 2012

22nd

Considering:

1. That Country St. Maarten has no legislation in place for the operation and obligations of pawn shops and cash for gold businesses
2. The spike in burglaries on our island of St. Maarten affecting our local inhabitants and visiting guest
3. That pawn shops and cash for gold businesses are seemingly used as a cash out no questions asked business on St. Maarten;
4. The growing world wide demand for gold, which has led to increasing theft of jewelry in homes and or around the necks of persons in the community;
5. The pawn shops and cash for gold businesses purchase items from individuals knowingly or unknowingly might be stolen goods with no obligation to report transaction to the police;
6. The law enforcement has no jurisdiction to search the pawnshops and cash for gold business premises or access to the pawn records for stolen property;

[Handwritten signatures and notes]
 - 19/3/2012
 - 03/19/02
 - [Signature]



Resolves:

To request that Government to do all within its power to:

Start within (90days) to enact a new law that regulates pawn shop and cash for gold business activities and to use the Alabama Pawn shop Act as a blue print and customize such to befit Country St. Maarten.
(see attached law)

and proceeds to the order of the day.

Copies of this motion to be sent to:

The Governor of St. Maarten
The Council of Ministers
The Council of Advice

Romya Laville

Ruth Douglas
[Signature] MP
19 3 2012

Silvia Meyers
[Signature]

[Signature]
03/9/12

[Signature]

[Signature]

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Alabama Pawn Shop Act

Title 5, Chapter 19A

• Chapter 19A Alabama Pawn Shop Act

Section 5-19A-1 Short title.

Section 5-19A-2 Definitions.

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Section 5-19A-13 Suspension or revocation of license; notice and

hearing; surrender of license.

Section 5-19A-14 Application for new pawnshop license, transfer of existing license, etc.

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Section 5-19A-16 Penalties for failure to secure license.

Section 5-19A-17 Penalties for willful violation of chapter or for false entry in required records; compliance enforced by supervisor; order requiring person to refrain from violation.

Section 5-19A-18 Department of Public Safety to supply available arrest and conviction records.

Section 5-19A-19 Ordinances to be in compliance with but not more restrictive than chapter.

Section 5-19A-20 Pawnbrokers to be subject to licensing and issuance fees under Chapter 12 of Title 40; chapter not to repeal

Uniform Commercial Code. Chapter 19A Pawn Shop Act

Section 5-19A-1

Short title.

This chapter shall be known and may be cited as the "Alabama Pawnshop Act."

(Acts 1992, No. 92-597, p. 1227, §1.)

Section 5-19A-2

Definitions.

The following words and phrases shall have the following meanings:

(1) APPROPRIATE LAW ENFORCEMENT AGENCY. The sheriff of each

county in which the pawnbroker maintains an office, or the police chief of the municipality in which the pawnbroker maintains an office.

(2) **ATTORNEY GENERAL.** The Attorney General of the State of Alabama.

(3) **PAWN TRANSACTION.** Any loan on the security of pledged goods or any purchase of pledged goods on condition that the pledged goods are left with the pawnbroker and may be redeemed or repurchased by the seller for a fixed price within a fixed period of time. A "pawn transaction" does not include the pledge to, or the purchase by, a pawnbroker of real or personal property from a customer followed by the sale or the leasing of that property back to the customer in the same or a related transaction.

(4) **PAWNBROKER.** Any person engaged in the business of lending money on the security of pledged goods left in pawn, or in the business of purchasing tangible personal property to be left in pawn on the condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time. Notwithstanding the foregoing, the following are exempt from the definition of the term "pawnbroker" and from this chapter: any bank which is regulated by the State Banking Department of Alabama; the Comptroller of the Currency of the United States; the Federal Deposit Insurance Corporation; the Board of Governors of the Federal Reserve System or any other federal or state authority; and all affiliates thereof and any bank or savings and loan association whose deposits or accounts are eligible for insurance by the Bank Insurance Fund or the Savings Association Insurance Fund or other fund administered by the Federal Deposit Insurance Corporation all affiliates

thereof, any state or federally chartered credit union, and any finance company subject to licensing and regulation by the State Banking

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

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

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

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

(Acts 1992, No. 92-597, p. 1227, §2.)

Section 5-19A-3

Pawnbroker to enter on pawn ticket record of information.

At the time of making the pawn or purchase transaction, the pawnbroker shall enter on the pawn ticket a record of the following information which shall be typed or written in ink and in the English language:

- (1) A clear and accurate description of the property, including model and serial number if indicated on the property.
- (2) The name, residence address, and date of birth of the pledgor or seller.
- (3) Date of the pawn or purchase transaction.
- (4) Type of identification and the identification number accepted from pledgor or seller.
- (5) Description of the pledgor including approximate height, sex, and race.
- (6) Amount of cash advanced.

(7) The maturity date of the pawn transaction and the amount due.

(8) The monthly rate and pawn charges.

(Acts 1992, No. 92-597, p. 1227, §3.) Section 5-19A-4

Certain information to be printed on pawn tickets.

The following information shall be printed on all pawn tickets:

(1) The statement that "Any personal property pledged to a pawnbroker within this state is subject to sale or disposal when there has been no payment made on the account for a period of 30 days past maturity date of the original contract, and no further notice is necessary."

(2) The statement that "The pledgor of this item attests that it is not stolen, it has no liens or encumbrances against it, and the pledgor has the right to sell or pawn the item."

(3) The statement that "The item pawned is redeemable only by the bearer of this ticket."

(4) A blank line for the pledgor's signature.

(Acts 1992, No. 92-597, p. 1227, §4.)

Section 5-19A-5

Statement verifying pledgor is rightful owner of goods; pawnbroker to maintain record of transactions; goods to be maintained on premises for certain number of days before resale.

(a) The pledgor or seller shall sign a statement verifying that the pledgor or seller is the rightful owner of the goods or is entitled to sell or pledge the goods and shall receive an exact copy of the pawn ticket which shall be signed or initialed by the pawnbroker or any employee of the pawnbroker.

(b) The pawnbroker shall maintain a record of all transactions of pledged or purchased goods on the premises. A pawnbroker shall make available

to the appropriate law enforcement agency a record of the transactions.

These records shall be a correct copy of the entries made of the pawn or purchase transaction, except as to the amount of cash advanced or paid for the goods and the monthly pawnshop charge.

(c) All goods purchased by the pawnbroker except for automobiles, trucks, and similar vehicles shall be maintained on the premises by the pawnbroker for at least fifteen business days before the goods may be offered for resale. Automobiles, trucks, and similar vehicles shall be maintained on the premises for 21 calendar days.

(Acts 1992, No. 92-597, p. 1227, §5.) Section 5-19A-6

Redemption or automatic forfeiture of pledged goods.

A pledgor shall have no obligation to redeem pledged goods or make any payment on a pawn transaction. Pledged goods not redeemed within 30 days following the originally fixed maturity date shall be forfeited to the pawnbroker and absolute right, title, and interest in and to the goods shall vest in the pawnbroker.

(Acts 1992, No. 92-597, p. 1227, §6.)

Section 5-19A-7

Pawnshop charge; amounts in excess of pawnshop charge.

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

(b) Any interest, charge, or fees contracted for or received, directly or indirectly, in excess of the amount permitted under subsection (a) shall be uncollectible and the pawn transaction shall be void. The pawnshop

charge allowed under subsection (a) shall be deemed earned, due, and owing as of the date of the pawn transaction and a like sum shall be deemed earned, due, and owing on the same day of the succeeding month.

(Acts 1992, No. 92-597, p. 1227, §7.)

Section 5-19A-8

Certain acts by pawnbrokers prohibited.

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

- (1) Fail to make an entry of any material matter in the record book.
- (2) Make any false entry therein.
- (3) Falsify, obliterate, destroy, or remove from the place of business records, books, or accounts relating to the licensee's pawn transactions.
- (4) Refuse to allow the supervisor, the appropriate law enforcement agency, the Attorney General, or any other duly authorized state or federal law enforcement officer to inspect the pawn records or any pawn goods during the ordinary hours of business or other acceptable time to both parties.
- (5) Fail to maintain a record of each pawn transaction for at least four years.
- (6) Accept a pledge or purchase property from a person under the age of 19 years.
- (7) Make any agreement requiring the personal liability of a pledgor or seller or waiving any of the provisions of this section or providing for a maturity date less than 30 days after the date of the pawn transaction.
- (8) Fail to return or replace pledged goods to a pledgor or seller upon

payment of the full amount due the pawnbroker unless the pledged goods have been taken into custody by a court or by a law enforcement officer or agency.

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

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

(Acts 1992, No. 92-597, p. 1227, §8.)

Section 5-19A-9

Pledgor presenting pawn ticket entitled to redeem or repurchase goods; lost or damaged pledged goods in possession of pawnbroker; lost, destroyed, or stolen pawn ticket.

(a) Any person properly identified as pledgor or as authorized representative of the pledgor and presenting a pawn ticket to the pawnbroker shall be entitled to redeem or repurchase the pledged goods described in the ticket. In the event pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with like kinds of merchandise and proof of replacement shall be a defense to any prosecution. For the purposes of this subsection, "lost" includes pledged goods that have been destroyed or have disappeared due to willful neglect that results in the pledged goods being unavailable for return to the pledgor.

(b) If the pawn ticket is lost, destroyed, or stolen, the pledgor shall so notify the pawnbroker in writing, and receipt of this notice shall invalidate

the pawn ticket, if the pledged goods have not previously been redeemed. Before delivering the pledged goods or issuing a new pawn ticket, the

pawnbroker shall require the pledgor to make a written statement of the loss, destruction, or theft of the ticket. The pawnbroker shall record on the written statement the identifying information required by Section 5-19A-3, the date the statement is given, and the number of the pawn ticket lost, destroyed, or stolen. The statement shall be signed by the pawnbroker or the pawnshop employee who accepts the statement from the pledgor. A pawnbroker is entitled to a fee not to exceed five dollars in connection with each lost, destroyed, or stolen pawn ticket and the taking of a properly prepared written statement for the pawn ticket.

(Acts 1992, No. 92-597, p. 1227, §9.)

Section 5-19A-10

Liens for pawnbrokers; pledged goods not redeemed on or before maturity date fixed in ticket.

(a) A pawnbroker shall have a lien on the pledged goods pawned for the money advanced and the pawnshop charge owed, but not for other debts due to the pawnbroker, subject to the rights of other persons who have an ownership interest or prior liens in the pledged goods. The pawnbroker shall retain possession of the pledged goods except as otherwise herein provided until the lien is satisfied.

(b) Pledged goods not redeemed on or before the maturity date if fixed and set out in the pawn ticket issued in connection with any transaction shall be held by the pawnbroker for 30 days following that date and may be redeemed or repurchased by the pledgor or seller within the period by the payment of the originally agreed redemption price, and by the payment

of an additional pawnshop charge equal to the original pawnshop charge.

(Acts 1992, No. 92-597, p. 1227, §10.)

Section 5-19A-11

Licensing generally; annual fee; temporary license; when new license not required upon change in ownership.

(a) A person may not engage in business as a pawnbroker unless the person has a valid license authorizing engagement in the business. A separate license is required for each place of business. The supervisor may issue more than one license to a person if that person complies with this chapter for each license. A new license or application to transfer an existing license is required upon any change, directly or beneficially, in the ownership of any licensed pawnshop and an application must be made to the supervisor in accordance with this chapter. (b) When a licensee wishes to move a pawnshop to another location, the

licensee shall give 30 days written notice to the supervisor, who shall then amend the license accordingly.

(c) Each license shall remain in full force and effect until relinquished, suspended, revoked, or expired. Every licensee, on or before each December 1st, shall pay the supervisor $100.00 for each license as the annual fee for the succeeding calendar year. If the annual fee remains unpaid 30 days after written notice of delinquency has been given to the licensee by the supervisor, the license shall thereupon expire, but not before December 31st of any year for which the annual fee has been paid.

All licensing and investigation fees shall be paid into the special fund established under Section 5-2A-20.

(d) The supervisor may issue a temporary license authorizing the

operation of a pawnshop upon receipt of an application to transfer a license from one person to another, or upon the receipt of an application for a license involving principals and owners that are substantially identical to those of an existing licensed pawnshop. The temporary license shall be effective until the permanent license is issued or denied.

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

(Acts 1992, No. 92-597, p. 1227, §11.)

Section 5-19A-11

Licensing generally; annual fee; temporary license; when new license not required upon change in ownership.

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the supervisor in accordance with this chapter. (b) When a licensee wishes to move a pawnshop to another location, the

licensee shall give 30 days written notice to the supervisor, who shall then amend the license accordingly.

(c) Each license shall remain in full force and effect until relinquished, suspended, revoked, or expired. Every licensee, on or before each December 1st, shall pay the supervisor $100.00 for each license as the annual fee for the succeeding calendar year. If the annual fee remains unpaid 30 days after written notice of delinquency has been given to the licensee by the supervisor, the license shall thereupon expire, but not before December 31st of any year for which the annual fee has been paid. All licensing and investigation fees shall be paid into the special fund established under Section 5-2A-20.

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(e) A new license or an application to transfer an existing license shall not be required upon any change, directly or beneficially, in the ownership of a licensed pawnshop incorporated under the laws of this state or any other state if the licensee continues to operate as a corporation doing a pawnbroking business under the license. The supervisor may require the licensee to provide information deemed reasonable and appropriate concerning the officers and directors of the corporation and persons

owning in excess of 25 percent of the outstanding shares of the corporation.

(Acts 1992, No. 92-597, p. 1227, §11.)

Section 5-19A-12

Eligibility for pawnshop license; application fee.

(a) To be eligible for a pawnshop license, an applicant shall:

(1) Operate lawfully and fairly within the purposes of this chapter.

(2) Not have been convicted of a felony within the last 10 years or not be acting as a beneficial owner for someone who has been convicted of a felony within the last 10 years.

(b) The application shall be accompanied by a fee of \$50.00 to be paid to the Supervisor if the applicant does not possess an existing license at the time of applying for the pawnshop license. If the application involves a second or additional license to an applicant previously licensed for a separate location or involves substantially identical principals and owners of a licensed pawnshop at a separate location. The application shall be accompanied by a fee of \$50.00.

(Acts 1992, No. 92-597, p. 1227, §12.)

Section 5-19A-13

Suspension or revocation of license; notice and hearing; surrender of license.

(a) The supervisor may, after notice and hearing, suspend or revoke any license upon a finding that:

(1) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated this chapter.

(2) A fact or condition exists which, if it had existed or had been known to

exist at the time of the original application for a license, would have justified the supervisor in refusing a license.

(3) The licensee has aided, abetted, or conspired with an individual or person to circumvent or violate the requirements of this chapter.

(4) The licensee or a legal or beneficial owner of the license has been convicted of a crime that the supervisor finds directly relates to the duties and responsibilities of the occupation of pawnbroker.

(b) The supervisor may conditionally license or place on probation a person whose license has been suspended or may reprimand a licensee for a violation of this chapter.

(c) The manner of giving notice and conducting a hearing, as required by subsection (a), shall be as required by Sections 41-22-12 and 41-22-13.

(d) Any licensee may surrender a license by delivering it to the supervisor with written notice of its surrender. Notwithstanding the foregoing, this surrender shall not affect the civil or criminal liability of the licensee for acts committed prior to surrendering of the license.

(e) No revocation, suspension, or surrender of a license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any pledgor. Any pawn transaction made without benefit of

license is void. (f) The supervisor may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which would have justified the supervisor in refusing originally to issue a license under this chapter.

(Acts 1992, No. 92-597, p. 1227, §13.)

Section 5-19A-14

Application for new pawnshop license, transfer of existing license, etc.

(a) An application for a new pawnshop license, the transfer of an existing pawnshop license, or the approval of a change in the ownership of a licensed pawnshop shall be under oath and shall state the full name and place of residence of the applicant, the place where the business is to be conducted, and other relevant information required by the supervisor. If the applicant is a partnership, the application shall state the full name and address of each partner. If the applicant is a corporation, the application shall state the full name and address of each officer, shareholder, and director.

(b) Notwithstanding the foregoing, the application need not state the full name and address of each shareholder, if the applicant is owned directly or beneficially by a person which as an issuer has a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, or pursuant to Section 15(d) is an issuer of securities which is required to file reports with the Securities and Exchange Commission, if the person files with the supervisor any information, documents, and reports required by that act to be filed with the Securities and Exchange Commission.

(Acts 1992, No. 92-597, p. 1227, §14.)

Section 5-19A-15

No confiscation of property pledged to pawnbroker if property may be put on seven-day hold; when property may be placed on hold.

(a) No pledged or purchased goods may be confiscated if the property pledged to, or purchased by, a pawnbroker may be put on a seven-day hold by the authorized law enforcement authorities, but the pledged or purchased property may not be placed on hold unless:

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

(2) A warrant is sworn out for the person who pledged or sold the goods to the pawnbroker or for alias if the person is unknown. (3) A warrant or writ is issued for the merchandise to be confiscated along with a request for restitution, pursuant to law.

(b) This section shall not affect the right of any person who has an ownership interest or prior lien in the pledged or purchased goods.

(Acts 1992, No. 92-597, p. 1227, §15.)

Section 5-19A-16

Penalties for failure to secure license.

Any person who engages in the business of operating a pawnshop without first securing the license prescribed by this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not in excess of \$1,000.00 or by confinement in the county jail for not more than one year, or for both.

(Acts 1992, No. 92-597, p. 1227, §16.)

Section 5-19A-17

Penalties for willful violation of chapter or for false entry in required records; compliance enforced by supervisor; order requiring person to refrain from violation.

(a) In addition to any other penalty which may be applicable, any licensee who willfully violates this chapter or who willfully makes a false entry in any record specifically required by this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not in excess of \$1,000.00 per violation or false entry.

(b) Compliance with this chapter shall be enforced by the supervisor who may exercise any authority conferred by law.

(c) When the supervisor has reasonable cause to believe that a person is violating this chapter, the supervisor, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop or to refrain from the violation. The supervisor may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in, continuing the violation, or from doing any act in furtherance of the violation. In an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

(Acts 1992, No. 92-597, p. 1227, §17.) Section 5-19A-18

Department of Public Safety to supply available arrest and conviction records.

The Department of Public Safety on request shall supply to the supervisor any available arrest and conviction records of an individual applying for or holding a license under this chapter.

(Acts 1992, No. 92-597, p. 1227, §18.)

Section 5-19A-19

Ordinances to be in compliance with but not more restrictive than chapter.

Any municipality may enact ordinances which are in compliance with but not more restrictive than this chapter. Any existing or future order, ordinances, or regulation which conflicts with this provision shall be null and void.

(Acts 1992, No. 92-597, p. 1227, §20.)

Section 5-19A-20

Pawnbrokers to be subject to licensing and issuance fees under Chapter 12 of Title 40; chapter not to repeal Uniform Commercial Code.

Notwithstanding the foregoing, all persons currently doing business as

pawnbrokers and those seeking licensure under this chapter, shall be subject to the applicable licensing and issuance fees levied under Chapter 12 of Title 40. This chapter shall not repeal or be construed to repeal any provision of the Uniform Commercial Code, Sections 7-1-101 et seq. (Acts 1992, No. 92-597, p. 1227, §21.)



STATEN VAN SINT MAARTEN
Thursday, March 22, 2012 Public Meeting no. 13

Voting list Motion no. 5

Law shop

NO.	NAME	VOOR/FOR	TEGEN/AGAINST
1.	Drs. Gracita R. Arrindell		
2.	P.G. Illidge		
3.	S.V. Olivacce-Meyers		
4.	J.E. Leonard		
5.	J.C. James		
6.	R.J. Laville		
7.	R.A.G. Douglass		
8.	R.R. Marlin		
9.	P.L. de Weever		
10.	W.V. Marlin		
11.	L.J. Richardson		
12.	G.C. Pantophlet		
13.	H.L. Richardson		
14.	L.E. Laveist		
15.	F.G. Richardson		

*Algemene Stemme
overgenomen*