

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

A Bill

HOUSE BILL 1846

4 By: Representative Woods
5 By: Senator M. Lamoureux

6 Filed with: Interim House Committee on Insurance and Commerce
7 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

8 AN ACT TO ENACT THE SMALL LOAN ACT TO HELP
9 UNDERSERVED CONSUMERS OBTAIN CREDIT AND FINANCIAL
10 OPPORTUNITIES; AND FOR OTHER PURPOSES.

Subtitle

11 TO ENACT THE SMALL LOAN ACT TO HELP
12 UNDERSERVED CONSUMERS OBTAIN CREDIT AND
13 FINANCIAL OPPORTUNITIES.

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

23
24 SECTION 1. Arkansas Code Title 23, Chapter 32 is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 6 – Small Loan Act

27
28 23-32-601. Title.

29 This subchapter shall be known as and may be cited as the "Small Loan
30 Act".

31
32 23-32-602. Legislative findings – Intent.

33 (a) The General Assembly finds and determines that:

34 (1) A demand for small loans exists among citizens of this
35 state. The scope and intensity of this demand have been increased
36 progressively by social and economic forces;

1 (2) A substantial population in this state does not have access
2 to traditional sources of consumer credit, financial services, or bank
3 checking accounts;

4 (3) Individuals that do not have or maintain traditional bank
5 accounts are "unbanked". Individuals who have impaired credit or limited
6 credit files are financially "underbanked". These unbanked and underbanked
7 group are denied credit and financial products that are generally available
8 to others in this state;

9 (4) Federally regulated banks are not subject to an interest
10 rate limit but are limited in the amount of risk that can be undertaken in
11 servicing consumers who are unbanked or underbanked;

12 (5) Small loans made on comparatively unsubstantial security to
13 wage earners, salaried employees, and other consumers with low credit scores
14 represent a higher cost of service due to the credit risk;

15 (6) Small loans cannot be made profitably under the limitations
16 imposed by existing interest and usury laws of this state. These limitations
17 have tended to exclude enterprises from the small-loan field;

18 (7) As a result, unbanked and underbanked borrowers of small sums
19 have been exploited to the injury of the borrower, his or her dependents, and
20 the general public; and

21 (8) Consumers deserve the right to know the terms, conditions,
22 and costs of obtaining credit through full, accurate, and understandable
23 disclosure.

24 (b) It is the intent of the General Assembly in enacting this
25 subchapter to:

26 (1) Assist underserved consumers with obtaining equal access to
27 consumer credit and financial opportunities;

28 (2) Supervise those engaged in the business of making small
29 loans;

30 (3) Eliminate practices that facilitate abuse of borrowers;

31 (4) Establish a regulatory system for the purpose of ensuring
32 honest and efficient small-loan service and allow for competitive loan
33 charges; and

34 (5) Allow lenders who meet the conditions of this subchapter to
35 charge a sufficient rate to permit a fair business profit and to provide for
36 a regulatory system necessary for effective enforcement.

1
2 23-32-603. Definitions.

3 As used in this subchapter:

4 (1) "Applicant" means a person who has applied to become
5 licensed under this subchapter as an installment lender;

6 (2) "Borrower" means a person who has received credit in a loan
7 transaction and is obligated to repay the loan amount;

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

10 (4) "Employee" means a person who is employed by an installment
11 lender under an employment contract, agency relationship, or other
12 arrangement whether or not the person is treated as an employee for
13 compliance with the federal income tax laws;

14 (5)(A) "Exempt person" means a person that is not required to be
15 licensed under this subchapter as an installment lender.

16 (B) "Exempt person" includes:

17 (i) An employee of an installment lender licensee;

18 (ii) An agency or corporate instrumentality of the
19 federal government or a state, county, or municipal government granting
20 installment loans under specific authority of the laws of a state or of the
21 United States;

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

26 (iv) A person extending credit other than by an
27 installment loan for the purchase of the person's goods or services;

28 (6) "Installment lender" means a person engaged in the business
29 of making installment loans to consumers;

30 (7)(A) "Installment loan" means a loan of a principal amount
31 bearing interest amortized for a specific length of time to be repaid in
32 scheduled payments over the term of the loan.

33 (B) "Installment loan" does not include an occasional loan
34 from an individual to an employee or acquaintance of the individual;

1 (8) "License" means the authorization issued by the Securities
2 Commissioner under this subchapter to make loans according to this
3 subchapter;

4 (9) "Licensee" means a person licensed by the Securities
5 Commissioner under this subchapter;

6 (10)(A) "Person" means an individual, firm, corporation,
7 partnership, limited liability company, limited partnership, association,
8 organization, or other entity.

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

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

12 (11) "Principal place of business" means a stationary
13 construction consisting of at least one (1) enclosed room or building where
14 the primary business functions of the licensee are conducted; and

15 (12) "Small loan" means an installment loan of at least two
16 hundred fifty dollars (\$250) but no more than five thousand dollars (\$5,000)
17 after deducting the payment of interest, expenses, and charges imposed when
18 the installment loan is originated.

19
20 23-32-604. Rulemaking authority.

21 The Securities Commissioner may adopt rules to:

22 (1) Administer this subchapter;

23 (2) Provide for the protection of consumers and the borrowing
24 public; and

25 (3) Instruct installment lenders in interpreting this
26 subchapter.

27
28 23-32-605. Applicability.

29 This subchapter applies to a small loan made by an installment lender
30 that is not an exempt person.

31
32 23-32-606. License required.

33 A person shall not make a small loan in this state unless the person is
34 licensed under this subchapter by the Securities Commissioner.

35
36 23-32-607. Requirements for license - Issuance.

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

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

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

8 (A) The applicant's name, address, social security number,
9 or tax identification number;

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

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

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

15 (E)(i) The qualifications, business history, and financial
16 condition of:

17 (a) The applicant;

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

21 (c) A person directly or indirectly
22 controlling the applicant.

23 (ii) The qualifications and business history of
24 persons under subdivision (a)(3)(E)(i) of this section shall include:

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 involving fraudulent dealings or moral
30 turpitude or relating to an aspect of the banking industry, the mortgage
31 industry, the money services industry, the securities industry, the insurance
32 industry, or another financial services activity; and

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

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

1 (1) A nonrefundable application fee of two hundred fifty dollars
2 (\$250); and

3 (2) A license fee of one thousand dollars (\$1,000) for each
4 location from which the licensee conducts business as an installment lender.

5 (c)(1) Each licensee shall provide a surety bond in the amount of five
6 thousand dollars (\$5,000) per licensed location or fifty thousand dollars
7 (\$50,000), whichever is less.

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 non-
11 borrower 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 installment loans to consumers of at least fifty
15 thousand dollars (\$50,000) per license.

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

18 (e) A license issued by the commissioner under this subchapter expires
19 at the close of business on December 31 of each calendar year unless the
20 license is:

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

23 (2) Renewed under § 23-32-608;

24 (3) Abandoned by the licensee; or

25 (4) Suspended or revoked by the commissioner.

26 (f) A license issued under this subchapter is not transferable.

27
28 23-32-608. Renewal of license.

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

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

32 (2) Payment of the annual renewal fee of one thousand dollars
33 (\$1,000) per licensed location;

34 (3) A current unaudited financial statement;

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

1 (5) Any other information that the commissioner considers
2 relevant to the renewal application.

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

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

6
7
8 23-32-609. Revocation of license.

9 (a) The Securities Commissioner shall revoke a license after providing
10 ten (10) days' written notice to a licensee stating the contemplated action
11 and the grounds for revocation and providing the licensee a reasonable
12 opportunity to be heard if the commissioner finds that:

13 (1) The licensee has failed to pay a license fee or renewal fee;

14 (2) The licensee knowingly or by failing to exercise due care has
15 violated this subchapter, the rules of the commissioner, or an order made
16 under this subchapter; or

17 (3) A fact or condition exists that would have justified the
18 commissioner's refusing to issue the original license if the fact or
19 condition had existed or had been known to exist at the time of the original
20 application for a license.

21 (b)(1) If the commissioner finds that probable cause for revocation of
22 a license exists and that enforcement of this subchapter or protection of the
23 public requires immediate suspension of a license, the commissioner may enter
24 an order suspending a license after providing three (3) days' notice to the
25 licensee.

26 (2) A hearing on the license suspension shall be scheduled
27 within thirty (30) days of entry of the order.

28 (c)(1) The commissioner shall suspend or revoke a license issued under
29 this subchapter by entering an order and providing notice to the licensee of
30 the commissioner's action.

31 (2) Within five (5) days after entry of the order, the
32 commissioner shall enter a final order detailing his or her findings and
33 summarizing the evidence supporting the order.

34 (3) The commissioner shall deliver a copy of the final order to
35 the licensee.

36 (d)(1) A licensee may surrender a license by delivering the license

1 and written notification of its surrender to the commissioner.

2 (2) The surrender shall not affect a licensee's civil or
3 criminal liability for acts committed before the surrender.

4 (e) Revocation, suspension, or surrender of a license shall not impair
5 or affect the obligation of a preexisting contract between the licensee and a
6 borrower.

7 (f) The commissioner may reinstate a suspended license or issue a new
8 license to a person whose license or licenses have been revoked if no fact or
9 condition exists that would have justified the commissioner in refusing to
10 issue a license under this subchapter.

11 (g) Upon sworn complaint of a borrower, the commissioner shall
12 investigate or cause to be investigated an alleged violation of this
13 subchapter.

14
15 23-32-610. Examination of licensees.

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

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

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

24 (ii) The cost of an examiner shall not exceed two
25 hundred dollars (\$200) for each day of examination.

26 (iii) Travel and meal costs shall be based upon the
27 authorized per diem allowances for state employees traveling inside the state
28 on state business.

29 (C) Examination costs shall be paid into the Small Loan
30 Fund.

31 (b) The commissioner may also examine a person who the commissioner
32 has reasonable cause to believe is violating or is about to violate this
33 subchapter, whether or not the person claims to be within the authority or
34 beyond the scope of this subchapter.

35 (c) The commissioner or the commissioner's designee shall have and be
36 given free access to the offices and places of business, files, safes, and

1 vaults of the persons examined under this section and may require the
2 attendance of any person to examine him or her under oath concerning the
3 loans, the business, or the subject matter of an examination, investigation,
4 or hearing.

5 (d)(1) If the commissioner has reasonable cause to believe that a
6 person is violating or intends to violate this subchapter, the commissioner
7 may without prejudice enter an order requiring the person to cease and desist
8 from the violation, and an action may be brought by the commissioner to
9 enjoin the person from engaging in or continuing the violation.

10 (2) In an action under this subchapter, an order or judgment may
11 be entered awarding a preliminary or permanent injunction.

12 (3) The court may impound property and appoint a receiver for
13 the property and business of the defendant, including books, papers,
14 documents, and records pertaining to the business or activity as the court
15 deems reasonably necessary to prevent violations of this subchapter through
16 the use of the property and business.

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

20 (e)(1) Reports of examinations and investigations of the commissioner
21 and the books and records of licensees are to be held strictly confidential.

22 (2) The commissioner shall not produce, reproduce, or otherwise
23 make information available to any person other than necessary personnel of
24 the Securities Department unless required by a subpoena.

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

27
28 23-32-611. Duties of licensee – Consumer protection.

29 (a) A licensee shall:

30 (1) Act with reasonable skill, care, and diligence in completing
31 a small loan transaction;

32 (2) Before approving a small loan, determine if the consumer has
33 the ability to pay for the loan by:

34 (A) Acquiring and reviewing the consumer's credit report;

35 (B) Preparing a budget that includes the consumer's
36 monthly income and expenditures to determine if the consumer has a positive

1 net cash flow sufficient to meet the payment requirements of the small loan;
2 and

3 (C) Provide financial literacy information to the
4 consumer;

5 (3) Retain copies of the budget and credit report acquired under
6 this section until the small loan is fully paid and provide copies of the
7 budget and credit report to the consumer when the small loan is made;

8 (4) Disclose the interest and finance charge of the small loan
9 in terms of an annual percentage rate according to regulations under the
10 Federal Truth in Lending Act of 1968, 12 C.F.R. Part 226, as they existed on
11 January 1, 2011;

12 (5) Accurately report the status of each small loan monthly to
13 the three (3) major credit bureaus, Equifax, Experian, and TransUnion;

14 (6)(A) Allow the borrower five (5) business days from the date a
15 small loan is approved to rescind the small loan for any reason.

16 (B) Upon rescission by the borrower fees paid by the
17 borrower shall be returned to the borrower and small loan proceeds shall be
18 returned to the licensee.

19 (C) The licensee shall not report the rescission to a
20 credit bureau;

21 (7)(A) Maintain accurate books, accounts, and records of small
22 loan transactions to enable the Securities Commissioner to determine
23 compliance with this subchapter.

24 (B) A licensee shall preserve the books, accounts, and
25 records for at least two (2) years after the last activity concerning a small
26 loan; and

27 (8) Comply with applicable federal and state law including
28 without limitation the following federal laws as they existed on January 1,
29 2011:

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

32 (B) The Fair Debt Collection Practices Act, 15 U.S.C. §
33 1692 et seq.;

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

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

1 (b) A licensee shall not with respect to a small loan:

2 (1) Fund less than two hundred fifty dollars (\$250) or more than
3 five thousand dollars (\$5,000);

4 (2) Fund the small loan if the total of all monthly payments
5 exceeds twenty-two and five-tenths percent (22.5%) of all borrowers' gross
6 monthly incomes;

7 (3) Maintain more than one (1) active small loan for each
8 borrower;

9 (4) Condition the funding of the small loan upon the purchase of
10 any good or service;

11 (5) Renew the small loan more than three (3) times in a calendar
12 year;

13 (6) Accept as payment:

14 (A) A check held for future deposit; or

15 (B) Electronic access to the borrower's deposit account
16 for future payment;

17 (7) Accept as security for the small loan the title to a
18 registered motor vehicle owned by a borrower;

19 (8) Charge an early payment penalty;

20 (9) Contract for mandatory arbitration of disputes between the
21 licensee and borrower;

22 (10) Contract to waive protections afforded to members of the
23 military under the Servicemember's Civil Relief Act, 50 U.S.C. Appendix, as
24 it existed on January 1, 2011, or similar law;

25 (11) Violate this subchapter or a rule or order issued by the
26 commissioner; or

27 (12) Engage in conduct involving fraud, dishonesty,
28 untruthfulness, or untrustworthiness.

29
30 23-32-612. Maximum rates of interest.

31 (a) Unless otherwise permitted under this subchapter, the maximum
32 lawful rate of interest on a small loan shall not exceed seventeen percent
33 (17%) per annum.

34 (b) A small loan shall be for a minimum term of six (6) months and a
35 maximum term of forty-eight (48) months.

1 (c) If a borrower fully pays a small loan before maturity, the
2 unearned interest, fees, and charges shall be refunded to the borrower.

3 (d) Except as provided in § 23-32-613, other charges under this
4 subchapter are prohibited.

5
6 23-32-613. Other permissible charges.

7 (a) Unless otherwise prohibited by law, in connection with a small
8 loan a licensee may charge:

9 (1) For each payment that is not paid within five (5) days after
10 the payment becomes due, a one-time delinquent charge of the lesser of:

11 (A) Five percent (5%) of the payment; or

12 (B) Fifteen dollars (\$15.00);

13 (2) A one-time dishonored check fee not to exceed twenty five
14 dollars (\$25.00) for a dishonored check, draft, negotiable order of
15 withdrawal, or like instrument drawn on a bank or other depository
16 institution given in full or partial repayment of a small loan;

17 (3) Fees or taxes paid or to be paid to a public office or
18 official for filing, recording, or releasing any document relating to the
19 small loan; and

20 (4) If provided in the small-loan contract, a reasonable
21 attorney's fee and other costs actually incurred to collect or enforce the
22 small loan.

23 (b) The charges allowed under this section shall not be considered
24 interest or finance charges for purposes of calculating the annual percentage
25 rate of the small loan.

26
27 23-32-614. Duties of Securities Commissioner – Fees.

28 (a) The Securities Commissioner shall administer this subchapter and
29 the small loan fund.

30 (b) All license fees, renewal fees, charges, fines, and penalties paid
31 to the commissioner under this subchapter shall be deposited into the Small
32 Loan Fund and used to administer this subchapter.

33 (c) A small loan found by the commissioner to violate this subchapter,
34 rules of the commissioner, or an order made under this subchapter is void as
35 to principal and interest.

36

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

3 19-6-819. Small Loan Fund.

4 (a) There is created on the books of the Treasurer of State, the
5 Auditor of State, and the Chief Fiscal Officer of the State a special revenue
6 fund to be known as the "Small Loan Fund".

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

9 (c) The fund shall be used by the Securities Commissioner to
10 administer the Small Loan Act, § 23-32-601 et seq.

11
12 Referred by the Arkansas House of Representatives

13 Prepared by: DLP/VJF
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