

By: Senator(s) Michel, Tollison, Albritton

To: Judiciary, Division A

SENATE BILL NO. 2911

1 AN ACT TO AMEND SECTIONS 97-19-57 AND 11-7-12, MISSISSIPPI  
2 CODE OF 1972, TO REVISE THE SERVICE CHARGE COLLECTIBLE AGAINST THE  
3 MAKER OF A CHECK, DRAFT OR ORDER THAT IS REFUSED BY THE DRAWEE;  
4 AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 97-19-57, Mississippi Code of 1972, is  
7 amended as follows:

8 97-19-57. (1) As against the maker or drawer thereof, the  
9 making, drawing, issuing, uttering or delivering of a check, draft  
10 or order, payment of which is refused by the drawee, shall be  
11 prima facie evidence and create a presumption of intent to defraud  
12 and of knowledge of insufficient funds in, or on deposit with,  
13 such bank, corporation, firm or person, provided such maker or  
14 drawer shall not have paid the holder thereof the amount due  
15 thereon, together with a service charge of Forty Dollars (\$40.00),  
16 within fifteen (15) days after receiving notice that such check,  
17 draft or order has not been paid by the drawee.

18 (2) For purposes of Section 11-7-12, the form of the notice  
19 provided for in subsection (1) of this section shall be sent by  
20 regular mail and shall be substantially as follows: "This  
21 statutory notice is provided pursuant to Section 97-19-57,  
22 Mississippi Code of 1972. You are hereby notified that a check,  
23 draft or order numbered \_\_\_\_\_, apparently issued by you on \_\_\_\_\_  
24 (date), drawn upon \_\_\_\_\_ (name of bank), and payable to \_\_\_\_\_, has  
25 been dishonored. Pursuant to Mississippi law, you have fifteen  
26 (15) days from receipt of this notice to tender payment of the  
27 full amount of such check, draft or order, plus a service charge  
28 of Forty Dollars (\$40.00), the total amount due being \$\_\_\_\_\_.

29 Failure to pay this amount in full within the time specified above  
30 shall be prima facie evidence of and create a presumption of both  
31 the intent to defraud and the knowledge of insufficient funds in,  
32 or on deposit with, such bank in violation of Section 97-19-55."

33 (3) For purposes of Section 97-19-67, the form of the notice  
34 provided for in subsection (1) of this section shall be sent by  
35 regular mail, supported by an affidavit of service by mailing, and  
36 shall be substantially as follows: "This statutory notice is  
37 provided pursuant to Section 97-19-57, Mississippi Code of 1972.  
38 You are hereby notified that a check, draft or order numbered  
39 \_\_\_\_\_, apparently issued by you on \_\_\_\_\_ (date), drawn upon \_\_\_\_\_  
40 (name of bank), and payable to \_\_\_\_\_, has been dishonored.  
41 Pursuant to Mississippi law, you have fifteen (15) days from  
42 receipt of this notice to tender payment of the full amount of  
43 such check, draft or order, plus a service charge of Forty Dollars  
44 (\$40.00), the total amount due being \$\_\_\_\_\_. Unless this amount  
45 is paid in full within the time specified above, the holder may  
46 assume that you delivered the instrument with intent to defraud  
47 and may turn over the dishonored instrument and all other  
48 available information relating to this incident to the proper  
49 authorities for criminal prosecution."

50 (4) If any notice is returned undelivered to the sender  
51 after such notice was mailed to the address printed on the check,  
52 draft or order, or to the address given by the accused at the time  
53 of issuance of the instrument, such return shall be prima facie  
54 evidence of the maker's or drawer's intent to defraud.

55 (5) Affidavit of service by mail shall be adequate if made  
56 in substantially the following form:

57 "STATE OF \_\_\_\_\_

58 COUNTY OF \_\_\_\_\_

59 \_\_\_\_\_, being first duly sworn on oath, deposes and  
60 states that he/she is at least eighteen (18) years of age and that  
61 on (date) \_\_\_\_\_, 2\_\_\_\_, he/she served the attached Notice

62 of Dishonor by placing a true and correct copy thereof securely  
63 enclosed in an envelope addressed as follows:

64 \_\_\_\_\_  
65 \_\_\_\_\_  
66 \_\_\_\_\_

67 and deposited the same, postage prepaid, in the United States mail  
68 at \_\_\_\_\_, \_\_\_\_\_.

69 \_\_\_\_\_  
70 (signature)

71 Subscribed to and sworn before me, this the \_\_\_\_\_ day of  
72 \_\_\_\_\_, 2\_\_\_\_.

73 \_\_\_\_\_  
74 (Notary Public)

75 My commission expires:

76 (SEAL)"

77 (6) Without in any way limiting the provisions of this  
78 section, this section shall apply to a draft for the payment of  
79 money given for a motor vehicle even if such payment is  
80 conditioned upon delivery of documents necessary for transfer of a  
81 valid title to the purchaser.

82 **SECTION 2.** Section 11-7-12, Mississippi Code of 1972, is  
83 amended as follows:

84 11-7-12. (1) If a check, draft or order is made, drawn,  
85 issued, uttered or delivered in violation of Section 97-19-55, the  
86 payee, endorser or his assignee shall be entitled to collect, in  
87 addition to the face amount of the check, draft or order, a  
88 service charge of Forty Dollars (\$40.00).

89 (2) In any civil action founded on a check, draft or order  
90 made, drawn, issued, uttered or delivered in violation of Section  
91 97-19-55, the plaintiff, if he be a payee or endorser, shall be  
92 entitled to recover, in addition to the face amount of the check,  
93 draft or order, damages in the following amount:

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

97           (b) If the amount of the check, draft or order is above  
98 Twenty-five Dollars (\$25.00) and up to and including Two Hundred  
99 Dollars (\$200.00), then the additional damages shall be fifty  
100 percent (50%) of the amount of the check, draft or order, not to  
101 exceed Fifty Dollars (\$50.00), and not to be less than Thirty  
102 Dollars (\$30.00);

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

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

109           **SECTION 3.** This act shall take effect and be in force from  
110 and after July 1, 2004.