

LD4721320

HOUSE BILL NO. 1811

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Corporations, Insurance and Banking
on February 2, 1995)

(Patron Prior to Substitute—Delegate Keating)

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 6.1-443, creating the Check Casher Act; penalties.

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 6.1-443, 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.

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

"Registrant" means a person registered under this chapter.

"Registration" means a registration filed under this chapter.

§ 6.1-433. Registration requirement.

No person shall engage in business as a check casher on or after July 1, 1995, unless such person has first registered with the Commission in accordance with procedures established by the Commission under this chapter.

§ 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 items for a fee or other consideration, where not more than two dollars or two percent of the amount of the item, whichever is greater, 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. Registration fee.

The registration shall be accompanied by a payment of a \$200 registration fee, which shall not be refundable or abated in any event.

§ 6.1-436. Investigations.

The Commission may, by its designated officers and employees, upon receiving a complaint or upon its own motion, investigate the affairs, business, premises and records of any person required to be registered under this chapter. In the course of such investigation, all persons associated with the person being investigated shall afford full access to all premises, books, records and information which the person making such investigation deems necessary. For the foregoing purposes, the person making such investigation shall have authority to administer oaths, examine under oath all the aforementioned persons, and compel the production of documents and objects of all kinds.

§ 6.1-437. Fees posted; endorsement of items cashed.

A. A registrant shall, in every location conducting business under this chapter, conspicuously post and at all times display a notice stating the fees charged for cashing items. A registrant shall further file a statement of the fees currently charged at every location with the Commissioner.

B. Items cashed by registrants shall be deposited or presented for payment by the second business day from the date the item is cashed for the customer. A registrant shall endorse every item presented by the registrant for payment in the actual name under which the registrant is doing business.

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

D. A registrant shall provide each customer cashing an item with a receipt showing the name or trade name of the registrant, the transaction date, the amount of the check, the fee charged, and the cash given.

§ 6.1-438. 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 the Rules of Practice and Procedure of the Commission.

§ 6.1-439. Prohibited practices.

No person required to be registered under this chapter shall:

1. Engage in the business of making loans of money, credit, goods, or things; or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items without meeting the requirements of the laws of the Commonwealth;

2. Cash post-dated items, other than government or payroll checks;

3. Use, or cause to be published or disseminated, any advertisement or communication which (i) contains any false, misleading or deceptive statement or representation or (ii) identifies the person by any name other than the name set forth on the registration; or

4. Engage in unfair, deceptive or fraudulent practices.

§ 6.1-440. Civil penalties.

A. The Commission may impose a civil penalty not exceeding \$1,000 upon any person required to be registered hereunder whom it determines, in proceedings commenced in accordance with the Rules of Practice and Procedure of the Commission, has violated any of the provisions of this chapter or regulations promulgated thereunder. For the purposes of this section, each separate violation shall be subject to the civil penalty therein prescribed. Civil penalties paid pursuant to this chapter shall be deposited to the credit of the Literary Fund.

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

§ 6.1-441. Criminal penalties.

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

§ 6.1-442. Revocation of registration.

A. The Commission may revoke a registration under this chapter upon any of the following grounds:

1. Any violation of the provisions of this chapter or regulations promulgated hereunder, or violation of any law or regulation applicable to the conduct of the registrant's business;

2. Charging fees for cashing items in excess of fees posted at any place of business or filed with the Commission pursuant to § 6.1-437;

3. Conviction or a felony or misdemeanor involving fraud, misrepresentation, deceit, false swearing or theft; or

4. Refusal to permit or respond to an investigation by the Commission.

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

§ 6.1-433. Notice of proposed revocation.

The Commission may not revoke a registration under this chapter until it has given the registrant twenty-one days' notice in writing of the grounds for the proposed revocation and an opportunity to be heard. The notice shall be served in accordance with § 12.1-19.1. Within fourteen days of mailing the notice, the registrant may file with the Clerk of the Commission a written request for a hearing. If a written request for a hearing is filed, the Commission shall not revoke the registration except based upon findings made at such hearing.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0.00.