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Chapter No. 500
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SENATE BILL NO. 2409

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2409

AN ACT TO CREATE THE "MISSISSIPPI CREDIT AVAILABILITY ACT"; TO DEFINE TERMS USED IN THE ACT; TO PROVIDE LICENSING REQUIREMENTS FOR PERSONS ENGAGING IN THE BUSINESS AS A CREDIT AVAILABILITY LICENSEE; TO PROVIDE EXEMPTIONS FROM THE ACT; TO PROVIDE APPLICANT ELIGIBILITY REQUIREMENTS; TO PROVIDE THAT EACH APPLICATION FOR A LICENSE SHALL BE IN A FORM PRESCRIBED BY THE COMMISSIONER; TO REQUIRE INVESTIGATION BY THE DEPARTMENT OF BANKING BEFORE ISSUANCE OF A LICENSE, AND TO REQUIRE THAT THE LICENSE SHALL BE CONSPICUOUSLY POSTED IN THE PLACE OF BUSINESS OF THE LICENSEE; TO AUTHORIZE THE DEPARTMENT OF BANKING TO ADOPT REGULATIONS AND TO EXAMINE THE BOOKS AND RECORDS OF ANY LICENSEE; TO PROHIBIT THE ADVERTISING, DISPLAYING OR PUBLISHING OF FALSE OR MISLEADING STATEMENTS BY A LICENSEE; TO PROVIDE FOR FEES, CHARGES AND METHOD OF COMPUTATION TO BE CHARGED BY A LICENSEE UNDER A CREDIT AVAILABILITY ACCOUNT; TO REQUIRE LICENSEES TO PROVIDE ACCOUNT HOLDER WITH A WRITTEN EXPLANATION OF FEES AND CHARGES; TO AUTHORIZE THE COMMISSIONER OF BANKING TO SUSPEND OR REVOKE A LICENSE UPON MAKING CERTAIN FINDINGS; TO AUTHORIZE THE COMMISSIONER OF BANKING TO INVESTIGATE AND EXAMINE PERSONS LICENSED UNDER THE ACT AND PERSONS REASONABLY SUSPECTED OF CONDUCTING BUSINESS WHICH REQUIRES A LICENSE UNDER THE ACT; TO PROVIDE PENALTIES FOR ENGAGING IN BUSINESS WITHOUT A LICENSE; TO PROVIDE CRIMINAL AND CIVIL PENALTIES FOR VIOLATIONS OF THE ACT; TO PROVIDE THAT MUNICIPALITIES OF THIS STATE MAY ENACT ORDINANCES WHICH ARE IN COMPLIANCE WITH, BUT NOT MORE RESTRICTIVE THAN, THE PROVISIONS OF THE ACT; TO AUTHORIZE THE COMMISSIONER OF BANKING TO EMPLOY THE NECESSARY FULL-TIME EMPLOYEES ABOVE THE NUMBER OF PERMANENT FULL-TIME EMPLOYEES AUTHORIZED FOR THE DEPARTMENT FOR FISCAL YEAR 2016 TO ENFORCE THE PROVISIONS OF THE ACT; TO PROVIDE LIABILITY PROTECTIONS FOR LICENSEES; TO AMEND SECTION 75-67-403,

MISSISSIPPI CODE OF 1972, TO REMOVE THE PROHIBITION THAT NO BUSINESS OTHER THAN TITLE PLEDGE BUSINESS SHALL BE CONDUCTED AT A TITLE PLEDGE OFFICE; TO AMEND SECTION 75-67-505, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE COMMISSIONER OF BANKING SHALL AUTHORIZE THE OFFERING OF CREDIT AVAILABILITY TRANSACTIONS IN ADDITION TO THOSE THAT MAY BE PERFORMED AS PART OF A CHECK CASHING BUSINESS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

(d) "Credit availability account" means all credit availability transactions held in the name of a single person through a single licensee or, if a secured transaction and the

property is jointly owned, the names of the persons who jointly own the property that is being used as security for the transaction. That person or those persons shall be the "account holder" or "account holders."

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

(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 providing credit availability transactions under Sections 1 through 19 of this act.

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

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

(j) "Written" and "writing" includes communication of information in an electronic record consistent with the federal Electronic Signatures in Global and National Commerce (E-SIGN) Act, 15 USC Section 7001 et seq.

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

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

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

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

(c) 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 any other provisions of Sections 1 through 19 of this act, the commissioner may issue a temporary license authorizing the operation of a credit availability

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

(5) Notwithstanding other provisions of Sections 1 through 19 of this act, 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 business incorporated under the laws of this state or any other state so long as the licensee continues to operate as a corporation doing a credit availability business under the license.

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

SECTION 4. Exemptions. The provisions of Sections 1 through 19 of this act shall not apply to any bank, trust company, savings association, savings and loan association, savings bank or credit

union that is chartered under the laws of this state or under federal law and domiciled in this state.

SECTION 5. Applicant eligibility requirements. To be eligible for a credit availability license, an applicant shall:

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

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

(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 Sections 1 through 19 of this act. The bond shall not be valid until the commissioner approves it. 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. Applicants applying for multiple licenses may submit a single bond for all licenses, provided that the total value of the bond is equal to Ten Thousand Dollars ($10,000.00) per license applied for.

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

(e) File with the commissioner a set of fingerprints from any local law enforcement agency for each owner of a sole proprietorship, partners in a partnership or principal owners of a limited liability company that own at least ten percent (10%) of the voting shares of the company, shareholders owning ten percent (10%) or more of the outstanding shares of the corporation, except publically traded corporations and their subsidiaries, and any other executive officer with significant oversight duties of the business. 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 Department of Public Safety shall forward the fingerprints 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 Sections 1 through 19 of this act.

SECTION 6. Application form. Each application for a license shall be in a form prescribed by the commissioner, signed under oath or otherwise authenticated in a record, 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. The commissioner may, however, 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.

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

(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. Investigations, findings and posting of licenses. (1) Upon filing of an application in a form prescribed by the commissioner, accompanied by the documents required in Sections 1 through 19 of this act, the department shall investigate to ascertain whether the qualifications prescribed in Sections 1 through 19 of this act 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 credit availability business in this state.

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

SECTION 8. Licensee duties; regulations; examinations of books and records. (1) The department may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of Sections 1 through 19 of this act and shall develop and provide any necessary forms or other documentation to carry out the provisions of Sections 1 through 19 of this act.

(2) To assure compliance with the provisions of Sections 1 through 19 of this act, 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 in an amount not less than Three Hundred Dollars ($300.00) nor more than Six Hundred Dollars ($600.00) for 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 a 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 Sections 1 through 19 of this act and the administrative regulations issued under Sections 1 through

19 of this act. Every licensee shall preserve the books, accounts and records of its business for at least two (2) years.

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

SECTION 10. Fees and charges; method of computation. (1) Notwithstanding any other statutory limitation, a licensee authorized to provide credit availability transactions under Sections 1 through 19 of this act may charge and collect fees and charges in a manner consistent with this section, and may take as security therefor any personal property that is not exempt or prohibited by state or federal law or regulations.

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

(b) A licensee may charge and collect a monthly handling fee for services, expenses, and costs not to exceed twenty-five percent (25%) of the outstanding principal balance of any credit availability account per month, or portion thereof, for

transactions in excess of Five Hundred Dollars ($500.00). The handling fee shall not be deemed interest for any purpose of law.

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

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

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

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

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

(b) Any credit availability account created under subsection (2)(b) of this section shall be a fully amortized loan, secured or unsecured, payable in equal payments of six (6) to twelve (12) months calculated on the amount initially disbursed to the account holder plus any fees that may be charged, in an amount and manner provided for under Sections 1 through 19 of this act.

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

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

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

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

(ii) If the credit availability agreement so provides, shall be entitled to recover from the account holder all court costs incurred and to recover any court-awarded damages, including those incurred on appeal.

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

SECTION 11. Licensee to provide account holder with a written explanation of fees and charges. (1) A licensee shall provide each prospective account holder, before consummation of a credit availability transaction, a written explanation of the fees, and charges to be charged by the licensee and the due dates for all payments. The style, content, and method of executing the required written explanation shall comply with federal truth-in-lending laws and shall contain a statement that the account holder may prepay the unpaid balance in whole or in part at any time. The commissioner may promulgate rules in accordance with Sections 1 through 19 of this act in order to assure complete and accurate disclosure of the fees and charges to be charged by a

licensee under a credit availability agreement. At a minimum, the written explanation must include:

(a) The amount of the transaction;

(b) The date the agreement was entered into;

(c) A schedule or description of the payments;

(d) The name and address of the licensed office;

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

(f) The amount of the principal;

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

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

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

(3) A licensee with a physical location in this state shall display in its consumer waiting area, and shall provide a copy to any account holder that requests it, a pamphlet prepared by the department that describes general information about the transaction and about the account holder's rights and

responsibilities in the transaction, including the rates and fees charged by the licensee, the licensee's rights in event of default by the consumer, the maximum allowable account balance, and the consumer hotline telephone number to the Mississippi Department of Banking and Consumer Finance. The licensee shall add the account information and/or complaint hotline telephone number of the licensee to the pamphlet. A licensee without a physical location in this state shall make the information available on its website.

SECTION 12. Suspending or revoking license; reinstatement; notice to law enforcement. (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 Sections 1 through 19 of this act;

(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 Sections 1 through 19 of this act;

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

(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 Sections 1 through 19 of this act.

(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 the 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 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 Sections 1 through 19 of this act.

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

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

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

SECTION 13. Investigative powers and examinations. The commissioner, or his duly authorized representative, for the purpose of discovering violations of Sections 1 through 19 of this act and for the purpose of determining whether persons are subject to the provisions of Sections 1 through 19 of this act, may examine persons licensed under Sections 1 through 19 of this act and persons reasonably suspected by the commissioner of conducting business which requires a license under Sections 1 through 19 of this act, 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 Sections 1 through 19 of this act, including without limitation the conduct of business without a license as required under Sections 1 through 19 of this act.

SECTION 14. Engaging in business without license; penalty. (1) Any person who engages in the business of offering credit availability transactions without first securing a license prescribed by Sections 1 through 19 of this act shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not to exceed 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 offering credit availability transactions without first securing a license prescribed by Sections 1 through 19 of this act 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 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. Violations; criminal and civil penalties; enforcement; order to refrain; injunctions; bond forfeiture. (1) In addition to any other penalty which may be applicable, any licensee or employee who willfully violates any provision of Sections 1 through 19 of this act, or who willfully makes a false entry in any record specifically required by Sections 1 through 19 of this act, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine not to exceed One Thousand Dollars ($1,000.00) per violation or false entry.

(2) Compliance with criminal provisions of Sections 1 through 19 of this act 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 Sections 1 through 19

of this act, the commissioner, in addition to and without prejudice to the authority provided elsewhere in Sections 1 through 19 of this act, 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 action 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 Sections 1 through 19 of this act. 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 Sections 1 through 19 of this act shall forfeit the surety bond or deposit required in Sections 1 through 19 of this act and the amount of the bond or deposit shall be credited to the budget of the state or local agency which directly participated in the prosecution of the licensee, for the specific purpose of increasing law enforcement resources for that specific state or local agency. The bond or deposit shall be used to augment existing state and local law enforcement budgets and not to supplant them.

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

SECTION 17. Municipal ordinances. (1) Municipalities of this state may enact ordinances that are in compliance with, but not more restrictive than, the provisions of Sections 1 through 19 of this act. Any existing or future order, ordinance or regulation that conflicts with this provision shall be null and void.

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

SECTION 18. Commissioner employees and funds authorized for enforcement. The commissioner may employ the necessary full-time employees above the number of permanent full-time employees authorized for the department for fiscal year 2016 to carry out and enforce the provisions of Sections 1 through 19 of this act.

The commissioner may also expend the necessary funds to equip and provide necessary travel expenses for those employees.

SECTION 19. Liability of licensees. (1) A licensee under Sections 1 through 19 of this act shall have no liability for any act or practice done or omitted in conformity with (a) any rule or regulation of the commissioner, or (b) any rule, regulation, interpretation or approval of any other state or federal agency or any opinion of the Attorney General, notwithstanding that after such act or omission has occurred the rule, regulation, interpretation, approval or opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

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

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

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

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

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

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

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

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

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

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

(h) "Title pledge agreement" means a thirty-day written agreement whereby a title pledge lender agrees to make a loan of money to a pledgor, and the pledgor agrees to give the title

pledge lender a security interest in unencumbered titled personal property owned by the pledgor. The pledgor shall agree that the title pledge lender keep possession of the certificate of title. The pledgor shall have the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title pledge agreement. When the certificate of title is redeemed, the title pledge lender shall release the security interest in the titled personal property and return the personal property certificate of title to the pledgor. The title pledge agreement shall provide that upon failure by the pledgor to redeem the certificate of title at the end of the original thirty-day agreement period, or at the end of any extension(s) thereof, the title pledge lender shall be allowed to take possession of the titled personal property. The title pledge agreement shall contain a power of attorney which authorizes the title pledge lender to transfer title to the pledged property from the pledgor to the title pledge lender upon failure to redeem the pledged property on or before the maturity date of the title pledge agreement, or any extension thereof. The title pledge lender shall take physical possession of the certificate of title for the entire length of the title pledge agreement, but shall not be required to take physical possession of the titled personal property at any time. A title pledge lender may only take unencumbered certificates of title for pledge, but may encumber

the title as part of the title pledge transaction by perfecting its security interest in the titled property.

(i) "Title pledge lender" means any person engaged in the business of making title pledge agreements with pledgors; provided, however, that the following are exempt from the definition of "title pledge lender" and from the provisions of this article: any bank which is regulated by the Department of Banking and Consumer Finance, the Comptroller of the Currency of the United States, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System or any other federal or state authority and all affiliates of such bank, and additionally any bank or savings and loan association whose deposits or accounts are eligible for insurance by the Bank Insurance Fund or the Savings Association Insurance Fund or other fund administered by the Federal Deposit Insurance Corporation or any successor thereto, and all affiliates of such banks and savings and loan associations, any state or federally chartered credit union and finance company subject to licensing and regulation by the Department of Banking and Consumer Finance.

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

(k) "Title pledge service charge" means a charge for investigating the title, appraising the titled personal property to which the pledged property relates, documenting and closing the

title pledge agreement transaction, making required reports to appropriate law enforcement officials, and for all of the services provided by the title pledge lender.

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

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

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

SECTION 21. Section 75-67-505, Mississippi Code of 1972, is amended 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. Any transaction that would be subject to this article that is made by a person who does not have a valid license under this article shall be null and void. A separate license is required for each place of business under this article and each business must be independent of, and not a part of, any other

business operation. A check cashing business shall not be a part of, or located at the same business address with, a pawnshop, title pledge office and small loan company.

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

(c) A licensed check casher may sell, at the same location as his check cashing business, the following items and services: money orders; income tax preparation service; copy service; wire transfer service; notary service; pagers; pager service; prepaid cellular service; debit card; prepaid telephone cards; prepaid telephone service; and operate a processing center where utility bills, credit card payments and other payments are collected from the general public and governmental and private payments are distributed. In the event a licensee accepts wire

transfers in the form of a direct deposit of a payroll check or other similar types of deposit, the licensee shall not encumber any transferred funds against a deferred deposit agreement or any delinquent deferred deposit agreement with such customer. The commissioner may authorize additional functions in addition to those provided in this subsection that may be performed as part of a check cashing business, but shall authorize the offering of credit availability transactions as provided in Sections 1 through 19 of this act.

(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 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.

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

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

PASSED BY THE SENATE
April 19, 2016

Tate Reeves

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
April 17, 2016

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

May 13, 2016
10:36 am