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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 36

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

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AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF  
REPRESENTATIVES, AS AMENDED, MAY 1, 1995

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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; and providing penalties.

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15 The General Assembly of the Commonwealth of Pennsylvania  
16 hereby enacts as follows:

17 CHAPTER 1

18 GENERAL PROVISIONS

19 Section 101. Short title.

20 This act shall be known and may be cited as the Check Cashing  
21 Licensing Act.

22 Section 102. Purpose.

23 The General Assembly hereby finds and declares that check  
24 cashers which engage in the business of cashing checks, drafts  
25 or money orders provide vital banking services which some  
26 citizens of this Commonwealth find unavailable or inconvenient  
27 to obtain from traditional banking institutions. Some customers,  
28 however, have been charged unreasonable rates by some check  
29 cashers for these services. Therefore, it is in the public  
30 interest, convenience and welfare to have the Commonwealth set

1 check-cashing rates and to regulate the manner in which these  
2 services are provided.

3 Section 103. Definitions.

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

7 "Cashing." Providing currency for payment instruments,  
8 except for travelers checks and foreign denominations payment  
9 instruments.

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

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

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

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

18 "Licensee." A check casher licensed by the Department of  
19 Banking to engage in the business of cashing checks, drafts or  
20 money orders.

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

24 "Secretary." The Secretary of Banking of the Commonwealth or  
25 a designee.

26 Section 104. Authority of department.

27 The department shall have the authority to:

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

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

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

### 20                               CHAPTER 3

#### 21                               LICENSING PROVISIONS

22   Section 301. License requirement and form.

23       (a) Licensing required.--No person, partnership, association  
24      or corporation shall engage in the business of cashing checks,  
25      drafts or money orders for a consideration without first  
26      obtaining a license under this act.

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

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

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

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

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

7 (5) Evidence in the form of a signed statement by the  
8 applicant that the applicant has complied with all municipal  
9 and county requirements for doing business.

10 (6) Evidence in the form of a signed statement by the  
11 applicant that the applicant has no outstanding debts to the  
12 Commonwealth or evidence that a payoff agreement is in place.

13 (c) Additional information.--The department may request any  
14 additional information which it deems necessary to the licensing  
15 procedure.

16 Section 302. License terms and fees.

17 Applicants for a license to conduct business shall remit to  
18 the department for each location:

19 (1) An investigation fee in an amount equal to the  
20 actual cost of the investigation which may be conducted only  
21 as determined necessary by the department.

22 (2) A license fee of ~~\$350~~ \$500. No abatement of any  
23 license fee shall be made if the license is issued for less  
24 than one year.

25 Section 303. Duration of license.

26 On or before January 1 of each year, a licensee shall pay a  
27 license renewal fee of \$350. Every licensee shall, 60 days prior  
28 to the date of expiration, apply for license renewal on a form  
29 provided by the department. The department shall renew the  
30 license if, after considering all relevant factors and the

1 comments and complaints of the public and consumers, if any, the  
2 license renewal applicant is in compliance with the provisions  
3 of this act. Any license applicant requesting a change of  
4 address shall pay to the department a fee as set forth in  
5 section 302. The department must review the application within  
6 60 days.

7 Section 304. Conditions for licensing.

8 (a) Conditions for license.--The department shall execute a  
9 license to permit the cashing of checks, drafts and money  
10 orders, in accordance with this act at the location specified in  
11 the application for license if the department finds that the  
12 financial responsibility and general fitness of the applicant,  
13 and of the members thereof if the applicant is a partnership or  
14 association, and of the officers and directors thereof if the  
15 applicant is a corporation, warrants the conclusion that the  
16 business will be operated honestly and fairly within the  
17 purposes of this act.

18 (b) Procedure for public comment.--To determine the  
19 financial responsibility, experience, character and general  
20 fitness of the applicant, the department shall consider public  
21 comment. The procedure for public comment shall be as follows:

22 (1) The applicant shall publish notice, within ten days  
23 after being notified by the department, that the application  
24 is completed. Notice shall be published in English and  
25 Spanish or other language if deemed necessary by the  
26 department in a newspaper having general circulation in the  
27 community in which the applicant intends to locate.

28 (2) The applicant shall transmit to the department two  
29 copies of each notice and each publisher's affidavit of  
30 publication.

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

6           (4) Within 30 days of the date of publication of notice,  
7       anyone may file a communication in protest or in favor of the  
8       application by submitting two copies to the department.

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

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

14      (c) Felony conviction.--The department shall not issue a  
15      license if it finds that the applicant, or any person who is a  
16      director, officer, partner or agent has been convicted of or  
17      pled guilty or nolo contendere to a felony or to a crime  
18      committed in another jurisdiction which, if committed within  
19      this Commonwealth, would constitute a felony.

20      (d) Notification of denial.--If the department finds that  
21      the applicant fails to meet any of the conditions set forth in  
22      this section, the license shall not be issued and the department  
23      shall notify the applicant of the denial. If an application is  
24      denied or withdrawn, the department shall retain the  
25      investigation fee and shall return the license fee to the  
26      applicant.

27      (e) Information on license.--The license issued pursuant to  
28      this section shall state:

29           (1) The name of the licensee.

30           (2) If the license is a partnership or association, the

names of the members thereof.

(3) The name and address of the business.

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

(f) Conspicuous posting.--The license shall be kept conspicuously posted in the place of business of the licensee. The license shall not be sold, transferred or assigned.

(g) Effect of license.--The license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as provided in this act.

## CHAPTER 5

### ENFORCEMENT

Section 501. Suspension and revocation of and refusal to issue 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 certificate, may refuse to issue, revoke or suspend any license if it finds any of the following:

(1) The licensee or applicant has made any material misstatement in the application for license.

(2) The licensee or applicant has violated any provision of this act.

(3) The licensee or applicant has violated any rule or regulation of the department issued under this act.

(4) The licensee or applicant has failed to comply with any demand, rule or regulation lawfully made by the department under the authority of this act.



1           (5) The licensee or applicant refuses or has refused to  
2 permit the department or its designated representative to  
3 make examinations authorized by this act.

4           (6) The licensee or applicant has failed to maintain  
5 satisfactory records required by this act or as prescribed by  
6 the department.

7           (7) The licensee or applicant has falsified any records  
8 required by this act to be maintained of the business  
9 contemplated by this act.

10          (8) The licensee or applicant has failed to file any  
11 report with the department within the time stipulated in this  
12 act.

13          (9) The licensee or applicant has used unfair or  
14 deceptive practices.

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

19          (11) The licensee or applicant has failed to report to  
20 the department any change in ownership at least ten days  
21 prior to the effective date of the ownership change.

22          (b) Multiple license suspension or revocation.--The  
23 department may revoke or suspend only the particular license  
24 with respect to which grounds for revocation may occur or exist,  
25 but if it finds that grounds for revocation are of general  
26 application to all places of business or to more than one place  
27 of business operated by a licensee, it may revoke all of the  
28 licenses issued to such licensee or those licenses to which  
29 grounds for revocation apply, as the case may be.

30          (c) Issuance of another license.--Whenever a license has

1 been revoked, the department shall not issue another license  
2 until the expiration of at least five years from the effective  
3 date of revocation of such license and shall never issue a  
4 license if such licensee or an owner, partner, member, officer,  
5 director, employee, agent or spouse of the licensee shall have  
6 pleaded guilty, entered a plea of nolo contendere, or has been  
7 found guilty by a judge or a jury of a second offense violation  
8 of this act.

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

13 Section 502. Change of location.

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

19 Section 503. Fees and charges.

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

25 (1) The greater of 1% of the face amount of the check or  
26 \$20 for entitlement checks from Federal or State government  
27 programs, including, but not limited to, Aid to Families with  
28 Dependent Children (AFDC), General Assistance, Social  
29 Security, Railroad Retirement, government and veterans'  
30 disability payments and government pensions.

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

3           (3) The greater of 5% of the face amount of the check or  
4       \$20 for personal checks.

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

15       (c) Receipt.--Based on the model form to be published by the  
16 department in the Pennsylvania Bulletin, the licensee shall  
17 provide a receipt to each consumer for each transaction. The  
18 receipt shall include the name and address of the licensee, the  
19 total amount of the check cashed, the fee charged, the remaining  
20 balance, a statement in English and Spanish or other language  
21 determined to be desirable by the department of the maximum fee  
22 permitted under this act, and the telephone number of the  
23 Consumer Services Division of the Department of Banking.

24       (d) Other goods and services.--The check casher shall not  
25 require consumers to purchase other goods or services in order  
26 to cash checks, drafts or money orders. A licensee shall not  
27 discount normal check-cashing fees or charges for cashing  
28 checks, drafts or money orders upon the purchase of other goods  
29 or services.

30 Section 504. Endorsement of checks, drafts or money orders

1                   cashed.

2       Before a check casher deposits with any banking institution a  
3 check, draft or money order cashed by the check casher, the same  
4 must be endorsed with the actual name under which such check  
5 casher is doing business and must have the words "licensed  
6 casher of checks" legibly written or stamped immediately after  
7 or below such name.

8 Section 505. Restrictions on business of licensee.

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

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

18           (1) the check is drawn by the United States, the  
19 Commonwealth or any political subdivision of the Commonwealth  
20 or by any department, bureau, agency, authority,  
21 instrumentality or officer (acting in official capacity) of  
22 the United States, or the Commonwealth or any political  
23 subdivision of the Commonwealth; or

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

26 Section 506. Books, accounts and records.

27       (a) Keeping and use of information.--Each check casher shall  
28 keep and use in the business, in a form satisfactory to the  
29 department, such books, accounts and records as will enable the  
30 department to determine whether the check casher is complying

1 with the provisions of this act and the rules and regulations  
2 adopted under this act. Every check casher shall preserve such  
3 books, accounts and records for five years.

4 (b) Filing of information.--Every check casher shall  
5 annually, on or before May 1, file a report with the department  
6 giving such information as the department may require concerning  
7 the business and operations of the licensee during the preceding  
8 calendar year. In addition to the annual report, the department  
9 may require such additional regular or special reports deemed  
10 necessary to the proper operation and enforcement of this act.  
11 These reports shall be made under oath or affirmation and shall  
12 be in the form prescribed by the department which shall make and  
13 publish annually an analysis of these reports.

14 (c) Examination and cost of information.--The department may  
15 examine the affairs, business, records, books, documents,  
16 accounts and papers of any licensee. The actual cost of these  
17 examinations shall be paid to the department by the licensee  
18 examined, and the department may bring an action for the  
19 recovery of these costs in any court of competent jurisdiction.  
20 Section 507. Departmental penalty.

21 Any person who is subject to the provisions of this act who  
22 violates any of the provisions of this act shall be subject to a  
23 fine levied by the department of up to \$2,000 for each offense.  
24 Section 508. Criminal penalty.

25 Any person, partnership, association or corporation, and any  
26 member, officer, director, agent or employee thereof, who  
27 violates any of the provisions of this act commits a misdemeanor  
28 of the third degree.  
29 Section 509. Private remedy.

30 (a) Liability.--Any person who fails to comply with any

1 provision of this act with respect to any consumer is liable to  
2 the consumer for an amount equal to three times any actual  
3 damage sustained by the consumer as a result of the failure or  
4 the sum of \$250, whichever is greater.

5 (b) Recovery of costs.--In the case of any successful action  
6 to enforce the liability under subsection (a), the consumer  
7 shall recover from the licensee the costs of the action,  
8 together with a reasonable attorney fee as determined by the  
9 court.

## 10 CHAPTER 11

### 11 MISCELLANEOUS PROVISIONS

#### 12 Section 1101. Applicability.

13 This act shall not apply to any insured depository  
14 institution or affiliate or service corporation of any  
15 depository institution supervised or regulated by the Department  
16 of Banking, the National Credit Union Administration, the Office  
17 of Thrift Supervision, the Federal Deposit Insurance  
18 Corporation, the Comptroller of the Currency or the Board of  
19 Governors of the Federal Reserve or the Federal Reserve Banks.  
20 It also shall not apply to companies licensed by the Department  
21 of Banking under the act of April 8, 1937 (P.L.262, No.66),  
22 known as the Consumer Discount Company Act, the act of September  
23 2, 1965 (P.L.490, No.249), referred to as the Money Transmission  
24 Business Licensing Law, the act of December 12, 1980 (P.L.1179,  
25 No.219), known as the Secondary Mortgage Loan Act, and the act  
26 of December 22, 1989 (P.L.687, No.90), known as the Mortgage  
27 Bankers and Brokers Act, in the normal course of business with  
28 specific relation to lending transactions.

#### 29 Section 1102. Report to General Assembly.

30 Three years from the effective date of this act, the

1 department shall provide a written report to the General  
2 Assembly summarizing consumer complaints received by the  
3 department relating to check cashing activities and the methods  
4 by which the complaints were addressed. The department shall  
5 also make recommendations to the General Assembly regarding  
6 improvements to this act and the continuance of a licensing  
7 program.

8 SECTION 1103. DISPOSITION OF FUNDS. <—

9 ALL MONEYS RECEIVED BY THE TREASURY DEPARTMENT FROM THE  
10 DEPARTMENT OF REVENUE FROM FEES, FINES, ASSESSMENTS, CHARGES AND  
11 PENALTIES, COLLECTED OR RECOVERED FROM PERSONS, FIRMS,  
12 CORPORATIONS OR ASSOCIATIONS, UNDER THE SUPERVISION OF THE  
13 DEPARTMENT OF BANKING PURSUANT TO THE PROVISIONS OF THIS ACT  
14 SHALL BE DEPOSITED IN THE BANKING DEPARTMENT FUND.

15 Section ~~1103~~ 1104. Effective date. <—

16 This act shall take effect in 180 days.