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REQUIRE LICENSE FOR CHECK CASHING BUSINESSES

House Bill 4408

Sponsor: Rep. Irma Clark

Committee: Commerce

Complete to 7-26-01

A SUMMARY OF HOUSE BILL 4408 AS INTRODUCED 3-6-01

House Bill 4408 would create the Check Cashing Licensing Act to provide for the licensure and regulation of check cashing businesses. In general, the bill would require a person to obtain a license before engaging in the business of cashing checks for a fee or other consideration. ("Person" would include individuals, partnerships, associations, corporations, limited liability companies and other legal entities except for governmental agencies. "Check" would mean a check, draft, money order, food stamp, government warrant, or other instrument for the transmission or payment of money.) The act would not apply to the cashing of checks by any of the following: a state or national bank or a state or federal credit union, savings and loan association, or savings bank; a department or agency of a state or the United States; a foreign bank agency; and a corporation or limited liability company with offices or franchises in at least 20 states engaged in the business of cashing checks. The act would also not apply to the receipt of money by an incorporated telegraph company at an office of the company for immediate transmission by telegraph. The bill would also set forth procedures for applying for a license, license fees, the powers and duties of licensees and the commissioner of the Office of Financial and Insurance Services relative to the act, and sanctions for violations of the act. A detailed summary of these procedures, powers, duties, and sanctions appears below.

A person engaged in the business of cashing checks would have to file an application with the commissioner the Office of Financial and Insurance Services (OFIS) in writing and under oath. The application would have to include the name and exact address of the applicant and a copy of a certificate of assumed name, if applicable. If the applicant was a corporation, it would have to file the names and addresses of its officers and directors and a copy of its articles of incorporation and by laws. If the applicant was a partnership, it would have to file the names and addresses of its partner and a copy of any partnership agreement and certificate. If the applicant was an association, it would have to file the name and addresses of its officers and directors and a copy of its organizational documents. If the applicant was a limited liability company, it would have to file the names and addresses of its manager or managers—if managed by a manager or managers—or its members and a copy of its articles of organization and operating agreement.

At the time of filing the application, the applicant would have to do the following: First, the applicant would have to pay OFIS a nonrefundable license fee of \$300 for one business location and \$150 for each additional location. Second, the applicant would be required to furnish financial statements to the department, in a form satisfactory to the commissioner, showing the applicant had working capital in excess of \$5,000 for each business location and cash in excess of \$25,000. Third, the applicant would have to furnish a \$5,000 surety bond for each business location to secure the performance of the applicant's obligations with respect to the receipt of

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money in connection with the cashing of checks; the bond would have to be issued by a bonding company or insurance company authorized to do business in the state and in a form satisfactory to the commissioner. Finally, the applicant would be required to file an appointment of the commissioner as the agent for service of process in the state.

After the applicant filed the application and complied with the requirements listed above, OFIS would investigate the applicant's financial responsibility, financial and business experience, character, and general fitness. The commissioner would issue the license, if OFIS found these factors and qualities met the requirement of the act and reasonably warranted the belief that the applicant's business would be conducted honestly, fairly, equitably, carefully, efficiently, and in a manner commanding the confidence and trust of the community.

Each licensee would be required to pay a renewal fee of \$300 for its principal business location and \$150 for each additional location and submit a renewal application in a form prescribed by the commissioner on or before January 1 of each year. The commissioner would renew the license if he or she determined that the licensee was in compliance with the act after considering relevant factors, comments, and complaints about the licensee.

A licensee could only cash checks at locations approved by the commissioner. The license would be nontransferable, though the licensee could change its name or principal address with the commissioner's prior written approval. A licensee could not contract for, receive, impose, assess, or collect a charge or fee for cashing a check that exceeded the following percentages of the face amount of the check: five percent for a payroll, pension, or government check; seven percent from an insurance company; ten percent for a personal check, money order, or other check. A licensee would also be required to maintain accurate and complete books, accounts, and records of its check cashing business—and preserve them for at least three years—in a form satisfactory to the commissioner.

The commissioner could not deny, suspend, or revoke a license before a written notice setting forth the reasons for the action was sent to the applicant or licensee. The applicant or licensee could submit a written demand for a hearing within five days of receiving the notice. The commissioner would hear and determine the matter "with reasonable promptness" and in a manner provided by the Administrative Procedures Act of 1969 (MCL 24.201 et al.). If the applicant or licensee considered itself aggrieved by the commissioner's order, the applicant or licensee could appeal to the circuit court within thirty days from the date of the order, as provided in the Administrative Procedures Act. If an order revoking a license was appealed, the court could stay the effect of the order pending the final determination of the appeal. The commissioner could conduct investigations and hearings to determine whether a licensee or other person had violated the act, or whether a licensee's actions justified suspension or revocation of the license. The commissioner could also subpoena witnesses, documents, papers, books, records, and other evidence in a matter over which he or she had jurisdiction, control, or supervision and could administer oaths and affirmations to a person whose testimony was required. The commissioner would be authorized to promulgate rules necessary for the administration of the act.

A violation of the act would be considered a misdemeanor, punishable by a fine of up to \$500 or imprisonment for not more than 90 days, or both. Each transaction in violation of the act would constitute a separate offense.

Analyst: J. Caver

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.