

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

October 7, 2011

John Allison
Commissioner
Department of Banking and Consumer Finance
501 North West Street
901 Woolfolk Building, Suite A
Jackson MS 39201

Re: HB 455 – Check Cashers Act

Dear Mr. Allison:

Attorney General Jim Hood has received your request for an Official opinion and has assigned it to me for research and reply. Your letter asks three questions which we will answer in sequence.

QUESTION 1

Currently, Section 75-67-519(1) allows a licensee to defer the deposit of a check for up to 30 days. Section 75-67-519(2) limits the total amount outstanding at any time to a customer to \$400.00. When the Act passed in 1998, the Department's initial interpretation was that a licensee must actually deposit the check in a financial institution on the due date. However, licensees began to "collect" the check by allowing a customer to pay off the transaction and "pick up the check" on the due date, thus the check was never actually deposited in a financial institution. Since the inception of this Act, the Department has allowed a licensee to "collect" the check. The Department's reasoning was that this method was very consumer friendly in that it may help a consumer avoid a NSF charge by their bank as well as a \$30.00 processing fee charged by the licensee which is allowed under the Act.

During the 2011 Legislative Session, Section 75-67-519(1) was amended as of January 1, 2012, Section 75-67-519(1)(a) shall read: "A licensee may delay the deposit of a personal check cashed for a customer with a

face amount of not more than Two Hundred Fifty Dollars (\$250.00) for up to thirty (30) days under the provisions of this section.” Section 75-67-519(1)(b) shall read: “A licensee shall enter into a written agreement for a delayed deposit transaction of a personal check cashed for a customer with a face amount of more than Two Hundred Fifty Dollars (\$250.00) but not more than Five Hundred Dollars (\$500.00) for a period of at least twenty-eight (28) days but not more than thirty (30) days, as selected by the customer, under the provisions of this section, with the licensee having the option to deposit or collect the check.” Section 75-67-519(3) shall read: “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 charge, expressed as a dollar amount and as an annual percentage rate. The written agreement shall authorize the licensee to delay deposit of the personal check with a face amount of not more than Two Hundred Fifty Dollars (\$250.00) until a specific date not later than thirty (30) days from the date of the transaction, and shall authorize the licensee to delay deposit or collection of the personal check with a face amount of more than Two Hundred Fifty Dollars (\$250.00) but not more than five Hundred Dollars (\$500.00) in accordance with the written agreement.”

As of January 1, 2012, does Section 75-67-519(1) require a licensee to deposit checks in a financial institution?

RESPONSE

No. The operative language of the statute in reference to checks up to \$250 remains essentially the same as it is under current law. The biggest difference is the use of the word “delay” instead of “defer”. You state in your letter that the Department has allowed a licensee to “collect” the check since the inception of the Act. The new statute expressly provides that option instead of depositing the check for checks over \$250 and up to \$500; however, we find nothing in the act evidencing legislative intent to change the same, current practice for checks under \$250.

QUESTION 2

Currently, Section 75-67-519(2) states that “The face amount of any delayed deposit check cashed under 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.” As of January 1, 2012, Section 75-67-519(2) shall read: “The face amount of the delayed deposit checks cashed under the provisions of this section shall not exceed Five Hundred Dollars (\$500.00), including the amount of the

fees. Each customer is limited to a maximum of Five Hundred Dollars (\$500.00), including the amount of the fees, at any time.”

May a customer write multiple checks as long as the aggregate total outstanding for a customer at any time does not exceed \$500.00?

RESPONSE

Yes. The statute appears to contemplate a customer cashing multiple checks up to \$500.00

QUESTION 3

As of January 1, 2012, transactions up to \$250.00 will have a rate cap of \$20.00 per \$100.00 and a term of up to 30 days. On transactions of \$250.01 to \$500.00 the rate cap will be \$21.95 per \$100.00 with a term of at least 28 days but not more than 30 days. It is possible for a customer to have multiple transactions outstanding at a time thus creating an outstanding amount that exceeds \$250.00.

If a customer writes two checks on the same day for \$200.00 should each transaction be subject to Section 75-67-519(1)(b) since the aggregate outstanding amount to the customer exceeds \$250.00?

ANSWER

No. The restrictions and limitations contained in 75-76-519(1)(b) are imposed upon “a personal check cashed for a customer with a face amount of more than \$250.00...” (Emphasis added).

Question 4

If a customer writes a check for \$250.00 or less under Section 75-67-519(1)(a) and enters into another transaction(s) creating an aggregate outstanding amount of over \$250.00, should the subsequent transaction(s) be subject to 75-67-519(1)(b)?

RESPONSE

No, for the same reasons.

It does seem that to allow a licensee to accept multiple checks exceeding a total of \$250 would circumvent the new statutory limitations. However, because violations of this statute may result in criminal penalties, the statute should be strictly construed.

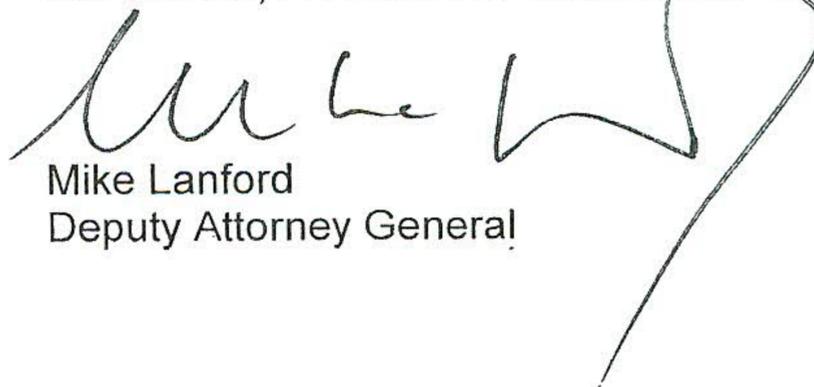
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See Miss Code Ann. Section 75-76-527. Therefore, the language of the statute should be applied strictly as written.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:

A handwritten signature in black ink, appearing to read "Mike Lanford", with a large, sweeping flourish extending to the right.

Mike Lanford
Deputy Attorney General

OFFICIAL OPINION