

By: Representative Guice

To: Banking and Financial
ServicesHOUSE BILL NO. 660
(As Passed the House)

1 AN ACT TO REENACT SECTIONS 75-67-501 THROUGH 75-67-537,
2 MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI CHECK CASHERS
3 ACT; TO AMEND REENACTED SECTION 75-67-505, MISSISSIPPI CODE OF
4 1972, TO DELETE PROVISIONS THAT ALLOW THE CHANGE OF OWNERSHIP OF A
5 LICENSED CHECK CASHING BUSINESS WITHOUT OBTAINING A NEW LICENSE
6 FOR THE BUSINESS; TO PROVIDE THAT THIS ACT SHALL STAND REPEALED ON
7 JUNE 30, 2008; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 75-67-501, Mississippi Code of 1972, is
10 reenacted as follows:

11 75-67-501. This article shall be known and may be cited as
12 the "Mississippi Check Cashers Act."

13 **SECTION 2.** Section 75-67-503, Mississippi Code of 1972, is
14 reenacted as follows:

15 75-67-503. The following words and phrases used in this
16 article shall have the following meanings unless the context
17 clearly indicates otherwise:

18 (a) "Appropriate law enforcement agency" means the
19 sheriff of each county in which the licensee maintains an office,
20 or the police chief of the municipality in which the licensee
21 maintains an office, or law enforcement officers of the Department
22 of Public Safety.

23 (b) "Attorney General" means the Attorney General of
24 the State of Mississippi.

25 (c) "Check" means any check, draft, money order,
26 personal money order, pre-authorized customer draft, or other
27 instrument for the transmission or payment of money as determined
28 by the Commissioner of Banking and Consumer Finance, but shall not
29 include travelers checks or foreign drawn payment instruments.

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

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

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

(g) "Licensee" means any individual, partnership, association or corporation duly licensed by the Department of Banking and Consumer Finance to engage in the business of cashing checks under this article.

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

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

SECTION 3. Section 75-67-505, Mississippi Code of 1972, is reenacted and amended as follows:

75-67-505. (1) (a) A person may not engage in business as a check casher or otherwise portray himself as a check casher unless the person has a valid license authorizing engagement in the business. A separate license is required for each place of business under this article and each business must be independent of, and not a part of, any other business operation. A check

63 cashing business shall not be a part of, or located at the same
64 business address with, a pawnshop, title pledge office and small
65 loan company.

66 (b) A check cashing business shall (i) have a
67 definitive United States Postal address and E911 address; (ii)
68 comply with local zoning requirements; (iii) have a minimum of one
69 hundred (100) square feet with walls from floor to ceiling
70 separating the operation from any other businesses; (iv) have an
71 outside entrance, but may be located in an area that has a common
72 lobby shared by other businesses as long as the customers do not
73 enter the check cashing business through another business; (v)
74 have proper signage; and (vi) maintain separate books and records.
75 Any licensee who does not cash any delayed deposit checks as
76 authorized under Section 75-67-519 shall not be subject to the
77 requirements of subparagraphs (i), (iii) and (iv) of this
78 paragraph.

79 (c) A licensed check casher may sell, at the same
80 location as his check cashing business, the following items and
81 services: money orders; income tax preparation service; copy
82 service; wire transfer service; notary service; pagers; pager
83 service; prepaid cellular service; debit card; prepaid telephone
84 cards; prepaid telephone service; and operate a processing center
85 where utility bills, credit card payments and other payments are
86 collected from the general public and governmental and private
87 payments are distributed. In the event a licensee accepts wire
88 transfers in the form of a direct deposit of a payroll check or
89 other similar types of deposit, the licensee shall not encumber
90 any transferred funds against a deferred deposit agreement or any
91 delinquent deferred deposit agreement with such customer. The
92 commissioner may authorize additional functions in addition to
93 those provided in this subsection that may be performed as part of
94 a check cashing business.

(d) The commissioner may issue more than one (1) license to a person if that person complies with this article for each license. A new license * * * is required upon a change, directly or beneficially, in the ownership of any licensed check casher business and an application shall be made to the commissioner in accordance with this article.

(2) When a licensee wishes to move a check casher business to another location, the licensee shall give thirty (30) days' prior written notice to the commissioner who shall amend the license accordingly.

(3) Each license shall remain in full force and effect until relinquished, suspended, revoked or expired. With each initial application for a license, the applicant shall pay the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars (\$750.00), and on or before September 1 of each year thereafter, an annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00). If the annual renewal fee remains unpaid twenty-nine (29) days after September 1, the license shall thereupon expire, but not before the thirtieth day of September of any year for which the annual fee has been paid. If any licensee fails to pay the annual renewal fee before the thirtieth day of September of any year for which the renewal fee is due, then the licensee shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars (\$25.00) for each day that the licensee has engaged in business after September 30. All licensing fees and penalties shall be paid into the Consumer Finance Fund of the Department of Banking and Consumer Finance.

(4) Notwithstanding other provisions of this article, the commissioner may issue a temporary license authorizing the operator of a check casher business on the receipt of an application for a license involving principals and owners that are substantially identical to those of an existing licensed check

128 casher. The temporary license is effective until the permanent
129 license is issued or denied.

130 * * *

131 **SECTION 4.** Section 75-67-507, Mississippi Code of 1972, is
132 reenacted as follows:

133 75-67-507. The provisions of this article shall not apply
134 to:

135 (a) Any bank, trust company, savings association,
136 savings and loan association, savings bank or credit union which
137 is chartered under the laws of this state or under federal law and
138 domiciled in this state.

139 (b) Any person who cashes checks at their face value
140 and does not charge the consumer a fee or otherwise receive any
141 consideration from the consumer.

142 (c) Any person principally engaged in the retail sale
143 of goods or services who, either as an incident to or
144 independently of a retail sale, may from time to time cash checks
145 for a fee, not exceeding three percent (3%) of the face amount of
146 the check or Ten Dollars (\$10.00), whichever is greater. However,
147 the fee shall be conspicuously posted for public view.

148 **SECTION 5.** Section 75-67-509, Mississippi Code of 1972, is
149 reenacted as follows:

150 75-67-509. To be eligible for a check casher license, an
151 applicant shall:

152 (a) Operate lawfully and fairly within the purposes of
153 this article.

154 (b) Not have been convicted of a felony in the last ten
155 (10) years or be active as a beneficial owner for someone who has
156 been convicted of a felony in the last ten (10) years.

157 (c) File with the commissioner a bond with good
158 security in the penal sum of Ten Thousand Dollars (\$10,000.00),
159 payable to the State of Mississippi for the faithful performance
160 by the licensee of the duties and obligations pertaining to the

business so licensed and the prompt payment of any judgment which may be recovered against the licensee on account of charges or other claims arising directly or collectively from any violation of the provisions of this article. The bond shall not be valid until it is approved by the commissioner. The applicant may file, in lieu of the bond, cash, a certificate of deposit or government bonds in the amount of Ten Thousand Dollars (\$10,000.00). Those deposits shall be filed with the commissioner and are subject to the same terms and conditions as are provided for in the surety bond required in this paragraph. Any interest or earnings on those deposits are payable to the depositor.

(d) File with the commissioner an application for a license and the initial license fee required in this article. If applicant's application is approved, a check casher license will be issued within thirty (30) days.

(e) Submit a set of fingerprints from any local law enforcement agency. In order to determine the applicant's suitability for license, the commissioner shall forward the fingerprints to the Department of Public Safety; and if no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(f) Complete and file with the commissioner an annual renewal application for a license accompanied by the renewal fee required in this article.

SECTION 6. Section 75-67-511, Mississippi Code of 1972, is reenacted as follows:

75-67-511. Each application for a license shall be in a form prescribed by the commissioner, signed under oath, and shall include the following:

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

194 However, the application need not state the full name and
195 address of each shareholder, if the applicant is owned directly or
196 beneficially by a person which as an issuer has a class of
197 securities registered under Section 12 of the Securities and
198 Exchange Act of 1934 or is an issuer of securities which is
199 required to file reports with the Securities and Exchange
200 Commission under Section 15(d) of the Securities and Exchange Act,
201 provided that the person files with the commissioner such
202 information, documents and reports as are required by the
203 provisions of the Securities and Exchange Act to be filed by the
204 issuer with the Securities and Exchange Commission.

205 (b) The complete address of the location at which the
206 applicant proposes to engage in the business of cashing checks.

207 (c) Other data and information the department may
208 require with respect to the applicant, its directors, trustees,
209 officers, members or agents.

210 (d) Sworn financial statements of the applicant showing
211 a net worth of at least Twenty Thousand Dollars (\$20,000.00) for
212 the first license. The applicant shall possess and maintain a net
213 worth of at least Twenty Thousand Dollars (\$20,000.00) for the
214 first license and at least Five Thousand Dollars (\$5,000.00) for
215 each additional license.

216 **SECTION 7.** Section 75-67-513, Mississippi Code of 1972, is
217 reenacted as follows:

218 75-67-513. (1) Upon filing of an application in a form
219 prescribed by the commissioner, accompanied by the documents
220 required in this article, the department shall investigate to
221 ascertain whether the qualifications prescribed by Sections
222 75-67-509 and 75-67-511 have been satisfied. If the commissioner
223 finds that the qualifications have been satisfied and, if he
224 approves the documents so filed by the applicant, he shall issue
225 to the applicant a license to engage in the business of check
226 cashing in this state.

227 (2) The license shall be kept conspicuously posted in the
228 place of business of the licensee.

229 **SECTION 8.** Section 75-67-515, Mississippi Code of 1972, is
230 reenacted as follows:

231 75-67-515. (1) The department may adopt reasonable
232 administrative regulations, not inconsistent with law, for the
233 enforcement of this article.

234 (2) To assure compliance with the provisions of this
235 article, the department may examine the books and records of any
236 licensee without notice during normal business hours. The
237 commissioner may charge the licensee an examination fee in an
238 amount not less than Three Hundred Dollars (\$300.00) nor more than
239 Six Hundred Dollars (\$600.00) for each office or location within
240 the State of Mississippi plus any actual expenses incurred while
241 examining the licensee's records or books that are located outside
242 the State of Mississippi. However, in no event shall a licensee
243 be examined more than once in a two-year period unless for cause
244 shown based upon consumer complaint and/or other exigent reasons
245 as determined by the commissioner.

246 (3) Each licensee shall keep and use in its business any
247 books, accounts and records the department may require to carry
248 into effect the provisions of this article and the administrative
249 regulations issued under this article. Every licensee shall
250 preserve the books, accounts and records of its business for at
251 least two (2) years.

252 (4) Any fee charged by a licensee for cashing a check shall
253 be posted conspicuously to the bearer of the check before cashing
254 the check, and the fee shall be a service fee and not interest.

255 (5) Before a licensee deposits with any bank or other
256 depository institution a check cashed by the licensee, the check
257 shall be endorsed with the actual name under which the licensee is
258 doing business.

259 (6) All personal checks cashed for a customer by a licensee
260 shall be dated on the actual date the cash is tendered to the
261 customer.

262 (7) No licensee shall cash a check payable to a payee unless
263 the licensee has previously obtained appropriate identification of
264 the payee clearly indicating the authority of the person cashing
265 the check, draft or money order on behalf of the payee.

266 (8) No licensee shall indicate through advertising, signs,
267 billboards or otherwise that checks may be cashed without
268 identification of the bearer of the check; and any person seeking
269 to cash a check shall be required to submit reasonable
270 identification as prescribed by the department. The provisions of
271 this subsection shall not prohibit a licensee from cashing a check
272 simultaneously with the verification and establishment of the
273 identity of the presenter by means other than presentation of
274 identification.

275 (9) Within five (5) business days after being advised by the
276 payor financial institution that a check has been altered, forged,
277 stolen, obtained through fraudulent or illegal means, negotiated
278 without proper legal authority or represents the proceeds of
279 illegal activity, the licensee shall notify the department and the
280 district attorney for the judicial district in which the check was
281 received. If a check is returned to the licensee by the payor
282 financial institution for any of these reasons, the licensee may
283 not release the check without consent of the district attorney or
284 other investigating law enforcement authority.

285 (10) If a check is returned to a licensee from a payor
286 financial institution because there are insufficient funds in or
287 on deposit with the financial institution to pay the check, the
288 licensee or any other person on behalf of the licensee shall not
289 institute or initiate any criminal prosecution against the maker
290 or drawer of the personal check with the intent and purpose of

aiding in the collection of or enforcing the payment of the amount owed to the check casher by the maker or drawer of the check.

(11) Nothing in this article shall prohibit a licensee from issuing coupons to customers or potential customers which are redeemable against a deferred deposit transaction provided the redemption results in a financial benefit to the customer on current or future transactions.

SECTION 9. Section 75-67-516, Mississippi Code of 1972, is reenacted as follows:

75-67-516. A licensee shall not advertise, display or publish, or permit to be advertised, displayed or published, in any manner whatsoever, any statement or representation that is false, misleading or deceptive.

SECTION 10. Section 75-67-517, Mississippi Code of 1972, is reenacted as follows:

75-67-517. Notwithstanding any other provision of law, no check cashing business licensed under this article shall directly or indirectly charge or collect fees for check cashing services in excess of the following:

(a) Three percent (3%) of the face amount of the check or Five Dollars (\$5.00), whichever is greater, for checks issued by the federal government, state government, or any agency of the state or agency of the state or federal government, or any county or municipality of this state.

(b) Ten percent (10%) of the face amount of the check or Five Dollars (\$5.00), whichever is greater, for personal checks.

(c) Five percent (5%) of the face amount of the check or Five Dollars (\$5.00), whichever is greater, for all other checks, or for money orders.

A licensee may not advance monies on the security of any personal check unless the presenter attests that the check being presented is drawn on a legitimate, open and active account.

Except as provided by Section 75-67-519, any licensee who cashes a check for a fee shall deposit the check not later than three (3) business days from the date the check is cashed.

SECTION 11. Section 75-67-519, Mississippi Code of 1972, is reenacted as follows:

75-67-519. (1) A licensee may defer the deposit of a personal check cashed for a customer for up to thirty (30) days under the provisions of this section.

(2) The face amount of any delayed deposit check cashed under the provisions of this section shall not exceed Four Hundred Dollars (\$400.00). Each customer is limited to a maximum amount of Four Hundred Dollars (\$400.00) at any time.

(3) Each delayed deposit check cashed by a licensee shall be documented by a written agreement that has been signed by the customer and the licensee. The written agreement shall contain a statement of the total amount of any fees charged, expressed as a dollar amount and as an annual percentage rate. The written agreement shall authorize the licensee to defer deposit of the personal check until a specific date not later than thirty (30) days from the date the check is cashed.

(4) A licensee shall not directly or indirectly charge any fee or other consideration for cashing a delayed deposit check in excess of eighteen percent (18%) of the face amount of the check.

(5) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same licensee or any affiliate of the licensee. A licensee shall not renew or otherwise extend any delayed deposit check.

(6) A licensee shall not offer discount catalog sales or other similar inducements as part of a delayed deposit transaction.

(7) A licensee shall not charge a late fee or collection fee on any deferred deposit transaction as a result of a returned check or the default by the customer in timely payment to the

357 licensee. Notwithstanding anything to the contrary contained in
358 this section, a licensee may charge a processing fee, not to
359 exceed an amount authorized by the commissioner, for a check
360 returned for any reason, including, without limitation,
361 insufficient funds, closed account or stop payment, if such
362 processing fee is authorized in the written agreement signed by
363 the customer and licensee. In addition, if a licensee takes legal
364 action against a customer to collect the amount of a delayed
365 deposit check for which the licensee has not obtained payment and
366 obtains a judgment against the customer for the amount of that
367 check, the licensee shall also be entitled to any court-awarded
368 fees.

369 (8) When cashing a delayed deposit check, a licensee may pay
370 the customer in the form of the licensee's business check or a
371 money order; however, no additional fee may then be charged by the
372 licensee for cashing the licensee's business check or money order
373 issued to the customer.

374 **SECTION 12.** Section 75-67-521, Mississippi Code of 1972, is
375 reenacted as follows:

376 75-67-521. (1) The commissioner may, after notice and
377 hearing, suspend or revoke a license if he finds that:

378 (a) The licensee, either knowingly, or without the
379 exercise of due care to prevent the same, has violated any
380 provision of this article;

381 (b) Any fact or condition exists which, if it had
382 existed or had been known to exist at the time of the original
383 application for the license, clearly would have justified the
384 commissioner in refusing the license;

385 (c) The licensee has aided, abetted or conspired with
386 an individual or person to circumvent or violate the requirement
387 of this article;

388 (d) The licensee, or a legal or beneficial owner of the
389 license, has been convicted of a felony, or has been convicted of

390 a misdemeanor that the commissioner finds directly relates to the
391 duties and responsibilities of the business of check cashing.

392 (2) The commissioner may conditionally license or place on
393 probation a person whose license has been suspended or may
394 reprimand a licensee for a violation of this article.

395 (3) The manner of giving notice and conducting a hearing as
396 required by subsection (1) of this section shall be performed in
397 accordance with procedures prescribed by the commissioner in rules
398 or regulations adopted under Mississippi Administrative Procedures
399 Law, Section 25-43-1 et seq.

400 (4) Any licensee may surrender any license by delivering it
401 to the commissioner with written notice of its surrender, but that
402 surrender shall not affect the licensee's civil or criminal
403 liability for acts committed prior thereto.

404 (5) The commissioner may reinstate suspended licenses or
405 issue new licenses to a person whose license or licenses have been
406 revoked if no fact or condition then exists which clearly would
407 have justified the commissioner in refusing originally to issue a
408 license under this article.

409 (6) The appropriate local law enforcement agency shall be
410 notified of any licensee who has his license suspended or revoked
411 as provided by this article.

412 (7) The commissioner shall enforce the provisions of this
413 section.

414 **SECTION 13.** Section 75-67-523, Mississippi Code of 1972, is
415 reenacted as follows:

416 75-67-523. The commissioner, or his duly authorized
417 representative, for the purpose of discovering violations of this
418 article and for the purpose of determining whether persons are
419 subject to the provisions of this article, may examine persons
420 licensed under this article and persons reasonably suspected by
421 the commissioner of conducting business which requires a license
422 under this article, including all relevant books, records and

423 papers employed by those persons in the transaction of their
424 business, and may summon witnesses and examine them under oath
425 concerning matters relating to the business of those persons, or
426 such other matters as may be relevant to the discovery of
427 violations of this article, including without limiting the conduct
428 of business without a license as required under this article.

429 **SECTION 14.** Section 75-67-525, Mississippi Code of 1972, is
430 reenacted as follows:

431 75-67-525. (1) Any person who engages in the business of
432 check cashing without first securing a license prescribed by this
433 article shall be guilty of a misdemeanor and upon conviction
434 thereof, shall be punishable by a fine not in excess of One
435 Thousand Dollars (\$1,000.00) or by confinement in the county jail
436 for not more than one (1) year, or both.

437 (2) Any person who engages in the business of check cashing
438 without first securing a license prescribed by this article shall
439 be liable for the full amount of the license fee, plus a penalty
440 in an amount not to exceed Twenty-five Dollars (\$25.00) for each
441 day that the person has engaged in the business without a license.
442 All licensing fees and penalties shall be paid into the Consumer
443 Finance Fund of the Department of Banking and Consumer Finance.

444 **SECTION 15.** Section 75-67-527, Mississippi Code of 1972, is
445 reenacted as follows:

446 75-67-527. (1) In addition to any other penalty which may
447 be applicable, any licensee or employee who willfully violates any
448 provision of this article, or who willfully makes a false entry in
449 any record specifically required by this article, shall be guilty
450 of a misdemeanor and upon conviction thereof, shall be punishable
451 by a fine not in excess of One Thousand Dollars (\$1,000.00) per
452 violation or false entry.

453 (2) Compliance with the criminal provisions of this article
454 shall be enforced by the appropriate law enforcement agency, which

455 may exercise for that purpose any authority conferred upon the
456 agency by law.

457 (3) When the commissioner has reasonable cause to believe
458 that a person is violating any provision of this article, the
459 commissioner, in addition to and without prejudice to the
460 authority provided elsewhere in this article, may enter an order
461 requiring the person to stop or to refrain from the violation.
462 The commissioner may sue in any circuit court of the state having
463 jurisdiction and venue to enjoin the person from engaging in or
464 continuing the violation or from doing any act in furtherance of
465 the violation. In such an action, the court may enter an order or
466 judgment awarding a preliminary or permanent injunction.

467 (4) The commissioner may impose a civil penalty against any
468 licensee adjudged by the commissioner to be in violation of the
469 provisions of this article. The civil penalty shall not exceed
470 Five Hundred Dollars (\$500.00) per violation and shall be
471 deposited into the Department of Banking and Consumer Finance,
472 "Consumer Finance Fund."

473 (5) Any licensee convicted in the manner provided in this
474 article shall forfeit the surety bond or deposit required in
475 Section 75-67-509(c) and the amount of the bond or deposit shall
476 be credited to the budget of the state or local agency which
477 directly participated in the prosecution of the licensee, for the
478 specific purpose of increasing law enforcement resources for that
479 specific state or local agency. The bond or deposit shall be used
480 to augment existing state and local law enforcement budgets and
481 not to supplant them.

482 **SECTION 16.** Section 75-67-529, Mississippi Code of 1972, is
483 reenacted as follows:

484 75-67-529. The provisions of this article are severable. If
485 any part of this article is declared invalid or unconstitutional,
486 that declaration shall not affect the parts which remain.

487 **SECTION 17.** Section 75-67-531, Mississippi Code of 1972, is
488 reenacted as follows:

489 75-67-531. Check cashers operating check cashing locations
490 in business as of July 1, 1998, shall have until September 30,
491 1998, to apply for a license under this article, and upon the
492 approval of the application, the commissioner shall grant a
493 license under this article.

494 **SECTION 18.** Section 75-67-533, Mississippi Code of 1972, is
495 reenacted as follows:

496 75-67-533. The commissioner shall develop and provide any
497 necessary forms to carry out the provisions of this article.

498 **SECTION 19.** Section 75-67-535, Mississippi Code of 1972, is
499 reenacted as follows:

500 75-67-535. Municipalities in this state may enact ordinances
501 which are in compliance with, but not more restrictive than, the
502 provisions of this article. Any existing or future order,
503 ordinance or regulation which conflicts with this provision shall
504 be null and void.

505 **SECTION 20.** Section 75-67-537, Mississippi Code of 1972, is
506 reenacted as follows:

507 75-67-537. The commissioner may employ the necessary
508 full-time employees above the number of permanent full-time
509 employees authorized for the department for fiscal year 1999, to
510 carry out and enforce the provisions of this article. The
511 commissioner may also expend the necessary funds to equip and
512 provide necessary travel expenses for those employees.

513 **SECTION 21.** This act shall take effect and be in force from
514 and after July 1, 2007, and shall stand repealed on June 30, 2008.