

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 14

Session of
1997

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BARD, JANUARY 27, 1997

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MARCH 18, 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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17 The General Assembly of the Commonwealth of Pennsylvania
18 hereby enacts as follows:

19 CHAPTER 1

20 GENERAL PROVISIONS

21 Section 101. Short title.

22 This act shall be known and may be cited as the Check Cashing
23 Licensing Act.

24 Section 102. Purpose.

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

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

5 Section 103. Definitions.

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

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

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

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

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

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

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

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

26 "Secretary." The Secretary of Banking of the Commonwealth or
27 a designee.

28 Section 104. Authority of department.

29 The department shall have the authority to:

30 (1) Issue rules, regulations and orders as may be

1 necessary for the administration and enforcement of this act
2 and the proper conduct of the business of check cashing.

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

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

22 CHAPTER 3

23 LICENSING PROVISIONS

24 Section 301. License requirement and form.

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

29 (b) Form of application.--Application for a license shall be
30 in writing, under oath, shall be in the form prescribed by the

1 department and shall contain the following:

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

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

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

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

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

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

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

18 Section 302. Annual license fee.

19 (a) Amount.--An applicant shall pay to the department at the
20 time an application is filed an initial license fee of \$500 for
21 each location. On or before January 1 of each year a licensee
22 shall pay a license renewal fee of \$350. Each licensee shall, 90
23 days prior to the date of expiration, apply for license renewal
24 on a form provided by the department. The department shall renew
25 the license if the license renewal applicant is in compliance
26 with the provisions of this act.

27 (b) Recovery of costs.--No abatement of any license fee
28 shall be made if the license is issued for a period of less than
29 one year. The department shall be entitled to recover any cost
30 of investigation in excess of license or renewal fees from the

1 licensee or from any person who is not licensed under this act
2 but who is presumed to be engaged in business contemplated by
3 this act.

4 Section 303. Issuance of license.

5 (a) Time limit.--Within 90 days after a complete application
6 is received, the department shall either issue a license or
7 refuse to issue or renew a license as provided for by section
8 501. Upon receipt of an application for license, the department
9 shall conduct such investigation as it deems necessary to
10 determine that the applicant and its officers, directors and
11 principals are of good character and ethical reputation.

12 (b) Appeal of denial.--If the department refuses to issue a
13 license, it shall notify the applicant, in writing, of the
14 denial and the reason therefor and of the applicant's right to
15 appeal from such action to the Commonwealth Court. An appeal
16 from the department's refusal to approve an application for a
17 license shall be filed by the applicant within 30 days of notice
18 thereof.

19 Section 304. Conditions for licensing.

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

30 (b) Procedure for public comment.--To determine the

1 financial responsibility, experience, character and general
2 fitness of the applicant, the department shall consider public
3 comment. The procedure for public comment shall be as follows:

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

9 (2) The applicant shall transmit to the department a
10 copy of the notice and the 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. The
17 department shall not be liable for disclosure of information
18 deemed confidential by the applicant.

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

22 (5) The applicant may request a copy of such
23 communication and may file an answer to any protest until ten
24 days after the last date for filing of communication by
25 submitting two copies to the department.

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

28 (c) Felony conviction.--The department shall not issue a
29 license if it finds that the applicant, or any person who is a
30 director, officer, partner or agent has been convicted of or

1 pled guilty or nolo contendere to a felony or to a crime
2 committed in this Commonwealth or another jurisdiction which, if
3 committed within this Commonwealth, would constitute a felony.

4 (d) Information on license.--The license issued pursuant to
5 this section shall state:

- 6 (1) The name of the licensee.
- 7 (2) The name and address of the business.
- 8 (3) Any other information deemed necessary by the
9 department.

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

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

16 CHAPTER 5

17 ENFORCEMENT

18 Section 501. Suspension and revocation of and refusal to issue
19 license.

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

- 27 (1) The licensee or applicant has made any material
28 misstatement in the application for license.
- 29 (2) The licensee or applicant has violated any provision
30 of this act.

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

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

6 (5) The licensee or applicant refuses or has refused to
7 permit the department or its designated representative to
8 make examinations or investigations authorized by this act.

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

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

15 (8) The licensee or applicant has failed to file any
16 report with the department within the time stipulated in this
17 act.

18 (9) The licensee or applicant has used unfair or
19 deceptive practices.

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

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

27 (b) Multiple license suspension or revocation.--The
28 department may revoke or suspend only the particular license
29 with respect to which grounds for revocation may occur or exist,
30 but if it finds that grounds for revocation are of general

1 application to all places of business or to more than one place
2 of business operated by a licensee, it may revoke all of the
3 licenses issued to such licensee or those licenses to which
4 grounds for revocation apply, as the case may be.

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

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

18 Section 502. Change of status.

19 A licensee shall make written application to the department
20 on any change in status including address change, ownership
21 change, change of directors, officers or principals by stating
22 the reason for the proposed change. If the department approves
23 the application a new license shall be issued.

24 Section 503. Fees and charges.

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

30 (1) One-half of one percent of the face amount of a

1 check which is an entitlement check from Federal or State
2 government programs, including, but not limited to, Aid to
3 Families with Dependent Children (AFDC), General Assistance,
4 Social Security, Railroad Retirement, government and
5 veterans' disability payments and government pensions.

6 (2) Two percent of the face amount of a nonentitlement
7 check.

8 (3) Five percent of the face amount of a personal check.

9 (b) Fee schedule.--In every check-casher location there
10 shall be conspicuously posted and at all times displayed a
11 schedule of fees and charges based on a model form to be
12 published by the department in the Pennsylvania Bulletin. The
13 schedule shall state the maximum fees or charges and shall
14 include a table of amounts and corresponding maximum fees along
15 with the telephone number of the Consumer Services Division of
16 the Department of Banking.

17 (c) Receipt.--Based on the model form to be published by the
18 department in the Pennsylvania Bulletin, the licensee shall
19 provide a receipt to each consumer for each transaction. The
20 receipt shall include the name and address of the licensee, the
21 total amount of the check cashed, the fee charged, the maximum
22 fee permitted under the act, the type of check and the telephone
23 number of the Consumer Affairs Division of the Department of
24 Banking.

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

1 Section 504. Endorsement of checks, drafts or money orders
2 cashed.

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

9 Section 505. Restrictions on business of licensee.

10 (a) Advancement of moneys.--No check casher shall at any
11 time cash or advance any money on a postdated check, draft or
12 money order. No check casher shall make loans without the
13 appropriate license or engage in the business of transmitting
14 money or receiving money for transmission, unless licensed under
15 the act of September 2, 1965 (P.L.490, No.249), referred to as
16 the Money Transmission Business Licensing Law.

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

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

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

28 Section 506. Books, accounts and records.

29 (a) Keeping and use of information.--Each check casher shall
30 keep and use in the business, in a form satisfactory to the

1 department, such books, accounts and records as will enable the
2 department to determine whether the check casher is complying
3 with the provisions of this act and the rules and regulations
4 adopted under this act. Every check casher shall preserve such
5 books, accounts and records for five years.

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

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

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

28 Any person, partnership, association or corporation, and any
29 member, officer, director, agent or employee thereof, who
30 violates any of the provisions of this act commits a misdemeanor

1 of the third degree.

2 Section 509. Private remedy.

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

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

13 CHAPTER 11

14 MISCELLANEOUS PROVISIONS

15 Section 1101. Applicability.

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

1 specific relation to lending transactions and when engaged in
2 the activities regulated under these acts.

3 Section 1102. Report to General Assembly.

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

12 Section 1103. Disposition of funds.

13 All moneys received by the Treasury Department from the
14 Department of Banking from fees, fines, assessments, charges and
15 penalties, collected or recovered from persons, firms,
16 corporations or associations, under the supervision of the
17 Department of Banking pursuant to the provisions of this act
18 shall be deposited in the Banking Department Fund.

19 Section 1104. Effective date.

20 This act shall take effect in one year.