

By: Representative Guice

To: Banks and Banking

## HOUSE BILL NO. 821

1 AN ACT TO REENACT SECTIONS 75-67-501 THROUGH 75-67-537,  
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE LICENSURE AND  
3 REGULATION OF CHECK CASHERS BY THE DEPARTMENT OF BANKING AND  
4 CONSUMER FINANCE; TO AMEND REENACTED SECTIONS 75-67-501,  
5 75-67-503, 75-67-505, 75-67-507, 75-67-509, 75-67-513, 75-67-515,  
6 75-67-517, 75-67-521, 75-67-523, 75-67-525, 75-67-527, 75-67-529,  
7 75-67-531, 75-67-533, 75-67-535, 75-67-537, MISSISSIPPI CODE OF  
8 1972, TO CHANGE REFERENCES TO CODE SECTION NUMBERS TO REFERENCES  
9 TO "THIS ARTICLE"; TO AMEND SECTION 75-67-539, MISSISSIPPI CODE OF  
10 1972, TO EXTEND THE DATE OF THE REPEALER ON THE MISSISSIPPI CHECK  
11 CASHERS ACT; AND FOR RELATED PURPOSES.

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

13 SECTION 1. Section 75-67-501, Mississippi Code of 1972, is  
14 reenacted and amended as follows:

15 75-67-501. This article shall be known and may be cited as  
16 the "Mississippi Check Cashers Act."

17 SECTION 2. Section 75-67-503, Mississippi Code of 1972, is  
18 reenacted and amended as follows:

19 75-67-503. The following words and phrases used in this  
20 article shall have the following meanings unless the context  
21 clearly indicates otherwise:

22 (a) "Appropriate law enforcement agency" means the  
23 sheriff of each county in which the licensee maintains an office,  
24 or the police chief of the municipality in which the licensee  
25 maintains an office, or law enforcement officers of the Department  
26 of Public Safety.

27 (b) "Attorney General" means the Attorney General of  
28 the State of Mississippi.

29 (c) "Check" means any check, draft, money order,  
30 personal money order, or other instrument for the transmission or

31 payment of money as determined by the Commissioner of Banking and  
32 Consumer Finance, but shall not include travelers checks or  
33 foreign drawn payment instruments.

34 (d) A "check casher" means any individual, partnership,  
35 association, joint stock association, trust or corporation,  
36 excluding the United States Government and the government of this  
37 state, who exchanges cash or other value for any check, draft,  
38 money order, personal money order, or other instrument for the  
39 transmission or payment of money, except travelers checks and  
40 foreign drawn payment instruments, and who charges a fee therefor.

41 (e) "Commissioner" means the Mississippi Commissioner  
42 of Banking and Consumer Finance, or his designee, as the  
43 designated official for the purpose of enforcing this article.

44 (f) "Consideration" includes any premium charged for  
45 the sale of goods or services in excess of the cash price of the  
46 goods or services.

47 (g) "Department" means the Department of Banking and  
48 Consumer Finance.

49 (h) "Licensee" means any individual, partnership,  
50 association or corporation duly licensed by the Department of  
51 Banking and Consumer Finance to engage in the business of cashing  
52 checks under this article.

53 (i) "Person" means an individual, partnership,  
54 corporation, joint venture, trust, association or any legal entity  
55 however organized.

56 (j) "Personal money order" means any instrument for the  
57 transmission or payment of money in relation to which the  
58 purchaser or remitter appoints or purports to appoint the seller  
59 thereof as his agent for the receipt, transmission or handling of  
60 money, whether such instrument is signed by the seller or by the  
61 purchaser or remitter or some other person.

62 SECTION 3. Section 75-67-505, Mississippi Code of 1972, is  
63 reenacted and amended as follows:

64 75-67-505. (1) A person may not engage in business as a  
65 check casher or otherwise portray himself as a check casher unless  
66 the person has a valid license authorizing engagement in the  
67 business. A separate license is required for each place of

68 business under this article and each business must be independent  
69 of, and not a part of, any other business operation. A check  
70 cashing business shall not be a part of, or located at the same  
71 business address with, a pawnshop, title pledge office and small  
72 loan company. However, a licensed check casher may, as a part of  
73 his business, sell money orders and operate a processing center  
74 where utility bills are collected from the general public and  
75 governmental payments are distributed. The commissioner may issue  
76 more than one (1) license to a person if that person complies with  
77 this article for each license. A new license or application to  
78 transfer an existing license is required upon a change, directly  
79 or beneficially, in the ownership of any licensed check casher  
80 business and an application shall be made to the commissioner in  
81 accordance with this article.

82 (2) When a licensee wishes to move a check casher business  
83 to another location, the licensee shall give thirty (30) days'  
84 prior written notice to the commissioner who shall amend the  
85 license accordingly.

86 (3) Each license shall remain in full force and effect until  
87 relinquished, suspended, revoked or expired. Every licensee, on  
88 or before each September 1, shall complete and file with the tax  
89 assessor of the county or city clerk of the municipality in which  
90 the check casher business is located, an annual renewal  
91 application for each license held by him. If the annual renewal  
92 application is not filed for twenty-nine (29) days after September  
93 1, the license shall thereupon expire, but not before the  
94 thirtieth day of September of any year for which the prior  
95 application has been filed.

96 (4) Notwithstanding other provisions of this article, the  
97 commissioner may issue a temporary license authorizing the  
98 operator of a check casher business on the receipt of an  
99 application for a license involving principals and owners that are  
100 substantially identical to those of an existing licensed check

101 cashier. The temporary license is effective until the permanent  
102 license is issued or denied.

103 (5) Notwithstanding other provisions of this article,  
104 neither a new license nor an application to transfer an existing  
105 license shall be required upon any change, directly or  
106 beneficially, in the ownership of any licensed check cashier  
107 business incorporated under the laws of this state or any other  
108 state as long as the licensee continues to operate as a  
109 corporation doing a check cashier business under the license.  
110 However, the commissioner may require the licensee to provide such  
111 information as he deems reasonable and appropriate concerning the  
112 officers and directors of the corporation and persons owning in  
113 excess of twenty-five percent (25%) of the outstanding shares of  
114 the corporation.

115 SECTION 4. Section 75-67-507, Mississippi Code of 1972, is  
116 reenacted and amended as follows:

117 75-67-507. The provisions of this article shall not apply  
118 to:

119 (a) Any bank, trust company, savings association,  
120 savings and loan association, savings bank or credit union which  
121 is chartered under the laws of this state or under federal law and  
122 domiciled in this state.

123 (b) Any person who cashes checks at their face value  
124 and does not charge the consumer a fee or otherwise receive any  
125 consideration from the consumer.

126 (c) Any person principally engaged in the retail sale  
127 of goods or services who, either as an incident to or  
128 independently of a retail sale, may from time to time cash checks  
129 for a fee or other consideration, not exceeding three percent (3%)  
130 of the face amount of the check or Ten Dollars (\$10.00), whichever  
131 is greater.

132 SECTION 5. Section 75-67-509, Mississippi Code of 1972, is  
133 reenacted and amended as follows:

134 75-67-509. To be eligible for a check casher license, an  
135 applicant shall:

136 (a) Operate lawfully and fairly within the purposes of  
137 this article.

138 (b) Not have been convicted of a felony in the last ten  
139 (10) years or be active as a beneficial owner for someone who has  
140 been convicted of a felony in the last ten (10) years.

141 (c) File with the sheriff of the county or the mayor of  
142 the municipality in which the check casher business is to be  
143 located, a bond with good security in the penal sum of Ten  
144 Thousand Dollars (\$10,000.00), payable to the mayor of the  
145 municipality or the sheriff of the county in which the check  
146 casher business is to be located, and their successors in office,  
147 for the faithful performance by the licensee of the duties and  
148 obligations pertaining to the business so licensed and the prompt  
149 payment of any judgment which may be recovered against the  
150 licensee on account of charges or other claims arising directly or  
151 collectively from any violation of the provisions of this article.

152 The bond shall not be valid until it is approved by the mayor of  
153 the municipality or by the sheriff of the county. The applicant  
154 may file, in lieu of the bond, cash, a certificate of deposit or  
155 government bonds in the amount of Ten Thousand Dollars  
156 (\$10,000.00). Those deposits shall be filed with the mayor of the  
157 municipality or the sheriff of the county in which the check  
158 casher is located, and is subject to the same terms and conditions  
159 as are provided for in the surety bond required in this paragraph.  
160 Any interest or earnings on those deposits are payable to the  
161 depositor.

162 (d) File with the tax assessor of the county or the  
163 city clerk of the municipality in which the check casher business  
164 is to be located, an application for a license. Upon completion  
165 of an investigation of the applicant, the tax assessor or city  
166 clerk shall send a copy of the filed application along with his

167 recommendation for the commissioner's approval or disapproval of  
168 the application. If applicant's application is approved, a check  
169 casher license will be issued within thirty (30) days.

170 (e) Submit a set of fingerprints from any local law  
171 enforcement agency.

172 (f) Complete and file with the tax assessor of the  
173 county or city clerk of the municipality in which the check casher  
174 business is located, an annual renewal application for a license.

175 SECTION 6. Section 75-67-511, Mississippi Code of 1972, is  
176 reenacted as follows:

177 75-67-511. Each application for a license shall be in a form  
178 prescribed by the commissioner, signed under oath, and shall  
179 include the following:

180 (a) The legal name, residence and business address of  
181 the applicant and, if the applicant is a partnership, association  
182 or corporation, of every member, officer and director thereof.

183 However, the application need not state the full name and  
184 address of each shareholder, if the applicant is owned directly or  
185 beneficially by a person which as an issuer has a class of  
186 securities registered under Section 12 of the Securities and  
187 Exchange Act of 1934 or is an issuer of securities which is  
188 required to file reports with the Securities and Exchange  
189 Commission under Section 15(d) of the Securities and Exchange Act,  
190 provided that the person files with the commissioner such  
191 information, documents and reports as are required by the  
192 provisions of the Securities and Exchange Act to be filed by the  
193 issuer with the Securities and Exchange Commission.

194 (b) The complete address of the location at which the  
195 applicant proposes to engage in the business of cashing checks.

196 (c) Other data and information the department may  
197 require with respect to the applicant, its directors, trustees,  
198 officers, members or agents.

199 (d) Sworn financial statements of the applicant showing

200 a net worth of at least Twenty Thousand Dollars (\$20,000.00).

201 SECTION 7. Section 75-67-513, Mississippi Code of 1972, is  
202 reenacted and amended as follows:

203 65-67-513. (1) Upon filing of an application in a form  
204 prescribed by the commissioner, accompanied by the documents  
205 required in this article, the department shall investigate to  
206 ascertain whether the qualifications prescribed by Sections  
207 75-67-509 and 75-67-511 have been satisfied. If the commissioner  
208 finds that the qualifications have been satisfied and, if he  
209 approves the documents so filed by the applicant, he shall issue  
210 to the applicant a license to engage in the business of check  
211 cashing in this state.

212 (2) The license shall be kept conspicuously posted in the  
213 place of business of the licensee.

214 SECTION 8. Section 75-67-515, Mississippi Code of 1972, is  
215 reenacted and amended as follows:

216 75-67-515. (1) The department may adopt reasonable  
217 administrative regulations, not inconsistent with law, for the  
218 enforcement of this article.

219 (2) To assure compliance with the provisions of this  
220 article, the department may examine the books and records of any  
221 licensee without notice during normal business hours.

222 (3) Each licensee shall keep and use in its business any  
223 books, accounts and records the department may require to carry  
224 into effect the provisions of this article and the administrative  
225 regulations issued under this article. Every licensee shall  
226 preserve the books, accounts and records of its business for at  
227 least two (2) years.

228 (4) Any fee charged by a licensee for cashing a check shall  
229 be posted conspicuously to the bearer of the check before cashing  
230 the check, and the fee shall be a service fee and not interest.

231 (5) Before a licensee deposits with any bank or other  
232 depository institution a check cashed by the licensee, the check

233 shall be endorsed with the actual name under which the licensee is  
234 doing business.

235 (6) All personal checks cashed for a customer by a licensee  
236 shall be dated on the actual date the cash is tendered to the  
237 customer.

238 (7) No licensee shall cash a check payable to a payee unless  
239 the licensee has previously obtained appropriate identification of  
240 the payee clearly indicating the authority of the person cashing  
241 the check, draft or money order on behalf of the payee.

242 (8) No licensee shall indicate through advertising, signs,  
243 billboards or otherwise that checks may be cashed without  
244 identification of the bearer of the check; and any person seeking  
245 to cash a check shall be required to submit reasonable  
246 identification as prescribed by the department. The provisions of  
247 this subsection shall not prohibit a licensee from cashing a check  
248 simultaneously with the verification and establishment of the  
249 identity of the presenter by means other than presentation of  
250 identification.

251 (9) Within five (5) business days after being advised by the  
252 payor financial institution that a check has been altered, forged,  
253 stolen, obtained through fraudulent or illegal means, negotiated  
254 without proper legal authority or represents the proceeds of  
255 illegal activity, the licensee shall notify the department and the  
256 district attorney for the judicial district in which the check was  
257 received. If a check is returned to the licensee by the payor  
258 financial institution for any of these reasons, the licensee may  
259 not release the check without consent of the district attorney or  
260 other investigating law enforcement authority.

261 (10) If a check is returned to a licensee from a payor  
262 financial institution because there are insufficient funds in or  
263 on deposit with the financial institution to pay the check, the  
264 licensee or any other person on behalf of the licensee shall not  
265 institute or initiate any criminal prosecution against the maker



266 or drawer of the personal check with the intent and purpose of  
267 aiding in the collection of or enforcing the payment of the amount  
268 owed to the check casher by the maker or drawer of the check.

269 SECTION 9. Section 75-67-517, Mississippi Code of 1972, is  
270 reenacted and amended as follows:

271 75-67-517. Notwithstanding any other provision of law, no  
272 check cashing business licensed under this article shall directly  
273 or indirectly charge or collect fees or other consideration for  
274 check cashing services in excess of the following:

275 (a) Three percent (3%) of the face amount of the check  
276 or Five Dollars (\$5.00), whichever is greater, for checks issued  
277 by the federal government, state government, or any agency of the  
278 state or agency of the state or federal government, or any county  
279 or municipality of this state.

280 (b) Ten percent (10%) of the face amount of the check  
281 or Five Dollars (\$5.00), whichever is greater, for personal  
282 checks.

283 (c) Five percent (5%) of the face amount of the check  
284 or Five Dollars (\$5.00), whichever is greater, for all other  
285 checks, or for money orders.

286 A licensee may not advance monies on the security of any  
287 personal check unless the presenter attests that the check being  
288 presented is drawn on a legitimate, open and active account.  
289 Except as provided by Section 75-67-519, any licensee who cashes a  
290 check for a fee shall deposit the check not later than three (3)  
291 business days from the date the check is cashed.

292 SECTION 10. Section 75-67-519, Mississippi Code of 1972, is  
293 reenacted as follows:

294 75-67-519. (1) A licensee may defer the deposit of a  
295 personal check cashed for a customer for up to thirty (30) days  
296 under the provisions of this section.

297 (2) The face amount of any delayed deposit check cashed  
298 under the provisions of this section shall not exceed Four Hundred

299 Dollars (\$400.00).

300 (3) Each delayed deposit check cashed by a licensee shall be  
301 documented by a written agreement that has been signed by the  
302 customer and the licensee. The written agreement shall contain a  
303 statement of the total amount of any fees charged, expressed as a  
304 dollar amount and as an annual percentage rate. The written  
305 agreement shall authorize the licensee to defer deposit of the  
306 personal check until a specific date not later than thirty (30)  
307 days from the date the check is cashed.

308 (4) A licensee shall not directly or indirectly charge any  
309 fee or other consideration for cashing a delayed deposit check in  
310 excess of eighteen percent (18%) of the face amount of the check.

311 (5) No check cashed under the provisions of this section  
312 shall be repaid by the proceeds of another check cashed by the  
313 same licensee or any affiliate of the licensee. A licensee shall  
314 not, for any consideration, renew or otherwise extend any delayed  
315 deposit check.

316 SECTION 11. Section 75-67-521, Mississippi Code of 1972, is  
317 reenacted and amended as follows:

318 75-67-521. (1) The commissioner may, after notice and  
319 hearing, suspend or revoke a license if he finds that:

320 (a) The licensee, either knowingly, or without the  
321 exercise of due care to prevent the same, has violated any  
322 provision of this article;

323 (b) Any fact or condition exists which, if it had  
324 existed or had been known to exist at the time of the original  
325 application for the license, clearly would have justified the  
326 commissioner in refusing the license;

327 (c) The licensee has aided, abetted or conspired with  
328 an individual or person to circumvent or violate the requirement  
329 of this article;

330 (d) The licensee, or a legal or beneficial owner of the  
331 license, has been convicted of a felony, or has been convicted of

332 a misdemeanor that the commissioner finds directly relates to the  
333 duties and responsibilities of the business of check cashing.

334 (2) The commissioner may conditionally license or place on  
335 probation a person whose license has been suspended or may  
336 reprimand a licensee for a violation of this article.

337 (3) The manner of giving notice and conducting a hearing as  
338 required by subsection (1) of this section shall be performed in  
339 accordance with procedures prescribed by the commissioner in rules  
340 or regulations adopted under Mississippi Administrative Procedures  
341 Law, Section 25-43-1 et seq.

342 (4) Any licensee may surrender any license by delivering it  
343 to the commissioner with written notice of its surrender, but that  
344 surrender shall not affect the licensee's civil or criminal  
345 liability for acts committed prior thereto.

346 (5) The commissioner may reinstate suspended licenses or  
347 issue new licenses to a person whose license or licenses have been  
348 revoked if no fact or condition then exists which clearly would  
349 have justified the commissioner in refusing originally to issue a  
350 license under this article.

351 (6) The appropriate local law enforcement agency shall be  
352 notified of any licensee who has his license suspended or revoked  
353 as provided by this article.

354 (7) The commissioner shall enforce the provisions of this  
355 section.

356

357 SECTION 12. Section 75-67-523, Mississippi Code of 1972, is  
358 reenacted and amended as follows:

359 75-67-523. The commissioner, or his duly authorized  
360 representative, for the purpose of discovering violations of this  
361 article and for the purpose of determining whether persons are  
362 subject to the provisions of this article, may examine persons  
363 licensed under this article and persons reasonably suspected by  
364 the commissioner of conducting business which requires a license

365 under this article, including all relevant books, records and  
366 papers employed by those persons in the transaction of their  
367 business, and may summon witnesses and examine them under oath  
368 concerning matters relating to the business of those persons, or  
369 such other matters as may be relevant to the discovery of  
370 violations of this article, including without limiting the conduct  
371 of business without a license as required under this article.

372 SECTION 13. Section 75-67-525, Mississippi Code of 1972, is  
373 reenacted and amended as follows:

374 75-67-525. Any person who engages in the business of check  
375 cashing without first securing a license prescribed by this  
376 article shall be guilty of a misdemeanor and upon conviction  
377 thereof, shall be punishable by a fine not in excess of One  
378 Thousand Dollars (\$1,000.00) or by confinement in the county jail  
379 for not more than one (1) year, or both.

380 SECTION 14. Section 75-67-527, Mississippi Code of 1972, is  
381 reenacted and amended as follows:

382 75-67-527. (1) In addition to any other penalty which may  
383 be applicable, any licensee or employee who willfully violates any  
384 provision of this article, or who willfully makes a false entry in  
385 any record specifically required by this article, shall be guilty  
386 of a misdemeanor and upon conviction thereof, shall be punishable  
387 by a fine not in excess of One Thousand Dollars (\$1,000.00) per  
388 violation or false entry.

389 (2) Compliance with the criminal provisions of this article  
390 shall be enforced by the appropriate law enforcement agency, which  
391 may exercise for that purpose any authority conferred upon the  
392 agency by law.

393 (3) When the commissioner has reasonable cause to believe  
394 that a person is violating any provision of this article, the  
395 commissioner, in addition to and without prejudice to the  
396 authority provided elsewhere in this article, may enter an order  
397 requiring the person to stop or to refrain from the violation.

398 The commissioner may sue in any circuit court of the state having  
399 jurisdiction and venue to enjoin the person from engaging in or  
400 continuing the violation or from doing any act in furtherance of  
401 the violation. In such an action, the court may enter an order or  
402 judgment awarding a preliminary or permanent injunction.

403 (4) The commissioner may impose a civil penalty against any  
404 licensee adjudged by the commissioner to be in violation of the  
405 provisions of this article. The civil penalty shall not exceed  
406 Five Hundred Dollars (\$500.00) per violation and shall be  
407 deposited into the Department of Banking and Consumer Finance,  
408 "Consumer Finance Fund."

409 (5) Any licensee convicted in the manner provided in this  
410 article shall forfeit the surety bond or deposit required in  
411 Section 75-67-509(c) \* \* \* and the amount of the bond or deposit  
412 shall be credited to the budget of the state or local agency which  
413 directly participated in the prosecution of the licensee, for the  
414 specific purpose of increasing law enforcement resources for that  
415 specific state or local agency. The bond or deposit shall be used  
416 to augment existing state and local law enforcement budgets and  
417 not to supplant them.

418 SECTION 15. Section 75-67-529, Mississippi Code of 1972, is  
419 reenacted and amended as follows:

420 75-67-529. The provisions of this article are severable. If  
421 any part of this article is declared invalid or unconstitutional,  
422 that declaration shall not affect the parts which remain.

423 SECTION 16. Section 75-67-531, Mississippi Code of 1972, is  
424 reenacted and amended as follows:

425 75-67-531. Check cashers operating check cashing locations  
426 in business as of July 1, 1998, shall have until September 30,  
427 1998, to apply for a license under this article, and upon the  
428 approval of the application, the commissioner shall grant a  
429 license under this article.

430 SECTION 17. Section 75-67-533, Mississippi Code of 1972, is

431 reenacted and amended as follows:

432           75-67-533. The commissioner shall develop and provide any  
433 necessary forms to carry out the provisions of this article.

434           SECTION 18. Section 75-67-535, Mississippi Code of 1972, is  
435 reenacted and amended as follows:

436           75-67-535. Municipalities in this state may enact ordinances  
437 which are in compliance with, but not more restrictive than, the  
438 provisions of this article. Any existing or future order,  
439 ordinance or regulation which conflicts with this provision shall  
440 be null and void.

441           SECTION 19. Section 75-67-537, Mississippi Code of 1972, is  
442 reenacted and amended as follows:

443           75-67-537. The commissioner may employ the necessary  
444 full-time employees above the number of permanent full-time  
445 employees authorized for the department for fiscal year 1999, to  
446 carry out and enforce the provisions of this article. The  
447 commissioner may also expend the necessary funds to equip and  
448 provide necessary travel expenses for those employees.

449           SECTION 20. Section 75-67-539, Mississippi Code of 1972, is  
450 amended as follows:

451           75-67-539. \* \* \* Sections 75-67-501 through 75-67-539 shall  
452 stand repealed on July 1, 2000.

453           SECTION 21. This act shall take effect and be in force from  
454 and after June 30, 1999.