

By: Representative Fillingane

To: Judiciary B

HOUSE BILL NO. 866

1 AN ACT TO AMEND SECTIONS 97-19-67, 97-19-75 AND 97-19-79,
2 MISSISSIPPI CODE OF 1972, TO REQUIRE BAD CHECK DEFENDANTS TO POST
3 BOND IN THE AMOUNT OF THE CHECK PLUS COSTS AND RESTITUTION; AND
4 FOR RELATED PURPOSES.

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

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

8 97-19-67. (1) Except as may be otherwise provided by
9 subsection (2) of this section, any person violating Section
10 97-19-55, upon conviction, shall be punished as follows:

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

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

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

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

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

55 (3) In addition to or in lieu of any penalty imposed under
56 the provisions of subsection (1) or subsection (2) of this
57 section, the court may, in its discretion, order any person
58 convicted of violating Section 97-19-55 to make restitution in
59 accordance with the provisions of Sections 99-37-1 through
60 99-37-23 to the holder of any check, draft or order for which
61 payment has been refused.

62 (4) Upon conviction of any person for a violation of Section
63 97-19-55, when the prosecution of such person was commenced by the
64 filing of a complaint with the court by the district attorney
65 under the provisions of Section 97-19-79, the court shall, in
66 addition to any other fine, fee, cost or penalty which may be
67 imposed under this section or as otherwise provided by law, and in
68 addition to any order as the court may enter under subsection (3)
69 of this section requiring the offender to pay restitution under
70 Sections 99-37-1 through 99-37-23, impose a fee in the amount up
71 to one hundred percent (100%) of the face amount of the check,
72 draft or order for which the offender was convicted of drawing,
73 making, issuing, uttering or delivering in violation of Section
74 97-19-55 plus all costs of prosecution and court costs.

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

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

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

88 97-19-75. (1) The holder of any check, draft or order for
89 the payment of money which has been made, drawn, issued, uttered
90 or delivered in violation of Section 97-19-55, Mississippi Code of
91 1972, may, after complying with the provisions of Section
92 97-19-57, Mississippi Code of 1972, present a complaint to the
93 district attorney. The complaint shall be accompanied by the
94 original check, draft or order upon which the complaint is filed

95 and the return receipt showing mailing of notice under Section
96 97-19-57, Mississippi Code of 1972. Not more than one (1) check,
97 draft or order shall be included within a single complaint. Upon
98 receipt of such complaint, the district attorney shall evaluate
99 the complaint to determine whether or not the complaint is
100 appropriate to be processed by the district attorney.

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

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

122 (4) If the accused voluntarily surrenders himself within the
123 time period as provided by subsection (3) of this section, the
124 accused shall be presented with the complaint and/or warrant and
125 prosecution of the accused may be deferred upon payment by the
126 accused of a service charge in the amount of Forty Dollars

127 (\$40.00) to the district attorney and by execution of a
128 restitution agreement as hereinafter provided.

129 (5) For the purposes of Sections 97-19-73 through 97-19-81,
130 the term "restitution" shall mean and be defined as the face
131 amount of any check, draft or order for the payment of money made,
132 drawn, issued, uttered or delivered in violation of Section
133 97-19-55, Mississippi Code of 1972, plus a service charge payable
134 to the complainant in the amount of Thirty Dollars (\$30.00).

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

156 (7) If the holder of any check, draft or order for the
157 payment of money presents to the district attorney satisfactory
158 evidence that the original check, draft or order is unavailable
159 and satisfactory evidence of the check, draft or order is

160 presented in the form of bank records or a photographic copy of
161 the instrument, whether from microfilm or otherwise, then the
162 procedures provided for in this section may be followed in the
163 absence of the original check, draft or order.

164 **SECTION 3.** Section 97-19-79, Mississippi Code of 1972, is
165 amended as follows:

166 97-19-79. If, after receiving notice as provided for by
167 subsection (3) of Section 97-19-75, the accused fails to timely
168 surrender himself to the district attorney as prescribed in the
169 notice or, if having timely surrendered himself, the accused fails
170 to pay the service charge prescribed by subsection (4) of Section
171 97-19-75 and/or fails to execute or comply with the terms of any
172 restitution agreement executed in accordance with the provisions
173 of Section 97-19-75, then the district attorney shall file the
174 complaint, along with the arrest warrant, if any, which the
175 district attorney may be holding against the accused, with the
176 municipal court, justice court, county court or circuit court in
177 his district having jurisdiction, and prosecution against the
178 accused may be commenced in accordance with the provisions of
179 Sections 97-19-55 through 97-19-69, Mississippi Code of 1972, or
180 as otherwise provided by law. If such prosecution is commenced,
181 the court shall assess the defendant the service charge payable to
182 the district attorney as provided in Section 97-19-75(4),
183 Mississippi Code of 1972, and require the defendant to post a bond
184 in the amount of the bad check plus service charges, all costs of
185 prosecutions, court costs and restitution.

186 **SECTION 4.** This act shall take effect and be in force from
187 and after July 1, 2005.