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BANKING AND FINANCE

Financial Institutions: Revise Check Selling, Issuing and Cashing Licensure Requirements

CODE SECTIONS:	O.C.G.A. § 7-1-681 (amended), 7-1-911 (amended), 7-1-912(a)–(b) (amended), 7-1-700 to -709 (new)
BILL NUMBERS:	HB 1240, HB 1208
ACT NUMBERS:	1090, 1194
SUMMARY:	The Acts revise regulations governing businesses engaged in the selling and issuing of checks, change license exemptions of certain financial institutions, and provide licensure requirements for people in the business of cashing checks.
EFFECTIVE DATE:	July 1, 1990

History

Prior to 1990, Georgia law provided that the only businesses exempt from licensure requirements for the selling and issuing of checks were banks, trust companies, and telegraph companies.¹ The definitions section of the Code² was incomplete and did not embrace the range of activities and entities that needed to be regulated by the State Department of Banking and Finance (Department).³ The Code section regulating currency transactions, intended to exempt legitimate transactions for which no mandatory reporting was required, did not specify which financial institutions were exempt from such requirements.⁴ HB 1240 was enacted to address these problems.⁵

A related bill was enacted to regulate check-cashing businesses. For people who either do not have checking accounts at banks or credit

1. 1986 Ga. Laws 458 (formerly found at O.C.G.A. § 7-1-681 (1989)).

2. 1989 Ga. Laws 1211 (formerly found at O.C.G.A. § 7-1-911 (1989)). Specifically, the Act amends § 7-1-911(4) by adding a more comprehensive definition of currency transaction, defining it as either "initiated from the receipt or payment of currency or concluding with the receipt of currency" or "involving the movement or transfer of monetary value by electronic means other than within the books of account of the same financial institution." O.C.G.A. § 7-1-911(4)(a)–(b) (Supp. 1990).

3. Telephone interview with Representative Frank C. Pinkston, House District No. 100 (Mar. 23, 1990) [hereinafter Pinkston Interview].

4. 1989 Ga. Laws 1211 (formerly found at O.C.G.A. § 7-1-912(b) (1989)).

5. See *infra* notes 11-26 and accompanying text.

unions or who prefer not to conduct currency transactions at such places, visiting a local establishment engaged in the business of cashing checks provides a convenient alternative to dealing with formal financial institutions.⁶ Typically, the patrons of these establishments are elderly and low-income people who, instead of opening a checking account at a bank where they can deposit their payroll or government checks and then draw against that account, go to a neighborhood store that simply cashes their check and withholds a percentage of the check as a service charge.⁷ Banks refuse to cash checks for people without an account. The person with a check to cash, without an account, is faced with a dilemma since opening an account can be expensive. Also, because banks may be inaccessible in certain areas or simply not open for business when needed, many people choose to cash checks at stores that better meet their convenience needs. However, these stores would frequently charge service fees in excess of twelve to fourteen percent.⁸ Such a high service fee was especially disturbing with respect to recipients of government benefits. A percentage of one's social security, disability, veteran's benefit or welfare check would thus be effectively denied the recipient. Such unrestrained service fees allowed check-cashing businesses to capitalize upon benefits the government had allocated to someone more deserving.⁹

Another problem sought to be remedied by the new legislation was the loose regulation governing licensing and reporting procedures of check-cashing stores.¹⁰ The check-cashing industry was especially vulnerable to money-laundering activities because of the large amount of cash transacted and because of the lack of coordinated oversight by the Department of Banking and Finance and the IRS.

In response to a study conducted by the State Department of Banking and Finance, legislation was drafted to provide for comprehensive regulation of check cashers including: requirements for licensure, investigation of applicants, maximum fees for cashing checks, record-keeping procedures, and authorization for the Department to promulgate regulations monitoring compliance by licensees.¹¹

HB 1240

HB 1240 was introduced as a piece of housekeeping legislation to tighten up the state's authority to regulate currency transactions.¹² The

6. *Id.*

7. GEORGIA DEPARTMENT OF BANKING AND FINANCE: THE CHECK CASHING BUSINESS IN GEORGIA 23 (1989) (available in Georgia State University Law School Library).

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Pinkston Interview, *supra* note 3.

Act amends Code section 7-1-681 by adding "credit union[s], savings and loan association[s] or savings bank[s] . . . and the United States Postal Service" as institutions exempt from licensure requirements for the selling and issuing of checks, and by deleting telegraph companies from that exemption.¹³

A new Code section, 7-1-912 (6)(F)(ii) specifically requires incorporated telegraph companies to be licensed.¹⁴ Since deregulation, a licensure exemption gave telegraph companies a competitive advantage in the financial marketplace, and also made wire transfers a favorite method of illegal currency transactions. For instance, wiring hundreds of thousands of dollars in small increments to a bogus pick-up escaped Public Service Commission and Federal Commerce Commission (FCC) scrutiny.¹⁵ With the passage of the Act, such structured currency transactions are subject to the same full documentation and reporting requirements as are non-bank check-cashing businesses that cash checks for a fee.¹⁶ This problem is addressed by defining "currency transaction" in the Code in two ways: the physical passing of currency in a transaction or the electronic movement of currency.¹⁷

Financial transactions involving over \$10,000 must be recorded and reported to the Department within 15 days.¹⁸ Amounts over \$100,000 must be reported the following business day. This amount is an increase from the previous limit of \$50,000.¹⁹ The major change in this Act comes with the addition of a section which provides that reporting requirements for currency transactions in excess of \$10,000 "shall not apply to transfers between banks, credit unions, or savings and loan associations" which do not involve government electronic transfer of funds.²⁰ However, these exempted financial institutions are still required to account for the name, address, and tax identification number of their customers, along with the name of the corresponding financial institution with whom they transfer money.²¹ These provisions were added to adequately safeguard the public against unauthorized currency transactions.²²

13. HB 1240, as introduced, 1990 Ga. Gen. Assem.

14. O.C.G.A. §§ 7-1-912(6)(F)(ii) (Supp. 1990).

15. Telephone interview with Robert M. Moler, Deputy Banking Commissioner, State of Georgia, Department of Banking and Finance (April 18, 1990).

16. O.C.G.A. § 7-1-911(6)(F)(i)-(ii) (Supp. 1990).

17. 1989 Ga. Laws 1211 (formerly found at O.C.G.A. § 7-1-911(4)(a)-(b) (Supp. 1990)).
See supra note 2.

18. 1989 Ga. Laws 1211 (formerly found at O.C.G.A. § 7-1-912 (1989)).

19. *Id.*

20. 1989 Ga. Laws 1211 (formerly found at O.C.G.A. § 7-1-912(a)(2) (1989)).

21. O.C.G.A. § 7-1-911(6)(F)(i)-(ii) (Supp. 1990).

22. 1989 Ga. Laws 1211 (formerly found at O.C.G.A. § 7-1-912(b)) is the codification of the legislative intent for this Act. *See also* 1977 Op. Att'y Gen. 77-12 (intent of article 4 is "to protect innocent members of the public from financial injury resulting from default of check-cashing companies").

HB 1208

HB 1208 adds new Code sections granting the State Department of Banking and Finance authority to license and regulate check-cashing businesses.²³ To engage "in the business of cashing checks, drafts, or money orders" for a fee, one's application for licensure must include necessary personal identification, such as the name and address of the applicant.²⁴ If the applicant is a corporation, the application must include the name and address of every member, officer, or director of the corporation.²⁵ The location of offices must be disclosed, as must any financial data the Department deems necessary to grant a license.²⁶ The Department has the authority to establish license fees, and licenses to operate check-cashing businesses must be renewed annually.²⁷

HB 1208 was enacted specifically to prevent unscrupulous business people from taking advantage of innocent consumers. Therefore, the Department is authorized to investigate applicants for licensure.²⁸ The applicant must satisfy two criteria: financial responsibility to ensure that the cashing of checks will be done in an "honest, fair, and efficient manner and with the confidence and trust of the community,"²⁹ and promotion of local convenience where the business will be operated.³⁰ Conviction for a felony involving moral turpitude by the applicant or by "any person who is a director, officer, partner, agent, employee, or substantial stockholder of the applicant" is an automatic bar to licensure.³¹ This provision was added to assure that a check-cashing business is initiated on a legitimate basis, and remains a legitimate business.³²

Also to better protect the consumer, licenses must be conspicuously posted at the place of business,³³ along with a conspicuously posted notice of check-cashing fees.³⁴ Maximum fee schedules are established by the Act and cannot exceed five percent of the check, or five dollars, whichever is greater.³⁵ If the check is a social security benefit or welfare assistance, fees cannot exceed three percent of the face value of the check, or five dollars, whichever is greater.³⁶ Charges for cashing

23. HB 1208, as introduced, 1990 Ga. Gen. Assem.

24. O.C.G.A. § 7-1-701(a) (Supp. 1990).

25. O.C.G.A. § 7-1-701(b)(1) (Supp. 1990).

26. O.C.G.A. § 7-1-701(b)(2)-(4) (Supp. 1990).

27. O.C.G.A. § 7-1-701(c) (Supp. 1990).

28. O.C.G.A. § 7-1-702(a) (Supp. 1990).

29. O.C.G.A. § 7-1-702(a)(1) (Supp. 1990).

30. O.C.G.A. § 7-1-702(a)(2) (Supp. 1990).

31. O.C.G.A. § 7-1-702(b) (Supp. 1990) (emphasis added).

32. Pinkston Interview, *supra* note 3.

33. O.C.G.A. § 7-1-702(c) (Supp. 1990).

34. O.C.G.A. § 7-1-705 (a) (Supp. 1990).

35. O.C.G.A. § 7-1-706 (1) (Supp. 1990).

36. O.C.G.A. § 7-1-706 (2) (Supp. 1990).

personal checks or money orders cannot exceed ten percent of the face value of the check, or five dollars, whichever is greater.³⁷ These fee ceilings were proposed to prevent usurious charges for cashing checks.³⁸

The person tendering the check must also comply with certain regulations. A post-dated check³⁹ cannot be accepted unless it is a draft for which a surety bond has been posted.⁴⁰ Checks cannot be cashed for persons other than the payee named on the face of the check, unless the licensee obtains "appropriate documentation" from the payee of the check authorizing the person presenting the check to receive the money.⁴¹ This provision was introduced to quell the rampant fraud throughout the business due to the presentation of stolen or forged checks for cashing.⁴² In instances in which the payor institution notifies the licensee that the check had not been legally negotiated, the licensee must notify the State Department of Banking and Finance and the local district attorney of such a transaction within five business days.⁴³ Further provisions allow for the revocation or suspension of licenses.⁴⁴ Regulation of the check-cashing industry in Georgia will allow consumers to take advantage of the convenience these businesses provide, while protecting them from being taken advantage of themselves.

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37. O.C.G.A. § 7-1-706 (3) (Supp. 1990).

38. Pinkston Interview, *supra* note 3. The fee ceiling was vigorously opposed by the Georgia Check Cashers Association, a group organized to lobby against regulation of their industry. The association felt that the free market approach to charges protected consumers while it simultaneously policed their businesses without unnecessary state interference. DBF Report at 26–27. In addition, the Association justified their fees as insurance against stolen or fraudulent checks. *Id.* at 21.

39. O.C.G.A. § 7-1-705 (d)(1) (Supp. 1990).

40. O.C.G.A. § 7-1-705 (d)(2) (Supp. 1990).

41. O.C.G.A. § 7-1-705 (e) (Supp. 1990). The Department of Banking and Finance has full authority to promulgate regulations to enforce compliance with the Act. O.C.G.A. § 7-1-704 (a) (Supp. 1990).

42. Pinkston Interview, *supra* note 3.

43. O.C.G.A. § 7-1-705 (g) (Supp. 1990).

44. O.C.G.A. § 7-1-707 (a)–(c) (Supp. 1990).