

By: Representative Perkins (By Request)

To: Banking and Financial Services

HOUSE BILL NO. 1136

1 AN ACT TO AMEND SECTION 75-67-509, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT ANY PERSON WHO HAS BEEN CONVICTED OF A FELONY
 3 SHALL NOT BE ELIGIBLE FOR A LICENSE AS A CHECK CASHER; TO AMEND
 4 SECTION 75-67-515, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE
 5 COMMISSIONER OF BANKING SHALL IMPOSE A CIVIL PENALTY AGAINST A
 6 CHECK CASHER LICENSEE FOR INITIATING CRIMINAL PROCEEDINGS FOR AN
 7 OVERDRAWN CHECK; TO REQUIRE LICENSEES TO ATTEND ANNUAL CONTINUING
 8 EDUCATION TRAINING; TO AMEND SECTION 75-67-519, MISSISSIPPI CODE
 9 OF 1972, TO PROVIDE THAT THE COMMISSIONER SHALL IMPOSE A CIVIL
 10 PENALTY AGAINST A LICENSEE FOR RENEWING OR EXTENDING A DELAYED
 11 DEPOSIT CHECK OR ACCEPTING REPAYMENT OF A DELAYED DEPOSIT CHECK
 12 WITH THE PROCEEDS OF ANOTHER CHECK CASHED BY THE SAME LICENSEE; TO
 13 AMEND SECTION 75-67-527, MISSISSIPPI CODE OF 1972, TO INCREASE THE
 14 AMOUNT OF A CIVIL PENALTY THAT THE COMMISSIONER MAY IMPOSE AGAINST
 15 A LICENSEE FOR VIOLATIONS OF THE CHECK CASHERS ACT; AND FOR
 16 RELATED PURPOSES.

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

18 **SECTION 1.** Section 75-67-509, Mississippi Code of 1972, is
 19 amended as follows:

20 75-67-509. To be eligible for a check casher license, an
 21 applicant shall:

22 (a) Operate lawfully and fairly within the purposes of
 23 this article.

24 (b) Not have been convicted of a felony * * * or be
 25 active as a beneficial owner for someone who has been convicted of
 26 a felony * * *.

27 (c) File with the commissioner a bond with good
 28 security in the penal sum of Ten Thousand Dollars (\$10,000.00),
 29 payable to the State of Mississippi for the faithful performance
 30 by the licensee of the duties and obligations pertaining to the
 31 business so licensed and the prompt payment of any judgment which
 32 may be recovered against the licensee on account of charges or
 33 other claims arising directly or collectively from any violation
 34 of the provisions of this article. The bond shall not be valid

35 until it is approved by the commissioner. The applicant may file,
36 in lieu of the bond, cash, a certificate of deposit or government
37 bonds in the amount of Ten Thousand Dollars (\$10,000.00). Those
38 deposits shall be filed with the commissioner and are subject to
39 the same terms and conditions as are provided for in the surety
40 bond required in this paragraph. Any interest or earnings on
41 those deposits are payable to the depositor.

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

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

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

56 **SECTION 2.** Section 75-67-515, Mississippi Code of 1972, is
57 amended as follows:

58 75-67-515. (1) The department may adopt reasonable
59 administrative regulations, not inconsistent with law, for the
60 enforcement of this article.

61 (2) To assure compliance with the provisions of this
62 article, the department may examine the books and records of any
63 licensee without notice during normal business hours. The
64 commissioner may charge the licensee an examination fee in an
65 amount not less than Three Hundred Dollars (\$300.00) nor more than
66 Six Hundred Dollars (\$600.00) for each office or location within
67 the State of Mississippi plus any actual expenses incurred while

68 examining the licensee's records or books that are located outside
69 the State of Mississippi. However, in no event shall a licensee
70 be examined more than once in a two-year period unless for cause
71 shown based upon consumer complaint and/or other exigent reasons
72 as determined by the commissioner.

73 (3) Each licensee shall keep and use in its business any
74 books, accounts and records the department may require to carry
75 into effect the provisions of this article and the administrative
76 regulations issued under this article. Every licensee shall
77 preserve the books, accounts and records of its business for at
78 least two (2) years.

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

82 (5) Before a licensee deposits with any bank or other
83 depository institution a check cashed by the licensee, the check
84 shall be endorsed with the actual name under which the licensee is
85 doing business.

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

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

93 (8) No licensee shall indicate through advertising, signs,
94 billboards or otherwise that checks may be cashed without
95 identification of the bearer of the check; and any person seeking
96 to cash a check shall be required to submit reasonable
97 identification as prescribed by the department. The provisions of
98 this subsection shall not prohibit a licensee from cashing a check
99 simultaneously with the verification and establishment of the

100 identity of the presenter by means other than presentation of
101 identification.

102 (9) Within five (5) business days after being advised by the
103 payor financial institution that a check has been altered, forged,
104 stolen, obtained through fraudulent or illegal means, negotiated
105 without proper legal authority or represents the proceeds of
106 illegal activity, the licensee shall notify the department and the
107 district attorney for the judicial district in which the check was
108 received. If a check is returned to the licensee by the payor
109 financial institution for any of these reasons, the licensee may
110 not release the check without consent of the district attorney or
111 other investigating law enforcement authority.

112 (10) If a check is returned to a licensee from a payor
113 financial institution because there are insufficient funds in or
114 on deposit with the financial institution to pay the check, the
115 licensee or any other person on behalf of the licensee shall not
116 institute or initiate any criminal prosecution against the maker
117 or drawer of the personal check with the intent and purpose of
118 aiding in the collection of or enforcing the payment of the amount
119 owed to the check casher by the maker or drawer of the check. If
120 the licensee initiates criminal prosecution against the maker or
121 drawer of a personal check because there are insufficient funds in
122 or on deposit with a payor financial institution to pay the check,
123 the commissioner shall impose a civil penalty of not more than One
124 Thousand Dollars (\$1,000.00) against the licensee.

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

130 (12) Each licensee shall attend annual continuing education
131 training. The commissioner shall establish and conduct that
132 training and shall maintain records on all licensees regarding

133 that training. The amount of annual continuing education training
134 that will be satisfactory to fulfill the requirements of this
135 section shall be determined by the commissioner. If a licensee
136 misses two (2) consecutive training sessions sponsored or approved
137 by the commissioner as required by this subsection or fails to
138 attend one (1) such training session within six (6) months after
139 receiving his or her license, the license shall not be renewed
140 until the training is successfully completed.

141 **SECTION 3.** Section 75-67-519, Mississippi Code of 1972, is
142 amended as follows:

143 75-67-519. (1) A licensee may defer the deposit of a
144 personal check cashed for a customer for up to thirty (30) days
145 under the provisions of this section.

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

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

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

161 (5) No check cashed under the provisions of this section
162 shall be repaid by the proceeds of another check cashed by the
163 same licensee or any affiliate of the licensee. A licensee shall
164 not renew or otherwise extend any delayed deposit check. The
165 commissioner shall impose a civil penalty of not more than One

166 Thousand Dollars (\$1,000.00) against any licensee that violates
167 this subsection.

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

171 (7) A licensee shall not charge a late fee or collection fee
172 on any deferred deposit transaction as a result of a returned
173 check or the default by the customer in timely payment to the
174 licensee. Notwithstanding anything to the contrary contained in
175 this section, a licensee may charge a processing fee, not to
176 exceed an amount authorized by the commissioner, for a check
177 returned for any reason, including, without limitation,
178 insufficient funds, closed account or stop payment, if such
179 processing fee is authorized in the written agreement signed by
180 the customer and licensee. In addition, if a licensee takes legal
181 action against a customer to collect the amount of a delayed
182 deposit check for which the licensee has not obtained payment and
183 obtains a judgment against the customer for the amount of that
184 check, the licensee shall also be entitled to any court-awarded
185 fees.

186 (8) When cashing a delayed deposit check, a licensee may pay
187 the customer in the form of the licensee's business check or a
188 money order; however, no additional fee may then be charged by the
189 licensee for cashing the licensee's business check or money order
190 issued to the customer.

191 **SECTION 4.** Section 75-67-527, Mississippi Code of 1972, is
192 amended as follows:

193 75-67-527. (1) In addition to any other penalty which may
194 be applicable, any licensee or employee who willfully violates any
195 provision of this article, or who willfully makes a false entry in
196 any record specifically required by this article, shall be guilty
197 of a misdemeanor and upon conviction thereof, shall be punishable

198 by a fine not in excess of One Thousand Dollars (\$1,000.00) per
199 violation or false entry.

200 (2) Compliance with the criminal provisions of this article
201 shall be enforced by the appropriate law enforcement agency, which
202 may exercise for that purpose any authority conferred upon the
203 agency by law.

204 (3) When the commissioner has reasonable cause to believe
205 that a person is violating any provision of this article, the
206 commissioner, in addition to and without prejudice to the
207 authority provided elsewhere in this article, may enter an order
208 requiring the person to stop or to refrain from the violation.
209 The commissioner may sue in any circuit court of the state having
210 jurisdiction and venue to enjoin the person from engaging in or
211 continuing the violation or from doing any act in furtherance of
212 the violation. In such an action, the court may enter an order or
213 judgment awarding a preliminary or permanent injunction.

214 (4) The commissioner may impose a civil penalty against any
215 licensee adjudged by the commissioner to be in violation of the
216 provisions of this article. The civil penalty shall not exceed
217 One Thousand Dollars (\$1,000.00) per violation and shall be
218 deposited into the Department of Banking and Consumer Finance,
219 "Consumer Finance Fund."

220 (5) Any licensee convicted in the manner provided in this
221 article shall forfeit the surety bond or deposit required in
222 Section 75-67-509(c) and the amount of the bond or deposit shall
223 be credited to the budget of the state or local agency which
224 directly participated in the prosecution of the licensee, for the
225 specific purpose of increasing law enforcement resources for that
226 specific state or local agency. The bond or deposit shall be used
227 to augment existing state and local law enforcement budgets and
228 not to supplant them.

229 **SECTION 5.** This act shall take effect and be in force from
230 and after July 1, 2007.