

By: Representatives Fillingane, Bounds

To: Judiciary B

HOUSE BILL NO. 433

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, 2006.