

By: Representative Miles

To: Judiciary B

HOUSE BILL NO. 38

1 AN ACT TO AMEND SECTIONS 97-19-67 AND 97-19-75, MISSISSIPPI
2 CODE OF 1972, TO REVISE PENALTY, COLLECTION AND RESTITUTION
3 PROVISIONS RELATED TO BAD CHECKS; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 97-19-67, Mississippi Code of 1972, is
6 amended as follows:

7 97-19-67. (1) Except as may be otherwise provided by
8 subsection (2) of this section, any person violating Section
9 97-19-55, upon conviction, shall be punished as follows:

10 (a) For the first offense of violating said section,
11 where the check, draft or order involved be less than One Hundred
12 Dollars (\$100.00), the person committing such offense shall be
13 guilty of a misdemeanor and, upon conviction, shall be punished by
14 a fine of not less than Twenty-five Dollars (\$25.00), nor more
15 than Five Hundred Dollars (\$500.00), or by imprisonment in the
16 county jail for a term of not less than five (5) days nor more
17 than six (6) months, or by both such fine and imprisonment, in the
18 discretion of the court;

19 (b) Upon commission of a second offense of violating
20 said section, where the check, draft or order involved is less
21 than One Hundred Dollars (\$100.00), the person committing such
22 offense shall be guilty of a misdemeanor and, upon conviction,
23 shall be punished by a fine of not less than Fifty Dollars
24 (\$50.00) nor more than One Thousand Dollars (\$1,000.00), or by
25 imprisonment in the county jail for a term of not less than thirty
26 (30) days nor more than one (1) year, or by both such fine and
27 imprisonment, in the discretion of the court;

28 (c) Upon commission of a third or any subsequent
29 offense of violating said section, regardless of the amount of the
30 check, draft or order involved, and regardless of the amount of
31 the checks, drafts or orders involved in the prior convictions,
32 the person committing such offense shall be guilty of a felony
33 and, upon conviction, shall be punished by imprisonment in the
34 State Penitentiary for a term of not less than one (1) nor more
35 than five (5) years;

36 (d) Where the check, draft or order involved shall be
37 One Hundred Dollars (\$100.00) or more, the person committing such
38 offense, whether same be a first or second offense, shall be
39 guilty of a felony and, upon conviction, shall be punished by a
40 fine of not less than One Hundred Dollars (\$100.00) nor more than
41 One Thousand Dollars (\$1,000.00), or by imprisonment in the State
42 Penitentiary for a term of not more than three (3) years, or by
43 both such fine and imprisonment, in the discretion of the court.
44 Upon conviction of a third or any subsequent offense, the person
45 convicted shall be punished as is provided in the immediately
46 preceding paragraph hereof;

47 (e) Any person who is guilty of a third or subsequent
48 violation of Section 97-19-55 may also have their picture and a
49 description of the violation published in a newspaper of general
50 circulation in the jurisdiction where the violation occurred.

51 (2) Where the conviction was based on a worthless check,
52 draft or order given for the purpose of satisfying a preexisting
53 debt or making a payment or payments on a past-due account or
54 accounts, no imprisonment shall be ordered as punishment, but the
55 court may order the convicted person to pay a fine of up to the
56 applicable amounts prescribed in paragraphs (1)(a), (b) and (d) of
57 this section.

58 (3) In addition to or in lieu of any penalty imposed under
59 the provisions of subsection (1) or subsection (2) of this
60 section, the court shall order any person convicted of violating

61 Section 97-19-55 to make restitution in accordance with the
62 provisions of Sections 99-37-1 through 99-37-23 to the holder of
63 any check, draft or order for which payment has been refused.

64 (4) Upon conviction of any person for a violation of Section
65 97-19-55, when the prosecution of such person was commenced by the
66 filing of a complaint with the court by the district attorney
67 under the provisions of Section 97-19-79, the court shall, in
68 addition to any other fine, fee, cost or penalty which may be
69 imposed under this section or as otherwise provided by law, and in
70 addition to any order as the court may enter under subsection (3)
71 of this section requiring the offender to pay restitution under
72 Sections 99-37-1 through 99-37-23, impose a fee in the amount up
73 to eighty-five percent (85%) of the face amount of the check,
74 draft or order for which the offender was convicted of drawing,
75 making, issuing, uttering or delivering in violation of Section
76 97-19-55.

77 (5) It shall be the duty of the clerk or judicial officer of
78 the court collecting the fees imposed under subsection (4) of this
79 section to monthly deposit all such fees so collected with the
80 State Treasurer, either directly or by other appropriate
81 procedures, for deposit in the special fund of the State Treasury
82 created under Section 99-19-32, known as the "Criminal Justice
83 Fund."

84 (6) After the accused has complied with all terms of the
85 statute and the complainant or victim has been paid, the district
86 attorney's check unit may dispose of the accused's file after one
87 (1) year has expired after the last audit.

88 (7) Persons convicted of violations of Section 97-19-55
89 shall be liable for all court costs involved including all filing
90 fees and collection costs.

91 **SECTION 2.** Section 97-19-75, Mississippi Code of 1972, is
92 amended as follows:

93 97-19-75. (1) The holder of any check, draft or order for
94 the payment of money which has been made, drawn, issued, uttered
95 or delivered in violation of Section 97-19-55, Mississippi Code of
96 1972, may, after complying with the provisions of Section
97 97-19-57, Mississippi Code of 1972, present a complaint to the
98 district attorney. The complaint shall be accompanied by the
99 original check, draft or order upon which the complaint is filed
100 and the return receipt showing mailing of notice under Section
101 97-19-57, Mississippi Code of 1972. Not more than one (1) check,
102 draft or order shall be included within a single complaint. Upon
103 receipt of such complaint, the district attorney shall evaluate
104 the complaint to determine whether or not the complaint is
105 appropriate to be processed by the district attorney.

106 (2) If, after filing a complaint with the district attorney,
107 the complainant wishes to withdraw the complaint for good cause,
108 the complainant shall pay a fee of Thirty Dollars (\$30.00) to the
109 office of the district attorney for processing such complaint.
110 Upon payment of the processing fee and withdrawal of the
111 complaint, the district attorney shall return the original check,
112 draft or order to the complainant.

113 (3) After approval of the complaint by the district
114 attorney, a warrant may be issued by any judicial officer
115 authorized by law to issue arrest warrants, and the warrant may be
116 held by the district attorney. After issuance of a warrant or
117 upon approval of a complaint by the district attorney, the
118 district attorney shall issue a notice to the individual charged
119 in the complaint, informing him that a warrant has been issued for
120 his arrest or that a complaint has been received by the district
121 attorney and that he may be eligible for deferred prosecution for
122 a violation of Section 97-19-55, Mississippi Code of 1972, by
123 voluntarily surrendering himself to the district attorney within
124 ten (10) days, Saturdays, Sundays and legal holidays excepted,

125 from receipt of the notice. Such notice shall be sent by United
126 States mail.

127 (4) If the accused voluntarily surrenders himself within the
128 time period as provided by subsection (3) of this section, the
129 accused shall be presented with the complaint and/or warrant and
130 prosecution of the accused may be deferred upon payment by the
131 accused of a service charge in the amount of Forty Dollars
132 (\$40.00) to the district attorney and by execution of a
133 restitution agreement as hereinafter provided.

134 (5) For the purposes of Sections 97-19-73 through 97-19-81,
135 the term "restitution" shall mean and be defined as the face
136 amount of any check, draft or order for the payment of money made,
137 drawn, issued, uttered or delivered in violation of Section
138 97-19-55, Mississippi Code of 1972, plus a service charge payable
139 to the complainant in the amount of Thirty Dollars (\$30.00) and
140 all court costs, filing fees and collection costs.

141 (6) After an accused has voluntarily surrendered himself and
142 paid the service charge as provided by subsection (4) of this
143 section, the district attorney may enter into a restitution
144 agreement with the accused prescribing the terms by which the
145 accused shall satisfy restitution to the district attorney on
146 behalf of the complainant. The terms of such agreement shall be
147 determined on a case-by-case basis by the district attorney, but
148 the duration of any such agreement shall be no longer than a
149 period of six (6) months. No interest shall be charged or
150 collected on restitution monies. The restitution agreement shall
151 be signed by the accused and approved by the district attorney
152 before it is effective. If the accused does not honor each term
153 of the restitution agreement signed by him, the accused may be
154 proceeded against by prosecution under the provisions of Sections
155 97-19-55 through 97-19-69, Mississippi Code of 1972, and as
156 provided by Section 97-19-79. If the accused makes restitution
157 and pays all charges set out by statute or if the accused enters

158 into a restitution agreement as set out above and honors all terms
159 of such agreement, then if requested, the original check may be
160 returned to the accused and a photocopy retained in the check
161 file.

162 (7) If the holder of any check, draft or order for the
163 payment of money presents to the district attorney satisfactory
164 evidence that the original check, draft or order is unavailable
165 and satisfactory evidence of the check, draft or order is
166 presented in the form of bank records or a photographic copy of
167 the instrument, whether from microfilm or otherwise, then the
168 procedures provided for in this section may be followed in the
169 absence of the original check, draft or order.

170 **SECTION 3.** This act shall take effect and be in force from
171 and after July 1, 2005.