

IC 28-8-5

Chapter 5. Cashing Checks

IC 28-8-5-1

Application of chapter

Sec. 1. (a) This chapter does not apply to a financial institution organized under IC 28 or federal law.

(b) This chapter does not apply to a person principally engaged in the bona fide retail sale of goods or services if:

(1) the person, either incidental to or independent of a retail sale of goods or services, from time to time cashes checks; and

(2) the consideration (as defined in section 3 of this chapter) charged for cashing checks does not exceed five dollars (\$5).

As added by P.L.42-1993, SEC.86. Amended by P.L.122-1994, SEC.104; P.L.213-2007, SEC.85; P.L.217-2007, SEC.83; P.L.89-2011, SEC.62.

IC 28-8-5-2

Check or checks

Sec. 2. As used in this chapter, "check" or "checks" includes a check, draft, money order, or personal money order.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-2.5

Check cashing transaction

Sec. 2.5. As used in this chapter, "check cashing transaction" means a transaction under this chapter in which there is no written or implied agreement to hold the check for more than three (3) business days.

As added by P.L.80-1998, SEC.21.

IC 28-8-5-3

Consideration

Sec. 3. As used in this chapter, "consideration" includes a premium charged for the sale of goods or services in excess of the cash price of the sale of such goods or services.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-4

Department

Sec. 4. As used in this chapter, "department" means the members of the department of financial institutions.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-5

Repealed

(Repealed by P.L.89-2011, SEC.78.)

IC 28-8-5-6

Licensed cashier of checks

Sec. 6. As used in this chapter, "licensed casher of checks" means a person licensed by the department to engage in business pursuant to the provisions of this chapter.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-7

Licensee

Sec. 7. As used in this chapter, "licensee" means a licensed casher of checks.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-8

Location

Sec. 8. As used in this chapter, "location" means a fixed or ambulatory place of business approved by the department.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-9

Person

Sec. 9. As used in this chapter, "person" means any individual, sole proprietorship, partnership, trust, joint venture, limited liability company, corporation, unincorporated organization, or other form of entity, however organized.

As added by P.L.42-1993, SEC.86. Amended by P.L.90-2008, SEC.62.

IC 28-8-5-10

Resolutions for administration of chapter

Sec. 10. The department may make regulations and establish policies and guidelines by resolution for the administration of this chapter.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-11

License required; application; other business at check cashing locations; application fee; tax warrant list

Sec. 11. (a) A person shall not engage in the business of cashing checks for consideration without first obtaining a license.

(b) Each application for a license shall be in writing in such form as the director may prescribe and shall include all of the following:

(1) The following information pertaining to the applicant:

- (A) Name.
- (B) Residence address.
- (C) Business address.

(2) The following information pertaining to any individual described in section 12(b)(1) of this chapter:

- (A) Name.
- (B) Residence address.
- (C) Business address.
- (D) Whether the person:

- (i) is, at the time of the application, under indictment for a felony under the laws of Indiana or any other jurisdiction; or
 - (ii) has been convicted of or pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction.
- (3) The address where the applicant's office or offices will be located. If any business, other than the business of cashing checks under this chapter, will be conducted by the applicant or another person at any of the locations identified under this subdivision, the applicant shall indicate for each location at which another business will be conducted:
- (A) the nature of the other business;
 - (B) the name under which the other business operates;
 - (C) the address of the principal office of the other business;
 - (D) the name and address of the business's resident agent in Indiana; and
 - (E) any other information that the director may require.
- (4) If the department of state revenue notifies the department that a person is on the most recent tax warrant list, the department shall not issue or renew the person's license until:
- (A) the person provides to the department a statement from the department of state revenue that the person's tax warrant has been satisfied; or
 - (B) the department receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).
- (5) Such other data, financial statements, and pertinent information as the director may require.
- (c) The application shall be filed with a nonrefundable fee fixed by the department under IC 28-11-3-5.
- As added by P.L.42-1993, SEC.86. Amended by P.L.122-1994, SEC.105; P.L.10-2006, SEC.62 and P.L.57-2006, SEC.62; P.L.213-2007, SEC.86; P.L.217-2007, SEC.84; P.L.90-2008, SEC.63; P.L.35-2010, SEC.185; P.L.172-2011, SEC.135.*

IC 28-8-5-12

Issuance and refusal of licenses; evidence of compliance; criminal background checks

Sec. 12. (a) The department shall determine the financial responsibility, business experience, character, and general fitness of the applicant before issuing the license.

(b) The department may refuse to issue a license for any of the following reasons:

- (1) Any of the following has been convicted of a felony under the laws of Indiana or any other jurisdiction:
 - (A) An executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant.
 - (B) Any person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the

outstanding shares of any class of equity security of the applicant.

(2) The application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(c) The director of the department may request evidence of compliance with this section by the licensee at:

- (1) the time of application;
- (2) the time of renewal of the licensee's license; or
- (3) any other time considered necessary by the director.

(d) For purposes of subsection (c), evidence of compliance may include:

- (1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for any individual described in subsection (b)(1);
- (2) credit histories; and
- (3) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (c). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

As added by P.L.42-1993, SEC.86. Amended by P.L.80-1998, SEC.22; P.L.63-2001, SEC.21 and P.L.134-2001, SEC.23; P.L.10-2006, SEC.63 and P.L.57-2006, SEC.63; P.L.213-2007, SEC.87; P.L.217-2007, SEC.85; P.L.90-2008, SEC.64; P.L.35-2010, SEC.186.

IC 28-8-5-13

Licenses not transferable or assignable

Sec. 13. Except in a transaction approved under section 13.1 of this chapter, a license is not transferable or assignable.

As added by P.L.42-1993, SEC.86. Amended by P.L.89-2011, SEC.63.

IC 28-8-5-13.1

Change in control of licensee; application to department; timeframe for department's decision; conditions for approval; duty of licensee to report transfer of securities; director's discretion to require new license

Sec. 13.1. (a) As used in this section, "control" means possession of the power directly or indirectly to:

- (1) direct or cause the direction of the management or policies of a licensee, whether through the beneficial ownership of voting securities, by contract, or otherwise; or
- (2) vote at least twenty-five percent (25%) of the voting securities of a licensee, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(b) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(c) The period for approval under subsection (b) may be extended:

- (1) in the discretion of the director for an additional thirty (30) days; and
- (2) not more than two (2) additional times for not more than forty-five (45) days each time if:

(A) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (d);

(B) the director determines that any material information submitted is substantially inaccurate; or

(C) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(d) The department shall issue a notice approving the application only after it is satisfied that both of the following apply:

(1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the licensee in a legal and proper manner.

(2) The interests of the owners and creditors of the licensee and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the licensee will not change as a result of the transaction.

(f) The president or other chief executive officer of a licensee shall report to the director any transfer or sale of securities of the licensee that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the

outstanding securities of the licensee. The report required by this subsection must be made not later than ten (10) days after the transfer of the securities on the books of the licensee.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a licensee to apply for a new license under section 11 of this chapter, instead of acquiring control of the licensee under this section.

As added by P.L.89-2011, SEC.64. Amended by P.L.6-2012, SEC.199.

IC 28-8-5-14

Expiration of licenses

Sec. 14. A license issued pursuant to this chapter expires on July 1 of the year following the date of issuance unless earlier suspended, relinquished, or revoked.

As added by P.L.42-1993, SEC.86. Amended by P.L.27-2012, SEC.103.

IC 28-8-5-15

Renewal of licenses

Sec. 15. (a) To remain in force, a license must be renewed not later than July 1 of each year, beginning with the year following the date of issuance, as set forth in section 14 of this chapter. A licensee may renew a license issued under this chapter by filing a renewal application as prescribed by the director of the department. The department shall prescribe a form for the renewal application. To be accepted for processing, a renewal application must be accompanied by:

- (1) the license renewal fee described in subsection (b); and
- (2) all information and documents requested by the director of the department.

(b) A licensee that seeks to renew a license issued under this chapter shall pay to the department before July 1 of each year a fee fixed by the department under IC 28-11-3-5 as a renewal fee. The department may fix a daily late fee under IC 28-11-3-5 for a:

- (1) renewal license application; or
- (2) renewal fee;

that is received by the department after July 1.

As added by P.L.42-1993, SEC.86. Amended by P.L.35-2010, SEC.187; P.L.89-2011, SEC.65.

IC 28-8-5-16

Check cashing requirements

Sec. 16. (a) A licensee must do the following:

- (1) Conspicuously display at each place of business a notice to the public stating the maximum charges for cashing checks.
- (2) Make payment to a customer for whom a check is being cashed upon presentment of the check.
- (3) Endorse the name in which the licensee is licensed on all

checks before depositing them in a financial institution.

(4) Cash a check made payable only to a natural person as payee unless the licensee has previously obtained appropriate documentation from a payee clearly indicating the authority of the natural person or persons cashing the check on behalf of the payee.

(b) If a licensee engages in a check cashing transaction in which the amount on the check is at least three thousand dollars (\$3,000) or in which the sum of the amounts on two (2) or more checks from the same customer on the same day total at least three thousand dollars (\$3,000), the licensee must obtain:

- (1) the thumbprint of the customer or a photograph of both the customer and the check;
- (2) the full name of the customer;
- (3) the residence address of the customer; and
- (4) the identification of the customer by:
 - (i) Social Security number;
 - (ii) driver's license number;
 - (iii) passport number; or
 - (iv) other traceable record.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-17

Check cashing fee limitations

Sec. 17. (a) Except as otherwise provided in this chapter, a licensee may not charge check cashing fees in excess of:

- (1) the greater of ten dollars (\$10) or ten percent (10%) of the face amount of a check, in the case of a personal check; or
- (2) the greater of five dollars (\$5) or five percent (5%) of the face amount of a check, in the case of all other checks.

(b) Except as provided in this chapter, a licensee or the licensee's agent may not accept multiple checks from a:

- (1) person;
- (2) person's spouse; or
- (3) person's agent;

drawn on the person's account with the intent that the licensee may collect multiple or increased fees for cashing the checks.

As added by P.L.42-1993, SEC.86. Amended by P.L.80-1998, SEC.23; P.L.213-2007, SEC.88; P.L.217-2007, SEC.86.

IC 28-8-5-18

Record keeping; duty to safeguard personal records

Sec. 18. (a) A licensee shall keep its books, accounts, and records satisfactory to the department for each transaction for at least three (3) years from the transaction date.

(b) A licensee shall keep its books, accounts, and records separate from those of any other type of business and in a manner that reflects the order of the licensee's transactions.

(c) A person licensed or required to be licensed under this chapter is subject to IC 28-1-2-30.5 with respect to any records maintained

by the person.

As added by P.L.42-1993, SEC.86. Amended by P.L.90-2008, SEC.65.

IC 28-8-5-18.3

Other business at check cashing locations; notice to department

Sec. 18.3. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any of the following apply:

(1) Any business, other than the business of cashing checks under this chapter, will be conducted by the licensee or another person at any location in Indiana in which the licensee conducts the business of cashing checks under this chapter.

(2) Any information concerning other business conducted at the locations identified in the licensee's application under section 11(b)(3) of this chapter changes.

(b) For each location described in subsection (a)(1) or (a)(2), the licensee shall provide to the department the information required under section 11(b)(3) of this chapter with respect to that location:

(1) not later than fifteen (15) days after the other business begins operating at the location; or

(2) if the licensee's next application for a renewal license under section 15 of this chapter is due before the date described in subdivision (1), in the licensee's next application for a renewal license under section 15 of this chapter.

As added by P.L.10-2006, SEC.64 and P.L.57-2006, SEC.64.

IC 28-8-5-18.4

Felony convictions or pleas; notice to department

Sec. 18.4. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, the licensee, or any individual described in section 11(b)(2) of this chapter, has been convicted of or pleaded guilty or nolo contendere to a felony under the laws of Indiana or any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 11(b)(2)(D) of this chapter:

(1) not later than thirty (30) days after the licensee or individual described in section 11(b)(2) of this chapter has been convicted of or pleaded guilty or nolo contendere to the felony; or

(2) if the licensee's next license renewal fee under section 15 of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 15 of this chapter.

As added by P.L.213-2007, SEC.89; P.L.217-2007, SEC.87. Amended by P.L.35-2010, SEC.188.

IC 28-8-5-18.5

Checks drawn on valid accounts and deposited with intent to draw funds

Sec. 18.5. The check in a check cashing transaction, to the best of the licensee's knowledge, must be drawn on a valid, open, and active account and must be deposited by the licensee into a financial institution with the intent to draw the funds of that check.

As added by P.L.80-1998, SEC.24.

IC 28-8-5-19

Examination of books, accounts, and records; fees; examination of vendors

Sec. 19. (a) The department may examine the books, accounts, and records of a licensee and may make investigations to determine compliance.

(b) If the department examines the books, accounts, and records of a licensee, the licensee shall pay all reasonably incurred costs of the examination in accordance with the fee schedule adopted under IC 28-11-3-5. A fee established by the department under IC 28-11-3-5 may be charged for each day a fee under this section is delinquent.

(c) If a licensee contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the licensee and be subject to the department's routine examination procedures, the person that provides the service to the licensee shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any licensee that receives services from the person refusing the examination to:

- (1) discontinue receiving one (1) or more services from the person; or
- (2) otherwise cease conducting business with the person.

As added by P.L.42-1993, SEC.86. Amended by P.L.10-2006, SEC.65 and P.L.57-2006, SEC.65; P.L.35-2010, SEC.189; P.L.27-2012, SEC.104.

IC 28-8-5-20

Investigation procedures

Sec. 20. In making investigations concerning the compliance of a licensee the department may:

- (1) administer oaths;
- (2) subpoena witnesses; and
- (3) require the production of:
 - (i) books, documents, or other tangible items; and
 - (ii) information pertaining to the identity of and location of persons having knowledge of facts concerning compliance with this chapter.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-21

Examination of records located outside Indiana

Sec. 21. If the licensee's records are located outside Indiana, the licensee shall either make them available to the department at a convenient location within Indiana or pay the reasonable and necessary expenses for the department or its representative to examine them at the place where they are maintained.

As added by P.L.42-1993, SEC.86.

IC 28-8-5-21.1

Applicability of law governing administrative orders and procedures; venue

Sec. 21.1. Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. A proceeding for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 must be held in Marion County.

As added by P.L.35-2010, SEC.190.

IC 28-8-5-22

Suspension or revocation of license; order to show cause; order of suspension or revocation; relinquishment of license; existing obligations; emergency order for revocation

Sec. 22. (a) The department may issue to a licensee an order to show cause why the licensee's license should not be revoked or suspended for a period determined by the department.

(b) An order issued under subsection (a) must:

(1) include:

(A) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;

(B) a description of the action contemplated by the department; and

(C) a statement of the facts or conduct supporting the issuance of the order; and

(2) be accompanied by a notice stating that the licensee is entitled to:

(A) a reasonable opportunity to be heard; and

(B) show the licensee's compliance with all lawful requirements for retention of the license;

at the meeting described in subdivision (1)(A).

(c) After the meeting described in subsection (b)(1)(A), the department may revoke or suspend the license if the department finds that:

(1) the licensee has repeatedly and willfully violated:

(A) this chapter or any rule, order, or guidance document adopted or issued by the department; or

(B) any other state or federal law, regulation, or rule applicable to the business of cashing checks for consideration;

(2) the licensee does not meet the licensing qualifications set forth in this chapter;

- (3) the licensee obtained the license for the benefit of, or on behalf of, a person who does not qualify for the license;
- (4) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or
- (5) facts or conditions exist that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.

(d) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of:

- (1) the revocation or suspension;
- (2) if a suspension has been ordered, the duration of the suspension;
- (3) the procedure for appealing the revocation or suspension under IC 4-21.5-3-5; and
- (4) any other terms and conditions that apply to the revocation or suspension.

Not later than five (5) days after the entry of the order, the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(e) Any person holding a license to engage in the business of cashing checks for consideration may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this subsection does not affect the person's liability for acts previously committed and coming within the scope of this chapter.

(f) If the director determines it to be in the public interest, the director may pursue the revocation of a license of a licensee that has relinquished the license under subsection (e).

(g) If a person's license is revoked, suspended, or relinquished, the revocation, suspension, or relinquishment does not impair or affect any obligation owed by any person under any existing lawful contract.

(h) If the director of the department has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, the director may proceed with the revocation of a license through an emergency or another temporary order under IC 4-21.5-4.

As added by P.L.42-1993, SEC.86. Amended by P.L.176-1996, SEC.25; P.L.80-1998, SEC.25; P.L.27-2012, SEC.105.

IC 28-8-5-22.5

Failure to file renewal form or pay renewal fee; revocation or suspension of license

Sec. 22.5. (a) A license issued by the department under this chapter may be revoked or suspended by the department if the person fails to:

- (1) file any renewal applications prescribed by the director; or
- (2) pay any license renewal fee described under section 15 of

this chapter;
not later than sixty (60) days after the date the renewal is due.

(b) A person whose license is revoked or suspended under this section may:

(1) pay all delinquent fees and apply for reinstatement of the person's license; or

(2) appeal the revocation to the department for an administrative review under IC 4-21.5-3.

Pending the decision resulting from a hearing under IC 4-21.5-3 concerning license revocation or suspension, a license remains in force.

As added by P.L.176-1996, SEC.26. Amended by P.L.35-2010, SEC.191; P.L.89-2011, SEC.66.

IC 28-8-5-23

Investigations; void check cashing transactions

Sec. 23. (a) If the department determines that a reasonable belief exists that a person is operating without a valid license or in violation of this chapter, the department may investigate the person.

(b) If a person knowingly acts as a cashier of checks without the license required by section 12 of this chapter, the check cashing transaction is void and the customer is not required to pay any check cashing fees to the person. If the customer has paid any check cashing fees to the person, the customer, or the department on behalf of the customer, is entitled to recover the payment from the person.
As added by P.L.42-1993, SEC.86. Amended by P.L.172-1997, SEC.24.

IC 28-8-5-24

Civil penalties; civil action by department

Sec. 24. (a) If the department determines, after notice and an opportunity to be heard, that a person has violated this chapter, the department may, in addition to or instead of all other remedies available under this chapter, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.

(b) In addition to or instead of imposing a civil penalty under subsection (a), the department may bring a civil action against a person for violating this chapter.

(c) If the court finds that the defendant is guilty of violating this chapter, the court may assess a civil penalty not to exceed five thousand dollars (\$5,000) per violation.

(d) Civil penalties collected under this section shall be deposited into the financial institutions fund established by IC 28-11-2-9.

As added by P.L.42-1993, SEC.86. Amended by P.L.89-2011, SEC.67.

IC 28-8-5-24.5

Compliance with money laundering laws; investigation and enforcement by department

Sec. 24.5. (a) A licensee shall comply with all state and federal

money laundering statutes and regulations, including the following:

- (1) The Bank Secrecy Act (31 U.S.C. 5311 et seq.).
- (2) The USA Patriot Act of 2001 (P.L. 107-56).
- (3) Any regulations, policies, or reporting requirements established by the Financial Crimes Enforcement Network of the United States Department of the Treasury.
- (4) Any other state or federal money laundering statutes or regulations that apply to a licensee.

(b) The department shall do the following:

- (1) To the extent authorized or required by state law, investigate potential violations of, and enforce compliance with, state money laundering statutes or regulations.
- (2) Investigate potential violations of federal money laundering statutes or regulations and, to the extent authorized or required by federal law:
 - (A) enforce compliance with the federal statutes or regulations; or
 - (B) refer suspected violations of the federal statutes or regulations to the appropriate federal regulatory agencies.

As added by P.L.10-2006, SEC.66 and P.L.57-2006, SEC.66.

IC 28-8-5-25

Violations

Sec. 25. A licensee who violates the provisions of this chapter commits a Class A misdemeanor.

As added by P.L.42-1993, SEC.86.