

LD1177320

HOUSE BILL NO. 1224

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding in Title 6.1 a chapter numbered 17, consisting of sections numbered 6.1-432 through 6.1-452, relating to the creation of the Check Casher Act; penalties.

Patrons—Keating, Callahan, Cohen, Heilig, Plum, Reynolds, Spruill, Van Landingham and Van Yahres

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.1 a chapter numbered 17, consisting of sections numbered 6.1-432 through 6.1-452, as follows:

CHAPTER 17.**CHECK CASHER ACT.****§ 6.1-432. Definitions.**

As used in this chapter, the following words and terms shall have the following meanings unless the context clearly requires a different meaning:

"Check casher" means a person engaged in the business of cashing checks, drafts, or money orders for compensation.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of the Bureau of Financial Institutions.

"Item" means a check, draft, or money order.

"License" means a license issued under this chapter.

"Licensee" means a person to whom one or more licenses have been issued under this chapter.

"Person" means any individual, firm, corporation, partnership, association, trust, or legal or commercial entity or group of individuals, however organized.

"Principal" means any person who, directly or indirectly, owns or controls (i) ten percent or more of the outstanding stock of a stock corporation or (ii) a ten percent, or greater, interest in a nonstock corporation or a limited liability company in the check cashing business.

§ 6.1-433. License requirement.

No person shall engage in business as a check casher on or after July 1, 1994, unless such person has first obtained a license under this chapter; however, a person engaged in such business on January 1, 1994, may continue to engage in the business if such person files an application for a license on or before July 1, 1994, and has obtained a license on or before December 31, 1994.

§ 6.1-434. Exempt persons.

This chapter shall not apply to persons cashing items as an incident to the conduct of another business for compensation not exceeding fifty cents per item, nor to any person authorized to engage in business as a bank, savings institution, or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia.

§ 6.1-435. Application for license; form; content; fee.

A. An application for a license under this chapter shall be in writing, under oath, and on a form provided by the Commissioner.

B. The application shall set forth:

1. The name and address of the applicant;

2. If the applicant is a firm or partnership, the name and address of each member of the firm or partnership;

3. If the applicant is a corporation, the name and address of each officer, director, registered agent, and each principal;

4. The addresses of the locations of the business to be licensed; and

5. Such other information concerning the financial responsibility, background, experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner may require.

C. The application shall be accompanied by a payment of a \$300 application fee, which fee shall not be refundable or abated in any event.

§ 6.1-436. Bond required.

The application for a license shall also be accompanied by a bond filed with the Commissioner with a corporate surety authorized to execute such bond in this Commonwealth, in the sum of \$25,000, or such greater sum as the Commissioner may require, the form of which shall be approved by the

INTRODUCED

HB1224

Commission. Such bond shall be continuously maintained thereafter in full force. Such bonds shall be conditioned upon the applicant or licensee conducting his licensed business in conformity with this chapter and all applicable law. Any person who may be damaged by noncompliance of a licensee with any condition of such bond may proceed on such bond against the principal or surety thereon, or both, to recover damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

§ 6.1-437. Liquid assets required.

Every licensee and applicant shall have and maintain liquid assets of at least \$25,000 for each business location, or such greater amount of liquid assets as the Commissioner may require.

§ 6.1-438. Investigation of application.

The Commissioner may make such investigations as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations promulgated thereunder.

§ 6.1-439. Qualifications.

Upon the filing and investigation of an application, and compliance by the applicant with the provisions of §§ 6.1-435, 6.1-436 and 6.1-437, the Commission shall issue and deliver to the applicant the license or licenses applied for to engage in business under this chapter at the locations specified in the application if it finds that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, senior officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. If the Commission fails to make such findings, no license shall be issued, and the Commissioner shall notify the applicant of the denial and the reasons for such denial.

§ 6.1-440. Licenses; places of businesses; changes.

A. Each license shall state the address or addresses at which the business is to be conducted and shall state fully the name of the licensee. Each license shall be prominently posted in each place of business of the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any name other than the name set forth on the license issued by the Commission.

B. No licensee shall open an additional office or relocate any office without prior approval of the Commission. Applications for such approval shall be made in writing on a form provided by the Commissioner and shall be accompanied by payment of a \$150 nonrefundable application fee. The applicants shall be approved unless the Commission finds that an applicant has not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the Commission to the applicant within thirty days of the date the application is received by the Commission. After approval, the applicant shall give written notice to the Commissioner within ten days of the commencement of the business at the additional or relocated office.

C. Every licensee shall within ten days notify the Commissioner, in writing, of the closing of any office and of the name, address and position of each new senior officer, member, partner, or director and provide such other information with respect to any such changes as the Commissioner may reasonably require.

D. Every license shall remain in force until it has been surrendered, revoked or suspended. The surrender, revocation or suspension of a license shall not affect any preexisting legal right or obligation of such licensee.

§ 6.1-441. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire directly or indirectly twenty-five percent or more of the voting shares of a corporation or twenty-five percent of the ownership of any other entity licensed to conduct business under this chapter unless such person first:

1. Files an application with the Commission in such form as the Commissioner may prescribe from time to time;

2. Delivers such other information to the Commissioner as the Commissioner may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, principals and members, and of any proposed new directors, senior officers, principals or members of the licensee; and

3. Pays such application fee as the Commission may prescribe.

B. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, senior officers and principals, and any proposed new directors, members, senior officers and principals have the financial responsibility, character, reputation, experience and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The Commission shall grant or deny the application within sixty days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person licensed by this chapter or a person exempt from this chapter under the provisions of § 6.1-434; (ii) the acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee; or (iii) the acquisition of an interest in a licensee by a person by bequest, descent, or survivorship or by operation of law. The person acquiring an interest in a licensee in a transaction which is exempt from filing an application by this subsection shall send written notice to the Commissioner of such acquisition within thirty days of its closing.

§ 6.1-442. Retention of books, accounts, and records.

Every person required to be licensed under this chapter shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require in order to determine whether such person is complying with the provisions of this chapter and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained apart and separate from any other business in which the person is engaged, and shall be retained for such period as the Commission may prescribe by regulation.

§ 6.1-443. Annual report.

Each person required to be licensed under this chapter shall annually, on or before March 25, file a written report with the Commissioner containing such information as the Commissioner may require concerning his business and operations during the preceding calendar year as to each licensed place of business. Reports shall be made under oath and shall be in the form prescribed by the Commissioner, who shall make and publish annually an analysis and recapitulation of the reports.

§ 6.1-444. Investigations; examinations.

The Commission may, by its designated officers and employees, as often as it deems necessary, investigate and examine the affairs, business, premises, and records of any person required to be licensed under this chapter insofar as they pertain to any business for which a license is required by this chapter. Examinations of licenses shall be conducted at least once in each two-year period. In the course of such investigations and examinations, the owners, members, officers, directors, partners, and employees of the person being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records, and information which the person making such investigation or examination deems necessary. For the foregoing purposes, the person making such investigation or examination shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of papers and objects of all kinds.

§ 6.1-445. Annual fees.

In order to defray the costs of their examination, supervision, and regulation, every licensee shall pay an annual fee calculated in accordance with a schedule set by the Commission. In setting such schedule, the Commission shall take into account the volume of business of licensees, the number of offices operated by the licensees, the actual costs of examinations, and other factors relating to supervision and regulation under this chapter. All such fees shall be assessed on or before April 25, 1995, for that calendar year, and on or before April 25 for every calendar year thereafter. All such fees shall be paid by licensees to the State Treasurer on or before May 25 following each assessment. Such fees shall not be abated by surrender, revocation, or suspension of any license.

§ 6.1-446. Regulations.

A. The Commission shall promulgate such regulations as it deems appropriate to effect the purposes of this chapter. Before promulgating any such regulations, the Commission shall give reasonable notice of the content thereof, and shall afford interested parties an opportunity to be heard, in accordance with the Rules of Practice and Procedure of the Commission.

B. The Commission shall also promulgate regulations, on or before December 31, 1995, establishing maximum fees which licensees may charge for cashing items, taking into consideration the following:

1. Maximum fees for cashing items established under the laws of other states;
2. Fees charged by persons exempt from this chapter for cashing items in this Commonwealth; and
3. Such other information as the Commission deems relevant.

C. Before promulgating regulations pursuant to this section, the Commission shall give reasonable notice of its intention to do so to all applicants and licensees, and cause like notice to be published once each week for two consecutive weeks in some newspaper having general circulation, or published in the City of Richmond.

D. The Commission shall promulgate regulations to require prominent posting of representative fees for cashing checks and fees for all services provided by the licensee.

§ 6.1-447. Prohibited practices.

No person required to be licensed under this chapter shall:

183 1. Engage in the business of making loans of money, credit, goods, or things; or discounting notes,
184 bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or
185 items;

186 2. Cash post-dated items, other than government or payroll checks payable the next business day
187 after cashing;

188 3. Cash items in a face amount exceeding \$2,500;

189 4. Use, or cause to be published or disseminated, any advertisement or communication which:

190 a. Contains any false, misleading, or deceptive statement or representation;

191 b. Contains any reference to the fact that such person is regulated or supervised by the Commission;

192 or

193 c. Identifies the person by any name other than the name set forth on the license issued by the
194 Commission.

195 5. Conduct the business for which a license is required by this chapter at any premise or location
196 where another person is engaged in the business described in subdivision 1 of this section.

197 § 6.1-448. Suspension or revocation of license.

198 A. The Commission may suspend or revoke any license issued under this chapter upon any of the
199 following grounds:

200 1. Any ground for denial of a license under this chapter;

201 2. Any violation of the provisions of this chapter, or regulations promulgated by the Commission
202 pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the
203 licensee's business;

204 3. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

205 4. Entry of a judgment against a licensee involving fraud, misrepresentation, or deceit;

206 5. Entry of a federal or state administrative order against such licensee for violation of any law or
207 regulation applicable to the conduct of his business;

208 6. Refusal to permit an investigation or examination by the Commission;

209 7. Failure to pay any fee or assessment imposed by this chapter; or

210 8. Failure to comply with any order of the Commission.

211 B. For the purposes of this section, acts of any officer, director, member, partner, or principal shall
212 be deemed acts of the licensee.

213 § 6.1-449. Cease and desist orders.

214 If the Commissioner determines that any person required to be licensed under this chapter has
215 violated any provision of this chapter, or any regulation promulgated hereunder, he may, upon
216 twenty-one days' notice in writing, order such person to cease and desist from such violations and to
217 comply with the provisions of this chapter. Such notice shall be sent by certified mail to the place of
218 business of such person, and shall state the grounds for the contemplated action. Within fourteen days
219 of mailing the notice, the person or persons named therein may file with the clerk of the Commission a
220 written request for a hearing by the Commission. In the event that such hearing is timely requested, the
221 Commissioner shall not issue any order under this section, and a hearing shall be conducted by the
222 Commission pursuant to Title 12.1. The Commission may enforce compliance with any order issued
223 under this section by the imposition and collection of civil penalties as may be provided herein, or by
224 Commission regulations.

225 § 6.1-450. Procedure for license suspensions or revocations.

226 The Commission shall not revoke or suspend any license issued under this chapter unless the
227 licensee has been given twenty-one days' written notice of the proposed revocation or suspension, and
228 the licensee has been given an opportunity for a hearing. Such notice shall be sent by certified mail to a
229 place of business of such licensee, and shall state with particularity the grounds for the proposed
230 revocation or suspension. Within fourteen days of mailing the notice, the licensee may file with the clerk
231 of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not
232 revoke or suspend the license unless or until findings are made at or after such hearing. The hearing
233 shall be conducted in accordance with the provisions of Title 12.1.

234 § 6.1-451. Civil penalties.

235 In addition to the authority conferred under §§ 6.1-449 and 6.1-450, the Commission may impose a
236 civil penalty not exceeding \$1,000 upon any person required to be licensed hereunder who it determines,
237 in proceedings commenced in accordance with the Rules of Practice and Procedure of the Commission,
238 has violated any of the provisions of this chapter or regulations promulgated thereunder. For the
239 purposes of this section, each separate violation shall be subject to the civil penalty therein prescribed.

240 Civil penalties paid pursuant to this chapter shall be deposited to the credit of the Literary Fund.

241 § 6.1-452. Criminal penalties.

242 Any person required to be licensed under this chapter who acts as a check casher in this
243 Commonwealth without having obtained a license shall be guilty of a Class 6 felony. For the purposes
244 of this section, each transaction entered into involving the cashing of an item by such person shall

245 *constitute a separate offense.*