

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1487

Chapter 355, Laws of 1991

52nd Legislature
1991 Regular Session

CHECK CASHERS AND SELLERS--REGULATION OF

EFFECTIVE DATE: 1/1/92

Passed by the House March 19, 1991
Yeas 98 Nays 0

JOE KING
**Speaker of the
House of Representatives**

Passed by the Senate April 16, 1991
Yeas 48 Nays 0

JOEL PRITCHARD
President of the Senate

Approved May 21, 1991

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1487** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 21, 1991 - 11:30 a.m.

Secretary of State
State of Washington

HOUSE BILL 1487

AS AMENDED BY THE SENATE

Passed Legislature - 1991 Regular Session

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Dellwo, Zellinsky, R. Johnson, R. Meyers, Mielke, Broback, Winsley, Inslee, Anderson, Scott, Dorn, Silver, Jacobsen and Paris.

Read first time January 31, 1991. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to check cashers and sellers; amending RCW
2 19.60.066; adding a new chapter to Title 31 RCW; adding a new section
3 to chapter 42.17 RCW; prescribing penalties; and providing an effective
4 date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout this
8 chapter.

9 (1) "Check casher" means an individual, partnership, unincorporated
10 association, or corporation that, for compensation, engages, in whole
11 or in part, in the business of cashing checks, drafts, money orders, or
12 other commercial paper serving the same purpose.

13 (2) "Check seller" means an individual, partnership, unincorporated
14 association, or corporation that, for compensation, engages, in whole

1 or in part, in the business of or selling checks, drafts, money orders,
2 or other commercial paper serving the same purpose.

3 (3) "Licensee" means a check casher or seller licensed by the
4 supervisor to engage in business in accordance with this chapter.

5 (4) "Supervisor" means the supervisor of banking.

6 NEW SECTION. **Sec. 2.** (1) This chapter does not apply to:

7 (a) Any bank, trust company, savings bank, savings and loan
8 association, or credit union;

9 (b) The cashing of checks, drafts, or money orders by any
10 corporation, partnership, association, or person who cashes checks,
11 drafts, or money orders as a convenience, as a minor part of its
12 customary business, and not for profit;

13 (c) The issuance or sale of checks, drafts, or money orders by any
14 corporation, partnership, or association that has a net worth of not
15 less than three million dollars as shown by audited financial
16 statements; and

17 (d) The issuance or sale of checks, drafts, money orders, or other
18 commercial paper serving the same purpose by any agent of a
19 corporation, partnership, or association described in (c) of this
20 subsection.

21 (2) Upon application to the supervisor, the supervisor may exempt
22 a corporation, partnership, association, or other person from any or
23 all provisions of this chapter upon a finding by the supervisor that
24 although not otherwise exempt under this section, the applicant is not
25 primarily engaged in the business of cashing or selling checks and a
26 total or partial exemption would not be detrimental to the public.

27 NEW SECTION. **Sec. 3.** (1) Except as provided in section 2 of this
28 act, no check casher or seller may engage in business without first

1 obtaining a license from the supervisor in accordance with this
2 chapter.

3 (2) Each application for a license shall be in writing in a form
4 prescribed by the supervisor and shall contain the following
5 information:

6 (a) The legal name, residence, and business address of the
7 applicant and, if the applicant is a partnership, association, or
8 corporation, of every member, officer, and director thereof;

9 (b) The location where the initial registered office of the
10 applicant will be located in this state;

11 (c) The complete address of any other locations at which the
12 applicant proposes to engage in business as a check casher or seller;

13 (d) Such other data, financial statements, and pertinent
14 information as the supervisor may require with respect to the
15 applicant, its directors, trustees, officers, members, or agents.

16 (3) Any information in the application regarding the personal
17 residential address or telephone number of the applicant is exempt from
18 the public records disclosure requirements of chapter 42.17 RCW.

19 (4) The application shall be filed together with an investigation
20 and supervision fee established by rule by the supervisor. Such fees
21 collected shall be deposited to the credit of the banking examination
22 fund in accordance with RCW 43.19.095.

23 (5) (a) If the applicant intends to engage in the business of
24 selling checks, drafts, money orders, or other commercial paper serving
25 the same purpose, the supervisor shall require the applicant to obtain
26 and maintain an adequate fidelity bond or blanket fidelity bond
27 covering each officer, employee, or agent having access to funds
28 collected by or for the licensee. The bond shall be for the protection
29 of the public against loss suffered through embezzlement by any person
30 having access to funds collected by or for the licensee or having

1 authority to draw against such funds, or from mysterious disappearance,
2 theft, holdup, or burglary.

3 (b) In lieu of providing a bond, the licensee may deposit with the
4 supervisor security in the form and amount determined by the supervisor
5 sufficient to protect the public against loss suffered through
6 embezzlement by any person having access to funds collected by or for
7 the licensee or having authority to draw against such funds, or from
8 mysterious disappearance, theft, holdup, or burglary.

9 (c) Such security may be sold by the supervisor at public auction
10 if it becomes necessary to satisfy the requirements of this chapter.
11 Notice of the sale shall be served upon the licensee who placed the
12 security personally or by mail. If notice is served by mail, service
13 shall be addressed to the licensee at its address as it appears in the
14 records of the supervisor. Bearer bonds of the United States or the
15 state of Washington without a prevailing market price must be sold at
16 public auction. Such bonds having a prevailing market price may be
17 sold at private sale not lower than the prevailing market price. Upon
18 any sale, any surplus above amounts due shall be returned to the
19 licensee, and the licensee shall deposit with the supervisor additional
20 security sufficient to meet the amount required by the supervisor. A
21 deposit given instead of the bond required by this section shall not be
22 deemed an asset of the licensee for the purpose of complying with the
23 liquid asset provisions of this chapter.

24 NEW SECTION. **Sec. 4.** (1) The supervisor shall conduct an
25 investigation of every applicant to determine the financial
26 responsibility, experience, character, and general fitness of the
27 applicant. The supervisor shall issue the applicant a license to
28 engage in the business of cashing or selling checks, or both, if the
29 supervisor determines to his or her satisfaction that:

1 (a) The applicant is financially responsible and appears to be able
2 to conduct the business of cashing or selling checks in an honest,
3 fair, and efficient manner with the confidence and trust of the
4 community; and

5 (b) The applicant has the required bonds.

6 (2) The supervisor may refuse to issue a license if he or she finds
7 that the applicant, or any person who is a director, officer, partner,
8 agent, or substantial stockholder of the applicant, has been convicted
9 of a felony in any jurisdiction or is associating or consorting with
10 any person who has been convicted of a felony in any jurisdiction. The
11 term "substantial stockholder" as used in this subsection, means a
12 person owning or controlling ten percent or more of the total
13 outstanding shares of the applicant corporation.

14 (3) No license may be issued to an applicant whose license to
15 conduct business under this chapter had been revoked by the supervisor
16 within the twelve-month period preceding the application.

17 (4) A license issued under this chapter shall be conspicuously
18 posted in the place of business of the licensee. The license is not
19 transferable or assignable.

20 (5) A license issued in accordance with this chapter remains in
21 force and effect through the remainder of the calendar year following
22 its date of issuance unless earlier surrendered, suspended, or revoked.

23 (6) The supervisor's investigation and fees required under this
24 chapter shall differentiate between check cashing and check selling
25 activities and take into consideration the level of risk and potential
26 harm to the public related to each such activity.

27 NEW SECTION. **Sec. 5.** (1) A license may be renewed upon the
28 filing of an application containing such information as the supervisor
29 may require and by the payment of a fee in an amount determined by the

1 supervisor as necessary to cover the costs of supervision. Such fees
2 collected shall be deposited to the credit of the bank examination fund
3 in accordance with RCW 43.19.095. The supervisor shall renew the
4 license in accordance with the standards for issuance of a new license.

5 (2) If a licensee intends to do business at a new location, to
6 close an existing place of business, or to relocate an existing place
7 of business, the licensee shall provide written notification of that
8 intention to the supervisor no less than thirty days before the
9 proposed establishing, closing, or moving of a place of business.

10 NEW SECTION. **Sec. 6.** (1) A schedule of the fees and the charges
11 for the cashing and selling of checks, drafts, money orders, or other
12 commercial paper serving the same purpose shall be conspicuously and
13 continuously posted in every location licensed under this chapter. The
14 licensee shall provide to its customer a receipt for each transaction.
15 The receipt must include the name of the licensee, the type and amount
16 of the transaction, and the fee or fees charged for the transaction.

17 (2) Each licensee shall keep and maintain such business books,
18 accounts, and records as the supervisor may require to fulfill the
19 purposes of this chapter. Every licensee shall preserve such books,
20 accounts, and records for at least two years.

21 (3) A check, draft, or money order sold by a licensee shall be
22 drawn on an account of a licensee maintained at a bank, savings bank,
23 or savings and loan association authorized to do business in the state
24 of Washington.

25 NEW SECTION. **Sec. 7.** (1) Except for the activities of a
26 pawnbroker as defined in RCW 19.60.010, no licensee may engage in a
27 loan business or the negotiation of loans or the discounting of notes,
28 bills of exchange, checks, or other evidences of debt on the same

1 premises where a check cashing or selling business is conducted, unless
2 such loan business is a properly licensed consumer finance company or
3 industrial loan company office or other lending activity permitted in
4 the state of Washington and is physically separated from the check
5 cashing or selling business in a manner approved by the supervisor.

6 (2) No licensee may at any time cash or advance any moneys on a
7 post-dated check or draft. However, a licensee may cash a check
8 payable on the first banking day following the date of cashing if:

9 (a) The check is drawn by the United States, the state of
10 Washington, or any political subdivision of the state, or by any
11 department or agency of the state or its subdivisions; or

12 (b) The check is a payroll check drawn by an employer to the order
13 of its employee in payment for services performed by the employee.

14 (3) No licensee may agree to hold a check or draft for later
15 deposit. A licensee shall deposit all checks and drafts cashed by the
16 licensee as soon as practicable.

17 (4) No licensee may issue or cause to be issued any check, draft,
18 or money order, or other commercial paper serving the same purpose,
19 that is drawn upon the trust account of a licensee without concurrently
20 receiving the full principal amount, in cash, or by check, draft, or
21 money order from a third party believed to be valid.

22 (5) No licensee may advertise, print, display, publish, distribute,
23 or broadcast or cause or permit to be advertised, printed, displayed,
24 published, distributed, or broadcast, any statement or representation
25 that is false, misleading, or deceptive, or that omits material
26 information, or that refers to the supervision of the licensee by the
27 state of Washington or any department or official of the state.

28 (6) Each licensee shall comply with all applicable federal statutes
29 governing currency transaction reporting.

1 NEW SECTION. **Sec. 8.** (1) All funds received by a licensee or its

2 agents from the sale of checks, drafts, money orders, or other
3 commercial paper serving the same purpose constitute trust funds owned
4 by and belonging to the person from whom they were received or to the
5 person who has paid the checks, drafts, money orders, or other
6 commercial paper serving the same purpose.

7 (2) All such trust funds shall be deposited in a bank, savings
8 bank, or savings and loan association located in Washington state in an
9 account or accounts in the name of the licensee designated "trust
10 account," or by some other appropriate name indicating that the funds
11 are not the funds of the licensee or of its officers, employees, or
12 agents. Such funds are not subject to attachment, levy of execution,
13 or sequestration by order of a court except by a payee, assignee, or
14 holder in due course of a check, draft, or money order sold by a
15 licensee or its agent. Funds in the trust account, together with funds
16 and checks on hand and in the hands of agents held for the account of
17 the licensee at all times shall be at least equal to the aggregate
18 liability of the licensee on account of checks, drafts, money orders,
19 or other commercial paper serving the same purpose that are sold.

20 (3) The supervisor shall adopt rules requiring the licensee to
21 periodically withdraw from the trust account the portion of trust funds
22 earned by the licensee from the sale of checks, drafts, money orders,
23 or other commercial paper serving the same purpose. If a licensee has
24 accepted, in payment for a check, draft, money order, or commercial
25 paper serving the same purpose issued by the licensee, a check or draft
26 that is subsequently dishonored, the supervisor shall prohibit the
27 withdrawal of earned funds in an amount necessary to cover the
28 dishonored check or draft.

29 (4) If a licensee or its agent commingles trust funds with its own
30 funds, all assets belonging to the licensee or its agent are impressed

1 with a trust in favor of the persons specified in subsection (1) of
2 this section in an amount equal to the aggregate funds that should have
3 been segregated. Such trust continues until an amount equal to the
4 necessary aggregate funds have been deposited in accordance with
5 subsection (2) of this section.

6 (5) Upon request of the supervisor, a licensee shall furnish to the
7 supervisor an authorization for examination of financial records of any
8 trust fund account established for compliance with this section.

9 (6) The supervisor may adopt any rules necessary for the
10 maintenance of trust accounts, including rules establishing procedures
11 for distribution of trust account funds if a license is suspended,
12 terminated, or not renewed.

13 NEW SECTION. **Sec. 9.** (1) Each licensee shall submit to the
14 supervisor, in a form approved by the supervisor, a report containing
15 financial statements covering the calendar year or, if the licensee has
16 an a established fiscal year, then for such fiscal year, within one
17 hundred five days after the close of each calendar or fiscal year. The
18 licensee shall also file such additional relevant information as the
19 supervisor may require.

20 (2) A licensee whose license has been suspended or revoked shall
21 submit to the supervisor, at the licensee's expense, within one hundred
22 five days after the effective date of such surrender or revocation, a
23 closing audit report containing audited financial statements as of such
24 effective date for the twelve months ending with such effective date.

25 (3) The supervisor shall adopt rules specifying the form and
26 content of such audit reports and may require additional reporting as
27 is necessary for the supervisor to ensure compliance with this chapter.

1 NEW SECTION. **Sec. 10.** The supervisor may at any time
2 investigate the business and examine the books, accounts, records, and
3 files of any licensee or person who the supervisor has reason to
4 believe is engaging in the business governed by this chapter. The
5 supervisor shall collect from the licensee, the actual cost of the
6 examination.

7 NEW SECTION. **Sec. 11.** (1) The supervisor may issue and serve
8 upon a licensee a notice of charges if, in the opinion of the
9 supervisor, any licensee:

10 (a) Is engaging or has engaged in an unsafe or unsound practice in
11 conducting the business governed by this chapter;

12 (b) Is violating or has violated the law, rule, or any condition
13 imposed in writing by the supervisor in connection with the granting of
14 any application or other request by the licensee or any written
15 agreement made with the supervisor; or

16 (c) Is about to do the acts prohibited in (a) or (b) of this
17 subsection when the opinion that the threat exists is based upon
18 reasonable cause.

19 (2) The notice shall contain a statement of the facts constituting
20 the alleged violation or violations or the practice or practices and
21 shall fix a time and place at which a hearing will be held to determine
22 whether an order to cease and desist should be issued against the
23 licensee. The hearing shall be set not earlier than ten days nor later
24 than thirty days after service of the notice unless a later date is set
25 by the supervisor at the request of the licensee.

26 Unless the licensee personally appears at the hearing or by a duly
27 authorized representative, the licensee is deemed to have consented to
28 the issuance of the cease and desist order. In the event of this
29 consent or if upon the record made at the hearing the supervisor finds

1 that any violation or practice specified in the notice of charges has
2 been established, the supervisor may issue and serve upon the licensee
3 an order to cease and desist from the violation or practice. The order
4 may require the licensee and its directors, officers, employees, and
5 agents to cease and desist from the violation or practice and may
6 require the licensee to take affirmative action to correct the
7 conditions resulting from the violation or practice.

8 (3) A cease and desist order becomes effective upon the expiration
9 of ten days after the service of the order upon the licensee concerned,
10 except that a cease and desist order issued upon consent becomes
11 effective at the time specified in the order and remains effective as
12 provided in the order unless it is stayed, modified, terminated, or set
13 aside by action of the supervisor or a reviewing court.

14 NEW SECTION. **Sec. 12.** Whenever the supervisor determines that
15 the acts specified in section 11 of this act or their continuation is
16 likely to cause insolvency or substantial injury to the public, the
17 supervisor may also issue a temporary order requiring the licensee to
18 cease and desist from the violation or practice. The order becomes
19 effective upon service upon the licensee and remains effective unless
20 set aside, limited, or suspended by a court under section 13 of this
21 act pending the completion of the administrative proceedings under the
22 notice and until such time as the supervisor dismisses the charges
23 specified in the notice or until the effective date of the cease and
24 desist order issued against the licensee under section 11 of this act.

25 NEW SECTION. **Sec. 13.** Within ten days after a licensee has
26 been served with a temporary cease and desist order, the licensee may
27 apply to the superior court in the county of its principal place of
28 business for an injunction setting aside, limiting, or suspending the

1 order pending the completion of the administrative proceedings pursuant
2 to the notice served under section 12 of this act. The superior court
3 has jurisdiction to issue the injunction.

4 NEW SECTION. **Sec. 14.** In the case of a violation or
5 threatened violation of a temporary cease and desist order issued under
6 section 12 of this act, the supervisor may apply to the superior court
7 of the county of the principal place of business of the licensee for an
8 injunction.

9 NEW SECTION. **Sec. 15.** Whenever as a result of an examination
10 or report it appears to the supervisor that:

11 (1) The capital of any licensee is impaired;

12 (2) Any licensee is conducting its business in such an unsafe or
13 unsound manner as to render its further operations hazardous to the
14 public;

15 (3) Any licensee has suspended payment of its trust obligations;

16 (4) Any licensee has refused to submit its books, papers, and
17 affairs to the inspection of the supervisor or the supervisor's
18 examiner;

19 (5) Any officer of any licensee refuses to be examined under oath
20 regarding the business of the licensee;

21 (6) Any licensee neglects or refuses to comply with any order of
22 the supervisor made pursuant to this chapter unless the enforcement of
23 such order is restrained in a proceeding brought by such licensee;

24 the supervisor may immediately take possession of the property and
25 business of the licensee and retain possession until the licensee
26 resumes business or its affairs are finally liquidated as provided in
27 section 16 of this act. The licensee may resume business upon such
28 terms as the supervisor may prescribe.

1 NEW SECTION. **Sec. 16.** Whenever the supervisor has taken
2 possession of the property and business of a licensee, the supervisor
3 may petition the superior court for the appointment of a receiver to
4 liquidate the affairs of the licensee. During the time that the
5 supervisor retains possession of the property and business of a
6 licensee, the supervisor has the same powers and authority with
7 reference to the licensee as is vested in the supervisor with respect
8 to industrial loan companies, and the licensee has the same rights to
9 hearings and judicial review as are granted to industrial loan
10 companies.

11 NEW SECTION. **Sec. 17.** Every licensee violating or failing to
12 comply with any provision of this chapter or any lawful direction or
13 requirement of the supervisor is subject, in addition to any penalty
14 otherwise provided, to a penalty of not more than one hundred dollars
15 for each offense, to be recovered by the attorney general in a civil
16 action in the name of the state. Each day's continuance of the
17 violation is a separate and distinct offense.

18 NEW SECTION. **Sec. 18.** Any person who violates or participates
19 in the violation of any provision of the rules or orders of the
20 supervisor or of this chapter is guilty of a misdemeanor.

21 NEW SECTION. **Sec. 19.** The legislature finds and declares that
22 any violation of this chapter substantially affects the public interest
23 and is an unfair and deceptive act or practice and an unfair method of
24 competition in the conduct of trade or commerce as set forth in RCW
25 19.86.020. Remedies available under chapter 19.86 RCW shall not affect
26 any other remedy the injured party may have.

1 NEW SECTION. **Sec. 20.** The supervisor has the power, and broad
2 administrative discretion, to administer and interpret the provisions
3 of this chapter to ensure the protection of the public.

4 **Sec. 21.** RCW 19.60.066 and 1984 c 10 s 12 are each amended to read
5 as follows:

6 It is a gross misdemeanor under chapter 9A.20 RCW for:

7 (1) Any person to remove, alter, or obliterate any manufacturer's
8 make, model, or serial number, personal identification number, or
9 identifying marks engraved or etched upon an item of personal property
10 that was purchased, consigned, or received in pledge;

11 (2) Any person to knowingly make, cause, or allow to be made any
12 false entry or misstatement of any material matter in any book, record,
13 or writing required to be kept under this chapter;

14 (3) Any pawnbroker or second-hand dealer to receive any property
15 from any person under the age of eighteen years, any person under the
16 influence of intoxicating liquor or drugs, or any person known to the
17 pawnbroker or second-hand dealer as having been convicted of burglary,
18 robbery, theft, or possession of or receiving stolen property within
19 the past ten years whether the person is acting in his or her own
20 behalf or as the agent of another; ((or))

21 (4) Any pawnbroker to engage in the business of cashing or selling
22 checks, drafts, money orders, or other commercial paper serving the
23 same purpose unless the pawnbroker complies with the provisions of
24 chapter 31.-- RCW (sections 1 through 20 of this act); or

25 (5) Any person to violate knowingly any other provision of this
26 chapter.

27 NEW SECTION. **Sec. 22.** A new section is added to chapter 42.17 RCW
28 to read as follows:

1 Information in an application for licensing under section 3 of this
2 act regarding the personal residential address, telephone number of the
3 applicant, or financial statement is exempt from disclosure under this
4 chapter.

5 NEW SECTION. **Sec. 23.** Sections 1 through 20 of this act shall
6 constitute a new chapter in Title 31 RCW.

7 NEW SECTION. **Sec. 24.** This act shall take effect January 1,
8 1992. The supervisor shall take such steps as are necessary to ensure
9 that this act is implemented on its effective date.

Passed the House March 19, 1991.

Passed the Senate April 16, 1991.

Approved by the Governor May 21, 1991.

Filed in Office of Secretary of State May 21, 1991.