

State of Arkansas
86th General Assembly
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A Bill

SENATE BILL 923

By: Senator T. Smith
By: Representative Dunn

For An Act To Be Entitled

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

Subtitle

TO PROVIDE PENALTIES AND ENSURE FAIRNESS
IN CHECK-CASHING UNDER THE CHECK-CASHERS
ACT.

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

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

23-52-102. Definitions.

As used in this chapter:

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

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

~~(2)~~(3) "Check" means a check, warrant, draft, money order, 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

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

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

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

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

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

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

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

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

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

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

(b) If a check-cashing business voluntarily establishes a policy to disallow any check-cashing services to a military customer or the spouse or 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.

31
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.