

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 36

Session of
1995

INTRODUCED BY THOMAS, DALEY, JOSEPHS, TIGUE, HORSEY, PRESTON AND
YOUNGBLOOD, JANUARY 19, 1995

AS REPORTED FROM COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT,
HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 24, 1995

AN ACT

1 Regulating the check-cashing industry; providing for the
2 licensing of check cashers, for additional duties of the
3 Department of Banking and for certain terms and conditions of
4 the business of check cashing; ~~establishing the Check Cashing~~ <—
5 ~~Industry Recovery Fund~~; and providing penalties.

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17 The General Assembly of the Commonwealth of Pennsylvania

18 hereby enacts as follows:

19 CHAPTER 1

20 GENERAL PROVISIONS

21 Section 101. Short title.

22 This act shall be known and may be cited as the Check Cashing

23 Licensing Act.

24 Section 102. Purpose.

25 The General Assembly hereby finds and declares that check

26 cashers which engage in the business of cashing checks, drafts

27 or money orders provide vital banking services which some

28 citizens of this Commonwealth find unavailable or inconvenient

29 to obtain from traditional banking institutions. Some customers,

30 however, have been charged unreasonable rates by some check

1 cashers for these services. Therefore, it is in the public
2 interest, convenience and welfare to have the Commonwealth set
3 check-cashing rates and to regulate the manner in which these
4 services are provided.

5 Section 103. Definitions.

6 The following words and phrases when used in this act shall
7 have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "CASHING." PROVIDING CURRENCY FOR PAYMENT INSTRUMENTS, <—
10 EXCEPT FOR TRAVELERS CHECKS AND FOREIGN DENOMINATIONS PAYMENT
11 INSTRUMENTS.

12 "Check." A type of negotiable instrument as defined in 13
13 Pa.C.S. § 3104 (relating to negotiable instrument).

14 "Check casher." Any person, partnership, association or
15 corporation engaging in the business of cashing checks, drafts
16 or money orders for a fee.

17 "Department." The Department of Banking of the Commonwealth.

18 "Draft." A type of negotiable instrument as defined in 13
19 Pa.C.S. § 3104 (relating to negotiable instrument).

20 ~~"Fund" or "recovery fund." The Check Cashing Industry~~ <—
21 ~~Recovery Fund.~~

22 "Licensee." A check casher licensed by the Department of
23 Banking to engage in the business of cashing checks, drafts or
24 money orders.

25 "Money order." As defined in the act of September 2, 1965
26 (P.L.490, No.249), referred to as the Money Transmission
27 Business Licensing Law.

28 "Secretary." The Secretary of Banking of the Commonwealth OR <—
29 A DESIGNEE.

30 Section 104. Authority of department.

1 The department shall have the authority to:

2 (1) Issue rules, regulations and orders as may be
3 necessary for the administration and enforcement of this act
4 and the proper conduct of the business of check cashing.

5 (2) Examine any instrument, document, account, book,
6 record or file of a check casher, any employee or any other
7 person, or make such other investigation as may be necessary
8 to administer this act.

9 (3) Conduct administrative hearings of any matter
10 pertaining to this act, issue subpoenas to compel the
11 attendance of witnesses and the production of instruments,
12 documents, accounts, books and records at any such hearing
13 which may be retained by the department until the completion
14 of all proceedings in connection with which they were
15 produced and administer oaths and affirmations to any person
16 whose testimony is required. In the event a person fails to
17 comply with a subpoena issued by the department or to testify
18 on any matter concerning which that person may be lawfully
19 interrogated, on application by the department, the
20 Commonwealth Court may issue an order requiring the
21 attendance of such person, the production of instruments,
22 documents, accounts, books or records or the giving of
23 testimony or may institute contempt of court penalties.

24 ~~(4) Employ three additional staff to administer and~~
25 ~~enforce this act.~~

<—

26 CHAPTER 3

27 LICENSING PROVISIONS

28 Section 301. License requirement and form.

29 (a) Licensing required.--No person, partnership, association
30 or corporation shall engage in the business of cashing checks,

1 drafts or money orders for a consideration without first
2 obtaining a license under this act.

3 (b) Form of application.--Application for a license shall be
4 in writing, under oath, shall be in the form prescribed by the
5 department and shall contain the following:

6 (1) The applicant's name and address of residence.

7 (2) If the applicant is a partnership or association,
8 the name and address of every member and, if a corporation,
9 of each officer and director.

10 (3) The name and address of the business. ~~if the~~ <—
11 ~~business will be conducted at a specific address.~~

12 (4) Evidence of a lease, mortgage or agreement of sale
13 for the business location.

14 (5) Evidence IN THE FORM OF A SIGNED STATEMENT BY THE <—
15 APPLICANT that the applicant has complied with all municipal
16 and county requirements for doing business.

17 (6) Evidence IN THE FORM OF A SIGNED STATEMENT BY THE <—
18 APPLICANT that the applicant has no outstanding debts to the
19 Commonwealth or evidence that a payoff agreement is in place.

20 (c) Additional information.--The department may request any
21 additional information which it deems necessary to the licensing
22 procedure.

23 Section 302. License terms and fees.

24 Applicants for a license to conduct business shall remit to
25 the department for each location:

26 (1) An investigation fee in an amount equal to the
27 actual cost of the investigation ~~with a cap to be determined~~ <—
28 ~~by departmental regulations~~ WHICH MAY BE CONDUCTED ONLY AS <—
29 DETERMINED NECESSARY BY THE DEPARTMENT.

30 (2) A license fee of \$350. No abatement of any license

1 fee shall be made if the license is issued for less than one
2 year.

3 Section 303. Duration of license.

4 On or before January 1 of each year, a licensee shall pay a
5 license renewal fee of \$350. Every licensee shall, 60 days prior
6 to the date of expiration, apply for license renewal on a form
7 provided by the department. The department shall renew the
8 license if, after considering all relevant factors and the
9 comments and complaints of the public and consumers, if any, the
10 license renewal applicant is in compliance with the provisions
11 of this act. Any license ~~renewal~~ applicant requesting a change <—
12 of address shall pay to the department a fee ~~in an amount equal~~ <—
13 ~~to the cost of investigation of the new address with a cap on~~
14 ~~the fee to be determined by departmental regulations.~~ AS SET <—
15 FORTH IN SECTION 302. THE DEPARTMENT MUST REVIEW THE APPLICATION
16 WITHIN 60 DAYS.

17 ~~Section 304. Check Cashing Industry Recovery Fund.~~ <—

18 ~~(a) Payments into fund. Each check casher shall pay prior~~
19 ~~to the issuance of its license, in addition to the applicable~~
20 ~~licensing and investigation fees, a further fee of \$1,000 which~~
21 ~~shall be paid and credited to the Check Cashing Industry~~
22 ~~Recovery Fund, which is hereby established as a separate account~~
23 ~~in the State Treasury. Each check casher shall pay this fee only~~
24 ~~upon issuance of its first license. The department may assess an~~
25 ~~additional fee at renewal or at such time deemed necessary by~~
26 ~~the department, not to exceed \$1,000, if it finds that the~~
27 ~~initial fund balance is insufficient to address the losses of~~
28 ~~aggrieved parties. All fees shall be paid into the State~~
29 ~~Treasury and credited to the fund. The deposits shall be~~
30 ~~allotted solely for the purpose of the fund as prescribed in~~

~~this act. The fund shall be invested and interest and dividends shall accrue to the fund.~~

~~(b) Application for recovery from fund.—~~

~~(1) When an aggrieved person obtains a final judgment in a court of competent jurisdiction against a check casher with reference to a transaction for which a license is required under this act, the aggrieved person may, upon termination of all proceedings, including reviews and appeals, file an application in the court in which the judgment was entered for an order directing payment out of the fund of the amount unpaid upon the judgment.~~

~~(2) The aggrieved person shall be required to show the following:~~

~~(i) He is not a spouse of the payor or the personal representative of the spouse.~~

~~(ii) He has obtained a final judgment as set out in this section.~~

~~(iii) All reasonable personal acts, rights of discovery and such other remedies at law and in equity as exist have been exhausted in the collection thereof.~~

~~(iv) He is making the application no more than one year after the termination of the proceedings, including reviews and appeals in connection with the judgment.~~

~~(3) Should the court direct payment from the fund, the license of that check casher shall automatically suspend upon the effective date of the payment from the fund. No such check casher shall be granted reinstatement until it has repaid in full, plus interest at the rate of 10% a year, the amount paid from the fund.~~

~~Section 305~~ 304. Conditions for licensing.

<—

1 (a) Conditions for license.--The department shall execute a
2 license to permit the cashing of checks, drafts and money
3 orders, in accordance with this act at the location specified in
4 the application for license if the department finds that the
5 financial responsibility, ~~experience~~ and general fitness of the <—
6 applicant, and of the members thereof if the applicant is a
7 partnership or association, and of the officers and directors
8 thereof if the applicant is a corporation, warrants a ~~belief~~ THE <—
9 CONCLUSION that the business will be operated honestly and
10 fairly within the purposes of this act.

11 (b) Procedure for public comment.--To determine the
12 financial responsibility, experience, character and general
13 fitness of the applicant, the department shall consider public
14 comment. The procedure for public comment shall be as follows:

15 (1) The applicant shall publish notice, within ten days
16 after being notified by the department, that the application
17 is completed. Notice shall be published in English and
18 Spanish or other language if deemed necessary by the
19 department in a newspaper having general circulation in the
20 community in which the applicant intends to locate.

21 (2) The applicant shall transmit to the department two
22 copies of each notice and each publisher's affidavit of
23 publication.

24 (3) Upon publication, the application and all related
25 communications may be inspected in the department during
26 working hours by any person. This inspection shall be upon
27 written request and by appointment. The department may refuse
28 to disclose information that it deems is confidential.

29 (4) Within 30 days of the date of publication of notice,
30 anyone may file a communication in protest or in favor of the

1 application by submitting two copies to the department.

2 (5) The applicant may file an answer to any protest
3 until ten days after the last date for filing of
4 communication by submitting two copies to the department.

5 (6) The department shall consider all such communication
6 in its evaluation of the application.

7 (c) Felony conviction.--The department shall not issue a
8 license if it finds that the applicant, or any person who is a
9 director, officer, partner OR agent, ~~employee or substantial~~ <—
10 ~~stockholder of the applicant,~~ has been convicted of a felony in <—
11 ~~any jurisdiction or of a crime which, if committed within this~~
12 ~~Commonwealth, would constitute a felony.~~ OR PLED GUILTY OR NOLO <—
13 CONTENDERE TO A FELONY OR TO A CRIME COMMITTED IN ANOTHER
14 JURISDICTION WHICH, IF COMMITTED WITHIN THIS COMMONWEALTH, WOULD
15 CONSTITUTE A FELONY.

16 ~~(d) Acts constituting conviction. For the purpose of this~~ <—
17 ~~act, a person shall be deemed to have been convicted of a crime~~
18 ~~if that person pleaded guilty to a charge thereof before a court~~
19 ~~or magistrate, or has been found guilty thereof by the decision~~
20 ~~or judgment of a court or magistrate or by the verdict of a~~
21 ~~jury, irrespective of the pronouncement of sentence or the~~
22 ~~suspension thereof, unless the plea of guilty, or the decision,~~
23 ~~judgment or verdict, has been set aside, reversed or otherwise~~
24 ~~abrogated by lawful judicial process or unless the person~~
25 ~~convicted of the crime has received a pardon from the President~~
26 ~~of the United States or the Governor or other pardoning~~
27 ~~authority in the jurisdiction where the conviction occurred, or~~
28 ~~shall have received a certificate of good conduct granted by the~~
29 ~~Pennsylvania Board of Probation and Parole to remove the~~
30 ~~disability under this act because of such conviction.~~

1 ~~(e)~~ (D) Notification of denial.--If the department finds <—
2 that the applicant fails to meet any of the conditions set forth
3 in this section, the license shall not be issued and the
4 department shall notify the applicant of the denial. If an
5 application is denied or withdrawn, the department shall retain
6 the investigation fee and shall return the license fee to the
7 applicant.

8 ~~(f)~~ (E) Information on license.--The license issued pursuant <—
9 to this section shall state:

10 (1) The name of the licensee.

11 (2) If the license is a partnership or association, the
12 names of the members thereof.

13 (3) The name and address of the business.

14 (4) Any other information deemed necessary by the
15 department.

16 ~~(g)~~ (F) Conspicuous posting.--The license shall be kept <—
17 conspicuously posted in the place of business of the licensee.
18 The license shall not be sold, transferred or assigned.

19 ~~(h)~~ (G) Effect of license.--The license shall remain in full <—
20 force and effect until it is surrendered by the licensee or
21 revoked or suspended as provided in this act.

22 CHAPTER 5

23 ENFORCEMENT

24 Section 501. Suspension and revocation of AND REFUSAL TO ISSUE <—
25 license.

(a) Notice.--The department, upon 30 days written notice to the licensee forwarded by registered mail to the place of business of such licensee as shown in the application for license or as amended on the license certificate in case of change of address subsequent to issuance of the license

1 certificate, may REFUSE TO ISSUE, revoke or suspend any license <—
2 if it finds any of the following:

3 (1) The licensee OR APPLICANT has made any material <—
4 misstatement in the application for license.

5 (2) The licensee OR APPLICANT has violated any provision <—
6 of this act.

7 (3) The licensee OR APPLICANT has violated any rule or <—
8 regulation of the department issued under this act.

9 (4) The licensee OR APPLICANT has failed to comply with <—
10 any demand, rule or regulation lawfully made by the
11 department under the authority of this act.

12 (5) The licensee OR APPLICANT refuses or has refused to <—
13 permit the department or its designated representative to
14 make examinations authorized by this act.

15 (6) The licensee OR APPLICANT has failed to maintain <—
16 satisfactory records required by this act or as prescribed by
17 the department.

18 (7) The licensee OR APPLICANT has falsified any records <—
19 required by this act to be maintained of the business
20 contemplated by this act.

21 (8) The licensee OR APPLICANT has failed to file any <—
22 report with the department within the time stipulated in this
23 act.

24 (9) The licensee OR APPLICANT has used unfair or <—
25 deceptive practices.

26 (10) Any fact or condition exists or is discovered
27 which, if it had existed or had been discovered at the time
28 of filing of the application for the license, would have been
29 grounds for the department to refuse to issue such license.

30 (11) The licensee OR APPLICANT has failed to report to <—

the department any change in ownership at least ten days prior to the effective date of the ownership change.

(b) ~~Particular~~ MULTIPLE license ~~subject~~ SUSPENSION OR
REVOCATION.--The department may revoke or suspend only the particular license with respect to which grounds for revocation may occur or exist, but if it finds that grounds for revocation are of general application to all places of business or to more than one place of business operated by a licensee, it may revoke all of the licenses issued to such licensee or those licenses to which grounds for revocation apply, as the case may be.

(c) Issuance of another license.--Whenever a license has been revoked, the department shall not issue another license until the expiration of at least five years from the effective date of revocation of such license and shall never issue a license if such licensee or an owner, partner, member, officer, director, employee, agent or spouse of the licensee shall have pleaded guilty, entered a plea of nolo contendere, or has been found guilty by a judge or a jury of a second offense violation of this act.

(d) Appeals.--Appeals may be taken from the action of the department in suspending and revoking licenses in accordance with the procedures of 2 Pa.C.S. (relating to administrative law and procedure).

Section 502. Change of location.

A licensee may make a written application to the department to change the business address, stating the reasons for the proposed change. If the department approves the application, a new license shall be issued in accordance with Chapter 3, stating the new location of the licensed business.

Section 503. Fees and charges.

(a) Allowable fees.--The licensee shall not charge or collect, in fees, charges or otherwise, for cashing a check or draft drawn on a bank or other financial institution an amount in excess of the following percentages of the face amount of the check or draft:

(1) The greater of 1% of the face amount of the check or \$20 for entitlement checks from Federal or State government programs, including, but not limited to, Aid to Families with Dependent Children (AFDC), General Assistance, Social Security, Railroad Retirement, government and veterans' disability payments and government pensions.

(2) The greater of 2% of the face amount of the check or \$20 for non-entitlement checks.

(3) The greater of 5% of the face amount of the check or \$20 for personal checks.

(b) Fee schedule.--In every check-casher location there shall be conspicuously posted and at all times displayed a schedule of fees and charges based on a model form to be published by the department in the Pennsylvania Bulletin. The schedule shall state the maximum fees or charges and shall include a table of amounts and corresponding maximum fees along with the telephone number of the Consumer Services Division of the Department of Banking. Where the department determines it desirable, the schedule shall also be posted in languages other than English.

(c) Receipt.--Based on the model form to be published by the department in the Pennsylvania Bulletin, the licensee shall provide a receipt to each consumer for each transaction. The receipt shall include the name and address of the licensee, the total amount of the check cashed, the fee charged, the remaining

1 balance, a statement in English and Spanish or other language
2 determined to be desirable by the department of the maximum fee
3 permitted under this act, and the telephone number of the
4 Consumer Services Division of the Department of Banking.

5 (d) Other goods and services.--The check casher shall not
6 require consumers to purchase other goods or services in order
7 to cash checks, drafts or money orders. A licensee shall not
8 discount normal check-cashing fees or charges for cashing
9 checks, drafts or money orders upon the purchase of other goods
10 or services.

11 ~~(e) Natural person payee. No licensee shall cash a check,~~ <—
12 ~~draft or money order which is not made out to a natural person.~~

13 Section 504. Endorsement of checks, drafts or money orders
14 cashed.

15 Before a check casher deposits with any banking institution a
16 check, draft or money order cashed by the check casher, the same
17 must be endorsed with the actual name under which such check
18 casher is doing business and must have the words "licensed
19 casher of checks" legibly written or stamped immediately after
20 or below such name.

21 Section 505. Restrictions on business of licensee.

22 (a) Advancement of moneys.--No check casher shall at any
23 time cash or advance any money on a postdated check, draft or
24 money order or engage in the business of transmitting money or
25 receiving money for transmission, unless licensed under the act
26 of September 2, 1965 (P.L.490, No.249), referred to as the Money
27 Transmission Business Licensing Law.

28 (b) Exceptions.--Notwithstanding subsection (a), a licensee
29 may cash a check payable on the first banking business day
30 following the date of cashing if:

1 (1) the check is drawn by the United States, the
2 Commonwealth or any political subdivision of the Commonwealth
3 or by any department, bureau, agency, authority,
4 instrumentality or officer (acting in official capacity) of
5 the United States, or the Commonwealth or any political
6 subdivision of the Commonwealth; or

7 (2) the check is a payroll check drawn by an employer to
8 the order of its employee.

9 Section 506. Books, accounts and records.

10 (a) Keeping and use of information.--Each check casher shall
11 keep and use in the business, in a form satisfactory to the
12 department, such books, accounts and records as will enable the
13 department to determine whether the check casher is complying
14 with the provisions of this act and the rules and regulations
15 adopted under this act. Every check casher shall preserve such
16 books, accounts and records for five years.

17 (b) Filing of information.--Every check casher shall
18 annually, on or before May 1, file a report with the department
19 giving such information as the department may require concerning
20 the business and operations of the licensee during the preceding
21 calendar year. In addition to the annual report, the department
22 may require such additional regular or special reports deemed
23 necessary to the proper operation and enforcement of this act.
24 These reports shall be made under oath or affirmation and shall
25 be in the form prescribed by the department which shall make and
26 publish annually an analysis of these reports.

27 (c) Examination and cost of information.--The department may
28 examine the affairs, business, records, books, documents,
29 accounts and papers of any licensee. The actual cost of these
30 examinations shall be paid to the department by the licensee

1 examined, and the department may bring an action for the
2 recovery of these costs in any court of competent jurisdiction.

3 SECTION 507. DEPARTMENTAL PENALTY. <—

4 ANY PERSON WHO IS SUBJECT TO THE PROVISIONS OF THIS ACT WHO
5 VIOLATES ANY OF THE PROVISIONS OF THIS ACT SHALL BE SUBJECT TO A
6 FINE LEVIED BY THE DEPARTMENT OF UP TO \$2,000 FOR EACH OFFENSE.

7 Section ~~507~~ 508. Criminal penalty. <—

8 Any person, partnership, association or corporation, and any
9 member, officer, director, agent or employee thereof, who
10 violates any of the provisions of this act commits a misdemeanor
11 ~~and shall, upon conviction, be sentenced to pay a fine of not~~ <—
12 ~~more than \$500 or to imprisonment for not more than one year, or~~
13 ~~both.~~ OF THE THIRD DEGREE. <—

14 Section ~~508~~ 509. Private remedy. <—

15 (a) Liability.--Any person who fails to comply with any
16 provision of this act with respect to any consumer is liable to
17 the consumer for an amount equal to three times any actual
18 damage sustained by the consumer as a result of the failure or
19 the sum of \$250, whichever is greater.

20 (b) Recovery of costs.--In the case of any successful action
21 to enforce the liability under subsection (a), the consumer
22 shall recover from the licensee the costs of the action,
23 together with a reasonable attorney fee as determined by the
24 court.

25 CHAPTER 11

26 MISCELLANEOUS PROVISIONS

27 Section 1101. Applicability.

28 This act shall not apply to any insured depository
29 institution or affiliate or service corporation of any
30 depository institution supervised or regulated by the Department

1 of Banking, the National Credit Union Administration, the Office
2 of Thrift Supervision, the Federal Deposit Insurance
3 Corporation, the Comptroller of the Currency or the Board of
4 Governors of the Federal Reserve or the Federal Reserve Banks.
5 It also shall not apply to companies licensed by the Department
6 of Banking under the act of April 8, 1937 (P.L.262, No.66),
7 known as the Consumer Discount Company Act, THE ACT OF SEPTEMBER <—
8 2, 1965 (P.L.490, NO.249), REFERRED TO AS THE MONEY TRANSMISSION
9 BUSINESS LICENSING LAW, the act of December 12, 1980 (P.L.1179,
10 No.219), known as the Secondary Mortgage Loan Act, and the act
11 of December 22, 1989 (P.L.687, No.90), known as the Mortgage
12 Bankers and Brokers Act, in the normal course of business with
13 specific relation to lending transactions.
14 ~~Section 1102. Expiration.~~ <—
15 ~~This act shall expire two years from the effective date of~~
16 ~~this act.~~
17 SECTION 1102. REPORT TO GENERAL ASSEMBLY. <—
18 THREE YEARS FROM THE EFFECTIVE DATE OF THIS ACT, THE
19 DEPARTMENT SHALL PROVIDE A WRITTEN REPORT TO THE GENERAL
20 ASSEMBLY SUMMARIZING CONSUMER COMPLAINTS RECEIVED BY THE
21 DEPARTMENT RELATING TO CHECK CASHING ACTIVITIES AND THE METHODS
22 BY WHICH THE COMPLAINTS WERE ADDRESSED. THE DEPARTMENT SHALL
23 ALSO MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING
24 IMPROVEMENTS TO THIS ACT AND THE CONTINUANCE OF A LICENSING
25 PROGRAM.
26 Section 1103. Effective date.
27 This act shall take effect in 180 days.