

By: Senator(s) Tollison

To: Business and Financial
Institutions; Judiciary,
Division A

SENATE BILL NO. 2134

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 this act, whether
59 acting on its own account or as an agent or broker of the third
60 party, to the extent federal law does not preempt the application
61 of this 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 effect through July 1 after its date of issuance unless earlier
141 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 (\$2,000.00) 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 consumers, 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
238 deferred deposit loans made at this institution are higher than
239 those 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 consumer 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 2006.

420 **SECTION 10.** This act shall take effect and be in force from
421 and after July 1, 2006.