

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

# A Bill

SENATE BILL 824

5 By: Senator Womack  
6 By: Representative Dunn  
7

## For An Act To Be Entitled

10 AN ACT TO IMPOSE DUTIES AND RESTRICTIONS ON  
11 CHECK-CASHERS AS RELATED TO MILITARY CUSTOMERS  
12 AND THEIR SPOUSES; TO IMPOSE PENALTIES FOR  
13 ROLLOVERS; TO ENCOURAGE AND PERMIT NO-FEE  
14 EXTENDED PAYOUTS; TO RESTRICT COLLECTION  
15 PRACTICES; TO OTHERWISE ENSURE FAIRNESS IN CHECK-  
16 CASHING; AND FOR OTHER PURPOSES.

## Subtitle

18 TO PROVIDE PENALTIES AND ENSURE FAIRNESS  
19 IN CHECK-CASHING UNDER THE CHECK-CASHERS  
20 ACT.  
21  
22  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code § 23-52-102 is amended to read as follows:  
27 23-52-102. Definitions.

28 As used in this chapter:

29 (1) "Armed services" means the National Guard, reserve  
30 components of the United States armed forces, United States Army, United  
31 States Navy, United States Marine Corps, United States Coast Guard, United  
32 States Air Force, and any other branch of the military and naval forces or  
33 auxiliaries of the United States or Arkansas;

34 ~~(1)~~(2) "Board" means the State Board of Collection Agencies;

35 ~~(2)~~(3) "Check" means a check, warrant, draft, money order,  
36 travelers' check, or other instrument for the payment of money, whether or



1 not negotiable, but excluding:

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

4 (B) Money or currency of any nation;

5 ~~(3)~~(4) "Check-casher" means a person who for compensation  
6 engages, in whole or in part, in the check-cashing business, but excluding:

7 (A) The United States, any state of the United States, any  
8 political subdivision of such state, or any department or agency of the  
9 United States or such state;

10 (B) Receipt of money by any incorporated telegraph company  
11 at any agency or office of the company for immediate transmission by  
12 telegraph;

13 (C) Any state or federally chartered bank, savings and  
14 loan association, or credit union;

15 (D) Any retail seller primarily engaged in the business of  
16 selling consumer or other goods to retail buyers that cash checks or issue  
17 money orders for a fee as a service to its customers that is incidental to  
18 its main purpose or business so long as revenue from such fees does not  
19 exceed three percent (3%) of such retail seller's gross revenues; and

20 (E) Issuance of a money order;

21 ~~(4)~~(5) "Check-cashing business" means the business of a check  
22 ~~cashier~~ casher:

23 (A) ~~selling~~ Selling currency or a check to another person  
24 in exchange for a check, with or without a deferred presentment option; or

25 (B) Assisting persons cashing checks to improve their  
26 credit history or ratings by avoiding statutory and other fees, costs, or  
27 charges associated with dishonored or insufficient funds checks, whether by  
28 deferred presentment option, credit enhancement, or otherwise;

29 ~~(5)~~(6) "Deferred presentment option" in connection with the  
30 check-cashing business means a transaction pursuant to a written agreement  
31 involving the following combination of activities in exchange for a fee:

32 (A) Accepting a customer's personal check dated on the  
33 date it was written;

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

36 (C) Granting the customer the option to repurchase the

1 customer's personal check for an agreed period of time prior to presentment  
 2 of such check for payment or deposit. The term "deferred presentment"  
 3 includes related terms such as "delayed deposit", "deferred deposit", or  
 4 substantially similar terms evidencing the same type of transaction;

5 (7) "Military customer" means a customer of a check-casher who  
 6 is a member of the armed services and who is on either active duty or active  
 7 guard and reserve status;

8 ~~(6)~~(8) "Permit" means a permit to engage in the check-cashing  
 9 business issued by the board in accordance with this chapter; ~~and~~

10 ~~(7)~~(9) "Person" means an individual, group of individuals,  
 11 partnership, incorporated or unincorporated association, corporation, or any  
 12 other business unit or legal entity-; and

13 (10) "Rollover" means the renewal, extension or other  
 14 consolidation of a deferred presentment option transaction upon payment of  
 15 only an additional fee by the customer as prohibited under § 23-52-106.  
 16

17 SECTION 2. Arkansas Code Title 23, Chapter 52, Subchapter 1 is amended  
 18 to add an additional section to read as follows:

19 23-52-118. Additional duties imposed on check-cashers for a military  
 20 customer or the spouse of a military customer.

21 (a) In addition to the other duties imposed on a check-casher under  
 22 this chapter or applicable by federal law under 10 U.S.C. § 987 and the rules  
 23 and regulations pertaining thereto, if a check casher's customer is a  
 24 military customer or the spouse of a military customer, the check-casher:

25 (1) Is bound by any statement or proclamation by an armed  
 26 services base commander or armed services reservation commander that a  
 27 specific check-casher branch location has been declared off-limits to armed  
 28 services personnel and their spouses or dependents; and

29 (2) Is exempt from any provision of the Military Service  
 30 Protection Act, § 12-62-801 et seq., that requires or could be interpreted to  
 31 require that a check-casher provide credit services to a member of the armed  
 32 services or to the spouse or dependent of a member of the armed services in  
 33 violation of this section.

34 (b) If a check-cashing business voluntarily establishes a policy to  
 35 disallow any check-cashing services to a military customer or the spouse or  
 36 dependents of a military customer, the check-cashing business shall not be

1 found to have violated the Military Service Protection Act, § 12-62-801 et  
2 seq.

3  
4 SECTION 3. Arkansas Code Title 23, Chapter 52 is amended to add an  
5 additional subchapter to read as follows:

6 23-52-201. Title.

7 This subchapter shall be known and may be cited as the "Fairness in  
8 Check-cashing Act".

9  
10 25-52-202. Full disclosure and compliance with other laws.

11 A check-casher shall comply with all state disclosure requirements  
12 relating to the check-cashing business and with the disclosure requirements  
13 under the Truth in Lending Act, 15 U.S.C. § 1601 et seq., as it existed on  
14 January 1, 2007, to the extent made applicable by federal law to deferred  
15 presentment options.

16  
17 23-52-203. Truthful advertising.

18 A check-casher shall not advertise its services in a false, misleading,  
19 or deceptive manner.

20  
21 23-52-204. Customer responsibility information.

22 (a) In addition to the other disclosure requirements under subchapter  
23 1 of this chapter, a check-casher providing deferred presentment options  
24 shall implement procedures to notify customers of the following:

25 (1) Deferred presentment options should be used for short-term  
26 financial needs only, not as a long-term financial solution;

27 (2) Customers with credit difficulties should seek credit  
28 counseling; and

29 (3) Notice of the availability of credit counseling services.

30 (b) The notifications required by this section shall be set forth on a  
31 page separate from the documents evidencing deferred presentment options.

32  
33 23-52-205. Rollovers.

34 (a) Rollovers are prohibited, and a check-casher shall not permit or  
35 otherwise provide a rollover to a customer.

36 (b) However, nothing provided in this subchapter shall be deemed to

1 prevent a check-casher from deferring or otherwise waiving its right to  
2 collect on a deferred presentment option for no additional fee.

3  
4 23-52-206. Right to rescind.

5 (a) A customer of a check-cashing business may rescind any deferred  
6 presentment option without cost or penalty to the customer on or before the  
7 close of business on the next business day following the day on which the  
8 deferred presentment option was made.

9 (b) To implement the rescission of a deferred presentment option under  
10 this section:

11 (1) A customer shall pay the check-casher all moneys received by  
12 the customer in connection with the deferred presentment option that is being  
13 rescinded; and

14 (2) The check-casher shall pay or otherwise reimburse the  
15 customer any fee received by the check-casher for the deferred presentment  
16 option and deliver the subject check to the customer.

17  
18 23-52-207. Collection practices.

19 (a) A check-casher shall collect on any check or past-due accounts in  
20 a professional, fair, and lawful manner.

21 (b) A check-casher shall comply with the requirements of the Fair Debt  
22 Collection Practices Act, 15 U.S.C. § 1692 et seq., as it existed on January  
23 1, 2007, and § 17-24-307(5)-(13) regarding harassment or abuse, false or  
24 misleading misrepresentations, and unfair practices in collections.

25 (c) A check-casher shall not go to a customer's place of employment to  
26 collect any check or past-due accounts.

27  
28 23-52-208. No criminal action.

29 A check-casher shall not threaten or pursue criminal action against a  
30 customer in connection with a deferred presentment option.

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32 23-52-209. Extended payment plan for deferred presentment option  
33 checks.

34 Subject to the rollover prohibitions in this subchapter, a customer and  
35 a check-casher may enter into an extended payment plan in connection with a  
36 deferred presentment option under the following terms and provisions:

1           (1) The extended payment plan shall be requested by the customer  
2 and entered into before the expiration of the deferred presentment option;

3           (2) Before entering into the extended payment plan, the customer  
4 shall provide the check-casher written proof that the customer has obtained  
5 credit counseling with respect to the use of deferred presentment options  
6 under this chapter;

7           (3) If the customer and the check-casher agree to an extended  
8 payment plan, then they shall enter into a written agreement evidencing the  
9 extended payment plan that provides that the customer:

10           (A) Shall pay any amount due under the incomplete deferred  
11 presentment option with no additional fee or charge of any kind in at least  
12 four (4) equal installments over an aggregate term of at least sixty (60)  
13 days; and

14           (B) May pay the full amount due under the extended payment  
15 plan at any time without charge or penalty;

16           (4) An extended payment plan is not and shall not be deemed to  
17 be a rollover;

18           (5) The check-casher and the customer shall not participate in a  
19 deferred presentment option while the customer is making payments under the  
20 extended payment plan;

21           (6) A check-casher may arrange for payment under an extended  
22 payment plan:

23           (A)(i) With the customer's electronic debit authorization.

24           (ii) However, the customer may terminate the  
25 electronic debit authorization at any time without default under the extended  
26 payment plan; or

27           (B) At the beginning of the extended payment plan and  
28 after each agreed payment under the extended payment plan with a new customer  
29 check for the remainder of the extended payment plans then term in the  
30 appropriate amount;

31           (7) Payments by a customer under this subsection shall be deemed  
32 to be partial payments under § 23-52-106(d), and that the check-casher shall  
33 not deposit the customer's original check that is the subject of the  
34 incomplete deferred presentment option and extended payment plan  
35 notwithstanding any other provision of this chapter; and

36           (8) An extended payment plan shall not be available to any

1 transaction that is not a deferred presentment option.

2  
3 23-52-210 Remedies.

4 (a) The State Board of Collection Agencies may enforce the provisions  
5 of this subchapter in the same manner as it may enforce the provisions of  
6 subchapter 1 of this chapter.

7 (b) If a check-casher violates this subchapter by permitting or  
8 providing a rollover in connection with a deferred presentment option, then  
9 the deferred presentment option is void, and the customer involved with the  
10 rollover:

11 (1) Shall not be obligated on the check that was the subject of  
12 the rollover; and

13 (2) Shall be entitled to recover from the check-casher the check  
14 involved in the rollover together with an amount equal to two (2) times the  
15 amount of the check paid by the customer or one thousand dollars (\$1,000),  
16 whichever is greater.