

ARKANSAS SENATE
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of Senate Bill No. 6

"AN ACT TO REPEAL THE CHECK-CASHERS ACT."

Amendment No. 1 to Senate Bill No. 6.

Amend Senate Bill No. 6 as originally introduced:

Page 1, delete line 9 and substitute:

"AN ACT TO AMEND THE CHECK-CASHERS ACT; AND FOR OTHER PURPOSES."

AND

Page 1, delete line 12 and substitute:

"TO AMEND THE CHECK-CASHERS ACT."

AND

Delete everything after the enacting clause and substitute:

"SECTION 1. Arkansas Code 23-52-102(3) and (4), concerning definitions in the Check casher Act, is amended to read as follows:

(3) "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;~~

(4) "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;~~

SECTION 2. Arkansas Code 23-52-104 is amended to read as follows:
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:

- documents;
- (1) Investigating the checking account and copying required
 - (2) Photographing the person signing the check;
 - (3) Securing check and customer records in a safe, fire-proof 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) The fee, when made and collected, shall not be deemed interest for any purpose of law, and a check-cashing transaction, including one (1) with a deferred presentment option, shall not be and shall not be deemed to be a loan, loan contract, or a contract for the payment of interest notwithstanding any disclosures required by this chapter.~~

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

~~(1) For 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 such check is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of such check or such 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 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).~~

SECTION 3. Arkansas Code 23-52-105(a) is amended to read as follows:

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

~~(3)(2) The initial issuance of any identification card.~~

SECTION 4. Arkansas Code 23-52-106 is amended to read as follows:

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

~~(g)(c) 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)(d) 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)(e) 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)(f) 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."~~

The Amendment was read the first time, rules suspended and read the second time and _____

**By: Senator Hoofman
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VVF337**

Secretary