

By: Senator(s) Parks

To: Business and Financial
Institutions

SENATE BILL NO. 2409
(As Sent to Governor)

1 AN ACT TO CREATE THE "MISSISSIPPI CREDIT AVAILABILITY ACT";
2 TO DEFINE TERMS USED IN THE ACT; TO PROVIDE LICENSING REQUIREMENTS
3 FOR PERSONS ENGAGING IN THE BUSINESS AS A CREDIT AVAILABILITY
4 LICENSEE; TO PROVIDE EXEMPTIONS FROM THE ACT; TO PROVIDE APPLICANT
5 ELIGIBILITY REQUIREMENTS; TO PROVIDE THAT EACH APPLICATION FOR A
6 LICENSE SHALL BE IN A FORM PRESCRIBED BY THE COMMISSIONER; TO
7 REQUIRE INVESTIGATION BY THE DEPARTMENT OF BANKING BEFORE ISSUANCE
8 OF A LICENSE, AND TO REQUIRE THAT THE LICENSE SHALL BE
9 CONSPICUOUSLY POSTED IN THE PLACE OF BUSINESS OF THE LICENSEE; TO
10 AUTHORIZE THE DEPARTMENT OF BANKING TO ADOPT REGULATIONS AND TO
11 EXAMINE THE BOOKS AND RECORDS OF ANY LICENSEE; TO PROHIBIT THE
12 ADVERTISING, DISPLAYING OR PUBLISHING OF FALSE OR MISLEADING
13 STATEMENTS BY A LICENSEE; TO PROVIDE FOR FEES, CHARGES AND METHOD
14 OF COMPUTATION TO BE CHARGED BY A LICENSEE UNDER A CREDIT
15 AVAILABILITY ACCOUNT; TO REQUIRE LICENSEES TO PROVIDE ACCOUNT
16 HOLDER WITH A WRITTEN EXPLANATION OF FEES AND CHARGES; TO
17 AUTHORIZE THE COMMISSIONER OF BANKING TO SUSPEND OR REVOKE A
18 LICENSE UPON MAKING CERTAIN FINDINGS; TO AUTHORIZE THE
19 COMMISSIONER OF BANKING TO INVESTIGATE AND EXAMINE PERSONS
20 LICENSED UNDER THE ACT AND PERSONS REASONABLY SUSPECTED OF
21 CONDUCTING BUSINESS WHICH REQUIRES A LICENSE UNDER THE ACT; TO
22 PROVIDE PENALTIES FOR ENGAGING IN BUSINESS WITHOUT A LICENSE; TO
23 PROVIDE CRIMINAL AND CIVIL PENALTIES FOR VIOLATIONS OF THE ACT; TO
24 PROVIDE THAT MUNICIPALITIES OF THIS STATE MAY ENACT ORDINANCES
25 WHICH ARE IN COMPLIANCE WITH, BUT NOT MORE RESTRICTIVE THAN, THE
26 PROVISIONS OF THE ACT; TO AUTHORIZE THE COMMISSIONER OF BANKING TO
27 EMPLOY THE NECESSARY FULL-TIME EMPLOYEES ABOVE THE NUMBER OF
28 PERMANENT FULL-TIME EMPLOYEES AUTHORIZED FOR THE DEPARTMENT FOR
29 FISCAL YEAR 2016 TO ENFORCE THE PROVISIONS OF THE ACT; TO PROVIDE
30 LIABILITY PROTECTIONS FOR LICENSEES; TO AMEND SECTION 75-67-403,
31 MISSISSIPPI CODE OF 1972, TO REMOVE THE PROHIBITION THAT NO
32 BUSINESS OTHER THAN TITLE PLEDGE BUSINESS SHALL BE CONDUCTED AT A
33 TITLE PLEDGE OFFICE; TO AMEND SECTION 75-67-505, MISSISSIPPI CODE
34 OF 1972, TO PROVIDE THAT THE COMMISSIONER OF BANKING SHALL



35 AUTHORIZE THE OFFERING OF CREDIT AVAILABILITY TRANSACTIONS IN
36 ADDITION TO THOSE THAT MAY BE PERFORMED AS PART OF A CHECK CASHING
37 BUSINESS; AND FOR RELATED PURPOSES.

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

39 **SECTION 1. Short title.** Sections 1 through 19 of this act
40 shall be known and may be cited as the "Mississippi Credit
41 Availability Act."

42 **SECTION 2. Definitions.** The following words and phrases
43 used in Sections 1 through 19 of this act shall have the following
44 meanings unless the context clearly indicates otherwise:

45 (a) "Appropriate law enforcement agency" means the
46 sheriff of each county in which the licensee maintains an office,
47 or the police chief of the municipality in which the licensee
48 maintains an office, or law enforcement officers of the Department
49 of Public Safety.

50 (b) "Attorney General" means the Attorney General of
51 the State of Mississippi.

52 (c) "Commissioner" means the Mississippi Commissioner
53 of Banking and Consumer Finance, or his designee, as the
54 designated official for the purpose of enforcing Sections 1
55 through 19 of this act.

56 (d) "Credit availability account" means all credit
57 availability transactions held in the name of a single person
58 through a single licensee or, if a secured transaction and the
59 property is jointly owned, the names of the persons who jointly
60 own the property that is being used as security for the



61 transaction. That person or those persons shall be the "account
62 holder" or "account holders."

63 (e) "Credit availability transaction" means a
64 transaction whereby a credit availability licensee provides a
65 consumer with a fully amortized loan, secured or unsecured,
66 payable in substantially equal payments due monthly, or on any
67 other schedule mutually agreed upon by the licensee and the
68 consumer, over an overall term of four (4) to twelve (12) months,
69 calculated on the amount initially disbursed to the account holder
70 or holders plus any fees that may be charged in an amount and
71 manner provided for under Sections 1 through 19 of this act.

72 (f) "Department" means the Department of Banking and
73 Consumer Finance.

74 (g) "Licensee" means any individual, partnership,
75 association or corporation duly licensed by the Department of
76 Banking and Consumer Finance to engage in the business of
77 providing credit availability transactions under Sections 1
78 through 19 of this act.

79 (h) "Month" means the calendar month beginning on and
80 including the date of the credit availability transaction.

81 (i) "Person" means an individual, partnership,
82 corporation, joint venture, trust, association or any legal
83 entity, however organized.

84 (j) "Written" and "writing" includes communication of
85 information in an electronic record consistent with the federal



86 Electronic Signatures in Global and National Commerce (E-SIGN)
87 Act, 15 USC Section 7001 et seq.

88 **SECTION 3. Licensing requirements.** (1) A person may not
89 engage in business as a credit availability licensee or otherwise
90 portray himself as a credit availability licensee unless the
91 person has a valid license authorizing him to engage in the
92 business. Any transaction that would be subject to Sections 1
93 through 19 of this act that is made by a person who does not have
94 a valid license under Sections 1 through 19 of this act shall be
95 null and void.

96 (2) A credit availability licensee shall (a) have a
97 definitive United States postal address and E911 address; and (b)
98 comply with applicable local zoning requirements, except as
99 otherwise provided in Sections 1 through 19 of this act; and (c)
100 maintain separate books and records for credit availability
101 transactions.

102 (3) (a) The commissioner may issue more than one (1)
103 license to a person if that person complies with Sections 1
104 through 19 of this act for each license. A new license is
105 required upon a change, directly or beneficially, in the ownership
106 of any licensed credit availability business and an application
107 shall be made to the commissioner in accordance with Sections 1
108 through 19 of this act.

109 (b) When a licensee wishes to move a credit
110 availability business to another physical location, the licensee



111 shall give thirty (30) days' prior written notice to the
112 commissioner who shall amend the license accordingly.

113 (c) Each license shall remain in full force and effect
114 until relinquished, suspended, revoked or expired. With each
115 initial application for a license, the applicant shall pay the
116 commissioner at the time of making the application a license fee
117 of Seven Hundred Fifty Dollars (\$750.00), and on or before
118 September 1 of each year thereafter, an annual renewal fee of Four
119 Hundred Seventy-five Dollars (\$475.00). If the annual renewal fee
120 remains unpaid twenty-nine (29) days after September 1, the
121 license shall thereupon expire, but not before the thirtieth day
122 of September of any year for which the annual fee has been paid.
123 If any licensee fails to pay the annual renewal fee before the
124 thirtieth day of September of any year for which the renewal fee
125 is due, then the licensee shall be liable for the full amount of
126 the license fee, plus a penalty in an amount not to exceed
127 Twenty-five Dollars (\$25.00) for each day that the licensee has
128 engaged in business after September 30. All licensing fees and
129 penalties shall be paid into the Consumer Finance Fund of the
130 Department of Banking and Consumer Finance.

131 (4) Notwithstanding any other provisions of Sections 1
132 through 19 of this act, the commissioner may issue a temporary
133 license authorizing the operation of a credit availability
134 business on the receipt of an application for a license involving
135 principals and owners that are substantially identical to those of



136 an existing licensed credit availability licensee. The temporary
137 license is effective until the permanent license is issued or
138 denied.

139 (5) Notwithstanding other provisions of Sections 1 through
140 19 of this act, neither a new license nor an application to
141 transfer an existing license shall be required upon any change,
142 directly or beneficially, in the ownership of any licensed
143 business incorporated under the laws of this state or any other
144 state so long as the licensee continues to operate as a
145 corporation doing a credit availability business under the
146 license.

147 (6) Persons licensed under Sections 75-67-401 et seq. and
148 75-67-501 et seq. on July 1, 2016, shall have until September 30,
149 2016, to apply for an expedited license approval under Sections 1
150 through 19 of this act. The commissioner, in his discretion, may
151 waive certain documentation already on file under those licenses,
152 including fingerprints, and may promulgate an application that
153 expedites the licensing process. Upon the approval of the
154 application, the commissioner shall grant a license under Sections
155 1 through 19 of this act.

156 **SECTION 4. Exemptions.** The provisions of Sections 1 through
157 19 of this act shall not apply to any bank, trust company, savings
158 association, savings and loan association, savings bank or credit
159 union that is chartered under the laws of this state or under
160 federal law and domiciled in this state.



161 **SECTION 5. Applicant eligibility requirements.** To be

162 eligible for a credit availability license, an applicant shall:

163 (a) Operate lawfully and fairly within the purposes of
164 Sections 1 through 19 of this act.

165 (b) Not have been convicted in the last ten (10) years
166 or be active as a beneficial owner for someone who has been
167 convicted in the last ten (10) years of a crime that the
168 commissioner finds directly relates to the duties and
169 responsibilities of the business of offering credit availability
170 transactions.

171 (c) File with the commissioner a bond with good
172 security in the penal sum of Ten Thousand Dollars (\$10,000.00),
173 payable to the State of Mississippi, for the faithful performance
174 by the licensee of the duties and obligations pertaining to the
175 business so licensed and the prompt payment of any judgment which
176 may be recovered against the licensee on account of charges or
177 other claims arising directly or collectively from any violation
178 of the provisions of Sections 1 through 19 of this act. The bond
179 shall not be valid until the commissioner approves it. The
180 applicant may file, in lieu of the bond, cash, a certificate of
181 deposit or government bonds in the amount of Ten Thousand Dollars
182 (\$10,000.00). Those deposits shall be filed with the commissioner
183 and are subject to the same terms and conditions as are provided
184 for in the surety bond required in this paragraph. Any interest
185 or earnings on those deposits are payable to the depositor.



186 Applicants applying for multiple licenses may submit a single bond
187 for all licenses, provided that the total value of the bond is
188 equal to Ten Thousand Dollars (\$10,000.00) per license applied
189 for.

190 (d) File with the commissioner an application for a
191 license and the initial license fee required in Sections 1 through
192 19 of this act. If applicant's application is approved, a credit
193 availability license will be issued within thirty (30) days.

194 (e) File with the commissioner a set of fingerprints
195 from any local law enforcement agency for each owner of a sole
196 proprietorship, partners in a partnership or principal owners of a
197 limited liability company that own at least ten percent (10%) of
198 the voting shares of the company, shareholders owning ten percent
199 (10%) or more of the outstanding shares of the corporation, except
200 publically traded corporations and their subsidiaries, and any
201 other executive officer with significant oversight duties of the
202 business. In order to determine the applicant's suitability for
203 license, the commissioner shall forward the fingerprints to the
204 Department of Public Safety; and if no disqualifying record is
205 identified at the state level, the Department of Public Safety
206 shall forward the fingerprints to the FBI for a national criminal
207 history record check.

208 (f) Complete and file with the commissioner an annual
209 renewal application for a license accompanied by the renewal fee
210 required in Sections 1 through 19 of this act.



211 **SECTION 6. Application form.** Each application for a license
212 shall be in a form prescribed by the commissioner, signed under
213 oath or otherwise authenticated in a record, and shall include the
214 following:

215 (a) The legal name, residence and business address of
216 the applicant and, if the applicant is a partnership, association
217 or corporation, of every member, officer and director thereof.
218 However, the application need not state the full name and address
219 of each shareholder, if the applicant is owned directly or
220 beneficially by a person which as an issuer has a class of
221 securities registered under Section 12 of the Securities and
222 Exchange Act of 1934 or is an issuer of securities which is
223 required to file reports with the Securities and Exchange
224 Commission under Section 15(d) of the Securities and Exchange Act,
225 provided that the person files with the commissioner such
226 information, documents and reports as are required by the
227 provisions of the Securities and Exchange Act to be filed by the
228 issuer with the Securities and Exchange Commission. The
229 commissioner may, however, require the licensee to provide such
230 information as he deems reasonable and appropriate concerning the
231 officers and directors of the corporation and persons owning in
232 excess of twenty-five percent (25%) of the outstanding shares of
233 the corporation.



234 (b) The complete address of the location at which the
235 applicant proposes to engage in the business of offering credit
236 availability transactions.

237 (c) Other data and information the department may
238 require with respect to the applicant, its directors, trustees,
239 officers, members or agents.

240 (d) Sworn financial statements of the applicant showing
241 a net worth of at least Twenty Thousand Dollars (\$20,000.00) for
242 the first license. The applicant shall possess and maintain a net
243 worth of at least Twenty Thousand Dollars (\$20,000.00) for the
244 first license and at least Five Thousand Dollars (\$5,000.00) for
245 each additional license.

246 **SECTION 7. Investigations, findings and posting of licenses.**

247 (1) Upon filing of an application in a form prescribed by the
248 commissioner, accompanied by the documents required in Sections 1
249 through 19 of this act, the department shall investigate to
250 ascertain whether the qualifications prescribed in Sections 1
251 through 19 of this act have been satisfied. If the commissioner
252 finds that the qualifications have been satisfied and, if he
253 approves the documents so filed by the applicant, he shall issue
254 to the applicant a license to engage in the credit availability
255 business in this state.

256 (2) The license shall be kept conspicuously posted in the
257 place of business of the licensee.



258 **SECTION 8. Licensee duties; regulations; examinations of**

259 **books and records.** (1) The department may adopt reasonable
260 administrative regulations, not inconsistent with law, for the
261 enforcement of Sections 1 through 19 of this act and shall develop
262 and provide any necessary forms or other documentation to carry
263 out the provisions of Sections 1 through 19 of this act.

264 (2) To assure compliance with the provisions of Sections 1
265 through 19 of this act, the department may examine the books and
266 records of any licensee without notice during normal business
267 hours. The commissioner may charge the licensee an examination
268 fee in an amount not less than Three Hundred Dollars (\$300.00) nor
269 more than Six Hundred Dollars (\$600.00) for each office or
270 location within the State of Mississippi plus any actual expenses
271 incurred while examining the licensee's records or books that are
272 located outside the State of Mississippi. However, in no event
273 shall a licensee be examined more than once in a two-year period
274 unless for cause shown based upon a consumer complaint and/or
275 other exigent reasons as determined by the commissioner.

276 (3) Each licensee shall keep and use in its business any
277 books, accounts and records the department may require to carry
278 into effect the provisions of Sections 1 through 19 of this act
279 and the administrative regulations issued under Sections 1 through
280 19 of this act. Every licensee shall preserve the books, accounts
281 and records of its business for at least two (2) years.



282 **SECTION 9. Advertising, displaying or publishing false or**
283 **misleading statements prohibited.** A licensee shall not advertise,
284 display or publish, or permit to be advertised, displayed or
285 published, in any manner whatsoever, any statement or
286 representation that is false, misleading or deceptive.

287 **SECTION 10. Fees and charges; method of computation.** (1)

288 Notwithstanding any other statutory limitation, a licensee
289 authorized to provide credit availability transactions under
290 Sections 1 through 19 of this act may charge and collect fees and
291 charges in a manner consistent with this section, and may take as
292 security therefor any personal property that is not exempt or
293 prohibited by state or federal law or regulations.

294 (2) (a) A licensee may charge and collect a monthly
295 handling fee for services, expenses, and costs not to exceed
296 twenty-five percent (25%) of the outstanding principal balance of
297 any credit availability account per month, or any portion thereof,
298 for transactions of Five Hundred Dollars (\$500.00) or less. The
299 handling fee shall not be deemed interest for any purpose of law.

300 (b) A licensee may charge and collect a monthly
301 handling fee for services, expenses, and costs not to exceed
302 twenty-five percent (25%) of the outstanding principal balance of
303 any credit availability account per month, or portion thereof, for
304 transactions in excess of Five Hundred Dollars (\$500.00). The
305 handling fee shall not be deemed interest for any purpose of law.



306 (c) (i) In addition to the charges authorized under
307 this subsection (2), a licensee may also charge and collect an
308 origination fee in the amount of one percent (1%) of the amount
309 disbursed to the account holder or Five Dollars (\$5.00), whichever
310 is greater, for costs associated with providing a credit
311 availability transaction.

312 (ii) The origination fee shall not be deemed
313 interest for any purpose of law.

314 (3) (a) No credit availability account created under
315 subsection (2) (a) of this section shall have an outstanding
316 principal balance in excess of Five Hundred Dollars (\$500.00) at
317 any time.

318 (b) No credit availability account created under
319 subsection (2) (b) of this section shall have an outstanding
320 principal balance in excess of Two Thousand Five Hundred Dollars
321 (\$2,500.00) at any time.

322 (4) (a) Any credit availability account created under
323 subsection (2) (a) of this section shall be a fully amortized loan,
324 secured or unsecured, payable in equal payments of four (4) to six
325 (6) months calculated on the amount initially disbursed to the
326 account holder plus any fees that may be charged, in an amount and
327 manner provided for under Sections 1 through 19 of this act.

328 (b) Any credit availability account created under
329 subsection (2) (b) of this section shall be a fully amortized loan,
330 secured or unsecured, payable in equal payments of six (6) to



331 twelve (12) months calculated on the amount initially disbursed to
332 the account holder plus any fees that may be charged, in an amount
333 and manner provided for under Sections 1 through 19 of this act.

334 (5) In the event an account holder is delinquent in payment
335 of a monthly payment under the terms of a credit availability
336 agreement, the licensee may charge and collect from the account
337 holder a late fee of ten percent (10%) of the past-due amount;
338 provided, however, that no such late fee may be charged unless an
339 account holder has failed to pay the past-due amount within ten
340 (10) business days after the due date and provided that such fees
341 are clearly disclosed in the credit availability agreement.

342 (6) In the event an account holder is in default under the
343 terms of a credit availability agreement for more than sixty (60)
344 days, the licensee may charge and collect from the account holder
345 the following fees in connection with any such default, provided
346 that such fees are clearly disclosed in the credit availability
347 agreement:

348 (a) If the licensee is required to employ a third
349 party, including an attorney, to collect on the account the
350 licensee may:

351 (i) If the credit availability agreement so
352 provides, charge and collect a reasonable collection fee and
353 attorney's fee; and

354 (ii) If the credit availability agreement so
355 provides, shall be entitled to recover from the account holder all



356 court costs incurred and to recover any court-awarded damages,
357 including those incurred on appeal.

358 (b) If applicable, the licensee may charge and collect
359 from the account holder any fees and costs relating to the
360 repossession and sale of collateral, including, but not limited
361 to, fees and costs associated with the repossession, storage,
362 preparation for sale and sale of collateral.

363 **SECTION 11. Licensee to provide account holder with a**
364 **written explanation of fees and charges.** (1) A licensee shall
365 provide each prospective account holder, before consummation of a
366 credit availability transaction, a written explanation of the
367 fees, and charges to be charged by the licensee and the due dates
368 for all payments. The style, content, and method of executing the
369 required written explanation shall comply with federal
370 truth-in-lending laws and shall contain a statement that the
371 account holder may prepay the unpaid balance in whole or in part
372 at any time. The commissioner may promulgate rules in accordance
373 with Sections 1 through 19 of this act in order to assure complete
374 and accurate disclosure of the fees and charges to be charged by a
375 licensee under a credit availability agreement. At a minimum, the
376 written explanation must include:

- 377 (a) The amount of the transaction;
378 (b) The date the agreement was entered into;
379 (c) A schedule or description of the payments;
380 (d) The name and address of the licensed office;



381 (e) The name of the person primarily obligated on the
382 agreement;

383 (f) The amount of the principal;

384 (g) The agreed rate of charge stated on a percent per
385 year basis and the amount in dollars and cents;

386 (h) All other disclosures required pursuant to state
387 and federal law.

388 (2) The contract for any credit availability agreement shall
389 include, along with other state or federal law requirements, the
390 right for an account holder to rescind the transaction within one
391 (1) business day; provided, however, that if the account holder
392 accepts funds from the credit availability licensee prior to the
393 expiration of the one-day rescission period, any origination fee
394 charged shall be nonrefundable.

395 (3) A licensee with a physical location in this state shall
396 display in its consumer waiting area, and shall provide a copy to
397 any account holder that requests it, a pamphlet prepared by the
398 department that describes general information about the
399 transaction and about the account holder's rights and
400 responsibilities in the transaction, including the rates and fees
401 charged by the licensee, the licensee's rights in event of default
402 by the consumer, the maximum allowable account balance, and the
403 consumer hotline telephone number to the Mississippi Department of
404 Banking and Consumer Finance. The licensee shall add the account
405 information and/or complaint hotline telephone number of the



406 licensee to the pamphlet. A licensee without a physical location
407 in this state shall make the information available on its website.

408 **SECTION 12. Suspending or revoking license; reinstatement;**

409 **notice to law enforcement.** (1) The commissioner may, after
410 notice and hearing, suspend or revoke a license if he finds that:

411 (a) The licensee, either knowingly, or without the
412 exercise of due care to prevent the same, has violated any
413 provision of Sections 1 through 19 of this act;

414 (b) Any fact or condition exists which, if it had
415 existed or had been known to exist at the time of the original
416 application for the license, clearly would have justified the
417 commissioner in refusing the license;

418 (c) The licensee has aided, abetted or conspired with
419 an individual or person to circumvent or violate the requirement
420 of Sections 1 through 19 of this act;

421 (d) The licensee, or a legal or beneficial owner of the
422 license, has been convicted of a crime that the commissioner finds
423 directly relates to the duties and responsibilities of the
424 business of offering credit availability transactions.

425 (2) The commissioner may conditionally license or place on
426 probation a person whose license has been suspended or may
427 reprimand a licensee for a violation of Sections 1 through 19 of
428 this act.

429 (3) The manner of giving notice and conducting a hearing as
430 required by subsection (1) of this section shall be performed in



431 accordance with procedures prescribed by the commissioner in rules
432 or regulations adopted under the Mississippi Administrative
433 Procedures Law, Section 25-43-1 et seq.

434 (4) Any licensee may surrender any license by delivering it
435 to the commissioner with written notice of its surrender, but that
436 surrender shall not affect the licensee's civil or criminal
437 liability for acts committed prior thereto.

438 (5) The commissioner may reinstate suspended licenses or
439 issue new licenses to a person whose licenses have been revoked if
440 no fact or condition then exists which clearly would have
441 justified the commissioner in refusing originally to issue a
442 license under Sections 1 through 19 of this act.

443 (6) The appropriate local law enforcement agency shall be
444 notified of any licensee who has his license suspended or revoked
445 as provided by Sections 1 through 19 of this act.

446 (7) The commissioner shall enforce the provisions of this
447 section.

448 (8) No revocation, suspension or surrender of any license
449 shall impair or affect the obligation of any pre-existing lawful
450 contract between the licensee and any debtor.

451 **SECTION 13. Investigative powers and examinations.** The
452 commissioner, or his duly authorized representative, for the
453 purpose of discovering violations of Sections 1 through 19 of this
454 act and for the purpose of determining whether persons are subject
455 to the provisions of Sections 1 through 19 of this act, may



456 examine persons licensed under Sections 1 through 19 of this act
457 and persons reasonably suspected by the commissioner of conducting
458 business which requires a license under Sections 1 through 19 of
459 this act, including all relevant books, records and papers
460 employed by those persons in the transaction of their business,
461 and may summon witnesses and examine them under oath concerning
462 matters relating to the business of those persons, or such other
463 matters as may be relevant to the discovery of violations of
464 Sections 1 through 19 of this act, including without limitation
465 the conduct of business without a license as required under
466 Sections 1 through 19 of this act.

467 **SECTION 14. Engaging in business without license; penalty.**

468 (1) Any person who engages in the business of offering credit
469 availability transactions without first securing a license
470 prescribed by Sections 1 through 19 of this act shall be guilty of
471 a misdemeanor and upon conviction thereof, shall be punishable by
472 a fine not to exceed One Thousand Dollars (\$1,000.00) or by
473 confinement in the county jail for not more than one (1) year, or
474 both.

475 (2) Any person who engages in the business of offering
476 credit availability transactions without first securing a license
477 prescribed by Sections 1 through 19 of this act shall be liable
478 for the full amount of the license fee, plus a penalty in an
479 amount not to exceed Twenty-five Dollars (\$25.00) for each day
480 that the person engaged in the business without a license. All



481 licensing fees and penalties shall be paid into the Consumer
482 Finance Fund of the Department of Banking and Consumer Finance.

483 **SECTION 15. Violations; criminal and civil penalties;**
484 **enforcement; order to refrain; injunctions; bond forfeiture.** (1)

485 In addition to any other penalty which may be applicable, any
486 licensee or employee who willfully violates any provision of
487 Sections 1 through 19 of this act, or who willfully makes a false
488 entry in any record specifically required by Sections 1 through 19
489 of this act, shall be guilty of a misdemeanor and upon conviction
490 thereof, shall be punishable by a fine not to exceed One Thousand
491 Dollars (\$1,000.00) per violation or false entry.

492 (2) Compliance with criminal provisions of Sections 1
493 through 19 of this act shall be enforced by the appropriate law
494 enforcement agency, which may exercise for that purpose any
495 authority conferred upon the agency by law.

496 (3) When the commissioner has reasonable cause to believe
497 that a person is violating any provision of Sections 1 through 19
498 of this act, the commissioner, in addition to and without
499 prejudice to the authority provided elsewhere in Sections 1
500 through 19 of this act, may enter an order requiring the person to
501 stop or to refrain from the violation. The commissioner may sue
502 in any circuit court of the state having jurisdiction and venue to
503 enjoin the person from engaging in or continuing the violation or
504 from doing any action in furtherance of the violation. In such an



505 action, the court may enter an order or judgment awarding a
506 preliminary or permanent injunction.

507 (4) The commissioner may impose a civil penalty against any
508 licensee adjudged by the commissioner to be in violation of the
509 provisions of Sections 1 through 19 of this act. The civil
510 penalty shall not exceed Five Hundred Dollars (\$500.00) per
511 violation and shall be deposited into the Department of Banking
512 and Consumer Finance, "Consumer Finance Fund."

513 (5) Any licensee convicted in the manner provided in
514 Sections 1 through 19 of this act shall forfeit the surety bond or
515 deposit required in Sections 1 through 19 of this act and the
516 amount of the bond or deposit shall be credited to the budget of
517 the state or local agency which directly participated in the
518 prosecution of the licensee, for the specific purpose of
519 increasing law enforcement resources for that specific state or
520 local agency. The bond or deposit shall be used to augment
521 existing state and local law enforcement budgets and not to
522 supplant them.

523 **SECTION 16. Severability.** The provisions of Sections 1
524 through 19 of this act are severable. If any part of Sections 1
525 through 19 of this act is declared invalid or unconstitutional,
526 that declaration shall not affect the parts that remain.

527 **SECTION 17. Municipal ordinances.** (1) Municipalities of
528 this state may enact ordinances that are in compliance with, but
529 not more restrictive than, the provisions of Sections 1 through 19



530 of this act. Any existing or future order, ordinance or
531 regulation that conflicts with this provision shall be null and
532 void.

533 (2) Notwithstanding any existing zoning ordinance, any
534 person or entity conducting business under a valid license issued
535 by the department pursuant to Section 75-67-401 et seq. or Section
536 75-67-501 et seq., as of the effective date of this act, that
537 elects to secure a license under Sections 1 through 19 of this act
538 may not be restricted from continuing operations under Sections 1
539 through 19 of this act in the same location, regardless of whether
540 the licensee elects to continue, if permitted by law, or to
541 terminate its previous license.

542 **SECTION 18. Commissioner employees and funds authorized for**
543 **enforcement.** The commissioner may employ the necessary full-time
544 employees above the number of permanent full-time employees
545 authorized for the department for fiscal year 2016 to carry out
546 and enforce the provisions of Sections 1 through 19 of this act.
547 The commissioner may also expend the necessary funds to equip and
548 provide necessary travel expenses for those employees.

549 **SECTION 19. Liability of licensees.** (1) A licensee under
550 Sections 1 through 19 of this act shall have no liability for any
551 act or practice done or omitted in conformity with (a) any rule or
552 regulation of the commissioner, or (b) any rule, regulation,
553 interpretation or approval of any other state or federal agency or
554 any opinion of the Attorney General, notwithstanding that after



555 such act or omission has occurred the rule, regulation,
556 interpretation, approval or opinion is amended, rescinded, or
557 determined by judicial or other authority to be invalid for any
558 reason.

559 (2) A licensee under Sections 1 through 19 of this act,
560 acting in conformity with a written interpretation or approval by
561 an official or employee of any state or federal agency or
562 department, shall be presumed to have acted in accordance with
563 applicable law, notwithstanding that after such act has occurred,
564 the interpretation or approval is amended, rescinded, or
565 determined by judicial or other authority to be incorrect or
566 invalid for any reason.

567 **SECTION 20.** Section 75-67-403, Mississippi Code of 1972, is
568 amended as follows:

569 75-67-403. The following words and phrases shall have the
570 following meanings:

571 (a) "Appropriate law enforcement agency" means the
572 sheriff of each county in which the title pledge lender maintains
573 an office, or the police chief of the municipality or law
574 enforcement officers of the Department of Public Safety in which
575 the title pledge lender maintains an office.

576 (b) "Attorney General" means the Attorney General of
577 the State of Mississippi.

578 (c) "Commissioner" means the Commissioner of Banking
579 and Consumer Finance of the State of Mississippi, or his designee,



580 as the designated official for the purpose of enforcing this
581 article.

582 (d) "Identification" means a government issued
583 photographic identification.

584 (e) "Person" means an individual, partnership,
585 corporation, joint venture, trust, association or other legal
586 entity.

587 (f) "Pledged property" means any personal property
588 certificate of title that is deposited with a title pledge lender
589 in the course of the title pledge lender's business and is the
590 subject of a title pledge agreement.

591 (g) "Pledgor" means the person to whom the property is
592 titled.

593 (h) "Title pledge agreement" means a thirty-day written
594 agreement whereby a title pledge lender agrees to make a loan of
595 money to a pledgor, and the pledgor agrees to give the title
596 pledge lender a security interest in unencumbered titled personal
597 property owned by the pledgor. The pledgor shall agree that the
598 title pledge lender keep possession of the certificate of title.
599 The pledgor shall have the exclusive right to redeem the
600 certificate of title by repaying the loan of money in full and by
601 complying with the title pledge agreement. When the certificate
602 of title is redeemed, the title pledge lender shall release the
603 security interest in the titled personal property and return the
604 personal property certificate of title to the pledgor. The title



605 pledge agreement shall provide that upon failure by the pledgor to
606 redeem the certificate of title at the end of the original
607 thirty-day agreement period, or at the end of any extension(s)
608 thereof, the title pledge lender shall be allowed to take
609 possession of the titled personal property. The title pledge
610 agreement shall contain a power of attorney which authorizes the
611 title pledge lender to transfer title to the pledged property from
612 the pledgor to the title pledge lender upon failure to redeem the
613 pledged property on or before the maturity date of the title
614 pledge agreement, or any extension thereof. The title pledge
615 lender shall take physical possession of the certificate of title
616 for the entire length of the title pledge agreement, but shall not
617 be required to take physical possession of the titled personal
618 property at any time. A title pledge lender may only take
619 unencumbered certificates of title for pledge, but may encumber
620 the title as part of the title pledge transaction by perfecting
621 its security interest in the titled property.

622 (i) "Title pledge lender" means any person engaged in
623 the business of making title pledge agreements with pledgors;
624 provided, however, that the following are exempt from the
625 definition of "title pledge lender" and from the provisions of
626 this article: any bank which is regulated by the Department of
627 Banking and Consumer Finance, the Comptroller of the Currency of
628 the United States, the Federal Deposit Insurance Corporation, the
629 Board of Governors of the Federal Reserve System or any other



630 federal or state authority and all affiliates of such bank, and
631 additionally any bank or savings and loan association whose
632 deposits or accounts are eligible for insurance by the Bank
633 Insurance Fund or the Savings Association Insurance Fund or other
634 fund administered by the Federal Deposit Insurance Corporation or
635 any successor thereto, and all affiliates of such banks and
636 savings and loan associations, any state or federally chartered
637 credit union and finance company subject to licensing and
638 regulation by the Department of Banking and Consumer Finance.

639 (j) "Title pledge office" means the location at which,
640 or premises in which, a title pledge lender regularly conducts
641 business. * * *

642 (k) "Title pledge service charge" means a charge for
643 investigating the title, appraising the titled personal property
644 to which the pledged property relates, documenting and closing the
645 title pledge agreement transaction, making required reports to
646 appropriate law enforcement officials, and for all of the services
647 provided by the title pledge lender.

648 (l) "Title pledge transaction form" means the
649 instrument on which a title pledge lender records title pledge
650 agreements pursuant to this article.

651 (m) "Titled personal property" means any personal
652 property the ownership of which is evidenced and delineated by a
653 state-issued certificate of title.



654 (n) "Records" or "documents" means any item in hard
655 copy or produced in a format of storage commonly described as
656 electronic, imaged, magnetic, microphotographic or otherwise, and
657 any reproduction so made shall have the same force and effect as
658 the original thereof and be admitted in evidence equally with the
659 original.

660 **SECTION 21.** Section 75-67-505, Mississippi Code of 1972, is
661 amended as follows:

662 75-67-505. (1) (a) A person may not engage in business as
663 a check casher or otherwise portray himself as a check casher
664 unless the person has a valid license authorizing engagement in
665 the business. Any transaction that would be subject to this
666 article that is made by a person who does not have a valid license
667 under this article shall be null and void. A separate license is
668 required for each place of business under this article and each
669 business must be independent of, and not a part of, any other
670 business operation. A check cashing business shall not be a part
671 of, or located at the same business address with, a pawnshop,
672 title pledge office and small loan company.

673 (b) A check cashing business shall (i) have a
674 definitive United States postal address and E911 address; (ii)
675 comply with local zoning requirements; (iii) have a minimum of one
676 hundred (100) square feet with walls from floor to ceiling
677 separating the operation from any other businesses; (iv) have an
678 outside entrance, but may be located in an area that has a common



679 lobby shared by other businesses as long as the customers do not
680 enter the check cashing business through another business; (v)
681 have proper signage; and (vi) maintain separate books and records.
682 Any licensee who does not cash any delayed deposit checks as
683 authorized under Section 75-67-519 shall not be subject to the
684 requirements of subparagraphs (i), (iii) and (iv) of this
685 paragraph.

686 (c) A licensed check casher may sell, at the same
687 location as his check cashing business, the following items and
688 services: money orders; income tax preparation service; copy
689 service; wire transfer service; notary service; pagers; pager
690 service; prepaid cellular service; debit card; prepaid telephone
691 cards; prepaid telephone service; and operate a processing center
692 where utility bills, credit card payments and other payments are
693 collected from the general public and governmental and private
694 payments are distributed. In the event a licensee accepts wire
695 transfers in the form of a direct deposit of a payroll check or
696 other similar types of deposit, the licensee shall not encumber
697 any transferred funds against a deferred deposit agreement or any
698 delinquent deferred deposit agreement with such customer. The
699 commissioner may authorize additional functions in addition to
700 those provided in this subsection that may be performed as part of
701 a check cashing business, but shall authorize the offering of
702 credit availability transactions as provided in Sections 1 through
703 19 of this act.



704 (d) The commissioner may issue more than one (1)
705 license to a person if that person complies with this article for
706 each license. A new license is required upon a change, directly
707 or beneficially, in the ownership of any licensed check casher
708 business and an application shall be made to the commissioner in
709 accordance with this article.

710 (2) When a licensee wishes to move a check casher business
711 to another location, the licensee shall give thirty (30) days'
712 prior written notice to the commissioner who shall amend the
713 license accordingly.

714 (3) Each license shall remain in full force and effect until
715 relinquished, suspended, revoked or expired. With each initial
716 application for a license, the applicant shall pay the
717 commissioner at the time of making the application a license fee
718 of Seven Hundred Fifty Dollars (\$750.00), and on or before
719 September 1 of each year thereafter, an annual renewal fee of Four
720 Hundred Seventy-five Dollars (\$475.00). If the annual renewal fee
721 remains unpaid twenty-nine (29) days after September 1, the
722 license shall thereupon expire, but not before the thirtieth day
723 of September of any year for which the annual fee has been paid.
724 If any licensee fails to pay the annual renewal fee before the
725 thirtieth day of September of any year for which the renewal fee
726 is due, then the licensee shall be liable for the full amount of
727 the license fee, plus a penalty in an amount not to exceed
728 Twenty-five Dollars (\$25.00) for each day that the licensee has



729 engaged in business after September 30. All licensing fees and
730 penalties shall be paid into the Consumer Finance Fund of the
731 Department of Banking and Consumer Finance.

732 (4) Notwithstanding other provisions of this article, the
733 commissioner may issue a temporary license authorizing the
734 operator of a check casher business on the receipt of an
735 application for a license involving principals and owners that are
736 substantially identical to those of an existing licensed check
737 casher. The temporary license is effective until the permanent
738 license is issued or denied.

739 **SECTION 22.** This act shall stand repealed on July 1, 2018.

740 **SECTION 23.** This act shall take effect and be in force from
741 and after July 1, 2016.

