MISSISSIPPI LEGISLATURE REGULAR SESSION 2004

By: Senator(s) Michel, Tollison, Albritton To: Judiciary, Division A

# SENATE BILL NO. 2911

AN ACT TO AMEND SECTIONS 97-19-57 AND 11-7-12, MISSISSIPPI CODE OF 1972, TO REVISE THE SERVICE CHARGE COLLECTIBLE AGAINST THE MAKER OF A CHECK, DRAFT OR ORDER THAT IS REFUSED BY THE DRAWEE; AND FOR RELATED PURPOSES.

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

**SECTION 1.** Section 97-19-57, Mississippi Code of 1972, is amended as follows:

97-19-57. (1) As against the maker or drawer thereof, the making, drawing, issuing, uttering or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence and create a presumption of intent to defraud and of knowledge of insufficient funds in, or on deposit with, such bank, corporation, firm or person, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with a service charge of Forty Dollars ($40.00), within fifteen (15) days after receiving notice that such check, draft or order has not been paid by the drawee.

(2) For purposes of Section 11-7-12, the form of the notice provided for in subsection (1) of this section shall be sent by regular mail and shall be substantially as follows: "This statutory notice is provided pursuant to Section 97-19-57, Mississippi Code of 1972. You are hereby notified that a check, draft or order numbered _____, apparently issued by you on _____ (date), drawn upon _____ (name of bank), and payable to _____, has been dishonored. Pursuant to Mississippi law, you have fifteen (15) days from receipt of this notice to tender payment of the full amount of such check, draft or order, plus a service charge of Forty Dollars ($40.00), the total amount due being $_____.

Failure to pay this amount in full within the time specified above shall be prima facie evidence of and create a presumption of both the intent to defraud and the knowledge of insufficient funds in, or on deposit with, such bank in violation of Section 97-19-55."

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

(4) If any notice is returned undelivered to the sender after such notice was mailed to the address printed on the check, draft or order, or to the address given by the accused at the time of issuance of the instrument, such return shall be prima facie evidence of the maker's or drawer's intent to defraud.

(5) Affidavit of service by mail shall be adequate if made in substantially the following form:

"STATE OF _____

COUNTY OF _____

_____, being first duly sworn on oath, deposes and states that he/she is at least eighteen (18) years of age and that on (date)_____, 2___, he/she served the attached Notice

of Dishonor by placing a true and correct copy thereof securely enclosed in an envelope addressed as follows:

_____

_____

_____

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

_____

(signature)

Subscribed to and sworn before me, this the _____ day of _____, 2___.

_____

(Notary Public)

My commission expires:

(SEAL)"

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

**SECTION 2.** Section 11-7-12, Mississippi Code of 1972, is amended as follows:

11-7-12. (1) If a check, draft or order is made, drawn, issued, uttered or delivered in violation of Section 97-19-55, the payee, endorser or his assignee shall be entitled to collect, in addition to the face amount of the check, draft or order, a service charge of Forty Dollars ($40.00).

(2) In any civil action founded on a check, draft or order made, drawn, issued, uttered or delivered in violation of Section 97-19-55, the plaintiff, if he be a payee or endorser, shall be entitled to recover, in addition to the face amount of the check, draft or order, damages in the following amount:

(a) If the amount of the check, draft or order is up to and including Twenty-five Dollars ($25.00), then the additional damages shall be Thirty Dollars ($30.00);

(b) If the amount of the check, draft or order is above Twenty-five Dollars ($25.00) and up to and including Two Hundred Dollars ($200.00), then the additional damages shall be fifty percent (50%) of the amount of the check, draft or order, not to exceed Fifty Dollars ($50.00), and not to be less than Thirty Dollars ($30.00);

(c) If the amount of the check, draft or order is above Two Hundred Dollars ($200.00), then the additional damages shall be twenty-five percent (25%) of the amount of the check, draft or order; and

(d) No service charge shall be payable in a civil action under this section.

**SECTION 3**. This act shall take effect and be in force from and after July 1, 2004.