

HOUSE BILL No. 4683

April 16, 1991, Introduced by Rep. Clack and referred to the Committee on Corporations and Finance.

A bill to regulate check cashing businesses; to provide for licensing and fees; to prescribe the powers and duties of certain state agencies and officials; and to provide for penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Check" means any check, draft, money order, food
3 stamps, government warrants, or other instrument for the trans-
4 mission or payment of money.

5 (b) "Commissioner" means the commissioner of the financial
6 institutions bureau.

7 (c) "Licensee" means any person licensed by the commissioner
8 pursuant to this act.

9 (d) "Person" means any individual, partnership, association,
10 corporation, or other legal entity.

1 Sec. 2. A person shall not engage in the business of
2 cashing checks as a service, for a fee, or for other
3 consideration without first obtaining a license as provided in
4 this act.

5 Sec. 3. (1) Except as otherwise provided in this act, this
6 act does not apply to the cashing of checks by the following:

7 (a) State or national banks, state or federal credit unions,
8 trust companies, state or federal savings and loan associations,
9 and state or federal savings banks whose principal office is
10 located in this state and that are insured by an agency of the
11 federal government.

12 (b) A department or agency of the United States.

13 (c) A foreign bank agency, as defined by section 5 of the
14 banking code of 1969, Act No. 319 of the Public Acts of 1969,
15 being section 487.305 of the Michigan Compiled Laws, located in
16 this state.

17 (2) This act does not apply to the receipt of money by an
18 incorporated telegraph company at an office of the company for
19 immediate transmission by telegraph.

20 Sec. 4. An application for a license to engage in the busi-
21 ness of cashing checks shall be made in writing and under oath to
22 the commissioner in such form as he or she may prescribe. The
23 application shall state the full name and business address of all
24 of the following:

25 (a) The proprietor, if the applicant is an individual.

26 (b) Each partner or member, if the applicant is a
27 partnership or association.

1 (c) The association and each of its officers and directors,
2 if the applicant is a joint stock association having 50 or more
3 members.

4 (d) The corporation and each of its officers and directors,
5 if the applicant is a corporation.

6 Sec. 5. An application for a license shall be accompanied
7 by an investigation fee of \$300.00. The investigation fee is not
8 refundable.

9 Sec. 6. An application for a license shall be accompanied
10 by both of the following:

11 (a) Financial statements, reasonably satisfactory to the
12 commissioner, showing the applicant's net worth exceeds
13 \$100,000.00.

14 (b) A surety bond issued by a bonding company or insurance
15 company authorized to do business in this state in the principal
16 sum of \$100,000.00, plus an additional sum of \$3,000.00 for each
17 office of the applicant in this state at which business is to be
18 conducted, but the bond shall not exceed \$250,000.00. The bond
19 shall be in form satisfactory to the commissioner and shall run
20 to the commissioner for the benefit of the residents of this
21 state to secure the faithful performance of the obligations of
22 the applicant with respect to the receipt of money in connection
23 with the cashing of checks. The aggregate liability of the
24 surety shall not exceed the principal sum of the bond.

25 Sec. 7. Upon the filing of the application, the payment of
26 the investigation fee, and the approval by the commissioner of
27 the bond delivered pursuant to section 6, the commissioner shall

1 investigate the financial responsibility, financial and business
2 experience, and character and general fitness of the applicant.
3 If the commissioner finds these factors and qualities meet the
4 requirements of this act and reasonably warrant the belief that
5 the applicant's business will be conducted honestly, fairly,
6 equitably, carefully, efficiently, and in a manner commanding the
7 confidence and trust of the community, the commissioner shall
8 issue to the person a license to engage in the business of cash-
9 ing checks subject to this act.

10 Sec. 8. A licensee shall have a principal address approved
11 by the commissioner and shall be the only location, except as
12 provided in section 13, from which the licensee may engage in the
13 business of cashing checks.

14 Sec. 9. A license shall not be transferable, but with the
15 prior written approval of the commissioner, the licensee may
16 change its name or principal address.

17 Sec. 10. A licensee shall pay to the commissioner within 5
18 days after the issuance of the license, and annually thereafter
19 on or before March 1 of each year, a license fee of \$450.00.

20 Sec. 11. A licensee shall have on hand at its place of
21 business the sum of \$5,000.00 or an amount equal to all outstand-
22 ing money orders and traveler's checks issued by the business,
23 whichever is greater.

24 Sec. 12. A licensee shall carry at all times adequate
25 insurance to protect against the loss of assets in the sum of
26 \$5,000.00 or an amount equal to the liquid funds normally kept at
27 the place of business, whichever is greater.

1 Sec. 13. (1) With the prior written approval of the
2 commissioner, a licensee may conduct business at more than 1
3 location within this state and through or by means of such
4 employees, agents, or representatives as the licensee may desig-
5 nate and appoint. A license under this act is not required for
6 any employee, agent, or representative who is acting for or on
7 behalf of a licensee in the sale of checks of which the licensee
8 is the issuer.

9 (2) A licensee or any other person shall not contract for,
10 receive, impose, assess, or collect any charge or fee for the
11 cashing of any checks that exceeds 3% of the value of the
12 checks.

13 Sec. 14. During business hours a licensee shall provide
14 minimum security for the safety of its employees and customers.
15 If the licensee considers it necessary, this may include the
16 presence of an armed guard and a camera as part of a recorded
17 security system.

18 Sec. 15. With the prior written approval of the commis-
19 sioner and the meeting of other statutory and legal requirements,
20 a licensee may provide additional related services which may
21 include, but are not limited to, the following:

- 22 (a) Receipt of utility company payments.
- 23 (b) Photocopying services.
- 24 (c) Notary services.
- 25 (d) Selling of traveler's checks.
- 26 (e) Selling of money orders.

1 (f) Issuing of food stamps.

2 Sec. 16. A licensee shall conspicuously and continuously
3 post at the place of business the granted license that shall
4 state the name of the licensee and the address of the business.
5 In addition, the licensee shall conspicuously and continuously
6 post a schedule of fees and charges for all services provided by
7 the licensee.

8 Sec. 17. A licensee shall file with the commissioner annu-
9 ally on or before March 1 of each year a statement listing the
10 locations of the offices of the licensee and the names and loca-
11 tions of the agents authorized by the licensee to engage in the
12 cashing of checks. A supplemental statement setting forth
13 changes, if any, in the list of offices or agents shall be filed
14 with the commissioner on or before June 1, September 1, and
15 December 1 of each year, and the principal sum of the bond
16 required under section 6 shall be adjusted to reflect any
17 increase or decrease in the number of offices and agents. The
18 supplemental statements are not required of any licensee who con-
19 tinues to maintain a surety bond or other security in the princi-
20 pal sum of \$250,000.00. A licensee is not required to list
21 agents who are exempt from this act pursuant to section 3.

22 Sec. 18. (1) A license shall not be denied, suspended, or
23 revoked before notice is sent to the applicant or licensee set-
24 ting forth in writing the reasons for the denial, suspension, or
25 revocation. Within 5 days after receipt of the notice, the
26 applicant or licensee may make written demand for a hearing. The
27 commissioner with reasonable promptness shall hear and determine

1 the matter as provided by the administrative procedures act of
2 1969, Act No. 306 of the Public Acts of 1969, being sections
3 24.201 to 24.328 of the Michigan Compiled Laws. If the applicant
4 or licensee considers itself aggrieved by the order of the com-
5 missioner, the applicant or licensee may appeal within 30 days
6 from the date of the order to the circuit court in the manner
7 provided by Act No. 306 of the Public Acts of 1969. If an appeal
8 is taken from an order revoking a license, the effect of the
9 order may be stayed by the court pending the final determination
10 of the appeal.

11 (2) The commissioner may conduct investigations and hearings
12 as the commissioner considers necessary to determine whether a
13 licensee or other person has violated this act, or whether a
14 licensee has conducted business in a manner that justifies sus-
15 pension or revocation of its license.

16 (3) The commissioner may subpoena witnesses, documents,
17 papers, books, records, and other evidence in any matter over
18 which the commissioner has jurisdiction, control, or
19 supervision. The commissioner may administer oaths and affirma-
20 tions to any person whose testimony is required.

21 (4) If a person fails to comply with a subpoena issued by
22 the commissioner or to testify with respect to any matter con-
23 cerning which the person may be lawfully questioned, upon appli-
24 cation of the commissioner, the circuit court for Ingham county
25 may issue an order requiring the attendance of the person or the
26 production of evidence.

1 (5) If in the opinion of the commissioner a person or
2 licensee has engaged, is engaging, or is about to engage in an
3 unsafe or unsound practice in conjunction with the cashing of
4 checks to the detriment of the people of the state, or the com-
5 missioner has reasonable cause to believe the licensee has vio-
6 lated or failed to comply with, is violating or failing to comply
7 with, or is about to violate or fail to comply with this act or a
8 rule promulgated under this act, the commissioner may issue and
9 serve upon the person or licensee a notice of the charges regard-
10 ing the unsafe or unsound practice, violation, or failure to
11 comply. The notice shall contain a statement of the facts con-
12 stituting the alleged unsafe or unsound practice, violation, or
13 failure and shall fix a time and place at which a hearing will be
14 held to determine whether an order to cease and desist from the
15 practice, violation, or failure to comply should issue against
16 the person or licensee. The hearing shall be not earlier than 5
17 days nor later than 10 days after service of the notice unless an
18 earlier or a later date is set by the commissioner at the request
19 of the person or licensee. Unless the person or licensee appears
20 at the hearing personally or by an authorized representative, the
21 person or licensee shall be considered to have consented to the
22 issuance of the cease and desist order. If upon the record made
23 at the hearing the commissioner finds that an unsafe or unsound
24 practice, violation, or failure to comply specified in the notice
25 of charges has been established, the commissioner may issue and
26 serve upon the person or licensee an order to cease and desist
27 from the practice, violation, or failure to comply. The order

1 may also require or recommend that the person or licensee take
2 affirmative action to correct the conditions resulting from the
3 practice, violation, or failure to comply.

4 (6) A cease and desist order issued under subsection (5)
5 shall take effect upon the expiration of 5 days after service of
6 the order upon the licensee, except in the case of an order
7 issued upon consent which shall take effect at the time specified
8 in the order and remain in effect and enforceable as provided in
9 the order.

10 Sec. 19. The commissioner shall promulgate rules that are
11 necessary for the administration of this act in accordance with
12 the administrative procedures act of 1969, Act No. 306 of the
13 Public Acts of 1969, being sections 24.201 to 24.328 of the
14 Michigan Compiled Laws.

15 Sec. 20. (1) The commissioner at any time may investigate
16 the business done in this state of a licensee, and may examine
17 the books, accounts, records, and files used and maintained by a
18 licensee and require the licensee to furnish additional reports
19 relating to the licensee's business. In addition to the annual
20 fee provided for in section 10, the commissioner shall assess the
21 licensee an amount sufficient to cover the cost of any
22 examination. The charge for the examination shall be in an
23 amount determined annually by the commissioner, except that the
24 charge shall not be less than \$20.00 per hour or more than \$40.00
25 per hour for each examiner required for the examination, and
26 shall include travel expenses when the examiner must travel out
27 of state.

1 (2) Instead of the examination provided for in subsection
2 (1), the commissioner may accept an annual report and audit of
3 the affairs of a licensee under this act if made by a certified
4 public accountant.

5 (3) All fees and expenses provided for in this act shall be
6 paid into the state treasury and credited to the financial insti-
7 tutions bureau. Money so credited shall be used only for the
8 operation of the financial institutions bureau.

9 Sec. 21. A person, including the licensee, shall not
10 solicit donations, gifts, contributions, purchase of tickets, or
11 similar demands for money within 100 yards from any entrance to a
12 business licensed under this act.

13 Sec. 22. (1) A person who violates this act is guilty of a
14 misdemeanor, punishable by a fine of not more than \$500.00, or
15 imprisonment for not more than 90 days, or both.

16 (2) Each transaction in violation of this act constitutes a
17 separate offense.