CHAPTER 41

Check‑Cashing Services

**SECTION 34‑41‑10.** Definitions.

 As used in this chapter, unless the context clearly requires otherwise, the term:

 (1) "Board" means the State Board of Financial Institutions.

 (2) "Cashing" means providing currency for payment instruments but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

 (3) "Level I check‑cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

 (4) "Level II check‑cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration. A Level II licensee may not be licensed to engaged in the business of deferred presentment.

 (5) "Licensee" means a person or entity licensed to engage in either a Level I or Level II check‑cashing service pursuant to this chapter.

 (6) "Person" means an individual, partnership, association, or corporation.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑20.** Licensure requirements.

 (A) No person or other entity may engage in the business of either Level I or Level II check‑cashing service without first obtaining a license pursuant to this chapter. No person or other entity providing a Level I or Level II check‑cashing service may avoid the requirements of this chapter by providing a check or other currency equivalent instead of currency when cashing payment instruments.

 (B) A person providing Level I or Level II check‑cashing service on the effective date of this chapter may continue to engage in the business without a license until the board has acted upon the application for a license, but the application must be filed within sixty days after the effective date of this chapter.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑30.** Applicability of chapter; exceptions.

 This chapter shall not apply to:

 (1) a bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; and

 (2) any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a Level I or Level II check‑cashing service, from time to time cashes checks, drafts, or money orders without a fee or other consideration.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑40.** Application for licensure.

 (A) An application for licensure pursuant to this chapter must be in writing, under oath, and on a form prescribed by the board. The application shall set forth all of the following:

 (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 principal;

 (4) the addresses of the locations of the business to be licensed; and

 (5) other information concerning the financial responsibility, background experience, and activities, such as other partnerships, associations, and corporations located at or adjacent to the licensed location, of the applicant and its members, officers, directors, and principals as the board requires.

 (B) The board may make such investigations as the board considers necessary to determine if the applicant has complied with all applicable provisions of this chapter and state and federal law.

 (C) The application must be accompanied by payment of a two hundred fifty dollar application fee and a five hundred dollar investigation fee. These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part of it.

 (D) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars plus a fifty dollar fee for each branch location certificate issued under a license.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑42.** Requirements for mobile check‑cashing services.

 For the purposes of this chapter, all mobile check‑cashing services must:

 (1) be licensed as a Level I licensee;

 (2) be a registered and licensed armored vehicle in accordance with the laws of this State;

 (3) be considered a "branch" of a check‑cashing business for purposes of licensure through this chapter; and

 (4) keep records in accordance with this chapter that are returned daily to either the main office or another nonmobile branch of the business.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑50.** Maintenance of minimum liquid assets; issuance of license.

 (A) Each licensee and applicant shall have and maintain liquid assets of at least fifty thousand dollars for each licensee.

 (B) Upon the filing and investigation of an application, and compliance by the applicant with Section 34‑41‑40, and this section, the board shall issue and deliver to the applicant the license applied for to engage in business pursuant to this chapter at the locations specified in the application, provided that the board finds that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, 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 board fails to make these findings, a license may not be issued, and the board shall notify the applicant of the denial and the reasons for it. The provisions of the Administrative Procedures Act apply to the appeal of the denial of a license.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑60.** Restrictions and requirements for licensed check‑cashing services.

 (A) Notwithstanding any other provision of law, a check‑cashing service licensed pursuant to this chapter may not 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 or three dollars, whichever is greater, 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) two percent of the face amount of the check or three dollars, whichever is greater, for printed payroll checks. For purposes of this item, "printed" means type written, electronically generated, or computer generated; and

 (3) seven percent of the face amount of the check or five dollars, whichever is greater, for all other checks, including handwritten payroll checks, or for money orders.

 (B) A licensee may not advance monies on the security of any check unless the account from which the check being presented is drawn is legitimate, open, and active. A licensee who cashes a check for a fee shall deposit the check not later than five days from the date the check is cashed.

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

 (D) A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee.

 (E) Each check must be documented by a written agreement signed by both the customer and the licensee. In the case of an automated check‑cashing machine, a printed receipt of the transaction between the customer and the licensee shall constitute an agreement. The written agreement must contain the name or trade name of the licensee, the transaction date, the amount of the check, and a statement of the total amount of fees charged.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑70.** Maintenance of books, accounts, and records; examination.

 (A) Each person required to be licensed pursuant to this chapter shall maintain in its offices such books, accounts, and records as the board reasonably may require. The books, accounts, and records must be maintained separate from any other business in which the person is engaged and must be retained for a period prescribed by the board.

 (B) The licensee shall ensure that each customer cashing a check is provided a receipt showing the name or trade name of the licensee, the transaction date, amount of the check, and the fee charged.

 (C) The board may examine the books, accounts, and records in order to determine whether the person is complying with this chapter and rules adopted pursuant to it. The cost of the examination must be paid by the licensee and must be determined by the board.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑80.** Limitations on activities by persons required to be licensed by chapter.

 No person required to be licensed pursuant to this chapter shall do any of the following:

 (1) charge fees in excess of those authorized pursuant to this chapter;

 (2) engage in the business of:

 (i) making loans of money or extension of credit;

 (ii) discounting notes, bills of exchange, items, or other evidences of debt; or

 (iii) accepting deposits or bailments of money or items;

 (3) use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation;

 (4) conduct business at premises or locations other than locations licensed by the board;

 (5) engage in unfair, deceptive, or fraudulent practices, including unconscionable conduct in violation of Section 37‑5‑108;

 (6) cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee;

 (7) as a Level I licensee, engage in the retail sale of goods or services, other than check‑cashing services and deferred presentment services, at the location licensed pursuant to this chapter, provided, however, that a sale of money orders, postage stamps, payment of utility bills with no additional fee to the customer, vending machines for food or beverage, facsimile services, Western Union services, or postal boxes at rates not higher than allowed by the United States Postal Service is not the sale of goods or services prohibited by this subsection;

 (8) as a Level II licensee, engage in the business of deferred presentment as provided in Chapter 39 of Title 34;

 (9) be licensed pursuant to Section 12‑21‑2720(a)(3) to operate a video poker machine; or

 (10) permit others to engage in an activity prohibited by this section at a location licensed pursuant to this chapter.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑90.** Suspension or revocation of license.

 (A) The board may suspend or revoke any license or licenses issued pursuant to this chapter if, after notice and opportunity for hearing, the board issues written findings that the licensee has engaged in any of the following conduct:

 (1) violated this chapter or applicable state or federal law or rules;

 (2) made a false statement on the application for a license pursuant to this chapter;

 (3) refused to permit investigation by the board authorized pursuant to this chapter;

 (4) failed to comply with an order of the board;

 (5) demonstrated incompetency or untrustworthiness to engage in the business of check cashing; or

 (6) has been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

 (B) The board may not suspend or revoke any license issued pursuant to this chapter unless the licensee has been given notice and opportunity for hearing in accordance with the Administrative Procedures Act.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑100.** Orders to cease and desist violations; hearing.

 If the board determines that a person required to be licensed pursuant to this chapter has violated this chapter or regulations promulgated pursuant to this chapter, the board, upon notice and opportunity for hearing in accordance with the Administrative Procedures Act, may order the person to cease and desist from the violations and to comply with this chapter. The board may designate a hearing officer or hearing panel to conduct hearings or take other action as necessary pursuant to this section and may seek the assistance of the Attorney General or the Department of Consumer Affairs in enforcing compliance with this chapter. The board may enforce compliance with an order issued pursuant to this section by the imposition and collection of civil penalties authorized pursuant to this chapter.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑110.** Civil penalties; repayment of unlawful or excessive fees.

 The board may order and impose civil penalties upon any person required to be licensed pursuant to this chapter for violations of this chapter or regulations promulgated under it. Civil penalties shall not exceed one thousand dollars for each violation. The board also may order repayment of unlawful or excessive fees charged to customers.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑120.** Wilful violations; referral for criminal prosecution.

 The board, upon a determination that a violation of Section 34‑41‑20 is wilful, may refer a violation to the Attorney General or to the appropriate circuit solicitor for criminal prosecution. A violation of Section 34‑41‑20 by a person required to obtain a license pursuant to this chapter is a Class B misdemeanor and each transaction involving the unlawful cashing of a check, draft, or money order constitutes a separate offense.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

**SECTION 34‑41‑130.** Promulgation of regulations.

 The board may promulgate regulations necessary to carry out the purposes of this chapter, to provide for the protection of the public, and to assist licensees in interpreting and complying with this chapter.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).