

CHECK CASHER LICENSING ACT - OMNIBUS AMENDMENTS

Act of Oct. 24, 2018, P.L. 742, No. 122

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No. 2018-122

HB 2453

AN ACT

Amending the act of February 18, 1998 (P.L.146, No.22), entitled "An act regulating the check-cashing industry; providing for the licensing of check cashers, for additional duties of the Department of Banking and for certain terms and conditions of the business of check cashing; and providing penalties for money-laundering activities and violations of the act," amending the title of the act; in general provisions, further providing for authority of the Department of Banking and Securities; in licensing provisions, further providing for license terms and fees; in enforcement, further providing for suspension and revocation of license and civil penalties, for change of status, for restrictions on business of licensee and for civil penalty; and, in miscellaneous provisions, further providing for applicability and repealing provisions relating to report to General Assembly.

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

Section 1. The title of the act of February 18, 1998 (P.L.146, No.22), known as the Check Casher Licensing Act, is amended to read:

AN ACT

Regulating the check-cashing industry; providing for the licensing of check cashers, for additional duties of the Department of Banking **and Securities** and for certain terms and conditions of the business of check cashing; and providing penalties for money-laundering activities and violations of the act.

Section 2. Sections 104, 302(b), 501, 502, 505, 507 and 1101 of the act are amended to read:

Section 104. Authority of department.

(a) General rule.--The department shall have the authority to:

[(1) Issue rules, regulations and orders as may be necessary for the administration and enforcement of this act.

(2) Examine any check, document, account, book, record or file relating to a check casher's business or operation during regular business hours at the check casher's principal office or to make such other investigation as may be reasonably necessary to administer and enforce this act.

(3) Conduct administrative hearings on any matter pertaining to this act, issue subpoenas to compel the attendance of witnesses and the production of checks, documents, accounts, books and records at any such hearing, which may be retained by the department until the proceedings are completed, and administer oaths and affirmations to any person whose testimony is required. In the event a person fails to comply with a subpoena issued by the department or to testify on any matter concerning which that person may be lawfully interrogated, on application by the department the Commonwealth Court may issue an order requiring the

attendance and testimony of such person and requiring the production of checks, documents, accounts, books and records or may institute contempt of court penalties.]

(1) Examine any instrument, document, account, book, record or file of a licensee or any person having a connection to the licensee or make other investigation as may be necessary to administer the provisions of this act. The department may remove any instrument, document, account, book, record or file of a licensee to a location outside of the licensee's office. The costs of the examination shall be borne by the licensee or the person subject to the examination.

(2) Conduct administrative hearings on any matter relating to this act, issue subpoenas to compel the attendance of witnesses and the production of instruments, documents, accounts, books and records at a hearing. The instruments, documents, accounts, books and records may be retained by the department until the completion of all proceedings in connection with which the materials were produced. A department official may administer oaths and affirmations to a person whose testimony is required. In the event a person fails to comply with a subpoena issued by the department or to testify on a matter which the person may be lawfully interrogated, on application by the department, the Commonwealth Court may issue an order requiring the attendance of the person, the production of instruments, documents, accounts, books and records and the giving of testimony.

(3) Request and receive information or records of any kind, including reports of criminal history record information from any Federal, State, local or foreign government entity regarding an applicant for a license, licensee or person related to the business of the applicant or licensee, the cost of which shall be paid for by the applicant or licensee.

(4) Issue regulations, statements of policy or orders as may be necessary for the proper conduct of the check casher business by licensees, the issuance and renewal of licenses and the enforcement of this act.

(5) Prohibit or permanently remove a person who violates this act from working in the person's current capacity or in any other capacity of the person related to activities regulated by the department.

(6) Order a person to make restitution for actual damages to consumers caused by any violation of this act.

(7) Issue cease and desist orders that are effective immediately, subject to a hearing as provided under subsection (b) within 14 days of the issuance of the cease and desist order.

(8) Impose such other conditions as the department deems appropriate.

(a.1) Hearings.--A person aggrieved by a decision of the department may appeal the decision to the commission. The appeal shall be conducted under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

(a.2) Injunctions.--The department may maintain an action for an injunction or other process against a person to restrain and prevent the person from engaging in an activity violating this act.

(a.3) Final orders.--A decision of the commission or an unappealed order of the department shall be a final order of the department and shall be enforceable in a court of competent

jurisdiction. The department may publish final adjudications issued under this section, subject to redaction or modification to preserve confidentiality. The department shall regularly report violations of this act, enforcement actions and other relevant information to the Nationwide Multistate Licensing System and Registry.

(a.4) Appeals.--A person aggrieved by a decision of the commission may appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

(b) Limitation.--The department may not require retail food stores, which must register with the department, to register with the Nationwide Multistate Licensing System and Registry. Section 302. License terms and fees.

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(b) [License renewal.--On May 1 of each year, upon payment of an annual renewal fee of \$350 for each fixed location or mobile unit, the department shall renew the license if the licensee is in compliance with the provisions of this act.]

Term and renewal.--A license shall be issued for a term not to exceed 14 months and may be renewed by the department each year on a schedule set by the department upon application by the licensee and the payment of \$350 for each fixed location or mobile unit. The licensee shall demonstrate to the department that it is conducting the check casher business in accordance with the requirements of this act and that the licensee or directors, officers, partners, employees, agents and ultimate equitable owners of 10% or more of the licensee continue to meet all of the initial requirements for licensure required by this act, unless otherwise determined by the department.

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Section 501. Suspension and revocation of license and civil penalties.

[(a) Acts of licensee.--The department, upon 60 days' written notice to the licensee and consistent with 2 Pa.C.S. (relating to administrative law and procedure), may revoke, suspend or decline to renew a license if it finds that the licensee:

- (1) has made any material misstatement in the application for license;
- (2) has violated any provision of this act or any order, rule or regulation of the department issued under this act;
- (3) has failed to comply with a subpoena issued under authority of this act;
- (4) has failed to maintain records as required under this act or as prescribed by the department;
- (5) has falsified a record required under this act or as prescribed by the department;
- (6) has refused to permit the department or its designated representative to make examinations or investigations authorized under this act;
- (7) has failed to file a report with the department within the time stipulated in this act;
- (8) has been convicted of or pled guilty or nolo contendere to, or has otherwise been adjudged in a final judgment by a court of competent jurisdiction to have committed, any of the following acts:
  - (i) a violation of 18 Pa.C.S. (relating to crimes and offenses) regarding theft or fraud involving a customer;
  - (ii) a violation of Federal or State law regarding the reporting of currency transactions, including section 21 of the Federal Deposit Insurance Corporation Act (64

Stat. 873, 12 U.S.C. § 1829b) and sections 121 through 124 of the act of October 26, 1970 (Public Law 91-508, 12 U.S.C. §§ 1951 through 1954);

(iii) a violation of 18 Pa.C.S. § 5111 (relating to dealing in proceeds of unlawful activities) or any Federal criminal statute related to money laundering or conspiracy to launder money; or

(iv) any other felony as determined in accordance with section 304(e); or

(9) has committed any act, the fact or condition of which exists or is discovered to exist which, if it had existed or had been discovered to exist at the time of filing of the application for a license, would have been grounds for the department to refuse to issue the license.

(b) Noncompliance notice.--The department shall provide to a licensee notice of noncompliance with or a violation of this act. The department shall permit the licensee a reasonable time to comply with this act or to correct the violation. If the licensee fails to comply or correct the violation, the department may order that civil penalties be levied against a licensee.

(c) Multiple license suspension or revocation.--The department may revoke, suspend or nonrenew only the particular license for which grounds to do so may occur or exist, but if it finds that such grounds are of general application to all places of business or to more than one place of business operated by a licensee, it may revoke, suspend or nonrenew all or some of the licenses issued to the check casher.

(d) Issuance of another license.--Whenever a license has been revoked, the department shall not issue another license until the expiration of at least one year from the effective date of revocation of such license.

(e) Appeals.--A licensee may appeal the department's suspension, revocation or nonrenewal of a license in accordance with the procedures of 2 Pa.C.S. (relating to administrative law and procedure).]

**The department may suspend, revoke or refuse to renew a license issued under this act if any fact or condition exists or is discovered which, if it had existed or had been discovered at the time of filing of the application for the license, would have warranted the department to refuse issuance of the license or if a licensee or director, officer, partner, employee, mortgage originator or owner of a licensee has:**

(1) Made a material misstatement in an application or any report or submission required by this act or any department regulation, statement of policy or order.

(2) Failed to comply with or violated any provision of this act or any regulation or order promulgated or issued by the department under this act.

(3) Engaged in dishonest, fraudulent or illegal practices or conduct in a business or unfair or unethical practices or conduct in connection with the check casher business.

(4) Been convicted of or pleaded guilty or nolo contendere to a crime of moral turpitude or a felony.

(5) Permanently or temporarily been enjoined by a court of competent jurisdiction from engaging in or continuing conduct or a practice involving an aspect of the check casher business.

(6) Become the subject of an order of the department denying, suspending or revoking a license applied for or issued under this act.

(7) Become the subject of a United States Postal Service fraud order.

(8) Failed to comply with the requirements of this act to make and keep records prescribed by regulation, statement of policy or order of the department, to produce records required by the department or to file financial reports or other information that the department, by regulation, statement of policy or order, may require.

(9) Become the subject of an order of the department denying, suspending or revoking a license under the provisions of any other law administered by the department.

(10) Demonstrated negligence or incompetence in performing an act for which the licensee is required to hold a license under this act.

(11) Become insolvent due to the liabilities of the applicant or licensee exceeding the assets of the applicant or licensee, the applicant or licensee being unable to meet the obligations of the applicant or licensee as they mature or being in a financial condition that the applicant or licensee cannot continue in business with safety to the customers of the applicant or licensee.

Section 502. Change of status.

[(a) Notice to department.--]A licensee shall send written notice to the department on any change in status including address change, change of directors, owners or officers, including the reason for the proposed change **within 10 days of the change of status.**

[(b) Approval for sale or transfer of license.--]A licensee shall not sell, transfer or assign its check-casher license without the issuance by the department of a new license. In the event a license is terminated, the former licensee shall surrender it to the department.]

Section 505. Restrictions on business of licensee.

[(a) Advancement of moneys.--]No licensee shall at any time cash or advance any money on a postdated **personal** check. **A licensee may cash a postdated government check, government assistance check or payroll check so long as the date on the check is no more than five days later than the date the check is presented to the licensee and the fee charged by the licensee for the transaction does not exceed the applicable fee provided in section 503.** No check-casher licensee shall engage in the business of transmitting money or receiving money for transmission, unless licensed **or operating as an agent of a licensee** under the act of September 2, 1965 (P.L.490, No.249), referred to as the Money Transmission Business Licensing Law.

[(b) Report of certain transactions.--]A licensee shall report to the department each transaction involving a check drawn on the personal account of the maker which is also payable to the maker in accordance with the requirements of 31 United States Code § 5316 (relating to reports on exporting and importing monetary instruments). The report shall be forwarded to the department within ten days of the transaction and shall include the name and address of the person on whose account the check was drawn and the date of the transaction.]

Section 507. Civil penalty.

[Any person who is subject to the provisions of this act who violates any of the provisions of this act shall be subject to a civil penalty levied by the department of up to \$2,000 for each violation. The civil penalty shall specifically apply to licensed and unlicensed activity under this act. The department may also recover the cost of investigating alleged violations.]

(a) **Persons operating without licenses.--**A person subject to the provisions of this act and not licensed by the department who violates a provision of this act or who commits any action which would subject a license to suspension, revocation or nonrenewal under section 501 may be fined by the department up to \$10,000 for each offense.

(b) **Violation by licensee.--**A person licensed under this act or director, officer, owner, partner, employee or agent of a licensee who violates a provision of this act or any act enforced by the department or who commits any action which would subject the licensee to suspension, revocation or nonrenewal under section 501 may be fined by the department up to \$10,000 for each offense.

Section 1101. Applicability.

This act shall not apply to any insured depository institution or affiliate or service corporation of any depository institution supervised or regulated by the [Department of Banking] **department**, the National Credit Union Administration, [the Office of Thrift Supervision,] the Federal Deposit Insurance Corporation, the Comptroller of the Currency or the Board of Governors of the Federal Reserve or the Federal Reserve Banks. It also shall not apply to companies licensed by the [Department of Banking] **department** under the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act, the act of September 2, 1965 (P.L.490, No.249), referred to as the Money Transmission Business Licensing Law, unless conducting activities regulated by this act[, the act of December 12, 1980 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act, and the act of December 22, 1989 (P.L.687, No.90), known as the Mortgage Bankers and Brokers Act,] **and 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry licensing and consumer protection)**, in the normal course of business with specific relation to lending transactions and when engaged in the activities regulated under these acts. It also shall not apply to a retail food store licensed as a food establishment, as defined in section 2 of the act of July 7, 1994 (P.L.421, No.70), known as the Food Act, or a retail food store licensed as a public eating or drinking place, as defined in section 1 of the act of May 23, 1945 (P.L.926, No.369), referred to as the Public Eating and Drinking Place Law, that receives less than 1% of its annual gross revenue from cashing checks. A retail food store location must register annually with the department, and the provisions of sections 301(b)(4), 304(c)(3), 503, 507 and 509 shall apply to such a business entity. Each retail food store location shall provide the department with the company name, address and telephone number on a form prescribed by the department and a \$100 annual registration fee. Upon request, a retail food store location shall demonstrate to the satisfaction of the department that it receives less than 1% of its annual gross income revenue from cashing checks.

Section 3. Section 1102 of the act is repealed:  
[Section 1102. Report to General Assembly.

Three years from the effective date of this act, the department shall provide a written report to the General Assembly summarizing consumer complaints received by the department relating to check-cashing activities and the methods by which the complaints were addressed. The department shall also make recommendations to the General Assembly regarding improvements to this act and the continuance of a licensing program.]

Section 4. This act shall take effect in 60 days.

APPROVED--The 24th day of October, A.D. 2018.

TOM WOLF