

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.