

Payday Loans in Arkansas

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Where did the “Payday Loan” come from? - There has always been a need by some consumers for extra cash just prior to payday. In years past, loan sharks filled this need by loaning consumers a few dollars to tide them over until their next payday. These lenders were often called Loan Sharks because their lending and collection practices were questionable at best. They had no office, but worked the streets and their interest rates always exceeded established state usury laws.

In the mid-1990s, Loan Sharking became big business. Offices were set up in storefronts while forms and systems were developed. They became known, as “check cashers” because the “system” they developed was to take a consumer’s check and “cash it”. They would take out their interest up front (example, \$50 for a \$350 loan = total \$400 check) and return to the consumer the remainder of the check as a loan until next payday. Next payday, the consumer is supposed to buy back the check by paying face amount of the check (\$400) or the check casher simply cashes the check for the face amount at the consumer’s bank.

In 1997-98, the Arkansas Attorney General’s office (on behalf of the citizens of the State of Arkansas) filed several lawsuits against companies engaged in payday loan transactions maintaining that payday loan transactions were void due to the usurious interest rates being charged. All of these cases were resolved in favor of the Attorney General. Arkansas’ state usury law, which is contained in Article 19, Section 13 of the Arkansas Constitution, sets a limit on interest charged on consumer loans not to exceed 17% per annum.

Check-cashers Act of 1999 - Because of the actions of the Arkansas Attorney General’s office, the Arkansas check cashers lobbied in 1999 for a law to legitimize payday loans. That year, the General Assembly passed a Check-casher’s Act (Act 1216 of 1999 – Arkansas Code Annotated §23-52-101 through 117) which stated among other things, that amounts advanced “shall not be deemed to be a loan”, and the fees charged for payday loans “shall not be deemed interest”. The check cashers were now in business – legally through passage of this new Arkansas law and they became regulated by the Arkansas Board of Collection Agencies, Division of Check Cashers (ASBCA).

The Federal Reserve acts in 2000 - Payday lenders were not only taking hold in Arkansas, but all across America and Attorney General Offices and legislatures in other states were beginning to question whether the cost to consumers for payday loans was interest or fees. When calculated as an interest rate, payday lender charges in Arkansas calculate from 168% to over 2028% Annual Percentage Rate.

The Federal Reserve Board of Governors took up the issue based upon its authority under the Federal Truth-in-Lending Act (TILA; 15 U.S.C. 1601). They studied schemes called “Payday Loans”, “Cash Advance Loans”, “Check Advance Loans”, “Postdated Check Loans”, “Delayed Deposit Loans”, “Deferred Deposit Loans”, and “Deferred Presentment Options.” A Final Rule was issued on March 24, 2000 indicating that “regardless of how the fee is characterized for state law purposes”; it would be considered interest and must comply with all the consumer disclosure requirements as required of other types of loans, effective October 1, 2000.

Repeal of Act Sought in 2001 - When the Arkansas General Assembly reconvened in the spring of 2001, then Senator Cliff H. Hoofman introduced Senate Bill 6 which would have repealed the Check-casher’s Act of 1999. Many additional bills were also introduced that year to alter the act. Although many bills were introduced, none passed the General Assembly.

Law Suits Followed - Even prior to the inability of the General Assembly to take action in 2001 to repeal the Check-cashers Act of 1999, attorneys in Arkansas were suing check cashers on behalf of Arkansas consumers, declaring the fees charged to consumers were interest and therefore usurious under the Arkansas Constitution. Most notable of these law firms is Arnold, Batson, Turner and Turner of Arkadelphia, Arkansas. Todd Turner, Attorney-at-Law had taken on the check cashers of Arkansas almost single handedly suing in county court, state court, appeals court, and even the Arkansas Supreme Court - winning class action lawsuits for his clients. Many check cashers have closed up shop in Arkansas due to the actions of Todd Turner and his firm. Turner continues to pursue cases against check cashers and has filed a lawsuit (currently awaiting a hearing from the Arkansas Supreme Court) seeking to have the Check-casher’s Act of 1999 declared unconstitutional.

Rent-A-Bank - Even though we may think the interest rates charged by payday lenders are extremely high and usurious, these lenders began looking for even higher earnings. Not entirely happy with the Arkansas state law, many Arkansas check cashers began establishing a scheme of relationships with out of state banks to “export” other states’ interest rates into Arkansas. Some states (Delaware and South Dakota, for example) have no usury rate and lenders can charge any interest rate that a consumer will pay.

Federal Bank Regulators (Comptroller of the Currency, Federal Reserve Board, and the Office of Thrift Supervision) have either forbidden the practice or placed such high restrictions on the banks they supervise as to stop the practice. The final bank regulator - the Federal Deposit Insurance Corporation who supervises state banks who are not members of the Federal Reserve – stopped the last bank from partnering with ACE Cash Express in Arkansas on April 16, 2007. Payday lenders no longer use this ruse at local storefronts anywhere in the nation.

Rent-A-Finance Company or Out-of-State Payday Lender – Some Arkansas Payday Lenders took the Rent-A-Bank concept and set up loan companies out of state (South Dakota and Missouri). They were trying to export those out of state interest rates and laws into Arkansas and ignore the Arkansas law and regulations published by the ASBCA. While the importation of out of state interest rates is legal for banks, savings & loans and credit unions that are Federally insured and regulated is not legal for finance companies which are governed and regulated by state laws. The Missouri scheme was stopped by the ASBCA in 2006 and one lender was fined \$1,300,000 by the ASBCA. The South Dakota scheme continues for now.

Internet Rebate Lenders - One consumer friendly provision of the Check-cashers Act of 1999 is the prohibition of rollovers. A rollover is the practice of extending the loan on payday if the consumer is unable to pay the balance in full. Rollovers put the consumer into a never-ending cycle of debt and turn a one time loan into a never ending loan at an extremely high interest rate. Rollovers are often considered the worst feature of Payday Lending.

Some lenders, in an effort to get around this restriction in the Check-cashers Act of 1999, have developed schemes like the “Internet Rebate”. The Internet Rebate Lender’s loan works just like a normal Payday Loan transaction from a check casher, except the consumer also signs a contract to rollover the loan every two weeks for a period of 12 months by agreeing to “purchase” Internet service from the Payday Lender. The Internet service is available from an Internet terminal in the lobby of the Internet Rebate Lender office during office hours and is limited based upon the amount of the loan (or rebate as it is called). The Arkansas Attorney General sued these lenders in early 2006 and received a judgment for \$1,000,000 on December 10, 2007. Payday lenders no longer use this ruse in Arkansas.

Money Order Payday Lender – First American Cash Advance has developed the Money Order Payday Loan only for its offices in Arkansas. This payday lender offers a 10% simple interest rate, and then issues the proceeds in the form of a Western Union money order. This lender then charges an additional 10% of the face amount of the money order to convert it to cash. The two fees when added together and expressed as an APR total over 300%. Additionally loans are granted up to \$900 instead of being restricted to \$350 as the Check-cashers Act requires. So far the ASBCA has not acted to stop this scheme.

Time for the Legislature to Act - In 1999 (prior to the Federal Reserve Board determining that fees paid on Payday Loans were interest) the fees charged by Payday Lenders might have been in question. The Arkansas General Assembly might have passed the Check-cashers Act of 1999 in good faith in an effort to regulate an industry that was growing rapidly and appeared to need state regulation.

Since October 1, 2000, when the Federal Reserve Board determined that the fees being charged by check cashers/payday lenders were interest, it has been clear that the interest rates charged are usurious based upon the Arkansas Constitution. Class Action lawsuit after Class Action lawsuit has proven that the usury rate in the Arkansas Constitution is being exceeded. The Courts of the state of Arkansas have reaffirmed this over and over again.

In 2005 the Arkansas Legislature approved Act 1964, Section 106 to remove the language from the existing law declaring amounts advanced “shall not be declared to be a loan” and that the fees charged “shall not be deemed interest” However the cost to consumers has not changed. Arkansas citizens who take out Payday Loans are still charged triple digit interest rates at least 20 times higher than the maximum of 17% per annum allowed by the Arkansas Constitution.

It is time for the Arkansas General Assembly to repeal the Check-cashers Act of 1999 just as former Senator Cliff Hoofman suggested in 2001. It is time to stop harming the poor families of Arkansas by allowing consumers to obtain Payday Loans at usurious rates and loan terms that cause an endless cycle of debt.