

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 85th General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 948

4
5 By: Senator Steele

For An Act To Be Entitled

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8
9 AN ACT TO CREATE THE PAYDAY LENDING ACT; AND FOR
10 OTHER PURPOSES.

Subtitle

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12
13 AN ACT TO CREATE THE PAYDAY LENDING ACT.
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

17
18 SECTION 1. Arkansas Code Title 23, Chapter 41, is amended to add an
19 additional subchapter 2 to read as follows:

20 23-41-201. Title.

21 This subchapter shall be known and cited as the "Payday Lending Act".

22
23 23-41-202. Definitions.

24 As used in this subchapter:

25 (1)(A) "Payday lender" means:

26 (i) A person, business, or other entity that makes a
27 payday loan;

28 (ii) A person, business, or other entity that holds,
29 acquires, or maintains an economic interest in the revenues generated by a
30 payday loan; or

31 (iii) Any party to an agency or partnership
32 agreement between an in-state entity and an out-of-state bank by which the
33 in-state party holds a predominant economic interest in the revenues
34 generated by a payday loan made to an Arkansas resident.

35 (B) "Payday lender" does not include state or federally
36 regulated financial institutions such as banks, savings and loan



1 associations, and credit unions.

2 (2) "Payday loan" means any transaction in which funds are
3 advanced to be repaid at a later date and includes:

4 (A) The cashing or deferred presentment of a check or other
5 instrument; or

6 (B) The selling or providing of an item, service, or
7 commodity incidental to the advance of funds.

8
9 23-41-203. Prohibited acts and practices.

10 (a) Unless otherwise authorized by law, no payday lender may make,
11 offer, or arrange a payday loan of three thousand dollars (\$3,000) or less.

12 (b) No person, business, or other entity may use any contrivance,
13 scheme, or device to evade the application of subsection (a) of this section.

14 (c) A payday loan contract with a resident of this state may not
15 include any provision:

16 (1) Applying the laws of a state other than Arkansas to govern
17 the terms and enforcement of the contract; or

18 (2) Designating a court other than a court of competent
19 jurisdiction for the county in which the borrower resides for the resolution
20 of disputes concerning the contract.

21 (d) An arbitration clause in a payday loan contract is unenforceable
22 if the contract is unconscionable.

23
24 23-41-204. Additional provisions for members of the military and their
25 spouses.

26 (a) If a borrower is a member of the military services of the United
27 States or is the spouse of a member, the payday lender:

28 (1) Is prohibited from garnishing any military wages or
29 salaries;

30 (2) Is prohibited from conducting any collection activity while
31 the military member is deployed to a combat or combat-support posting for the
32 duration of that deployment;

33 (3) Is prohibited from contacting the commanding officer of a
34 military member in an effort to collect on a loan to the military member or
35 his or her spouse;

36 (4) Agrees to be bound by the terms of any repayment agreement

1 negotiated through military counselors or third-party credit counselors; and

2 (5) Agrees to abide by any statement or proclamation by a
 3 military base commander that a specific payday lender branch location has
 4 been declared off limits to military personnel and their spouses.

5 (b) Whenever a loan is made, the payday lender shall provide to each
 6 borrower a notice describing the additional terms contained in subsection (a)
 7 of this section.

8
 9 23-41-205. Evidence.

10 (a) Notwithstanding § 4-2-202, parol or extrinsic evidence, including
 11 evidence about gift cards, telephone cards, the sale of goods or services,
 12 computer services, or any other consideration which may be tied to the loan,
 13 is admissible to determine if there has been any contrivance, device, or
 14 scheme used to evade the application of § 23-41-203(a).

15 (b) Any person or entity holding, acquiring, or maintaining an
 16 economic interest in the revenue generated by the loan shall be presumed to
 17 be the lender.

18
 19 23-41-206. Tax.

20 (a)(1) There is imposed a tax on all loans made in violation of § 23-
 21 41-203.

22 (2) The tax shall be administered and collected in connection
 23 with the Arkansas income taxation of the person, business, or other entity
 24 making the loan.

25 (b) The tax imposed by this section shall be at the rate of fifty
 26 percent (50%) of all proceeds received by the person, business, or other
 27 entity from any loan made in violation of § 23-41-203.

28 (c) A person, business, or other entity making a loan in violation of
 29 this subchapter shall declare and return the proceeds subject to taxation
 30 under this subsection as a part of that person or entity's Arkansas income
 31 tax return.

32 (d) The Revenue Division of the Department of Finance and
 33 Administration:

34 (1) Shall retain returns under this subsection apart from all
 35 other returns; and

36 (2) Shall not disclose any part of that return for any purpose

1 other than the collection of tax owed or a criminal prosecution.

2
3 23-41-207. Criminal enforcement.

4 (a) A person who violates § 23-41-203 is guilty of a misdemeanor and
5 shall be fined not more than five thousand dollars (\$5,000) or imprisoned not
6 more than one (1) year, or both fined and imprisoned.

7 (b) A person who is an accomplice to a violation of § 23-41-203 is
8 guilty of a misdemeanor and shall be fined not more than five thousand
9 dollars (\$5,000) or imprisoned not more than one (1) year, or both fined and
10 imprisoned.

11 (c) A person who has three (3) or more convictions for violating § 23-
12 41-203 and subsequently violates that section is guilty of a felony and shall
13 be fined not more than ten thousand dollars (\$10,000) or imprisoned not more
14 than five (5) years, or both fined and imprisoned.

15
16 23-41-208. Civil enforcement.

17 (a) A civil action may be brought by the borrower, the Attorney
18 General, or a prosecuting attorney on behalf of an individual borrower or
19 class of borrowers against any person, business, or other entity that
20 violates this subchapter.

21 (b) Any person, business, or other entity that violates this
22 subchapter shall be:

23 (1) Barred from collecting any indebtedness created by a payday
24 loan arising from the violation;

25 (2) Liable to the borrower for three (3) times the amount of any
26 interest or other charges associated with a loan arising from the violation;
27 and

28 (3)(A) Liable to the state for three (3) times the amount of any
29 interest or other charges associated with a loan arising from a violation.

30 (B) Whenever a successful action is brought by a
31 prosecuting attorney for a violation of this subchapter, one-half (1/2) of
32 the recovery on behalf of the state shall be distributed to the office of the
33 prosecuting attorney to supplement the budget of that office.

34 (c) In a successful action to enforce the provisions of this
35 subchapter, the court shall award costs and reasonable attorney's fees.

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