

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 671

5 By: Senator Hester
6

For An Act To Be Entitled

8 AN ACT TO REGULATE INSTALLMENT LOANS; TO ESTABLISH
9 THE ARKANSAS TRADITIONAL INSTALLMENT LOAN ACT; TO
10 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.
11

Subtitle

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13
14 TO REGULATE INSTALLMENT LOANS; TO
15 ESTABLISH THE ARKANSAS TRADITIONAL
16 INSTALLMENT LOAN ACT; AND TO DECLARE AN
17 EMERGENCY.
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19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 19-6-301, concerning the enumeration of
23 special revenues, is amended to add an additional subdivision to read as
24 follows:

25 (255) All licenses, fees, renewal fees, charges, fines, and
26 penalties paid to the Securities Commissioner under the Arkansas Traditional
27 Installment Loan Act, § 23-34-101 et seq.
28

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

31 19-6-833. Traditional Installment Loan Fund.

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

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



1 (c) The fund shall be used by the Securities Commissioner to
2 administer the Arkansas Traditional Installment Loan Act, § 23-34-101 et seq.

3
4 SECTION 3. Arkansas Code Title 23 is amended to add an additional
5 chapter to read as follows:

6
7 CHAPTER 34
8 ARKANSAS TRADITIONAL INSTALLMENT LOAN ACT

9
10 Subchapter 1 – General Provisions

11
12 23-34-101. Title.

13 This chapter shall be known and may be cited as the "Arkansas
14 Traditional Installment Loan Act".

15
16 23-34-102. Purpose.

17 The purpose of this chapter is to provide citizens of this state
18 greater access to traditional sources of consumer credit through affordable
19 installment loans.

20
21 23-34-103. Definitions.

22 As used in this chapter:

23 (1)(A) "Applicant" means a person that has applied to become
24 licensed under this chapter as a lender.

25 (B) "Applicant" includes the executive officer of the
26 applicant if the applicant is not an individual;

27 (2) "Borrower" means a person that has received credit in a loan
28 transaction and is obligated to repay the loan amount;

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

31 (4)(A) "Exempt person" means a person that is not required to be
32 licensed under this chapter as a lender.

33 (B) "Exempt person" includes:

34 (i) An employee of a lender licensee;

35 (ii) An agency or corporate instrumentality of the
36 federal government or a state, county, or municipal government granting

1 traditional installment loans under specific authority of the laws of the
2 state or of the United States;

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

7 (iv) A person extending credit other than by a
8 traditional installment loan for the purchase of the person's goods or
9 services;

10 (5) "Lender" means a person engaged in the business of making
11 traditional installment loans to consumers;

12 (6) "License" means the authorization issued by the Securities
13 Commissioner under this chapter to make traditional installment loans
14 according to this chapter;

15 (7)(A) "Licensed location" means a stationary construction
16 consisting of at least one (1) enclosed room or a separate building, with a
17 designated entrance and exit used exclusively for the licensee, where the
18 primary business functions of the licensee are conducted in the state.

19 (B) "Licensed location" does not include a corporation's
20 headquarters;

21 (8) "Licensee" means a person licensed by the Securities
22 Commissioner under this chapter;

23 (9) "Loan" means an advance of funds or moneys that is
24 conditioned on the obligation of a person or entity to repay the funds or
25 moneys pursuant to a loan agreement, note, contract, or other instrument or
26 document evidencing the indebtedness;

27 (10)(A) "Person" means an individual, firm, corporation,
28 partnership, limited liability company, limited partnership, association,
29 organization, or other entity.

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

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

33 (11)(A) "Traditional installment loan" means a loan of a
34 principal amount bearing interest amortized for a specific length of time to
35 be repaid in equal scheduled payments over the term of the loan if the net
36 proceeds of the transaction are five thousand dollars (\$5,000) or less.

1 (B) "Traditional installment loan" does not include
2 payments for interest, expenses, and charges incurred with the making of the
3 loan.

4
5 23-34-104. Applicability.

6 This chapter applies to a traditional installment loan made by a lender
7 for five thousand dollars (\$5,000) or less.

8
9 Subchapter 2 – Licensing

10
11 23-34-201. Rulemaking and enforcement.

12 The Securities Commissioner shall:

13 (1) Administer this chapter;

14 (2) Establish rules to enforce the requirements of this chapter;

15 and

16 (3)(A) To determine if an applicant possesses a background that
17 does not call into question public trust or the applicant’s fitness for
18 licensure, obtain a:

19 (i) State criminal background check of an applicant
20 performed by the Identification Bureau of the Department of Arkansas State
21 Police; and

22 (ii) National fingerprint-based criminal background
23 check of an applicant performed by the Federal Bureau of Investigation in
24 compliance with federal law and regulations.

25 (B) An applicant shall provide all information requested
26 by the commissioner to assist the commissioner in making the determination
27 under subdivision (3)(A) of this section.

28
29 23-34-202. License required.

30 (a) A person shall not make a traditional installment loan in this
31 state unless the person is licensed under this chapter by the Securities
32 Commissioner.

33 (b) A person found guilty of violations of this chapter may be subject
34 to emergency suspension or revocation of licensure depending upon the
35 findings.

1 23-34-203. Requirement for license – Issuance.

2 (a)(1) A person may apply in the manner prescribed by the Securities
3 Commissioner to be licensed under this chapter.

4 (2) No more than one (1) principal place of business shall be
5 maintained under the same license, but the commissioner may issue additional
6 licenses to the same licensee upon compliance with this chapter.

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

9 (A) The applicant's name, address, Social Security number,
10 or tax identification number;

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

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

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

16 (E)(i) The qualifications and business history of:

17 (a) The applicant; and

18 (b) The applicant's partners, officers,
19 directors, or persons occupying a similar status and performing similar
20 functions.

21 (ii) The qualifications and business history of
22 persons under subdivision (a)(3)(E)(i) of this section shall include
23 disclosure of any legal proceedings or rulings that reflect the person's
24 financial or criminal record, including without limitation:

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

28 (b) A conviction of, a guilty plea, or a plea
29 of nolo contendere to a misdemeanor:

30 (A) Involving fraudulent dealings or
31 moral turpitude; or

32 (B) Relating to an aspect of the banking
33 industry, the mortgage industry, the money services industry, the securities
34 industry, the insurance industry, or another financial services activity; and

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

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

2 (1) A nonrefundable application fee of five hundred dollars
3 (\$500); and

4 (2) A license fee of five hundred dollars (\$500) for each
5 location from which the licensee conducts business as a lender.

6 (c)(1) Each licensee shall provide a surety bond in the amount of
7 fifty thousand dollars (\$50,000) per licensed location.

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

10 (3) A borrower's claim on the bond has priority over nonborrower
11 claims but is equal to the claims of other borrowers.

12 (d)(1) An applicant shall file with the application a certified
13 financial statement showing the applicant has net assets available for use in
14 the business of making traditional installment loans to consumers of at least
15 one million dollars (\$1,000,000).

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

18 (e) A license expires at the close of business on December 31 of each
19 calendar year unless the license is:

20 (1) Previously surrendered by the licensee and the surrender is
21 accepted by the commissioner;

22 (2) Renewed under § 23-34-204;

23 (3) Abandoned by the licensee; or

24 (4) Suspended or revoked by the commissioner.

25 (f) A license issued under this chapter is not transferable.

26
27 23-34-204. Renewal of license.

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

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

31 (2) Payment of the annual renewal fee of five hundred dollars
32 (\$500) per licensed location;

33 (3) A current unaudited financial statement;

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

36 (5) Any other information that the commissioner considers

1 relevant to the renewal application.

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

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

5
6 23-34-205. Disciplinary action.

7 (a) The Securities Commissioner may deny, suspend, revoke, or restrict
8 a license or otherwise discipline a licensee if after a hearing, the
9 commissioner finds that the licensee:

10 (1) Has pleaded guilty or nolo contendere to or has been found
11 guilty of a felony;

12 (2) Has committed fraud or deceit in the procuring or attempting
13 to procure a license under this chapter;

14 (3) Has engaged in unprofessional or unethical conduct;

15 (4) Has advertised in a false, fraudulent, deceptive, or
16 misleading manner;

17 (5) Has violated this chapter or any rule or order issued by the
18 commissioner; or

19 (6) Has had a license revoked or suspended in any jurisdiction.

20 (b) A hearing under this section and an appeal of the commissioner's
21 decision concerning any adverse action to a license under this section is
22 governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

23
24 23-34-206. Examination of licensees.

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

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

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

33 (ii) The cost of an examiner shall not exceed three
34 hundred dollars (\$300) for each day of examination.

35 (iii) Travel and meal costs of an examiner shall be
36 based upon the authorized per diem allowances for state employees traveling

1 inside the state on state business.

2 (C) Examination costs shall be paid into the Traditional
3 Installment Loan Fund.

4 (b) The commissioner may examine a person that the commissioner has
5 reasonable cause to believe is violating or is about to violate this chapter,
6 whether or not the person claims to be within the authority or beyond the
7 scope of this chapter.

8 (c) The commissioner or the commissioner's designee shall have free
9 access to the offices and places of business, files, safes, and vaults of the
10 persons examined under this section and may require the attendance of any
11 individual to examine him or her under oath concerning the loans, the
12 business, or the subject matter of an examination, investigation, or hearing.

13 (d)(1) If the commissioner has reasonable cause to believe that a
14 person is violating or intends to violate this chapter, the commissioner may
15 without prejudice enter an order requiring the person to cease and desist
16 from the violation, and an action may be brought by the commissioner to
17 enjoin the person from engaging in or continuing the violation.

18 (2) In an action under this chapter, an order or judgment may be
19 entered awarding a preliminary or permanent injunction.

20 (3) The court may impound property and appoint a receiver for
21 the property and business of the defendant, including books, papers,
22 documents, and records pertaining to the business or activity as the court
23 deems reasonably necessary to prevent violations of this chapter through the
24 use of the property and business.

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

28 (e) A hearing under this section and an appeal of the commissioner's
29 decision to enter an order or judgment against a licensee under this section
30 is governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

31 (f)(1) Reports of examinations and investigations of the commissioner
32 and the books and records of licensees are confidential and exempt from the
33 Freedom of Information Act of 1967, § 25-19-101 et seq., except as provided
34 in subdivision (f)(3) of this section.

35 (2) The commissioner shall not produce, reproduce, or otherwise
36 make information available to any person other than necessary personnel of

1 the State Securities Department unless required by a subpoena.

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

4
5 Subchapter 3 – Miscellaneous Provisions

6
7 23-34-301. Duties of licensee – Consumer protection.

8 (a) A licensee shall:

9 (1) Act with reasonable skill, care, and diligence in completing
10 a traditional installment loan transaction;

11 (2) Before approving a traditional installment loan, determine
12 if the consumer has the ability to pay for the loan by:

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

14 (B) Preparing a budget that includes the consumer’s
15 monthly income and expenditures to determine if the consumer has a positive
16 net cash flow sufficient to meet the payment requirements of the traditional
17 installment loan; and

18 (C) Provide financial literacy information to the
19 consumer;

20 (3) Retain copies of the budget and credit report acquired under
21 this section until the traditional installment loan is fully paid, or thirty-
22 six (36) months, whichever is longer, and provide copies of the budget to the
23 consumer when the traditional installment loan is made;

24 (4) Disclose the interest and finance charge of the traditional
25 installment loan in terms of an annual percentage rate according to
26 regulations under the Federal Truth in Lending Act of 1968, 12 C.F.R. Part
27 226, as they existed on January 1, 2017;

28 (5) Within ninety (90) days of the consummation of the
29 traditional installment loan, accurately report the monthly status of each
30 traditional installment loan to at least one (1) of the three (3) major
31 credit bureaus:

32 (A) Equifax;

33 (B) Experian; and

34 (C) TransUnion;

35 (6)(A) Allow the borrower five (5) business days from the date a
36 traditional installment loan is approved to return the traditional

1 installment loan proceeds to the licensee and rescind the traditional loan
2 for any reason.

3 (B) Upon rescission by the borrower and the return of the
4 traditional installment loan proceeds to the licensee, fees paid by the
5 borrower shall be returned to the borrower.

6 (C) The licensee shall not report the rescission to a
7 credit bureau;

8 (7)(A) Maintain accurate books, accounts, and records of
9 traditional installment loan transactions to enable the Securities
10 Commissioner to determine compliance with this chapter.

11 (B) A licensee shall preserve the books, accounts, and
12 records for at least twenty-five (25) months after the last activity
13 concerning a traditional installment loan; and

14 (8) Comply with applicable provisions of federal and state law,
15 including without limitation the following federal laws as they existed on
16 January 1, 2017:

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

19 (B) The Fair Debt Collection Practices Act, 15 U.S.C. §
20 1692 et seq.;

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

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

24 (b) A licensee shall not with respect to a traditional installment
25 loan:

26 (1) Fund more than five thousand dollars (\$5,000);

27 (2) Fund the traditional installment loan if the monthly payment
28 on the loan exceeds twenty-two and five-tenths percent (22.5%) of all
29 borrowers' monthly gross income;

30 (3) Maintain more than three (3) active traditional installment
31 loans for each borrower;

32 (4) Condition the funding of the traditional installment loan
33 upon the purchase of any good or service or product as described in § 23-34-
34 306 or electronic access to the borrower's deposit account for future
35 payment;

36 (5) Renew the traditional installment loan more than three (3)

1 times in a calendar year;

2 (6) Accept as payment a check held for future deposit;

3 (7) Charge an early payment penalty;

4 (8) Contract to waive protections afforded to members of the
5 military under the Servicemember’s Civil Relief Act, 50 U.S.C. Appendix, as
6 it existed on January 1, 2017, or similar law;

7 (9) Violate this chapter or a rule or order issued by the
8 commissioner; or

9 (10) Engage in conduct involving fraud, dishonesty,
10 untruthfulness, or untrustworthiness.

11
12 23-34-302. Maximum rates of interest – Charges.

13 (a) Unless otherwise permitted under this chapter, the maximum lawful
14 rate of interest on a traditional installment loan shall not exceed seventeen
15 percent (17%) per annum.

16 (b) A traditional installment loan shall be for a minimum term of
17 eighteen (18) months and no longer than thirty-six (36) months.

18 (c) If a borrower fully pays a traditional installment loan before
19 maturity, the unearned interest, fees, and charges shall be refunded to the
20 borrower under an actuarial method.

21 (d) Application fees for a traditional installment loan transaction
22 under this chapter are prohibited.

23 (e)(1) Closing costs for a traditional installment loan transaction
24 under this chapter shall not exceed ten percent (10%) of the amount borrowed
25 in a traditional installment loan transaction.

26 (2) Closing costs for a traditional installment loan shall not
27 be considered interest or finance charges for purposes of calculating the
28 annual percentage rate of the traditional installment loan.

29 (f)(1) The maximum monthly handling charges for a traditional
30 installment loan shall be based on the amount borrowed in a traditional
31 installment loan transaction as follows:

<u>Traditional Installment Loan Amount</u>	<u>Monthly Fee</u>
<u>\$1,000.00 - 1,500.00</u>	<u>\$36.00</u>
<u>1,500.01 - 2,000.00</u>	<u>32.00</u>
<u>2,000.01 - 3,000.00</u>	<u>31.00</u>
<u>3,000.01 - 4,000.00</u>	<u>24.00</u>

1 4,000.01 - 5,000.00

14.00

2 (2) Monthly handling charges for a traditional installment loan
3 shall not be considered interest or finance charges for purposes of
4 calculating the annual percentage rate of the traditional installment loan.

5 (g) Other products shall not be considered interest or finance charges
6 for purposes of calculating the annual percentage rate of the traditional
7 installment loan.

8
9 23-34-303. Duties of Securities Commissioner – Fees.

10 (a) The Securities Commissioner shall administer this chapter and the
11 Traditional Installment Loan Fund.

12 (b) All license fees, renewal fees, charges, fines, and penalties paid
13 to the commissioner under this chapter shall be deposited into the fund and
14 used to administer this chapter.

15 (c) A traditional installment loan found by the commissioner to
16 violate this chapter, rules of the commissioner, or an order made under this
17 chapter is void as to principal and interest.

18
19 23-34-304. Prohibited activity.

20 A licensee shall not charge any type of fee for procuring a traditional
21 installment loan for another lender.

22
23 23-34-305. Civil penalties.

24 (a) If after a hearing conducted in accordance with the Arkansas
25 Administrative Procedure Act, § 25-15-201 et seq., the Securities
26 Commissioner determines that a person has violated any provision of this
27 chapter or the rules promulgated by the commissioner, the commissioner may
28 impose a civil penalty on that person not to exceed three (3) times the
29 amount of financial harm the consumer experienced as determined by the
30 commissioner per violation.

31 (b) This subchapter provides an exclusive remedy for a consumer who
32 has been wronged by a licensee.

33 (c)(1) If a licensee is informed in writing of an unlawful or disputed
34 charge, the licensee has thirty (30) days to issue a refund.

35 (2) A refund issued under subdivision (c)(1) of this section may
36 be as a credit against the remaining balance owed on the traditional

1 installment loan or as a check to the consumer.

2 (d)(1) In the event that the lender fails to issue a refund, the
3 consumer may file a civil action in circuit court.

4 (2) A consumer who has been charged an unlawful or disputed
5 charge may receive three (3) times the amount of the unlawful or disputed
6 charge in addition to reasonable attorney's fees.

7
8 23-34-306. Optional products.

9 (a) A licensee may provide optional products, including without
10 limitation:

11 (1) Credit life insurance on any borrower;

12 (2) Credit accident and health insurance on one (1) borrower in
13 a traditional installment loan;

14 (3) Accidental death and dismemberment insurance on one (1)
15 borrower in a traditional installment loan;

16 (4) Credit involuntary unemployment insurance on one (1)
17 borrower on a traditional installment loan; and

18 (5) Credit property insurance on any real property used to
19 secure a traditional installment loan.

20 (b) An optional product provided in subsection (a) of this section
21 shall not be written for an amount that exceeds the total amount of payments
22 required on the traditional installment loan.

23
24 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
25 General Assembly of the State of Arkansas that a substantial population in
26 the State of Arkansas does not have access to traditional sources of consumer
27 credit as a result of federal preemption of state interest rate regulation;
28 that without relief from the financial limitations for access to small loans,
29 the citizens of this state will suffer irreparable harm to their health and
30 well-being; and that this act is immediately necessary because it will
31 provide the General Assembly with the ability to establish appropriate
32 regulations of consumer credit products necessary to ensure the public
33 safety, health, and welfare of its citizens. Therefore, an emergency is
34 declared to exist, and this act being immediately necessary for the
35 preservation of the public peace, health, and safety shall become effective
36 on:

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(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.