

By: Representative Guice

To: Banks and Banking

## HOUSE BILL NO. 999

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

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

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

29 75-67-505. (1) A person may not engage in business as a  
30 check casher or otherwise portray himself as a check casher unless  
31 the person has a valid license authorizing engagement in the  
32 business. A separate license is required for each place of  
33 business under this article and each business must be independent  
34 of, and not a part of, any other business operation. A check  
35 cashing business shall not be a part of, or located at the same  
36 business address with, a pawnshop, title pledge office and small

37 loan company. A check cashing business shall have a definitive  
38 United States Postal address and E911 address; comply with local  
39 zoning requirements; have a minimum of one hundred (100) square  
40 feet with walls from floor to ceiling separating the operation  
41 from any other businesses; have an outside entrance, but may be  
42 located in an area that has a common lobby shared by other  
43 businesses as long as the customers do not enter the check cashing  
44 business through another business; have proper signage; and  
45 maintain separate books and records. A licensed check cashier  
46 may \* \* \* sell, at the same location as his check cashing  
47 business, the following items and services: money orders; income  
48 tax preparation service; copy service; wire transfer service;  
49 notary service; pagers; pager service; prepaid cellular service;  
50 debit card; prepaid telephone cards; prepaid telephone service;  
51 and operate a processing center where utility bills, credit card  
52 payments and other payments are collected from the general public  
53 and governmental and private payments are distributed. If a  
54 licensee accepts wire transfers in the form of a direct deposit of  
55 a payroll check, social security check or other similar types of  
56 deposit, the licensee shall not encumber any transferred funds  
57 against a deferred deposit agreement or any delinquent deferred  
58 deposit agreement with such customer. The commissioner may  
59 authorize additional functions in addition to those provided in  
60 this subsection that may be performed as part of a check cashing  
61 business. The commissioner may issue more than one (1) license to  
62 a person if that person complies with this article for each  
63 license. A new license or application to transfer an existing  
64 license is required upon a change, directly or beneficially, in  
65 the ownership of any licensed check cashier business and an  
66 application shall be made to the commissioner in accordance with  
67 this article.

68 (2) When a licensee wishes to move a check cashier business  
69 to another location, the licensee shall give thirty (30) days'

70 prior written notice to the commissioner who shall amend the  
71 license accordingly.

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

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

97 (5) Notwithstanding other provisions of this article,  
98 neither a new license nor an application to transfer an existing  
99 license shall be required upon any change, directly or  
100 beneficially, in the ownership of any licensed check casher  
101 business incorporated under the laws of this state or any other  
102 state as long as the licensee continues to operate as a

103 corporation doing a check casher business under the license.  
104 However, the commissioner may require the licensee to provide such  
105 information as he deems reasonable and appropriate concerning the  
106 officers and directors of the corporation and persons owning in  
107 excess of twenty-five percent (25%) of the outstanding shares of  
108 the corporation.

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

111 75-67-507. The provisions of this article shall not apply  
112 to:

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

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

120 (c) Any person principally engaged in the retail sale  
121 of goods or services who, either as an incident to or  
122 independently of a retail sale, may, from time to time, cash  
123 checks for a fee, not exceeding three percent (3%) of the face  
124 amount of the check or Ten Dollars (\$10.00), whichever is greater.  
125 However, any person principally engaged in the retail sale of  
126 goods or services who advertises on the physical grounds of his  
127 place of business that a check cashing service is provided shall  
128 obtain a license as required under this article.

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

131 75-67-515. (1) The department may adopt reasonable  
132 administrative regulations, not inconsistent with law, for the  
133 enforcement of this article.

134 (2) To assure compliance with the provisions of this  
135 article, the department may examine the books and records of any

136 licensee without notice during normal business hours. The  
137 commissioner may charge the licensee an examination fee in an  
138 amount not less than Two Hundred Dollars (\$200.00) nor more than  
139 Three Hundred Dollars (\$300.00) per examination of each office or  
140 location within the State of Mississippi plus any actual expenses  
141 incurred while examining the licensee's records or books that are  
142 located outside the State of Mississippi. However, in no event  
143 shall a licensee be examined more than once in a two-year period  
144 unless for cause shown based upon consumer complaint and/or other  
145 exigent reasons as determined by the commissioner.

146 (3) Each licensee shall keep and use in its business any  
147 books, accounts and records the department may require to carry  
148 into effect the provisions of this article and the administrative  
149 regulations issued under this article. Every licensee shall  
150 preserve the books, accounts and records of its business for at  
151 least two (2) years.

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

155 (5) Before a licensee deposits with any bank or other  
156 depository institution a check cashed by the licensee, the check  
157 shall be endorsed with the actual name under which the licensee is  
158 doing business.

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

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

166 (8) No licensee shall indicate through advertising, signs,  
167 billboards or otherwise that checks may be cashed without  
168 identification of the bearer of the check; and any person seeking

169 to cash a check shall be required to submit reasonable  
170 identification as prescribed by the department. The provisions of  
171 this subsection shall not prohibit a licensee from cashing a check  
172 simultaneously with the verification and establishment of the  
173 identity of the presenter by means other than presentation of  
174 identification.

175 (9) Within five (5) business days after being advised by the  
176 payor financial institution that a check has been altered, forged,  
177 stolen, obtained through fraudulent or illegal means, negotiated  
178 without proper legal authority or represents the proceeds of  
179 illegal activity, the licensee shall notify the department and the  
180 district attorney for the judicial district in which the check was  
181 received. If a check is returned to the licensee by the payor  
182 financial institution for any of these reasons, the licensee may  
183 not release the check without consent of the district attorney or  
184 other investigating law enforcement authority.

185 (10) If a check is returned to a licensee from a payor  
186 financial institution because there are insufficient funds in or  
187 on deposit with the financial institution to pay the check, the  
188 licensee or any other person on behalf of the licensee shall not  
189 institute or initiate any criminal prosecution against the maker  
190 or drawer of the personal check with the intent and purpose of  
191 aiding in the collection of or enforcing the payment of the amount  
192 owed to the check casher by the maker or drawer of the check.

193 (11) Nothing in this article shall prohibit a licensee from  
194 issuing coupons to customers or potential customers which are  
195 redeemable against a deferred deposit transaction provided the  
196 redemption results in a financial benefit to the customer on  
197 current or future transactions.

198 SECTION 4. Section 75-67-519, Mississippi Code of 1972, is  
199 amended as follows:

200           75-67-519. (1) A licensee may defer the deposit of a  
201 personal check cashed for a customer for up to thirty (30) days  
202 under the provisions of this section.

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

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

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

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

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

225           (7) A licensee shall not charge a late fee or collection fee  
226 on any deferred deposit transaction as a result of a returned  
227 check or the default by the customer in timely payment to the  
228 licensee \* \* \*. Notwithstanding anything to the contrary  
229 contained in this section, a licensee may charge a processing fee  
230 for a check returned for any reason, including, without  
231 limitation, insufficient funds, closed account or stop payment, if  
232 such processing fee is authorized in the written agreement signed

233 by the customer and licensee. Furthermore, a licensee may receive  
234 any court awarded fees, including, without limitation, court  
235 costs, attorneys fees and the processing fee provided for in this  
236 subsection.

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

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

244 75-67-525. (1) Any person who engages in the business of  
245 check cashing without first securing a license prescribed by this  
246 article shall be guilty of a misdemeanor and upon conviction  
247 thereof, shall be punishable by a fine not in excess of One  
248 Thousand Dollars (\$1,000.00) or by confinement in the county jail  
249 for not more than one (1) year, or both.

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

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

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

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