

A-Engrossed
House Bill 2202

Ordered by the House February 5
Including House Amendments dated February 5

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Consumer and Business Services)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Prohibits certain persons from conducting check-cashing business without license from Director of Department of Consumer and Business Services. Provides for license application and specifies information required in application. Requires director to issue license to persons meeting certain criteria. Prohibits collection of excessive fees for cashing payment instruments. Requires licensees to post and file with director schedule of fees collected. Permits director to investigate violations of Act, to suspend or revoke license and to impose civil fines of not more than \$1,000 per violation or \$1,000 per day for continuing violations.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to check-cashing businesses; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 16 of this 2007 Act:**

5 (1) **"Check-cashing business" means any person that conducts a business that for a fee,**
6 **service charge or other consideration provides money, credit or any other thing of value in**
7 **exchange for payment instruments. "Check-cashing business" does not include a financial**
8 **institution as defined in ORS 706.008 or an employee of a licensee.**

9 (2) **"Licensee" means a person licensed as a check-cashing business under section 6 of**
10 **this 2007 Act.**

11 (3) **"Payment instrument" means:**

12 (a) **A check, warrant or draft issued by the federal government, a state government, a**
13 **county or municipal government, or a federal or state agency;**

14 (b) **A payroll check; or**

15 (c) **A personal check, money order or any other check.**

16 **SECTION 2. (1) Sections 4, 5, 6 and 13 of this 2007 Act do not apply to a person licensed**
17 **under ORS 717.200 to 717.320.**

18 (2) **Sections 4, 5, 6, 11 and 13 of this 2007 Act do not apply to a person engaged in the bona**
19 **fide retail sale of goods or services and not purporting to be a check-cashing business that,**
20 **as an incident of or independent of a retail sale or service, from time to time cashes payment**
21 **instruments for a fee, service charge or other consideration but does not charge more than**
22 **\$2 or two percent of the face value of the payment instrument, whichever is greater.**

23 **SECTION 3. Except as provided in section 2 of this 2007 Act, a person may not conduct,**
24 **purport to conduct or advertise that the person conducts a check-cashing business without**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 first obtaining a license under section 6 of this 2007 Act.

2 **SECTION 4.** (1) An applicant for a license to conduct a check-cashing business shall apply
3 in writing and in a form that the Director of the Department of Consumer and Business
4 Services prescribes by rule.

5 (2) An application for a license to conduct a check-cashing business must contain all of
6 the following:

7 (a) The applicant's name, together with any fictitious name, assumed business name or
8 trade name the applicant uses in conducting the applicant's business;

9 (b) The name and address of all of the applicant's members, partners, officers, directors
10 or principals, as appropriate;

11 (c) The name and address of the applicant's agent for the service of process, notice or
12 demand, or a power of attorney that the applicant has executed and by which the applicant
13 appoints the Director of the Department of Consumer and Business Services as the appli-
14 cant's agent for service of process, notice or demand;

15 (d) The applicant's principal business address, the location of the applicant's business
16 records and the addresses for all locations where the applicant conducts or proposes to
17 conduct a check-cashing business; and

18 (e) Other information that the director may require concerning the applicant's financial
19 responsibility, background experience and business activities and those of the applicant's
20 members, partners, officers, directors and principals.

21 (3) The director, for good cause shown, may waive any requirement of this section with
22 respect to any license application or may allow an applicant to submit substituted informa-
23 tion in a license application in lieu of the information required under subsection (2) of this
24 section.

25 **SECTION 5.** (1) Each person who submits an application under section 4 of this 2007 Act
26 shall at the same time pay a nonrefundable application fee and a nonrefundable investigation
27 fee to the Director of the Department of Consumer and Business Services in amounts the
28 director prescribes by rule. If the director approves the application and issues a license un-
29 der section 6 of this 2007 Act, the application fee shall constitute the license fee for the re-
30 maining portion of the first calendar year and the subsequent full calendar year in which the
31 applicant conducts a check-cashing business.

32 (2) The director shall prescribe fee amounts under subsection (1) of this section that in
33 the aggregate are sufficient to pay all expenses of the Department of Consumer and Business
34 Services related to administering sections 1 to 16 of this 2007 Act. The director shall pay all
35 moneys received under this section into the Consumer and Business Services Fund as pro-
36 vided in ORS 705.145.

37 **SECTION 6.** (1) After an applicant has submitted a complete application, the Director of
38 the Department of Consumer and Business Services shall review the application and may
39 investigate the applicant's financial condition and responsibility, financial and business ex-
40 perience, character and general fitness to conduct a check-cashing business. The director
41 may also determine if the applicant has complied with applicable provisions of sections 1 to
42 16 of this 2007 Act and of federal law.

43 (2) The director shall issue a license to the applicant to conduct a check-cashing business
44 at the locations identified in the application if the director finds that:

45 (a) The applicant and the applicant's members, officers, directors and principals are fi-

1 nancially responsible, have a good character and a good reputation and are experienced and
2 generally fit to conduct a check-cashing business efficiently, in the public interest and in
3 accordance with law;

4 (b) The applicant has fulfilled the requirements imposed under section 4 of this 2007 Act;
5 and

6 (c) The applicant has paid the license and investigation fees required under section 5 of
7 this 2007 Act.

8 (3) A license issued under this section expires on December 31 of the first full calendar
9 year following the year in which the license is issued. A licensee may not assign or transfer
10 a license issued under this section. A licensee may renew a license upon payment of a license
11 fee in an amount the director prescribes by rule.

12 (4) The director shall deny the application if the applicant does not meet the require-
13 ments set forth in this section. The director's denial shall be in writing and shall describe
14 the reasons for the denial.

15 (5) If the director denies a license under this section, the applicant may request a hearing
16 in accordance with ORS 183.435. Upon receiving the applicant's request, the director shall
17 grant the applicant a hearing under ORS 183.413 to 183.470.

18 **SECTION 7.** (1) A check-cashing business may not charge or collect, directly or indi-
19 rectly, an excessive fee, service charge or other consideration for cashing a payment in-
20 strument. A fee, service charge or other consideration is excessive if the total amount
21 charged is more than the following amounts:

22 (a) For a payment instrument issued by the federal government or an agency of the
23 federal government, by this state or an agency of this state or by the government of the
24 municipality in which a person is cashing the payment instrument:

25 (A) \$5 or two percent of the face value of the payment instrument, whichever is greater,
26 if the person cashing the payment instrument provides valid and current government-issued
27 photo identification; or

28 (B) \$5 or 2-1/2 percent of the face value of the payment instrument, whichever is greater,
29 if the person cashing the payment instrument does not provide valid and current
30 government-issued photo identification.

31 (b) For a payment instrument issued by any other state or political subdivision thereof
32 or for a payment instrument that is a payroll check:

33 (A) \$5 or three percent of the face value of the payment instrument, whichever is
34 greater, if the person cashing the payment instrument provides valid and current
35 government-issued photo identification; or

36 (B) \$5 or 3-1/2 percent of the face value of the payment instrument, whichever is greater,
37 if the person cashing the payment instrument does not provide valid and current
38 government-issued photo identification.

39 (c) For any other payment instrument, 10 percent of the face value of the payment in-
40 strument.

41 (2) Notwithstanding the provisions of subsection (1) of this section, a fee, service charge
42 or other consideration is excessive if the total amount charged is more than \$100.

43 (3) This section does not affect fees, statutory damages or other charges a person may
44 collect under ORS 30.701 in connection with dishonored payment instruments.

45 **SECTION 8.** A check-cashing business shall provide a receipt to the individual for whom

1 the business cashes a payment instrument. The receipt must display at least:

- 2 (1) The name, assumed business name or trade name of the check-cashing business;
- 3 (2) The transaction date;
- 4 (3) The face amount of the payment instrument; and
- 5 (4) The fee charged or collected for cashing the payment instrument.

6 **SECTION 9.** A check-cashing business shall:

7 (1) Endorse in the name of the business all payment instruments for which the business
8 provided money, credit or any other thing of value; and

9 (2) Deposit or present for payment each such payment instrument not later than one
10 business day following the date of the transaction.

11 **SECTION 10.** A check-cashing business shall conspicuously post and at all times display
12 in each business location a notice that states the fees, services charges or other consider-
13 ation that the business charges for cashing payment instruments. A licensee shall also file
14 with the Director of the Department of Consumer and Business Services a copy of the notice
15 posted in each of the licensee's business locations.

16 **SECTION 11.** (1) A check-cashing business shall make, keep and maintain all records
17 used in providing money, credit or any other thing of value in exchange for payment in-
18 struments that the Director of the Department of Consumer and Business Services may
19 reasonably require. The check-cashing business shall keep and maintain the records that the
20 director requires under this section separate from records used for any other business that
21 the check-cashing business conducts. The check-cashing business shall retain the records the
22 director requires under this section for three years following the date of the transaction
23 each record describes, or for so long as the director may prescribe by rule.

24 (2) The director may examine the records required to be kept and maintained under this
25 section to determine whether the check-cashing business is complying with sections 1 to 16
26 of this 2007 Act and with rules the director has adopted under sections 1 to 16 of this 2007
27 Act. The check-cashing business shall pay the Department of Consumer and Business Ser-
28 vices for the actual cost of the examination. The director by rule shall establish rates and
29 charges associated with examinations made under this section.

30 **SECTION 12.** A check-cashing business may not:

31 (1) Publish, disseminate or cause to be published or disseminated a communication that
32 contains a false, misleading or deceptive statement or representation.

33 (2) Conduct business at premises or locations other than locations licensed by the Di-
34 rector of the Department of Consumer and Business Services.

35 (3) Engage in unfair, deceptive or fraudulent practices.

36 **SECTION 13.** (1) The Director of the Department of Consumer and Business Services
37 may by order suspend or revoke any license issued under section 6 of this 2007 Act if the
38 director finds that any of the following circumstances are true:

39 (a) The licensee has violated a provision of sections 1 to 16 of this 2007 Act or of a rule
40 or order the director has adopted or issued under sections 1 to 16 of this 2007 Act.

41 (b) The licensee knowingly made a false or misleading statement on the application for
42 a license under section 4 of this 2007 Act or in information the licensee submitted to the di-
43 rector.

44 (c) The licensee refused to permit the director to make an investigation authorized under
45 section 11 of this 2007 Act.

1 (d) The licensee has engaged in, or has a felony or misdemeanor conviction for, fraud,
2 misrepresentation or deceit or has demonstrated untrustworthiness or incompetence in
3 conducting the check-cashing business.

4 (e) The licensee has not paid a fee required under section 5 of this 2007 Act or examina-
5 tion costs under section 11 of this 2007 Act.

6 (2) The director may not suspend or revoke any license issued under section 6 of this 2007
7 Act unless the licensee has had notice and an opportunity for a hearing in accordance with
8 ORS 183.413 to 183.470.

9 **SECTION 14.** The Director of the Department of Consumer and Business Services may:

10 (1) Make such investigations as the director deems necessary to determine whether a
11 person has violated, is violating or is preparing to violate sections 1 to 16 of this 2007 Act
12 or a rule or order adopted or issued under sections 1 to 16 of this 2007 Act.

13 (2) Require a person to file a statement in writing, under oath or otherwise as the di-
14 rector determines, concerning a matter under investigation.

15 (3) Take evidence from witnesses and compel the attendance of witnesses and the pro-
16 duction of books, papers, correspondence, memoranda, agreements or other documents or
17 records that the director considers relevant or material to an investigation or proceeding.

18 (4) Take any affirmative action necessary to carry out the provisions of this section, in-
19 cluding assessing the costs of an investigation.

20 (5) Order a person to cease and desist from any action that the director has reason to
21 believe was, is or is about to become a violation of sections 1 to 16 of this 2007 Act, a rule
22 adopted to implement sections 1 to 16 of this 2007 Act or an order the director issued to
23 enforce sections 1 to 16 of this 2007 Act.

24 **SECTION 15.** (1) If the Director of the Department of Consumer and Business Services
25 finds that a person has violated a provision of sections 1 to 16 of this 2007 Act or any rules
26 adopted under sections 1 to 16 of this 2007 Act, the director may impose in the manner pro-
27 vided in ORS 183.745 a civil penalty in an amount not to exceed \$1,000 for each violation or,
28 in the case of a continuing violation, not more than \$1,000 for each day that the violation
29 continues. The total amount of a penalty imposed for a continuing violation may not exceed
30 \$20,000 for each offense. The director shall pay all moneys received under this section into
31 the Consumer and Business Services Fund as provided in ORS 705.145.

32 (2) The director may order any check-cashing business the director finds in violation of
33 section 7 of this 2007 Act to repay any excessive fee, service charge or consideration the
34 check-cashing business has collected.

35 **SECTION 16.** The Director of the Department of Consumer and Business Services may
36 adopt rules for the purpose of carrying out the provisions of sections 1 to 16 of this 2007 Act.

37 **SECTION 17.** Sections 1 to 15 of this 2007 Act become operative on January 1, 2008.

38 **SECTION 18.** (1) Except as provided in section 2 of this 2007 Act, sections 3, 4, 5, 6, 10,
39 11 and 12 of this 2007 Act apply to all persons conducting a check-cashing business on or
40 after the operative date of sections 1 to 15 of this 2007 Act.

41 (2) Sections 7, 8 and 9 of this 2007 Act apply to all transactions in which money, credit
42 or any other thing of value is exchanged for a payment instrument on or after the operative
43 date of sections 1 to 15 of this 2007 Act.

44 **SECTION 19.** The Director of the Department of Consumer and Business Services may
45 take any action before the operative date of sections 1 to 15 of this 2007 Act that is necessary

1 to enable the director to exercise, on and after the operative date of sections 1 to 15 of this
2 2007 Act, all the duties, functions and powers conferred on the director by sections 1 to 15
3 of this 2007 Act.

4 SECTION 20. This 2007 Act being necessary for the immediate preservation of the public
5 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
6 on its passage.

7
