

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S3/16/99

A Bill

Act 1216 of 1999
SENATE BILL 781

5 By: Senators Webb, Kennedy, B. Walker
6 *By: Representatives French, Harris, T. Smith, Bookout, Booker, House, Gillespie, Wilkinson,*
7 *Pappas, Horn, Ammons, Glover, Laverty, Hausam, Broadway, Vess, Lancaster, Napper, Jacobs,*
8 *Davis*
9

For An Act To Be Entitled

10
11
12 "AN ACT TO LICENSE AND REGULATE CHECK-CASHING AND
13 DEFERRED PRESENTMENT OPTION SERVICES; TO PROVIDE FOR
14 DEFINITIONS; TO PROVIDE FOR ADMINISTRATION BY THE
15 STATE BOARD OF COLLECTION AGENCIES; TO PROVIDE FOR
16 EXEMPTIONS, FINES, AND PENALTIES; AND FOR OTHER
17 PURPOSES. "

Subtitle

18
19
20 "TO PROVIDE AN ACT TO LICENSE AND
21 REGULATE CHECK-CASHING AND DEFERRED
22 PRESENTMENT OPTION BUSINESSES. "

23
24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Title.

26
27 This act shall be known and may be cited as the "Check-cashers Act."
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29

SECTION 2. Definitions.

30 As used in this act:

31 (1) "Check" means a check, warrant, draft, money order, travelers
32 check, or other instrument for the payment of money, whether or not
33 negotiable; but excluding:
34

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

- 1 (B) Money or currency of any nation;
2 (2) "Check-casher" means a person that for compensation engages, in
3 whole or in part, in the check-cashing business; but excluding:
4 (A) The United States, any state of the United States, any
5 political subdivision of such state or any department or agency of the United
6 States or such state;
7 (B) Receipt of money by any incorporated telegraph company at any
8 agency or office of the company for immediate transmission by telegraph;
9 (C) Any state or federally chartered bank, savings and loan
10 association or credit union;
11 (D) Any retail seller primarily engaged in the business of
12 selling consumer or other goods to retail buyers that cash checks or issue
13 money orders for a fee as a service to its customers that is incidental to its
14 main purpose or business so long as revenue from such fees do not exceed three
15 percent (3%) of such retail seller's gross revenues; and
16 (E) Issuance of a money order;
17 (3) "Check-cashing business" means the business of a check cashier
18 selling currency or a check to another person in exchange for a check, with or
19 without a deferred presentment option;
20 (4) "Deferred presentment option" means in connection with the check-
21 cashing business, a transaction pursuant to a written agreement involving the
22 following combination of activities in exchange for a fee:
23 (A) Accepting a customer's personal check dated on the date it
24 was written;
25 (B) Paying that customer an amount of money equal to the face
26 amount of that check, less any fees charged pursuant to this act; and
27 (C) Granting the customer the option to repurchase the customer's
28 personal check for an agreed period of time prior to presentment of such check
29 for payment or deposit. The term "deferred presentment" includes related
30 terms such as "delayed deposit", "deferred deposit" or substantially similar
31 terms evidencing the same type of transaction;
32 (5) "Department" means the State Board of Collection Agencies;
33 (6) "Person" means an individual, group of individuals, partnership,
34 incorporated or unincorporated association, corporation, or any other business
35 unit or legal entity; and
36 (7) "Permit" means a permit to engage in the check-cashing business

1 issued by the department in accordance with this act.

2
3 SECTION 3. Permit required.

4 No person shall engage in the check-cashing business without first
5 obtaining a permit from the department in accordance with this act. A
6 separate permit shall be required for each location from which such check-
7 cashing business is conducted.

8
9 SECTION 4. Permissible check-casher fees.

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

12 (1) Investigating the checking account and copying required
13 documents;

14 (2) Photographing the person signing the check;

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

17 (4) Maintaining records as required by this act;

18 (5) Maintaining required capital and liquidity; and

19 (6) Processing, documenting, and closing the check-cashing or
20 deferred deposit transactions.

21 (b) The fee, when made and collected, shall not be deemed interest for
22 any purpose of law, and a check cashing transaction, including one with a
23 deferred presentment option, shall not be, and shall not be deemed to be, a
24 loan, loan contract or a contract for the payment of interest notwithstanding
25 any disclosures required by this act.

26 (c) The fees authorized by this section shall not exceed the following,
27 unless otherwise authorized by this act:

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

30 (A) A fee not to exceed five percent (5%) of the face
31 amount of the check if such check is the payment of any kind of state public
32 assistance or federal social security benefit payable to the bearer of such
33 check or such check is otherwise a check issued by a federal or state
34 governmental entity;

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

1 (C) A fee not in excess of six percent (6%) of the face
2 amount of the check in the case of all other checks. Such fee may be
3 collected separately or by paying the customer an amount of money equal to the
4 face amount of the check less the appropriate fee under this act.

5 (2) For a deferred presentment option which involves a personal
6 check, an additional fee not to exceed ten dollars (\$10.00) may be charged by
7 a check-casher.

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

13
14 SECTION 5. General disclosure.

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

17 (1) Cashing checks and making any deferred presentment option
18 thereof;

19 (2) The sale or issuance of money orders; and

20 (3) The initial issuance of any identification card.

21 (b) Each check-casher shall also post a list of valid identification
22 which is acceptable in lieu of identification provided by the person cashing
23 the check. The information required by this section shall be posted at each
24 location at which the check-casher conducts the check-cashing business and in
25 clear, legible letters not less than one-half (1/2) inch in height. The
26 information shall be posted in a conspicuous location in the unobstructed view
27 of the public within the check-casher's premises.

28
29 SECTION 6. Other terms of doing the check-cashing business.

30 (a) A check-casher may not purchase a check for the purpose of deferred
31 presentment option without receiving from the customer a written certification
32 that the account upon which the check is drawn is legitimate and open, which
33 certification may be contained in the body of the deferred presentment option
34 agreement required by this act.

35 (b) Before a check-casher shall present for payment or deposit a check
36 purchased by the check-casher, the check shall be endorsed with the actual

1 name under which the check-casher is doing business.

2 (c) Any agreement for a deferred presentment option of a check shall be
3 in writing and signed by the maker of the check. Such written agreement shall
4 contain a written explanation, in clear, understandable language, of the fees
5 to be charged by the check-casher, and the date on which the check will be
6 deposited or presented by the check-casher. Without limitation, such
7 explanation shall contain a statement of the total amount of any fees charged
8 for the deferred presentment option expressed both in United States currency
9 and as an annual percentage rate. Enactment of this subsection shall not
10 create any inference that a particular method of disclosure was required prior
11 to the effective date of this act.

12 (d) The maker of any check purchased by a check-casher and accepted for
13 deferred presentment option shall have the right to repurchase that check from
14 the check-casher before the agreed date of deposit upon payment to the check-
15 casher of the face amount of that check. If a check-casher accepts a partial
16 payment, that check may not be presented for deposit nor may the check-casher
17 charge any additional fee. A check-casher shall not defer presentment of any
18 check for less than six (6) calendar days nor more than thirty-one (31)
19 calendar days after the date the check is sold to the check-casher.

20 (e) A check-casher shall issue a copy of the written agreement to each
21 person for whom a check-casher grants a repurchase option and defers deposit
22 of a check.

23 (f) A check-casher shall comply with all provisions of state and
24 federal law regarding cash transactions and cash transaction reporting.

25 (g) If a check is returned to the check-casher from a payer bank or
26 other financial institution due to insufficient funds, closed account, or a
27 stop payment order, the check-casher shall have the right to all civil
28 remedies allowed by law to collect the check and shall be entitled to recover
29 any returned check fee authorized by applicable Arkansas law, court costs and
30 reasonable attorney's fee paid to an attorney who is not a salaried employee
31 of the check-casher.

32 (h) If a check is returned to a check-casher from a payer financial
33 institution because there are insufficient funds in or on deposit with the
34 financial institution to pay the check, the check-casher or any other person
35 on behalf of the check-casher shall not institute or initiate any criminal
36 prosecution against the customer who sold such check to the check-casher,

1 unless the check-casher would otherwise be entitled to institute or initiate a
2 criminal prosecution against such customer under applicable Arkansas criminal
3 law and such check is returned to the check-casher because:

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

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

8 (i) No check-casher may alter or delete the date on any check accepted
9 by the check-casher.

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

12 (k) Consistent with the nature of a deferred presentment option, no
13 check-casher shall require a customer to provide security for the deferred
14 presentment transaction or require the customer to provide a guaranty from
15 another person.

16 (l) Each check-casher shall pay all proceeds in cash for any check
17 purchased.

18 (m) No check-casher shall have more than one (1) deferred presentment
19 check outstanding at any time from any one customer per permitted location. A
20 deferred presentment check purchased from any one customer and outstanding at
21 any one time shall not exceed *four hundred dollars (\$400)*.

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

25
26 SECTION 7. Qualification for check-casher permit.

27 A check-casher permit applicant shall satisfy the following requirements
28 to qualify for a permit under this act:

29 (1) The applicant shall have a minimum cash or other liquid assets of
30 at least twenty thousand dollars (\$20,000) for the operation of each location
31 at which the applicant will engage in the check-cashing *business and shall be*
32 *required to post with the Department of Finance and Administration a fifty*
33 *thousand dollar (\$50,000) bond payable to the State of Arkansas.*

34 (2) The financial responsibility, financial condition, and business
35 experience of the applicant shall reasonably warrant the belief that the
36 applicant's check-cashing business will be conducted in accordance with this

1 act. In determining whether this qualification has been met, and for the
2 purpose of investigating compliance with this act, the department may review
3 and approve the following:

4 (A) The relevant business records and the capital adequacy of the
5 applicant; and

6 (B) The competence, experience, and financial ability of any
7 person who is a member, partner, director, officer, or five percent (5%) or
8 more shareholder of the applicant or who otherwise controls the applicant.

9 (3) The requirements set forth in subdivisions (1) and (2) shall be
10 continuing in nature.

11 (4) The department shall deny an application for a permit to conduct a
12 check-cashing business, or for renewal of a permit, if the applicant, or any
13 person referred to in subdivision (2)(A) of this section, has a felony
14 conviction involving dishonesty, fraud, or deceit, provided the crime is
15 substantially related to the qualifications, functions, or duties of a person
16 engaged in the check-cashing business.

17
18 SECTION 8. Form of application for permit.

19 (a) Each application for a check-cashing permit shall be in writing in
20 a form prescribed by the department, and shall include at least the following:

21 (1) The legal name, residence, business address, and telephone
22 number of the applicant. If the applicant is a partnership, association,
23 limited liability company, or corporation, the name and address of every
24 member, officer, and director; and

25 (2) Such other data and information the department may require
26 with respect to the applicant, its directors, officers, partners or members.

27 (b) For each location at which the applicant wants to engage in the
28 check-cashing business, each application for a permit shall be accompanied by
29 both of the following:

30 (1) An initial permit fee of five hundred dollars (\$500) which
31 shall not be subject to refund; and

32 (2) A financial statement showing applicant has at least twenty
33 thousand dollars (\$20,000) in liquid or other cash assets available for the
34 operation of the check-casing business prepared in accordance with standard
35 accounting practices and procedures.

36

1 SECTION 9. Department action and issuance of permits.

2 (a) Upon the filing of an application in the form prescribed by the
3 department, accompanied by the fees and documents required in this act, the
4 department shall investigate to ascertain whether the qualifications
5 prescribed by Section 7 of this act have been satisfied. If the department
6 finds that the qualifications have been satisfied, and approves the documents,
7 the department shall issue to the applicant a permit to engage in the check-
8 cashing business in Arkansas at the locations specified in the application as
9 approved by the department.

10 (b) No person engaged in the check-cashing business shall conduct any
11 other business within the same location without having obtained prior written
12 approval from the department.

13 (c) The check-casher permit shall be kept conspicuously posted in the
14 check-casher's place of business, and shall not be assignable or transferable
15 nor moved to another location without permission of the department.

16 (d) The annual permit fee after the initial permit fee shall be four
17 hundred dollars (\$400) for each office, branch, or place of business of the
18 check-casher, which shall be due on August 1 of each year, and shall be for a
19 one (1) year period ending July 31, and shall be delinquent on September 1 of
20 each year, and there shall be a penalty of ten percent (10%) for each month or
21 part thereof that the check-casher is delinquent in the payment of such permit
22 fee. All permit fees collected by the department shall be used by the
23 department in the supervision and examination of check-cashers and the
24 issuance of permits under this act.

25 (e) Persons operating check-cashing business on the effective date of
26 this act shall have until the beginning of the next permit year after this act
27 becomes effective to apply for a permit under this act and to pay the required
28 permit fee, and upon qualification and payment of such required fee shall be
29 granted a permit under this act; provided that such check-cashers shall comply
30 with the other provisions of this act pending such application.

31 (f) A check-casher may voluntarily surrender its permit to the
32 department; however, such check-casher shall not be entitled to receive a
33 refund of any permit fees previously paid. Upon surrender, the check-casher
34 shall immediately make available to the department all books, records and
35 papers required to be created and maintained under this act or regulations
36 promulgated by the department under this act.

1
2 SECTION 10. Change of control of check-casher.

3 The prior written approval of the department shall be required for the
4 continued operation of a check-cashing business whenever a change in control
5 of a permitted check-casher is proposed. Control in the case of a corporation
6 shall mean direct or indirect ownership, or the right to control, twenty-five
7 percent (25%) or more of the voting shares of the corporation, or the ability
8 of a person to elect a majority of the directors. Control in the case of any
9 other entity shall mean the ability to change the principles of the
10 organization, whether active or passive. The department may require
11 information deemed necessary to determine whether a new application is
12 required.

13
14 SECTION 11. Regulations.

15 The department is authorized and empowered to promulgate reasonable
16 regulations for the execution and enforcement of this act. However, before
17 any rules and regulations promulgated by the department shall be effective,
18 they must be approved by the Director of the Department of Finance and
19 Administration and issued in accordance with the Arkansas Administrative
20 Procedure Act, beginning at Arkansas Code § 25-15-201.

21
22 SECTION 12. Records and inspections.

23 (a) Each check-casher shall keep and use in its business any books,
24 accounts, and records the department may require to carry into effect the
25 provisions of this act and the administrative regulations issued hereunder;
26 provided, such records may be retained on computer or other electronic storage
27 devices.

28 (b) For the purpose of determining compliance with this act, the
29 department may, at any reasonable time, cause an examination to be made at a
30 check-casher's place of business of the records and transactions of such
31 check-casher. Each check-casher shall preserve all relevant records for a
32 period of at least two (2) years after making the last entry on any
33 transaction, and the department shall have free access to such records at the
34 check-casher's place of business at all reasonable times during the check-
35 casher's normal business hours. If the department has probable cause to
36 believe that a person has engaged in an activity which violates the provisions

1 of this act, the department may compel the production of such books and
2 records of the person as the department has probable cause to believe are
3 relevant to the alleged violation.

4
5 SECTION 13. Appeal of permit denial.

6 (a) If the department determines that an applicant is not qualified to
7 receive a permit, the department shall notify the applicant in writing that
8 the application has been denied, stating the basis for denial.

9 (b) If the department denies an application, or if the department fails
10 to act on an application within ninety (90) days after the filing of a
11 properly completed application, the applicant may make a written demand to the
12 department for a hearing before the department on the question of whether the
13 permit should be granted.

14 (c) At the hearing, the burden of proving that the applicant is
15 entitled to a permit under this act shall be on the applicant. A decision of
16 the department following any hearing on the denial of a permit may be subject
17 to review in accordance with the Arkansas Administrative Procedure Act.

18
19 SECTION 14. Revocation or suspension of permit.

20 (a) The department may, after notice and hearing, suspend or revoke any
21 permit if the director finds that the check-casher has knowingly or through
22 lack of due care has committed one of the following:

23 (1) Failed to pay the annual permit fee imposed by this act or an
24 examination fee imposed by the department under the authority of this act;

25 (2) Violated a provision of this act or an administrative
26 regulation issued pursuant to this act; and

27 (3) Made a false statement in the application for the permit or
28 failed to give a true reply to a question in the application.

29 (b) If the reason for revocation or suspension of a permit of the
30 check-casher at any one location is of general application to all locations
31 operated by a check-casher, the department may revoke or suspend all permits
32 issued to the check-casher.

33 (c) Any hearing under this section shall be held on written notice
34 given at least twenty (20) days prior to the date of the hearings.

35
36 SECTION 15. Department remedies for violation of this act.

1 If, after a hearing, the department finds that a person has violated
2 this act, or any administrative regulation issued pursuant to this act, the
3 department may do any or all of the following:

4 (1) Order the person to cease and desist violating this act or any
5 administrative rules issued pursuant thereto;

6 (2) Require the refund of any fees collected by such person in
7 violation of this act;

8 (3) Order the person to pay to the department a civil penalty of not
9 more than one thousand dollars (\$1,000) for each transaction in violation of
10 this act or for each day that a violation has occurred and continues.

11
12 SECTION 16. Consent Orders.

13 (a) The department may enter into consent orders at any time with any
14 person to resolve any matter arising under this act. A consent order shall be
15 signed by the person to whom it is issued, or an authorized representative,
16 and shall indicate agreement to the terms contained therein. A consent order
17 need not constitute an admission by any person that any provision of this act,
18 or any rule, regulation, or order promulgated or issued pursuant to this act
19 has been violated, nor need it constitute a finding by the department that
20 such person has violated any provision of this act or any rule, regulation, or
21 order promulgated or issued hereunder.

22 (b) Notwithstanding the issuance of a consent order, the department may
23 seek civil or criminal penalties or compromise civil penalties concerning
24 matters encompassed by the consent order.

25
26 SECTION 17. Complaints.

27 (a) Without limiting any other right, power or remedy of the department
28 under this act, or the Attorney General pursuant to authority granted under
29 Subchapter 1 of Chapter 88 of Title 4 of the Arkansas Code pertaining to
30 deceptive trade practices, any person aggrieved by the conduct of a check-
31 casher under this act in connection with the regulated activities of the
32 check-casher may file a written complaint with the department which may
33 investigate the complaint.

34 (b) In the course of the investigation of the complaint, the department
35 may do any or all of the following:

36 (1) Subpoena witnesses;

1 (2) Administer oaths;

2 (3) Examine any individual under oath; and

3 (4) Compel the production of records, books, papers, contracts,
4 or other documents relevant to the investigation.

5 (c) If a person fails to comply with a subpoena of the department under
6 this act or to testify concerning any matter about which the person may be
7 interrogated under this act, the department may petition any court of
8 competent jurisdiction for enforcement.

9 (d) The permit of any check-casher under this act who fails to comply
10 with a subpoena of the director may be suspended pending compliance with the
11 subpoena.

12 (e) A person who wilfully makes charges in excess of those permitted by
13 Section 4 of this act or a person who wilfully engages in the check-cashing
14 business in violation of this act, is guilty of a Class A misdemeanor.

15 (f) Any action for a civil remedy under this act by the department or
16 any other person against a check-casher must be commenced within five (5)
17 years after the action or inaction giving rise to the right to seek such civil
18 remedy.

19
20 SECTION 18. All provisions of this act of a general and permanent
21 nature are amendatory to the Arkansas code of 1987 Annotated and the Arkansas
22 Code Revision Commission shall incorporate the same in the Code.

23
24 SECTION 19. If any provision of this act or the application thereof to
25 any person or circumstance is held invalid, such invalidity shall not affect
26 other provisions or applications of the act which can be given effect without
27 the invalid provision for application, and to this end the provisions of this
28 act are declared to be severable.

29
30 SECTION 20. All laws and parts of laws in conflict with this act are
31 hereby repealed, provided that nothing in this act shall be deemed to replace,
32 modify, or supersede the provisions of the Arkansas Uniform Commercial Code
33 dealing with checks.

34
35 SECTION 21. EMERGENCY CLAUSE. It is hereby found and determined by the
36 Eighty-second General Assembly that the effectiveness of this act on its

1 passage or approval is essential to the operation of the deferred presentment
2 check-cashing and other check-cashing business in Arkansas and that a delay in
3 the effective date of this act could work irreparable harm on consumers of the
4 State of Arkansas who use such services.. Therefore, an emergency is declared
5 to exist and this act being immediately necessary for the preservation of the
6 public peace, health and safety shall become effective on the date of its
7 approval by the Governor. If the bill is neither approved nor vetoed by the
8 Governor, it shall become effective on the expiration of the period of time
9 during which the Governor may veto the bill. If the bill is vetoed by the
10 Governor and the veto is overridden, it shall become effective on the date the
11 last house overrides the veto.

12 /s/ Webb

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15 APPROVED: 4/7/1999
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