

Hall of the House of Representatives
87th General Assembly - Regular Session, 2009
Amendment Form

Subtitle of House Bill No. 1935

"TO CREATE THE OFFENSE OF UNLAWFUL CONSUMER LOANS."

Amendment No. 1 to House Bill No. 1935.

Amend House Bill No. 1935 as originally introduced:

Page 1, delete lines 9 through 12 and substitute:

"AN ACT TO REPEAL THE CHECK-CASHERS ACT, § 23-52-101 ET SEQ., WHICH THE SUPREME COURT OF ARKANSAS RULED UNCONSTITUTIONAL IN MCGHEE v. ARKANSAS STATE BOARD OF COLLECTION AGENCIES AND RUSTY GUINN; AND FOR OTHER PURPOSES."

AND

Page 1, delete lines 15 and 16 and substitute:

"TO REPEAL THE CHECK-CASHERS ACT AND TO CREATE THE OFFENSE OF UNLAWFUL CONSUMER LOANS."

AND

Page 2, delete lines 27 and 28

AND

Delete Section 2 in its entirety and substitute:

"SECTION 2. Arkansas Code Title 23, Chapter 52 is repealed.

~~Chapter 52~~

~~Check Cashers Act~~

~~23-52-101. Title.~~

~~This chapter shall be known and may be cited as the "Check cashers Act".~~

~~23-52-102. Definitions.~~

~~As used in this chapter:~~

~~(1) "Board" means the State Board of Collection Agencies;~~

~~(2) "Check" means a check, warrant, draft, money order, travelers' check, or other instrument for the payment of money, whether or not negotiable, but excluding:~~

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



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

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

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

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

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

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

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

~~(4) "Check cashing business" means the business of a check cashier selling currency or a check to another person in exchange for a check, with or without a deferred presentment option;~~

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

~~(A) Accepting a customer's personal check dated on the date it was written;~~

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

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

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

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

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

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

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

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

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

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

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

~~(4) Maintaining records as required by this chapter;~~
~~(5) Maintaining required capital and liquidity; and~~
~~(6) Processing, documenting, and closing the check cashing or deferred deposit transactions.~~

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

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

~~(A) A fee not to exceed five percent (5%) of the face amount of the check if the check is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the check or the check is otherwise a check issued by a federal or state governmental entity;~~

~~(B) A fee not in excess of ten percent (10%) of the face amount of any personal check or money order; or~~

~~(C) A fee not in excess of six percent (6%) of the face amount of the check in the case of all other checks. Such a fee may be collected separately or by paying the customer an amount of money equal to the face amount of the check less the appropriate fee under this chapter;~~

~~(2) For a deferred presentment option which involves a personal check, an additional fee not to exceed ten dollars (\$10.00) may be charged by a check-casher; and~~

~~(3) In addition to the foregoing fees, a check-casher may charge a fee of no more than five dollars (\$5.00) to set up an initial customer account and issue an optional identification card for providing check-cashing services. A replacement optional identification card may be issued at a cost not to exceed five dollars (\$5.00).~~

~~23-52-105. General disclosure.~~

~~(a) Every check-casher, as applicable to the services provided, shall post a complete, detailed, and unambiguous schedule of all fees for:~~

~~(1) Cashing checks and making any deferred presentment option thereof;~~

~~(2) The sale or issuance of money orders; and~~

~~(3) The initial issuance of any identification card.~~

~~(b) Each check-casher shall also post a list of valid identification which is acceptable in lieu of identification provided by the person cashing the check. The information required by this section shall be posted at each location at which the check-casher conducts the check-cashing business and in clear, legible letters not less than one half inch ($\frac{1}{2}$ "') in height. The information shall be posted in a conspicuous location in the unobstructed view of the public within the check-casher's premises.~~

~~23-52-106. Other terms of doing the check-cashing business.~~

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

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

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

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

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

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

~~(g) If a check is returned to the check casher from a payer bank or other financial institution due to insufficient funds, closed account, or a stop payment order, the check casher shall have the right to all civil remedies allowed by law to collect the check and shall be entitled to recover any returned check fee authorized by applicable Arkansas law, court costs, and reasonable attorney's fee paid to an attorney who is not a salaried employee of the check casher.~~

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

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

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

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

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

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

~~(l) Each check casher shall pay all proceeds in cash for any check~~

~~purchased.~~

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

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

~~23-52-107. Qualification for check casher permit.~~

~~A check casher permit applicant shall satisfy the following requirements to qualify for a permit under this chapter:~~

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

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

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

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

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

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

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

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

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

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

~~(3) Such other data and information as the board may require with respect to the applicant and its directors, officers, partners or members.~~

~~(b) For each location at which the applicant wants to engage in the check-cashing business, each application for a permit shall be accompanied by~~

~~both of the following:~~

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

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

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

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

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

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

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

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

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

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

~~The prior written approval of the State Board of Collection Agencies shall be required for the continued operation of a check-cashing business whenever a change in control of a permitted check-casher is proposed. Control in the case of a corporation shall mean direct or indirect ownership, the right to control twenty-five percent (25%) or more of the voting shares of~~

~~the corporation, or the ability of a person to elect a majority of the directors. Control in the case of any other entity shall mean the ability to change the principles of the organization, whether active or passive. The board may require information deemed necessary to determine whether a new application is required.~~

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

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

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

~~(a) Each check-casher shall keep and use in its business any books, accounts, and records that the State Board of Collection Agencies may require to carry into effect the provisions of this chapter and the administrative regulations issued hereunder. Provided, such records may be retained on computer or other electronic storage devices.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~23-52-117. Complaints.~~

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

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

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

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

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

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

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

AND

Delete Section 3 in its entirety

AND

Page 5, delete Section 4 in its entirety and substitute:

"SECTION 3. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the Arkansas Constitution does not contain a criminal penalty for charging usurious interest rates; that citizens of this state who are required to pay usurious interest rates are subjected to financial burdens that can result in devastating financial hardships; that the Supreme Court of Arkansas has ruled the Check-Cashers Act unconstitutional; and that this act is immediately necessary because a criminal penalty will protect the citizens of this state from persons or businesses that charge an interest rate in violation of the Arkansas Constitution. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(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."

The Amendment was read _____

By: Representative Nickels
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Chief Clerk