

By: Senator(s) Tollison

To: Business and Financial  
Institutions; Judiciary,  
Division A

SENATE BILL NO. 2807

1 AN ACT TO CREATE THE MISSISSIPPI DEFERRED DEPOSIT LOAN ACT;  
2 TO DEFINE CERTAIN TERMS; TO PROVIDE FOR LICENSING AND EXAMINATION  
3 OF PERSONS ENGAGING IN THE BUSINESS OF MAKING DEFERRED DEPOSIT  
4 LOANS; TO REQUIRE CERTAIN DISCLOSURES TO CONSUMERS; TO REQUIRE  
5 CERTAIN ACTS; TO PROHIBIT CERTAIN ACTS; TO REQUIRE REPORTING TO  
6 THE COMMISSIONER OF BANKING AND CONSUMER FINANCE; TO PROVIDE  
7 PENALTIES FOR VIOLATIONS OF THE ACT; TO REPEAL SECTIONS 75-67-501  
8 THROUGH 75-67-539, MISSISSIPPI CODE OF 1972, WHICH CREATE THE  
9 MISSISSIPPI CHECK CASHERS ACT; AND FOR RELATED PURPOSES.

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

11 **SECTION 1. Title and purpose.** This act shall be known and  
12 may be cited as the "Mississippi Deferred Deposit Loan Act." This  
13 act shall be liberally construed to effectuate its purpose and is  
14 to be construed as a consumer protection statute for all purposes.  
15 The purpose of the act is to protect Mississippi consumers who  
16 enter into short-term, high interest rate "deferred deposit" or  
17 "payday" loans from the abuses that occur in the credit  
18 marketplace.

19 **SECTION 2. Definitions.** The following words and phrases  
20 used in this act shall have the following meanings unless the  
21 context clearly indicates otherwise:

22 (a) "Appropriate law enforcement agency" means the  
23 sheriff of each county in which the licensee maintains an office,  
24 or the police chief of the municipality in which the licensee  
25 maintains an office, or law enforcement officers of the Department  
26 of Public Safety.

27 (b) "Attorney General" means the Attorney General of  
28 the State of Mississippi.

29 (c) "Check" means any check, draft, money order,  
30 personal money order, pre-authorized customer draft, or other

31 instrument for the transmission or payment of money as determined  
32 by the Commissioner of Banking and Consumer Finance, but shall not  
33 include travelers checks or foreign drawn payment instruments.

34 (d) A "check casher" means any individual, partnership,  
35 association, joint stock association, trust or corporation,  
36 excluding the United States government and the government of this  
37 state, who exchanges cash or other value for any check, draft,  
38 money order, personal money order, or other instrument for the  
39 transmission or payment of money, except travelers checks and  
40 foreign drawn payment instruments and who charges a fee therefor.

41 (e) "Commissioner" means the Mississippi Commissioner  
42 of Banking and Consumer Finance, or his designee, as the  
43 designated official for the purpose of enforcing this act.

44 (f) "Department" means the Department of Banking and  
45 Consumer Finance.

46 (g) "Lender" means any person or entity that offers or  
47 makes a deferred deposit transaction, arranges a deferred deposit  
48 transaction for a third party, or acts as an agent for a third  
49 party, regardless of whether the third party is exempt from  
50 licensing under this act or whether approval, acceptance or  
51 ratification by the third party is necessary to create a legal  
52 obligation for the third party. Notwithstanding that a bank,  
53 savings institution, credit union or farm credit system may be  
54 exempted by federal law from this act's provisions related to  
55 interest rate, finance charges and licensure, all other applicable  
56 provisions of this act apply to these entities. Any lender that  
57 is not a bank, savings institution, credit union or farm credit  
58 system must comply with all the provisions of act, whether acting  
59 on its own account or as an agent or broker of the third party, to  
60 the extent federal law does not preempt the application of this  
61 act to agents or brokers.

62 (h) "Licensee" means any individual, partnership,  
63 association or corporation duly licensed by the Department of

64 Banking and Consumer Finance to engage in the business of cashing  
65 checks under this act.

66 (i) "Person" means an individual, partnership,  
67 corporation, joint venture, trust, association or any legal entity  
68 however organized.

69 (j) "Personal money order" means any instrument for the  
70 transmission or payment of money in relation to which the  
71 purchaser or remitter appoints or purports to appoint the seller  
72 thereof as his agent for the receipt, transmission or handling of  
73 money, whether such instrument is signed by the seller or by the  
74 purchaser or remitter or some other person.

75 **SECTION 3. Licensing and examination.** (1) No person shall  
76 engage in or offer to engage in the business regulated by this act  
77 unless and until a license has been issued by the commissioner. A  
78 separate license is required for each place of business regulated  
79 by this act and each business must be independent of, and not a  
80 part of, any other business operation. The commissioner shall not  
81 issue or renew any such license unless and until the following  
82 findings are made:

83 (a) That authorizing the applicant to engage in such  
84 business will promote the convenience and advantage of the  
85 community in which the applicant proposes to engage in business;

86 (b) That the financial responsibility, experience,  
87 character and general fitness of the applicant are such as to  
88 command the confidence of the public and to warrant the belief  
89 that the business will be operated lawfully and fairly, and within  
90 the provisions and purposes of this act;

91 (c) That neither the applicant, nor any principals of  
92 the applicant, which includes any persons owning at least five  
93 percent (5%) of the applicant, have been convicted of any crimes;

94 (d) That the applicant shall have a minimum net worth  
95 of at least Twenty-five Thousand Dollars (\$25,000.00) available  
96 for the operation of each location, with such net worth to be

97 determined in accordance with generally accepted accounting  
98 practices;

99 (e) That the applicant has provided a sworn statement  
100 that the applicant has not used in the past, nor will in the  
101 future directly or indirectly use the criminal process of this  
102 State or any other State to collect the payment of deferred  
103 deposit loans not generally available to creditors to collect  
104 loans in default; and

105 (f) Any other information as the commissioner may deem  
106 necessary.

107 (2) Application for a license. Each application for a  
108 license shall be in writing and under oath to the commissioner, in  
109 a form prescribed by the commissioner, and shall include the  
110 following:

111 (a) The legal name, residence and business address of  
112 the applicant and, if the applicant is a partnership, association  
113 or corporation, of every member, officer, managing employee and  
114 director thereof.

115 (b) The location in Mississippi at which the registered  
116 office of the applicant shall be located; and

117 (c) Other data and information the commissioner may  
118 require with respect to the applicant, its directors, trustees,  
119 officers, members and managing employees or agents.

120 (3) Fee and bond. A nonrefundable fee of One Thousand  
121 Dollars (\$1,000.00) shall be paid by each applicant for each place  
122 of business for which a license is sought under this act. Each  
123 applicant must post a bond in the amount of Twenty-five Thousand  
124 Dollars (\$25,000.00) per location which must continue in effect  
125 for five (5) years after the licensee ceases operation in  
126 Mississippi. Such bond shall be available to pay damages and  
127 penalties to consumers harmed by any violation of this act.

128 (4) Issuance and Posting of License. Upon the filing of an  
129 application in a form prescribed by the commissioner, accompanied

130 by the fee, bond and documents required by this act, the  
131 commissioner shall investigate to ascertain whether the  
132 qualifications prescribed by this act have been satisfied. If the  
133 commissioner finds that the qualifications have been satisfied,  
134 and approves the documents, the commissioner shall issue to the  
135 applicant a license to engage in the deferred deposit services  
136 business in Mississippi. The license shall be kept conspicuously  
137 posted in the place of business of the licensee.

138 (5) Effectiveness and nontransferability of license. (a) A  
139 license issued pursuant to this act shall remain in force and  
140 effective through the July 1 after its date of issuance unless  
141 earlier surrendered, suspended or revoked pursuant to this act.

142 (b) Licenses issued pursuant to this act shall expire  
143 on July 1 of each year. Each license may be renewed for the  
144 ensuing twelve-month period upon application by the licensee  
145 showing continued compliance with the requirements of this act and  
146 the payment to the commissioner annually, on or before May 1 of  
147 each year, a license renewal fee of Seven Hundred Fifty Dollars  
148 (\$750.00) per location.

149 (c) A license issued pursuant to this act is not  
150 transferable or assignable. The prior written approval of the  
151 commissioner is required for the continued operation of a deferred  
152 deposit service business whenever a change of control or ownership  
153 of a license is proposed.

154 (6) Regulations and examinations. (a) The commissioner may  
155 promulgate reasonable regulations, not inconsistent with law, for  
156 the enforcement of this act.

157 (b) To assure compliance with the provisions of this  
158 act, the commissioner may examine the relevant business, books and  
159 records of any licensee. The commissioner may charge and collect  
160 an examination fee of Four Hundred Dollars (\$400.00) per day per  
161 examiner for any compliance examination conducted by the  
162 commissioner, with such fee not exceeding Two Thousand Dollars

163 (\$,2000.00) per year. All examination fees collected by the  
164 commissioner pursuant to this provision shall be deposited into  
165 the Department of Banking and Consumer Finance Special Fund.

166 (7) Revocation of license. If the commissioner shall find,  
167 after due notice and hearing, or opportunity for hearing that any  
168 licensee, or an officer, agent, employee or representative  
169 thereof, has violated any of the provisions of this act, or has  
170 failed to comply with the rules, regulations, instructions or  
171 orders promulgated by the commissioner, or has failed or refused  
172 to make its reports to the commissioner, or has furnished false  
173 information to the commissioner, the commissioner may issue an  
174 order revoking or suspending the right of such licensee and such  
175 officer, agent, employee or representative to do business in this  
176 state as a licensee. No revocation, suspension or surrender of  
177 any license shall relieve the licensee from civil or criminal  
178 liability for acts committed prior thereto.

179 **SECTION 4. Required disclosures.** (1) Information pamphlet  
180 provided to all consumers. Before entering into a deferred  
181 deposit loan, the licensee shall deliver to the consumer a  
182 pamphlet prepared by or at the direction of the commissioner which  
183 explains, in simple English and Spanish, all of the consumer's  
184 rights and responsibilities in a deferred deposit loan  
185 transaction.

186 (2) Toll-free phone number. The pamphlet shall include a  
187 toll free number to the commissioner's office to handle concerns  
188 or complaints by consumers, and informs consumers that the  
189 commissioner's office can provide information about whether a  
190 lender is licensed, whether complaints have been filed with the  
191 commissioner, and the resolution of such complaints. The  
192 toll-free number (along with an explanation that the number is to  
193 the commissioner's office and can handle concerns or complaints by  
194 consumer, provide information about whether a lender is licensed,  
195 whether complaints have been filed with the commissioner, and the

196 resolution of such complaints) shall be posted in a conspicuous  
197 place in the licensee's place of business in at least twenty-four  
198 (24) bold Times New Roman font.

199 (3) Loan documents. Licensees shall provide consumers with  
200 a written agreement on a form specified or approved by the  
201 commissioner that can be kept by the consumer, and must include  
202 the following information in English and in the language in which  
203 the loan was negotiated:

204 (a) The name, address, phone number of the licensee  
205 making the deferred deposit loan, and the name and title of the  
206 individual employee who signs the agreement on behalf of the  
207 licensee;

208 (b) An itemization of the fees and interest charges to  
209 be paid by the consumer;

210 (c) Disclosures required by the federal Truth in  
211 Lending Act, regardless of whether the Truth in Lending Act  
212 applies to the particular deferred deposit loan;

213 (d) Disclosures required under any other state law;

214 (e) A clear description of the consumer's payment  
215 obligations under the loan;

216 (f) In a manner which is more conspicuous than the  
217 other information provided in the loan document and is in at least  
218 fourteen (14) point boldtypeface, a statement that "you cannot be  
219 prosecuted in criminal court to collect this loan and the licensee  
220 can not take civil action beyond that allowed for other financial  
221 institutions." Such notice shall be located immediately preceding  
222 the signature of the consumer;

223 (3) Posting requirements. The following notices in English,  
224 Spanish, as well as other languages, in which a significant amount  
225 of deferred deposit loan business is conducted, must be  
226 conspicuously posted by all licensees in each location of a  
227 business providing deferred deposit loans in at least fourteen  
228 (14) point bold typeface:

229           (a) That informs consumers that the licensee cannot use  
230 the criminal process against a consumer to collect any deferred  
231 deposit loan.

232           (b) The schedule of all interest and fees to be charged  
233 on such loans with an example of the amounts that would be charged  
234 on a Four Hundred Dollar (\$400.00) loan payable in fourteen (14)  
235 days and thirty (30) days, giving the corresponding annual  
236 percentage rate.

237           (c) "WARNING: The fees and interest charged on deferred  
238 deposit loans made at this institution are higher than those  
239 charged at other financial institutions."

240           **SECTION 5. Required acts.** (1) Each deferred deposit loan  
241 must have a minimum term of no less than thirty-one (31) days.

242           (2) The maximum amount of the deferred deposit loan shall  
243 not exceed Four Hundred Dollars (\$400.00), excluding charges  
244 discussed in subsection (3).

245           (3) The licensee may charge a maximum annual percentage rate  
246 (APR) of interest equal to sixty percent (60%) of the deferred  
247 deposit loan. For example, a deferred deposit loan with a term of  
248 thirty-one (31) days made in the amount of Four Hundred Dollars  
249 (\$400.00) allows additional interest fees of Twenty Dollars and  
250 Thirty-eight cents (\$20.38) based on a 365-day year.

251           (4) A consumer shall be permitted to make partial payments,  
252 in amounts equal to no less than Five Dollar (\$5.00) increments,  
253 on the loan at any time, without charge, prior to presentment of  
254 the check for collection. However, partial payments made by the  
255 consumer may not be in the form of a personal check.

256           (5) After each payment made, in full or in part, on any  
257 loan, the licensee shall give to the person making such payment a  
258 signed, dated receipt showing the amount paid and the balance due  
259 on the loan.

260           (6) The check written by the consumer in a deferred deposit  
261 loan must be made payable to the licensee.



262 (7) Upon receipt of the check from the customer for a  
263 deferred deposit loan, the licensee must immediately stamp the  
264 back of the check with an endorsement that states: "This check is  
265 being negotiated as part of a deferred deposit loan pursuant to  
266 [include the code citation to this act] and any holder of this  
267 check takes it subject to all claims and defenses of the maker."

268 (8) The licensee must provide the consumer, or each consumer  
269 if there are more than one, with a copy of all loan documents  
270 prior to consummation of the deferred deposit loan agreement.

271 (9) The holder or assignee of any check written by a  
272 consumer in connection with a deferred deposit loan takes the  
273 instrument subject to all claims and defenses of the consumer.

274 **SECTION 6. Prohibited acts.** The following are prohibited  
275 practices regarding deferred deposit transactions:

276 (a) Taking or attempting to take any security other  
277 than the borrower's instrument.

278 (b) Taking or attempting to take more than a single  
279 check or other instrument from the borrower in connection with a  
280 single transaction.

281 (c) Selling, offering or soliciting any application for  
282 credit insurance in connection with a transaction.

283 (d) Tying the transaction to any other transaction,  
284 offer or obligation of the borrower.

285 (e) Failing to comply with the commissioner's request  
286 for assistance in resolving a complaint.

287 (f) Using or threatening to use criminal process to  
288 collect a dishonored check, unless fraud is involved.

289 (g) Assigning or selling to another lender an  
290 instrument taken in connection with a deferred deposit transaction  
291 unless the instrument bears the following endorsement: THIS  
292 INSTRUMENT WAS GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT  
293 TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS DEEMED TO HAVE

294 KNOWLEDGE OF AND SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE  
295 LOAN AGREEMENT BETWEEN THE BORROWER AND THE ORIGINAL LENDER.

296 (h) Engaging in any device or subterfuge to evade the  
297 requirements of this act including making loans disguised as  
298 personal property sales and leaseback transactions or disguising  
299 loan proceeds as cash "rebates" for the pretextual installment  
300 sale of goods or services.

301 (i) Failing to collect and provide information  
302 regarding the number, total and average transaction amounts and  
303 any other information the commissioner may request.

304 (j) Offering, arranging, acting as an agent for, or  
305 assisting a lender in the making of a deferred deposit transaction  
306 unless the lender complies with the provisions of this act.

307 **SECTION 7. Reporting requirements.** (1) Supervision by  
308 commissioner. Each licensee shall keep and use books, accounts  
309 and records which will enable the commissioner to determine if the  
310 licensee is complying with the provisions of the act and maintain  
311 any other records as required by the commissioner. The  
312 commissioner, or his designee, is authorized to examine such  
313 records at any reasonable time. All such records must be kept for  
314 four (4) years following the last entry on a loan and according to  
315 generally accepted accounting procedures which means that an  
316 examiner must be able to review the recordkeeping and reconcile  
317 each consumer loan with documentation maintained in the consumer's  
318 loan file records.

319 (2) Licensee information. Each licensee shall file an  
320 annual report with the commissioner on forms prescribed by the  
321 commissioner. Such reports shall be verified by the oath or  
322 affirmation of the owner, manager or president of the licensee.  
323 Such reports shall disclose in detail and under appropriate  
324 headings:

325 (a) The resources, assets and liabilities of such  
326 licensee at the beginning and the end of the period.

327           (b) The income, expense, gain, loss and a  
328 reconciliation of surplus or net worth with the balance sheets,  
329 and the ratios of the profits to the assets reported.

330           (c) The total number of deferred deposit loans made in  
331 the calendar year ending as of December 31 of the previous year.

332           (d) The total number of such loans outstanding as of  
333 December 31 of the previous year.

334           (e) The minimum, maximum and average dollar amount of  
335 checks whose deposits were deferred in the calendar year ending as  
336 of December 31 of the previous year.

337           (f) The average annual percentage rate, the average  
338 number of days a deposit of a check is deferred during the  
339 calendar year ending as of December 31 of the previous year.

340           (g) The total number and dollar amount of returned  
341 checks, the total number and dollar amount of checks recovered,  
342 the total number and dollar amount of checks charged off during  
343 the calendar year ending as of December 31 of the previous year.

344           (h) Verification that the licensee has not used the  
345 criminal process or caused the criminal process to be used in the  
346 collection of any deferred deposit loans or used any civil process  
347 to collect the payment of deferred payment loans not generally  
348 available to creditors to collect on loans in default during the  
349 calendar year ending as of December 31 of the previous year.

350           (3) Other business. If a licensee conducts another business  
351 or is affiliated with other licensees under this act, or if any  
352 other situation exists under which allocations of expense are  
353 necessary, the licensee shall make such allocation according to  
354 appropriate and reasonable accounting principles as approved by  
355 the commissioner. Information about other business conducted on  
356 the same premises as that of deferred deposit loans shall be  
357 provided as required by the commissioner.

358           (4) Annual reports. The commissioner shall compile annual  
359 reports of deferred deposit lending in this state from the

360 information provided under this section and provide a copy to the  
361 Governor and the Legislature. Annual reports shall be available  
362 to interested parties and to the general public.

363 (5) Copy of contract and fee schedule. Each licensee shall  
364 file a copy of the contract and the fee schedule with the  
365 commissioner prior to the date of commencement of business at each  
366 location, at the time any changes are made to the documents or  
367 schedule, and annually thereafter upon renewal of the license.  
368 These documents shall be available to interested parties and to  
369 the general public.

370 **SECTION 8. Violations.** (1) Criminal penalties. In  
371 addition to any penalty which may be applicable, any licensee or  
372 employee who willfully violates any provision of this act, or who  
373 willfully makes a false entry in any record specifically required  
374 by this act shall be guilty of a misdemeanor and upon conviction  
375 thereof, shall be punishable by a fine not in excess of One  
376 Thousand Dollars (\$1,000.00) per violation or false entry.  
377 Compliance with the criminal provisions of this act shall be  
378 enforced by the appropriate law enforcement agency, which may  
379 exercise for that purpose any authority conferred upon that agency  
380 by law.

381 (2) Cease and desist orders. When the commissioner has  
382 reasonable cause to believe that a person is violating any  
383 provision of this act, the commissioner, in addition to and  
384 without prejudice to the authority provided elsewhere in this act,  
385 may do one or more of the following:

386 (a) Order the person to cease and desist from violating  
387 this act;

388 (b) Order the person to pay the commissioner a civil  
389 penalty of not more than One Thousand Dollars (\$1,000.00) for each  
390 transaction in violation of this act;

391 (c) Require the refund of any fees collected by such  
392 person in violation of this act.

393           (3) Civil penalties. (a) Any person found to have violated  
394 this act shall be liable to the consumer for actual, consequential  
395 and punitive damages, plus statutory damages of One Thousand  
396 Dollars (\$1,000.00) for each violation (to be increased by the  
397 commissioner to reflect inflation), plus costs and attorney's  
398 fees.

399           (b) A civil action may be brought by the Attorney  
400 General or any district attorney. Where a successful civil action  
401 is brought by a district attorney, one-half (1/2) of the damages  
402 recovered on behalf of the state shall be distributed to the  
403 office of the district attorney of the judicial circuit of such  
404 district attorney to be used by the district attorney in order to  
405 fund the budget of that office.

406           (4) Void agreement. Any deferred deposit loan agreement,  
407 and the accompanying payment device, the making or collecting of  
408 which violates any provision of this act or rule adopted  
409 thereunder shall be void, and the lender or any other party  
410 acting by or through the lender shall have no right to collect,  
411 receive or retain any principal or charges whatsoever with  
412 respect to the loan.

413           **SECTION 9.** The provisions of Sections 75-67-501, 75-67-503,  
414 75-67-505, 75-67-507, 75-67-509, 75-67-511, 75-67-513, 75-67-515,  
415 75-67-516, 75-67-517, 75-67-519, 75-67-521, 75-67-523, 75-67-525,  
416 75-67-527, 75-67-529, 75-67-531, 75-67-533, 75-67-535, 75-67-537  
417 and 75-67-539, Mississippi Code of 1972, which create the  
418 Mississippi Check Cashers Act, are hereby repealed on July 1,  
419 2005.

420           **SECTION 10.** This act shall take effect and be in force from  
421 and after July 1, 2005.