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HOUSE BILL NO. 1811

Offered January 19, 1995

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 6.1-450, relating to the creation of the Check Casher Act; penalties.

Patrons—Keating, Cohen, Copeland, Darner, Hall and Scott; Senator: Miller, Y.B.

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 6.1-450, 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, 1995, unless such person has first obtained a license under this chapter; however, a person engaged in such business on January 1, 1995, may continue to engage in the business if such person files an application for a license on or before July 1, 1995, and has obtained a license on or before December 31, 1995.

§ 6.1-434. Exempt persons.

This chapter shall not apply to any person not holding itself out to be a check cashing service, which is principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of such retail sale or service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars is charged for the service, 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 shall not be refundable or abated in any event.

§ 6.1-436. Investigation of application.

The Commissioner may make such investigations as he deems necessary to determine if the applicant

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60 has complied with all applicable provisions of this chapter and state and federal law and regulations
61 promulgated thereunder.

62 § 6.1-437. *Qualifications.*

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

71 § 6.1-438. *Licenses; places of business; changes.*

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

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

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

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

93 § 6.1-439. *Acquisition of control; application.*

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

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

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

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

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

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

§ 6.1-440. 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.

§ 6.1-441. 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.

§ 6.1-442. 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.

§ 6.1-443. 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 the 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, 1996, 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.

§ 6.1-444. Maximum fees for service; fees posted; endorsement of checks cashed.

A. No check-cashing business licensed under this chapter shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

1. Two percent of the face amount of the check for checks issued by the federal government, state government, or any agency of the state or federal government, or any county or municipality of this state.

2. Ten percent of the face amount of the check for personal checks; or

3. Five percent of the face amount of the check or money order for all other checks, or for money orders.

B. A licensee shall ensure that in every location conducting business under a license issued under this chapter, there is conspicuously posted and at all times displayed a notice stating the fees charged for cashing checks, drafts and money orders. A licensee shall further ensure that notice of the fees currently charged at every location shall be filed with the Commissioner.

C. Checks, drafts, and money orders cashed at every location conducting business under a license issued under this chapter shall be deposited or presented for payment by the next business day from the date the check is cashed for the customer. A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the actual name under which the licensee is doing business.

D. A licensee shall post a list of valid identifications which are acceptable for cashing checks.

E. A licensee shall post the Commission's toll-free telephone number and information on how to file a complaint pursuant to regulations adopted by the Commission.

F. A licensee shall ensure that each customer cashing a check shall be provided a receipt showing the name or trade name of the licensee, the transaction date, the amount of the check, the fee charged, and the cash given.

§ 6.1-445. Regulations.

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

183 *the Rules of Practice and Procedure of the Commission.*

184 *§ 6.1-446. Prohibited practices.*

185 *No person required to be licensed under this chapter shall:*

186 *1. Engage in the business of making loans of money, credit, goods, or things; or discounting notes,*
187 *bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or*
188 *items;*

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

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

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

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

194 *b. Contains any reference to the fact that such person is regulated or supervised by the Commission*
195 *except as required in § 6.1-444; or*

196 *c. Identifies the person by any name other than the name set forth on the license issued by the*
197 *Commission.*

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

200 *6. Charge fees in excess of those authorized under this chapter.*

201 *7. Engage in unfair, deceptive or fraudulent practices.*

202 *§ 6.1-447. Suspension or revocation of license.*

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

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

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

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

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

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

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

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

215 *8. Failure to comply with any order of the Commission.*

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

218 *§ 6.1-448. Procedure for license suspensions or revocations.*

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

227 *§ 6.1-449. Civil penalties.*

228 *A. In addition to the authority conferred under § 6.1-448, the Commission may impose a civil penalty*
229 *not exceeding \$1,000 upon any person required to be licensed hereunder who it determines, in*
230 *proceedings commenced in accordance with the Rules of Practice and Procedure of the Commission,*
231 *has violated any of the provisions of this chapter or regulations promulgated thereunder. For the*
232 *purposes of this section, each separate violation shall be subject to the civil penalty therein prescribed.*
233 *Civil penalties paid pursuant to this chapter shall be deposited to the credit of the Literary Fund. The*
234 *Commission may also order repayment of unlawful or excessive fees charged to customers.*

235 *B. Any person who suffers loss by reason of a violation of any provision of this chapter may bring a*
236 *civil action to enforce such provision. Any person who is successful in such action shall recover*
237 *reasonable attorney's fees, expert witness fees and court costs incurred by bringing such action.*

238 *§ 6.1-450. Criminal penalties.*

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