

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

SENATE BILL 671

By: Senator Hester

For An Act To Be Entitled

AN ACT TO REGULATE INSTALLMENT LOANS; TO ESTABLISH
THE ARKANSAS TRADITIONAL INSTALLMENT LOAN ACT; TO
DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO REGULATE INSTALLMENT LOANS; TO
ESTABLISH THE ARKANSAS TRADITIONAL
INSTALLMENT LOAN ACT; AND TO DECLARE AN
EMERGENCY.

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

SECTION 1. Arkansas Code § 19-6-301, concerning the enumeration of special revenues, is amended to add an additional subdivision to read as follows:

(255) All licenses, fees, renewal fees, charges, fines, and penalties paid to the Securities Commissioner under the Arkansas Traditional Installment Loan Act, § 23-34-101 et seq.

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

19-6-833. Traditional Installment Loan Fund.

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

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



(c) The fund shall be used by the Securities Commissioner to administer the Arkansas Traditional Installment Loan Act, § 23-34-101 et seq.

SECTION 3. Arkansas Code Title 23 is amended to add an additional chapter to read as follows:

CHAPTER 34

ARKANSAS TRADITIONAL INSTALLMENT LOAN ACT

Subchapter 1 – General Provisions

23-34-101. Title.

This chapter shall be known and may be cited as the "Arkansas Traditional Installment Loan Act".

23-34-102. Purpose.

The purpose of this chapter is to provide citizens of this state greater access to traditional sources of consumer credit through affordable installment loans.

23-34-103. Definitions.

As used in this chapter:

(1)(A) "Applicant" means a person that has applied to become licensed under this chapter as a lender.

(B) "Applicant" includes the executive officer of the applicant if the applicant is not an individual;

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

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

(4)(A) "Exempt person" means a person that is not required to be licensed under this chapter as a lender.

(B) "Exempt person" includes:

(i) An employee of a lender licensee;

(ii) An agency or corporate instrumentality of the federal government or a state, county, or municipal government granting

traditional installment loans under specific authority of the laws of the state or of the United States;

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

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

(5) "Lender" means a person engaged in the business of making traditional installment loans to consumers;

(6) "License" means the authorization issued by the Securities Commissioner under this chapter to make traditional installment loans according to this chapter;

(7)(A) "Licensed location" means a stationary construction consisting of at least one (1) enclosed room or a separate building, with a designated entrance and exit used exclusively for the licensee, where the primary business functions of the licensee are conducted in the state.

(B) "Licensed location" does not include a corporation's headquarters;

(8) "Licensee" means a person licensed by the Securities Commissioner under this chapter;

(9) "Loan" means an advance of funds or moneys that is conditioned on the obligation of a person or entity to repay the funds or moneys pursuant to a loan agreement, note, contract, or other instrument or document evidencing the indebtedness;

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

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

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

(11)(A) "Traditional installment loan" means a loan of a principal amount bearing interest amortized for a specific length of time to be repaid in equal scheduled payments over the term of the loan if the net proceeds of the transaction are five thousand dollars (\$5,000) or less.

(B) "Traditional installment loan" does not include payments for interest, expenses, and charges incurred with the making of the loan.

23-34-104. Applicability.

This chapter applies to a traditional installment loan made by a lender for five thousand dollars (\$5,000) or less.

Subchapter 2 – Licensing

23-34-201. Rulemaking and enforcement.

The Securities Commissioner shall:

(1) Administer this chapter;

(2) Establish rules to enforce the requirements of this chapter;

and

(3)(A) To determine if an applicant possesses a background that does not call into question public trust or the applicant's fitness for licensure, obtain a:

(i) State criminal background check of an applicant performed by the Identification Bureau of the Department of Arkansas State Police; and

(ii) National fingerprint-based criminal background check of an applicant performed by the Federal Bureau of Investigation in compliance with federal law and regulations.

(B) An applicant shall provide all information requested by the commissioner to assist the commissioner in making the determination under subdivision (3)(A) of this section.

23-34-202. License required.

(a) A person shall not make a traditional installment loan in this state unless the person is licensed under this chapter by the Securities Commissioner.

(b) A person found guilty of violations of this chapter may be subject to emergency suspension or revocation of licensure depending upon the findings.

23-34-203. Requirement for license – Issuance.

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

(2) No more than one (1) principal place of business shall be maintained under the same license, but the commissioner may issue additional licenses to the same licensee upon compliance with this chapter.

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

(A) The applicant's name, address, Social Security number, or tax identification number;

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

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

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

(E)(i) The qualifications and business history of:

(a) The applicant; and

(b) The applicant's partners, officers, directors, or persons occupying a similar status and performing similar functions.

(ii) The qualifications and business history of persons under subdivision (a)(3)(E)(i) of this section shall include disclosure of any legal proceedings or rulings that reflect the person's financial or criminal record, including without limitation:

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

(b) A conviction of, a guilty plea, or a plea of nolo contendere to a misdemeanor:

(A) Involving fraudulent dealings or moral turpitude; or

(B) Relating to an aspect of the banking industry, the mortgage industry, the money services industry, the securities industry, the insurance industry, or another financial services activity; and

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

(b) An applicant shall pay to the commissioner:

(1) A nonrefundable application fee of five hundred dollars (\$500); and

(2) A license fee of five hundred dollars (\$500) for each location from which the licensee conducts business as a lender.

(c)(1) Each licensee shall provide a surety bond in the amount of fifty thousand dollars (\$50,000) per licensed location.

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

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

(d)(1) An applicant shall file with the application a certified financial statement showing the applicant has net assets available for use in the business of making traditional installment loans to consumers of at least one million dollars (\$1,000,000).

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

(e) A license expires at the close of business on December 31 of each calendar year unless the license is:

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

(2) Renewed under § 23-34-204;

(3) Abandoned by the licensee; or

(4) Suspended or revoked by the commissioner.

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

23-34-204. Renewal of license.

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

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

(2) Payment of the annual renewal fee of five hundred dollars (\$500) per licensed location;

(3) A current unaudited financial statement;

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

(5) Any other information that the commissioner considers

relevant to the renewal application.

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

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

23-34-205. Disciplinary action.

(a) The Securities Commissioner may deny, suspend, revoke, or restrict a license or otherwise discipline a licensee if after a hearing, the commissioner finds that the licensee:

(1) Has pleaded guilty or nolo contendere to or has been found guilty of a felony;

(2) Has committed fraud or deceit in the procuring or attempting to procure a license under this chapter;

(3) Has engaged in unprofessional or unethical conduct;

(4) Has advertised in a false, fraudulent, deceptive, or misleading manner;

(5) Has violated this chapter or any rule or order issued by the commissioner; or

(6) Has had a license revoked or suspended in any jurisdiction.

(b) A hearing under this section and an appeal of the commissioner's decision concerning any adverse action to a license under this section is governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

23-34-206. Examination of licensees.

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

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

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

(ii) The cost of an examiner shall not exceed three hundred dollars (\$300) for each day of examination.

(iii) Travel and meal costs of an examiner shall be based upon the authorized per diem allowances for state employees traveling

inside the state on state business.

(C) Examination costs shall be paid into the Traditional Installment Loan Fund.

(b) The commissioner may examine a person that the commissioner has reasonable cause to believe is violating or is about to violate this chapter, whether or not the person claims to be within the authority or beyond the scope of this chapter.

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

(d)(1) If the commissioner has reasonable cause to believe that a person is violating or intends to violate this chapter, the commissioner may without prejudice enter an order requiring the person to cease and desist from the violation, and an action may be brought by the commissioner to enjoin the person from engaging in or continuing the violation.

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

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

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

(e) A hearing under this section and an appeal of the commissioner's decision to enter an order or judgment against a licensee under this section is governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f)(1) Reports of examinations and investigations of the commissioner and the books and records of licensees are confidential and exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., except as provided in subdivision (f)(3) of this section.

(2) The commissioner shall not produce, reproduce, or otherwise make information available to any person other than necessary personnel of

the State Securities Department unless required by a subpoena.

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

Subchapter 3 – Miscellaneous Provisions

23-34-301. Duties of licensee – Consumer protection.

(a) A licensee shall:

(1) Act with reasonable skill, care, and diligence in completing a traditional installment loan transaction;

(2) Before approving a traditional installment loan, determine if the consumer has the ability to pay for the loan by:

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

(B) Preparing a budget that includes the consumer's monthly income and expenditures to determine if the consumer has a positive net cash flow sufficient to meet the payment requirements of the traditional installment loan; and

(C) Provide financial literacy information to the consumer;

(3) Retain copies of the budget and credit report acquired under this section until the traditional installment loan is fully paid, or thirty-six (36) months, whichever is longer, and provide copies of the budget to the consumer when the traditional installment loan is made;

(4) Disclose the interest and finance charge of the traditional installment loan in terms of an annual percentage rate according to regulations under the Federal Truth in Lending Act of 1968, 12 C.F.R. Part 226, as they existed on January 1, 2017;

(5) Within ninety (90) days of the consummation of the traditional installment loan, accurately report the monthly status of each traditional installment loan to at least one (1) of the three (3) major credit bureaus:

(A) Equifax;

(B) Experian; and

(C) TransUnion;

(6)(A) Allow the borrower five (5) business days from the date a traditional installment loan is approved to return the traditional

installment loan proceeds to the licensee and rescind the traditional loan for any reason.

(B) Upon rescission by the borrower and the return of the traditional installment loan proceeds to the licensee, fees paid by the borrower shall be returned to the borrower.

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

(7)(A) Maintain accurate books, accounts, and records of traditional installment loan transactions to enable the Securities Commissioner to determine compliance with this chapter.

(B) A licensee shall preserve the books, accounts, and records for at least twenty-five (25) months after the last activity concerning a traditional installment loan; and

(8) Comply with applicable provisions of federal and state law, including without limitation the following federal laws as they existed on January 1, 2017:

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

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

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

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

(b) A licensee shall not with respect to a traditional installment loan:

(1) Fund more than five thousand dollars (\$5,000);

(2) Fund the traditional installment loan if the monthly payment on the loan exceeds twenty-two and five-tenths percent (22.5%) of all borrowers' monthly gross income;

(3) Maintain more than three (3) active traditional installment loans for each borrower;

(4) Condition the funding of the traditional installment loan upon the purchase of any good or service or product as described in § 23-34-306 or electronic access to the borrower's deposit account for future payment;

(5) Renew the traditional installment loan more than three (3)

times in a calendar year;

(6) Accept as payment a check held for future deposit;

(7) Charge an early payment penalty;

(8) Contract to waive protections afforded to members of the military under the Servicemember’s Civil Relief Act, 50 U.S.C. Appendix, as it existed on January 1, 2017, or similar law;

(9) Violate this chapter or a rule or order issued by the commissioner; or

(10) Engage in conduct involving fraud, dishonesty, untruthfulness, or untrustworthiness.

23-34-302. Maximum rates of interest – Charges.

(a) Unless otherwise permitted under this chapter, the maximum lawful rate of interest on a traditional installment loan shall not exceed seventeen percent (17%) per annum.

(b) A traditional installment loan shall be for a minimum term of eighteen (18) months and no longer than thirty-six (36) months.

(c) If a borrower fully pays a traditional installment loan before maturity, the unearned interest, fees, and charges shall be refunded to the borrower under an actuarial method.

(d) Application fees for a traditional installment loan transaction under this chapter are prohibited.

(e)(1) Closing costs for a traditional installment loan transaction under this chapter shall not exceed ten percent (10%) of the amount borrowed in a traditional installment loan transaction.

(2) Closing costs for a traditional installment loan shall not be considered interest or finance charges for purposes of calculating the annual percentage rate of the traditional installment loan.

(f)(1) The maximum monthly handling charges for a traditional installment loan shall be based on the amount borrowed in a traditional installment loan transaction as follows:

<u>Traditional Installment Loan Amount</u>	<u>Monthly Fee</u>
<u>\$1,000.00 - 1,500.00</u>	<u>\$36.00</u>
<u>1,500.01 - 2,000.00</u>	<u>32.00</u>
<u>2,000.01 - 3,000.00</u>	<u>31.00</u>
<u>3,000.01 - 4,000.00</u>	<u>24.00</u>

4,000.01 - 5,000.00

14.00

(2) Monthly handling charges for a traditional installment loan shall not be considered interest or finance charges for purposes of calculating the annual percentage rate of the traditional installment loan.

(g) Other products shall not be considered interest or finance charges for purposes of calculating the annual percentage rate of the traditional installment loan.

23-34-303. Duties of Securities Commissioner – Fees.

(a) The Securities Commissioner shall administer this chapter and the Traditional Installment Loan Fund.

(b) All license fees, renewal fees, charges, fines, and penalties paid to the commissioner under this chapter shall be deposited into the fund and used to administer this chapter.

(c) A traditional installment loan found by the commissioner to violate this chapter, rules of the commissioner, or an order made under this chapter is void as to principal and interest.

23-34-304. Prohibited activity.

A licensee shall not charge any type of fee for procuring a traditional installment loan for another lender.

23-34-305. Civil penalties.

(a) If after a hearing conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Securities Commissioner determines that a person has violated any provision of this chapter or the rules promulgated by the commissioner, the commissioner may impose a civil penalty on that person not to exceed three (3) times the amount of financial harm the consumer experienced as determined by the commissioner per violation.

(b) This subchapter provides an exclusive remedy for a consumer who has been wronged by a licensee.

(c)(1) If a licensee is informed in writing of an unlawful or disputed charge, the licensee has thirty (30) days to issue a refund.

(2) A refund issued under subdivision (c)(1) of this section may be as a credit against the remaining balance owed on the traditional

installment loan or as a check to the consumer.

(d)(1) In the event that the lender fails to issue a refund, the consumer may file a civil action in circuit court.

(2) A consumer who has been charged an unlawful or disputed charge may receive three (3) times the amount of the unlawful or disputed charge in addition to reasonable attorney's fees.

23-34-306. Optional products.

(a) A licensee may provide optional products, including without limitation:

(1) Credit life insurance on any borrower;

(2) Credit accident and health insurance on one (1) borrower in a traditional installment loan;

(3) Accidental death and dismemberment insurance on one (1) borrower in a traditional installment loan;

(4) Credit involuntary unemployment insurance on one (1) borrower on a traditional installment loan; and

(5) Credit property insurance on any real property used to secure a traditional installment loan.

(b) An optional product provided in subsection (a) of this section shall not be written for an amount that exceeds the total amount of payments required on the traditional installment loan.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that a substantial population in the State of Arkansas does not have access to traditional sources of consumer credit as a result of federal preemption of state interest rate regulation; that without relief from the financial limitations for access to small loans, the citizens of this state will suffer irreparable harm to their health and well-being; and that this act is immediately necessary because it will provide the General Assembly with the ability to establish appropriate regulations of consumer credit products necessary to ensure the public safety, health, and welfare of its citizens. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

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

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