

By: Senator(s) Dawkins

To: Business and Financial
Institutions

SENATE BILL NO. 2900

1 AN ACT TO DECLARE LEGISLATIVE INTENT TO PROHIBIT ACTIVITIES
 2 COMMONLY REFERRED TO AS PAYDAY LENDING, DEFERRED PRESENTMENT
 3 SERVICES, ADVANCE CASH SERVICES AND OTHER SIMILAR ACTIVITIES; TO
 4 PROVIDE THAT IT SHALL BE UNLAWFUL TO ENGAGE IN THE BUSINESS OF
 5 MAKING CERTAIN SMALL LOANS; TO PROVIDE CRIMINAL PENALTIES
 6 THEREFOR; TO PROVIDE FOR COLLECTION OF CIVIL PENALTIES IN ACTIONS
 7 BY THE STATE OR BY PRIVATE PARTIES ON BEHALF OF THE STATE; TO
 8 DECLARE THE SITE OR LOCATION OF A PLACE OF BUSINESS WHERE PAYDAY
 9 LENDING TAKES PLACE IN THE STATE OF MISSISSIPPI AS A PUBLIC
 10 NUISANCE; TO REPEAL SECTIONS 75-67-401 THROUGH 75-67-449,
 11 MISSISSIPPI CODE OF 1972, WHICH CREATE THE MISSISSIPPI TITLE
 12 PLEDGE ACT; TO REPEAL SECTIONS 75-67-501 THROUGH 75-67-539,
 13 MISSISSIPPI CODE OF 1972, WHICH CREATE THE MISSISSIPPI CHECK
 14 CASHERS ACT; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** (1) Without limiting in any manner the scope of
 17 this chapter, the Legislature declares that it is the general
 18 intent of this act to reiterate that in the State of Mississippi
 19 the practice of engaging in activities commonly referred to as
 20 payday lending, deferred presentment services or advance cash
 21 services and other similar activities are currently illegal and to
 22 strengthen the penalties for those engaging in such activities.

23 (2) This act in no way impairs or restricts the authority
 24 granted to the Commissioner of Banking and Finance or any other
 25 regulatory authority with concurrent jurisdiction over the matters
 26 stated in this act.

27 **SECTION 2.** (1) It shall be unlawful for any person to
 28 engage in any business, in whatever form transacted, including,
 29 but not limited to, by mail, electronic means, the Internet or
 30 telephonic means, which consists in whole or in part of making,
 31 offering, arranging or acting as an agent in the making of loans
 32 of Three Thousand Dollars (\$3,000.00) or less unless:



33 (a) Such person is engaging in financial transactions
34 permitted pursuant to:

35 (i) Title 81, Mississippi Code of 1972;

36 (ii) The laws regulating the sale of checks,
37 Section 75-15-1 et seq.;

38 (iii) Chapter 17 of Title 75, relating to interest
39 and usury, and revolving charge agreements;

40 (b) Such loans are lawful under the terms of:

41 (i) Chapter 19 of Title 63, the "Motor Vehicle
42 Sales Finance Law";

43 (ii) Articles 3 and 5 of Chapter 67 of Title 75,
44 relating to small loan companies; or

45 (iii) Article 7 of Chapter 67 of Title 75,
46 relating to pawnbrokers;

47 (c) Such person is a bank or thrift chartered under the
48 laws of the United States, a bank chartered under the laws of
49 another state and insured by the Federal Deposit Insurance
50 Corporation, or a credit card bank and is not operating in
51 violation of the federal and state laws applicable to its charter;
52 or

53 (d) Such loan is made as a tax refund anticipation
54 loan. In order to be exempt under this paragraph, the tax refund
55 anticipation loan must be issued using a borrower's filed tax
56 return and the loan cannot be for more than the amount of the
57 borrower's anticipated tax refund. Tax returns that are prepared
58 but not filed with the proper government agency will not qualify
59 for a loan exemption under this paragraph.

60 (2) Subject to the exceptions in subsection (1) of this
61 section, this section shall apply with respect to all transactions
62 in which funds are advanced to be repaid at a later date,
63 notwithstanding the fact that the transaction contains one or more
64 other elements. Without limiting the generality of the foregoing,
65 the advance of funds to be repaid at a later date shall be subject



66 to this section, notwithstanding the fact that the transaction
67 also involves:

68 (a) The cashing or deferred presentment of a check or
69 other instrument;

70 (b) The selling or providing of an item, service, or
71 commodity incidental to the advance of funds;

72 (c) Any other element introduced to disguise the true
73 nature of the transaction as an extension of credit; or

74 (d) Any arrangement by which a de facto lender purports
75 to act as the agent for an exempt entity. A purported agent shall
76 be considered a de facto lender if the entire circumstances of the
77 transaction show that the purported agent holds, acquires or
78 maintains a predominant economic interest in the revenues
79 generated by the loan.

80 (3) (a) A payday lender shall not include in any loan
81 contract made with a resident of this state any provision by which
82 the laws of a state other than Mississippi shall govern the terms
83 and enforcement of the contract, nor shall the loan contract
84 designate a court for the resolution of disputes concerning the
85 contract other than a court of competent jurisdiction in and for
86 the county in which the borrower resides or the loan office is
87 located.

88 (b) An arbitration clause in a payday loan contract
89 shall not be enforceable if the contract is unconscionable. In
90 determining whether the contract is unconscionable, the court
91 shall consider the circumstances of the transaction as a whole,
92 including, but not limited to:

93 (i) The relative bargaining power of the parties;

94 (ii) Whether arbitration would be prohibitively
95 expensive to the borrower in view of the amounts in controversy;

96 (iii) Whether the contract restricts or excludes
97 damages or remedies that would be available to the borrower in
98 court, including the right to participate in a class action;



99 (iv) Whether the arbitration would take place
100 outside the county in which the loan office is located or any
101 other place that would be unduly inconvenient or expensive in view
102 of the amounts in controversy; and

103 (v) Any other circumstance that might render the
104 contract oppressive.

105 (4) Any person who violates Section 2(1) or (2) of this act
106 shall be guilty of a misdemeanor of a high and aggravated nature
107 and upon conviction thereof shall be punished by imprisonment for
108 not more than one (1) year or by a fine not to exceed Five
109 Thousand Dollars (\$5,000.00), or both fine and imprisonment. Each
110 loan transaction shall be deemed a separate violation of this
111 section. Any person who aids or abets such a violation, including
112 any arbiter or arbitration company, shall likewise be guilty of a
113 misdemeanor of a high and aggravated nature and shall be punished
114 as set forth in this subsection. If a person has been convicted
115 of violations of Section 2(1) or (2) of this act on three (3)
116 prior occasions, then all subsequent convictions shall be
117 considered felonies punishable by a fine of Ten Thousand Dollars
118 (\$10,000.00) or five (5) years imprisonment, or both.

119 **SECTION 3.** Any person who violates Section 2(1) or (2) of
120 this act shall be barred from the collection of any indebtedness
121 created by said loan transaction and said transaction shall be
122 void ab initio, and any person violating the provisions of Section
123 2(1) or (2) of this act shall in addition be liable to the
124 borrower in each unlawful transaction for three (3) times the
125 amount of any interest or other charges to the borrower. A civil
126 action under Section 2 of this act may be brought on behalf of an
127 individual borrower or on behalf of an ascertainable class of
128 borrowers. In a successful action to enforce the provisions of
129 this chapter, a court shall award a borrower, or class of
130 borrowers, costs including reasonable attorneys' fees.



131 **SECTION 4.** (1) Any person who violates Section 2(1) or (2)
132 of this act shall be liable to the state for a civil penalty equal
133 to three (3) times the amount of any interest or charges to the
134 borrowers in the unlawful transactions.

135 (2) A civil action under this section may be brought by the
136 Attorney General, any district attorney, or a private party.
137 Where a successful civil action is brought by a district attorney,
138 one-half (1/2) of the damages recovered on behalf of the state
139 shall be distributed to the counties comprising the judicial
140 district of such district attorney, pro rata according to the
141 population of the counties.

142 **SECTION 5.** In regard to any loan transaction that is alleged
143 to be in violation of Section 2(1) of this act, the trial court
144 shall be authorized to review the terms of the transaction in
145 their entirety in order to determine if there has been any
146 contrivance, device or scheme used by the lender in order to avoid
147 the provisions of Section 2(1) of this act. The trial court shall
148 not be bound in making such determination by the parole evidence
149 rule or by any written contract but shall be authorized to
150 determine exactly whether the loan transaction includes the use of
151 a scheme, device or contrivance and whether in reality the loan is
152 in violation of the provisions of Section 2(1) of this act based
153 upon the facts and evidence relating to that transaction and
154 similar transactions being made in the State of Mississippi. If
155 any entity involved in soliciting or facilitating the making of
156 payday loans purports to be acting as an agent of a bank or
157 thrift, then the court shall be authorized to determine whether
158 the entity claiming to act as agent is in fact the lender. Such
159 entity shall be presumed to be the lender if, under the totality
160 of the circumstances, it holds, acquires or maintains a
161 predominant economic interest in the revenues generated by the
162 loan. Furthermore, the trial court shall further be authorized to
163 investigate all transactions involving gift cards, telephone



164 cards, the sale of goods or services, computer services or the
165 like which may be tied to such loan transactions and are an
166 integral part thereof in order to determine whether any such
167 transaction is in fact a contrivance, scheme or device used by the
168 payday lender in order to evade the provisions of Section 2(1) of
169 this act.

170 **SECTION 6.** The site or location of a place of business where
171 payday lending takes place in the State of Mississippi is declared
172 a public nuisance.

173 **SECTION 7.** Sections 75-67-401, 75-67-403, 75-67-405,
174 75-67-407, 75-67-409, 75-67-411, 75-67-413, 75-67-415, 75-67-417,
175 75-67-419, 75-67-421, 75-67-423, 75-67-425, 75-67-427, 75-67-429,
176 75-67-431, 75-67-433, 75-67-435, 75-67-437, 75-67-439, 75-67-441,
177 75-67-443, 75-67-445, 75-67-447 and 75-67-449, Mississippi Code of
178 1972, which create the Mississippi Title Pledge Act, are hereby
179 repealed.

180 **SECTION 8.** Sections 75-67-501, 75-67-503, 75-67-505,
181 75-67-507, 75-67-509, 75-67-511, 75-67-513, 75-67-515, 75-67-516,
182 75-67-517, 75-67-519, 75-67-521, 75-67-523, 75-67-525, 75-67-527,
183 75-67-529, 75-67-531, 75-67-533, 75-67-535, 75-67-537 and
184 75-67-539, Mississippi Code of 1972, which create the Mississippi
185 Check Cashers Act, are hereby repealed.

186 **SECTION 9.** This act shall take effect and be in force from
187 and after July 1, 2012.

