

By: Senator(s) Mettetal

To: Business and Financial
Institutions

SENATE BILL NO. 2411
(As Sent to Governor)

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 75-67-515, MISSISSIPPI CODE OF 1972, TO
6 CLARIFY THAT NOTHING IN THIS ARTICLE SHALL PROHIBIT A LICENSEE
7 FROM ISSUING COUPONS TO CUSTOMERS WHICH ARE REDEEMABLE AGAINST A
8 DEFERRED DEPOSIT TRANSACTION PROVIDED THE REDEMPTION RESULTS IN A
9 FINANCIAL BENEFIT TO THE CUSTOMER ON CURRENT OR FUTURE
10 TRANSACTIONS; TO AMEND SECTION 75-67-519, MISSISSIPPI CODE OF
11 1972, TO AUTHORIZE A LICENSEE TO CHARGE A FEE FOR A RETURNED CHECK
12 DUE TO INSUFFICIENT FUNDS IF THE FEE IS IN THE WRITTEN AGREEMENT;
13 TO AUTHORIZE A LICENSEE TO RECEIVE COURT-AWARDED FEES IN A LEGAL
14 ACTION TAKEN TO COLLECT THE AMOUNT OF A DELAYED DEPOSIT CHECK; TO
15 AMEND SECTION 75-67-525, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
16 ANY PERSON WHO ENGAGES IN THE BUSINESS OF CHECK CASHING WITHOUT
17 FIRST SECURING A LICENSE SHALL BE LIABLE FOR THE FULL AMOUNT OF
18 THE LICENSE FEE PLUS A PENALTY; TO CREATE A NEW CODE SECTION TO
19 PROHIBIT THE ADVERTISING, DISPLAYING OR PUBLISHING OF FALSE OR
20 MISLEADING STATEMENTS BY A LICENSEE; TO AMEND SECTION 75-67-539,
21 MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER ON THE
22 MISSISSIPPI CHECK CASHERS ACT; AND FOR RELATED PURPOSES.

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

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

26 75-67-505. (1) (a) A person may not engage in business as
27 a check casher or otherwise portray himself as a check casher
28 unless the person has a valid license authorizing engagement in
29 the business. A separate license is required for each place of
30 business under this article and each business must be independent
31 of, and not a part of, any other business operation. A check
32 cashing business shall not be a part of, or located at the same
33 business address with, a pawnshop, title pledge office and small
34 loan company.

35 (b) A check cashing business shall (i) have a
36 definitive United States Postal address and E911 address; (ii)
37 comply with local zoning requirements; (iii) have a minimum of one
38 hundred (100) square feet with walls from floor to ceiling
39 separating the operation from any other businesses; (iv) have an
40 outside entrance, but may be located in an area that has a common
41 lobby shared by other businesses as long as the customers do not
42 enter the check cashing business through another business; (v)
43 have proper signage; and (vi) maintain separate books and records.
44 Any licensee who does not cash any delayed deposit checks as
45 authorized under Section 75-67-519 shall not be subject to the
46 requirements of subparagraphs (i), (iii) and (iv) of this
47 paragraph.

48 (c) A licensed check casher may * * * sell, at the same
49 location as his check cashing business, the following items and
50 services: money orders; income tax preparation service; copy
51 service; wire transfer service; notary service; pagers; pager
52 service; prepaid cellular service; debit card; prepaid telephone
53 cards; prepaid telephone service; and operate a processing center
54 where utility bills, credit card payments and other payments are
55 collected from the general public and governmental and private
56 payments are distributed. In the event a licensee accepts wire
57 transfers in the form of a direct deposit of a payroll check or
58 other similar types of deposit, the licensee shall not encumber
59 any transferred funds against a deferred deposit agreement or any
60 delinquent deferred deposit agreement with such customer. The
61 commissioner may authorize additional functions in addition to
62 those provided in this subsection that may be performed as part of
63 a check cashing business.

64 (d) The commissioner may issue more than one (1)
65 license to a person if that person complies with this article for
66 each license. A new license or application to transfer an
67 existing license is required upon a change, directly or

68 beneficially, in the ownership of any licensed check casher
69 business and an application shall be made to the commissioner in
70 accordance with this article.

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

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

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

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

112 SECTION 2. Section 75-67-515, Mississippi Code of 1972, is
113 amended as follows:

114 75-67-515. (1) The department may adopt reasonable
115 administrative regulations, not inconsistent with law, for the
116 enforcement of this article.

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

129 (3) Each licensee shall keep and use in its business any
130 books, accounts and records the department may require to carry
131 into effect the provisions of this article and the administrative
132 regulations issued under this article. Every licensee shall

133 preserve the books, accounts and records of its business for at
134 least two (2) years.

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

138 (5) Before a licensee deposits with any bank or other
139 depository institution a check cashed by the licensee, the check
140 shall be endorsed with the actual name under which the licensee is
141 doing business.

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

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

149 (8) No licensee shall indicate through advertising, signs,
150 billboards or otherwise that checks may be cashed without
151 identification of the bearer of the check; and any person seeking
152 to cash a check shall be required to submit reasonable
153 identification as prescribed by the department. The provisions of
154 this subsection shall not prohibit a licensee from cashing a check
155 simultaneously with the verification and establishment of the
156 identity of the presenter by means other than presentation of
157 identification.

158 (9) Within five (5) business days after being advised by the
159 payor financial institution that a check has been altered, forged,
160 stolen, obtained through fraudulent or illegal means, negotiated
161 without proper legal authority or represents the proceeds of
162 illegal activity, the licensee shall notify the department and the
163 district attorney for the judicial district in which the check was
164 received. If a check is returned to the licensee by the payor
165 financial institution for any of these reasons, the licensee may

166 not release the check without consent of the district attorney or
167 other investigating law enforcement authority.

168 (10) If a check is returned to a licensee from a payor
169 financial institution because there are insufficient funds in or
170 on deposit with the financial institution to pay the check, the
171 licensee or any other person on behalf of the licensee shall not
172 institute or initiate any criminal prosecution against the maker
173 or drawer of the personal check with the intent and purpose of
174 aiding in the collection of or enforcing the payment of the amount
175 owed to the check casher by the maker or drawer of the check.

176 (11) Nothing in this article shall prohibit a licensee from
177 issuing coupons to customers or potential customers which are
178 redeemable against a deferred deposit transaction provided the
179 redemption results in a financial benefit to the customer on
180 current or future transactions.

181 SECTION 3. Section 75-67-519, Mississippi Code of 1972, is
182 amended as follows:

183 75-67-519. (1) A licensee may defer the deposit of a
184 personal check cashed for a customer for up to thirty (30) days
185 under the provisions of this section.

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

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

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

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

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

208 (7) A licensee shall not charge a late fee or collection fee
209 on any deferred deposit transaction as a result of a returned
210 check or the default by the customer in timely payment to the
211 licensee * * *. Notwithstanding anything to the contrary
212 contained in this section, a licensee may charge a processing fee,
213 not to exceed an amount authorized by the commissioner, for a
214 check returned for any reason, including, without limitation,
215 insufficient funds, closed account or stop payment, if such
216 processing fee is authorized in the written agreement signed by
217 the customer and licensee. In addition, if a licensee takes legal
218 action against a customer to collect the amount of a delayed
219 deposit check for which the licensee has not obtained payment and
220 obtains a judgment against the customer for the amount of that
221 check, the licensee shall also be entitled to any court-awarded
222 fees.

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

228 SECTION 4. Section 75-67-525, Mississippi Code of 1972, is
229 amended as follows:

230 75-67-525. (1) Any person who engages in the business of
231 check cashing without first securing a license prescribed by this
232 article shall be guilty of a misdemeanor and upon conviction
233 thereof, shall be punishable by a fine not in excess of One
234 Thousand Dollars (\$1,000.00) or by confinement in the county jail
235 for not more than one (1) year, or both.

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

243 SECTION 5. A licensee shall not advertise, display or
244 publish, or permit to be advertised, displayed or published, in
245 any manner whatsoever, any statement or representation that is
246 false, misleading or deceptive.

247 SECTION 6. Section 75-67-539, Mississippi Code of 1972, is
248 amended as follows:

249 75-67-539. Sections 75-67-501 through 75-67-539 shall stand
250 repealed on July 1, 2004.

251 SECTION 7. This act shall take effect and be in force from
252 and after its passage.