

By Ms. Walsh of Boston, petition of Marian Walsh relative to the licensing and regulation of check cashers. Banks and Banking.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT PROVIDING FOR THE LICENSING AND REGULATION OF CHECK CASHERS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after
2 chapter 169 the following chapter: —

3 **CHAPTER 169A.**

4 Section 1. In this chapter, unless the context otherwise requires,
5 the following words shall have the following meanings:

6 “Commissioner”, the commissioner of banks;

7 “Casher of checks”, any person engaged in the business of
8 cashing checks, drafts or money orders for a consideration;

9 “Licensee”, a casher of checks, drafts or money orders for a
10 consideration licensed under the provisions of this chapter;

11 “Mobile unit”, any motor vehicle or other movable means from
12 which the business of a licensee is to be conducted.

13 Section 2. No person shall engage in the business of cashing
14 checks, drafts or money orders for a consideration as a primary
15 business without first obtaining a license from the commissioner.
16 The provisions of this chapter shall not apply to a bank, as defined
17 in section one of chapter one hundred and sixty-seven, a national
18 banking association, a federally chartered credit union, a federal
19 savings and loan association or a federal savings bank. For the
20 purposes of this section, the term “primary business” shall mean
21 the principal business of the licensee as determined by the
22 commissioner, exclusive of any business conducted as an agent

23 of the Massachusetts State Lottery Commission. The commis-
24 sioner shall establish rules and regulations, which may include an
25 adequate capitalization requirement, for each place of business
26 or mobile unit of a licensee to aid in the administration and
27 enforcement of this chapter.

28 Section 3. The application for such license shall be in writing
29 and in the form prescribed by the commissioner and shall contain
30 the name, complete residential address and the complete address
31 where the business of the applicant is located, and if the applicant
32 is a partnership, association, corporation or other form of
33 business organization, the names and complete addresses of each
34 member, director and principal officer thereof: provided, that if
35 such business is to be conducted from a mobile unit, the said
36 application shall contain the Massachusetts motor vehicle
37 registration number or other satisfactory identification of such
38 mobile unit and a description of the area in which the applicant
39 seeks to utilize such mobile unit, together with such further
40 information as the commissioner may require. Each application
41 for a license shall be accompanied by an investigation fee.
42 Investigation and license fees shall be determined annually by the
43 commissioner of administration under the provisions of section
44 three B of chapter seven.

45 Section 4. Upon the filing of an application for a license, if the
46 commissioner finds that the financial responsibility, character,
47 reputation, integrity and general fitness of the applicant and of
48 the members thereof if the applicant is a partnership or association
49 and of the director and principal officers if the applicant is a
50 corporation, are such as to warrant the belief that the business
51 will be operated honestly, fairly, soundly, and efficiently in the
52 public interest consistent with the purposes of this chapter he shall
53 thereupon issue the applicant a license to engage in the business
54 of cashing checks, drafts, and money orders. If the commissioner
55 shall not so find, he shall not issue a license and he shall notify
56 the applicant of the denial. Within twenty days thereafter, he shall
57 enter upon his records a written decision and findings containing
58 the reasons supporting the denial and shall forthwith give written
59 notice thereof by registered mail to the applicant. Within thirty
60 days after the date of such notice, the applicant may appeal such
61 denial to the superior court sitting in the county in which the

62 business of the applicant is located. The court shall hear all
63 pertinent evidence and determine the facts and, upon the facts so
64 determined, review said denial and, as justice and equity may
65 require, affirm the same or order the commissioner to issue such
66 license. The commissioner shall approve or deny every application
67 for a license within ninety days after the filing thereof, but any
68 failure of the commissioner to act within such period shall not
69 be deemed to be an approval of any such application.

70 Section 5. Each license shall state the address at which the
71 business is to be conducted, and if a mobile unit, the appropriate
72 identification thereof, and shall state fully the name of the licensee.
73 If a licensee intends to carry on business in more than one place
74 or, in the case of a mobile unit, in an area greater than that
75 specified on the license, he shall procure a license for each place
76 or area where such business is to be conducted. A copy of such
77 license shall be prominently posted in the place of business or the
78 mobile unit of the licensee. Such license shall not be transferable
79 or assignable and shall expire annually on April first. Any change
80 of location or closing of the place of business of the licensee at
81 the address stated on the license, including any change in the area
82 of operation of a mobile unit, shall require prior approval of the
83 commissioner. Any request for such relocation or change shall be
84 in writing setting forth the reason or reasons therefor and shall
85 be accompanied by a relocation investigation fee to be determined
86 annually by the commissioner of administration under the
87 provisions of section three B of chapter seven.

88 If there shall be any change among the officers, partners or
89 directors of any licensee, the licensee shall forthwith notify the
90 commissioner of the name, address and occupation of each new
91 officer, partner or director, and provide such other information
92 as the commissioner may require.

93 Section 6. A schedule of fees and charges to be assessed for the
94 cashing of checks, drafts or money orders shall be filed with the
95 commission and shall be conspicuously posted in every place of
96 business and mobile unit of a licensee.

97 Section 7. The licensee shall provide each patron cashing a
98 check, draft or money order with a receipt of their transaction
99 stating the amount of the check, draft or money order cashed,
100 the fee charged, and the total amount received by the patron.

101 Section 8. The commissioner may suspend or revoke any license
102 issued pursuant to this chapter if he finds that either:

103 (a) the licensee has violated any provision of this chapter or any
104 rule or regulation adopted hereunder, or any other law applicable
105 to the conduct of its business; or

106 (b) any fact or condition exists which, if it had existed at the
107 time of the original application for such license, would have
108 warranted the commissioner in refusing originally to issue such
109 license.

110 Except as provided in Section Eight A, no license shall be
111 revoked or suspended except after notice and a hearing thereon
112 pursuant to chapter thirty A.

113 Any licensee may surrender any license by delivering to the
114 commissioner written notice that it hereby surrenders such license,
115 but such surrender shall not affect the civil or criminal liability
116 of the licensee for acts committed before such surrender.

117 No revocation, suspension or surrender of any license shall
118 impair or affect the obligation of any preexisting lawful contract
119 between the licensee and any person.

120 In lieu of suspension or revocation of any license issued
121 hereunder, the commissioner may fine a licensee up to a maximum
122 of five hundred dollars per day for each such violation.

123 The commissioner may suspend or revoke, or impose a fine on
124 only the particular license or licenses for particular locations or
125 areas of business with respect to which grounds for revocation
126 occur or exist; provided, however, that if he shall find that such
127 grounds for revocation are of general application to all places of
128 business or locations of the licensee, or that such grounds for fines,
129 suspension or revocation have occurred or exist with respect to
130 a substantial number of places of business or locations of said
131 licensee, he may suspend, revoke or impose fines with respect to
132 all of the licenses issued to such licensee.

133 Section 8A. (a) If the commissioner determines, after giving
134 notice of and opportunity for a hearing, that any licensee has
135 engaged in or is about to engage in any act or practice constituting
136 a violation of any provision of this chapter or any rule, regulation
137 or order hereunder, he may order such licensee to cease and desist
138 from such unlawful act or practice and take such affirmative
139 action as in his judgment will effect the purposes of this chapter.

140 (b) If the commissioner makes written findings of fact that the
141 public interest will be irreparably harmed by delay in issuing an
142 order under subsection (a) he may issue a temporary cease and
143 desist order. Upon the entry of a temporary cease and desist order,
144 the commissioner shall promptly notify, in writing, the licensee
145 affected thereby that such order has been so entered, the reasons
146 therefor, and that within twenty days after the receipt of a written
147 request from such licensee therefor, the matter will be scheduled
148 for hearing to determine whether or not such temporary order
149 shall become permanent and final. If no such hearing is requested
150 and none is ordered by the commissioner, the order shall remain
151 in effect until it is modified or vacated by the commissioner. If
152 a hearing is requested or ordered, the commissioner, after giving
153 notice of and opportunity for a hearing to the licensee subject to
154 said order, shall, by written finding of facts and conclusion of law,
155 vacate, modify or make permanent the order.

156 (c) No order under this section, except an order issued pursuant
157 to subsection (b), may be entered without prior notice of the
158 opportunity for a hearing. The commissioner may vacate or
159 modify an order under this section upon his finding that the
160 conditions which required such an order have changed and that
161 it is in the public interest to so vacate or modify.

162 Any order issued pursuant to this section shall be subject to
163 review as provided in chapter thirty A.

164 Section 9. For the purpose of discovering violations of this
165 chapter, any rule or regulation promulgated hereunder or securing
166 information lawfully required by him hereunder, the commis-
167 sioner may at any time, and as often as he may determine, either
168 personally or by a person designated by him, investigate the
169 business and examine the books, accounts, records and files used
170 therein of every licensee hereunder. The total charge for such
171 examination, which shall be paid by the licensee within thirty days
172 after receipt of invoice therefor, shall be determined annually by
173 the commissioner of administration under the provisions of
174 section three B of chapter seven for each person participating in
175 such examination. For that purpose, the commissioner and his
176 duly-designated representative shall have free access to the offices
177 and places of business, books, accounts, papers, records, files,
178 safes and vaults of all such licensees. The commissioner and any
179 person designated by him may require the attendance of and

180 examine under oath all persons whose testimony he may require
181 relative to such business.

182 Section 10. The licensee shall keep and use within the
183 commonwealth such books, accounts and records as will enable
184 the commissioner to determine whether such licensee is complying
185 with the provisions of this chapter and with the rules and
186 regulations lawfully made pursuant thereto by the commissioner.
187 Every licensee shall preserve such books, accounts and records
188 for at least three years. Preservation by photographic
189 reproduction thereof or records in photographic form shall
190 constitute compliance with the requirements of this section.

191 Each licensee shall annually, on or before a date to be
192 determined by the commissioner, file a report with the
193 commissioner giving such information as the commissioner may
194 require concerning its business and operations during the
195 preceding calendar year. The commissioner shall evaluate such
196 reports and make such recommendations, if any, as he deems
197 necessary relative to the same to the General Court.

198 Section 11. The commissioner or any aggrieved party may
199 enforce the provisions of this chapter, or restrain any violations
200 thereof, by filing a civil action in any court of competent
201 jurisdiction. A violation of this chapter, or any rule or regulation
202 issued hereunder, shall constitute a violation of chapter ninety-
203 three A.

204 Section 12. Any licensee who commits a wilful violation of the
205 provisions of this chapter, or any rule or regulation hereunder,
206 shall be punished by a fine of not more than five hundred dollars
207 or by imprisonment for not more than one year, or both.

