Pending AMENDMENT No. 1 PROPOSED TO

House Bill NO. 821

By Senator(s) Committee

Amend by striking all after the enacting clause and inserting in lieu thereof the following: SECTION 1. Section 75-67-501, Mississippi Code of 1972, is 26 reenacted and amended as follows: 27 28 75-67-501. This article shall be known and may be cited as the "Mississippi Check Cashers Act." 29 SECTION 2. Section 75-67-503, Mississippi Code of 1972, is 30 reenacted and amended as follows: 31 75-67-503. The following words and phrases used in this 32 33 article shall have the following meanings unless the context clearly indicates otherwise: 34 (a) "Appropriate law enforcement agency" means the 35 sheriff of each county in which the licensee maintains an office, 36 or the police chief of the municipality in which the licensee 37 maintains an office, or law enforcement officers of the Department 38 of Public Safety. 39 40 (b) "Attorney General" means the Attorney General of the State of Mississippi. 41 42 (C) "Check" means any check, draft, money order, 43 personal money order, pre-authorized customer draft, or other instrument for the transmission or payment of money as determined 44 45 by the Commissioner of Banking and Consumer Finance, but shall not include travelers checks or foreign drawn payment instruments. 46

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47 (d) A "check casher" means any individual, partnership, 48 association, joint stock association, trust or corporation, 49 excluding the United States Government and the government of this state, who exchanges cash or other value for any check, draft, 50 money order, personal money order, or other instrument for the 51 transmission or payment of money, except travelers checks and 52 53 foreign drawn payment instruments, and who charges a fee therefor. 54 "Commissioner" means the Mississippi Commissioner (e) of Banking and Consumer Finance, or his designee, as the 55 56 designated official for the purpose of enforcing this article. 57 * * *

58 (f) "Department" means the Department of Banking and
59 Consumer Finance.

(q) "Licensee" means any individual, partnership,
association or corporation duly licensed by the Department of
Banking and Consumer Finance to engage in the business of cashing
checks under <u>this article</u>.

64 (h) "Person" means an individual, partnership,
65 corporation, joint venture, trust, association or any legal entity
66 however organized.

67 (i) "Personal money order" means any instrument for the 68 transmission or payment of money in relation to which the 69 purchaser or remitter appoints or purports to appoint the seller 70 thereof as his agent for the receipt, transmission or handling of 71 money, whether such instrument is signed by the seller or by the 72 purchaser or remitter or some other person.

73 SECTION 3. Section 75-67-505, Mississippi Code of 1972, is 74 reenacted and amended as follows:

75 75-67-505. (1) A person may not engage in business as a 76 check casher or otherwise portray himself as a check casher unless 77 the person has a valid license authorizing engagement in the 78 business. A separate license is required for each place of 79 business under <u>this article</u> and each business must be independent

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of, and not a part of, any other business operation. A check 80 81 cashing business shall not be a part of, or located at the same 82 business address with, a pawnshop, title pledge office and small loan company. However, a licensed check casher may, as a part of 83 his business, sell money orders and operate a processing center 84 where utility bills are collected from the general public and 85 governmental payments are distributed. The commissioner may issue 86 more than one (1) license to a person if that person complies with 87 this article for each license. A new license or application to 88 89 transfer an existing license is required upon a change, directly 90 or beneficially, in the ownership of any licensed check casher business and an application shall be made to the commissioner in 91 92 accordance with this article.

93 (2) When a licensee wishes to move a check casher business 94 to another location, the licensee shall give thirty (30) days' 95 prior written notice to the commissioner who shall amend the 96 license accordingly.

97 (3) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial 98 99 application for a license, the applicant shall pay the commissioner at the time of making the application a license fee 100 101 of Seven Hundred Fifty Dollars (\$750.00), and on or before September 1 of each year thereafter, an annual renewal fee of Four 102 Hundred Seventy-five Dollars (\$475.00). If the annual renewal fee 103 104 remains unpaid twenty-nine (29) days after September 1, the license shall thereupon expire, but not before the thirtieth day 105 106 of September of any year for which the annual fee has been paid. (4) Notwithstanding other provisions of this article, the 107 commissioner may issue a temporary license authorizing the 108 operator of a check casher business on the receipt of an 109 110 application for a license involving principals and owners that are 111 substantially identical to those of an existing licensed check casher. The temporary license is effective until the permanent 112

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113 license is issued or denied.

114 (5) Notwithstanding other provisions of this article, 115 neither a new license nor an application to transfer an existing license shall be required upon any change, directly or 116 117 beneficially, in the ownership of any licensed check casher business incorporated under the laws of this state or any other 118 state as long as the licensee continues to operate as a 119 120 corporation doing a check casher business under the license. However, the commissioner may require the licensee to provide such 121 122 information as he deems reasonable and appropriate concerning the 123 officers and directors of the corporation and persons owning in 124 excess of twenty-five percent (25%) of the outstanding shares of 125 the corporation.

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

128 75-67-507. The provisions of <u>this article</u> shall not apply 129 to:

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

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

(c) Any person principally engaged in the retail sale
of goods or services who, either as an incident to or
independently of a retail sale, may from time to time cash checks
for a fee * * *, not exceeding three percent (3%) of the face
amount of the check or Ten Dollars (\$10.00), whichever is greater.
SECTION 5. Section 75-67-509, Mississippi Code of 1972, is
reenacted and amended as follows:

144 75-67-509. To be eligible for a check casher license, an 145 applicant shall:

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146 (a) Operate lawfully and fairly within the purposes of147 <u>this article</u>.

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

151 (c) File with the <u>commissioner</u> a bond with good security in the penal sum of Ten Thousand Dollars (\$10,000.00), 152 payable to the State of Mississippi for the faithful performance 153 154 by the licensee of the duties and obligations pertaining to the 155 business so licensed and the prompt payment of any judgment which 156 may be recovered against the licensee on account of charges or other claims arising directly or collectively from any violation 157 158 of the provisions of this article. The bond shall not be valid until it is approved by the commissioner. The applicant may file, 159 in lieu of the bond, cash, a certificate of deposit or government 160 bonds in the amount of Ten Thousand Dollars (\$10,000.00). Those 161 162 deposits shall be filed with the commissioner is subject to the 163 same terms and conditions as are provided for in the surety bond required in this paragraph. Any interest or earnings on those 164 165 deposits are payable to the depositor.

(d) File with the <u>commissioner</u> an application for a
license <u>and the initial license fee required in this</u>
<u>article</u>. * * * If applicant's application is approved, a check
casher license will be issued within thirty (30) days.

170 Submit a set of fingerprints from any local law (e) 171 enforcement agency. In order to determine the applicant's 172 suitability for license, the commissioner shall forward the fingerprints to the Department of Public Safety; and if no 173 disqualifying record is identified at the state level, the 174 175 fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check. 176 177 (f) Complete and file with the commissioner an annual

178 renewal application for a license <u>accompanied by the renewal fee</u>

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179 required in this article.

180 SECTION 6. Section 75-67-511, Mississippi Code of 1972, is 181 reenacted and amended as follows:

182 75-67-511. Each application for a license shall be in a form 183 prescribed by the commissioner, signed under oath, and shall 184 include the following:

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

188 However, the application need not state the full name and 189 address of each shareholder, if the applicant is owned directly or beneficially by a person which as an issuer has a class of 190 securities registered under Section 12 of the Securities and 191 Exchange Act of 1934 or is an issuer of securities which is 192 required to file reports with the Securities and Exchange 193 194 Commission under Section 15(d) of the Securities and Exchange Act, 195 provided that the person files with the commissioner such 196 information, documents and reports as are required by the provisions of the Securities and Exchange Act to be filed by the 197 198 issuer with the Securities and Exchange Commission.

(b) The complete address of the location at which the
applicant proposes to engage in the business of cashing checks.
(c) Other data and information the department may
require with respect to the applicant, its directors, trustees,

203 officers, members or agents.

204 (d) Sworn financial statements of the applicant showing
205 a net worth of at least Twenty Thousand Dollars (\$20,000.00) for
206 the first license. The applicant shall possess and maintain a net
207 worth of at least Twenty Thousand Dollars (\$20,000.00) for the

208 first license and at least Five Thousand Dollars (\$5,000.00) for

209 <u>each additional license.</u>

210 SECTION 7. Section 75-67-513, Mississippi Code of 1972, is 211 reenacted and amended as follows:

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212 75-67-513. (1) Upon filing of an application in a form 213 prescribed by the commissioner, accompanied by the documents required in this article, the department shall investigate to 214 215 ascertain whether the qualifications prescribed by Sections 75-67-509 and 75-67-511 have been satisfied. If the commissioner 216 217 finds that the qualifications have been satisfied and, if he approves the documents so filed by the applicant, he shall issue 218 to the applicant a license to engage in the business of check 219 cashing in this state. 220

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

223 SECTION 8. Section 75-67-515, Mississippi Code of 1972, is 224 reenacted and amended as follows:

225 75-67-515. (1) The department may adopt reasonable
226 administrative regulations, not inconsistent with law, for the
227 enforcement of <u>this article</u>.

228 (2) To assure compliance with the provisions of this 229 article, the department may examine the books and records of any licensee without notice during normal business hours. The 230 commissioner may charge the licensee an examination fee in an 231 232 amount not less than Two Hundred Dollars (\$200.00) nor more than 233 Three Hundred Dollars (\$300.00) per examination of each office or location within the State of Mississippi plus any actual expenses 234 incurred while examining the licensee's records or books that are 235 236 located outside the State of Mississippi. However, in no event 237 shall a licensee be examined more than once in a two-year period 238 unless for cause shown based upon consumer complaint and/or other 239 exigent reasons as determined by the commissioner.

(3) Each licensee shall keep and use in its business any books, accounts and records the department may require to carry into effect the provisions of <u>this article</u> and the administrative regulations issued under <u>this article</u>. Every licensee shall preserve the books, accounts and records of its business for at

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245 least two (2) years.

(4) Any fee charged by a licensee for cashing a check shall
be posted conspicuously to the bearer of the check before cashing
the check, and the fee shall be a service fee and not interest.
(5) Before a licensee deposits with any bank or other
depository institution a check cashed by the licensee, the check
shall be endorsed with the actual name under which the licensee is
doing business.

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

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

(8) No licensee shall indicate through advertising, signs, 260 261 billboards or otherwise that checks may be cashed without 262 identification of the bearer of the check; and any person seeking to cash a check shall be required to submit reasonable 263 264 identification as prescribed by the department. The provisions of this subsection shall not prohibit a licensee from cashing a check 265 266 simultaneously with the verification and establishment of the identity of the presenter by means other than presentation of 267 268 identification.

269 Within five (5) business days after being advised by the (9) payor financial institution that a check has been altered, forged, 270 271 stolen, obtained through fraudulent or illegal means, negotiated 272 without proper legal authority or represents the proceeds of illegal activity, the licensee shall notify the department and the 273 district attorney for the judicial district in which the check was 274 275 received. If a check is returned to the licensee by the payor 276 financial institution for any of these reasons, the licensee may not release the check without consent of the district attorney or 277

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278 other investigating law enforcement authority.

279 (10) If a check is returned to a licensee from a payor 280 financial institution because there are insufficient funds in or on deposit with the financial institution to pay the check, the 281 licensee or any other person on behalf of the licensee shall not 282 283 institute or initiate any criminal prosecution against the maker or drawer of the personal check with the intent and purpose of 284 aiding in the collection of or enforcing the payment of the amount 285 owed to the check casher by the maker or drawer of the check. 286 SECTION 9. Section 75-67-517, Mississippi Code of 1972, is 287 288 reenacted and amended as follows:

289 75-67-517. Notwithstanding any other provision of law, no 290 check cashing business licensed under <u>this article</u> shall directly 291 or indirectly charge or collect fees * * * for check cashing 292 services in excess of the following:

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

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

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

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

310 SECTION 10. Section 75-67-519, Mississippi Code of 1972, is

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311 reenacted and amended as follows:

312 75-67-519. (1) A licensee may defer the deposit of a 313 personal check cashed for a customer for up to thirty (30) days 314 under the provisions of this section.

315 (2) The face amount of any delayed deposit check cashed 316 under the provisions of this section shall not exceed Four Hundred 317 Dollars (\$400.00). <u>Each customer is limited to a maximum amount</u> 318 <u>of Four Hundred Dollars (\$400.00) at any time.</u>

(3) Each delayed deposit check cashed by a licensee shall be 319 320 documented by a written agreement that has been signed by the 321 customer and the licensee. The written agreement shall contain a statement of the total amount of any fees charged, expressed as a 322 323 dollar amount and as an annual percentage rate. The written agreement shall authorize the licensee to defer deposit of the 324 personal check until a specific date not later than thirty (30) 325 days from the date the check is cashed. 326

327 (4) A licensee shall not directly or indirectly charge any 328 fee or other consideration for cashing a delayed deposit check in excess of eighteen percent (18%) of the face amount of the check. 329 330 (5) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the 331 332 same licensee or any affiliate of the licensee. A licensee shall not * * * renew or otherwise extend any delayed deposit check. 333 (6) A licensee shall not offer coupon redemption, catalog 334 335 sales or other similar inducements as part of a delayed deposit 336 transaction.

337 (7) A licensee shall not charge a late fee or collection fee
 338 on any deferred deposit transaction as a result of a returned

339 check or the default by the customer in timely payment to the

340 licensee; however, a licensee may receive any court-awarded fees.

341 (8) When cashing a delayed deposit check, a licensee may pay

- 342 the customer in the form of the licensee's business check or a
- 343 money order; however, no additional fee may then be charged by the

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344 licensee for cashing the licensee's business check or money order 345 issued to the customer.

346 SECTION 11. Section 75-67-521, Mississippi Code of 1972, is 347 reenacted and amended as follows:

348 75-67-521. (1) The commissioner may, after notice and 349 hearing, suspend or revoke a license if he finds that:

350 (a) The licensee, either knowingly, or without the
351 exercise of due care to prevent the same, has violated any
352 provision of <u>this article</u>;

353 (b) Any fact or condition exists which, if it had 354 existed or had been known to exist at the time of the original 355 application for the license, clearly would have justified the 356 commissioner in refusing the license;

357 (c) The licensee has aided, abetted or conspired with 358 an individual or person to circumvent or violate the requirement 359 of <u>this article</u>;

360 (d) The licensee, or a legal or beneficial owner of the 361 license, has been convicted of a felony, or has been convicted of 362 a misdemeanor that the commissioner finds directly relates to the 363 duties and responsibilities of the business of check cashing.

364 (2) The commissioner may conditionally license or place on
 365 probation a person whose license has been suspended or may
 366 reprimand a licensee for a violation of <u>this article</u>.

367 (3) The manner of giving notice and conducting a hearing as 368 required by subsection (1) of this section shall be performed in 369 accordance with procedures prescribed by the commissioner in rules 370 or regulations adopted under Mississippi Administrative Procedures 371 Law, Section 25-43-1 et seq.

372 (4) Any licensee may surrender any license by delivering it 373 to the commissioner with written notice of its surrender, but that 374 surrender shall not affect the licensee's civil or criminal 375 liability for acts committed prior thereto.

376 (5) The commissioner may reinstate suspended licenses or

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377 issue new licenses to a person whose license or licenses have been 378 revoked if no fact or condition then exists which clearly would 379 have justified the commissioner in refusing originally to issue a 380 license under <u>this article</u>.

381 (6) The appropriate local law enforcement agency shall be 382 notified of any licensee who has his license suspended or revoked 383 as provided by <u>this article</u>.

384 (7) The commissioner shall enforce the provisions of this385 section.

386 SECTION 12. Section 75-67-523, Mississippi Code of 1972, is 387 reenacted and amended as follows:

75-67-523. The commissioner, or his duly authorized 388 representative, for the purpose of discovering violations of this 389 390 article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons 391 licensed under this article and persons reasonably suspected by 392 393 the commissioner of conducting business which requires a license 394 under this article, including all relevant books, records and papers employed by those persons in the transaction of their 395 396 business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or 397 398 such other matters as may be relevant to the discovery of violations of this article, including without limiting the conduct 399 400 of business without a license as required under this article. 401 SECTION 13. Section 75-67-525, Mississippi Code of 1972, is

402 reenacted and amended as follows:

403 75-67-525. Any person who engages in the business of check 404 cashing without first securing a license prescribed by <u>this</u> 405 <u>article</u> shall be guilty of a misdemeanor and upon conviction 406 thereof, shall be punishable by a fine not in excess of One 407 Thousand Dollars (\$1,000.00) or by confinement in the county jail 408 for not more than one (1) year, or both.

409 SECTION 14. Section 75-67-527, Mississippi Code of 1972, is

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410 reenacted and amended as follows:

411 75-67-527. (1) In addition to any other penalty which may 412 be applicable, any licensee or employee who willfully violates any 413 provision of <u>this article</u>, or who willfully makes a false entry in 414 any record specifically required by <u>this article</u>, shall be guilty 415 of a misdemeanor and upon conviction thereof, shall be punishable 416 by a fine not in excess of One Thousand Dollars (\$1,000.00) per 417 violation or false entry.

(2) Compliance with the criminal provisions of <u>this article</u>
shall be enforced by the appropriate law enforcement agency, which
may exercise for that purpose any authority conferred upon the
agency by law.

(3) When the commissioner has reasonable cause to believe 422 423 that a person is violating any provision of this article, the commissioner, in addition to and without prejudice to the 424 authority provided elsewhere in this article, may enter an order 425 426 requiring the person to stop or to refrain from the violation. 427 The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or 428 429 continuing the violation or from doing any act in furtherance of In such an action, the court may enter an order or 430 the violation. 431 judgment awarding a preliminary or permanent injunction.

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

438 (5) Any licensee convicted in the manner provided in <u>this</u> 439 <u>article</u> shall forfeit the surety bond or deposit required in 440 Section 75-67-509(c) * * * and the amount of the bond or deposit 441 shall be credited to the budget of the state or local agency which 442 directly participated in the prosecution of the licensee, for the

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443 specific purpose of increasing law enforcement resources for that 444 specific state or local agency. The bond or deposit shall be used 445 to augment existing state and local law enforcement budgets and 446 not to supplant them.

447 SECTION 15. Section 75-67-529, Mississippi Code of 1972, is 448 reenacted and amended as follows:

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

452 SECTION 16. Section 75-67-531, Mississippi Code of 1972, is 453 reenacted and amended as follows:

454 75-67-531. Check cashers operating check cashing locations 455 in business as of July 1, 1998, shall have until September 30, 456 1998, to apply for a license under <u>this article</u>, and upon the 457 approval of the application, the commissioner shall grant a 458 license under <u>this article</u>.

459 SECTION 17. Section 75-67-533, Mississippi Code of 1972, is 460 reenacted and amended as follows:

461 75-67-533. The commissioner shall develop and provide any
462 necessary forms to carry out the provisions of <u>this article</u>.

463 SECTION 18. Section 75-67-535, Mississippi Code of 1972, is 464 reenacted and amended as follows:

465 75-67-535. Municipalities in this state may enact ordinances 466 which are in compliance with, but not more restrictive than, the 467 provisions of <u>this article</u>. Any existing or future order, 468 ordinance or regulation which conflicts with this provision shall 469 be null and void.

470 SECTION 19. Section 75-67-537, Mississippi Code of 1972, is 471 reenacted and amended as follows:

472 75-67-537. The commissioner may employ the necessary 473 full-time employees above the number of permanent full-time 474 employees authorized for the department for fiscal year 1999, to 475 carry out and enforce the provisions of <u>this article</u>. The

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476 commissioner may also expend the necessary funds to equip and

477 provide necessary travel expenses for those employees.

478 SECTION 20. Section 75-67-539, Mississippi Code of 1972, is

479 amended as follows:

480 75-67-539. * * * Sections 75-67-501 through 75-67-539 shall
481 stand repealed <u>on</u> July 1, <u>2002</u>.

482 SECTION 21. This act shall take effect and be in force from 483 and after its passage.

Further, amend by striking the title in its entirety and

inserting in lieu thereof the following:

AN ACT TO REENACT SECTIONS 75-67-501 THROUGH 75-67-537, 1 2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE LICENSURE AND 3 REGULATION OF CHECK CASHERS BY THE DEPARTMENT OF BANKING AND CONSUMER FINANCE; TO AMEND REENACTED SECTION 75-67-501, 4 5 MISSISSIPPI CODE OF 1972, TO DELETE THE DEFINITION OF THE TERM б "CONSIDERATION"; TO AMEND REENACTED SECTIONS 75-67-505 AND 7 75-67-509, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE APPLICANT 8 SHALL FILE THE APPLICATION AND BOND WITH THE COMMISSIONER OF 9 BANKING, INSTEAD OF THE LOCAL AUTHORITIES; TO AMEND REENACTED SECTION 75-67-511, MISSISSIPPI CODE OF 1972, TO REVISE THE NET 10 11 WORTH REQUIREMENTS FOR A CHECK CASHERS LICENSE; TO AMEND REENACTED SECTION 75-67-515, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE 12 13 COMMISSIONER TO CHARGE EXAMINATION FEES AND ANNUAL LICENSE FEES; TO AMEND REENACTED SECTIONS 75-67-507, 75-67-517 AND 75-67-519, 14 15 MISSISSIPPI CODE OF 1972, TO REMOVE THE AUTHORIZATION FOR CASHING CHECKS FOR ANY CONSIDERATION OTHER THAN A FEE; TO AMEND REENACTED 16 17 SECTIONS 75-67-503, 75-67-513, 75-67-521, 75-67-523, 75-67-525, 75-67-527, 75-67-529, 75-67-531, 75-67-533, 75-67-535 AND 18 19 75-67-537, MISSISSIPPI CODE OF 1972, TO CHANGE REFERENCES TO CODE 20 SECTION NUMBERS TO REFERENCES TO "THIS ARTICLE"; TO AMEND SECTION 75-67-539, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF THE 21 22 REPEALER ON THE MISSISSIPPI CHECK CASHERS ACT; AND FOR RELATED 23 PURPOSES.

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