

By: Senator(s) Dawkins

To: Business and Financial  
Institutions

SENATE BILL NO. 2517

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, 2013.

