

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

# A Bill

HOUSE BILL 1846

5 By: Representative Woods  
6 By: Senator M. Lamoureux  
7

## For An Act To Be Entitled

9 AN ACT TO ENACT THE SMALL LOAN ACT TO HELP  
10 UNDERSERVED CONSUMERS OBTAIN CREDIT AND FINANCIAL  
11 OPPORTUNITIES; AND FOR OTHER PURPOSES.  
12  
13

## Subtitle

15 TO ENACT THE SMALL LOAN ACT TO HELP  
16 UNDERSERVED CONSUMERS OBTAIN CREDIT AND  
17 FINANCIAL OPPORTUNITIES.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Arkansas Code Title 23, Chapter 32 is amended to add an  
23 additional subchapter to read as follows:

24 Subchapter 6 – Small Loan Act

25  
26 23-32-601. Title.

27 This subchapter shall be known as and may be cited as the "Small Loan  
28 Act".  
29

30 23-32-602. Legislative findings – Intent.

31 (a) The General Assembly finds and determines that:

32 (1) A demand for small loans exists among citizens of this  
33 state. The scope and intensity of this demand have been increased  
34 progressively by social and economic forces;

35 (2) A substantial population in this state does not have access  
36 to traditional sources of consumer credit, financial services, or bank



1 checking accounts;

2 (3) Individuals that do not have or maintain traditional bank  
3 accounts are "unbanked". Individuals who have impaired credit or limited  
4 credit files are financially "underbanked". These unbanked and underbanked  
5 group are denied credit and financial products that are generally available  
6 to others in this state;

7 (4) Federally regulated banks are not subject to an interest  
8 rate limit but are limited in the amount of risk that can be undertaken in  
9 servicing consumers who are unbanked or underbanked;

10 (5) Small loans made on comparatively unsubstantial security to  
11 wage earners, salaried employees, and other consumers with low credit scores  
12 represent a higher cost of service due to the credit risk;

13 (6) Small loans cannot be made profitably under the limitations  
14 imposed by existing interest and usury laws of this state. These limitations  
15 have tended to exclude enterprises from the small-loan field;

16 (7) As a result, unbanked and underbanked borrowers of small sums  
17 have been exploited to the injury of the borrower, his or her dependents, and  
18 the general public; and

19 (8) Consumers deserve the right to know the terms, conditions,  
20 and costs of obtaining credit through full, accurate, and understandable  
21 disclosure.

22 (b) It is the intent of the General Assembly in enacting this  
23 subchapter to:

24 (1) Assist underserved consumers with obtaining equal access to  
25 consumer credit and financial opportunities;

26 (2) Supervise those engaged in the business of making small  
27 loans;

28 (3) Eliminate practices that facilitate abuse of borrowers;

29 (4) Establish a regulatory system for the purpose of ensuring  
30 honest and efficient small-loan service and allow for competitive loan  
31 charges; and

32 (5) Allow lenders who meet the conditions of this subchapter to  
33 charge a sufficient rate to permit a fair business profit and to provide for  
34 a regulatory system necessary for effective enforcement.

35  
36 23-32-603. Definitions.

1 As used in this subchapter:

2 (1) "Applicant" means a person who has applied to become  
3 licensed under this subchapter as an installment lender;

4 (2) "Borrower" means a person who has received credit in a loan  
5 transaction and is obligated to repay the loan amount;

6 (3) "Consumer" means an individual who contemplates a  
7 transaction primarily for personal, family, or household purposes;

8 (4) "Employee" means a person who is employed by an installment  
9 lender under an employment contract, agency relationship, or other  
10 arrangement whether or not the person is treated as an employee for  
11 compliance with the federal income tax laws;

12 (5)(A) "Exempt person" means a person that is not required to be  
13 licensed under this subchapter as an installment lender.

14 (B) "Exempt person" includes:

15 (i) An employee of an installment lender licensee;

16 (ii) An agency or corporate instrumentality of the  
17 federal government or a state, county, or municipal government granting  
18 installment loans under specific authority of the laws of a state or of the  
19 United States;

20 (iii) A state or federally chartered bank, savings  
21 bank, savings and loan association, or credit union, the accounts of which  
22 are insured by the Federal Deposit Insurance Corporation, the National Credit  
23 Union Administration, or their operating subsidiaries; and

24 (iv) A person extending credit other than by an  
25 installment loan for the purchase of the person's goods or services;

26 (6) "Installment lender" means a person engaged in the business  
27 of making installment loans to consumers;

28 (7)(A) "Installment loan" means a loan of a principal amount  
29 bearing interest amortized for a specific length of time to be repaid in  
30 scheduled payments over the term of the loan.

31 (B) "Installment loan" does not include an occasional loan  
32 from an individual to an employee or acquaintance of the individual;

33 (8) "License" means the authorization issued by the Securities  
34 Commissioner under this subchapter to make loans according to this  
35 subchapter;

36 (9) "Licensee" means a person licensed by the Securities

1 Commissioner under this subchapter;

2 (10)(A) "Person" means an individual, firm, corporation,  
3 partnership, limited liability company, limited partnership, association,  
4 organization, or other entity.

5 (B) "Person" includes a group of persons engaged in joint  
6 business activities.

7 (C) "Person" does not include an exempt person;

8 (11) "Principal place of business" means a stationary  
9 construction consisting of at least one (1) enclosed room or building where  
10 the primary business functions of the licensee are conducted; and

11 (12) "Small loan" means an installment loan of at least two  
12 hundred fifty dollars (\$250) but no more than five thousand dollars (\$5,000)  
13 after deducting the payment of interest, expenses, and charges imposed when  
14 the installment loan is originated.

15  
16 23-32-604. Rulemaking authority.

17 The Securities Commissioner may adopt rules to:

18 (1) Administer this subchapter;

19 (2) Provide for the protection of consumers and the borrowing  
20 public; and

21 (3) Instruct installment lenders in interpreting this  
22 subchapter.

23  
24 23-32-605. Applicability.

25 This subchapter applies to a small loan made by an installment lender  
26 that is not an exempt person.

27  
28 23-32-606. License required.

29 A person shall not make a small loan in this state unless the person is  
30 licensed under this subchapter by the Securities Commissioner.

31  
32 23-32-607. Requirements for license - Issuance.

33 (a)(1) A person may apply in the manner prescribed by the Securities  
34 Commissioner to be licensed under this subchapter.

35 (2) No more than one (1) principal place of business shall be  
36 maintained under the same license, but the commissioner may issue additional

1 licenses to the same licensee upon compliance with this subchapter.

2 (3) The application shall contain the information required by  
 3 the commissioner and shall include without limitation:

4 (A) The applicant's name, address, social security number,  
 5 or tax identification number;

6 (B) The applicant's form of business, place of  
 7 organization, and proposed method of doing business;

8 (C) The location of the applicant's business;

9 (D) The names and addresses of the partners, officers,  
 10 directors, or trustees of the applicant; and

11 (E)(i) The qualifications, business history, and financial  
 12 condition of:

13 (a) The applicant;

14 (b) The applicant's partners, officers,  
 15 directors, and persons occupying a similar status and performing similar  
 16 functions; and

17 (c) A person directly or indirectly  
 18 controlling the applicant.

19 (ii) The qualifications and business history of  
 20 persons under subdivision (a)(3)(E)(i) of this section shall include:

21 (a) A description of an injunction,  
 22 administrative order, or any other form of a denial to engage in or be  
 23 authorized to engage in a regulated activity by a state or federal authority;

24 (b) A conviction of, a guilty plea, or a plea  
 25 of nolo contendere to a misdemeanor involving fraudulent dealings or moral  
 26 turpitude or relating to an aspect of the banking industry, the mortgage  
 27 industry, the money services industry, the securities industry, the insurance  
 28 industry, or another financial services activity; and

29 (c) A conviction of, a guilty plea, or a plea  
 30 of nolo contendere to a felony.

31 (b) An applicant shall pay to the commissioner:

32 (1) A nonrefundable application fee of two hundred fifty dollars  
 33 (\$250); and

34 (2) A license fee of one thousand dollars (\$1,000) for each  
 35 location from which the licensee conducts business as an installment lender.

36 (c)(1) Each licensee shall provide a surety bond in the amount of five

1 thousand dollars (\$5,000) per licensed location or fifty thousand dollars  
2 (\$50,000), whichever is less.

3 (2) The total liability of the surety shall not exceed the  
4 principal sum of the bond.

5 (3) A borrower's claim on the bond has priority over non-  
6 borrower claims but is equal to the claims of other borrowers.

7 (d)(1) An applicant shall file with the application a certified  
8 financial statement showing the applicant has net assets available for use in  
9 the business of making installment loans to consumers of at least fifty  
10 thousand dollars (\$50,000) per license.

11 (2) The financial statement shall be dated within three (3)  
12 months before the date the application is filed.

13 (e) A license issued by the commissioner under this subchapter expires  
14 at the close of business on December 31 of each calendar year unless the  
15 license is:

16 (1) Previously surrendered by the licensee and the surrender is  
17 accepted by the commissioner;

18 (2) Renewed under § 23-32-608;

19 (3) Abandoned by the licensee; or

20 (4) Suspended or revoked by the commissioner.

21 (f) A license issued under this subchapter is not transferable.

22  
23 23-32-608. Renewal of license.

24 (a) A license may be renewed by providing the Securities Commissioner:

25 (1) A renewal application in the form prescribed by the  
26 commissioner between November 1 and December 31 annually;

27 (2) Payment of the annual renewal fee of one thousand dollars  
28 (\$1,000) per licensed location;

29 (3) A current unaudited financial statement;

30 (4) Proof that the licensee continues to satisfy the  
31 requirements for a license; and

32 (5) Any other information that the commissioner considers  
33 relevant to the renewal application.

34 (b)(1) Renewal fees are due on November 1 each year.

35 (2) A late fee of ten percent (10%) of the renewal fee shall be  
36 assessed for each month the renewal fee is delinquent.

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2  
3 23-32-609. Revocation of license.

4 (a) The Securities Commissioner shall revoke a license after providing  
5 ten (10) days' written notice to a licensee stating the contemplated action  
6 and the grounds for revocation and providing the licensee a reasonable  
7 opportunity to be heard if the commissioner finds that:

8 (1) The licensee has failed to pay a license fee or renewal fee;

9 (2) The licensee knowingly or by failing to exercise due care has  
10 violated this subchapter, the rules of the commissioner, or an order made  
11 under this subchapter; or

12 (3) A fact or condition exists that would have justified the  
13 commissioner's refusing to issue the original license if the fact or  
14 condition had existed or had been known to exist at the time of the original  
15 application for a license.

16 (b)(1) If the commissioner finds that probable cause for revocation of  
17 a license exists and that enforcement of this subchapter or protection of the  
18 public requires immediate suspension of a license, the commissioner may enter  
19 an order suspending a license after providing three (3) days' notice to the  
20 licensee.

21 (2) A hearing on the license suspension shall be scheduled  
22 within thirty (30) days of entry of the order.

23 (c)(1) The commissioner shall suspend or revoke a license issued under  
24 this subchapter by entering an order and providing notice to the licensee of  
25 the commissioner's action.

26 (2) Within five (5) days after entry of the order, the  
27 commissioner shall enter a final order detailing his or her findings and  
28 summarizing the evidence supporting the order.

29 (3) The commissioner shall deliver a copy of the final order to  
30 the licensee.

31 (d)(1) A licensee may surrender a license by delivering the license  
32 and written notification of its surrender to the commissioner.

33 (2) The surrender shall not affect a licensee's civil or  
34 criminal liability for acts committed before the surrender.

35 (e) Revocation, suspension, or surrender of a license shall not impair  
36 or affect the obligation of a preexisting contract between the licensee and a

1 borrower.

2 (f) The commissioner may reinstate a suspended license or issue a new  
3 license to a person whose license or licenses have been revoked if no fact or  
4 condition exists that would have justified the commissioner in refusing to  
5 issue a license under this subchapter.

6 (g) Upon sworn complaint of a borrower, the commissioner shall  
7 investigate or cause to be investigated an alleged violation of this  
8 subchapter.

9  
10 23-32-610. Examination of licensees.

11 (a)(1) At least one (1) time each year and at other times as  
12 considered necessary, the Securities Commissioner shall examine the place of  
13 business of each licensee and analyze the loans, transactions, books, papers,  
14 and records of the licensee.

15 (2)(A) The licensee shall pay the costs of an examination.

16 (B)(i) The commissioner shall adopt a rule to prescribe the  
17 conduct of the examination and the costs payable by the licensee based upon  
18 the actual, reasonable costs incurred by the commissioner.

19 (ii) The cost of an examiner shall not exceed two  
20 hundred dollars (\$200) for each day of examination.

21 (iii) Travel and meal costs shall be based upon the  
22 authorized per diem allowances for state employees traveling inside the state  
23 on state business.

24 (C) Examination costs shall be paid into the Small Loan  
25 Fund.

26 (b) The commissioner may also examine a person who the commissioner  
27 has reasonable cause to believe is violating or is about to violate this  
28 subchapter, whether or not the person claims to be within the authority or  
29 beyond the scope of this subchapter.

30 (c) The commissioner or the commissioner's designee shall have and be  
31 given free access to the offices and places of business, files, safes, and  
32 vaults of the persons examined under this section and may require the  
33 attendance of any person to examine him or her under oath concerning the  
34 loans, the business, or the subject matter of an examination, investigation,  
35 or hearing.

36 (d)(1) If the commissioner has reasonable cause to believe that a



1 person is violating or intends to violate this subchapter, the commissioner  
 2 may without prejudice enter an order requiring the person to cease and desist  
 3 from the violation, and an action may be brought by the commissioner to  
 4 enjoin the person from engaging in or continuing the violation.

5 (2) In an action under this subchapter, an order or judgment may  
 6 be entered awarding a preliminary or permanent injunction.

7 (3) The court may impound property and appoint a receiver for  
 8 the property and business of the defendant, including books, papers,  
 9 documents, and records pertaining to the business or activity as the court  
 10 deems reasonably necessary to prevent violations of this subchapter through  
 11 the use of the property and business.

12 (4) The receiver shall have the powers and duties as to custody,  
 13 collection, administration, winding up, and liquidation of the property and  
 14 business conferred from time to time by the court.

15 (e)(1) Reports of examinations and investigations of the commissioner  
 16 and the books and records of licensees are to be held strictly confidential.

17 (2) The commissioner shall not produce, reproduce, or otherwise  
 18 make information available to any person other than necessary personnel of  
 19 the Securities Department unless required by a subpoena.

20 (3) This subsection does not apply to a disclosure made during  
 21 proceedings brought by the commissioner under this subchapter.

22  
 23 23-32-611. Duties of licensee – Consumer protection.

24 (a) A licensee shall:

25 (1) Act with reasonable skill, care, and diligence in completing  
 26 a small loan transaction;

27 (2) Before approving a small loan, determine if the consumer has  
 28 the ability to pay for the loan by:

29 (A) Acquiring and reviewing the consumer’s credit report;

30 (B) Preparing a budget that includes the consumer’s  
 31 monthly income and expenditures to determine if the consumer has a positive  
 32 net cash flow sufficient to meet the payment requirements of the small loan;  
 33 and

34 (C) Provide financial literacy information to the  
 35 consumer;

36 (3) Retain copies of the budget and credit report acquired under

1 this section until the small loan is fully paid and provide copies of the  
2 budget and credit report to the consumer when the small loan is made;

3 (4) Disclose the interest and finance charge of the small loan  
4 in terms of an annual percentage rate according to regulations under the  
5 Federal Truth in Lending Act of 1968, 12 C.F.R. Part 226, as they existed on  
6 January 1, 2011;

7 (5) Accurately report the status of each small loan monthly to  
8 the three (3) major credit bureaus, Equifax, Experian, and TransUnion;

9 (6)(A) Allow the borrower five (5) business days from the date a  
10 small loan is approved to rescind the small loan for any reason.

11 (B) Upon rescission by the borrower fees paid by the  
12 borrower shall be returned to the borrower and small loan proceeds shall be  
13 returned to the licensee.

14 (C) The licensee shall not report the rescission to a  
15 credit bureau;

16 (7)(A) Maintain accurate books, accounts, and records of small  
17 loan transactions to enable the Securities Commissioner to determine  
18 compliance with this subchapter.

19 (B) A licensee shall preserve the books, accounts, and  
20 records for at least two (2) years after the last activity concerning a small  
21 loan; and

22 (8) Comply with applicable federal and state law including  
23 without limitation the following federal laws as they existed on January 1,  
24 2011:

25 (A) The Equal Credit Opportunity Act, 15 U.S.C. § 1691 et  
26 seq.;

27 (B) The Fair Debt Collection Practices Act, 15 U.S.C. §  
28 1692 et seq.;

29 (C) The Fair Credit Reporting Act, 15 U.S.C. § 1681 et  
30 seq.; and

31 (D) The Truth in Lending Act, 15 U.S.C. § 1601 note.

32 (b) A licensee shall not with respect to a small loan:

33 (1) Fund less than two hundred fifty dollars (\$250) or more than  
34 five thousand dollars (\$5,000);

35 (2) Fund the small loan if the total of all monthly payments  
36 exceeds twenty-two and five-tenths percent (22.5%) of all borrowers' gross

1 monthly incomes;

2 (3) Maintain more than one (1) active small loan for each  
 3 borrower;

4 (4) Condition the funding of the small loan upon the purchase of  
 5 any good or service;

6 (5) Renew the small loan more than three (3) times in a calendar  
 7 year;

8 (6) Accept as payment:

9 (A) A check held for future deposit; or

10 (B) Electronic access to the borrower's deposit account  
 11 for future payment;

12 (7) Accept as security for the small loan the title to a  
 13 registered motor vehicle owned by a borrower;

14 (8) Charge an early payment penalty;

15 (9) Contract for mandatory arbitration of disputes between the  
 16 licensee and borrower;

17 (10) Contract to waive protections afforded to members of the  
 18 military under the Servicemember's Civil Relief Act, 50 U.S.C. Appendix, as  
 19 it existed on January 1, 2011, or similar law;

20 (11) Violate this subchapter or a rule or order issued by the  
 21 commissioner; or

22 (12) Engage in conduct involving fraud, dishonesty,  
 23 untruthfulness, or untrustworthiness.

24  
 25 23-32-612. Maximum rates of interest.

26 (a) Unless otherwise permitted under this subchapter, the maximum  
 27 lawful rate of interest on a small loan shall not exceed seventeen percent  
 28 (17%) per annum.

29 (b) A small loan shall be for a minimum term of six (6) months and a  
 30 maximum term of forty-eight (48) months.

31 (c) If a borrower fully pays a small loan before maturity, the  
 32 unearned interest, fees, and charges shall be refunded to the borrower.

33 (d) Except as provided in § 23-32-613, other charges under this  
 34 subchapter are prohibited.

35  
 36 23-32-613. Other permissible charges.

1        (a) Unless otherwise prohibited by law, in connection with a small  
2 loan a licensee may charge:

3            (1) For each payment that is not paid within five (5) days after  
4 the payment becomes due, a one-time delinquent charge of the lesser of:

5                    (A) Five percent (5%) of the payment; or

6                    (B) Fifteen dollars (\$15.00);

7            (2) A one-time dishonored check fee not to exceed twenty five  
8 dollars (\$25.00) for a dishonored check, draft, negotiable order of  
9 withdrawal, or like instrument drawn on a bank or other depository  
10 institution given in full or partial repayment of a small loan;

11           (3) Fees or taxes paid or to be paid to a public office or  
12 official for filing, recording, or releasing any document relating to the  
13 small loan; and

14           (4) If provided in the small-loan contract, a reasonable  
15 attorney's fee and other costs actually incurred to collect or enforce the  
16 small loan.

17        (b) The charges allowed under this section shall not be considered  
18 interest or finance charges for purposes of calculating the annual percentage  
19 rate of the small loan.

20  
21        23-32-614. Duties of Securities Commissioner – Fees.

22        (a) The Securities Commissioner shall administer this subchapter and  
23 the small loan fund.

24        (b) All license fees, renewal fees, charges, fines, and penalties paid  
25 to the commissioner under this subchapter shall be deposited into the Small  
26 Loan Fund and used to administer this subchapter.

27        (c) A small loan found by the commissioner to violate this subchapter,  
28 rules of the commissioner, or an order made under this subchapter is void as  
29 to principal and interest.

30  
31        SECTION 2. Arkansas Code Title 19, Chapter 6, Subchapter 8 is amended  
32 to add an additional section to read as follows:

33        19-6-819. Small Loan Fund.

34        (a) There is created on the books of the Treasurer of State, the  
35 Auditor of State, and the Chief Fiscal Officer of the State a special revenue  
36 fund to be known as the "Small Loan Fund".

1           (b) The fund shall consist of all revenues provided by the General  
2 Assembly and all other revenues authorized by law.

3           (c) The fund shall be used by the Securities Commissioner to  
4 administer the Small Loan Act, § 23-32-601 et seq.

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