



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5747

Introduced 2/16/2012, by Rep. Elizabeth Hernandez

SYNOPSIS AS INTRODUCED:

New Act

815 ILCS 315/Act rep.

815 ILCS 122/1-15

815 ILCS 505/2Z

from Ch. 121 1/2, par. 262Z

Repeals the Check Cashing Act and creates the Check Cashers Act. Contains a statement of purpose. Defines "merchant" as a person, firm, association, partnership, or corporation primarily engaged in the business of selling tangible personal property at retail, and defines other terms. Provides that a merchant may engage in the check cashing business for a fee only if it is incidental to the merchant's main business. Contains provisions concerning applicability, permitted fees, proceeds, deposits, reporting requirements, forged checks, records, enforcement and remedies, judicial review, and waivers. Provides that the Department may make and enforce such reasonable rules, regulations, directions, orders, decisions, and findings as the execution and enforcement of the Act require. Amends the Consumer Fraud and Deceptive Business Practices Act. Provides that any person who knowingly violates the Check Cashers Act commits an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. Makes conforming changes in the Payday Loan Reform Act. Contains a severability provision. Effective 180 days after becoming law.

LRB097 20258 JLS 65722 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Check
5 Cashers Act.

6 Section 5. Purpose. The purpose of this Act is to protect
7 consumers who cash checks at retail businesses that provide
8 check cashing services. This Act shall be construed as a
9 consumer protection law for all purposes. This Act shall be
10 liberally construed to effectuate its purpose.

11 Section 10. Definitions. As used in this Act:

12 "Cash" means legal tender of the United States.

13 "Check" means a check, draft, money order, traveler's
14 check, or negotiable instrument as defined by Article 3 of the
15 Uniform Commercial Code.

16 "Check casher" means a merchant, including any affiliate or
17 subsidiary of a merchant that engages in the check cashing
18 business.

19 "Check cashing business" means the business of converting
20 checks, drafts, money orders, traveler's checks, or other
21 payment instruments to cash for a fee. "Check cashing business"
22 does not include any transaction where a customer presents a

1 check for the exact amount of any purchase.

2 "Consumer" means any natural person who, singly or jointly
3 with another consumer, cashes a check.

4 "Department" means the Department of Financial and
5 Professional Regulation.

6 "Incidental" means that in the course of a merchant's
7 business, at each location, the merchant's check fee income is
8 less than 20% of gross sales.

9 "Location" means a place of business at which activity
10 regulated by this Act occurs.

11 "Person" means an individual, partnership, limited
12 liability company, unincorporated association, corporation, or
13 other legal entity.

14 "Merchant" means a person, firm, association, partnership,
15 or corporation primarily engaged in the business of selling
16 tangible personal property at retail.

17 "Secretary" means the Secretary of Financial and
18 Professional Regulation.

19 Section 15. Incidental business only. A merchant may engage
20 in the check cashing business only if it is incidental to the
21 business of selling tangible personal property at retail.

22 Section 20. Applicability.

23 (a) Except as otherwise provided in this Section, this Act
24 applies to any check casher that engages or offers to engage in

1 the check cashing business for a fee to Illinois consumers.
2 Anyone not a check casher, except as provided in this Section,
3 may not cash checks for a fee.

4 (b) The provisions of this Act apply to any person or
5 entity that seeks to evade its applicability by any device,
6 subterfuge, or pretense whatsoever.

7 (c) Banks, savings banks, savings and loan associations,
8 and credit unions organized, chartered, or holding a
9 certificate of authority to do business under the laws of this
10 State or any other state or under the laws of the United States
11 are exempt from the provisions of this Act.

12 (d) A check casher that is an agent for a bank, savings
13 bank, savings and loan association, or credit union shall be
14 subject to all of the provisions of this Act.

15 (e) Currency exchanges licensed pursuant to the Currency
16 Exchange Act and in compliance with all relevant State and
17 federal rules and regulations are exempt from the provisions of
18 this Act.

19 Section 25. Money received by the Department. All moneys
20 received by the Department under this Act shall be deposited in
21 the Financial Institutions Fund created under Section 6z-26 of
22 the State Finance Act.

23 Section 30. Permitted fees.

24 (a) The fees charged by a check casher may not exceed the

1 greater of \$0.50 or 1% of the face value of the check cashed.
2 No check casher shall charge or collect any sum for cashing a
3 check in excess of the fees allowed by this Act. If there are
4 insufficient funds to cover a check, a check casher may charge
5 a fee not to exceed \$25. Only one such fee may be collected by
6 the check casher per check.

7 (b) The schedule of fees and charges permitted under this
8 Section shall be conspicuously and continuously posted in at
9 least 14-point font in English and the dominant languages
10 spoken in in each check casher's location.

11 Section 35. Proceeds. A check casher shall issue the
12 proceeds of a check to a consumer in cash. No check casher
13 shall issue proceeds of a check in an amount other than the
14 face value of the check, except for the deduction of check
15 cashing fees charged pursuant to this Act.

16 Section 40. Deposits. Before a check casher deposits, with
17 any banking or other financial institution, a check cashed by
18 the check casher, the check must be endorsed with the name
19 under which the check casher is doing business.

20 Section 45. Reporting requirements. A check casher shall
21 submit to the Secretary, or the Secretary's designee, any
22 suspicious activity reports or currency transaction reports as
23 are required to be submitted to federal authorities pursuant to

1 the federal Bank Secrecy Act, and regulations and
2 administrative orders related thereto, as amended, within the
3 periods of time as required by the federal Bank Secrecy Act and
4 regulations. A check casher may submit a copy of any report to
5 the Secretary, or Secretary's designee, that is filed with that
6 federal authority. The Secretary may adopt rules or require
7 additional reports as he or she deems necessary to ensure
8 effective enforcement of this Section.

9 Section 50. Forged checks. A check casher shall post in a
10 conspicuous location, clearly visible to all patrons, a
11 statement printed in at least 14-point font in plain language,
12 in English and in the dominant languages spoken in in each
13 check casher's location, informing the public that cashing a
14 forged check is illegal and those who knowingly cash forged
15 checks will be prosecuted pursuant to the applicable provisions
16 of the Criminal Code of 1961.

17 Section 55. Examination of check cashers; records.

18 (a) A check casher shall keep and use books, accounts, and
19 records that will enable the Secretary to determine whether the
20 check casher is complying with the provisions of this Act and
21 maintain any other records as required by the Secretary. Check
22 cashers shall preserve their books, accounts, and records for 5
23 years from the date of each transaction.

24 (b) For the purpose of discovering violations of this Act

1 or securing information lawfully required in this Section, the
2 Department may at any time, and as often as may be determined,
3 investigate the check casher's books, accounts, records,
4 files, and any other document related to the check casher's
5 check cashing business activities. The Secretary and his or her
6 designee shall have free access to the offices and places of
7 business, books, accounts, papers, records, files, safes, and
8 vaults of all check cashers.

9 (c) Confidentiality. All information collected by the
10 Department in the course of an examination or investigation of
11 a check casher including, but not limited to, any complaint
12 against a check casher filed with the Department and
13 information collected to investigate any such complaint, shall
14 be maintained for the confidential use of the Department and
15 may not be disclosed. The Department may not disclose such
16 information to anyone other than law enforcement officials,
17 other regulatory agencies that have an appropriate regulatory
18 interest as determined by the Secretary, or a party presenting
19 a lawful subpoena to the Department. Information disclosed to a
20 federal, State, county, or local law enforcement agency may not
21 be disclosed by the agency for any purpose to any other agency
22 or person. A formal complaint filed against a check casher by
23 the Department or any order issued by the Department against a
24 check casher shall be a public record, except as otherwise
25 prohibited by law.

1 Section 60. Prohibited acts. A check casher may not commit,
2 or have committed on behalf of the check casher, any of the
3 following acts:

4 (1) Threatening to use the criminal process in this or any
5 other state to enforce payment of a dishonored check.

6 (2) Using any device or agreement that would have the
7 effect of charging or collecting more fees or charges than
8 allowed by this Act, including, but not limited to, entering
9 into a different type of transaction with the consumer.

10 (3) Engaging in unfair, deceptive, or fraudulent practices
11 in the cashing of a check.

12 (4) Using or causing to be published or disseminated any
13 advertising communication that contains false, misleading, or
14 deceptive statements or representations. No check casher may
15 advertise in any manner so as to indicate or imply that its
16 rates or charges are in any way recommended, approved, set, or
17 established by the State government or by this Act.

18 (5) Engaging in the business of making loans of money,
19 discounting notes, bills of exchange, or other evidences of
20 debt, or accepting deposits or bailments of money or other
21 items except as provided by this Act.

22 (6) Extending credit.

23 (7) Using or attempting to use the check provided by the
24 consumer as collateral for a transaction unrelated to a
25 transaction authorized by this Act.

26 (8) Charging any fees or charges other than those

1 specifically authorized by this Act.

2 (9) Threatening to take any action against a consumer that
3 is prohibited by this Act.

4 Section 65. Enforcement and remedies.

5 (a) The remedies provided in this Act are cumulative and
6 apply to persons or entities subject to this Act.

7 (b) Any material violation of this Act, including the
8 commission of an act prohibited under Section 60, constitutes a
9 violation of the Consumer Fraud and Deceptive Business
10 Practices Act.

11 (c) Subject to the Illinois Administrative Procedure Act,
12 the Secretary may hold hearings, make findings of fact and
13 conclusions of law, issue cease and desist orders, issue fines
14 of up to \$10,000 per violation, and refer the matter to the
15 appropriate law enforcement agency for prosecution under this
16 Act. All proceedings shall be open to the public.

17 (d) The Secretary may issue a cease and desist order to any
18 check casher when in the opinion of the Secretary the check
19 casher is violating or is about to violate any provision of
20 this Act or any rule or requirement imposed in writing by the
21 Department as a condition of granting any authorization
22 permitted by this Act. The cease and desist order permitted by
23 this subsection (d) is effective as of the date of service and
24 may be issued prior to a hearing. The Secretary shall serve
25 notice of his or her action, including, but not limited to, a

1 statement of the reasons for the action, either personally or
2 by certified mail, return receipt requested. Service by
3 certified mail shall be deemed completed when the notice is
4 deposited in the U.S. Mail. Within 10 days of service of the
5 cease and desist order, the check casher may request, in
6 writing, a hearing.

7 If it is determined that the Secretary had the authority to
8 issue the cease and desist order, he or she may issue such
9 orders as may be reasonably necessary to correct, eliminate, or
10 remedy the conduct. The powers vested in the Secretary by this
11 subsection (d) are in addition to any and all other powers and
12 remedies vested in the Secretary by law, and nothing in this
13 subsection (d) shall be construed as requiring that the
14 Secretary shall employ the power conferred in this subsection
15 instead of or as a condition precedent to the exercise of any
16 other power or remedy vested in the Secretary.

17 (e) The Secretary may, after 10 days' notice by registered
18 mail to the check casher at the check casher's business address
19 stating the contemplated action and in general the grounds
20 therefor, fine the check casher an amount not exceeding \$10,000
21 per violation if he or she finds that the check casher has
22 failed to comply with any provision of this Act or any order,
23 decision, finding, rule, regulation, or direction of the
24 Secretary lawfully made pursuant to the authority of this Act.

25 The Secretary may fine only the particular location with
26 respect to which grounds for the fine occur or exist, but if

1 the Secretary finds that grounds for the fine are of general
2 application to all locations or to more than one location of
3 the check cashier, the Secretary may fine every check cashier's
4 location to which the grounds apply.

5 An order assessing a fine shall take effect upon service
6 of the order unless the check cashier requests a hearing within
7 10 days of service of the order pursuant to this Section. In
8 the event a hearing is requested, the order shall be stayed
9 until a final administrative order is entered.

10 The hearing shall be held at the time and place designated
11 by the Secretary. The Secretary and any administrative law
12 judge designated by him or her shall have the power to
13 administer oaths and affirmations, subpoena witnesses and
14 compel their attendance, take evidence, and require the
15 production of books, papers, correspondence, and other records
16 or information that he or she considers relevant or material to
17 the inquiry.

18 (f) The costs of administrative hearings conducted
19 pursuant to this Section shall be paid by the check cashier.

20 Section 70. Rulemaking. The Department may make and enforce
21 such reasonable rules, regulations, directions, orders,
22 decisions, and findings as the execution and enforcement of the
23 provisions of this Act require, and as are not inconsistent
24 therewith. All rules, regulations, and directions of a general
25 character shall be made available to all check cashers in

1 electronic form.

2 Section 75. Judicial review. All final administrative
3 decisions of the Department under this Act are subject to
4 judicial review pursuant to the provisions of the
5 Administrative Review Law and any rules adopted pursuant
6 thereto.

7 Section 80. No waivers. There shall be no waiver of any
8 provision of this Act.

9 (815 ILCS 315/Act rep.)

10 Section 100. The Check Cashing Act is repealed.

11 Section 905. The Payday Loan Reform Act is amended by
12 changing Section 1-15 as follows:

13 (815 ILCS 122/1-15)

14 Sec. 1-15. Applicability.

15 (a) Except as otherwise provided in this Section, this Act
16 applies to any lender that offers or makes a payday loan to a
17 consumer in Illinois.

18 (b) The provisions of this Act apply to any person or
19 entity that seeks to evade its applicability by any device,
20 subterfuge, or pretense whatsoever.

21 (c) Retail sellers who cash checks incidental to a retail

1 sale and who charge no more than the fees as provided by the
2 Check Cashers Act ~~Check Cashing Act~~ per check for the service
3 are exempt from the provisions of this Act.

4 (d) Banks, savings banks, savings and loan associations,
5 credit unions, and insurance companies organized, chartered,
6 or holding a certificate of authority to do business under the
7 laws of this State or any other state or under the laws of the
8 United States are exempt from the provisions of this Act.

9 (e) A lender, as defined in Section 1-10, that is an agent
10 for a bank, savings bank, savings and loan association, credit
11 union, or insurance company for the purpose of brokering,
12 selling, or otherwise offering payday loans made by the bank,
13 savings bank, savings and loan association, credit union, or
14 insurance company shall be subject to all of the provisions of
15 this Act, except those provisions related to finance charges.

16 (Source: P.A. 94-13, eff. 12-6-05.)

17 Section 910. The Consumer Fraud and Deceptive Business
18 Practices Act is amended by changing Section 2Z as follows:

19 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

20 Sec. 2Z. Violations of other Acts. Any person who knowingly
21 violates the Automotive Repair Act, the Automotive Collision
22 Repair Act, the Home Repair and Remodeling Act, the Dance
23 Studio Act, the Physical Fitness Services Act, the Hearing
24 Instrument Consumer Protection Act, the Illinois Union Label

1 Act, the Job Referral and Job Listing Services Consumer
2 Protection Act, the Travel Promotion Consumer Protection Act,
3 the Credit Services Organizations Act, the Automatic Telephone
4 Dialers Act, the Pay-Per-Call Services Consumer Protection
5 Act, the Telephone Solicitations Act, the Illinois Funeral or
6 Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care
7 Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales
8 Act, the High Risk Home Loan Act, the Payday Loan Reform Act,
9 the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section
10 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section
11 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the
12 Internet Caller Identification Act, paragraph (6) of
13 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
14 Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150,
15 or 18d-153 of the Illinois Vehicle Code, Article 3 of the
16 Residential Real Property Disclosure Act, the Automatic
17 Contract Renewal Act, the Check Cashers Act, or the Personal
18 Information Protection Act commits an unlawful practice within
19 the meaning of this Act.

20 (Source: P.A. 96-863, eff. 1-19-10; 96-1369, eff. 1-1-11;
21 96-1376, eff. 7-29-10; 97-333, eff. 8-12-11.)

22 Section 996. Severability. The provisions of this Act are
23 severable under Section 1.31 of the Statute on Statutes.

24 Section 999. Effective date. This Act takes effect 180 days
25 after becoming law.