

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

As Engrossed: H3/29/01

# A Bill

HOUSE BILL 2583

5 By: Representative Glover  
6  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE THE ARKANSAS DEFERRED DEPOSIT  
10 LOAN ACT: TO DEFINE CERTAIN TERMS; TO REQUIRE  
11 CERTAIN DISCLOSURES IN DEFERRED DEPOSIT  
12 TRANSACTIONS; TO REGULATE THE FEES WHICH CAN BE  
13 CHARGED IN DEFERRED DEPOSIT TRANSACTIONS; AND FOR  
14 OTHER PURPOSES.

## Subtitle

17 AN ACT TO CREATE THE ARKANSAS DEFERRED  
18 DEPOSIT LOAN ACT.  
19  
20

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

23 SECTION 1. Title - purpose - definitions.

24 (a) This act shall be known as the "Arkansas Deferred Deposit Loan  
25 Act".

26 (b) This Act shall be liberally construed to effectuate its purpose.

27 (c) The purpose of the Act is to protect consumers who enter into  
28 short-term, high rate loans from abuses that occur in the credit marketplace  
29 when such lenders are unregulated.

30 (d) This Act is to be construed as a consumer protection statute for  
31 all purposes.  
32

33 SECTION 2. For purposes of this act:

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

1 loan;

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

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

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

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

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

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

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

23

24 SECTION 3. Applicability.

25 This act shall apply to:

26 (1) Any person who, for a fee, service charge, or other consideration,  
27 accepts a check dated on the date it was written and agrees to hold it for a  
28 period of days prior to deposit or presentment, or accepts a check dated  
29 subsequent to the date it was written, and agrees to hold the check for  
30 deposit until the date written on the check;

31 (2) Facilitators;

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

1 financial institutions; and

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

4  
5 SECTION 4. Exemptions.

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

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

14  
15 SECTION 5. Licensing.

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

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

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

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

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

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

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

1 deposit loans; and

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

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

6 (c) A public hearing shall be held for each original application and  
7 for renewals if one is requested in writing by five (5) or more members of  
8 the public or the executive director.

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

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

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

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

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

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

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

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

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

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

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

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

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

17  
18 SECTION 6. Information and Annual Reports.

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

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

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

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

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

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

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

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

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

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

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

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

17 (H) Verification that the licensee has not used the  
18 criminal process or caused the criminal process to be used in the collection  
19 of any deferred deposit loans during the calendar year ending as of December  
20 31<sup>st</sup> of the previous year.

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

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

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

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

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

36 (f)(1) Each licensee shall file a copy of the contract described in

1 section 8(b) and the fee schedule described in section 8(c) with the  
2 executive director prior to the date of commencement of business at each  
3 location, at the time any changes are made to the documents or schedule, and  
4 annually thereafter upon renewal of the license.

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

7  
8 SECTION 7. Required acts.

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

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

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

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

19 (e) The minimum amount of a deferred deposit loan is fifty dollars  
20 (\$50.00).

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

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

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

32 (i) The licensee shall provide the consumer, or each consumer if there  
33 is more than one (1), with a copy of the loan documents described in section  
34 8 prior to the consummation of the loan.

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

1 claims and defenses of the consumer.

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3 SECTION 8. Required Disclosures.

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

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

17 (1) The name, address, telephone number of the licensee making  
18 the deferred deposit loan, and the name and title of the individual employee  
19 who signs the agreement on behalf of the licensee;

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

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

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

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

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

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

35 (c) The following notices in English, Spanish, as well as other  
36 languages in which a significant amount of deferred deposit loan business is



1 conducted, shall be conspicuously posted by all licensees in each location of  
2 a business providing deferred deposit loan:

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

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

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

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

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

21  
22 SECTION 9. Permitted Charges.

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

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

29 (c)(1) In addition to the administrative fee, the licensee shall be  
30 permitted to charge interest on the amount of cash delivered to the consumer  
31 in a deferred deposit loan in an amount no great than thirty-six percent  
32 (36%) per annum, which is defined as a three hundred and sixty-five-day year.

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

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

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

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

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

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

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

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16           SECTION 10. Prohibited Acts.

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

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

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

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

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

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

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

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

36           (7) Charging to cash a check representing the proceeds of the deferred

1 deposit loan;

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

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

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

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

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

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

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

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

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

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

31 (A) Charges for insurance; and

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

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

36 (16) Making a misrepresentation of a material fact by an applicant in

1 obtaining or attempting to obtain a license;

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

4 (A) A hold harmless clause;

5 (B) A confession of judgment clause;

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

8 (D) A mandatory arbitration clause;

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

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

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

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

16  
17 SECTION 11. Enforcement.

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

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

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

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

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

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

35 (g) The remedies provided in this section are not intended to be the  
36 exclusive remedies available to a consumer, nor shall the consumer exhaust

1 any administrative remedies provided under this act or any other applicable  
2 law.

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

7 /s/ Glover

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