

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

SENATE BILL 773

5 By: Senator M. Lamoureux
6 By: Representative Woods
7

For An Act To Be Entitled

9 AN ACT TO ENACT THE SMALL LOAN ACT TO HELP
10 UNDERSERVED CONSUMERS OBTAIN CREDIT AND FINANCIAL
11 OPPORTUNITIES; AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO ENACT THE SMALL LOAN ACT TO HELP
16 UNDERSERVED CONSUMERS OBTAIN CREDIT AND
17 FINANCIAL OPPORTUNITIES.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 23, Chapter 32 is amended to add an
23 additional subchapter to read as follows:

24 Subchapter 6 – Small Loan Act

25
26 23-32-601. Title.

27 This subchapter shall be known as and may be cited as the "Small Loan
28 Act".
29

30 23-32-602. Legislative findings – Intent.

31 (a) The General Assembly finds and determines that:

32 (1) A demand for small loans exists among citizens of this
33 state. The scope and intensity of this demand have been increased
34 progressively by social and economic forces;

35 (2) A substantial population in this state does not have access
36 to traditional sources of consumer credit, financial services, or bank



1 checking accounts;

2 (3) Individuals that do not have or maintain traditional bank
 3 accounts are "unbanked". Individuals who have impaired credit or limited
 4 credit files are financially "underbanked". These unbanked and underbanked
 5 group are denied credit and financial products that are generally available
 6 to others in this state;

7 (4) Federally regulated banks are not subject to an interest
 8 rate limit but are limited in the amount of risk that can be undertaken in
 9 servicing consumers who are unbanked or underbanked;

10 (5) Small loans made on comparatively unsubstantial security to
 11 wage earners, salaried employees, and other consumers with low credit scores
 12 represent a higher cost of service due to the credit risk;

13 (6) Small loans cannot be made profitably under the limitations
 14 imposed by existing interest and usury laws of this state. These limitations
 15 have tended to exclude enterprises from the small-loan field;

16 (7) As a result, unbanked and underbanked borrowers of small sums
 17 have been exploited to the injury of the borrower, his or her dependents, and
 18 the general public; and

19 (8) Consumers deserve the right to know the terms, conditions,
 20 and costs of obtaining credit through full, accurate, and understandable
 21 disclosure.

22 (b) It is the intent of the General Assembly in enacting this
 23 subchapter to:

24 (1) Assist underserved consumers with obtaining equal access to
 25 consumer credit and financial opportunities;

26 (2) Supervise those engaged in the business of making small
 27 loans;

28 (3) Eliminate practices that facilitate abuse of borrowers;

29 (4) Establish a regulatory system for the purpose of ensuring
 30 honest and efficient small-loan service and allow for competitive loan
 31 charges; and

32 (5) Allow lenders who meet the conditions of this subchapter to
 33 charge a sufficient rate to permit a fair business profit and to provide for
 34 a regulatory system necessary for effective enforcement.

35
 36 23-32-603. Definitions.

1 As used in this subchapter:

2 (1) "Applicant" means a person who has applied to become
3 licensed under this subchapter as an installment lender;

4 (2) "Borrower" means a person who has received credit in a loan
5 transaction and is obligated to repay the loan amount;

6 (3) "Consumer" means an individual who contemplates a
7 transaction primarily for personal, family, or household purposes;

8 (4) "Employee" means a person who is employed by an installment
9 lender under an employment contract, agency relationship, or other
10 arrangement whether or not the person is treated as an employee for
11 compliance with the federal income tax laws;

12 (5)(A) "Exempt person" means a person that is not required to be
13 licensed under this subchapter as an installment lender.

14 (B) "Exempt person" includes:

15 (i) An employee of an installment lender licensee;

16 (ii) An agency or corporate instrumentality of the
17 federal government or a state, county, or municipal government granting
18 installment loans under specific authority of the laws of a state or of the
19 United States;

20 (iii) A state or federally chartered bank, savings
21 bank, savings and loan association, or credit union, the accounts of which
22 are insured by the Federal Deposit Insurance Corporation, the National Credit
23 Union Administration, or their operating subsidiaries; and

24 (iv) A person extending credit other than by an
25 installment loan for the purchase of the person's goods or services;

26 (6) "Installment lender" means a person engaged in the business
27 of making installment loans to consumers;

28 (7)(A) "Installment loan" means a loan of a principal amount
29 bearing interest amortized for a specific length of time to be repaid in
30 scheduled payments over the term of the loan.

31 (B) "Installment loan" does not include an occasional loan
32 from an individual to an employee or acquaintance of the individual;

33 (8) "License" means the authorization issued by the Securities
34 Commissioner under this subchapter to make loans according to this
35 subchapter;

36 (9) "Licensee" means a person licensed by the Securities

1 Commissioner under this subchapter;

2 (10)(A) "Person" means an individual, firm, corporation,
3 partnership, limited liability company, limited partnership, association,
4 organization, or other entity.

5 (B) "Person" includes a group of persons engaged in joint
6 business activities.

7 (C) "Person" does not include an exempt person;

8 (11) "Principal place of business" means a stationary
9 construction consisting of at least one (1) enclosed room or building where
10 the primary business functions of the licensee are conducted; and

11 (12) "Small loan" means an installment loan of at least two
12 hundred fifty dollars (\$250) but no more than five thousand dollars (\$5,000)
13 after deducting the payment of interest, expenses, and charges imposed when
14 the installment loan is originated.

15
16 23-32-604. Rulemaking authority.

17 The Securities Commissioner may adopt rules to:

18 (1) Administer this subchapter;

19 (2) Provide for the protection of consumers and the borrowing
20 public; and

21 (3) Instruct installment lenders in interpreting this
22 subchapter.

23
24 23-32-605. Applicability.

25 This subchapter applies to a small loan made by an installment lender
26 that is not an exempt person.

27
28 23-32-606. License required.

29 A person shall not make a small loan in this state unless the person is
30 licensed under this subchapter by the Securities Commissioner.

31
32 23-32-607. Requirements for license - Issuance.

33 (a)(1) A person may apply in the manner prescribed by the Securities
34 Commissioner to be licensed under this subchapter.

35 (2) No more than one (1) principal place of business shall be
36 maintained under the same license, but the commissioner may issue additional

1 licenses to the same licensee upon compliance with this subchapter.

2 (3) The application shall contain the information required by
3 the commissioner and shall include without limitation:

4 (A) The applicant's name, address, social security number,
5 or tax identification number;

6 (B) The applicant's form of business, place of
7 organization, and proposed method of doing business;

8 (C) The location of the applicant's business;

9 (D) The names and addresses of the partners, officers,
10 directors, or trustees of the applicant; and

11 (E)(i) The qualifications, business history, and financial
12 condition of:

13 (a) The applicant;

14 (b) The applicant's partners, officers,
15 directors, and persons occupying a similar status and performing similar
16 functions; and

17 (c) A person directly or indirectly
18 controlling the applicant.

19 (ii) The qualifications and business history of
20 persons under subdivision (a)(3)(E)(i) of this section shall include:

21 (a) A description of an injunction,
22 administrative order, or any other form of a denial to engage in or be
23 authorized to engage in a regulated activity by a state or federal authority;

24 (b) A conviction of, a guilty plea, or a plea
25 of nolo contendere to a misdemeanor involving fraudulent dealings or moral
26 turpitude or relating to an aspect of the banking industry, the mortgage
27 industry, the money services industry, the securities industry, the insurance
28 industry, or another financial services activity; and

29 (c) A conviction of, a guilty plea, or a plea
30 of nolo contendere to a felony.

31 (b) An applicant shall pay to the commissioner:

32 (1) A nonrefundable application fee of two hundred fifty dollars
33 (\$250); and

34 (2) A license fee of one thousand dollars (\$1,000) for each
35 location from which the licensee conducts business as an installment lender.

36 (c)(1) Each licensee shall provide a surety bond in the amount of five

1 thousand dollars (\$5,000) per licensed location or fifty thousand dollars
 2 (\$50,000), whichever is less.

3 (2) The total liability of the surety shall not exceed the
 4 principal sum of the bond.

5 (3) A borrower's claim on the bond has priority over non-
 6 borrower claims but is equal to the claims of other borrowers.

7 (d)(1) An applicant shall file with the application a certified
 8 financial statement showing the applicant has net assets available for use in
 9 the business of making installment loans to consumers of at least fifty
 10 thousand dollars (\$50,000) per license.

11 (2) The financial statement shall be dated within three (3)
 12 months before the date the application is filed.

13 (e) A license issued by the commissioner under this subchapter expires
 14 at the close of business on December 31 of each calendar year unless the
 15 license is:

16 (1) Previously surrendered by the licensee and the surrender is
 17 accepted by the commissioner;

18 (2) Renewed under § 23-32-608;

19 (3) Abandoned by the licensee; or

20 (4) Suspended or revoked by the commissioner.

21 (f) A license issued under this subchapter is not transferable.

22
 23 23-32-608. Renewal of license.

24 (a) A license may be renewed by providing the Securities Commissioner:

25 (1) A renewal application in the form prescribed by the
 26 commissioner between November 1 and December 31 annually;

27 (2) Payment of the annual renewal fee of one thousand dollars
 28 (\$1,000) per licensed location;

29 (3) A current unaudited financial statement;

30 (4) Proof that the licensee continues to satisfy the
 31 requirements for a license; and

32 (5) Any other information that the commissioner considers
 33 relevant to the renewal application.

34 (b)(1) Renewal fees are due on November 1 each year.

35 (2) A late fee of ten percent (10%) of the renewal fee shall be
 36 assessed for each month the renewal fee is delinquent.

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2
3 23-32-609. Revocation of license.

4 (a) The Securities Commissioner shall revoke a license after providing
5 ten (10) days' written notice to a licensee stating the contemplated action
6 and the grounds for revocation and providing the licensee a reasonable
7 opportunity to be heard if the commissioner finds that:

8 (1) The licensee has failed to pay a license fee or renewal fee;

9 (2) The licensee knowingly or by failing to exercise due care has
10 violated this subchapter, the rules of the commissioner, or an order made
11 under this subchapter; or

12 (3) A fact or condition exists that would have justified the
13 commissioner's refusing to issue the original license if the fact or
14 condition had existed or had been known to exist at the time of the original
15 application for a license.

16 (b)(1) If the commissioner finds that probable cause for revocation of
17 a license exists and that enforcement of this subchapter or protection of the
18 public requires immediate suspension of a license, the commissioner may enter
19 an order suspending a license after providing three (3) days' notice to the
20 licensee.

21 (2) A hearing on the license suspension shall be scheduled
22 within thirty (30) days of entry of the order.

23 (c)(1) The commissioner shall suspend or revoke a license issued under
24 this subchapter by entering an order and providing notice to the licensee of
25 the commissioner's action.

26 (2) Within five (5) days after entry of the order, the
27 commissioner shall enter a final order detailing his or her findings and
28 summarizing the evidence supporting the order.

29 (3) The commissioner shall deliver a copy of the final order to
30 the licensee.

31 (d)(1) A licensee may surrender a license by delivering the license
32 and written notification of its surrender to the commissioner.

33 (2) The surrender shall not affect a licensee's civil or
34 criminal liability for acts committed before the surrender.

35 (e) Revocation, suspension, or surrender of a license shall not impair
36 or affect the obligation of a preexisting contract between the licensee and a

1 borrower.

2 (f) The commissioner may reinstate a suspended license or issue a new
3 license to a person whose license or licenses have been revoked if no fact or
4 condition exists that would have justified the commissioner in refusing to
5 issue a license under this subchapter.

6 (g) Upon sworn complaint of a borrower, the commissioner shall
7 investigate or cause to be investigated an alleged violation of this
8 subchapter.

9
10 23-32-610. Examination of licensees.

11 (a)(1) At least one (1) time each year and at other times as
12 considered necessary, the Securities Commissioner shall examine the place of
13 business of each licensee and analyze the loans, transactions, books, papers,
14 and records of the licensee.

15 (2)(A) The licensee shall pay the costs of an examination.

16 (B)(i) The commissioner shall adopt a rule to prescribe the
17 conduct of the examination and the costs payable by the licensee based upon
18 the actual, reasonable costs incurred by the commissioner.

19 (ii) The cost of an examiner shall not exceed two
20 hundred dollars (\$200) for each day of examination.

21 (iii) Travel and meal costs shall be based upon the
22 authorized per diem allowances for state employees traveling inside the state
23 on state business.

24 (C) Examination costs shall be paid into the Small Loan
25 Fund.

26 (b) The commissioner may also examine a person who the commissioner
27 has reasonable cause to believe is violating or is about to violate this
28 subchapter, whether or not the person claims to be within the authority or
29 beyond the scope of this subchapter.

30 (c) The commissioner or the commissioner's designee shall have and be
31 given free access to the offices and places of business, files, safes, and
32 vaults of the persons examined under this section and may require the
33 attendance of any person to examine him or her under oath concerning the
34 loans, the business, or the subject matter of an examination, investigation,
35 or hearing.

36 (d)(1) If the commissioner has reasonable cause to believe that a

1 person is violating or intends to violate this subchapter, the commissioner
 2 may without prejudice enter an order requiring the person to cease and desist
 3 from the violation, and an action may be brought by the commissioner to
 4 enjoin the person from engaging in or continuing the violation.

5 (2) In an action under this subchapter, an order or judgment may
 6 be entered awarding a preliminary or permanent injunction.

7 (3) The court may impound property and appoint a receiver for
 8 the property and business of the defendant, including books, papers,
 9 documents, and records pertaining to the business or activity as the court
 10 deems reasonably necessary to prevent violations of this subchapter through
 11 the use of the property and business.

12 (4) The receiver shall have the powers and duties as to custody,
 13 collection, administration, winding up, and liquidation of the property and
 14 business conferred from time to time by the court.

15 (e)(1) Reports of examinations and investigations of the commissioner
 16 and the books and records of licensees are to be held strictly confidential.

17 (2) The commissioner shall not produce, reproduce, or otherwise
 18 make information available to any person other than necessary personnel of
 19 the Securities Department unless required by a subpoena.

20 (3) This subsection does not apply to a disclosure made during
 21 proceedings brought by the commissioner under this subchapter.

22
 23 23-32-611. Duties of licensee – Consumer protection.

24 (a) A licensee shall:

25 (1) Act with reasonable skill, care, and diligence in completing
 26 a small loan transaction;

27 (2) Before approving a small loan, determine if the consumer has
 28 the ability to pay for the loan by:

29 (A) Acquiring and reviewing the consumer’s credit report;

30 (B) Preparing a budget that includes the consumer’s
 31 monthly income and expenditures to determine if the consumer has a positive
 32 net cash flow sufficient to meet the payment requirements of the small loan;
 33 and

34 (C) Provide financial literacy information to the
 35 consumer;

36 (3) Retain copies of the budget and credit report acquired under

1 this section until the small loan is fully paid and provide copies of the
2 budget and credit report to the consumer when the small loan is made;

3 (4) Disclose the interest and finance charge of the small loan
4 in terms of an annual percentage rate according to regulations under the
5 Federal Truth in Lending Act of 1968, 12 C.F.R. Part 226, as they existed on
6 January 1, 2011;

7 (5) Accurately report the status of each small loan monthly to
8 the three (3) major credit bureaus, Equifax, Experian, and TransUnion;

9 (6)(A) Allow the borrower five (5) business days from the date a
10 small loan is approved to rescind the small loan for any reason.

11 (B) Upon rescission by the borrower fees paid by the
12 borrower shall be returned to the borrower and small loan proceeds shall be
13 returned to the licensee.

14 (C) The licensee shall not report the rescission to a
15 credit bureau;

16 (7)(A) Maintain accurate books, accounts, and records of small
17 loan transactions to enable the Securities Commissioner to determine
18 compliance with this subchapter.

19 (B) A licensee shall preserve the books, accounts, and
20 records for at least two (2) years after the last activity concerning a small
21 loan; and

22 (8) Comply with applicable federal and state law including
23 without limitation the following federal laws as they existed on January 1,
24 2011:

25 (A) The Equal Credit Opportunity Act, 15 U.S.C. § 1691 et
26 seq.;

27 (B) The Fair Debt Collection Practices Act, 15 U.S.C. §
28 1692 et seq.;

29 (C) The Fair Credit Reporting Act, 15 U.S.C. § 1681 et
30 seq.; and

31 (D) The Truth in Lending Act, 15 U.S.C. § 1601 note.

32 (b) A licensee shall not with respect to a small loan:

33 (1) Fund less than two hundred fifty dollars (\$250) or more than
34 five thousand dollars (\$5,000);

35 (2) Fund the small loan if the total of all monthly payments
36 exceeds twenty-two and five-tenths percent (22.5%) of all borrowers' gross

1 monthly incomes;

2 (3) Maintain more than one (1) active small loan for each
 3 borrower;

4 (4) Condition the funding of the small loan upon the purchase of
 5 any good or service;

6 (5) Renew the small loan more than three (3) times in a calendar
 7 year;

8 (6) Accept as payment:

9 (A) A check held for future deposit; or

10 (B) Electronic access to the borrower's deposit account
 11 for future payment;

12 (7) Accept as security for the small loan the title to a
 13 registered motor vehicle owned by a borrower;

14 (8) Charge an early payment penalty;

15 (9) Contract for mandatory arbitration of disputes between the
 16 licensee and borrower;

17 (10) Contract to waive protections afforded to members of the
 18 military under the Servicemember's Civil Relief Act, 50 U.S.C. Appendix, as
 19 it existed on January 1, 2011, or similar law;

20 (11) Violate this subchapter or a rule or order issued by the
 21 commissioner; or

22 (12) Engage in conduct involving fraud, dishonesty,
 23 untruthfulness, or untrustworthiness.

24
 25 23-32-612. Maximum rates of interest.

26 (a) Unless otherwise permitted under this subchapter, the maximum
 27 lawful rate of interest on a small loan shall not exceed seventeen percent
 28 (17%) per annum.

29 (b) A small loan shall be for a minimum term of six (6) months and a
 30 maximum term of forty-eight (48) months.

31 (c) If a borrower fully pays a small loan before maturity, the
 32 unearned interest, fees, and charges shall be refunded to the borrower.

33 (d) Except as provided in § 23-32-613, other charges under this
 34 subchapter are prohibited.

35
 36 23-32-613. Other permissible charges.

1 (a) Unless otherwise prohibited by law, in connection with a small
 2 loan a licensee may charge:

3 (1) For each payment that is not paid within five (5) days after
 4 the payment becomes due, a one-time delinquent charge of the lesser of:

5 (A) Five percent (5%) of the payment; or

6 (B) Fifteen dollars (\$15.00);

7 (2) A one-time dishonored check fee not to exceed twenty five
 8 dollars (\$25.00) for a dishonored check, draft, negotiable order of
 9 withdrawal, or like instrument drawn on a bank or other depository
 10 institution given in full or partial repayment of a small loan;

11 (3) Fees or taxes paid or to be paid to a public office or
 12 official for filing, recording, or releasing any document relating to the
 13 small loan; and

14 (4) If provided in the small-loan contract, a reasonable
 15 attorney's fee and other costs actually incurred to collect or enforce the
 16 small loan.

17 (b) The charges allowed under this section shall not be considered
 18 interest or finance charges for purposes of calculating the annual percentage
 19 rate of the small loan.

20
 21 23-32-614. Duties of Securities Commissioner – Fees.

22 (a) The Securities Commissioner shall administer this subchapter and
 23 the small loan fund.

24 (b) All license fees, renewal fees, charges, fines, and penalties paid
 25 to the commissioner under this subchapter shall be deposited into the Small
 26 Loan Fund and used to administer this subchapter.

27 (c) A small loan found by the commissioner to violate this subchapter,
 28 rules of the commissioner, or an order made under this subchapter is void as
 29 to principal and interest.

30
 31 SECTION 2. Arkansas Code Title 19, Chapter 6, Subchapter 8 is amended
 32 to add an additional section to read as follows:

33 19-6-819. Small Loan Fund.

34 (a) There is created on the books of the Treasurer of State, the
 35 Auditor of State, and the Chief Fiscal Officer of the State a special revenue
 36 fund to be known as the "Small Loan Fund".

1 (b) The fund shall consist of all revenues provided by the General
2 Assembly and all other revenues authorized by law.

3 (c) The fund shall be used by the Securities Commissioner to
4 administer the Small Loan Act, § 23-32-601 et seq.

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