

By: Representative Gadd

To: Judiciary B

HOUSE BILL NO. 1362
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 97-19-75, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE SERVICE CHARGE PAYABLE TO THE COMPLAINANT IN A BAD
3 CHECK CASE; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 97-19-75, Mississippi Code of 1972, is
6 amended as follows:

7 97-19-75. (1) The holder of any check, draft or order for
8 the payment of money which has been made, drawn, issued, uttered
9 or delivered in violation of Section 97-19-55, Mississippi Code of
10 1972, may, after complying with the provisions of Section
11 97-19-57, Mississippi Code of 1972, present a complaint to the
12 district attorney. The complaint shall be accompanied by the
13 original check, draft or order upon which the complaint is filed
14 and the return receipt showing mailing of notice under Section
15 97-19-57, Mississippi Code of 1972. Not more than one (1) check,
16 draft or order shall be included within a single complaint. Upon
17 receipt of such complaint, the district attorney shall evaluate
18 the complaint to determine whether or not the complaint is
19 appropriate to be processed by the district attorney.

20 (2) If, after filing a complaint with the district attorney,
21 the complainant wishes to withdraw the complaint for good cause,
22 the complainant shall pay a fee of Thirty Dollars (\$30.00) to the
23 office of the district attorney for processing such complaint.
24 Upon payment of the processing fee and withdrawal of the
25 complaint, the district attorney shall return the original check,
26 draft or order to the complainant.

27 (3) After approval of the complaint by the district
28 attorney, a warrant may be issued by any judicial officer
29 authorized by law to issue arrest warrants, and the warrant may be
30 held by the district attorney. After issuance of a warrant or
31 upon approval of a complaint by the district attorney, the
32 district attorney shall issue a notice to the individual charged
33 in the complaint, informing him that a warrant has been issued for
34 his arrest or that a complaint has been received by the district
35 attorney and that he may be eligible for deferred prosecution for
36 a violation of Section 97-19-55, Mississippi Code of 1972, by
37 voluntarily surrendering himself to the district attorney within
38 ten (10) days, Saturdays, Sundays and legal holidays excepted,
39 from receipt of the notice. Such notice shall be sent by United
40 States mail.

41 (4) If the accused voluntarily surrenders himself within the
42 time period as provided by subsection (3) of this section, the
43 accused shall be presented with the complaint and/or warrant and
44 prosecution of the accused may be deferred upon payment by the
45 accused of a service charge in the amount of Forty Dollars
46 (\$40.00) to the district attorney and by execution of a
47 restitution agreement as hereinafter provided.

48 (5) For the purposes of Sections 97-19-73 through 97-19-81,
49 the term "restitution" shall mean and be defined as the face
50 amount of any check, draft or order for the payment of money made,
51 drawn, issued, uttered or delivered in violation of Section
52 97-19-55, Mississippi Code of 1972, plus a service charge payable
53 to the complainant in the amount of Thirty Dollars (\$30.00).

54 (6) After an accused has voluntarily surrendered himself and
55 paid the service charge as provided by subsection (4) of this
56 section, the district attorney may enter into a restitution
57 agreement with the accused prescribing the terms by which the
58 accused shall satisfy restitution to the district attorney on
59 behalf of the complainant. The terms of such agreement shall be

60 determined on a case-by-case basis by the district attorney, but
61 the duration of any such agreement shall be no longer than a
62 period of six (6) months. No interest shall be charged or
63 collected on restitution monies. The restitution agreement shall
64 be signed by the accused and approved by the district attorney
65 before it is effective. If the accused does not honor each term
66 of the restitution agreement signed by him, the accused may be
67 proceeded against by prosecution under the provisions of Sections
68 97-19-55 through 97-19-69, Mississippi Code of 1972, and as
69 provided by Section 97-19-79. If the accused makes restitution
70 and pays all charges set out by statute or if the accused enters
71 into a restitution agreement as set out above and honors all terms
72 of such agreement, then if requested, the original check may be
73 returned to the accused and a photocopy retained in the check
74 file.

75 (7) If the holder of any check, draft or order for the
76 payment of money presents to the district attorney satisfactory
77 evidence that the original check, draft or order is unavailable
78 and satisfactory evidence of the check, draft or order is
79 presented in the form of bank records or a photographic copy of
80 the instrument, whether from microfilm or otherwise, then the
81 procedures provided for in this section may be followed in the
82 absence of the original check, draft or order.

83 SECTION 2. This act shall take effect and be in force from
84 and after July 1, 1999.