

No. 1998-22

AN ACT

HB 14

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.

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

CHAPTER 1
GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Check Casher Licensing Act.

Section 102. Purpose.

The General Assembly hereby finds and declares that check cashers which engage in the business of cashing checks provide vital financial services which some citizens of this Commonwealth find unavailable or inconvenient to obtain from traditional banking institutions and that it is in the public interest, convenience and welfare to:

- (1) Prevent the charging of unconscionable rates.
- (2) Insure the financial stability of the check-cashing industry.
- (3) Regulate the manner of performance of check-cashing service.
- (4) Seek the check-cashing industry's assistance in preventing money-laundering activities.

Section 103. Definitions.

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

"Check." A type of negotiable instrument as defined in 13 Pa.C.S. § 3104 (f), (g) and (h) (relating to negotiable instrument) and domestic postal money orders.

"Check casher." A business entity, whether operating as a proprietorship, partnership, association, limited liability company or corporation, that engages in the cashing of checks for a fee.

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

"Licensee." A check casher licensed by the Department of Banking to engage in the business of cashing checks at a fixed location or by means of a mobile unit.

"Mobile unit." A vehicle or other movable means from which a check casher conducts business.

Section 104. Authority of department.

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.

CHAPTER 3 LICENSING PROVISIONS

Section 301. License requirement and form.

(a) Licensing required.—No person or business entity shall engage in the business of cashing checks for a fee without first obtaining a license under this act for each fixed location or mobile unit.

(b) Form of application.—Application for a license shall be in a 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. If the applicant is a corporation or limited liability company, the application shall contain the name and address of each officer and director.

(3) The name and address of the business or, if the applicant intends to operate a mobile unit, the Pennsylvania registration number or other identification of the mobile unit, the area in which the applicant proposes to operate the mobile unit and a stationary physical location where records shall be maintained.

(4) A signed statement by the applicant that the applicant has complied with all applicable municipal and county ordinances or requirements for doing business.

(5) A signed statement by the applicant that the applicant has no outstanding debts to the Commonwealth or evidence that a payment agreement is in place.

(6) For applicants doing business on the effective date of this act, the length of time the applicant has been a check casher at the location specified in the application or any other location.

(c) Additional information.—The department may request any additional information deemed necessary for licensure, including information from other states or the Federal Government, which may be evaluated for licensure purposes.

Section 302. License terms and fees.

(a) Application fees.—An applicant for a check-casher license under this act shall be subject to an initial application fee of \$500 for each fixed location or mobile unit.

(b) Renewal fee.—On or before March 1 of every year, a licensee shall apply for license renewal on a form provided by the department and pay a 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.

(c) Single application.—The department shall provide for the filing of a single application for all applicants who conduct business at multiple locations. A single application shall indicate the principal office of the business and a specific address for each fixed location or mobile unit covered under the application. The principal office shall have available all pertinent records and information related to the businesses licensed. A license shall be issued for each location or mobile unit. The department may accept the filing of an application electronically or in computer format.

(d) Recovery of costs.—No abatement of any license fee shall be made if the license is issued for a period of less than one year.

(e) Adjustment of fee.—In the event that application and renewal fees exceed the amount needed to administer this act, the department may reduce the fee by regulation.

Section 303. Issuance of license.

(a) Time limit.—Except as provided in section 1104(a), within 60 days after the receipt of a complete application, the department shall issue a license or refuse to issue or renew a license as provided for by section 501. Upon receipt of an application for license, the department shall conduct such investigation as it deems necessary to determine that the applicant and its officers and principals meet the requirements of section 304.

(b) Appeal of denial.—If the department refuses to issue or renew a license, it shall notify the applicant, in writing, of the denial and the reason therefor and of the applicant's right to appeal the denial in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

Section 304. Conditions for licensing.

(a) Conditions for license.—

(1) Except as provided in subsection (b), if the department finds that the financial responsibility, experience, character and general fitness of the applicant warrants the conclusion that the business will be operated honestly and fairly within the purpose of the act, the department shall issue a check-casher license in accordance with this act.

(2) A license shall be issued for the business location specified in the application only and for mobile units to the site or sites specified.

(b) New location or new licensees.—For all new locations or new licensees, to determine the financial responsibility, experience, character and general fitness of the applicant pursuant to subsection (a), the department shall consider public comment. The procedure for public comment shall be as follows:

(1) The applicant shall publish notice, within ten days after being notified by the department, that the application is completed. Notice shall

be published in a newspaper having general circulation in the community in which the applicant intends to locate.

(2) The applicant shall transmit to the department a copy of the notice and the publisher's affidavit of publication.

(3) Upon publication, the application and all related communications may be inspected in the department during working hours. The department may refuse to disclose information that it deems confidential. The department shall not be liable for disclosure of information deemed confidential by the applicant.

(4) Within 30 days of the date of publication of notice, any person may file a notice in protest or in favor of the application by submitting two copies to the department.

(5) The applicant may request a copy of the notice and may file an answer to any protest within ten days from the last date for filing a notice under paragraph (4) by submitting two copies to the department.

(6) The department shall consider all such public comment in its evaluation of the application.

(c) Factors affecting licensing.—Prior to the granting of a license, the department shall consider the following factors:

(1) For purposes of the initial application only, whether the applicant has been engaged in the check-cashing business at the location specified in the application for a period of at least one year prior to the effective date of this act.

(2) Whether the applicant has made a substantial legal or financial commitment, in the form of a lease, option to lease or purchase of property covering the location to be licensed prior to the effective date of this act.

(3) Whether the applicant is operating in compliance with all local zoning laws and laws pertaining to the operation of a business in this Commonwealth.

(4) Whether the applicant has sufficient business experience to qualify the applicant to act or operate as a check casher.

(d) Number of licenses.—One license shall be issued for each place of business or mobile unit. More than one license may be issued to the same licensee upon compliance with this act for each location or mobile unit.

(e) Felony conviction.—The department may decline to issue a license if it finds that the applicant has been convicted of or pled guilty or nolo contendere to a felony which would warrant such a denial. The department shall consider the year of the conviction, the nature of the offense and the potential impact on the check-cashing business or the community prior to declining to issue a license pursuant to this subsection. The department shall make specific written findings regarding its decision to deny within 30 days of the denial.

(f) Information on license.—The license issued under this section shall state:

- (1) The name and specific address of the licensee.
- (2) The name and specific address of the business and the location of any mobile unit.
- (3) Any other information deemed necessary by the department.
- (g) License not transferable.—The license shall not be transferable or assignable. Ownership shall not be changed under the existing license.
- (h) Posting.—The license shall be conspicuously posted in the place of business of the licensee or, in the case of a mobile unit, upon a window of the mobile unit.
- (i) Effect of license.—The license shall remain in full force and effect until it expires, is surrendered by the licensee or is revoked or suspended as provided in this act.

CHAPTER 5 ENFORCEMENT

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).

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.

(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 503. Fees and charges.

(a) Allowable fees.—The licensee may collect the following fees for cashing a check:

(1) A sum not exceeding 2.5% of the face amount of a government assistance check, provided the payee submits valid identification in the form of a driver's license, an identification card issued by the Department of Transportation or the equivalent; or

(2) A sum not exceeding 3% of the face amount of a payroll check.

(3) A sum not exceeding 10% of the face amount of a personal check.

(b) New customer fee.—Notwithstanding anything in this section to the contrary, the licensee may charge an initial fee not to exceed \$10 to a new customer to cover the cost of investigating the customer's credit.

(c) Receipt of transaction.—The licensee shall provide a receipt of the transaction.

(d) Other goods and services.—

(1) The licensee shall not require consumers to purchase other goods or services in order to cash a check.

(2) Nothing in this section shall prevent licensees from offering additional goods and services.

(e) Definition.—As used in this section, the term “government assistance check” means a check issued on a continuing periodic basis by a government agency for payment to the recipient payee of Federal or State assistance, Social Security, workers' compensation, unemployment compensation, railroad retirement benefits or veterans' disability.

Section 504. Endorsement of checks.

Before a check casher deposits a check with any banking institution, the check shall be endorsed with the actual name under which the check casher is doing business and shall have the words “licensed check casher” legibly written or stamped immediately after or below such name.

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 check. No check-casher¹ licensee shall engage in the business of transmitting money or receiving money for transmission, unless licensed 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 506. Books, accounts and records.

(a) Maintenance and use of information.—Each check casher shall maintain and use such books, accounts and records as will enable the department to determine whether the check casher is complying with the provisions of this act and the rules and regulations adopted under this act. A check casher shall maintain records in a form prescribed by the department and shall preserve such books, accounts and records for five years.

¹“-casher” omitted in enrolled bill.

(b) Examination and cost of information.—The department may examine the affairs, business, records, books, documents, accounts and papers of any licensee. The actual cost of these examinations shall be paid to the department by the licensee examined, and the department may bring an action for the recovery of these costs in any court of competent jurisdiction.

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.

Section 508. Criminal penalty.

It shall be a misdemeanor of the third degree for any person to operate as a check casher without obtaining a license under section 304 or to violate section 501(a)(5) or (6) or 503.

Section 509. Private remedy.

(a) Liability.—Any person who willfully violates any provision of this act with respect to any consumer is liable to the consumer for an amount equal to three times any actual damage sustained by the consumer as a result of the failure or the sum of \$250, whichever is greater.

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

CHAPTER 11 MISCELLANEOUS PROVISIONS

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, 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 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, in the normal course of business with specific relation to lending transactions and when engaged in the activities regulated under these acts.

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 1103. Disposition of funds.

All moneys received by the Treasury Department from the Department of Banking from fees, fines, assessments, charges and penalties, collected or recovered from check cashers pursuant to the provisions of this act shall be deposited in the Banking Department Fund.

Section 1104. Transition provisions.

(a) **New license and location.**—Notwithstanding the provisions of section 303(a), the department shall have six months to grant or deny an application for a new license or new location. This subsection shall expire on January 1, 1999.

(b) **Current operation.**—An application for a license by a check casher operating on the effective date of this act shall be filed within one year from the effective date of this act.

Section 1105. Effective date.

This act shall take effect as follows:

- (1) Section 1104(a) of this act and this section shall take effect immediately.
- (2) The remainder of this act shall take effect in 60 days.

APPROVED—The 18th day of February, A.D. 1998.

THOMAS J. RIDGE