

By: Senator(s) White

To: Judiciary, Division B

SENATE BILL NO. 2028

1 AN ACT TO AMEND SECTIONS 11-7-12, 97-19-57 AND 97-19-75,  
2 MISSISSIPPI CODE OF 1972, TO REVISE THE SERVICE FEE THAT MAY BE  
3 CHARGED ON A BAD CHECK BY A MERCHANT OR BY THE DISTRICT ATTORNEY;  
4 TO AMEND SECTION 97-19-81, MISSISSIPPI CODE OF 1972, TO CONFORM;  
5 AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 11-7-12, Mississippi Code of 1972, is  
8 amended as follows:

9 11-7-12. (1) If a check, draft or order is made, drawn,  
10 issued, uttered or delivered in violation of Section 97-19-55, the  
11 payee, endorser or his assignee shall be entitled to collect, in  
12 addition to the face amount of the check, draft or order, a  
13 service charge of Fifty Dollars (\$50.00).

14 (2) In any civil action founded on a check, draft or order  
15 made, drawn, issued, uttered or delivered in violation of Section  
16 97-19-55, the plaintiff, if he be a payee or endorser, shall be  
17 entitled to recover, in addition to the face amount of the check,  
18 draft or order, damages in the following amount:

19 (a) If the amount of the check, draft or order is up to  
20 and including Twenty-five Dollars (\$25.00), then the additional  
21 damages shall be Fifty Dollars (\$50.00);

22 (b) If the amount of the check, draft or order is above  
23 Twenty-five Dollars (\$25.00) and up to and including Two Hundred  
24 Dollars (\$200.00), then the additional damages shall be fifty  
25 percent (50%) of the amount of the check, draft or order, not to  
26 exceed Seventy-five Dollars (\$75.00), and not to be less than  
27 Fifty Dollars (\$50.00);

28 (c) If the amount of the check, draft or order is above  
29 Two Hundred Dollars (\$200.00), then the additional damages shall  
30 be twenty-five percent (25%) of the amount of the check, draft or  
31 order; and

32 (d) No service charge shall be payable in a civil  
33 action under this section.

34 **SECTION 2.** Section 97-19-57, Mississippi Code of 1972, is  
35 amended as follows:

36 97-19-57. (1) As against the maker or drawer thereof, the  
37 making, drawing, issuing, uttering or delivering of a check, draft  
38 or order, payment of which is refused by the drawee, shall be  
39 prima facie evidence and create a presumption of intent to defraud  
40 and of knowledge of insufficient funds in, or on deposit with,  
41 such bank, corporation, firm or person, provided such maker or  
42 drawer shall not have paid the holder thereof the amount due  
43 thereon, together with a service charge of Fifty Dollars (\$50.00),  
44 within fifteen (15) days after receiving notice that such check,  
45 draft or order has not been paid by the drawee.

46 (2) For purposes of Section 11-7-12, the form of the notice  
47 provided for in subsection (1) of this section shall be sent by  
48 regular mail and shall be substantially as follows: "This  
49 statutory notice is provided pursuant to Section 97-19-57,  
50 Mississippi Code of 1972. You are hereby notified that a check,  
51 draft or order numbered \_\_\_\_\_, apparently issued by you on \_\_\_\_\_  
52 (date), drawn upon \_\_\_\_\_ (name of bank), and payable to \_\_\_\_\_, has  
53 been dishonored. Pursuant to Mississippi law, you have fifteen  
54 (15) days from receipt of this notice to tender payment of the  
55 full amount of such check, draft or order, plus a service charge  
56 of Fifty Dollars (\$50.00), the total amount due being \$\_\_\_\_\_.  
57 Failure to pay this amount in full within the time specified above  
58 shall be prima facie evidence of and create a presumption of both  
59 the intent to defraud and the knowledge of insufficient funds in,  
60 or on deposit with, such bank in violation of Section 97-19-55."

61 (3) For purposes of Section 97-19-67, the form of the notice  
62 provided for in subsection (1) of this section shall be sent by  
63 regular mail, supported by an affidavit of service by mailing, and  
64 shall be substantially as follows: "This statutory notice is  
65 provided pursuant to Section 97-19-57, Mississippi Code of 1972.  
66 You are hereby notified that a check, draft or order numbered  
67 \_\_\_\_\_, apparently issued by you on \_\_\_\_\_ (date), drawn upon \_\_\_\_\_  
68 (name of bank), and payable to \_\_\_\_\_, has been dishonored.  
69 Pursuant to Mississippi law, you have fifteen (15) days from  
70 receipt of this notice to tender payment of the full amount of  
71 such check, draft or order, plus a service charge of Fifty Dollars  
72 (\$50.00), the total amount due being \$\_\_\_\_\_. Unless this amount  
73 is paid in full within the time specified above, the holder may  
74 assume that you delivered the instrument with intent to defraud  
75 and may turn over the dishonored instrument and all other  
76 available information relating to this incident to the proper  
77 authorities for criminal prosecution."

78 (4) If any notice is returned undelivered to the sender  
79 after such notice was mailed to the address printed on the check,  
80 draft or order, or to the address given by the accused at the time  
81 of issuance of the instrument, such return shall be prima facie  
82 evidence of the maker's or drawer's intent to defraud.

83 (5) Affidavit of service by mail shall be adequate if made  
84 in substantially the following form:

85 "STATE OF \_\_\_\_\_

86 COUNTY OF \_\_\_\_\_

87 \_\_\_\_\_, being first duly sworn on oath, deposes and  
88 states that he/she is at least eighteen (18) years of age and that  
89 on (date)\_\_\_\_\_, 2\_\_\_\_, he/she served the attached Notice  
90 of Dishonor by placing a true and correct copy thereof securely  
91 enclosed in an envelope addressed as follows:

92 \_\_\_\_\_

93 \_\_\_\_\_

94 \_\_\_\_\_  
95 and deposited the same, postage prepaid, in the United States mail  
96 at \_\_\_\_\_, \_\_\_\_\_.

97 \_\_\_\_\_  
98 (signature)

99 Subscribed to and sworn before me, this the \_\_\_\_\_ day of  
100 \_\_\_\_\_, 2\_\_\_\_.

101 \_\_\_\_\_  
102 (Notary Public)

103 My commission expires:  
104 (SEAL)"

105 (6) Without in any way limiting the provisions of this  
106 section, this section shall apply to a draft for the payment of  
107 money given for a motor vehicle even if such payment is  
108 conditioned upon delivery of documents necessary for transfer of a  
109 valid title to the purchaser.

110 **SECTION 3.** Section 97-19-75, Mississippi Code of 1972, is  
111 amended as follows:

112 97-19-75. (1) The holder of any check, draft or order for  
113 the payment of money which has been made, drawn, issued, uttered  
114 or delivered in violation of Section 97-19-55, Mississippi Code of  
115 1972, may, after complying with the provisions of Section  
116 97-19-57, Mississippi Code of 1972, present a complaint to the  
117 district attorney. The complaint shall be accompanied by the  
118 original check, draft or order upon which the complaint is filed  
119 and the return receipt showing mailing of notice under Section  
120 97-19-57, Mississippi Code of 1972. Not more than one (1) check,  
121 draft or order shall be included within a single complaint. Upon  
122 receipt of such complaint, the district attorney shall evaluate  
123 the complaint to determine whether or not the complaint is  
124 appropriate to be processed by the district attorney.

125 (2) If, after filing a complaint with the district attorney,  
126 the complainant wishes to withdraw the complaint for good cause,

127 the complainant shall pay a fee of Fifty Dollars (\$50.00) to the  
128 office of the district attorney for processing such complaint.  
129 Upon payment of the processing fee and withdrawal of the  
130 complaint, the district attorney shall return the original check,  
131 draft or order to the complainant.

132 (3) After approval of the complaint by the district  
133 attorney, a warrant may be issued by any judicial officer  
134 authorized by law to issue arrest warrants, and the warrant may be  
135 held by the district attorney. After issuance of a warrant or  
136 upon approval of a complaint by the district attorney, the  
137 district attorney shall issue a notice to the individual charged  
138 in the complaint, informing him that a warrant has been issued for  
139 his arrest or that a complaint has been received by the district  
140 attorney and that he may be eligible for deferred prosecution for  
141 a violation of Section 97-19-55, Mississippi Code of 1972, by  
142 voluntarily surrendering himself to the district attorney within  
143 ten (10) days, Saturdays, Sundays and legal holidays excepted,  
144 from receipt of the notice. Such notice shall be sent by United  
145 States mail.

146 (4) If the accused voluntarily surrenders himself within the  
147 time period as provided by subsection (3) of this section, the  
148 accused shall be presented with the complaint and/or warrant and  
149 prosecution of the accused may be deferred upon payment by the  
150 accused of a service charge in the amount of Fifty Dollars  
151 (\$50.00) to the district attorney and by execution of a  
152 restitution agreement as hereinafter provided.

153 (5) For the purposes of Sections 97-19-73 through 97-19-81,  
154 the term "restitution" shall mean and be defined as the face  
155 amount of any check, draft or order for the payment of money made,  
156 drawn, issued, uttered or delivered in violation of Section  
157 97-19-55, Mississippi Code of 1972, plus a service charge payable  
158 to the complainant in the amount of Fifty Dollars (\$50.00).

159           (6) After an accused has voluntarily surrendered himself and  
160 paid the service charge as provided by subsection (4) of this  
161 section, the district attorney may enter into a restitution  
162 agreement with the accused prescribing the terms by which the  
163 accused shall satisfy restitution to the district attorney on  
164 behalf of the complainant. The terms of such agreement shall be  
165 determined on a case-by-case basis by the district attorney, but  
166 the duration of any such agreement shall be no longer than a  
167 period of six (6) months. No interest shall be charged or  
168 collected on restitution monies. The restitution agreement shall  
169 be signed by the accused and approved by the district attorney  
170 before it is effective. If the accused does not honor each term  
171 of the restitution agreement signed by him, the accused may be  
172 proceeded against by prosecution under the provisions of Sections  
173 97-19-55 through 97-19-69, Mississippi Code of 1972, and as  
174 provided by Section 97-19-79. If the accused makes restitution  
175 and pays all charges set out by statute or if the accused enters  
176 into a restitution agreement as set out above and honors all terms  
177 of such agreement, then if requested, the original check may be  
178 returned to the accused and a photocopy retained in the check  
179 file.

180           (7) If the holder of any check, draft or order for the  
181 payment of money presents to the district attorney satisfactory  
182 evidence that the original check, draft or order is unavailable  
183 and satisfactory evidence of the check, draft or order is  
184 presented in the form of bank records or a photographic copy of  
185 the instrument, whether from microfilm or otherwise, then the  
186 procedures provided for in this section may be followed in the  
187 absence of the original check, draft or order.

188           **SECTION 4.** Section 97-19-81, Mississippi Code of 1972, is  
189 amended as follows:

190           97-19-81. When an entity that is authorized by the laws of  
191 this state to make loans or grant extensions of credit is paid by

192 check to retire all or a part of a loan or extension of credit,  
193 and such check is returned because of insufficient funds, and the  
194 lender is charged a fee or service charge as a result of such  
195 return, the lender shall be authorized to add the actual amount of  
196 such fee or service charge up to a maximum amount of Fifty Dollars  
197 (\$50.00) to the principal of the unpaid balance of the loan or  
198 extension of credit.

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