

**Hall of the House of Representatives**  
83rd General Assembly - Regular Session, 2001  
**Amendment Form**

\*\*\*\*\*

**Subtitle of House Bill No. 2583**

"AN ACT TO CREATE THE ARKANSAS DEFERRED DEPOSIT LOAN ACT."

\*\*\*\*\*

**Amendment No. 1 to House Bill No. 2583.**

Amend House Bill No. 2583 as originally introduced:

Page 1, line 33, insert:

"SECTION 2. For purposes of this act:

(1) "Check" means a negotiable instrument as defined in Article 3 of the Uniform Commercial Code, as exists on January 1, 2001, which is drawn on a bank and is to be payable on demand at maturity of the deferred deposit loan;

(2) "Consumer" means any natural person who, singly or jointly with another consumer, enters into a deferred deposit loan;

(3) "Deferred deposit loan" means any arrangement in which a person accepts a check dated on the date it was written and agrees to hold it for a period of days prior to deposit or presentment, or accepts a check dated subsequent to the date it was written, and agrees to hold the check for deposit until the date written on the check;

(4) "Executive director" means the Executive Director of the State Board of Collection Agencies;

(5) "Facilitator" means any person who facilitates, enables, or acts as a conduit for another person, who is or may be exempt from licensing, who makes deferred deposit loans;

(6)(A) "Licensee" means any person licensed by the State Board of Collection Agencies under the provisions of this act to engage in deferred deposit loans, or any facilitator.

(B) Except for purposes of section 4 of this act, a licensee includes any bank, savings and loan association, credit union, or other state or federally regulated financial institution; and

(7) "Person" means any natural person, firm, partnership, association or corporation, or other entity that makes a deferred deposit loan in this state, or any facilitator.

SECTION 3. Applicability.

This act shall apply to:

(1) Any person who, for a fee, service charge, or other consideration,

\* **VVF355** \*

The Amendment was read \_\_\_\_\_

By: Representative Glover

MG/VJF - 032820011334

VVF355

\_\_\_\_\_  
Chief Clerk

accepts a check dated on the date it was written and agrees to hold it for a period of days prior to deposit or presentment, or accepts a check dated subsequent to the date it was written, and agrees to hold the check for deposit until the date written on the check;

(2) Facilitators;

(3) Financial institutions to the extent that banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions are exempt by other state or federal laws from the provisions of this act regarding limitations on interest rates and fees, all other provisions except the requirements for licensure in section 5 apply to these financial institutions; and

(4) Any person who seeks to evade its applicability by any device, subterfuge, or pretense whatsoever.

#### SECTION 4. Exemptions.

(a) Retail sellers who cash checks incidental to or independent of a sale and who charge no more than two dollars (\$2.00) per check for the service are exempt from the provisions of this act.

(b) To the extent that banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions are exempt by other state or federal laws from the provisions of this act regarding limitations on interest and rates, all other sections of this act apply except section 5.

#### SECTION 5. Licensing.

(a)(1) No person shall engage in or offer to engage in the business regulated by this act unless a license has been issued by the executive director.

(2) The executive director shall not issue or renew any such license unless the following findings are made:

(A) That authorizing the applicant to engage in such business will promote the convenience and advantage of the community in which the applicant proposes to engage in business;

(B) That the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly, and within the provisions and purposes of this act;

(C) That neither the applicant, nor any principals of the applicant, which includes any persons owning at least five percent (5%) of the applicant, have been convicted of any felony;

(D) That the applicant has unencumbered assets of at least twenty-five thousand dollars (\$25,000) per location;

(E) That the applicant has provided a sworn statement that the applicant has not used in the past, nor will in the future directly or indirectly use the criminal process to collect the payment of deferred deposit loans; and

(F) Other information as the executive director may determine necessary.

(b) No license shall be issued for longer than one (1) year, and no renewal of a license may be provided if licensee has violated this act.

(c) A public hearing shall be held for each original application and

for renewals if one is requested in writing by five (5) or more members of the public or the executive director.

(d)(1) Each licensee shall post a bond in the amount of fifty thousand dollars (\$50,000) per location which shall continue in effect for five (5) years after the licensee ceases operation in the state.

(2) The bond shall be available to pay damages and penalties to consumers harmed by any violations of this act.

(e) An annual fee and investigative fee set in an amount to be determined by the executive director shall be paid by each licensee.

(f) Not more than one (1) place of business shall be maintained under the same license, but the executive director may issue more than one (1) license to the same licensee upon compliance with all the provisions of this act governing issuance of a single license.

(g) No licensee shall conduct the business of making loans under this act within any office, suite, room or place of business in which any other business is solicited or engaged in unless, in the opinion of the executive director, the other business would not be contrary to the best interests of consumers and is authorized by the executive director in writing.

(h)(1) If the executive director shall find, after due notice and hearing, or opportunity for hearing, that any licensee, or an officer, agent, employee or representative thereof, has violated any of the provisions of this act, or has failed to comply with the rules, regulations, instructions or orders promulgated by the Board of Collection Agencies, or has failed or refused to make its reports to the executive director, or has furnished false information to the executive director, the executive director may issue an order revoking or suspending the right of such licensee and such officer, agent, employee or representative to do business in this state as a licensee.

(2) No revocation, suspension, or surrender of any license shall relieve the licensee from civil or criminal liability for acts committed prior thereto.

(i)(1) The executive director shall maintain a list of licensees which shall be available to interested persons and the public.

(2) The executive director shall create a toll free number whereby consumers may obtain information about licensees.

(3) The executive director shall also establish a complaint process whereby an aggrieved consumer or any member of the public may file a complaint against a licensee or non-licensee who violates any provisions of this act.

(4) The executive director shall hold hearings upon the request of a party to the complaint, make findings of fact, conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution under this act, and suspend or revoke a license granted under this act.

(5) All proceedings shall be open to the public.

(j) The State Board of Collection Agencies may promulgate regulations to carry out the provisions of this act.

#### SECTION 6. Information and Annual Reports.

(a)(1) Each licensee shall keep and use books, accounts, and records which shall enable the executive director to determine if the licensee is complying with the provisions of the act and maintain any other records as required by the executive director.

(2) The executive director, or designee, is authorized to examine the records at any reasonable time.

(3) All the records shall be kept for four (4) years following the last entry on a loan and according to generally accepted accounting procedures, which means that an examiner shall be able to review the record keeping and reconcile each consumer loan with documentation maintained in the consumer's loan file records.

(b)(1) Each licensee shall file an annual report with the Executive Director on or before the last day of March for the twelve-month period in the preceding year on forms prescribed by the executive director.

(2) The reports shall disclose in detail and under appropriate headings:

(A) The resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(B) The income, expense, gain, loss, and a reconciliation of surplus or net worth with the balance sheets, and the ratios of the profits to the assets reported;

(C) The total number of deferred deposit loans made in the calendar year ending as of December 31<sup>st</sup> of the previous year;

(D) The total number of such loans outstanding as of December 31<sup>st</sup> of the previous year;

(E) The minimum, maximum, and average dollar amount of checks whose deposits were deferred in the calendar year ending as of December 31<sup>st</sup> of the previous year;

(F) The average annual percentage rate and the average number of days a deposit of a check is deferred during the calendar year ending as of December 31<sup>st</sup> of the previous year;

(G) The total of returned checks, the total of checks recovered, and the total of checks charged off during the calendar year ending as of December 31<sup>st</sup> of the previous year; and

(H) Verification that the licensee has not used the criminal process or caused the criminal process to be used in the collection of any deferred deposit loans during the calendar year ending as of December 31<sup>st</sup> of the previous year.

(c) The reports shall be verified by the oath or affirmation of the owner, manager, or president of the licensee.

(d)(1) If a licensee conducts another business or is affiliated with other licensees under this act, or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the executive director.

(2) Information about other business conducted on the same premises as that of deferred deposit loans shall be provided as required by the executive director.

(e)(1) The executive director shall compile annual reports of deferred deposit lending in this state from the information provided under this section and provide a copy to the Governor and the General Assembly.

(2) Annual reports shall be available to interested parties and to the general public.

(f)(1) Each licensee shall file a copy of the contract described in section 8(b) and the fee schedule described in section 8(c) with the executive director prior to the date of commencement of business at each

location, at the time any changes are made to the documents or schedule, and annually thereafter upon renewal of the license.

(2) These documents shall be available to interested parties and to the general public.

#### SECTION 7. Required acts.

(a) Each deferred deposit loan shall have a minimum term of no less than two (2) weeks for each fifty dollars (\$50.00) owed on the loan.

(b) A consumer shall be permitted to make partial payments, in amounts equal to no less than five dollar (\$5.00) increments, on the loan at any time, without charge.

(c) The maximum amount of the deferred deposit loan shall not exceed three hundred dollars (\$300).

(d) After each payment made, in full or in part, on any loan, the licensee shall give to the person making such payment a signed, dated receipt showing the amount paid and the balance due on the loan.

(e) The minimum amount of a deferred deposit loan is fifty dollars (\$50.00).

(f) The check written by the consumer in a deferred deposit loan shall be made payable to the licensee.

(g) Upon receipt of the check from the consumer for a deferred deposit loan, the licensee shall immediately stamp the back of the check with an endorsement that states: "This check is being negotiated as part of a deferred deposit loan pursuant to Arkansas Deferred Deposit Loan Act and any holder of this check takes it subject to all claims and defenses of the maker."

(h) Any facilitator is subject to enforcement under section 5 and the civil remedies provisions of section 11 if the person making the deferred deposit loans fails to comply with the requirements of this act.

(i) The licensee shall provide the consumer, or each consumer if there is more than one (1), with a copy of the loan documents described in section 8 prior to the consummation of the loan.

(j) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.

#### SECTION 8. Required Disclosures.

(a) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by the executive director which explains, in simple English and Spanish, all of the consumer's rights and responsibilities in a deferred deposit loan transaction, includes a toll free number to the executive director's office to handle concerns or complaints by consumers, and informs consumers that the executive director's office can provide information about whether a lender is licensed, whether complaints have been filed with the executive director, and the resolution of such complaints.

(b) Licensees shall provide consumers with a written agreement on a form specified or approved by the executive director that can be kept by the consumer, and shall include the following information in English and in the language in which the loan was negotiated:

(1) The name, address, telephone number of the licensee making the deferred deposit loan, and the name and title of the individual employee

who signs the agreement on behalf of the licensee;

(2) An itemization of the fees and interest charges to be paid by the consumer;

(3) Disclosures required by the federal Truth in Lending Act, as exists on January 1, 2001, regardless of whether the Truth in Lending Act applies to the particular deferred deposit loan;

(4) Disclosures required under any other state law, as exists on January 1, 2001;

(5) A clear description of the consumer's payment obligations under the loan;

(6)(A) In a manner which is more conspicuous than the other information provided in the loan document and is in at least 14-point bold type face, a statement that "you cannot be prosecuted in criminal court to collect this loan."

(B) The notice shall be located immediately preceding the signature of the consumer.

(c) The following notices in English, Spanish, as well as other languages in which a significant amount of deferred deposit loan business is conducted, shall be conspicuously posted by all licensees in each location of a business providing deferred deposit loan:

(1) Informs consumers that the licensee cannot use the criminal process against a consumer to collect any deferred deposit loan.

(2) The schedule of all interest and fees to be charged on such loans with an example of the amounts that would be charged on a three hundred dollars (\$300) loan payable in fourteen (14) days and thirty (30) days, giving the corresponding annual percentage rate.

(d)(1) Financial institutions making deferred deposit loans which, because of the application of other state or federal law, are exempt from the fee limitations of section 9, and which charge fees, interest, and charges greater than that authorized in section 9, shall post, in a conspicuous place in the branch in which the deferred deposit loans are entered into, the notice in subdivision (d)(2) of this section.

(2) A single instance of charging a consumer more than the fees, interest, and other charges permitted in section 9 requires the financial institution to post this notice.

"WARNING: The fees and interest charged on deferred deposit loans made at this institution are higher than those charged at other financial institutions."

#### SECTION 9. Permitted Charges.

(a) No licensee shall charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(b) A licensee shall be permitted to charge an administrative fee of no more than five dollars (\$5.00) for each deferred deposit loan entered into with a consumer.

(c)(1) In addition to the administrative fee, the licensee shall be permitted to charge interest on the amount of cash delivered to the consumer in a deferred deposit loan in an amount no great than thirty-six percent (36%) per annum, which is defined as a three hundred and sixty-five-day year.

(2) The rate charged on the outstanding balance after maturity shall not be greater than the rate charged during the loan term.

(3) Charges on loans shall be computed and paid only as a percentage of the unpaid principal balance.

(4) For purposes of this section "principal balance" means the balance due and owed exclusive of any interest, service charges, or other loan-related charges.

(d)(1) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed the lesser of fifteen dollars (\$15.00) or the fee imposed upon the licensee by the financial institution.

(2) Only one (1) fee may be collected with respect to a particular check even if it has been redeposited and returned more than once.

(3) A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment.

(e) When a loan is repaid before its due date, unearned interest charges shall be rebated to the consumer based on a method at least as favorable to the consumer as the actuarial method.

#### SECTION 10. Prohibited Acts.

No licensee making deferred deposit loans shall commit, or have committed on behalf of the licensee, any of the following prohibited acts:

(1) Engaging in the business of deferred deposit lending unless the executive director has first issued a valid license;

(2) Threatening to use or using the criminal process in this or any other state to collect on the loan;

(3) Altering the date or any other information on the check;

(4) Using any devise or agreement which would have the effect of charging or collecting more fees, charges, or interest than allowed by this act, including but not limited to entering into a different type of transaction with the consumer;

(5) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a deferred deposit loan;

(6)(A) Entering into a deferred deposit loan with a consumer which is unconscionable;

(B) In determining whether a deferred deposit loan transaction is unconscionable, consideration shall be given to, but is not limited to, whether the amount of the loan exceeds twenty-five percent (25%) of the consumer's net income for the term of the loan;

(7) Charging to cash a check representing the proceeds of the deferred deposit loan;

(8) Using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law;

(9) Accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan provided by the same licensee or any affiliate;

(10) Making more than one (1) deferred deposit loan to a consumer at a time;

(11)(A) Making a deferred deposit loan, which, when combined with another outstanding deferred deposit loan owed by another licensee, exceeds a total of three hundred dollars (\$300) when combining the face amount of the checks written in connection with each loan.

(B) The licensee shall make inquiry of the consumer or utilize available information based to determine whether the loans are outstanding.

(C) In no event shall a licensee make a loan to a consumer who has two (2) or more loans outstanding, regardless of the total value of the loans;

(12)(A) Renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made by the same consumer.

(B) Upon termination of a deferred deposit loan through the payment of the consumer's check by the drawee bank, the return of a check to a consumer who redeems it for consideration, or any other method of termination, the licensee shall not enter into another deferred deposit loan with the same consumer for at least thirty (30) days thereafter, provided, that a licensee may extend the term of the loan beyond the due date without charge;

(13) Accepting any collateral for a deferred deposit loan;

(14) Charging any interest, fees, or charges other than those specifically authorized by this act, including but not limited to:

(A) Charges for insurance; and

(B) Attorney's fees or other collection costs;

(15) Threatening to take any action against a consumer that is prohibited by this act, or making any misleading or deceptive statements regarding the deferred deposit loan or any consequences thereof;

(16) Making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;

(17) Including any of the following provisions in loan documents required by section 8(b):

(A) A hold harmless clause;

(B) A confession of judgment clause;

(C) A waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;

(D) A mandatory arbitration clause;

(E) Any assignment of or order for payment of wages or other compensation for services;

(F) A provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(G) A waiver of any provision of the act; and

(18) Selling any insurance of any kind whether or not sold in connection with the making or collecting of a deferred deposit loan.

#### SECTION 11. Enforcement.

(a) The remedies provided herein are cumulative and apply to licensees and unlicensed persons to whom this act applies and who failed to obtain license.

(b) Any violation of this act constitutes a violation of any state law prohibiting deceptive or unconscionable trade practices.

(c) The violation of any provision of this act, or regulation thereunder, except as the result of accidental or bona fide error of computation, renders the loan void, and the person shall have no right to collect, receive, or retain any principal, interest, or other charges whatsoever with respect to the loan.

(d) Any person found to have violated this act shall be liable to the consumer for actual, consequential, and punitive damages, plus statutory damages of one thousand dollars (\$1,000) for each violation, plus costs, and



attorney's fees.

(e) A consumer may sue for injunctive and other appropriate equitable relief to stop any person from violating any provisions of this act.

(f) The consumer may bring a class action suit to enforce this act.

(g) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer, nor shall the consumer exhaust any administrative remedies provided under this act or any other applicable law.

(h) Any person, including members, officers, and directors of the person who knowingly violates this act, is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding one thousand dollars (\$1,000) or is subject to imprisonment not exceeding six (6) months, or both."