

By: Representative Gadd

To: Judiciary B

HOUSE BILL NO. 1362

1 AN ACT TO AMEND SECTION 97-19-75, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE SERVICE CHARGE PAYABLE TO THE COMPLAINANT IN A BAD  
3 CHECK CASE; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 97-19-75, Mississippi Code of 1972, is  
6 amended as follows:

7 97-19-75. (1) The holder of any check, draft or order for  
8 the payment of money which has been made, drawn, issued, uttered  
9 or delivered in violation of Section 97-19-55, Mississippi Code of  
10 1972, may, after complying with the provisions of Section  
11 97-19-57, Mississippi Code of 1972, present a complaint to the  
12 district attorney. The complaint shall be accompanied by the  
13 original check, draft or order upon which the complaint is filed  
14 and the return receipt showing mailing of notice under Section  
15 97-19-57, Mississippi Code of 1972. Not more than one (1) check,  
16 draft or order shall be included within a single complaint. Upon  
17 receipt of such complaint, the district attorney shall evaluate  
18 the complaint to determine whether or not the complaint is  
19 appropriate to be processed by the district attorney.

20 (2) If, after filing a complaint with the district attorney,  
21 the complainant wishes to withdraw the complaint for good cause,  
22 the complainant shall pay a fee of Thirty Dollars (\$30.00) to the  
23 office of the district attorney for processing such complaint.  
24 Upon payment of the processing fee and withdrawal of the  
25 complaint, the district attorney shall return the original check,  
26 draft or order to the complainant.

27           (3) After approval of the complaint by the district  
28 attorney, a warrant may be issued by any judicial officer  
29 authorized by law to issue arrest warrants, and the warrant may be  
30 held by the district attorney. After issuance of a warrant or  
31 upon approval of a complaint by the district attorney, the  
32 district attorney shall issue a notice to the individual charged  
33 in the complaint, informing him that a warrant has been issued for  
34 his arrest or that a complaint has been received by the district  
35 attorney and that he may be eligible for deferred prosecution for  
36 a violation of Section 97-19-55, Mississippi Code of 1972, by  
37 voluntarily surrendering himself to the district attorney within  
38 ten (10) days, Saturdays, Sundays and legal holidays excepted,  
39 from receipt of the notice. Such notice shall be sent by United  
40 States mail.

41           (4) If the accused voluntarily surrenders himself within the  
42 time period as provided by subsection (3) of this section, the  
43 accused shall be presented with the complaint and/or warrant and  
44 prosecution of the accused may be deferred upon payment by the  
45 accused of a service charge in the amount of Forty Dollars  
46 (\$40.00) to the district attorney and by execution of a  
47 restitution agreement as hereinafter provided.

48           (5) For the purposes of Sections 97-19-73 through 97-19-81,  
49 the term "restitution" shall mean and be defined as the face  
50 amount of any check, draft or order for the payment of money made,  
51 drawn, issued, uttered or delivered in violation of Section  
52 97-19-55, Mississippi Code of 1972, plus a service charge payable  
53 to the complainant in the amount of Thirty Dollars (\$30.00).

54           (6) After an accused has voluntarily surrendered himself and  
55 paid the service charge as provided by subsection (4) of this  
56 section, the district attorney may enter into a restitution  
57 agreement with the accused prescribing the terms by which the  
58 accused shall satisfy restitution to the district attorney on  
59 behalf of the complainant. The terms of such agreement shall be

60 determined on a case-by-case basis by the district attorney, but  
61 the duration of any such agreement shall be no longer than a  
62 period of six (6) months. No interest shall be charged or  
63 collected on restitution monies. The restitution agreement shall  
64 be signed by the accused and approved by the district attorney  
65 before it is effective. If the accused does not honor each term  
66 of the restitution agreement signed by him, the accused may be  
67 proceeded against by prosecution under the provisions of Sections  
68 97-19-55 through 97-19-69, Mississippi Code of 1972, and as  
69 provided by Section 97-19-79. If the accused makes restitution  
70 and pays all charges set out by statute or if the accused enters  
71 into a restitution agreement as set out above and honors all terms  
72 of such agreement, then if requested, the original check may be  
73 returned to the accused and a photocopy retained in the check  
74 file.

75 (7) If the holder of any check, draft or order for the  
76 payment of money presents to the district attorney satisfactory  
77 evidence that the original check, draft or order is unavailable  
78 and satisfactory evidence of the check, draft or order is  
79 presented in the form of bank records or a photographic copy of  
80 the instrument, whether from microfilm or otherwise, then the  
81 procedures provided for in this section may be followed in the  
82 absence of the original check, draft or order.

83 SECTION 2. This act shall take effect and be in force from  
84 and after July 1, 1999.