

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 14

Session of
1997

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BARD, JANUARY 27, 1997

AS REPORTED FROM COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT,
HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 11, 1997

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

21 CHAPTER 1
22 GENERAL PROVISIONS

23 Section 101. Short title.

24 This act shall be known and may be cited as the Check Cashing
25 Licensing Act.

26 Section 102. Purpose.

27 The General Assembly hereby finds and declares that check
28 cashers which engage in the business of cashing checks, drafts
29 or money orders provide vital banking services which some
30 citizens of this Commonwealth find unavailable or inconvenient

1 to obtain from traditional banking institutions. Some customers,
2 however, have been charged unreasonable rates by some check
3 cashers for these services. Therefore, it is in the public
4 interest, convenience and welfare to have the Commonwealth set
5 check-cashing rates and to regulate the manner in which these
6 services are provided.

7 Section 103. Definitions.

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

11 "Cashing." Providing currency for payment instruments,
12 except for travelers checks and foreign denominations payment
13 instruments.

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

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

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

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

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 CHAPTER 3

25 LICENSING PROVISIONS

26 Section 301. License requirement and form.

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

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

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

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

(3) The name and address of the business.

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

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

(6) Evidence in the form of a signed statement by the applicant 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 which may be conducted only as determined necessary by the department.~~

~~(2) A license fee of \$500. 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~~

1 ~~license renewal fee of \$350. Every licensee shall, 60 days prior~~
2 ~~to the date of expiration, apply for license renewal on a form~~
3 ~~provided by the department. The department shall renew the~~
4 ~~license if, after considering all relevant factors and the~~
5 ~~comments and complaints of the public and consumers, if any, the~~
6 ~~license renewal applicant is in compliance with the provisions~~
7 ~~of this act. Any license applicant requesting a change of~~
8 ~~address shall pay to the department a fee as set forth in~~
9 ~~section 302. The department must review the application within~~
10 ~~60 days.~~

11 SECTION 302. ANNUAL LICENSE FEE. <—

12 (A) AMOUNT.--AN APPLICANT SHALL PAY TO THE DEPARTMENT AT THE
13 TIME AN APPLICATION IS FILED AN INITIAL LICENSE FEE OF \$500 FOR
14 EACH LOCATION. ON OR BEFORE JANUARY 1 OF EACH YEAR A LICENSEE
15 SHALL PAY A LICENSE RENEWAL FEE OF \$350. EACH LICENSEE SHALL, 90
16 DAYS PRIOR TO THE DATE OF EXPIRATION, APPLY FOR LICENSE RENEWAL
17 ON A FORM PROVIDED BY THE DEPARTMENT. THE DEPARTMENT SHALL RENEW
18 THE LICENSE IF THE LICENSE RENEWAL APPLICANT IS IN COMPLIANCE
19 WITH THE PROVISIONS OF THIS ACT.

20 (B) RECOVERY OF COSTS.--NO ABATEMENT OF ANY LICENSE FEE
21 SHALL BE MADE IF THE LICENSE IS ISSUED FOR A PERIOD OF LESS THAN
22 ONE YEAR. THE DEPARTMENT SHALL BE ENTITLED TO RECOVER ANY COST
23 OF INVESTIGATION IN EXCESS OF LICENSE OR RENEWAL FEES FROM THE
24 LICENSEE OR FROM ANY PERSON WHO IS NOT LICENSED UNDER THIS ACT
25 BUT WHO IS PRESUMED TO BE ENGAGED IN BUSINESS CONTEMPLATED BY
26 THIS ACT.

27 SECTION 303. ISSUANCE OF LICENSE.

28 (A) TIME LIMIT.--WITHIN 90 DAYS AFTER A COMPLETE APPLICATION
29 IS RECEIVED, THE DEPARTMENT SHALL EITHER ISSUE A LICENSE OR
30 REFUSE TO ISSUE OR RENEW A LICENSE AS PROVIDED FOR BY SECTION

1 501. UPON RECEIPT OF AN APPLICATION FOR LICENSE, THE DEPARTMENT
2 SHALL CONDUCT SUCH INVESTIGATION AS IT DEEMS NECESSARY TO
3 DETERMINE THAT THE APPLICANT AND ITS OFFICERS, DIRECTORS AND
4 PRINCIPALS ARE OF GOOD CHARACTER AND ETHICAL REPUTATION.

5 (B) APPEAL OF DENIAL.--IF THE DEPARTMENT REFUSES TO ISSUE A
6 LICENSE, IT SHALL NOTIFY THE APPLICANT, IN WRITING, OF THE
7 DENIAL AND THE REASON THEREFOR AND OF THE APPLICANT'S RIGHT TO
8 APPEAL FROM SUCH ACTION TO THE COMMONWEALTH COURT. AN APPEAL
9 FROM THE DEPARTMENT'S REFUSAL TO APPROVE AN APPLICATION FOR A
10 LICENSE SHALL BE FILED BY THE APPLICANT WITHIN 30 DAYS OF NOTICE
11 THEREOF.

12 Section 304. Conditions for licensing.

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

23 (b) Procedure for public comment.--To determine the
24 financial responsibility, experience, character and general
25 fitness of the applicant, the department shall consider public
26 comment. The procedure for public comment shall be as follows:

27 (1) The applicant shall publish notice, within ten days
28 after being notified by the department, that the application
29 is completed. Notice shall be published ~~in English and~~ <—
30 ~~Spanish or other language if deemed necessary by the~~

1 ~~department~~ in a newspaper having general circulation in the
2 community in which the applicant intends to locate.

3 (2) The applicant shall transmit to the department ~~two~~ <—
4 ~~copies of each~~ A COPY OF THE notice and ~~each~~ THE publisher's <—
5 affidavit of publication.

6 (3) Upon publication, the application and all related
7 communications may be inspected in the department during
8 working hours by any person. This inspection shall be upon
9 written request and by appointment. The department may refuse
10 to disclose information that it deems is confidential. THE <—
11 DEPARTMENT SHALL NOT BE LIABLE FOR DISCLOSURE OF INFORMATION
12 DEEMED CONFIDENTIAL BY THE APPLICANT.

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

16 (5) The applicant may REQUEST A COPY OF SUCH <—
17 COMMUNICATION AND MAY file an answer to any protest until ten
18 days after the last date for filing of communication by
19 submitting two copies to the department.

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

22 (c) Felony conviction.--The department shall not issue a
23 license if it finds that the applicant, or any person who is a
24 director, officer, partner or agent has been convicted of or
25 pled guilty or nolo contendere to a felony or to a crime
26 committed in THIS COMMONWEALTH OR another jurisdiction which, if <—
27 committed within this Commonwealth, would constitute a felony.

28 ~~(d) Notification of denial. If the department finds that~~ <—
29 ~~the applicant fails to meet any of the conditions set forth in~~
30 ~~this section, the license shall not be issued and the department~~

1 ~~shall notify the applicant of the denial. If an application is~~
2 ~~denied or withdrawn, the department shall retain the~~
3 ~~investigation fee and shall return the license fee to the~~
4 ~~applicant.~~

5 ~~(e)~~ (D) Information on license.--The license issued pursuant <—
6 to this section shall state:

7 (1) The name of the licensee.

8 ~~(2) If the license is a partnership or association, the~~ <—
9 ~~names of the members thereof.~~

10 ~~(3)~~ (2) The name and address of the business.

11 ~~(4)~~ (3) Any other information deemed necessary by the <—
12 department.

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

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

19 CHAPTER 5

20 ENFORCEMENT

21 Section 501. Suspension and revocation of and refusal to issue
22 license.

23 (a) Notice.--The department, upon 30 days written notice to
24 the licensee forwarded by registered mail to the place of
25 business of such licensee as shown in the application for
26 license or as amended on the license certificate in case of
27 change of address subsequent to issuance of the license
28 certificate, may refuse to issue, revoke or suspend any license
29 if it finds any of the following:

30 (1) The licensee or applicant has made any material

1 misstatement in the application for license.

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

4 (3) The licensee or applicant has violated any, ORDER, <—
5 rule or regulation of the department issued under this act.

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

9 (5) The licensee or applicant refuses or has refused to
10 permit the department or its designated representative to
11 make examinations OR INVESTIGATIONS authorized by this act. <—

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

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

18 (8) The licensee or applicant has failed to file any
19 report with the department within the time stipulated in this
20 act.

21 (9) The licensee or applicant has used unfair or
22 deceptive practices.

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

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

30 (b) Multiple license suspension or revocation.--The

1 department may revoke or suspend only the particular license
2 with respect to which grounds for revocation may occur or exist,
3 but if it finds that grounds for revocation are of general
4 application to all places of business or to more than one place
5 of business operated by a licensee, it may revoke all of the
6 licenses issued to such licensee or those licenses to which
7 grounds for revocation apply, as the case may be.

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

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

21 ~~Section 502. Change of location.~~ <—

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

27 SECTION 502. CHANGE OF STATUS. <—

28 A LICENSEE SHALL MAKE WRITTEN APPLICATION TO THE DEPARTMENT
29 ON ANY CHANGE IN STATUS INCLUDING ADDRESS CHANGE, OWNERSHIP
30 CHANGE, CHANGE OF DIRECTORS, OFFICERS OR PRINCIPALS BY STATING

1 THE REASON FOR THE PROPOSED CHANGE. IF THE DEPARTMENT APPROVES
2 THE APPLICATION A NEW LICENSE SHALL BE ISSUED.

3 Section 503. Fees and charges.

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

9 (1) ~~The greater of 1% ONE-HALF OF ONE PERCENT of the~~ <—
10 face amount of ~~the check or \$20 for~~ A CHECK WHICH IS AN <—
11 entitlement ~~checks~~ CHECK from Federal or State government <—
12 programs, including, but not limited to, Aid to Families with
13 Dependent Children (AFDC), General Assistance, Social
14 Security, Railroad Retirement, government and veterans'
15 disability payments and government pensions.

16 ~~(2) The greater of 2% of the face amount of the check or~~ <—
17 ~~\$20 for non entitlement checks.~~

18 ~~(3) The greater of 5% of the face amount of the check or~~
19 ~~\$20 for personal checks.~~

20 (2) TWO PERCENT OF THE FACE AMOUNT OF A NONENTITLEMENT <—
21 CHECK.

22 (3) FIVE PERCENT OF THE FACE AMOUNT OF A PERSONAL CHECK.

23 (b) Fee schedule.--In every check-casher location there
24 shall be conspicuously posted and at all times displayed a
25 schedule of fees and charges based on a model form to be
26 published by the department in the Pennsylvania Bulletin. The
27 schedule shall state the maximum fees or charges and shall
28 include a table of amounts and corresponding maximum fees along
29 with the telephone number of the Consumer Services Division of
30 the Department of Banking. ~~Where the department determines it~~ <—

1 ~~desirable, the schedule shall also be posted in languages other~~
2 ~~than English.~~

3 (c) Receipt.--Based on the model form to be published by the
4 department in the Pennsylvania Bulletin, the licensee shall
5 provide a receipt to each consumer for each transaction. The
6 receipt shall include the name and address of the licensee, the
7 total amount of the check cashed, the fee charged, ~~the remaining~~ <—
8 ~~balance, a statement in English and Spanish or other language~~
9 ~~determined to be desirable by the department of the maximum fee~~
10 ~~permitted under this act, and the telephone number of the~~
11 ~~Consumer Services Division of the Department of Banking.~~ THE <—
12 MAXIMUM FEE PERMITTED UNDER THE ACT, THE TYPE OF CHECK AND THE
13 TELEPHONE NUMBER OF THE CONSUMER AFFAIRS DIVISION OF THE
14 DEPARTMENT OF BANKING.

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

21 Section 504. Endorsement of checks, drafts or money orders
22 cashed.

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

29 Section 505. Restrictions on business of licensee.

30 (a) Advancement of moneys.--No check casher shall at any

1 time cash or advance any money on a postdated check, draft or
2 money order. NO CHECK CASHER SHALL MAKE LOANS WITHOUT THE <—
3 APPROPRIATE LICENSE or engage in the business of transmitting
4 money or receiving money for transmission, unless licensed under
5 the act of September 2, 1965 (P.L.490, No.249), referred to as
6 the Money Transmission Business Licensing Law.

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

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

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

18 Section 506. Books, accounts and records.

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

26 (b) Filing of information.--Every check casher shall
27 annually, on or before ~~May 1~~ SEPTEMBER 1, file a report with the <—
28 department giving such information as the department may require
29 concerning the business and operations of the licensee during
30 the preceding calendar year. In addition to the annual report,

1 the department may require such additional regular or special
2 reports deemed necessary to the proper operation and enforcement
3 of this act. These reports shall be made under oath or
4 affirmation and shall be in the form prescribed by the
5 department which shall make and publish annually an analysis of
6 these reports.

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

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

18 Any person, partnership, association or corporation, and any
19 member, officer, director, agent or employee thereof, who
20 violates any of the provisions of this act commits a misdemeanor
21 of the third degree.

22 Section 509. Private remedy.

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

28 (b) Recovery of costs.--In the case of any successful action
29 to enforce the liability under subsection (a), the consumer
30 shall recover from the licensee the costs of the action,

1 together with a reasonable attorney fee as determined by the
2 court.

3 CHAPTER 11

4 MISCELLANEOUS PROVISIONS

5 Section 1101. Applicability.

6 This act shall not apply to any insured depository
7 institution or affiliate or service corporation of any
8 depository institution supervised or regulated by the Department
9 of Banking, the National Credit Union Administration, the Office
10 of Thrift Supervision, the Federal Deposit Insurance
11 Corporation, the Comptroller of the Currency or the Board of
12 Governors of the Federal Reserve or the Federal Reserve Banks.

13 It also shall not apply to companies licensed by the Department
14 of Banking under the act of April 8, 1937 (P.L.262, No.66),
15 known as the Consumer Discount Company Act, the act of September
16 2, 1965 (P.L.490, No.249), referred to as the Money Transmission
17 Business Licensing Law, the act of December 12, 1980 (P.L.1179,
18 No.219), known as the Secondary Mortgage Loan Act, and the act
19 of December 22, 1989 (P.L.687, No.90), known as the Mortgage
20 Bankers and Brokers Act, in the normal course of business with
21 specific relation to lending transactions AND WHEN ENGAGED IN <—
22 THE ACTIVITIES REGULATED UNDER THESE ACTS.

23 Section 1102. Report to General Assembly.

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

1 program.

2 Section 1103. Disposition of funds.

3 All moneys received by the Treasury Department from the
4 Department of ~~Revenue~~ BANKING from fees, fines, assessments, <—
5 charges and penalties, collected or recovered from persons,
6 firms, corporations or associations, under the supervision of
7 the Department of Banking pursuant to the provisions of this act
8 shall be deposited in the Banking Department Fund.

9 Section 1104. Effective date.

10 This act shall take effect in ~~180 days~~ ONE YEAR. <—