SENATE BILL NO. 2683

AN ACT TO AMEND SECTION 75-67-519, MISSISSIPPI CODE OF 1972, TO REVISE THE MAXIMUM FEE AND LENGTH OF DEFERRAL ON LOANS MADE BY CHECK CASHER LICENSEES; TO AMEND SECTIONS 75-67-505 AND 75-67-515, MISSISSIPPI CODE OF 1972, TO INCREASE THE LICENSE RENEWAL FEES AND EXAMINATION FEES PAID TO THE COMMISSIONER OF BANKING BY CHECK CASHER LICENSEES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 75-67-519, Mississippi Code of 1972, is amended as follows:

75-67-519. (1) A licensee may defer the deposit of a personal check cashed for a customer for a period of 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 which shall be 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 fifteen percent (15%) 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 licensee. Notwithstanding anything to the contrary contained in this section, a licensee may charge a processing fee, not to exceed an amount authorized by the commissioner, for a check returned for any reason, including, without limitation, insufficient funds, closed account or stop payment, if such processing fee is authorized in the written agreement signed by the customer and licensee. In addition, if a licensee takes legal action against a customer to collect the amount of a delayed deposit check for which the licensee has not obtained payment and obtains a judgment against the customer for the amount of that check, the licensee shall also be entitled to any court-awarded fees.

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

SECTION 2. Section 75-67-505, Mississippi Code of 1972, is 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 cashing business shall not be a part of, or located at the same business address with, a pawnshop, title pledge office and small loan company.

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

(c) A licensed check cashier may sell, at the same location as his check cashing business, the following items and services: money orders; income tax preparation service; copy service; wire transfer service; notary service; pagers; pager service; prepaid cellular service; debit card; prepaid telephone cards; prepaid telephone service; and operate a processing center where utility bills, credit card payments and other payments are collected from the general public and governmental and private payments are distributed. In the event a licensee accepts wire transfers in the form of a direct deposit of a payroll check or other similar types of deposit, the licensee shall not encumber any transferred funds against a deferred deposit agreement or any delinquent deferred deposit agreement with such customer. The commissioner may authorize additional functions in addition to
those provided in this subsection that may be performed as part of
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 Six Hundred Dollars ($600.00). 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 cashier. The temporary license is effective until the permanent license is issued or denied.

SECTION 3. Section 75-67-515, Mississippi Code of 1972, is amended as follows:

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

(2) To assure compliance with the provisions of this article, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner may charge the licensee an examination fee in an amount of **Six Hundred Dollars ($600.00)** for each office or location within the State of Mississippi plus any actual expenses incurred while examining the licensee’s records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.

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

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

(5) Before a licensee deposits with any bank or other depository institution a check cashed by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.
(6) All personal checks cashed for a customer by a licensee shall be dated on the actual date the cash is tendered to the customer.

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

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

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

(10) If a check is returned to a licensee from a payor financial institution because there are insufficient funds in or on deposit with the financial institution to pay the check, the licensee or any other person on behalf of the licensee shall not institute or initiate any criminal prosecution against the maker 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 4. This act shall take effect and be in force from and after July 1, 2011.