

By: Senator(s) Mettetal

To: Business and Financial
Institutions

SENATE BILL NO. 2574

1 AN ACT TO REENACT SECTIONS 75-67-501 THROUGH 75-67-537,
2 MISSISSIPPI CODE OF 1972, WHICH ARE THE MISSISSIPPI CHECK CASHERS
3 ACT; TO AMEND REENACTED SECTION 75-67-507, TO PROVIDE THAT CHECK
4 CASHING FEES BE CONSPICUOUSLY POSTED FOR PUBLIC VIEW; TO AMEND
5 REENACTED SECTION 75-67-515, MISSISSIPPI CODE OF 1972, TO PROVIDE
6 THAT THE COMMISSIONER OF BANKING MAY CHARGE A LICENSEE AN
7 EXAMINATION FEE CONSISTING OF ACTUAL EXPENSES PER EXAMINATION; TO
8 AMEND REENACTED SECTION 75-67-539, TO EXTEND THE DATE OF REPEAL ON
9 THE CHECK CASHERS LAW; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 75-67-501, Mississippi Code of 1972, is
12 reenacted as follows:

13 75-67-501. This article shall be known and may be cited as
14 the "Mississippi Check Cashers Act."

15 **SECTION 2.** Section 75-67-503, Mississippi Code of 1972, is
16 reenacted as follows:

17 75-67-503. The following words and phrases used in this
18 article shall have the following meanings unless the context
19 clearly indicates otherwise:

20 (a) "Appropriate law enforcement agency" means the
21 sheriff of each county in which the licensee maintains an office,
22 or the police chief of the municipality in which the licensee
23 maintains an office, or law enforcement officers of the Department
24 of Public Safety.

25 (b) "Attorney General" means the Attorney General of
26 the State of Mississippi.

27 (c) "Check" means any check, draft, money order,
28 personal money order, pre-authorized customer draft, or other
29 instrument for the transmission or payment of money as determined



by the Commissioner of Banking and Consumer Finance, but shall not include travelers checks or foreign drawn payment instruments.

(d) A "check casher" means any individual, partnership, association, joint stock association, trust or corporation, excluding the United States Government and the government of this state, who exchanges cash or other value for any check, draft, money order, personal money order, or other instrument for the transmission or payment of money, except travelers checks and foreign drawn payment instruments, and who charges a fee therefor.

(e) "Commissioner" means the Mississippi Commissioner of Banking and Consumer Finance, or his designee, as the designated official for the purpose of enforcing this article.

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

(g) "Licensee" means any individual, partnership, association or corporation duly licensed by the Department of Banking and Consumer Finance to engage in the business of cashing checks under this article.

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

(i) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission or handling of money, whether such instrument is signed by the seller or by the purchaser or remitter or some other person.

SECTION 3. Section 75-67-505, Mississippi Code of 1972, is reenacted as follows:

75-67-505. (1) (a) A person may not engage in business as a check casher or otherwise portray himself as a check casher unless the person has a valid license authorizing engagement in the business. A separate license is required for each place of



63 business under this article and each business must be independent
64 of, and not a part of, any other business operation. A check
65 cashing business shall not be a part of, or located at the same
66 business address with, a pawnshop, title pledge office and small
67 loan company.

68 (b) A check cashing business shall (i) have a
69 definitive United States Postal address and E911 address; (ii)
70 comply with local zoning requirements; (iii) have a minimum of one
71 hundred (100) square feet with walls from floor to ceiling
72 separating the operation from any other businesses; (iv) have an
73 outside entrance, but may be located in an area that has a common
74 lobby shared by other businesses as long as the customers do not
75 enter the check cashing business through another business; (v)
76 have proper signage; and (vi) maintain separate books and records.
77 Any licensee who does not cash any delayed deposit checks as
78 authorized under Section 75-67-519 shall not be subject to the
79 requirements of subparagraphs (i), (iii) and (iv) of this
80 paragraph.

81 (c) A licensed check casher may sell, at the same
82 location as his check cashing business, the following items and
83 services: money orders; income tax preparation service; copy
84 service; wire transfer service; notary service; pagers; pager
85 service; prepaid cellular service; debit card; prepaid telephone
86 cards; prepaid telephone service; and operate a processing center
87 where utility bills, credit card payments and other payments are
88 collected from the general public and governmental and private
89 payments are distributed. In the event a licensee accepts wire
90 transfers in the form of a direct deposit of a payroll check or
91 other similar types of deposit, the licensee shall not encumber
92 any transferred funds against a deferred deposit agreement or any
93 delinquent deferred deposit agreement with such customer. The
94 commissioner may authorize additional functions in addition to



those provided in this subsection that may be performed as part of a check cashing business.

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

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

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

(4) Notwithstanding other provisions of this article, the commissioner may issue a temporary license authorizing the



operator of a check casher business on the receipt of an application for a license involving principals and owners that are substantially identical to those of an existing licensed check casher. The temporary license is effective until the permanent license is issued or denied.

(5) Notwithstanding other provisions of this article, neither a new license nor an application to transfer an existing license shall be required upon any change, directly or beneficially, in the ownership of any licensed check casher business incorporated under the laws of this state or any other state as long as the licensee continues to operate as a corporation doing a check casher business under the license. However, the commissioner may require the licensee to provide such information as he deems reasonable and appropriate concerning the officers and directors of the corporation and persons owning in excess of twenty-five percent (25%) of the outstanding shares of the corporation.

SECTION 4. Section 75-67-507, Mississippi Code of 1972, is reenacted and amended as follows:

75-67-507. The provisions of this article shall not apply to:

(a) Any bank, trust company, savings association, savings and loan association, savings bank or credit union which is chartered under the laws of this state or under federal law and domiciled in this state.

(b) Any person who cashes checks at their face value and does not charge the consumer a fee or otherwise receive any consideration from the consumer.

(c) Any person principally engaged in the retail sale of goods or services who, either as an incident to or independently of a retail sale, may from time to time cash checks for a fee, not exceeding three percent (3%) of the face amount of



the check or Ten Dollars (\$10.00), whichever is greater. However,
the fee shall be conspicuously posted for public view.

SECTION 5. Section 75-67-509, Mississippi Code of 1972, is
reenacted as follows:

75-67-509. To be eligible for a check casher license, an
applicant shall:

(a) Operate lawfully and fairly within the purposes of
this article.

(b) Not have been convicted of a felony in the last ten
(10) years or be active as a beneficial owner for someone who has
been convicted of a felony in the last ten (10) years.

(c) File with the commissioner a bond with good
security in the penal sum of Ten Thousand Dollars (\$10,000.00),
payable to the State of Mississippi for the faithful performance
by the licensee of the duties and obligations pertaining to the
business so licensed and the prompt payment of any judgment which
may be recovered against the licensee on account of charges or
other claims arising directly or collectively from any violation
of the provisions of this article. The bond shall not be valid
until it is approved by the commissioner. The applicant may file,
in lieu of the bond, cash, a certificate of deposit or government
bonds in the amount of Ten Thousand Dollars (\$10,000.00). Those
deposits shall be filed with the commissioner and are subject to
the same terms and conditions as are provided for in the surety
bond required in this paragraph. Any interest or earnings on
those deposits are payable to the depositor.

(d) File with the commissioner an application for a
license and the initial license fee required in this article. If
applicant's application is approved, a check casher license will
be issued within thirty (30) days.

(e) Submit a set of fingerprints from any local law
enforcement agency. In order to determine the applicant's
suitability for license, the commissioner shall forward the



fingerprints to the Department of Public Safety; and if no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the FBI for a national criminal history record check.

(f) Complete and file with the commissioner an annual renewal application for a license accompanied by the renewal fee required in this article.

SECTION 6. Section 75-67-511, Mississippi Code of 1972, is reenacted as follows:

75-67-511. Each application for a license shall be in a form prescribed by the commissioner, signed under oath, and shall include the following:

(a) The legal name, residence and business address of the applicant and, if the applicant is a partnership, association or corporation, of every member, officer and director thereof.

However, the application need not state the full name and address of each shareholder, if the applicant is owned directly or beneficially by a person which as an issuer has a class of securities registered under Section 12 of the Securities and Exchange Act of 1934 or is an issuer of securities which is required to file reports with the Securities and Exchange Commission under Section 15(d) of the Securities and Exchange Act, provided that the person files with the commissioner such information, documents and reports as are required by the provisions of the Securities and Exchange Act to be filed by the issuer with the Securities and Exchange Commission.

(b) The complete address of the location at which the applicant proposes to engage in the business of cashing checks.

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

(d) Sworn financial statements of the applicant showing a net worth of at least Twenty Thousand Dollars (\$20,000.00) for



the first license. The applicant shall possess and maintain a net worth of at least Twenty Thousand Dollars (\$20,000.00) for the first license and at least Five Thousand Dollars (\$5,000.00) for each additional license.

SECTION 7. Section 75-67-513, Mississippi Code of 1972, is reenacted as follows:

75-67-513. (1) Upon filing of an application in a form prescribed by the commissioner, accompanied by the documents required in this article, the department shall investigate to ascertain whether the qualifications prescribed by Sections 75-67-509 and 75-67-511 have been satisfied. If the commissioner finds that the qualifications have been satisfied and, if he approves the documents so filed by the applicant, he shall issue to the applicant a license to engage in the business of check cashing in this state.

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

SECTION 8. Section 75-67-515, Mississippi Code of 1972, is reenacted and amended as follows:

75-67-515. (1) The department may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this article.

(2) To assure compliance with the provisions of this article, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner may charge the licensee an examination fee consisting of actual expenses per examination of each office or location within the State of Mississippi plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.



(3) Each licensee shall keep and use in its business any books, accounts and records the department may require to carry into effect the provisions of this article and the administrative regulations issued under this article. Every licensee shall preserve the books, accounts and records of its business for at least two (2) years.

(4) Any fee charged by a licensee for cashing a check shall be posted conspicuously to the bearer of the check before cashing the check, and the fee shall be a service fee and not interest.

(5) Before a licensee deposits with any bank or other depository institution a check cashed by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

(6) All personal checks cashed for a customer by a licensee shall be dated on the actual date the cash is tendered to the customer.

(7) No licensee shall cash a check payable to a payee unless the licensee has previously obtained appropriate identification of the payee clearly indicating the authority of the person cashing the check, draft or money order on behalf of the payee.

(8) No licensee shall indicate through advertising, signs, billboards or otherwise that checks may be cashed without identification of the bearer of the check; and any person seeking to cash a check shall be required to submit reasonable identification as prescribed by the department. The provisions of this subsection shall not prohibit a licensee from cashing a check simultaneously with the verification and establishment of the identity of the presenter by means other than presentation of identification.

(9) Within five (5) business days after being advised by the payor financial institution that a check has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority or represents the proceeds of



292 illegal activity, the licensee shall notify the department and the
293 district attorney for the judicial district in which the check was
294 received. If a check is returned to the licensee by the payor
295 financial institution for any of these reasons, the licensee may
296 not release the check without consent of the district attorney or
297 other investigating law enforcement authority.

298 (10) If a check is returned to a licensee from a payor
299 financial institution because there are insufficient funds in or
300 on deposit with the financial institution to pay the check, the
301 licensee or any other person on behalf of the licensee shall not
302 institute or initiate any criminal prosecution against the maker
303 or drawer of the personal check with the intent and purpose of
304 aiding in the collection of or enforcing the payment of the amount
305 owed to the check casher by the maker or drawer of the check.

306 (11) Nothing in this article shall prohibit a licensee from
307 issuing coupons to customers or potential customers which are
308 redeemable against a deferred deposit transaction provided the
309 redemption results in a financial benefit to the customer on
310 current or future transactions.

311 **SECTION 9.** Section 75-67-516, Mississippi Code of 1972, is
312 reenacted as follows:

313 75-67-516. A licensee shall not advertise, display or
314 publish, or permit to be advertised, displayed or published, in
315 any manner whatsoever, any statement or representation that is
316 false, misleading or deceptive.

317 **SECTION 10.** Section 75-67-517, Mississippi Code of 1972, is
318 reenacted as follows:

319 75-67-517. Notwithstanding any other provision of law, no
320 check cashing business licensed under this article shall directly
321 or indirectly charge or collect fees for check cashing services in
322 excess of the following:

323 (a) Three percent (3%) of the face amount of the check
324 or Five Dollars (\$5.00), whichever is greater, for checks issued



by the federal government, state government, or any agency of the state or agency of the state or federal government, or any county or municipality of this state.

(b) Ten percent (10%) of the face amount of the check or Five Dollars (\$5.00), whichever is greater, for personal checks.

(c) Five percent (5%) of the face amount of the check or Five Dollars (\$5.00), whichever is greater, for all other checks, or for money orders.

A licensee may not advance monies on the security of any personal check unless the presenter attests that the check being presented is drawn on a legitimate, open and active account. Except as provided by Section 75-67-519, any licensee who cashes a check for a fee shall deposit the check not later than three (3) business days from the date the check is cashed.

SECTION 11. Section 75-67-519, Mississippi Code of 1972, is reenacted as follows:

75-67-519. (1) A licensee may defer the deposit of a personal check cashed for a customer for up to thirty (30) days under the provisions of this section.

(2) The face amount of any delayed deposit check cashed under the provisions of this section shall not exceed Four Hundred Dollars (\$400.00). Each customer is limited to a maximum amount of Four Hundred Dollars (\$400.00) at any time.

(3) Each delayed deposit check cashed by a licensee shall be documented by a written agreement that has been signed by the customer and the licensee. The written agreement shall contain a statement of the total amount of any fees charged, expressed as a dollar amount and as an annual percentage rate. The written agreement shall authorize the licensee to defer deposit of the personal check until a specific date not later than thirty (30) days from the date the check is cashed.



(4) A licensee shall not directly or indirectly charge any fee or other consideration for cashing a delayed deposit check in excess of eighteen percent (18%) of the face amount of the check.

(5) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same licensee or any affiliate of the licensee. A licensee shall not renew or otherwise extend any delayed deposit check.

(6) A licensee shall not offer discount catalog sales or other similar inducements as part of a delayed deposit transaction.

(7) A licensee shall not charge a late fee or collection fee on any deferred deposit transaction as a result of a returned check or the default by the customer in timely payment to the licensee. Notwithstanding anything to the contrary contained in this section, a licensee may charge a processing fee, not to exceed an amount authorized by the commissioner, for a check returned for any reason, including, without limitation, insufficient funds, closed account or stop payment, if such processing fee is authorized in the written agreement signed by the customer and licensee. In addition, if a licensee takes legal action against a customer to collect the amount of a delayed deposit check for which the licensee has not obtained payment and obtains a judgment against the customer for the amount of that check, the licensee shall also be entitled to any court-awarded fees.

(8) When cashing a delayed deposit check, a licensee may pay the customer in the form of the licensee's business check or a money order; however, no additional fee may then be charged by the licensee for cashing the licensee's business check or money order issued to the customer.

SECTION 12. Section 75-67-521, Mississippi Code of 1972, is reenacted as follows:



75-67-521. (1) The commissioner may, after notice and hearing, suspend or revoke a license if he finds that:

(a) The licensee, either knowingly, or without the exercise of due care to prevent the same, has violated any provision of this article;

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

(c) The licensee has aided, abetted or conspired with an individual or person to circumvent or violate the requirement of this article;

(d) The licensee, or a legal or beneficial owner of the license, has been convicted of a felony, or has been convicted of a misdemeanor that the commissioner finds directly relates to the duties and responsibilities of the business of check cashing.

(2) The commissioner may conditionally license or place on probation a person whose license has been suspended or may reprimand a licensee for a violation of this article.

(3) The manner of giving notice and conducting a hearing as required by subsection (1) of this section shall be performed in accordance with procedures prescribed by the commissioner in rules or regulations adopted under Mississippi Administrative Procedures Law, Section 25-43-1 et seq.

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

(5) The commissioner may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if no fact or condition then exists which clearly would have justified the commissioner in refusing originally to issue a license under this article.



(6) The appropriate local law enforcement agency shall be notified of any licensee who has his license suspended or revoked as provided by this article.

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

SECTION 13. Section 75-67-523, Mississippi Code of 1972, is reenacted as follows:

75-67-523. The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business which requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limiting the conduct of business without a license as required under this article.

SECTION 14. Section 75-67-525, Mississippi Code of 1972, is reenacted as follows:

75-67-525. (1) Any person who engages in the business of check cashing without first securing a license prescribed by this article shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not in excess of One Thousand Dollars (\$1,000.00) or by confinement in the county jail for not more than one (1) year, or both.

(2) Any person who engages in the business of check cashing without first securing a license prescribed by this article shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars (\$25.00) for each day that the person has engaged in the business without a license.



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

SECTION 15. Section 75-67-527, Mississippi Code of 1972, is reenacted as follows:

75-67-527. (1) In addition to any other penalty which may be applicable, any licensee or employee who willfully violates any provision of this article, or who willfully makes a false entry in any record specifically required by this article, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not in excess of One Thousand Dollars (\$1,000.00) per violation or false entry.

(2) Compliance with the criminal provisions of this article shall be enforced by the appropriate law enforcement agency, which may exercise for that purpose any authority conferred upon the agency by law.

(3) When the commissioner has reasonable cause to believe that a person is violating any provision of this article, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this article, may enter an order requiring the person to stop or to refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

(4) The commissioner may impose a civil penalty against any licensee adjudged by the commissioner to be in violation of the provisions of this article. The civil penalty shall not exceed Five Hundred Dollars (\$500.00) per violation and shall be deposited into the Department of Banking and Consumer Finance, "Consumer Finance Fund."

(5) Any licensee convicted in the manner provided in this article shall forfeit the surety bond or deposit required in



488 Section 75-67-509(c) and the amount of the bond or deposit shall
489 be credited to the budget of the state or local agency which
490 directly participated in the prosecution of the licensee, for the
491 specific purpose of increasing law enforcement resources for that
492 specific state or local agency. The bond or deposit shall be used
493 to augment existing state and local law enforcement budgets and
494 not to supplant them.

495 **SECTION 16.** Section 75-67-529, Mississippi Code of 1972, is
496 reenacted as follows:

497 75-67-529. The provisions of this article are severable. If
498 any part of this article is declared invalid or unconstitutional,
499 that declaration shall not affect the parts which remain.

500 **SECTION 17.** Section 75-67-531, Mississippi Code of 1972, is
501 reenacted as follows:

502 75-67-531. Check cashers operating check cashing locations
503 in business as of July 1, 1998, shall have until September 30,
504 1998, to apply for a license under this article, and upon the
505 approval of the application, the commissioner shall grant a
506 license under this article.

507 **SECTION 18.** Section 75-67-533, Mississippi Code of 1972, is
508 reenacted as follows:

509 75-67-533. The commissioner shall develop and provide any
510 necessary forms to carry out the provisions of this article.

511 **SECTION 19.** Section 75-67-535, Mississippi Code of 1972, is
512 reenacted as follows:

513 75-67-535. Municipalities in this state may enact ordinances
514 which are in compliance with, but not more restrictive than, the
515 provisions of this article. Any existing or future order,
516 ordinance or regulation which conflicts with this provision shall
517 be null and void.

518 **SECTION 20.** Section 75-67-537, Mississippi Code of 1972, is
519 reenacted as follows:



520 75-67-537. The commissioner may employ the necessary
521 full-time employees above the number of permanent full-time
522 employees authorized for the department for fiscal year 1999, to
523 carry out and enforce the provisions of this article. The
524 commissioner may also expend the necessary funds to equip and
525 provide necessary travel expenses for those employees.

526 **SECTION 21.** Section 75-67-539, Mississippi Code of 1972, is
527 amended as follows:

528 75-67-539. Sections 75-67-501 through 75-67-537 shall stand
529 repealed on July 1, 2009.

530 **SECTION 22.** This act shall take effect and be in force from
531 and after its passage.

