

HOUSE BILL No. 5116

November 5, 1987, Introduced by Reps. Hunter, Hillegonds, Stallworth, Ciaramitaro, Johnson, Berman, Murphy, Clack, Leland, Hollister, Stabenow, Hood, Kosteva, Browne, Power, Bennane, Saunders, Gire, Rocca, Dutko, Webb, Gubow, Gagliardi, Scott, Knight, Farhat, Bankes, Brown, Jondahl, Walberg, Honigman, Willis Bullard, Keith, Stopczynski, Barns, Smith, Emerson and DeMars and referred to the Committee on Consumers.

A bill to regulate check cashing businesses; to provide for licensing and fees; to establish duties for state agencies; 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 duly licensed by the commis-
8 sioner pursuant to this act.

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

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 shall 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 stock or mutual savings banks whose princi-
10 pal office is located in this state and is insured by an agency
11 of the federal government.

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

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

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

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

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

24 (b) Every member, if the applicant is a partnership or asso-
25 ciation, except that if the applicant is a joint stock associa-
26 tion having 50 or more members, the name and business address

1 need be given only for the association and each of its officers
2 and directors.

3 (c) If the applicant is a corporation, the corporation and
4 each of its officers and directors.

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

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

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

13 (b) A surety bond issued by a bonding company or insurance
14 company authorized to do business in this state, in the principal
15 sum of \$100,000.00 and in an additional principal sum of
16 \$3,000.00 for each office and for each agency of the applicant in
17 this state at which the business is to be conducted, but in no
18 event shall the bond be required to be in excess of \$250,000.00.
19 If the bond accompanying the application is in a principal sum of
20 less than \$250,000.00, the application shall be accompanied by a
21 list of the locations, including agencies, at which the business
22 is to be conducted. The bond shall be in form satisfactory to
23 the commissioner and shall run to the commissioner for the bene-
24 fit of any residents who, through the cashing of checks with the
25 applicant or its agents located in this state, are creditors of
26 or claimants against the applicant or its agents to secure the
27 faithful performance of the obligations of the applicant and the

1 agents of the applicant with respect to the receipt of money in
2 connection with the cashing of checks. The aggregate liability
3 of the surety in no event shall exceed the principal sum of the
4 bond.

5 Sec. 7. Upon the filing of the application, the payment of
6 the investigation fee, and the approval by the commissioner of
7 the bond delivered pursuant to section 6, the commissioner shall
8 investigate the financial responsibility, financial and business
9 experience, character and general fitness of the person and, if
10 he or she deems it advisable, of its officers and directors, and
11 if he or she finds these factors and qualities meet the require-
12 ments of this act and are such as to reasonably warrant the
13 belief that the person's business will be conducted honestly,
14 fairly, equitably, carefully, and efficiently and in a manner
15 commanding the confidence and trust of the community, he or she
16 shall issue to the person a license to engage in the business of
17 cashing checks subject to the provisions of this act.

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

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

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

1 Sec. 11. A licensee shall have on hand at its place of
2 business the sum of \$5,000.00, or an amount equal to all out-
3 standing money orders and traveler's checks issued by the busi-
4 ness, whichever is greater.

5 Sec. 12. A licensee shall carry at all times adequate
6 insurance to protect against the loss of assets in the sum of
7 \$5,000.00, or an amount equal to the liquid funds normally kept
8 at the place of business, whichever is greater.

9 Sec. 13. (1) With the prior written approval of the commis-
10 sioner, a licensee may conduct business at more than 1 location
11 within this state and through or by means of such employees,
12 agents, or representatives as the licensee may designate and
13 appoint from time to time. A license under this act shall not be
14 required of any employee, agent, or representative who is acting
15 for or on behalf of a licensee in the sale of checks of which the
16 licensee is the issuer.

17 (2) A licensee or any other person shall not contract for,
18 receive, impose, assess, or collect any charge or fee on the
19 cashing of any checks which exceeds 3% of the value of the
20 checks.

21 Sec. 14. During business hours a licensee shall provide
22 minimum security for the safety of its employees and customers.
23 This shall include the presence of an armed guard as the licensee
24 deems necessary and at least 1 camera as part of a recorded
25 security system.

26 Sec. 15. A licensee may, with the prior written approval of
27 the commissioner and the meeting of other statutory and legal

1 requirements, provide additional related services which may
2 include, but are not limited to, the following:

3 (a) Receipt of utility company payments.

4 (b) Photocopying services.

5 (c) Notary services.

6 (d) Selling of traveler's checks.

7 (e) Selling of money orders.

8 (f) Issuing of food stamps if the licensee has been awarded
9 a state contract granting authority to issue food stamps and has
10 met all other requirements as established by the commissioner.

11 Sec. 16. A licensee shall conspicuously and continuously
12 post at the place of business the granted license which shall
13 state the name of the licensee and the address of the business.
14 In addition, the licensee shall conspicuously and continuously
15 post a schedule of fees and charges for all services provided by
16 the licensee.

17 Sec. 17. A licensee shall file with the commissioner annu-
18 ally on or before March 1 of each year a statement listing the
19 locations of the offices of the licensee and the names and loca-
20 tions of the agents authorized by the licensee to engage in the
21 cashing of checks. A supplemental statement setting forth
22 changes, if any, in the list of offices or agents shall be filed
23 with the commissioner on or before June 1, September 1, and
24 December 1 of each year, and the principal sum of the bond
25 required under section 6 shall be adjusted to reflect any
26 increase or decrease in the number of offices and agents. The
27 supplemental statements shall not be required of any licensee who

1 continues to maintain a surety bond or other security in the
2 principal sum of \$250,000.00. A licensee shall not be required
3 to list agents who or which are exempt from this act pursuant to
4 section 3.

5 Sec. 18. (1) A license shall not be denied, suspended, or
6 revoked except on not less than 10 days' notice to the applicant
7 or licensee setting forth in writing the reasons for the denial,
8 suspension, or revocation. Within 5 days after receipt of the
9 notice, the applicant or licensee may make written demand for a
10 hearing. The commissioner with reasonable promptness shall hear
11 and determine the matter as provided by the administrative proce-
12 dures act of 1969, Act No. 306 of the Public Acts of 1969, being
13 sections 24.201 to 24.328 of the Michigan Compiled Laws. If the
14 applicant or licensee considers itself aggrieved by the order of
15 the commissioner, the applicant or licensee may appeal within 30
16 days from the date of such order to the circuit court in the
17 manner provided by the administrative procedures act of 1969, and
18 shall be entitled to the same judicial review as provided in that
19 act. If an appeal is taken from an order revoking any license,
20 the effect of the order may be stayed by the court pending the
21 final determination of the appeal.

22 (2) The commissioner may make investigations and conduct
23 hearings as the commissioner considers necessary to determine
24 whether any licensee or any other person has violated any of the
25 provisions of this act, or whether any licensee has conducted
26 business in such a manner as would justify suspension or
27 revocation of its license.

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

6 (4) If a person fails to comply with a subpoena issued by
7 the commissioner or to testify with respect to any matter con-
8 cerning which the person may be lawfully questioned, the circuit
9 court for Ingham county, on application of the commissioner, may
10 issue an order requiring the attendance of the person and the
11 giving of testimony or production of evidence.

12 (5) If, in the opinion of the commissioner, a person or
13 licensee is engaging in, or has engaged in, or the commissioner
14 has reasonable cause to believe that the person or licensee is
15 about to engage in, an unsafe or unsound practice in conjunction
16 with the cashing of checks, to the detriment of the people of the
17 state, or the commissioner has reasonable cause to believe the
18 licensee has, is, or is about to violate or fail to comply with
19 this act or a rule promulgated under this act, the commissioner
20 may issue and serve upon the person or licensee a notice of the
21 charges regarding the unsafe or unsound practice, violation, or
22 failure to comply. The notice shall contain a statement of the
23 facts constituting the alleged unsafe or unsound practice, viola-
24 tion, or failure and shall fix a time and place at which a hear-
25 ing will be held to determine whether an order to cease and
26 desist from the practice, violation, or failure to comply should
27 issue against the licensee. The hearing shall be not earlier

1 than 5 days nor later than 10 days after service of the notice
2 unless an earlier or a later date is set by the commissioner at
3 the request of the person or licensee. Unless the person or
4 licensee appears at the hearing personally or by a duly autho-
5 rized representative, the person or licensee shall be considered
6 to have consented to the issuance of the cease and desist order.
7 In the event of such consent, or if upon the record made at the
8 hearing, the commissioner finds that any unsafe or unsound prac-
9 tice, violation, or failure to comply specified in the notice of
10 charges has been established, the commissioner may issue and
11 serve upon the person or licensee an order to cease and desist
12 from any practice, violation, or failure to comply. The order
13 may also require or recommend that the person or licensee take
14 affirmative action to correct the conditions resulting from any
15 practice, violation, or failure to comply.

16 (6) A cease and desist order issued under subsection (5)
17 shall become effective at the expiration of 5 days after service
18 of the order upon the licensee, except in the case of an order
19 issued upon consent which shall become effective at the time
20 specified in the order, and shall remain in effect and enforce-
21 able as provided in the order, except to the extent it is stayed,
22 modified, terminated, or set aside by action of the commissioner
23 or a reviewing court.

24 Sec. 19. The commissioner shall promulgate rules that are
25 necessary for the enforcement of this act in accordance with the
26 administrative procedures act of 1969, Act No. 306 of the Public
27 Acts of 1969, being sections 24.201 to 24.328 of the Michigan

1 Compiled Laws. The commissioner shall promulgate rules that are
2 necessary to ensure that relevant information is disclosed and
3 made available to consumers as required by this act.

4 Sec. 20. (1) The commissioner at any time may investigate
5 the business done in this state of any licensee, and may examine
6 the books, accounts, records, and files used and maintained by
7 any licensee and require the licensee to furnish additional
8 reports relating to the licensee's business. In addition to the
9 annual fee provided for in section 10, the commissioner shall
10 make a charge to the licensee in an amount sufficient to cover
11 the cost of any examination. The charge for the examination
12 shall be in an amount determined annually by the commissioner,
13 except that the charge shall not be less than \$20.00 per hour or
14 more than \$40.00 per hour for each examiner required for the
15 examination, and shall include travel expenses when the examiner
16 must travel out of state.

17 (2) The commissioner may accept an annual report and audit
18 of the affairs of any licensee under this act, if made by a cer-
19 tified public accountant, instead of the examination provided for
20 in subsection (1).

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

25 Sec. 21. A person, including the licensee, shall not
26 solicit donations, gifts, contributions, purchase of tickets, or

1 similar demands for money within 100 yards from any entrance to a
2 business licensed under this act.

3 Sec. 22. A person who violates any of the provisions of
4 this act is guilty of a misdemeanor, and shall be fined not less
5 than \$100.00 nor more than \$500.00, or imprisoned in the county
6 jail for not more than 90 days, or both. Each transaction in
7 violation of this act and each day that a violation continues
8 shall be a separate offense.