

Enrolled
House Bill 2202

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CHAPTER

AN ACT

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

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

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

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

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

(3) "Payment instrument" means:

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

(b) A payroll check; or

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

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

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

SECTION 3. Except as provided in section 2 of this 2007 Act, a person may not conduct, purport to conduct or advertise that the person conducts a check-cashing business without first obtaining a license under section 6 of this 2007 Act.

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

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

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

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

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

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

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

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

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

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

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

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

(a) The applicant and the applicant's members, officers, directors and principals are financially responsible, have a good character and a good reputation and are experienced and generally fit to conduct a check-cashing business efficiently, in the public interest and in accordance with law;

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

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

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

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

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

SECTION 7. (1) A check-cashing business may not charge or collect, directly or indirectly, an excessive fee, service charge or other consideration for cashing a payment instrument. A fee, service charge or other consideration is excessive if the total amount charged is more than the following amounts:

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

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

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

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

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

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

(c) For any other payment instrument, \$5 or 10 percent of the face value of the payment instrument, whichever is greater.

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

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

SECTION 8. A check-cashing business shall provide a receipt to the individual for whom the business cashes a payment instrument. The receipt must display at least:

(1) The name, assumed business name or trade name of the check-cashing business;

(2) The transaction date;

(3) The face amount of the payment instrument; and

(4) The fee charged or collected for cashing the payment instrument.

SECTION 9. A check-cashing business shall:

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

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

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

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

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

SECTION 12. A check-cashing business may not:

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

(2) Conduct business at premises or locations other than locations licensed by the Director of the Department of Consumer and Business Services.

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

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

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

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

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

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

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

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

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

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

(2) Require a person to file a statement in writing, under oath or otherwise as the director determines, concerning a matter under investigation.

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

(4) Take any affirmative action necessary to carry out the provisions of this section, including assessing the costs of an investigation.

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

SECTION 15. (1) If the Director of the Department of Consumer and Business Services finds that a person has violated a provision of sections 1 to 16 of this 2007 Act or any rules adopted under sections 1 to 16 of this 2007 Act, the director may impose in the manner provided in ORS 183.745 a civil penalty in an amount not to exceed \$1,000 for each violation or, in the case of a continuing violation, not more than \$1,000 for each day that the violation continues. The total amount of a penalty imposed for a continuing violation may not exceed

\$20,000 for each offense. The director shall pay all moneys received under this section into the Consumer and Business Services Fund as provided in ORS 705.145.

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

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

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

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

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

SECTION 19. The Director of the Department of Consumer and Business Services may take any action before the operative date of sections 1 to 15 of this 2007 Act that is necessary to enable the director to exercise, on and after the operative date of sections 1 to 15 of this 2007 Act, all the duties, functions and powers conferred on the director by sections 1 to 15 of this 2007 Act.

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

Passed by House February 13, 2007

Received by Governor:

Repassed by House May 22, 2007

.....M.,....., 2007

Approved:

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Chief Clerk of House

.....M.,....., 2007

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Speaker of House

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Governor

Passed by Senate May 18, 2007

Filed in Office of Secretary of State:

.....M.,....., 2007

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President of Senate

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Secretary of State