

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: S3/28/01

A Bill

SENATE BILL 6

5 By: Senator Hoofman
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7

For An Act To Be Entitled

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

Subtitle

11 TO AMEND THE CHECK-CASHERS ACT.
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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18 SECTION 1. Arkansas Code 23-52-102(3) and (4), concerning definitions
19 in the Check casher Act, is amended to read as follows:

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

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

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

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

30 ~~(C) Granting the customer the option to repurchase the customer's~~
31 ~~personal check for an agreed period of time prior to presentment of such check~~
32 ~~for payment or deposit. The term "deferred presentment" includes related terms~~
33 ~~such as "delayed deposit", "deferred deposit", or substantially similar terms~~
34 ~~evidencing the same type of transaction;~~
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36 SECTION 2. Arkansas Code 23-52-104 is amended to read as follows:

1 23-52-104. Permissible check-casher fees.

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

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

6 (2) Photographing the person signing the check;

7 (3) Securing check and customer records in a safe, fire-proof
8 place;

9 (4) Maintaining records as required by this chapter;

10 (5) Maintaining required capital and liquidity; and

11 (6) Processing, documenting, and closing the check-cashing ~~or~~
12 deferred deposit transactions.

13 ~~(b) The fee, when made and collected, shall not be deemed interest for~~
14 ~~any purpose of law, and a check-cashing transaction, including one (1) with a~~
15 ~~deferred presentment option, shall not be and shall not be deemed to be a~~
16 ~~loan, loan contract, or a contract for the payment of interest notwithstanding~~
17 ~~any disclosures required by this chapter.~~

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

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

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

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

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

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

1 ~~a check-casher; and~~

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

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

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

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

13 ~~(2)(1) The sale or issuance of money orders; and~~

14 ~~(3)(2) The initial issuance of any identification card.~~

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

17 23-52-106. Other terms of doing the check-cashing business.

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

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

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

36 ~~(d) The maker of any check purchased by a check-casher and accepted for~~

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

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

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

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

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

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

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

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

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

36 ~~(k)~~ Consistent with the nature of a deferred presentment option, no

1 ~~check-casher shall require a customer to provide security for the deferred~~
2 ~~presentment transaction or require the customer to provide a guaranty from~~
3 ~~another person.~~

4 ~~(f)~~ (f) Each check-casher shall pay all proceeds in cash for any check
5 purchased.

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

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

13 /s/ Hoofman

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