
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 36

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INTRODUCED BY THOMAS, DALEY, JOSEPHS, TIGUE AND HORSEY,
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REFERRED TO COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT,
JANUARY 19, 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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13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 CHAPTER 1
16 GENERAL PROVISIONS

17 Section 101. Short title.

18 This act shall be known and may be cited as the Check Cashing
19 Licensing Act.

20 Section 102. Purpose.

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

1 Section 103. Definitions.

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

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

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

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

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

13 "Fund" or "recovery fund." The Check Cashing Industry
14 Recovery Fund.

15 "Licensee." A check casher licensed by the Department of
16 Banking to engage in the business of cashing checks, drafts or
17 money orders.

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

21 "Secretary." The Secretary of Banking of the Commonwealth.

22 Section 104. Authority of department.

23 The department shall have the authority to:

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

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

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

16 (4) Employ three additional staff to administer and
17 enforce this act.

18 CHAPTER 3

19 LICENSING PROVISIONS

20 Section 301. License requirement and form.

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

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

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

29 (2) If the applicant is a partnership or association,
30 the name and address of every member and, if a corporation,

of each officer and director.

(3) The name and address of the business, if the business will be conducted at a specific address.

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

(5) Evidence that the applicant has complied with all municipal and county requirements for doing business.

(6) Evidence that the applicant has no outstanding debts to the Commonwealth or evidence that a payoff agreement is in place.

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

Section 302. License terms and fees.

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

(1) An investigation fee in an amount equal to the actual cost of the investigation with a cap to be determined by departmental regulations.

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

Section 303. Duration of license.

On or before January 1 of each year, a licensee shall pay a license renewal fee of \$350. Every licensee shall, 60 days prior to the date of expiration, apply for license renewal on a form provided by the department. The department shall renew the license if, after considering all relevant factors and the comments and complaints of the public and consumers, if any, the license renewal applicant is in compliance with the provisions

1 of this act. Any license renewal applicant requesting a change
2 of address shall pay to the department a fee in an amount equal
3 to the cost of investigation of the new address with a cap on
4 the fee to be determined by departmental regulations.

5 Section 304. Check Cashing Industry Recovery Fund.

6 (a) Payments into fund.--Each check casher shall pay prior
7 to the issuance of its license, in addition to the applicable
8 licensing and investigation fees, a further fee of \$1,000 which
9 shall be paid and credited to the Check Cashing Industry
10 Recovery Fund, which is hereby established as a separate account
11 in the State Treasury. Each check casher shall pay this fee only
12 upon issuance of its first license. The department may assess an
13 additional fee at renewal or at such time deemed necessary by
14 the department, not to exceed \$1,000, if it finds that the
15 initial fund balance is insufficient to address the losses of
16 aggrieved parties. All fees shall be paid into the State
17 Treasury and credited to the fund. The deposits shall be
18 allotted solely for the purpose of the fund as prescribed in
19 this act. The fund shall be invested and interest and dividends
20 shall accrue to the fund.

21 (b) Application for recovery from fund.--

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

30 (2) The aggrieved person shall be required to show the

1 following:

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

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

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

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

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

18 Section 305. Conditions for licensing.

19 (a) Conditions for license.--The department shall execute a
20 license to permit the cashing of checks, drafts and money
21 orders, in accordance with this act at the location specified in
22 the application for license if the department finds that the
23 financial responsibility, experience and general fitness of the
24 applicant, and of the members thereof if the applicant is a
25 partnership or association, and of the officers and directors
26 thereof if the applicant is a corporation, warrants a belief
27 that the business will be operated honestly and fairly within
28 the purposes of this act.

29 (b) Procedure for public comment.--To determine the
30 financial responsibility, experience, character and general

1 fitness of the applicant, the department shall consider public
2 comment. The procedure for public comment shall be as follows:

3 (1) The applicant shall publish notice, within ten days
4 after being notified by the department, that the application
5 is completed. Notice shall be published in English and
6 Spanish or other language if deemed necessary by the
7 department in a newspaper having general circulation in the
8 community in which the applicant intends to locate.

9 (2) The applicant shall transmit to the department two
10 copies of each notice and each publisher's affidavit of
11 publication.

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

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

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

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

25 (c) Felony conviction.--The department shall not issue a
26 license if it finds that the applicant, or any person who is a
27 director, officer, partner, agent, employee or substantial
28 stockholder of the applicant, has been convicted of a felony in
29 any jurisdiction or of a crime which, if committed within this
30 Commonwealth, would constitute a felony.

1 (d) Acts constituting conviction.--For the purpose of this
2 act, a person shall be deemed to have been convicted of a crime
3 if that person pleaded guilty to a charge thereof before a court
4 or magistrate, or has been found guilty thereof by the decision
5 or judgment of a court or magistrate or by the verdict of a
6 jury, irrespective of the pronouncement of sentence or the
7 suspension thereof, unless the plea of guilty, or the decision,
8 judgment or verdict, has been set aside, reversed or otherwise
9 abrogated by lawful judicial process or unless the person
10 convicted of the crime has received a pardon from the President
11 of the United States or the Governor or other pardoning
12 authority in the jurisdiction where the conviction occurred, or
13 shall have received a certificate of good conduct granted by the
14 Pennsylvania Board of Probation and Parole to remove the
15 disability under this act because of such conviction.

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

23 (f) Information on license.--The license issued pursuant to
24 this section shall state:

25 (1) The name of the licensee.

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

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

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

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

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

7 CHAPTER 5

8 ENFORCEMENT

9 Section 501. Suspension and revocation of license.

10 (a) Notice.--The department, upon 30 days written notice to
11 the licensee forwarded by registered mail to the place of
12 business of such licensee as shown in the application for
13 license or as amended on the license certificate in case of
14 change of address subsequent to issuance of the license
15 certificate, may revoke or suspend any license if it finds any
16 of the following:

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

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

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

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

25 (5) The licensee refuses or has refused to permit the
26 department or its designated representative to make
27 examinations authorized by this act.

28 (6) The licensee has failed to maintain satisfactory
29 records required by this act or as prescribed by the
30 department.

1 (7) The licensee has falsified any records required by
2 this act to be maintained of the business contemplated by
3 this act.

4 (8) The licensee has failed to file any report with the
5 department within the time stipulated in this act.

6 (9) The licensee has used unfair or deceptive practices.

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

11 (11) The licensee has failed to report to the department
12 any change in ownership at least ten days prior to the
13 effective date of the ownership change.

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

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

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

5 Section 502. Change of location.

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

11 Section 503. Fees and charges.

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

17 (1) The greater of 1% of the face amount of the check or
18 \$20 for entitlement checks from Federal or State government
19 programs, including, but not limited to, Aid to Families with
20 Dependent Children (AFDC), General Assistance, Social
21 Security, Railroad Retirement, government and veterans'
22 disability payments and government pensions.

23 (2) The greater of 2% of the face amount of the check or
24 \$20 for non-entitlement checks.

25 (3) The greater of 5% of the face amount of the check or
26 \$20 for personal checks.

27 (b) Fee schedule.--In every check-casher location there
28 shall be conspicuously posted and at all times displayed a
29 schedule of fees and charges based on a model form to be
30 published by the department in the Pennsylvania Bulletin. The

1 schedule shall state the maximum fees or charges and shall
2 include a table of amounts and corresponding maximum fees along
3 with the telephone number of the Consumer Services Division of
4 the Department of Banking. Where the department determines it
5 desirable, the schedule shall also be posted in languages other
6 than English.

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

16 (d) Other goods and services.--The check casher shall not
17 require consumers to purchase other goods or services in order
18 to cash checks, drafts or money orders. A licensee shall not
19 discount normal check-cashing fees or charges for cashing
20 checks, drafts or money orders upon the purchase of other goods
21 or services.

22 (e) Natural person payee.--No licensee shall cash a check,
23 draft or money order which is not made out to a natural person.

24 Section 504. Endorsement of checks, drafts or money orders
25 cashed.

26 Before a check casher deposits with any banking institution a
27 check, draft or money order cashed by the check casher, the same
28 must be endorsed with the actual name under which such check
29 casher is doing business and must have the words "licensed
30 casher of checks" legibly written or stamped immediately after

1 or below such name.

2 Section 505. Restrictions on business of licensee.

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

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

12 (1) the check is drawn by the United States, the
13 Commonwealth or any political subdivision of the Commonwealth
14 or by any department, bureau, agency, authority,
15 instrumentality or officer (acting in official capacity) of
16 the United States, or the Commonwealth or any political
17 subdivision of the Commonwealth; or

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

20 Section 506. Books, accounts and records.

21 (a) Keeping and use of information.--Each check casher shall
22 keep and use in the business, in a form satisfactory to the
23 department, such books, accounts and records as will enable the
24 department to determine whether the check casher is complying
25 with the provisions of this act and the rules and regulations
26 adopted under this act. Every check casher shall preserve such
27 books, accounts and records for five years.

28 (b) Filing of information.--Every check casher shall
29 annually, on or before May 1, file a report with the department
30 giving such information as the department may require concerning

1 the business and operations of the licensee during the preceding
2 calendar year. In addition to the annual report, the department
3 may require such additional regular or special reports deemed
4 necessary to the proper operation and enforcement of this act.
5 These reports shall be made under oath or affirmation and shall
6 be in the form prescribed by the department which shall make and
7 publish annually an analysis of these reports.

8 (c) Examination and cost of information.--The department may
9 examine the affairs, business, records, books, documents,
10 accounts and papers of any licensee. The actual cost of these
11 examinations shall be paid to the department by the licensee
12 examined, and the department may bring an action for the
13 recovery of these costs in any court of competent jurisdiction.
14 Section 507. Criminal penalty.

15 Any person, partnership, association or corporation, and any
16 member, officer, director, agent or employee thereof, who
17 violates any of the provisions of this act commits a misdemeanor
18 and shall, upon conviction, be sentenced to pay a fine of not
19 more than \$500 or to imprisonment for not more than one year, or
20 both.

21 Section 508. Private remedy.

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

27 (b) Recovery of costs.--In the case of any successful action
28 to enforce the liability under subsection (a), the consumer
29 shall recover from the licensee the costs of the action,
30 together with a reasonable attorney fee as determined by the

1 court.

2 CHAPTER 11

3 MISCELLANEOUS PROVISIONS

4 Section 1101. Applicability.

5 This act shall not apply to any insured depository
6 institution or affiliate or service corporation of any
7 depository institution supervised or regulated by the Department
8 of Banking, the National Credit Union Administration, the Office
9 of Thrift Supervision, the Federal Deposit Insurance
10 Corporation, the Comptroller of the Currency or the Board of
11 Governors of the Federal Reserve or the Federal Reserve Banks.
12 It also shall not apply to companies licensed by the Department
13 of Banking under the act of April 8, 1937 (P.L.262, No.66),
14 known as the Consumer Discount Company Act, the act of December
15 12, 1980 (P.L.1179, No.219), known as the Secondary Mortgage
16 Loan Act, and the act of December 22, 1989 (P.L.687, No.90),
17 known as the Mortgage Bankers and Brokers Act, in the normal
18 course of business with specific relation to lending
19 transactions.

20 Section 1102. Expiration.

21 This act shall expire two years from the effective date of
22 this act.

23 Section 1103. Effective date.

24 This act shall take effect in 180 days.