

By: Tollison

To: Judiciary

SENATE BILL NO. 2405
(As Passed the Senate)

1 AN ACT TO AMEND SECTIONS 11-7-12 AND 97-19-57, MISSISSIPPI
2 CODE OF 1972, TO CONFORM TO ONE ANOTHER THE CIVIL AND CRIMINAL
3 PROCEDURES FOR INSTITUTING RECOVERY OF THE FACE AMOUNT OF A BAD
4 CHECK, TOGETHER WITH A SERVICE CHARGE OR PENALTY AS APPROPRIATE;
5 AND FOR RELATED PURPOSES.

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

7 SECTION 1. Section 11-7-12, Mississippi Code of 1972, is
8 amended as follows:[CSQ1]

9 11-7-12. (1) If a check, draft or order is made, drawn,
10 issued, uttered or delivered in violation of Section 97-19-55, the
11 payee, endorser or his assignee shall be entitled to collect, in
12 addition to the face amount of the check, draft or order, a
13 service charge of Thirty Dollars (\$30.00).

14 (2) In any civil action founded on a check, draft or order
15 made, drawn, issued, uttered or delivered in violation of Section
16 97-19-55, the plaintiff, if he be a payee or endorser, shall be
17 entitled to recover, in addition to the face amount of the check,
18 draft or order, damages in the following amount:

19 (a) If the amount of the check, draft or order is up to
20 and including Twenty-five Dollars (\$25.00), then the additional
21 damages shall be Thirty Dollars (\$30.00);

22 (b) If the amount of the check, draft or order is above
23 Twenty-five Dollars (\$25.00) and up to and including Two Hundred
24 Dollars (\$200.00), then the additional damages shall be fifty
25 percent (50%) of the amount of the check, draft or order, not to
26 exceed Fifty Dollars (\$50.00), and not to be less than Thirty
27 Dollars (\$30.00); * * *

28 (c) If the amount of the check, draft or order is above
29 Two Hundred Dollars (\$200.00), then the additional damages shall
30 be twenty-five percent (25%) of the amount of the check, draft or
31 order; and

32 (d) No service charge shall be payable in a civil
33 action under this section.

34 SECTION 2. Section 97-19-57, Mississippi Code of 1972, is
35 amended as follows:[CSQ2]

36 97-19-57. (1) As against the maker or drawer thereof, the
37 making, drawing, issuing, uttering or delivering of a check, draft
38 or order, payment of which is refused by the drawee, shall be
39 prima facie evidence and create a presumption of intent to defraud
40 and of knowledge of insufficient funds in, or on deposit with,
41 such bank, corporation, firm or person, provided such maker or
42 drawer shall not have paid the holder thereof the amount due
43 thereon, together with a service charge of Thirty Dollars
44 (\$30.00), within thirty (30) days after receiving notice that such
45 check, draft or order has not been paid by the drawee.

46 (2) For purposes of Section 11-7-12, the form of the notice
47 provided for in subsection (1) of this section shall be sent by
48 regular mail and shall be substantially as follows: "This
49 statutory notice is provided pursuant to Section 97-19-57,
50 Mississippi Code of 1972. You are hereby notified that a check,
51 draft or order numbered __, apparently issued by you on __ (date),
52 drawn upon __ (name of bank), and payable to __, has been
53 dishonored. Pursuant to Mississippi law, you have thirty (30)
54 days from receipt of this notice to tender payment of the full
55 amount of such check, draft or order, plus a service charge of
56 Thirty Dollars (\$30.00), the total amount due being \$__. Failure
57 to pay this amount * * * in full within the time specified above
58 shall be prima facie evidence of and create a presumption of both
59 the intent to defraud and the knowledge of insufficient funds in,
60 or on deposit with, such bank in violation of Section 97-19-55."

61 (3) For purposes of Section 97-19-67, the form of the notice
62 provided for in subsection (1) of this section shall be sent by
63 certified or registered mail and shall be substantially as
64 follows: "This statutory notice is provided pursuant to Section
65 97-19-57, Mississippi Code of 1972. You are hereby notified that
66 a check, draft or order numbered _____, apparently issued by you on
67 _____ (date), drawn upon _____ (name of bank), and payable to _____, has
68 been dishonored. Pursuant to Mississippi law, you have thirty
69 (30) days from receipt of this notice to tender payment of the
70 full amount of such check, draft or order, plus a service charge
71 of Thirty Dollars (\$30.00), the total amount due being \$_____.
72 Unless this amount is paid in full within the time specified
73 above, the holder may assume that you delivered the instrument
74 with intent to defraud and may turn over the dishonored instrument
75 and all other available information relating to this incident to
76 the proper authorities for criminal prosecution."

77 (4) If any notice is * * * returned undelivered to the
78 sender after such notice was mailed * * * to the address printed
79 on the check, draft or order, or to the address given by the
80 accused at the time of issuance of the instrument, such return
81 shall be prima facie evidence of the maker's or drawer's intent to
82 defraud.

83 (5) Without in any way limiting the provisions of this
84 section, this section shall apply to a draft for the payment of
85 money given for a motor vehicle even if such payment is
86 conditioned upon delivery of documents necessary for transfer of a
87 valid title to the purchaser.

88 SECTION 3. This act shall take effect and be in force from
89 and after July 1, 2000.