To: Banks and Banking

MISSISSIPPI LEGISLATURE                        REGULAR SESSION 2001
By: Representative Guice
To: Banks and Banking

HOUSE BILL NO. 999

AN ACT TO AMEND SECTION 75-67-505, MISSISSIPPI CODE OF 1972, TO REVISE THE LICENSING REQUIREMENTS FOR A CHECK CASHING BUSINESS AND TO PROVIDE THAT A LICENSEE WHO FAILS TO PAY THE ANNUAL RENEWAL FEE SHALL BE LIABLE FOR THE FULL AMOUNT OF THE LICENSE FEE PLUS A PENALTY; TO AMEND SECTION 75-67-507, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY PERSON PRINCIPALLY ENGAGED IN THE RETAIL SALE OF GOODS OR SERVICES WHO ADVERTISES ON THE PHYSICAL GROUNDS OF HIS PLACE OF BUSINESS THAT A CHECK CASHING SERVICE IS PROVIDED SHALL OBTAIN A LICENSE UNDER THIS ARTICLE; TO AMEND SECTION 75-67-515, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT NOTHING IN THIS ARTICLE SHALL PROHIBIT A LICENSEE FROM ISSUING COUPONS TO CUSTOMERS WHICH ARE REDEEMABLE AGAINST A DEFERRED DEPOSIT TRANSACTION PROVIDED THE REDEMPTION RESULTS IN A FINANCIAL BENEFIT TO THE CUSTOMER ON CURRENT OR FUTURE TRANSACTIONS; TO AMEND SECTION 75-67-519, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A LICENSEE TO CHARGE A FEE FOR A RETURNED CHECK DUE TO INSUFFICIENT FUNDS IF THE FEE IS IN THE WRITTEN AGREEMENT; TO AMEND SECTION 75-67-525, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY PERSON WHO ENGAGES IN THE BUSINESS OF CHECK CASHING WITHOUT FIRST SECURING A LICENSE SHALL BE LIABLE FOR THE FULL AMOUNT OF THE LICENSE FEE PLUS A PENALTY; TO CREATE A NEW CODE SECTION TO PROHIBIT THE ADVERTISING, DISPLAYING OR PUBLISHING OF FALSE OR MISLEADING STATEMENTS BY A LICENSEE; TO REPEAL SECTION 75-67-539, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE REPEAL OF THE MISSISSIPPI CHECK CASHERS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 75-67-505, Mississippi Code of 1972, is amended as follows:

75-67-505. (1) A person may not engage in business as a check cashier or otherwise portray himself as a check cashier unless the person has a valid license authorizing engagement in the business. A separate license is required for each place of business under this article and each business must be independent of, and not a part of, any other business operation. A check cashing business shall not be a part of, or located at the same business address with, a pawnshop, title pledge office and small
loan company. A check cashing business shall have a definitive
United States Postal address and E911 address; comply with local
zoning requirements; have a minimum of one hundred (100) square
feet with walls from floor to ceiling separating the operation
from any other businesses; have an outside entrance, but may be
located in an area that has a common lobby shared by other
businesses as long as the customers do not enter the check cashing
business through another business; have proper signage; and
maintain separate books and records. A licensed check cashier
may sell, at the same location as his check cashing
business, the following items and services: money orders; income
tax preparation service; copy service; wire transfer service;
notary service; pagers; pager service; prepaid cellular service;
debit card; prepaid telephone cards; prepaid telephone service;
and operate a processing center where utility bills, credit card
payments and other payments are collected from the general public
and governmental and private payments are distributed. If a
licensee accepts wire transfers in the form of a direct deposit of
a payroll check, social security check or other similar types of
deposit, the licensee shall not encumber any transferred funds
against a deferred deposit agreement or any delinquent deferred
deposit agreement with such customer. The commissioner may
authorize additional functions in addition to those provided in
this subsection that may be performed as part of a check cashing
business. The commissioner may issue more than one (1) license to
a person if that person complies with this article for each
license. A new license or application to transfer an existing
license is required upon a change, directly or beneficially, in
the ownership of any licensed check cashier business and an
application shall be made to the commissioner in accordance with
this article.

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

(3) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars ($750.00), and on or before September 1 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars ($475.00). If the annual renewal fee remains unpaid twenty-nine (29) days after September 1, the license shall thereupon expire, but not before the thirtieth day of September of any year for which the annual fee has been paid. If any licensee fails to pay the annual renewal fee before the thirtieth day of September of any year for which the renewal fee is due, then the licensee shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars ($25.00) for each day that the licensee has engaged in business after September 30. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) Notwithstanding other provisions of this article, the commissioner may issue a temporary license authorizing the operator of a check casher business on the receipt of an application for a license involving principals and owners that are substantially identical to those of an existing licensed check casher. The temporary license is effective until the permanent license is issued or denied.

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

SECTION 2. Section 75-67-507, Mississippi Code of 1972, is amended as follows:

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

(a) Any bank, trust company, savings association, savings and loan association, savings bank or credit union which is chartered under the laws of this state or under federal law and 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 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. However, any person principally engaged in the retail sale of goods or services who advertises on the physical grounds of his place of business that a check cashing service is provided shall obtain a license as required under this article.

SECTION 3. Section 75-67-515, Mississippi Code of 1972, is amended as follows:

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

(2) To assure compliance with the provisions of this article, the department may examine the books and records of any
licensee without notice during normal business hours. The commissioner may charge the licensee an examination fee in an amount not less than Two Hundred Dollars ($200.00) nor more than Three Hundred Dollars ($300.00) per examination of each office or location within the State of Mississippi plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other 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 this article and the administrative regulations issued under this article. Every licensee shall preserve the books, accounts and records of its business for at 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, billboards or otherwise that checks may be cashed without identification of the bearer of the check; and any person seeking
to cash a check shall be required to submit reasonable
identification as prescribed by the department. The provisions of
this subsection shall not prohibit a licensee from cashing a check
simultaneously with the verification and establishment of the
identity of the presenter by means other than presentation of
identification.
(9) Within five (5) business days after being advised by the
payor financial institution that a check has been altered, forged,
stolen, obtained through fraudulent or illegal means, negotiated
without proper legal authority or represents the proceeds of
illegal activity, the licensee shall notify the department and the
district attorney for the judicial district in which the check was
received. If a check is returned to the licensee by the payor
financial institution for any of these reasons, the licensee may
not release the check without consent of the district attorney or
other investigating law enforcement authority.
(10) If a check is returned to a licensee from a payor
financial institution because there are insufficient funds in or
on deposit with the financial institution to pay the check, the
licensee or any other person on behalf of the licensee shall not
institute or initiate any criminal prosecution against the maker
or drawer of the personal check with the intent and purpose of
aiding in the collection of or enforcing the payment of the amount
owed to the check cashier by the maker or drawer of the check.
(11) Nothing in this article shall prohibit a licensee from
issuing coupons to customers or potential customers which are
redeemable against a deferred deposit transaction provided the
redemption results in a financial benefit to the customer on
current or future transactions.

SECTION 4. Section 75-67-519, Mississippi Code of 1972, is
amended as follows:
75-67-519. (1) A licensee may defer the deposit of a personal check cashed for a customer for up to thirty (30) days under the provisions of this section.

(2) The face amount of any delayed deposit check cashed under the provisions of this section shall not exceed Four Hundred Dollars ($400.00). Each customer is limited to a maximum amount of Four Hundred Dollars ($400.00) at any time.

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

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

(5) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same licensee or any affiliate of the licensee. A licensee shall not renew or otherwise extend any delayed deposit check.

(6) A licensee shall not offer discount catalog sales or other similar inducements as part of a delayed deposit transaction.

(7) A licensee shall not charge a late fee or collection fee on any deferred deposit transaction as a result of a returned check or the default by the customer in timely payment to the licensee * * *. Notwithstanding anything to the contrary contained in this section, a licensee may charge a processing fee for a check returned for any reason, including, without limitation, insufficient funds, closed account or stop payment, if such processing fee is authorized in the written agreement signed
by the customer and licensee. Furthermore, a licensee may receive
any court awarded fees, including, without limitation, court
costs, attorneys fees and the processing fee provided for in this
subsection.

(8) When cashing a delayed deposit check, a licensee may pay
the customer in the form of the licensee's business check or a
money order; however, no additional fee may then be charged by the
licensee for cashing the licensee's business check or money order
issued to the customer.

SECTION 5. Section 75-67-525, Mississippi Code of 1972, is
amended as follows:

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

(2) Any person who engages in the business of check cashing
without first securing a license prescribed by this article shall
be liable for the full amount of the license fee, plus a penalty
in an amount not to exceed Twenty-five Dollars ($25.00) for each
day that the person has engaged in the business without a license.
All licensing fees and penalties shall be paid into the Consumer
Finance Fund of the Department of Banking and Consumer Finance.

SECTION 6. A licensee shall not advertise, display or
publish, or permit to be advertised, displayed or published, in
any manner whatsoever, any statement or representation that is
false, misleading or deceptive.

SECTION 7. Section 75-67-539, Mississippi Code of 1972,
which provides for the repeal of the Mississippi Check Cashers
Act, Sections 75-67-501 through 75-67-539, is repealed.

SECTION 8. This act shall take effect and be in force from
and after its passage.