

A Bill for an Act Relating to Check Cashing.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CHECK CASHING**

§ **-1 Definitions.** As used in this chapter, unless the context requires otherwise:

“Check” means any check, draft, money order, or other instrument for the transmission or payment of money. “Check” does not include a traveler’s check or foreign denomination or foreign drawn payment instrument.

“Check casher” means a person or entity that engages in the business of cashing checks for a fee.

“Deferred deposit” means a transaction in which a check casher refrains from depositing a personal check written by a customer until a date after the transaction date, pursuant to a written agreement.

“Fee” includes any payment of cash or other consideration paid or given by a customer to a check casher in exchange for the cashing of a check, including an exchange of value for the purchase of catalog items, which is in excess of regular retail value, or for coupons, which may be redeemed for goods or services.

§ **-2 Posting and notice of fees charged.** Any person who cashes one or more checks for a fee shall:

- (1) Post in a conspicuous place in every location at which the person does business a notice that sets forth:
 - (A) The fees charged for cashing a check, for selling or issuing a money order, and for the initial issuance of any membership or identification cards; and
 - (B) That consumer complaints about the check cashing business may be filed with the department of commerce and consumer affairs, and includes and identifies the telephone number of the consumer information service of the department of commerce and consumer affairs;
- (2) Provide written notice to each customer of the fees charged for cashing checks that is separate from and in addition to any posted notice;
- (3) Obtain a written acknowledgement from the customer that written notice of the fees charged for cashing checks was provided; and
- (4) Provide each customer a receipt documenting any and all fees charged.

§ **-3 Authorized fees.** Except as provided in section -4, no check casher shall charge fees in excess of the following amounts:

- (1) Five per cent of the face amount of the check or \$5, whichever is greater;
- (2) Three per cent of the face amount of the check or \$5, whichever is greater, if the check is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the check;

- (3) Ten per cent of the face amount of a personal check or money order, or \$5, whichever is greater; or
- (4) No more than \$10 to set up an initial account and issue an optional membership or identification card, and no more than \$5 for a replacement optional identification card.

The fees allowed in this section shall not be assessed in any transaction or agreement in which the check casher defers deposit of the check.

§ **-4 Deferred deposits, when allowed.** (a) No check casher may defer the deposit of a check except as provided in this section.

(b) Each deferred deposit shall be made pursuant to a written agreement that has been signed by the customer and the check casher or an authorized representative of the check casher. The written agreement shall contain a statement of the total amount of any fees charged for the deferred deposit, expressed both in United States currency and as an annual percentage rate. The written agreement shall authorize the check casher to defer deposit of the personal check until a specific date not later than thirty-one days from the date the written agreement was signed. The written agreement shall not permit the check casher to accept collateral.

(c) The face amount of the check shall not exceed \$300 and the deposit of a personal check written by a customer pursuant to a deferred deposit transaction may be deferred for no more than thirty-one days. A check casher may charge a fee for deferred deposit of a personal check in an amount not to exceed fifteen per cent of the face amount of the check. Any fees charged for deferred deposit of a personal check in compliance with this section shall be exempt from chapter 478.

(d) A check casher shall not enter into an agreement for deferred deposit with a customer during the period of time that an earlier agreement for a deferred deposit for the same customer is in effect. A deferred deposit transaction shall not be repaid, refinanced, or consolidated by or with the proceeds of another deferred deposit transaction.

(e) A check casher who enters into a deferred deposit agreement and accepts a check passed on insufficient funds, or any assignee of that check casher, shall not be entitled to recover damages in any action brought pursuant to or governed by chapter 490. Instead, the check casher may charge and recover a fee for the return of a dishonored check in an amount not greater than \$20.

(f) No amount in excess of the amounts authorized by this section and no collateral products such as insurance shall be directly or indirectly charged by a check casher pursuant or incident to a deferred deposit agreement.

§ **-5 Exemptions.** This chapter shall not apply to:

- (1) Any person who is principally engaged in the bona fide retail sale of goods or services, and who, either as incident to or independent of the retail sale or service, from time to time cashes items for a fee or other consideration, where not more than \$2, or two per cent of the amount of the check, whichever is greater, is charged for the service; or
- (2) Any person authorized to engage in business as a bank, trust company, savings bank, savings and loan association, financial services loan company, or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia.

§ **-6 Penalties.** (a) Any person who violates this chapter shall be deemed to have engaged in an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2(a). Aggrieved consumers may seek those remedies set forth in section 480-13(b).

(b) Any person who is not a consumer and is injured by a wilful violation of the chapter may bring an action for the recovery of damages, a proceeding to restrain and enjoin those violations, or both. If judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages, whichever sum is greater, and reasonable attorneys' fees together with the costs of suit.

(c) A wilful violation of this chapter shall be punishable by a fine of up to \$500 and up to thirty days imprisonment.

(d) A customer who enters into a written deferred deposit agreement and offers a personal check to a check casher pursuant to that agreement shall not be subject to any criminal penalty for failure to comply with the terms of that agreement unless the check is dishonored because the customer closed the account or stopped payment on the check.

§ -7 **Other relief available.** The penalties provided in this chapter are in addition to penalties and remedies otherwise available against the same conduct under the common law or other state or federal statutes or rules."

SECTION 2. This Act shall take effect on July 1, 1999, and shall be repealed on July 1, 2001.

(Approved June 28, 1999.)