

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 1196
Economic Matters

(Delegate Washington, *et al.*)

Finance

Financial Institutions - Check Cashing Services - Registration and Dissemination
of Information

This bill repeals an exemption for specified check cashing entities from licensure requirements. Instead, the bill authorizes certain check cashing entities to provide services by registering (rather than by obtaining licensure) with the Office of the Commissioner of Financial Regulation (OCFR). The check cashing service must provide OCFR with the information required under the bill through the Nationwide Multistate Licensing System and Registry (NMLS). By registering with OCFR, such entities are exempt from various regulatory requirements for licensed check cashers. The bill also makes conforming changes and generally subjects check cashing registrants to the same enforcement powers as check cashing licensees. **OCFR must notify any person affected by the bill beginning July 1, 2020; the bill otherwise takes effect October 1, 2020.**

Fiscal Summary

State Effect: The bill is not anticipated to materially affect special fund expenditures. Special fund revenues may be affected minimally, as discussed below.

Local Effect: The bill does not materially affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill authorizes a person to provide check cashing services without obtaining a license under Title 12, Subtitle 1 of the Financial Institutions Article by registering with OCFR as a check cashing service if the person:

- charges a fee of up to 1.5% or \$1, whichever is greater, of the face amount of the payment instrument (per payment instrument);
- provides check cashing services that are incidental to the retail sale of goods or services by the person that is providing the check cashing services;
- is registered as a check casher money service business with the U.S. Department of the Treasury;
- conducts check cashing service transactions within the interior of the business location (and not through the use of a mobile unit or an exterior drive-up or walk-up window); has conspicuously posted a notice, as specified, with information on (1) the fees charged for the services and (2) how to contact OCFR with comments or complaints; and
- provides a receipt to each customer that includes (1) the date of the transaction; (2) the face value of the check cashed; (3) the fee charged; and (4) the net dollar amount paid to the customer.

To register as a check cashing service, a person must obtain and maintain a valid unique identifier issued by NMLS when an account is created with NMLS and provide OCFR with specified information through NMLS. A person who registers pursuant to the bill's authorization must submit an initial registration (or a renewal registration) through NMLS, as specified. Any such entity must pay NMLS any fees that NMLS imposes in connection with the issuance of the registration or registration renewal.

The bill requires a check cashing licensee to conspicuously post the phone number of OCFR for customers to file complaints.

Current Law: Check cashing licensing requirements do not apply to check cashing services:

- for which a fee of up to 1.5% of the face amount of the payment instrument is charged per payment instrument and that are incidental to the retail sale of goods or services by the check casher;
- in which a customer presents a payment instrument for the exact amount of a purchase; or
- involving foreign currency exchange services or the cashing of a payment instrument drawn on a financial institution other than a federal, State, or other state financial institution.

In addition, licensing requirements do not apply to a transaction that is subject to the Maryland Consumer Loan Law (MCLL), including a transaction in which an additional fee is charged to defer the presentment or deposit of a payment instrument until a subsequent date. A check cashing service is not subject to MCLL if (1) the fee charged for the service

does not exceed the permitted fee; (2) no additional fee is charged to defer the presentment or deposit of the payment instrument; and (3) the service is not subject to renewal or extension by any means.

Licensing Requirements

To apply for a license, an applicant must (1) complete, sign, and submit to OCFR an application made under oath in the form, and in accordance with the process, that OCFR requires and (2) provide all the information OCFR requests. The application must include specified information. With an initial application, the applicant must pay OCFR (1) an investigation fee of \$100 and (2) a \$500 license fee. An applicant must also submit a separate application and additional fees for each principal executive office, branch location, and mobile unit.

Enforcement and Violations

OCFR may order a licensee to cease and desist from a course of conduct if such conduct results in an evasion or violation of the State's check cashing services laws. Moreover, OCFR may suspend or revoke the license of any licensee if the licensee, or any owner, director, officer, member, partner, stockholder, employee, or agent of the licensee:

- makes any material misstatement in an application for a license;
- is convicted under the laws of the United States or any other state of a felony or a misdemeanor that is directly related to the fitness and qualification of the person to provide check cashing services;
- in connection with any check cashing service: (1) commits any fraud; (2) engages in any illegal or dishonest activities; or (3) misrepresents or fails to disclose any material facts to anyone entitled to that information;
- violates any provision of Title 12, Subtitle 1 of the Financial Institutions Article (or any rule or regulation adopted pursuant to those provisions), or any other law regulating check cashing services in the State; or
- otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been (or will not be) conducted honestly, fairly, equitably, and efficiently.

In determining whether a license should be suspended or revoked as a result of a conviction of a crime, OCFR must take into account specified factors (*e.g.*, the nature of the crime).

Before OCFR takes any of the above actions, however, the licensee must be given an opportunity for a hearing, which must be held pursuant to the Administrative Procedure Act.

A person who knowingly violates the State's check cashing laws is guilty of a misdemeanor and upon conviction is subject to a fine of up to \$5,000 and/or imprisonment for up to three years. OCFR may also impose a civil penalty (of up to \$10,000 for a first offense and \$25,000 for a subsequent offense) against a person who violates the State's check cashing laws.

Background: OCFR advises that there are 476 federally registered check cashing entities in Maryland. (Taking into account branches of the same company, the total is 720.) In fiscal 2019, 263 check cashers were licensed by OCFR.

State Fiscal Effect: OCFR notes that the bill may affect revenues in opposing ways. First, because the exemption under current law is somewhat broader than the exemption created by the bill, OCFR notes that entities that are exempt under current law may be required to obtain licensure, depending on their business practices. In that case, the number of licensees could increase, resulting in an increase in special fund revenues from licensing fees. On the other hand, to the extent that check cashers that are currently licensed decide to take advantage of the registration option created by the bill (thereby avoiding a licensing fee), special fund revenues could decrease because there is no fee for registrations. While the overall impact on special fund revenues cannot be determined, the net impact on special fund revenues is expected to be minimal, given the small number of check cashing entities affected by the bill.

OCFR advises that it anticipates additional complaints under the bill and, as a result, may need one additional staff person to handle and investigate the complaints. However, the Department of Legislative Services advises that the additional complaints are, according to OCFR, expected to be limited in number and, thus, can likely be handled with existing resources. To the extent that OCFR receives a significant influx of complaints, additional staff may be necessary in future years to process the complaints.

Small Business Effect: The bill affects any small businesses that are currently licensed as check cashers but may qualify to register (rather than obtain licensure) under the bill. Such businesses may be able to engage in the same check cashing activities without undergoing the licensing process, thereby saving time and the costs of licensure. On the other hand, some small businesses that are currently engaging in check cashing activities under the existing exemption may need to seek licensure under the bill (due to the bill's more detailed exemption requirements). Those businesses may incur additional costs as a result of the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 939 (Senator Hayes) - Finance.

Information Source(s): Maryland Department of Labor; Department of Legislative Services

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