3/29/19 2:11 P.M.

Chapter No. 428
19/HR43/R538SG
FF 1 EST

HOUSE BILL NO. 940

Originated in House _____ Clerk

HOUSE BILL NO. 940

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

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

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

SECTION 2. (1) There shall be a written agreement between the consignor and the consignee, reflecting not only the

consignment agreement between the parties, but that title to the consigned motor fuels and to the proceeds from the sale of the consigned motor fuels is always vested in the consignor and never the consignee.

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

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

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

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

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

(2) (a) Any person who has been convicted of one (1) of the following felonies may petition the court in which the conviction

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

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

(c) The petitioner shall give ten (10) days' written notice to the district attorney before any hearing on the petition. In all cases, the court wherein the petition is filed may grant the petition if the court determines, on the record or

in writing, that the applicant is rehabilitated from the offense which is the subject of the petition. In those cases where the court denies the petition, the findings of the court in this respect shall be identified specifically and not generally.

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

camera, of the previous conviction and expunction in any legal proceeding wherein the person has been called as a prospective juror. The court shall thereafter and before the selection of the jury advise the attorneys representing the parties of the previous conviction and expunction.

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

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

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

PASSED BY THE HOUSE OF REPRESENTATIVES
February 13, 2019

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 13, 2019

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

3/29/2019 2:16pm