

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

# A Bill

SENATE BILL 259

5 By: Senators Madison, D. Johnson  
6 By: Representatives Williams, J. Edwards  
7

## For An Act To Be Entitled

9 AN ACT TO MAKE VARIOUS CORRECTIONS TO TITLE 23 OF THE  
10 ARKANSAS CODE OF 1987 CONCERNING PUBLIC UTILITIES AND  
11 REGULATED INDUSTRIES; AND FOR OTHER PURPOSES.  
12  
13

## Subtitle

15 TO MAKE VARIOUS CORRECTIONS TO TITLE 23  
16 OF THE ARKANSAS CODE OF 1987 CONCERNING  
17 PUBLIC UTILITIES AND REGULATED  
18 INDUSTRIES.  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. The introductory language of Arkansas Code § 23-39-513 is  
24 amended to read as follows to correct a reference:

25 In addition to the other activities that are prohibited under this  
26 subchapter, it is unlawful for any person other than a person described in §  
27 23-39-502(9)(B) ~~(vii)~~ (vi) in the course of any mortgage loan transaction or  
28 activity:  
29

30 SECTION 2. Having been declared unconstitutional in its entirety by  
31 the Arkansas Supreme Court in McGhee v. Ark. State Bd. of Collection  
32 Agencies, 375 Ark. 52, 289 S.W.3d 18 (2008) because it authorized loans  
33 charging usurious rates of interest in contravention of the limits set forth  
34 in article 19, section 13, the Check-cashers Act, § 23-52-101 et seq., is  
35 repealed.  
36



1           ~~23-52-101. Title.~~

2           ~~This chapter shall be known and may be cited as the “Check-cashers~~  
3 ~~Act”.~~

4  
5           ~~23-52-102. Definitions.~~

6           ~~As used in this chapter:~~

7                 ~~(1) “Board” means the State Board of Collection Agencies;~~

8                 ~~(2) “Check” means a check, warrant, draft, money order,~~  
9 ~~travelers’ check, or other instrument for the payment of money, whether or~~  
10 ~~not negotiable, but excluding:~~

11                     ~~(A) Any such instrument drawn on an account or financial~~  
12 ~~institution outside of the United States; and~~

13                     ~~(B) Money or currency of any nation;~~

14                 ~~(3) “Check-casher” means a person who for compensation engages,~~  
15 ~~in whole or in part, in the check-cashing business, but excluding:~~

16                     ~~(A) The United States, any state of the United States, any~~  
17 ~~political subdivision of such state, or any department or agency of the~~  
18 ~~United States or such state;~~

19                     ~~(B) Receipt of money by any incorporated telegraph company~~  
20 ~~at any agency or office of the company for immediate transmission by~~  
21 ~~telegraph;~~

22                     ~~(C) Any state or federally chartered bank, savings and~~  
23 ~~loan association, or credit union;~~

24                     ~~(D) Any retail seller primarily engaged in the business of~~  
25 ~~selling consumer or other goods to retail buyers that cash checks or issue~~  
26 ~~money orders for a fee as a service to its customers that is incidental to~~  
27 ~~its main purpose or business so long as revenue from such fees does not~~  
28 ~~exceed three percent (3%) of such retail seller’s gross revenues; and~~

29                     ~~(E) Issuance of a money order;~~

30                 ~~(4) “Check-cashing business” means the business of a check~~  
31 ~~easher selling currency or a check to another person in exchange for a~~  
32 ~~check, with or without a deferred presentment option;~~

33                 ~~(5) “Deferred presentment option” in connection with the check-~~  
34 ~~cashing business means a transaction pursuant to a written agreement~~  
35 ~~involving the following combination of activities in exchange for a fee:~~

36                     ~~(A) Accepting a customer’s personal check dated on the~~

1 ~~date it was written;~~

2 ~~(B) Paying that customer an amount of money equal to the~~  
3 ~~face amount of that check less any fees charged pursuant to this chapter; and~~

4 ~~(C) Granting the customer the option to repurchase the~~  
5 ~~customer's personal check for an agreed period of time prior to presentment~~  
6 ~~of such check for payment or deposit. The term "deferred presentment"~~  
7 ~~includes related terms such as "delayed deposit", "deferred deposit", or~~  
8 ~~substantially similar terms evidencing the same type of transaction;~~

9 ~~(6) "Permit" means a permit to engage in the check-cashing~~  
10 ~~business issued by the board in accordance with this chapter; and~~

11 ~~(7) "Person" means an individual, group of individuals,~~  
12 ~~partnership, incorporated or unincorporated association, corporation, or any~~  
13 ~~other business unit or legal entity.~~

14  
15 ~~23-52-103. Permit required.~~

16 ~~No person shall engage in the check-cashing business without first~~  
17 ~~obtaining a permit from the State Board of Collection Agencies in accordance~~  
18 ~~with this chapter. A separate permit shall be required for each location from~~  
19 ~~which such check-cashing business is conducted.~~

20  
21 ~~23-52-104. Permissible check-casher fees.~~

22 ~~(a) A check-casher may charge a reasonable fee to defray operational~~  
23 ~~costs incurred in the check-cashing business, including, without limitation:~~

24 ~~(1) Investigating the checking account and copying required~~  
25 ~~documents;~~

26 ~~(2) Photographing the person signing the check;~~

27 ~~(3) Securing check and customer records in a safe, fireproof~~  
28 ~~place;~~

29 ~~(4) Maintaining records as required by this chapter;~~

30 ~~(5) Maintaining required capital and liquidity; and~~

31 ~~(6) Processing, documenting, and closing the check-cashing or~~  
32 ~~deferred-deposit transactions.~~

33 ~~(b) Unless otherwise authorized by this chapter, the fees authorized~~  
34 ~~by this section shall not exceed the following:~~

35 ~~(1) For the service of selling currency or check in exchange for~~  
36 ~~checks, without regard to whether a deferred presentment option is involved.~~



1           ~~(a) A check-casher may not purchase a check for the purpose of~~  
2 ~~deferred presentment option without receiving from the customer a written~~  
3 ~~certification that the account upon which the check is drawn is legitimate~~  
4 ~~and open. The certification may be contained in the body of the deferred~~  
5 ~~presentment option agreement required by this chapter.~~

6           ~~(b) Before a check-casher shall present for payment or deposit a check~~  
7 ~~purchased by the check-casher, the check shall be endorsed with the actual~~  
8 ~~name under which the check-casher is doing business.~~

9           ~~(c) Any agreement for a deferred presentment option of a check shall~~  
10 ~~be in writing and signed by the maker of the check. Such written agreement~~  
11 ~~shall contain a written explanation in clear, understandable language of the~~  
12 ~~fees to be charged by the check-casher and the date on which the check will~~  
13 ~~be deposited or presented by the check-casher. Without limitation, such~~  
14 ~~explanation shall contain a statement of the total amount of any fees charged~~  
15 ~~for the deferred presentment option expressed both in United States currency~~  
16 ~~and as an annual percentage rate. Enactment of this subsection shall not~~  
17 ~~create any inference that a particular method of disclosure was required~~  
18 ~~prior to April 7, 1999.~~

19           ~~(d) The maker of any check purchased by a check-casher and accepted~~  
20 ~~for deferred presentment option shall have the right to repurchase that check~~  
21 ~~from the check-casher before the agreed date of deposit upon payment to the~~  
22 ~~check-casher of the face amount of that check. If a check-casher accepts a~~  
23 ~~partial payment, that check may not be presented for deposit nor may the~~  
24 ~~check-casher charge any additional fee. A check-casher shall not defer~~  
25 ~~presentment of any check for less than six (6) calendar days nor more than~~  
26 ~~thirty one (31) calendar days after the date the check is sold to the check-~~  
27 ~~casher.~~

28           ~~(e) A check-casher shall issue a copy of the written agreement to each~~  
29 ~~person for whom a check-casher grants a repurchase option and defers deposit~~  
30 ~~of a check.~~

31           ~~(f) A check-casher shall comply with all provisions of state and~~  
32 ~~federal law regarding cash transactions and cash transaction reporting.~~

33           ~~(g) If a check is returned to the check-casher from a payer bank or~~  
34 ~~other financial institution due to insufficient funds, closed account, or a~~  
35 ~~stop payment order, the check-casher shall have the right to all civil~~  
36 ~~remedies allowed by law to collect the check and shall be entitled to recover~~

1 any returned check fee authorized by applicable Arkansas law, court costs,  
2 and reasonable attorney's fee paid to an attorney who is not a salaried  
3 employee of the check casher.

4 (h) If a check is returned to a check casher from a payer financial  
5 institution because there are insufficient funds in or on deposit with the  
6 financial institution to pay the check, the check casher or any other person  
7 on behalf of the check casher shall not institute or initiate any criminal  
8 prosecution against the customer who sold such check to the check casher,  
9 unless the check casher would otherwise be entitled to institute or initiate  
10 a criminal prosecution against such customer under applicable Arkansas  
11 eriminal law and such check is returned to the check casher because:

12 (1) The account on which such check was drawn was closed by the  
13 maker of the check, either before or during the term of the deferred  
14 presentment option agreement; and

15 (2) Payment on the check was stopped by the maker of the check.

16 (i) No check casher may alter or delete the date on any check accepted  
17 by the check casher.

18 (j) No check casher may accept an undated check or a check dated on a  
19 date other than the date on which the check casher purchases the check.

20 (k) Consistent with the nature of a deferred presentment option, no  
21 check casher shall require a customer to provide security for the deferred  
22 presentment transaction or require the customer to provide a guaranty from  
23 another person.

24 (l) Each check casher shall pay all proceeds in cash for any check  
25 purchased.

26 (m) No check casher shall have more than one (1) deferred presentment  
27 check outstanding at any time from any one (1) customer per permitted  
28 location. A deferred presentment check purchased from any one (1) customer  
29 and outstanding at any one (1) time shall not exceed four hundred dollars  
30 (\$400).

31 (n) A check casher shall not renew or otherwise consolidate a deferred  
32 presentment option transaction with the proceeds of another deferred  
33 presentment option transaction made by the same customer.

34  
35 23-52-107. Qualification for check casher permit.

36 A check casher permit applicant shall satisfy the following

1 ~~requirements to qualify for a permit under this chapter.~~

2 ~~(1) The applicant shall have a minimum of cash or other liquid~~  
3 ~~assets of at least twenty thousand dollars (\$20,000) for the operation of~~  
4 ~~each location at which the applicant will engage in the check-cashing~~  
5 ~~business and shall be required to post with the State Board of Collection~~  
6 ~~Agencies a fifty thousand dollar bond payable to the State of Arkansas;~~

7 ~~(2) The financial responsibility, financial condition, and~~  
8 ~~business experience of the applicant shall reasonably warrant the belief that~~  
9 ~~the applicant's check-cashing business will be conducted in accordance with~~  
10 ~~this chapter. In determining whether this qualification has been met and for~~  
11 ~~the purpose of investigating compliance with this chapter, the board may~~  
12 ~~review and approve the following:~~

13 ~~(A) The relevant business records and the capital adequacy~~  
14 ~~of the applicant; and~~

15 ~~(B) The competence, experience, and financial ability of~~  
16 ~~any person who is a member, partner, director, officer, or five percent (5%)~~  
17 ~~or more shareholder of the applicant or who otherwise controls the applicant;~~

18 ~~(3) The requirements set forth in subdivisions (1) and (2) of~~  
19 ~~this section shall be continuing in nature; and~~

20 ~~(4) The board shall deny an application for a permit to conduct~~  
21 ~~a check-cashing business or for renewal of a permit if the applicant or any~~  
22 ~~person referred to in subdivision (2)(B) of this section has a felony~~  
23 ~~conviction involving dishonesty, fraud, or deceit, provided the crime is~~  
24 ~~substantially related to the qualifications, functions, or duties of a person~~  
25 ~~engaged in the check-cashing business.~~

26  
27 ~~23-52-108. Form of application for permit.~~

28 ~~(a) Each application for a check-cashing permit shall be in writing in~~  
29 ~~a form prescribed by the State Board of Collection Agencies and shall include~~  
30 ~~at least the following:~~

31 ~~(1) The legal name, residence, business address, and telephone~~  
32 ~~number of the applicant;~~

33 ~~(2) If the applicant is a partnership, association, limited~~  
34 ~~liability company, or corporation, the name and address of every member,~~  
35 ~~officer, and director; and~~

36 ~~(3) Such other data and information as the board may require~~

1 with respect to the applicant and its directors, officers, partners or  
2 members.

3 (b) For each location at which the applicant wants to engage in the  
4 check-cashing business, each application for a permit shall be accompanied by  
5 both of the following:

6 (1) An initial permit fee of five hundred dollars (\$500) which  
7 shall not be subject to refund; and

8 (2) A financial statement showing that the applicant has at  
9 least twenty thousand dollars (\$20,000) in liquid or other cash assets  
10 available for the operation of the check-cashing business prepared in  
11 accordance with standard accounting practices and procedures.

12  
13 ~~23-52-109. Board action and issuance of permits.~~

14 (a) Upon the filing of an application in the form prescribed by the  
15 State Board of Collection Agencies accompanied by the fees and documents  
16 required in this chapter, the board shall investigate to ascertain whether  
17 the qualifications prescribed by § 23-52-107 have been satisfied. If the  
18 board finds that the qualifications have been satisfied and approves the  
19 documents, the board shall issue to the applicant a permit to engage in the  
20 check-cashing business in Arkansas at the locations specified in the  
21 application as approved by the board.

22 (b) No person engaged in the check-cashing business shall conduct any  
23 other business within the same location without having obtained prior written  
24 approval from the board.

25 (c) The check-casher permit shall be kept conspicuously posted in the  
26 check-casher's place of business and shall not be assignable or transferable  
27 nor moved to another location without permission of the board.

28 (d) In addition to the initial permit fee required by § 23-52-  
29 108(b)(1), there shall be an annual permit fee of four hundred dollars (\$400)  
30 for each office, branch, or place of business of the check-casher, which  
31 shall be due on August 1 of each year. The annual permit fee shall be for a  
32 one-year period ending July 31 and shall be delinquent on September 1 of each  
33 year. There shall be a penalty of ten percent (10%) for each month or part  
34 thereof that the check-casher is delinquent in the payment of the annual  
35 permit fee. All permit fees collected by the board shall be used by the board  
36 in the supervision and examination of check-cashers and the issuance of

1 ~~permits under this chapter.~~

2 ~~(e) A person operating a check cashing business on April 7, 1999,~~  
3 ~~shall have until the beginning of the next permit year after April 7, 1999,~~  
4 ~~to apply for a permit under this chapter and to pay the required permit fee,~~  
5 ~~and upon qualification and payment of the required fee shall be granted a~~  
6 ~~permit under this chapter. Provided, that the check-casher shall comply with~~  
7 ~~the other provisions of this chapter pending the application.~~

8 ~~(f) A check-casher may voluntarily surrender its permit to the board.~~  
9 ~~However, the check-casher shall not be entitled to receive a refund of any~~  
10 ~~permit fees previously paid. Upon surrender, the check-casher shall~~  
11 ~~immediately make available to the board all books, records, and papers~~  
12 ~~required to be created and maintained under this chapter or regulations~~  
13 ~~promulgated by the board under this chapter.~~

14

15 ~~23-52-110. Change of control of check-casher.~~

16 ~~The prior written approval of the State Board of Collection Agencies~~  
17 ~~shall be required for the continued operation of a check-cashing business~~  
18 ~~whenever a change in control of a permitted check-casher is proposed. Control~~  
19 ~~in the case of a corporation shall mean direct or indirect ownership, the~~  
20 ~~right to control twenty-five percent (25%) or more of the voting shares of~~  
21 ~~the corporation, or the ability of a person to elect a majority of the~~  
22 ~~directors. Control in the case of any other entity shall mean the ability to~~  
23 ~~change the principles of the organization, whether active or passive. The~~  
24 ~~board may require information deemed necessary to determine whether a new~~  
25 ~~application is required.~~

26

27 ~~23-52-111. Regulations.~~

28 ~~The State Board of Collection Agencies is authorized and empowered to~~  
29 ~~promulgate reasonable regulations for the execution and enforcement of this~~  
30 ~~chapter. However, before any rules and regulations promulgated by the board~~  
31 ~~shall be effective, they must be issued in accordance with the Arkansas~~  
32 ~~Administrative Procedure Act, § 25-15-201 et seq.~~

33

34 ~~23-52-112. Records and inspections.~~

35 ~~(a) Each check-casher shall keep and use in its business any books,~~  
36 ~~accounts, and records that the State Board of Collection Agencies may require~~

1 to carry into effect the provisions of this chapter and the administrative  
2 regulations issued hereunder. Provided, such records may be retained on  
3 computer or other electronic storage devices.

4 (b) For the purpose of determining compliance with this chapter, the  
5 board, at any reasonable time, may cause an examination to be made at a  
6 check-casher's place of business of the records and transactions of such  
7 check-casher. Each check-casher shall preserve all relevant records for a  
8 period of at least two (2) years after making the last entry on any  
9 transaction, and the board shall have free access to such records at the  
10 check-casher's place of business at all reasonable times during the check-  
11 casher's normal business hours. If the board has probable cause to believe  
12 that a person has engaged in an activity which violates the provisions of  
13 this chapter, the board may compel the production of such books and records  
14 of the person as the board has probable cause to believe are relevant to the  
15 alleged violation.

16  
17 ~~23-52-113. Appeal of permit denial.~~

18 (a) If the State Board of Collection Agencies determines that an  
19 applicant is not qualified to receive a permit, the board shall notify the  
20 applicant in writing that the application has been denied, stating the basis  
21 for denial.

22 (b) If the board denies an application or if the board fails to act on  
23 an application within ninety (90) days after the filing of a properly  
24 completed application, the applicant may make a written demand to the board  
25 for a hearing before the board on the question of whether the permit should  
26 be granted.

27 (c) At the hearing, the burden of proving that the applicant is  
28 entitled to a permit under this chapter shall be on the applicant. A decision  
29 of the board following any hearing on the denial of a permit may be subject  
30 to review in accordance with the Arkansas Administrative Procedure Act, § 25-  
31 15-201 et seq.

32  
33 ~~23-52-114. Revocation or suspension of permit.~~

34 (a) After notice and hearing, the State Board of Collection Agencies  
35 may suspend or revoke any permit if the Chairman of the State Board of  
36 Collection Agencies finds that the check-casher either knowingly or through

1 ~~lack of due care has committed one (1) of the following:~~

2 ~~(1) Failed to pay the annual permit fee imposed by this chapter~~  
3 ~~or an examination fee imposed by the board under the authority of this~~  
4 ~~chapter;~~

5 ~~(2) Violated a provision of this chapter or an administrative~~  
6 ~~regulation issued pursuant to this chapter; and~~

7 ~~(3) Made a false statement in the application for the permit or~~  
8 ~~failed to give a true reply to a question in the application.~~

9 ~~(b) If the reason for revocation or suspension of a permit of the~~  
10 ~~check-casher at any one (1) location is of general application to all~~  
11 ~~locations operated by a check-casher, the board may revoke or suspend all~~  
12 ~~permits issued to the check-casher.~~

13 ~~(c) Any hearing under this section shall be held on written notice~~  
14 ~~given at least twenty (20) days prior to the date of the hearing.~~

15  
16 ~~23-52-115. Board remedies for violation of this chapter.~~

17 ~~If after a hearing the State Board of Collection Agencies finds that a~~  
18 ~~person has violated this chapter or any administrative regulation issued~~  
19 ~~pursuant to this chapter, the board may do any or all of the following:~~

20 ~~(1) Order the person to cease and desist violating this chapter~~  
21 ~~or any administrative rules issued pursuant thereto;~~

22 ~~(2) Require the refund of any fees collected by the person in~~  
23 ~~violation of this chapter; and~~

24 ~~(3) Order the person to pay to the board a civil penalty of not~~  
25 ~~more than one thousand dollars (\$1,000) for each transaction in violation of~~  
26 ~~this chapter or for each day that a violation has occurred and continues.~~

27  
28 ~~23-52-116. Consent orders.~~

29 ~~(a) The State Board of Collection Agencies may enter into consent~~  
30 ~~orders at any time with any person to resolve any matter arising under this~~  
31 ~~chapter. A consent order shall be signed by the person to whom it is issued~~  
32 ~~or an authorized representative and shall indicate agreement to the terms~~  
33 ~~contained therein. A consent order need not constitute an admission by any~~  
34 ~~person that any provision of this chapter or any rule, regulation, or order~~  
35 ~~promulgated or issued pursuant to this chapter has been violated, nor need it~~  
36 ~~constitute a finding by the board that the person has violated any provision~~

1 of this chapter or any rule, regulation, or order promulgated or issued  
 2 hereunder.

3 (b) ~~Notwithstanding the issuance of a consent order, the board may~~  
 4 ~~seek civil or criminal penalties or compromise civil penalties concerning~~  
 5 ~~matters encompassed by the consent order.~~

6  
 7 ~~23-52-117. Complaints.~~

8 (a) ~~Without limiting any other right, power, or remedy of the State~~  
 9 ~~Board of Collection Agencies under this chapter or the Attorney General~~  
 10 ~~pursuant to authority granted under § 4-88-101 et seq. pertaining to~~  
 11 ~~deceptive trade practices, any person aggrieved by the conduct of a check-~~  
 12 ~~casher under this chapter in connection with the regulated activities of the~~  
 13 ~~check-casher may file a written complaint with the board, which may~~  
 14 ~~investigate the complaint.~~

15 (b) ~~In the course of the investigation of the complaint, the board may~~  
 16 ~~do any or all of the following:~~

- 17 (1) ~~Subpoena witnesses;~~
- 18 (2) ~~Administer oaths;~~
- 19 (3) ~~Examine any individual under oath; and~~
- 20 (4) ~~Compel the production of records, books, papers, contracts,~~  
 21 ~~or other documents relevant to the investigation.~~

22 (c) ~~If a person fails to comply with a subpoena of the board under~~  
 23 ~~this chapter or to testify concerning any matter about which the person may~~  
 24 ~~be interrogated under this chapter, the board may petition any court of~~  
 25 ~~competent jurisdiction for enforcement.~~

26 (d) ~~The permit of any check-casher under this chapter who fails to~~  
 27 ~~comply with a subpoena of the Chairman of the State Board of Collection~~  
 28 ~~Agencies may be suspended pending compliance with the subpoena.~~

29 (e) ~~A person who willfully makes charges in excess of those permitted~~  
 30 ~~by § 23-52-104 or a person who willfully engages in the check-cashing~~  
 31 ~~business in violation of this chapter is guilty of a Class A misdemeanor.~~

32 (f) ~~Any action for a civil remedy under this chapter by the board or~~  
 33 ~~any other person against a check-casher must be commenced within five (5)~~  
 34 ~~years after the action or inaction giving rise to the right to seek such a~~  
 35 ~~civil remedy.~~

36 SECTION 3. DO NOT CODIFY. The enactment and adoption of this act

1 shall not repeal, expressly or impliedly, the acts passed at the regular  
2 session of the Eighty-Eighth General Assembly. All such acts shall have the  
3 full force and effect and, so far as those acts intentionally vary from or  
4 conflict with any provision contained in this act, those acts shall have the  
5 effect of subsequent acts and as amending or repealing the appropriate parts  
6 of the Arkansas Code of 1987.

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9 **APPROVED: 03/25/2011**  
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