

By: Senator(s) Michel

To: Judiciary, Division B

SENATE BILL NO. 2264

1 AN ACT TO AMEND SECTION 97-19-75, MISSISSIPPI CODE OF 1972,
2 TO CONFORM THE FEES FOR WITHDRAWAL OF COMPLAINT AND RESTITUTION IN
3 BAD CHECK CASES TO THE BAD CHECK CRIMINAL FEES; AND FOR RELATED
4 PURPOSES.

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

6 **SECTION 1.** Section 97-19-75, Mississippi Code of 1972, is
7 amended as follows:

8 97-19-75. (1) The holder of any check, draft or order for
9 the payment of money which has been made, drawn, issued, uttered
10 or delivered in violation of Section 97-19-55, Mississippi Code of
11 1972, * * * after complying with the provisions of Section
12 97-19-57, Mississippi Code of 1972, may present a complaint to the
13 district attorney. The complaint shall be accompanied by the
14 original check, draft or order upon which the complaint is filed
15 and the return receipt showing mailing of notice under Section
16 97-19-57, Mississippi Code of 1972. Not more than one (1) check,
17 draft or order shall be included within a single complaint. Upon
18 receipt of the complaint, the district attorney shall evaluate the
19 complaint to determine whether * * * the complaint is appropriate
20 to be processed by the district attorney.

21 (2) If, after filing a complaint with the district attorney,
22 the complainant wishes to withdraw the complaint for good cause,
23 the complainant shall pay a fee of Forty Dollars (\$40.00) to the
24 office of the district attorney for processing the complaint.
25 Upon payment of the processing fee and withdrawal of the
26 complaint, the district attorney shall return the original check,
27 draft or order to the complainant.

28 (3) After approval of the complaint by the district
29 attorney, a warrant may be issued by any judicial officer
30 authorized by law to issue arrest warrants, and the warrant may be
31 held by the district attorney. After issuance of a warrant or
32 upon approval of a complaint by the district attorney, the
33 district attorney shall issue a notice to the individual charged
34 in the complaint, informing him that a warrant has been issued for
35 his arrest or that a complaint has been received by the district
36 attorney and that he may be eligible for deferred prosecution for
37 a violation of Section 97-19-55, Mississippi Code of 1972, by
38 voluntarily surrendering himself to the district attorney within
39 ten (10) days, Saturdays, Sundays and legal holidays excepted,
40 from receipt of the notice. The notice shall be sent by United
41 States mail.

42 (4) If the accused voluntarily surrenders himself within the
43 time period as provided by subsection (3) of this section, the
44 accused shall be presented with the complaint * * * or warrant and
45 prosecution of the accused may be deferred upon payment by the
46 accused of a service charge in the amount of Forty Dollars
47 (\$40.00) to the district attorney and by execution of a
48 restitution agreement as hereinafter provided.

49 (5) For the purposes of Sections 97-19-73 through 97-19-81,
50 the term "restitution" shall mean and be defined as the face
51 amount of any check, draft or order for the payment of money made,
52 drawn, issued, uttered or delivered in violation of Section
53 97-19-55, Mississippi Code of 1972, plus a service charge payable
54 to the complainant in the amount of Forty Dollars (\$40.00).

55 (6) After an accused has voluntarily surrendered himself and
56 paid the service charge as provided by subsection (4) of this
57 section, the district attorney may enter into a restitution
58 agreement with the accused prescribing the terms by which the
59 accused shall satisfy restitution to the district attorney on
60 behalf of the complainant. The terms of the agreement shall be

61 determined on a case-by-case basis by the district attorney, but
62 the duration of any such agreement shall be no longer than a
63 period of six (6) months. No interest shall be charged or
64 collected on restitution monies. The restitution agreement shall
65 be signed by the accused and approved by the district attorney
66 before it is effective. If the accused does not honor each term
67 of the restitution agreement signed by him, the accused may be
68 proceeded against by prosecution under the provisions of Sections
69 97-19-55 through 97-19-69, Mississippi Code of 1972, and as
70 provided by Section 97-19-79. If the accused makes restitution
71 and pays all charges set out by statute or if the accused enters
72 into a restitution agreement as set out above and honors all terms
73 of the agreement, then if requested, the original check may be
74 returned to the accused and a photocopy retained in the check
75 file.

76 (7) If the holder of any check, draft or order for the
77 payment of money presents to the district attorney satisfactory
78 evidence that the original check, draft or order is unavailable
79 and satisfactory evidence of the check, draft or order is
80 presented in the form of bank records or a photographic copy of
81 the instrument, whether from microfilm or otherwise, then the
82 procedures provided for in this section may be followed in the
83 absence of the original check, draft or order.

84 **SECTION 2.** This act shall take effect and be in force from
85 and after July 1, 2005.