

By: Representatives Smith (39th), Nelson

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 272

1 AN ACT TO AMEND SECTIONS 97-19-55, 97-19-57, 97-19-61,
2 97-19-62, 97-19-63, 97-19-65, 97-19-67 AND 97-19-69, MISSISSIPPI
3 CODE OF 1972, TO INCLUDE ELECTRONICALLY CONVERTED CHECKS AND
4 ELECTRONIC COMMERCIAL DEBITS IN THE BAD CHECK LAW; AND FOR RELATED
5 PURPOSES.

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

7 **SECTION 1.** Section 97-19-55, Mississippi Code of 1972, is
8 amended as follows:

9 97-19-55. (1) It shall be unlawful for any person with
10 fraudulent intent:

11 (a) To make, draw, issue, utter * * *, deliver, or
12 authorize any check, draft * * *, electronically converted check,
13 or electronic commercial debit to obtain money, delivery of other
14 valuable property, services, the use of property or credit
15 extended by any licensed gaming establishment drawn on any real or
16 fictitious bank, corporation, firm or person, knowing at the time
17 of making, drawing, issuing, uttering or delivering said check,
18 draft * * * order, electronically converted check, or electronic
19 commercial debit that the maker * * *, drawer or payor has not



20 sufficient funds in or on deposit with such bank, corporation,
21 firm or person for the payment of such check, draft * * *, order,
22 electronically converted check, or electronic commercial debit in
23 full, and all other checks, drafts or orders, or electronic fund
24 transfers upon such funds then outstanding;

25 (b) To close an account without leaving sufficient
26 funds to cover all outstanding checks, electronically converted
27 check, or electronic commercial debit written or authorized on
28 such account.

29 (2) For purposes of Sections 97-19-55 through 97-19-69:

30 (a) "Check" includes a casino marker issued to any
31 licensed gaming establishment.

32 (b) "Credit" means an arrangement or understanding with
33 a bank, corporation, firm or person for the payment of a check or
34 other instrument.

35 (c) "Electronically converted check" means a single
36 entry electronic debit transaction initiated with a check and
37 cleared through the ACH Network as an Accounts Receivable Entry, a
38 Point of Purchase Entry, or a Back Office Conversion Entry.

39 (d) "Electronic commercial debit" means an electronic
40 debit transaction initiated through the ACH Network by a person
41 for commercial, and not consumer, purposes whereby (i) the payor
42 has signed an agreement to pay the payee for goods or services
43 provided, (ii) as part of that agreement and as a condition
44 thereof the payor provides the payee its bank and account



45 information for the purposes of initiating such a debit in payment
46 for the service or goods provided, (iii) the payee delivers such
47 goods or services to the payor in reliance upon the agreement and
48 the payor's debit authorization, and (iv) the payee initiates such
49 a debit for such purposes. This definition does not include a
50 consumer transaction governed by the Federal Electronic Fund
51 Transfer Act (15 USC Section 1693, et seq.) and its implementing
52 Regulation E (12 CFR Part 205) or a credit transaction governed by
53 Section 75-4A-101 et seq., Mississippi Code of 1972.

54 (e) "Payor" means the party making payment through the
55 referenced transaction.

56 (f) "Payee" means the party receiving payment through
57 the referenced transaction.

58 (g) "Payor bank" is the bank on whom the payor's funds
59 are drawn for the purposes of making payment through the
60 referenced transaction.

61 (h) "Payee bank" is the bank through which payee is
62 collecting funds for deposit into the payee's account by using the
63 referenced transaction.

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

66 97-19-57. (1) As against the maker * * *, drawer or payor
67 thereof, the making, drawing, issuing, uttering * * *, delivering,
68 or initiation of a check, draft * * *, order, electronically
69 converted check, or electronic commercial debit payment of which



70 is refused by the drawee, shall be prima facie evidence and create
71 a presumption of intent to defraud and of knowledge of
72 insufficient funds in, or on deposit with, such bank, corporation,
73 firm or person, provided such maker * * *, drawer or payor shall
74 not have paid the holder or payee thereof the amount due thereon,
75 together with a service charge of Forty Dollars (\$40.00), within
76 fifteen (15) days after receiving notice that such check,
77 draft * * *, order, electronically converted check, or electronic
78 commercial debit has not been paid by the drawee or payor's bank.

79 (2) For purposes of Section 11-7-12, the form of the notice
80 provided for in subsection (1) of this section for a check, draft,
81 order, or electronically converted check shall be sent by regular
82 mail and shall be substantially as follows: "This statutory
83 notice is provided pursuant to Section 97-19-57, Mississippi Code
84 of 1972. You are hereby notified that a check, draft * * *,
85 order, or electronically converted check numbered _____,
86 apparently issued by you on _____ (date), drawn upon _____ (name
87 of bank), and payable to _____, has been dishonored. Pursuant to
88 Mississippi law, you have fifteen (15) days from receipt of this
89 notice to tender payment of the full amount of such check, draft
90 or order, or electronically converted check plus a service charge
91 of Forty Dollars (\$40.00), the total amount due being \$_____.
92 Failure to pay this amount in full within the time specified above
93 shall be prima facie evidence of and create a presumption of both



94 the intent to defraud and the knowledge of insufficient funds in,
95 or on deposit with, such bank in violation of Section 97-19-55."

96 (3) For purposes of Section 97-19-67, the form of the notice
97 provided for in subsection (1) of this section for a check, draft,
98 order, or electronically converted check shall be sent by regular
99 mail, supported by an affidavit of service by mailing, and shall
100 be substantially as follows: "This statutory notice is provided
101 pursuant to Section 97-19-57, Mississippi Code of 1972. You are
102 hereby notified that a check, draft * * *, order, or
103 electronically converted check numbered _____, apparently issued
104 by you on _____ (date), drawn upon _____ (name of bank), and
105 payable to _____, has been dishonored. Pursuant to Mississippi
106 law, you have fifteen (15) days from receipt of this notice to
107 tender payment of the full amount of such check, draft or order,
108 or electronically converted check plus a service charge of Forty
109 Dollars (\$40.00), the total amount due being \$_____. Unless this
110 amount is paid in full within the time specified above, the holder
111 may assume that you delivered the instrument with intent to
112 defraud and may turn over the dishonored instrument and all other
113 available information relating to this incident to the proper
114 authorities for criminal prosecution."

115 (4) For purposes of Sections 11-7-12 and 97-19-67, the form
116 of notice provided for in subsection (1) of this section for an
117 electronic commercial debit shall be sent by regular mail,
118 supported by an affidavit of service by mailing, and shall be



119 substantially as follows: "This statutory notice is provided
120 pursuant to Section 97-19-57, Mississippi Code of 1972. You are
121 hereby notified that on (date) an electronic commercial
122 debit was initiated by (name of payee bank) on behalf of
123 (payee) to (name of payor bank) through the
124 ACH Network requesting a payment in the amount of \$ to
125 (payee) from your account pursuant to invoice number
126 and our agreement dated , but that payment has
127 been dishonored. Pursuant to Mississippi law, because the payee
128 delivered (goods or service) to you in reliance upon
129 the agreement, you have fifteen (15) days from receipt of this
130 notice to tender payment of the full amount of such electronic
131 commercial debit plus a service charge of Forty Dollars (\$40.00),
132 the total amount due being \$. Failure to pay this amount
133 in full within the time specified above shall be prima facie
134 evidence of and create a presumption of both the intent to defraud
135 and the knowledge of insufficient funds in, or on deposit with,
136 such bank in violation of Section 97-19-55, and the payee may
137 assume that you entered into such agreement with intent to defraud
138 and may turn over all documentation related to the dishonored
139 electronic commercial debit to the proper authorities for criminal
140 prosecution."

141 (* * *5) If any notice is returned undelivered to the
142 sender after such notice was mailed to the address printed on the
143 check, draft or order, or to the address given by the accused at



144 the time of issuance of the instrument, such return shall be prima
145 facie evidence of the maker's or drawer's intent to defraud.

146 (* * *6) Affidavit of service by mail shall be adequate if
147 made in substantially the following form:

148 "STATE OF _____

149 COUNTY OF _____

150 _____, being first duly sworn on oath, deposes and
151 states that he/she is at least eighteen (18) years of age and that
152 on (date) _____, 2____, he/she served the attached Notice
153 of Dishonor by placing a true and correct copy thereof securely
154 enclosed in an envelope addressed as follows:

155 _____

156 _____

157 _____

158 and deposited the same, postage prepaid, in the United States mail
159 at _____, _____.

160 _____

161 (signature)

162 Subscribed to and sworn before me, this the _____ day of

163 _____, 2____.

164 _____

165 (Notary Public)

166 My commission expires:

167 (SEAL) "



168 (* * *7) Without in any way limiting the provisions of this
169 section, this section shall apply to a draft for the payment of
170 money given for a motor vehicle even if such payment is
171 conditioned upon delivery of documents necessary for transfer of a
172 valid title to the purchaser.

173 **SECTION 3.** Section 97-19-61, Mississippi Code of 1972, is
174 amended as follows:

175 97-19-61. Such notice as is provided for in Section 97-19-57
176 is dispensed with: (a) in the event the situs of the drawee is
177 not in the State of Mississippi; (b) if the drawer or payor is not
178 a resident of the State of Mississippi or has left the State of
179 Mississippi at the time such check, draft * * *, order,
180 electronically converted check, or electronic commercial debit
181 is dishonored; or (c) if the drawer or payor of such check,
182 draft * * *, order, electronically converted check, or electronic
183 commercial debit did not have an account with the drawee or payor
184 bank of such check, draft * * *, order, electronically converted
185 check, or electronic commercial debit at the time the same was
186 issued or dishonored, or payment of the * * * same is denied
187 because the account was closed at the time the check, draft * * *,
188 order, or electronically converted check, or electronic commercial
189 debit was issued or dishonored.

190 **SECTION 4.** Section 97-19-62, Mississippi Code of 1972, is
191 amended as follows:



192 97-19-62. (1) In any prosecution or action under the
193 provisions of Section 97-19-55, a check, draft * * *, order, or
194 electronically converted check for which the information required
195 in subsections (2) and (3) of this section is available at the
196 time of issuance, utterance or delivery shall constitute prima
197 facie evidence of the identity of the party issuing, uttering or
198 delivering the check, draft * * *, order, or electronically
199 converted check and that such person was a party authorized to
200 draw upon the named account.

201 (2) To establish prima facie evidence of the identity of the
202 party presenting such check, draft * * *, order, or electronically
203 converted check, the following information regarding such identity
204 shall be requested by the party receiving such instrument: The
205 presenter's name, residence address and home phone number. Such
206 information may be provided in the following manner:

207 (a) The information may be recorded upon the check,
208 draft or order, or electronically converted check itself; or

209 (b) The number of a check-cashing identification card
210 issued by the receiving party may be recorded on the check,
211 draft * * *, order, or electronically converted check. Such
212 check-cashing identification card shall be issued only after the
213 information required in this subsection has been placed on file by
214 the receiving party.

215 (3) In addition to the information required in subsection
216 (2) of this section, the party receiving the check, draft * * *,



217 order, or electronically converted check shall witness the
218 signature or endorsement of the party presenting such instrument
219 and, as evidence of such, the receiving party shall initial the
220 instrument.

221 (4) In any prosecution or action under the provisions of
222 Section 97-19-55 for an electronic commercial debit, the following
223 shall constitute prima facie evidence that the payee was a party
224 authorized to draw upon the named account for the electronic
225 commercial debit: (i) the existence of an enforceable written
226 agreement between the payor and the payee whereby the payee agrees
227 to provide a good or service to the payor conditioned and in
228 reliance upon the payor's provision of its account and bank
229 information and agreement to pay for the good or service through
230 an electronic commercial debit, and (ii) an invoice, bill of
231 lading, or other business record evidencing the delivery of the
232 good or service by the payee to the payor.

233 **SECTION 5.** Section 97-19-63, Mississippi Code of 1972, is
234 amended as follows:

235 97-19-63. (1) It shall be the duty of the drawee of any
236 check, draft or other order for the payment of money, before
237 refusing to pay the same to the holder thereof upon presentation,
238 to cause to be written, printed, or stamped in plain language
239 thereon or attached thereto, the reason for drawee's dishonor or
240 refusal of the same. In all prosecutions under Sections 97-19-55
241 through 97-19-69, the introduction in evidence of any unpaid and



242 dishonored check, draft or other order for the payment of money,
243 having the drawee's refusal to pay stamped or written thereon or
244 attached thereto, with the reason therefor as aforesaid, shall be
245 prima facie evidence of the making or uttering of said check,
246 draft or other order for the payment of money and the dishonor
247 thereof, and that the same was properly dishonored for the reasons
248 written, stamped or attached by the drawee on such dishonored
249 check, draft or other such order for the payment of money.

250 (2) It shall be the duty of the drawee or the payor's bank
251 in an electronically converted check or electronic commercial
252 debit transaction, before refusing to pay the same to the payee's
253 bank and the payee thereof upon initiation of such a transaction
254 through the ACH Network, to provide such notice for the reason for
255 dishonor or refusal of the same by the payor's bank as would be
256 required by the NACHA Operating Rules & Guidelines for the reasons
257 of insufficient funds, account closed, no account or unable to
258 locate account, payment stopped, or uncollected funds. In all
259 prosecutions under Sections 97-19-55 through 97-19-69, the
260 introduction in evidence of any such notice of an unpaid and
261 dishonored electronically converted check or electronic commercial
262 debit properly given under the NACHA rules with the reason of
263 insufficient funds, account closed, no account or unable to locate
264 account, payment stopped, or uncollected funds shall be prima
265 facie evidence of the dishonor of said electronically converted



266 check or electronic commercial debit for the reasons recorded and
267 noticed pursuant to the NACHA Operating Rules & Guidelines.

268 (3) In the case of an electronically converted check, the
269 introduction into evidence of a check payable to the payee and
270 signed by the drawer to authorize the transaction is prima facie
271 evidence of the making or uttering of said electronically
272 converted check for the payment of money.

273 **SECTION 6.** Section 97-19-65, Mississippi Code of 1972, is
274 amended as follows:

275 97-19-65. Each making, drawing, issuing, uttering * * *,
276 delivering, or initiation of any such check, draft * * *, order,
277 electronically converted check, or electronic commercial debit as
278 aforesaid shall constitute a separate offense.

279 **SECTION 7.** Section 97-19-67, Mississippi Code of 1972, is
280 amended as follows:

281 97-19-67. (1) Except as may be otherwise provided by
282 subsection (2) of this section, any person violating Section
283 97-19-55, upon conviction, shall be punished as follows:

284 (a) For the first offense of violating said section,
285 where the check, draft * * *, order, electronically converted
286 check, or electronic commercial debit involved be less than One
287 Hundred Dollars (\$100.00), the person committing such offense
288 shall be guilty of a misdemeanor and, upon conviction, shall be
289 punished by a fine of not less than Twenty-five Dollars (\$25.00),
290 nor more than Five Hundred Dollars (\$500.00), or by imprisonment



291 in the county jail for a term of not less than five (5) days nor
292 more than six (6) months, or by both such fine and imprisonment,
293 in the discretion of the court * * *.

294 (b) Upon commission of a second offense of violating
295 said section, where the check, draft * * *, order, electronically
296 converted check, or electronic commercial debit involved is less
297 than One Hundred Dollars (\$100.00), the person committing such
298 offense shall be guilty of a misdemeanor and, upon conviction,
299 shall be punished by a fine of not less than Fifty Dollars
300 (\$50.00) nor more than One Thousand Dollars (\$1,000.00), or by
301 imprisonment in the county jail for a term of not less than thirty
302 (30) days nor more than one (1) year, or by both such fine and
303 imprisonment, in the discretion of the court * * *.

304 (c) Upon commission of a third or any subsequent
305 offense of violating said section, regardless of the amount of the
306 check, draft * * *, order, electronically converted check, or
307 electronic commercial debit involved, and regardless of the amount
308 of the checks, drafts or orders involved in the prior convictions,
309 the person committing such offense shall be guilty of a felony
310 and, upon conviction, shall be punished by imprisonment in the
311 State Penitentiary for a term of not less than one (1) nor more
312 than five (5) years.

313 (d) Where the check, draft * * *, order, electronically
314 converted check, or electronic commercial debit involved shall be
315 One Hundred Dollars (\$100.00) or more, the person committing such



316 offense, whether same be a first or second offense, shall be
317 guilty of a felony and, upon conviction, shall be punished by a
318 fine of not less than One Hundred Dollars (\$100.00) nor more than
319 One Thousand Dollars (\$1,000.00), or by imprisonment in the State
320 Penitentiary for a term of not more than three (3) years, or by
321 both such fine and imprisonment, in the discretion of the court.
322 Upon conviction of a third or any subsequent offense, the person
323 convicted shall be punished as is provided in the immediately
324 preceding paragraph hereof.

325 (2) Where the conviction was based on a worthless check,
326 draft * * *, order, or electronically converted check given for
327 the purpose of satisfying a preexisting debt or making a payment
328 or payments on a past-due account or accounts, no imprisonment
329 shall be ordered as punishment, but the court may order the
330 convicted person to pay a fine of up to the applicable amounts
331 prescribed in * * * subsection (1) (a) (b) and (d) of this
332 section * * *; provided, however, that an electronic commercial
333 debit initiated following the delivery of goods or services that
334 were provided in reliance upon the agreement for payment through
335 that means shall not be considered payment for a preexisting debt
336 or a past-due account or accounts for the purposes of this
337 section.

338 (3) In addition to or in lieu of any penalty imposed under
339 the provisions of subsection (1) or subsection (2) of this
340 section, the court may, in its discretion, order any person



341 convicted of violating Section 97-19-55 to make restitution in
342 accordance with the provisions of Sections 99-37-1 through
343 99-37-23 to the holder or payee of any check, draft * * *, order,
344 electronically converted check, or electronic commercial debit for
345 which payment has been refused.

346 (4) Upon conviction of any person for a violation of Section
347 97-19-55, when the prosecution of such person was commenced by the
348 filing of a complaint with the court by the district attorney
349 under the provisions of Section 97-19-79, the court shall, in
350 addition to any other fine, fee, cost or penalty which may be
351 imposed under this section or as otherwise provided by law, and in
352 addition to any order as the court may enter under subsection (3)
353 of this section requiring the offender to pay restitution under
354 Sections 99-37-1 through 99-37-23, impose a fee in the amount up
355 to eighty-five percent (85%) of the face amount of the check,
356 draft * * *, order, electronically converted check, or electronic
357 commercial debit for which the offender was convicted of drawing,
358 making, issuing, uttering * * *, delivering or authorizing in
359 violation of Section 97-19-55.

360 (5) It shall be the duty of the clerk or judicial officer of
361 the court collecting the fees imposed under subsection (4) of this
362 section to monthly deposit all such fees so collected with the
363 State Treasurer, either directly or by other appropriate
364 procedures, for deposit in the special fund of the State Treasury



365 created under Section 99-19-32, known as the "Criminal Justice
366 Fund."

367 (6) After the accused has complied with all terms of the
368 statute and the complainant or victim has been paid, the district
369 attorney's check unit may dispose of the accused's file after one
370 (1) year has expired after the last audit.

371 **SECTION 8.** Section 97-19-69, Mississippi Code of 1972, is
372 amended as follows:

373 97-19-69. In the event of the existence of prima facie
374 evidence of fraudulent intent as defined in Section 97-19-57 and
375 the giving of notice under Section 97-19-57, if required, any
376 person, firm or corporation causing the arrest of the drawer of
377 such check, draft * * *, order, electronically converted check, or
378 electronic commercial debit shall not be criminally or civilly
379 liable for false arrest or false imprisonment.

380 **SECTION 9.** This act shall take effect and be in force from
381 and after July 1, 2015.

