

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 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H1/22/07

A Bill

HOUSE BILL 1036

5 By: Representatives D. Johnson, Burris, Cook, Cornwell, Dickinson, Hall, Harrelson, J. Johnson, Key,
6 Maloch, Medley, S. Prater, Reep, Webb
7 By: Senators Womack, Whitaker
8
9

For An Act To Be Entitled

11 AN ACT TO CREATE THE OFFENSE OF UNLAWFUL CONSUMER
12 LOANS; TO ENFORCE THE PROVISIONS OF ARKANSAS
13 CONSTITUTION, ARTICLE 19, § 13; AND FOR OTHER
14 PURPOSES.

Subtitle

17 TO CREATE THE OFFENSE OF UNLAWFUL
18 CONSUMER LOANS.
19
20

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

23 SECTION 1. Arkansas Code Title 5, Chapter 63, Subchapter 2 is amended
24 to add an additional section to read as follows:

25 5-63-205. Unlawful consumer loans.

26 (a) As used in this section:

27 (1) "Check" means a check, warrant, draft, money order,
28 travelers' check, or other instrument for the payment of money, whether or
29 not negotiable, but excluding:

30 (A) Any such instrument drawn on an account or financial
31 institution outside of the United States; and

32 (B) Money or currency of any nation;

33 (2)(A) "Consumer loan" means a loan extended to an individual in
34 which the money that is the subject of the transaction is primarily used for
35 personal, family, or household purposes.

36 (B) "Consumer loan" does not include a loan that is



1 secured in full by tangible personal property other than a check or checks;

2 (3) "Financial institution" means a federally insured depository
3 institution including a state bank, a national bank, an out-of-state state-
4 chartered bank that has received a certificate of authority under § 23-48-
5 1001, a savings bank, a savings and loan association, a credit union, or a
6 credit union service organization that is:

7 (A) Organized under the laws of this state, another state,
8 or the United States; and

9 (B) Subject to regulation by the State Bank Department,
10 the State Credit Union Supervisor, the National Credit Union Administration,
11 the Office of the Comptroller of the Currency, the Federal Deposit Insurance
12 Corporation, the Board of Governors of the Federal Reserve System, the Office
13 of Thrift Supervision, or their successors;

14 (4) "Interest" means a charge or fee for the borrowing of
15 currency or money; and

16 (5) "Person" means an individual, group of individuals,
17 partnership, incorporated or unincorporated association, corporation, or any
18 other business unit or legal entity.

19 (b) It is unlawful for any person to knowingly charge a rate of
20 interest greater than seventeen percent (17%) per annum in a transaction
21 involving a consumer loan, as prohibited by Arkansas Constitution, Article
22 19, § 13.

23 (c)(1) Any person violating subsection (b) of this section is guilty
24 of a violation and upon conviction shall be fined three hundred dollars
25 (\$300).

26 (2) Each transaction involving an unlawful consumer loan is a
27 separate offense.

28 (d) A consumer loan is exempt from subsection (b) of this section if
29 the consumer loan is made by a financial institution.

30
31 *SECTION 2. Arkansas Code § 23-52-104 is amended to read as follows:*
32 *23-52-104. Permissible check-casher fees.*

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

35 *(1) Investigating the checking account and copying required*
36 *documents;*

- 1 (2) Photographing the person signing the check;
2 (3) Securing check and customer records in a safe, fireproof
3 place;
4 (4) Maintaining records as required by this chapter;
5 (5) Maintaining required capital and liquidity; and
6 (6) Processing, documenting, and closing the check-cashing or
7 deferred-deposit transactions.

8 (b) Unless otherwise authorized by this chapter, the fees fee
9 authorized by this section shall not exceed ~~the following~~:

10 ~~(1) For the service of selling currency or check in exchange for~~
11 ~~checks, without regard to whether a deferred presentment option is involved;~~

12 ~~(A) A fee not to exceed five percent (5%) of the face~~
13 ~~amount of the check if the check is the payment of any kind of state public~~
14 ~~assistance or federal social security benefit payable to the bearer of the~~
15 ~~check or the check is otherwise a check issued by a federal or state~~
16 ~~governmental entity;~~

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

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

23 ~~(2) For a deferred presentment option which involves a personal~~
24 ~~check, an additional fee not to exceed ten dollars (\$10.00) may be charged by~~
25 ~~a check-casher; and~~

26 ~~(3) In addition to the foregoing fees, a check-casher may charge~~
27 ~~a fee of no more than five dollars (\$5.00) to set up an initial customer~~
28 ~~account and issue an optional identification card for providing check-cashing~~
29 ~~services. A replacement optional identification card may be issued at a cost~~
30 ~~not to exceed five dollars (\$5.00) seventeen percent (17%) per annum of the~~
31 ~~face amount of the check.~~

32
33 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
34 General Assembly of the State of Arkansas that the Arkansas Constitution does
35 not contain a criminal penalty for charging a usurious interest rate; that
36 citizens of this state who are required to pay usurious interest rates are

1 subjected to financial burdens that can result in devastating financial
2 hardships; and that this act is immediately necessary because a criminal
3 penalty will protect the citizens of this state from persons or businesses
4 that charge an interest rate in violation of the Arkansas Constitution.
5 Therefore, an emergency is declared to exist and this act being immediately
6 necessary for the preservation of the public peace, health, and safety shall
7 become effective on:

8 (1) The date of its approval by the Governor;

9 (2) If the bill is neither approved nor vetoed by the Governor,
10 the expiration of the period of time during which the Governor may veto the
11 bill; or

12 (3) If the bill is vetoed by the Governor and the veto is
13 overridden, the date the last house overrides the veto.

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15 */s/ D. Johnson, et al*
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