

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 *As Engrossed: H1/22/07 H1/30/07 H2/6/07*

2 86th General Assembly

# A Bill

3 Regular Session, 2007

HOUSE BILL 1036

4

5 By: Representatives D. Johnson, Burris, Cook, Cornwell, Dickinson, Hall, Harrelson, J. Johnson, Key,  
6 Maloch, Medley, S. Prater, Reep, Webb, *Abernathy, Allen, Berry, Bond, Breedlove, E. Brown, J. Brown,*  
7 *D. Creekmore, Davis, S. Dobbins, Edwards, D. Evans, Flowers, Garner, Gaskill, R. Green, Greenberg,*  
8 *Harris, Hoyt, D. Hutchinson, King, Lamoureux, W. Lewellen, Lovell, M. Martin, Pate, Pennartz, Pickett,*  
9 *Pierce, Powers, Ragland, Rainey, Reynolds, J. Roebuck, Rosenbaum, Sample, L. Smith, Sullivan, Walters,*  
10 *Wills, Lowery*

11 By: Senators Womack, Whitaker, *Glover*

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## For An Act To Be Entitled

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

19

20

## Subtitle

21

TO CREATE THE OFFENSE OF UNLAWFUL  
22 CONSUMER LOANS.

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

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

29

5-63-205. Unlawful consumer loans.

30

(a) As used in this section:

31

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

34

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

36

(B) Money or currency of any nation;



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

4           (B) "Consumer loan" does not include a loan that is  
5 secured in full by tangible personal property of which the lender takes  
6 possession other than a check or checks;

7           (3) "Financial institution" means a federally insured depository  
8 institution including a state bank, a national bank, an out-of-state state-  
9 chartered bank that has received a certificate of authority under § 23-48-  
10 1001, a savings bank, a savings and loan association, a credit union, or a  
11 credit union service organization that is:

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

14           (B) Subject to regulation by the State Bank Department,  
15 the State Credit Union Supervisor, the National Credit Union Administration,  
16 the Office of the Comptroller of the Currency, the Federal Deposit Insurance  
17 Corporation, the Board of Governors of the Federal Reserve System, the Office  
18 of Thrift Supervision, or their successors;

19           (4) "Interest" means a charge or fee for the borrowing of  
20 currency or money between a willing lender and a willing borrower; and

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

24           (b) It is unlawful for any person to knowingly charge a rate of  
25 interest greater than seventeen percent (17%) per annum in a transaction  
26 involving a consumer loan, as prohibited by Arkansas Constitution, Article  
27 19, § 13.

28           (c)(1) Any person violating subsection (b) of this section is guilty  
29 of a violation and upon conviction shall be fined three hundred dollars  
30 (\$300).

31           (2) Each transaction involving an unlawful consumer loan is a  
32 separate offense.

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

35  
36           SECTION 2. Arkansas Code § 23-52-102 is amended to read as follows:

1           23-52-102. Definitions.

2           As used in this chapter:

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

4                   (2) "Check" means a check, warrant, draft, money order,  
5 travelers' check, or other instrument for the payment of money, whether or  
6 not negotiable, but excluding:

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

9                           (B) Money or currency of any nation;

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

12                           (A) The United States, any state of the United States, any  
13 political subdivision of such state, or any department or agency of the  
14 United States or such state;

15                           (B) Receipt of money by any incorporated telegraph company  
16 at any agency or office of the company for immediate transmission by  
17 telegraph;

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

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

25                           (E) Issuance of a money order;

26                   (4) "Check-cashing business" means the business of a ~~check~~  
27 ~~cashier~~ selling currency or a check to another person in exchange for a  
28 check, with or without a deferred presentment option;

29                   (5) "Deferred presentment option" in connection with the check-  
30 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~~  Holding the customer's personal check for an

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

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

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

12  
 13 SECTION 3. Arkansas Code § 23-52-104 is amended to read as follows:

14 23-52-104. Permissible check-casher fees.

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

17 (1) Investigating the checking account and copying required  
 18 documents;

19 (2) Photographing the person signing the check;

20 (3) Securing check and customer records in a safe, fireproof  
 21 place;

22 (4) Maintaining records as required by this chapter;

23 (5) Maintaining required capital and liquidity; and

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

26 (b) Unless otherwise authorized by this chapter, the fees authorized  
 27 by this section shall not exceed the following:

28 (1) For the service of ~~selling~~ exchanging currency or a check in  
 29 exchange for checks ~~a check, without regard to whether~~ in a transaction in  
 30 which a deferred presentment option is not involved, a check-casher may  
 31 charge:

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

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

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

7 (2) ~~For a deferred presentment option which involves a personal~~  
8 ~~check, an additional fee not to exceed ten dollars (\$10.00) may be charged by~~  
9 ~~a check-casher~~ For the service of exchanging currency or a check for a check  
10 in a transaction in which a deferred presentment option is involved, the  
11 check-casher may charge a fee not to exceed seventeen percent (17%) per annum  
12 of the face amount of the check; and

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

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19 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the  
20 General Assembly of the State of Arkansas that the Arkansas Constitution does  
21 not contain a criminal penalty for charging a usurious interest rate; that  
22 citizens of this state who are required to pay usurious interest rates are  
23 subjected to financial burdens that can result in devastating financial  
24 hardships; and that this act is immediately necessary because a criminal  
25 penalty will protect the citizens of this state from persons or businesses  
26 that charge an interest rate in violation of the Arkansas Constitution.  
27 Therefore, an emergency is declared to exist and this act being immediately  
28 necessary for the preservation of the public peace, health, and safety shall  
29 become effective on:

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

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

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

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*/s/ D. Johnson, et al*