



Rep. Elizabeth Hernandez

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1 AMENDMENT TO HOUSE BILL 5747

2 AMENDMENT NO. _____. Amend House Bill 5747 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Check Cashing Act is amended by adding
5 Sections 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70,
6 75, and 80 as follows:

7 (815 ILCS 315/5 new)

8 Sec. 5. Purpose. The purpose of this Act is to protect
9 consumers who cash checks at retail businesses that provide
10 check cashing services. This Act shall be construed as a
11 consumer protection law for all purposes. This Act shall be
12 liberally construed to effectuate its purpose.

13 (815 ILCS 315/10 new)

14 Sec. 10. Definitions. As used in this Act:

15 "Cash" means legal tender of the United States.

1 "Check" means a check, draft, money order, traveler's
2 check, or negotiable instrument as defined by Article 3 of the
3 Uniform Commercial Code.

4 "Check casher" means a merchant, including any affiliate or
5 subsidiary of a merchant that engages in the check cashing
6 business.

7 "Check cashing business" means the business of converting
8 checks, drafts, money orders, traveler's checks, or other
9 payment instruments to cash for a fee. "Check cashing business"
10 does not include any transaction in which a customer presents a
11 check for the exact amount of any purchase.

12 "Consumer" means any natural person who, individually or
13 jointly with another consumer, cashes a check.

14 "Department" means the Department of Financial and
15 Professional Regulation.

16 "Incidental" means that in the course of a merchant's
17 business, at each location, the merchant's check fee income is
18 less than 20% of gross sales.

19 "Location" means a place of business at which activity
20 regulated by this Act occurs.

21 "Person" means an individual, partnership, limited
22 liability company, unincorporated association, corporation, or
23 other legal entity.

24 "Merchant" means a person, firm, association, partnership,
25 or corporation primarily engaged in the business of selling
26 tangible personal property at retail.

1 "Secretary" means the Secretary of Financial and
2 Professional Regulation.

3 (815 ILCS 315/15 new)

4 Sec. 15. Engaging in the check cashing business. A merchant
5 may engage in the check cashing business only if it is
6 incidental to the business of selling tangible personal
7 property at retail. However, "check cashing business" does not
8 include any transaction in which a customer presents a check
9 for the exact amount of any purchase. The fees charged for
10 cashing a check shall not exceed the greater of \$0.50 or 1% of
11 the face value of the check cashed. No license shall be
12 required as a condition for providing such services. This Act
13 does not affect the applicability of Sections 2 and 29 of the
14 Currency Exchange Act to any activity of a merchant that is not
15 expressly authorized by this Act.

16 (815 ILCS 315/20 new)

17 Sec. 20. Applicability.

18 (a) Except as otherwise provided in this Section, this Act
19 applies to any check casher that engages or offers to engage in
20 the check cashing business for a fee to Illinois consumers.
21 Anyone not a check casher, except as provided in this Section,
22 may not cash checks for a fee.

23 (b) The provisions of this Act apply to any person or
24 entity that seeks to evade its applicability by any device,

1 subterfuge, or pretense whatsoever.

2 (c) This Act does not apply to any bank holding company,
3 financial holding company, bank, savings bank, savings and loan
4 association, credit union, or trust company, or any subsidiary
5 or affiliate thereof, that is authorized to do business under
6 the laws of this State or of the United States.

7 (d) A check casher that is an agent for a bank, savings
8 bank, savings and loan association, or credit union shall be
9 subject to all of the provisions of this Act.

10 (e) Currency exchanges licensed pursuant to the Currency
11 Exchange Act and in compliance with all relevant State and
12 federal rules and regulations are exempt from the provisions of
13 this Act.

14 (815 ILCS 315/25 new)

15 Sec. 25. Money received by the Department. All moneys
16 received by the Department under this Act shall be deposited in
17 the Financial Institutions Fund created under Section 6z-26 of
18 the State Finance Act.

19 (815 ILCS 315/30 new)

20 Sec. 30. Permitted fees.

21 (a) The fees charged by a check casher may not exceed the
22 greater of \$0.50 or 1% of the face value of the check cashed.
23 No check casher shall charge or collect any sum for cashing a
24 check in excess of the fees allowed by this Act. If there are

1 insufficient funds to cover a check, a check casher may charge
2 a fee not to exceed \$25. Only one such fee may be collected by
3 the check casher per check.

4 (b) The schedule of fees and charges permitted under this
5 Section shall be conspicuously and continuously posted in at
6 least 14-point font in English and the dominant languages
7 spoken in each check casher's location.

8 (815 ILCS 315/35 new)

9 Sec. 35. Proceeds. A check casher shall issue the proceeds
10 of a check to a consumer in cash or cash equivalent. No check
11 casher shall issue proceeds of a check in an amount other than
12 the face value of the check, except for the deduction of check
13 cashing fees charged pursuant to this Act.

14 (815 ILCS 315/40 new)

15 Sec. 40. Deposits. Before a check casher deposits, with any
16 banking or other financial institution, a check cashed by the
17 check casher, the check must be endorsed with the name under
18 which the check casher is doing business.

19 (815 ILCS 315/45 new)

20 Sec. 45. Reporting requirements. A check casher shall
21 submit to the Secretary, or the Secretary's designee, any
22 suspicious activity reports or currency transaction reports as
23 are required to be submitted to federal authorities pursuant to

1 the federal Bank Secrecy Act, and regulations and
2 administrative orders related thereto, as amended, within the
3 periods of time as required by the federal Bank Secrecy Act and
4 regulations. A check casher may submit a copy of any report to
5 the Secretary, or Secretary's designee, that is filed with that
6 federal authority. The Secretary may adopt rules or require
7 additional reports as he or she deems necessary to ensure
8 effective enforcement of this Section.

9 (815 ILCS 315/50 new)

10 Sec. 50. Forged checks. A check casher shall post in a
11 conspicuous location, clearly visible to all patrons, a
12 statement printed in at least 14-point font in plain language,
13 in English and in the dominant languages spoken in each check
14 casher's location, informing the public that cashing a forged
15 check is illegal and those who knowingly cash forged checks
16 will be prosecuted pursuant to the applicable provisions of the
17 Criminal Code of 1961.

18 (815 ILCS 315/55 new)

19 Sec. 55. Examination of check cashers; records.

20 (a) A check casher shall keep and use books, accounts, and
21 records that will enable the Secretary to determine whether the
22 check casher is complying with the provisions of this Act and
23 maintain any other records as required by the Secretary. Check
24 cashers shall preserve their books, accounts, and records for 5

1 years from the date of each transaction.

2 (b) For the purpose of discovering violations of this Act
3 or securing information lawfully required in this Section, the
4 Department may at any time, and as often as may be determined,
5 investigate the check cashier's books, accounts, records,
6 files, and any other document related to the check cashier's
7 check cashing business activities. The Secretary and his or her
8 designee shall have free access to the offices and places of
9 business, books, accounts, papers, records, files, safes, and
10 vaults of all check cashers.

11 (c) Confidentiality. All information collected by the
12 Department in the course of an examination or investigation of
13 a check cashier including, but not limited to, any complaint
14 against a check cashier filed with the Department and
15 information collected to investigate any such complaint, shall
16 be maintained for the confidential use of the Department and
17 may not be disclosed. The Department may not disclose such
18 information to anyone other than law enforcement officials,
19 other regulatory agencies that have an appropriate regulatory
20 interest as determined by the Secretary, or a party presenting
21 a lawful subpoena to the Department. Information disclosed to a
22 federal, State, county, or local law enforcement agency may not
23 be disclosed by the agency for any purpose to any other agency
24 or person. A formal complaint filed against a check cashier by
25 the Department or any order issued by the Department against a
26 check cashier shall be a public record, except as otherwise

1 prohibited by law.

2 (815 ILCS 315/60 new)

3 Sec. 60. Prohibited acts. A check casher may not commit, or
4 have committed on behalf of the check casher, any of the
5 following acts:

6 (1) Using any device or agreement that would have the
7 effect of charging or collecting more fees or charges than
8 allowed by this Act, including, but not limited to, entering
9 into a different type of transaction with the consumer.

10 (2) Engaging in unfair, deceptive, or fraudulent practices
11 in the cashing of a check.

12 (3) Using or causing to be published or disseminated any
13 advertising communication that contains false, misleading, or
14 deceptive statements or representations. No check casher may
15 advertise in any manner so as to indicate or imply that its
16 rates or charges are in any way recommended, approved, set, or
17 established by the State government or by this Act.

18 (4) Engaging in the business of making loans of money,
19 discounting notes, bills of exchange, or other evidences of
20 debt, or accepting deposits or bailments of money or other
21 items except as provided by this Act.

22 (5) Extending credit.

23 (6) Using or attempting to use the check provided by the
24 consumer as collateral for a transaction unrelated to a
25 transaction authorized by this Act.

1 (7) Charging any fees or charges other than those
2 specifically authorized by this Act or under the Uniform
3 Commercial Code.

4 (8) Threatening to take any action against a consumer that
5 is prohibited by this Act.

6 (815 ILCS 315/65 new)

7 Sec. 65. Enforcement and remedies.

8 (a) The remedies provided in this Act are cumulative and
9 apply to persons or entities subject to this Act.

10 (b) Any material violation of this Act, including the
11 commission of an act prohibited under Section 60, constitutes a
12 violation of the Consumer Fraud and Deceptive Business
13 Practices Act.

14 (c) Subject to the Illinois Administrative Procedure Act,
15 the Secretary may hold hearings, make findings of fact and
16 conclusions of law, issue cease and desist orders, issue fines
17 of up to \$10,000 per violation, and refer the matter to the
18 appropriate law enforcement agency for prosecution under this
19 Act. All proceedings shall be open to the public.

20 (d) The Secretary may issue a cease and desist order to any
21 check casher when in the opinion of the Secretary the check
22 casher is violating or is about to violate any provision of
23 this Act or any rule or requirement imposed in writing by the
24 Department as a condition of granting any authorization
25 permitted by this Act. The cease and desist order permitted by

1 this subsection (d) is effective as of the date of service and
2 may be issued prior to a hearing. The Secretary shall serve
3 notice of his or her action, including, but not limited to, a
4 statement of the reasons for the action, either personally or
5 by certified mail, return receipt requested. Service by
6 certified mail shall be deemed completed when the notice is
7 deposited in the U.S. Mail. Within 10 days of service of the
8 cease and desist order, the check casher may request, in
9 writing, a hearing.

10 If it is determined that the Secretary had the authority to
11 issue the cease and desist order, he or she may issue such
12 orders as may be reasonably necessary to correct, eliminate, or
13 remedy the conduct. The powers vested in the Secretary by this
14 subsection (d) are in addition to any and all other powers and
15 remedies vested in the Secretary by law, and nothing in this
16 subsection (d) shall be construed as requiring that the
17 Secretary shall employ the power conferred in this subsection
18 instead of or as a condition precedent to the exercise of any
19 other power or remedy vested in the Secretary.

20 (e) The Secretary may, after 10 days' notice by registered
21 mail to the check casher at the check casher's business address
22 stating the contemplated action and in general the grounds
23 therefor, fine the check casher an amount not exceeding \$10,000
24 per violation if he or she finds that the check casher has
25 failed to comply with any provision of this Act or any order,
26 decision, finding, rule, regulation, or direction of the

1 Secretary lawfully made pursuant to the authority of this Act.

2 The Secretary may fine only the particular location with
3 respect to which grounds for the fine occur or exist, but if
4 the Secretary finds that grounds for the fine are of general
5 application to all locations or to more than one location of
6 the check casher, the Secretary may fine every check casher's
7 location to which the grounds apply.

8 An order assessing a fine shall take effect upon service of
9 the order unless the check casher requests a hearing within 10
10 days of service of the order pursuant to this Section. In the
11 event a hearing is requested, the order shall be stayed until a
12 final administrative order is entered.

13 The hearing shall be held at the time and place designated
14 by the Secretary. The Secretary and any administrative law
15 judge designated by him or her shall have the power to
16 administer oaths and affirmations, subpoena witnesses and
17 compel their attendance, take evidence, and require the
18 production of books, papers, correspondence, and other records
19 or information that he or she considers relevant or material to
20 the inquiry.

21 (f) The costs of administrative hearings conducted
22 pursuant to this Section shall be paid by the check casher.

23 (815 ILCS 315/70 new)

24 Sec. 70. Rulemaking. The Department may make and enforce
25 such reasonable rules, regulations, directions, orders,

1 decisions, and findings as the execution and enforcement of the
2 provisions of this Act require, and as are not inconsistent
3 therewith. All rules, regulations, and directions of a general
4 character shall be made available to all check cashers in
5 electronic form.

6 (815 ILCS 315/75 new)

7 Sec. 75. Judicial review. All final administrative
8 decisions of the Department under this Act are subject to
9 judicial review pursuant to the provisions of the
10 Administrative Review Law and any rules adopted pursuant
11 thereto.

12 (815 ILCS 315/80 new)

13 Sec. 80. No waivers. There shall be no waiver of any
14 provision of this Act.

15 (815 ILCS 315/1 rep.)

16 (815 ILCS 315/2 rep.)

17 Section 900. The Check Cashing Act is amended by repealing
18 Sections 1 and 2.

19 Section 910. The Consumer Fraud and Deceptive Business
20 Practices Act is amended by changing Section 2Z as follows:

21 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

1 Sec. 2Z. Violations of other Acts. Any person who knowingly
2 violates the Automotive Repair Act, the Automotive Collision
3 Repair Act, the Home Repair and Remodeling Act, the Dance
4 Studio Act, the Physical Fitness Services Act, the Hearing
5 Instrument Consumer Protection Act, the Illinois Union Label
6 Act, the Job Referral and Job Listing Services Consumer
7 Protection Act, the Travel Promotion Consumer Protection Act,
8 the Credit Services Organizations Act, the Automatic Telephone
9 Dialers Act, the Pay-Per-Call Services Consumer Protection
10 Act, the Telephone Solicitations Act, the Illinois Funeral or
11 Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care
12 Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales
13 Act, the High Risk Home Loan Act, the Payday Loan Reform Act,
14 the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section
15 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section
16 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the
17 Internet Caller Identification Act, paragraph (6) of
18 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
19 Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150,
20 or 18d-153 of the Illinois Vehicle Code, Article 3 of the
21 Residential Real Property Disclosure Act, the Automatic
22 Contract Renewal Act, the Check Cashing Act, or the Personal
23 Information Protection Act commits an unlawful practice within
24 the meaning of this Act.

25 (Source: P.A. 96-863, eff. 1-19-10; 96-1369, eff. 1-1-11;
26 96-1376, eff. 7-29-10; 97-333, eff. 8-12-11.)

1 Section 996. Severability. The provisions of this Act are
2 severable under Section 1.31 of the Statute on Statutes.

3 Section 999. Effective date. This Act takes effect 180 days
4 after becoming law.".