

By: Representative Guice

To: Banking and Financial Services

HOUSE BILL NO. 1013

1 AN ACT TO AUTHORIZE BANKS TO CONSTRUCT SAFE DEPOSIT  
 2 FACILITIES AND LEASE SAFE DEPOSIT BOXES; TO PROVIDE THAT THE BANK  
 3 IS NOT LIABLE FOR THE LOSS OF PROPERTY IN SAFE DEPOSIT BOXES; TO  
 4 PROVIDE FOR ACCESS TO SAFE DEPOSIT BOXES BY FIDUCIARIES; TO  
 5 REQUIRE NOTIFICATION TO THE BANK OF THE DEATH OF ANY PERSON WHO  
 6 HAS ACCESS TO A SAFE DEPOSIT BOX; TO SPECIFY WHO WILL HAVE ACCESS  
 7 TO A SAFE DEPOSIT BOX UPON THE DEATH OF THE LAST SURVIVING LESSEE  
 8 OF THE BOX; TO PROVIDE CERTAIN PROCEDURES THAT THE BANK MUST  
 9 FOLLOW IF THE RENTAL DUE ON A SAFE DEPOSIT BOX HAS NOT BEEN PAID;  
 10 TO AUTHORIZE THE SALE OF THE PROPERTY IN A SAFE DEPOSIT BOX AND  
 11 PROVIDE FOR THE DISPOSITION OF THE PROCEEDS OF THE SALE; AND FOR  
 12 RELATED PURPOSES.

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

14 **SECTION 1.** As used in this act, unless the context otherwise  
 15 requires:

16 (a) "Agent" means any person duly authorized in writing  
 17 by a lessee to enter a safe deposit box rented by the lessee,  
 18 whether the person is denominated as "agent," "deputy,"  
 19 "attorney-in-fact," or otherwise.

20 (b) "Fiduciary" means trustee, agent, executor,  
 21 administrator, committee, guardian or conservator for a minor or  
 22 other incompetent person, receiver, trustee in bankruptcy,  
 23 assignee for creditors or any holders of a similar position of  
 24 trust.

25 (c) "Lessee" means a person contracting with a lessor  
 26 for the use of a safe deposit box.

27 (d) "Lessor" means a bank or subsidiary corporation of  
 28 a bank renting safe deposit facilities.

29 (e) "Safe deposit box" means a safe deposit box, vault,  
 30 or other safe deposit receptacle maintained by a lessor, and the  
 31 rules relating thereto apply to property or documents kept in  
 32 safekeeping in the bank's vault.

33           **SECTION 2.** Any bank has the right to construct a vault on  
34 its real estate, or on premises leased by it, or to rent any vault  
35 that, in the judgment of the directors, will provide reasonable  
36 means of safety against loss by theft, fire or other cause, in  
37 which vault may be placed safes, boxes, or receptacles, for the  
38 keeping of jewelry, diamonds, gold, bank notes, bonds, notes, and  
39 other valuables, and that may be rented by the bank to other  
40 persons on such terms as may be agreed by the parties. However,  
41 in no event shall the bank be liable for any loss of the jewelry,  
42 diamonds, gold, bank notes, bonds, notes, or other valuables by  
43 theft, robbery, fire, or other cause, the bank not being the  
44 insurer of the safety of the property, nor in any manner liable  
45 therefor. The bank is not required to take any note of property  
46 thus deposited, as the person who rents a safe, box, or receptacle  
47 is, for the term of the lease, the owner thereof.

48           **SECTION 3.** (1) Where a safe deposit box is made available  
49 by a lessor to one or more fiduciaries, the lessor may, except as  
50 otherwise expressly provided in the lease or the writings under  
51 which the fiduciaries are acting, allow access thereto to any one  
52 or more of the fiduciaries or to any agent authorized in writing  
53 by any one or more of the fiduciaries.

54           (2) The lessee, the lessee's estate or any successor  
55 fiduciary is bound by any dealings between the agent and the  
56 lessor under a power granting the agent access to a safe deposit  
57 box until the lessor has written notice of revocation of that  
58 power.

59           **SECTION 4.** A bank may lease a safe deposit box to and in  
60 connection therewith deal with a minor with the same effect as if  
61 leasing to and dealing with a person of full legal capacity, as  
62 provided in Section 81-5-61.

63           (1) No lessor shall rent any safe deposit box without first  
64 requiring all persons entitled to access thereto to agree in  
65 writing to notify the lessor of the death of a sole or last

66 surviving lessee of the safe deposit box. All persons having the  
67 right of access to the safe deposit box, upon the death of any  
68 such other person having the right of access thereto, before  
69 seeking access, shall notify the lessor of the death of the  
70 lessee, and the lessor may rely conclusively upon the absence of  
71 any such notification in allowing a person with a right of access  
72 to enter the box.

73 (2) Access to a safe deposit box shall be in accordance with  
74 the agreement between a lessor and lessee(s). The death of a  
75 person authorized access to a safe deposit box by that agreement  
76 shall not terminate the access of others so authorized in all  
77 cases where there is a surviving lessee, whether the surviving  
78 lessee is an individual, trust, corporation or other entity,  
79 unless further access is restricted by that agreement or by court  
80 order.

81 (3) Upon the death of the sole or last surviving lessee of a  
82 safe deposit box, access is authorized as follows:

83 (a) The duly qualified executor or administrator of the  
84 lessee may have access to and remove contents from the safe  
85 deposit box without inventory, unless an inventory is required by  
86 the lessor or by court order.

87 (b) In order to search for and remove any written  
88 instrument purporting to be the lessee's last will and testament,  
89 or any writing relating to a burial plot or burial instructions,  
90 or any writing purporting to be an insurance policy on the life of  
91 the lessee, a lessor shall permit a person named in a court order  
92 for that purpose, or if no order has been served upon the lessor,  
93 the lessee's spouse, parent, adult sibling or adult descendant, or  
94 a person named as executor in a copy of the lessee's purported  
95 will provided to the lessor, or any person with a right of access  
96 to the safe deposit box immediately before the death of the  
97 lessee, to open the safe deposit box with an officer or employee  
98 of the lessor and remove any such documents. A record of items

99 removed from the box by the person authorized entry shall be made  
100 by the lessor and the other person. If a purported will is found  
101 that does not name as executor the person conducting the will  
102 search with the lessor's representative, the lessor may make a  
103 copy thereof and mail or deliver it to the executor named therein,  
104 or to the court having jurisdiction of the decedent's estate  
105 according to the decedent's domicile as declared in the  
106 instrument.

107 (c) If an executor or administrator of the lessee's  
108 estate has not requested access to the contents within sixty (60)  
109 days following the lessee's death, the lessor may then permit  
110 access by the surviving spouse or any next-of-kin of the lessee  
111 for the purposes of inventory and the removal of contents. Before  
112 removal, an officer or employee of the lessor and the surviving  
113 spouse or next-of-kin of the lessee shall inventory the contents  
114 of the box and prepare a record thereof to be retained by the  
115 lessor.

116 (4) Upon the death of the sole or last surviving lessee, the  
117 lessor shall notify the Department of Banking and Consumer Finance  
118 of the death of the lessee and the existence of a safe deposit box  
119 within thirty (30) days of the time the lessor has actual  
120 knowledge of the lessee's death. The lessor shall retain records  
121 made under subsection (3) for a period of three (3) years after  
122 entry. The lessor shall provide copies of any such record to the  
123 department upon its request, to the executor or administrator of  
124 the decedent upon request, and to any party designated by court  
125 order, and the lessor may elect to provide copies to any person  
126 authorized access to the box at the time of the decedent's death,  
127 or to any person having a degree of kinship to the decedent equal  
128 to that of the next-of-kin who received contents following the  
129 death of the decedent.

130 (5) A lessor shall not be liable to any person for the  
131 removal or loss of any contents from a safe deposit box during a

132 period of access by an executor or administrator of a deceased  
133 lessee, or by any other person or persons authorized access to  
134 open and examine contents, whether the property removed or lost is  
135 that of the decedent's estate, a surviving lessee, or any other  
136 person, and the lessor is entitled to its expenses in defending  
137 against any such claim of liability.

138       **SECTION 5.** (1) An adverse claim to the contents of a safe  
139 deposit box, or to property held in safekeeping, is not sufficient  
140 to require the lessor to deny access to its lessee unless:

141           (a) The lessor is directed to do so by order of a court  
142 of competent jurisdiction; or

143           (b) The safe deposit box is leased or the property is  
144 held in the name of the lessee with the addition of words  
145 indicating that the contents or property are held in a fiduciary  
146 capacity, and the adverse claim is supported by a written  
147 statement of facts disclosing that it is made by or on behalf of a  
148 beneficiary and that there is reason to know that the fiduciary  
149 will misappropriate the trust property.

150       (2) A claim is also an adverse claim where one (1) of  
151 several lessees claims, contrary to the terms of the lease, an  
152 exclusive right of access, or where one or more persons claim a  
153 right of access as agents or officers of a lessee to the exclusion  
154 of others as agents or officers, or where it is claimed that a  
155 lessee is the same person as one using another name.

156       **SECTION 6.** (1) If the rental due on a safe deposit box has  
157 not been paid, the lessor shall, not sooner than thirty (30) days  
158 nor later than four (4) years after the rental was due, send a  
159 notice by certified mail, return receipt requested, or by  
160 registered mail to the last known address of the lessee, stating  
161 that unless payment of the rental is made within thirty (30) days  
162 after the date of the notice:

163 (a) The safe deposit box will be opened and its  
164 contents stored for a minimum of one (1) year at the expense of  
165 the lessee;

166 (b) Without additional notice to the lessee, the  
167 contents may be offered for sale and unsold or unsalable items  
168 will be destroyed; and

169 (c) The proceeds of the sale, less expenses, unpaid  
170 rental charges, and storage will be transferred to the State  
171 Treasurer under Section 89-12-1 et seq.

172 (2) If the rental is not paid within thirty (30) days from  
173 the mailing of the notice, the box shall be opened in the presence  
174 of an officer or employee of the lessor and a notary public who  
175 also may be, but is not required to be, an officer or employee of  
176 the lessor. Those persons shall take an inventory of the contents  
177 of the safe deposit box. The contents, together with the  
178 inventory, shall be sealed in a package by the notary public, who  
179 shall write on the outside the name of the lessee and the date of  
180 the opening. The lessor shall report the name and last known  
181 address of the lessee and the contents of the box, as attested by  
182 the notary public, to the State Treasurer under Section 89-12-1 et  
183 seq. The report shall be delivered to the State Treasurer in a  
184 format as prescribed by the State Treasurer and shall be due on  
185 May 1 of the year following the calendar year in which the box is  
186 opened. The package shall then be retained by the lessor at a  
187 rental not exceeding the rental charges for the box.

188 (3) Before an auction or sale, the following types of  
189 property may be rejected as unsalable by an independent appraiser,  
190 an auctioneer, or the lessor and disposed of in the following  
191 manners:

192 (a) Documents or writings of a private nature having  
193 little or no apparent value may be destroyed by the lessor;

194 (b) Coins or currency with a face value of Twenty  
195 Dollars (\$20.00) or less each that are valued at no more than

196 twice the face value shall be treated as proceeds from a sale and  
197 deposited as provided in subsection (5);

198 (c) Coins or currency with a face value of greater than  
199 Twenty Dollars (\$20.00) each that are valued at one hundred  
200 twenty-five percent (125%) or less of face value shall be treated  
201 as proceeds from a sale and deposited as provided in subsection  
202 (5);

203 (d) Any tangible item having an estimated sale value of  
204 less than Twenty-five Dollars (\$25.00) may be destroyed by the  
205 lessor, provided that the aggregate value of all those items for a  
206 specific lessee does not exceed Two Hundred Fifty Dollars  
207 (\$250.00); and

208 (e) Any tangible property including, but not limited  
209 to, stocks, bonds and promissory notes, shall be delivered to the  
210 State Treasurer under Section 89-12-1 et seq.

211 A current version of any recognized numismatist publication  
212 may be utilized for purposes of valuation of coins and currency.

213 (4) If the contents of the safe deposit box have not been  
214 claimed and redeemed by the payment of charges within one (1) year  
215 after filing the report with the State Treasurer, but not before  
216 May 1 of the succeeding year, the lessor shall sell the contents  
217 of the box at public auction or by other commercially reasonable  
218 sale at whatever time and place affords, in the judgment of the  
219 lessor, the most favorable price for the property involved. A  
220 lessor may sell the contents of safe deposit boxes in a sale  
221 conducted exclusively for the lessor, or in a sale conducted  
222 jointly for the lessor and any number of other financial  
223 institutions or other entities. The time, place and manner of any  
224 public sale shall be posted conspicuously on the premises of the  
225 lessor and advertised once in a newspaper of general circulation  
226 in the community, or in some other commercially reasonable manner  
227 of advertising. Property sold through other than a public auction  
228 shall be appraised, in writing, by a person who does not acquire

229 the appraised contents and who is regularly engaged in the  
230 business of appraising, buying or selling like merchandise, or any  
231 other combination thereof. Firearms shall be sold through a  
232 federal firearm licensed dealer, or if sold at public auction,  
233 through an auctioneer who possesses a federal firearm license.

234 (5) The monetary proceeds resulting from any sale conducted  
235 under this section, after deducting accumulated charges, including  
236 a proportionate share of the expense of advertising and conducting  
237 the sale, shall be deposited to the credit of the lessee in any  
238 existing account maintained by the lessor on behalf of the lessee;  
239 any such deposit shall not constitute account activity under  
240 Section 89-12-1 et seq. If no account exists, proceeds shall be  
241 delivered to the State Treasurer under Section 89-12-1 et seq.

242 (6) Property offered for sale at a public auction or other  
243 commercially reasonable sale for which no purchaser exists shall  
244 be destroyed by the lessor and no action or proceeding may be  
245 maintained against the lessor, the independent appraiser or  
246 auctioneer, the State Treasurer or any of their employees for or  
247 on account of that action. If, before the sale, the property is  
248 rejected by an independent appraiser or auctioneer in accordance  
249 with subsection (3), the property shall be destroyed by the lessor  
250 and no action or proceeding may be maintained against the lessor,  
251 the independent appraiser or auctioneer, the State Treasurer or  
252 any of their employees for or on account of that action.

253 (7) After disposition of all contents of a safe deposit box,  
254 the lessor shall provide to the State Treasurer an updated  
255 inventory on the contents of the box, together with property not  
256 sold under subsection (3)(e). The report shall include  
257 information that the State Treasurer may, by rule and regulation,  
258 direct.

259 **SECTION 7.** This act shall take effect and be in force from  
260 and after July 1, 2006.