

LICENSING BUSINESS OF TRANSMITTING MONEY OR CREDIT

Act of 1965, P.L. 490, No. 249

AN ACT

Providing for the licensing and regulation of the business of transmitting money or credit for a fee or other consideration by the issuance of money orders, by the sale of checks or by other methods; conferring powers and duties upon the Department of Banking; and imposing penalties. The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Definitions.

Unless the context clearly indicates otherwise, the following words when used in this act shall have the following meanings:

- (1) "Person" includes an individual or an organization but does not include the governments of the United States or of the Commonwealth of Pennsylvania.
- (2) "Transmittal instrument" means any check, draft, money order, personal money order or method for the payment of money or transmittal of credit, other than a merchandise gift certificate sold in the regular course of business by a vendor of personal property or services.
- (3) "Personal money order" means any transmittal instrument in relation to which the purchaser or remitter appoints the seller thereof as his agent for the handling of the transmittal instrument or its proceeds no matter by whom such transmittal instrument is signed.
- (4) "Deliver" means surrendering a transmittal instrument to the first person, who in payment for the same makes a remittance of the whole or a part of the face amount thereof, whether or not the person delivering the instrument charges a fee in addition to the face amount and whether or not he signs the same.
- (5) Accelerated mortgage payment providers[@] includes persons who receive funds from mortgagors to make mortgage payments to a lender or lenders, on behalf of those mortgagors, in order to exceed regularly scheduled minimum payment obligations under the terms of the indebtedness. This term does not include persons or entities described in section 3 of this act.

((5) added July 2, 1996, P.L. 486, No. 79)

Section 2. License Required.

No person shall engage in the business of transmitting money by means of a transmittal instrument for a fee or other consideration without first having obtained a license from the Department of Banking nor shall any person engage in such business as an agent except as an agent of a person licensed or exempted under this act.

Section 3. Exemptions.

No license shall be required hereunder of

- (1) banks, bank and trust companies, credit unions, savings banks and private banks organized under the laws of this Commonwealth; similar banking institutions organized under the laws of the United States or of any other state which are insured by the Federal Deposit Insurance Corporation; similar credit unions organized under the laws of the United States or another state, and insured by the National Credit Union Share Insurance Fund; and savings and loan associations and building and loan associations organized under the laws of this Commonwealth or of the United States; or agents of a person licensed under this act.
(1) amended July 2, 1996, P.L. 486, No. 79)
- (2) ((2) repealed July 2, 1996, P.L. 486, No. 79)

Section 3.1. Partial Exemption.

Accelerated mortgage payment providers shall be exempt from clause (1) of section 4 and clause (2) of subsection (a) of section 6 of this act relating to a net worth requirement and proof thereof but otherwise shall be subject to the terms and licensing requirements of this act.

(3.1. added July 2, 1996, P.L. 486, No. 79)

Section 4. Qualifications for a License.

To qualify for a license hereunder an applicant shall

- (1) have a net worth of at least five hundred thousand dollars (\$500,000);
- (2) in the case of an individual, have at least five years' experience in business and be of good character and reputation, or, in the case of an organization, have officers and directors who meet the requirements specified in this clause for an individual applicant; and
- (3) undertake to operate the business honestly, fairly and in accordance with this act.

No applicant shall be qualified to receive a license if he or, in the event that the applicant is an organization, if any of its officers or directors has been convicted within five years of violating this act.

(4 amended July 9, 1977, P.L. 70, No. 25)

Section 5. Application for License.

- (a) Applications for license shall be in writing under oath and in the form prescribed by the Department of Banking. Among other things, the application shall state the full name of
 - (1) the applicant, if an individual;
 - (2) each partner, if the applicant is a partnership;

- (3) each trustee and officer thereof, if the applicant is a trust;
 - (4) each officer and director thereof, if the applicant is a corporation, joint stock association or other unincorporated association;
 - (5) each other business in which applicant and any affiliated companies are engaged; and
 - (6) the name and address of each agent or subagent conducting business in this Commonwealth.
- (b) A person applying for a new or renewal license and who is not located in this Commonwealth shall file with the application for license an irrevocable consent, duly acknowledged, that suits and actions may be commenced against that person in the courts of this Commonwealth by the service of process of any pleading upon the department in the usual manner provided for service of process and pleadings by the statutes and court rules of this Commonwealth. The consent shall provide that this service shall be as valid and binding as if service had been made personally upon the applicant in this Commonwealth. In all cases where process or pleadings are served upon the department pursuant to the provisions of this section, such process or pleadings shall be served in triplicate; one copy shall be filed in the office of the Secretary of Banking and the other shall be forwarded by the department, by certified or registered mail, return receipt requested, to the last known principal place of business in this Commonwealth and to the person's principal place of business.
- ((b) added July 2, 1996, P.L. 486, No. 79)
- (5 amended July 9, 1977, P.L. 70, No. 25)

Section 6. Fee, Financial Statement and Security.

- (a) Each application for a license shall be accompanied by
- (1) an investigation fee of one thousand dollars (\$1,000) which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license period. The renewal fee shall be three hundred dollars (\$300);
 - (2) a financial statement showing a net worth of at least five hundred thousand dollars (\$500,000);
 - (3) a bond in the penal sum of one million dollars (\$1,000,000) executed by a surety company authorized to transact business within the Commonwealth of Pennsylvania or securities as provided in the following subsection. The bond shall run to the Commonwealth of Pennsylvania and shall be for the use of the Commonwealth and of any person or persons who may have a cause of action against the licensee for failure to carry out the terms of any transmittal instrument which the licensee shall have issued and who were residents of the Commonwealth of Pennsylvania at the time the cause of action arose. The condition of the bond shall be that the licensee will comply with and abide by the provisions of this act and the rules and regulations of the Department of Banking lawfully promulgated under this act and that the licensee will pay to the Commonwealth, to the Department of Banking or to any other person any moneys that may become due from the licensee to the Commonwealth or to the Department of Banking or to any other person under the provisions of this act or of any transmittal instrument issued by the licensee within this Commonwealth and who

were residents of the Commonwealth of Pennsylvania at the time the cause of action arose.

If any person shall be aggrieved by the misconduct of any licensee, he may upon recovering judgment against such licensee, issue execution under such judgment and maintain an action upon the bond of the licensee in any court having jurisdiction of the amount claimed, provided the Department of Banking assents thereto.

- (b) In lieu of the bond required by clause (3) of subsection (a) hereof, the applicant may deposit with the Department of Banking or with the State Treasurer of the Commonwealth of Pennsylvania bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof if guaranteed by the United States, or such bonds, notes, debentures or other obligations of this Commonwealth or of a political subdivision thereof having a market value of at least one million dollars (\$1,000,000); and it shall be the obligation of the licensee to see to it that the securities on deposit shall have a market value of at least one million dollars (\$1,000,000) at all times. The depositor shall be entitled to receive all interest and dividends thereon, and shall have the right, with the approval of the Department of Banking, to substitute other securities for those deposited. Should the securities on deposit at any time have a market value of less than one million dollars (\$1,000,000) the Department of Banking may revoke the license as hereinafter provided. All securities deposited shall be held under the same conditions and subject to the same right of execution as the bond provided for in clause (3) of subsection (a) hereof.
- (b.1) If the Department of Banking, in its discretion, shall determine the bond or deposit of securities provided for in clause (3) of subsection (a) and subsection (b) hereof is not adequate, the Department of Banking may require an additional bond or the deposit of additional securities in an amount up to one million dollars (\$1,000,000); subject to the same conditions and the same right of execution provided for in clause (3) of subsection (a) and subsection (b) hereof.
- (c) Should any licensee become insolvent, the principal sum of the bond or the securities deposited in lieu of a bond shall be applied to the payment in full of claims arising out of the issuance of transmittal instruments in this Commonwealth.

(6 amended July 9, 1977, P.L. 70, No. 25)

Compiler's Note: Section 15 of Act 67 of 1990 provided that Section 6 is repealed insofar as it relates to fee payments.

Section 7. Investigation Issuance of License.

- (a) Upon the filing of an application and the payment of the fee for investigating the same, the Department of Banking shall make such investigation as is necessary to determine whether the applicant is qualified to receive a license under this act. If so, a license shall be issued. If not, the application shall be denied.
- (b) Whenever the Secretary of Banking rejects an application for a license, he shall furnish the applicant with a written specification of the reason or reasons therefor. Any applicant whose application for a license is rejected by the Secretary of Banking may within thirty days' notice of the rejection request that the Department of Banking hold a hearing.

Section 8. Term of License.

Licenses issued under this act shall be for a term expiring January first of the year following issuance.

Section 9. Renewal of Licenses.

- (a) All applications for renewals of licenses shall be filed with the Department of Banking at least sixty days before the expiration date of the license. Unless the department shall have given to the applicant twenty days' previous notice of objections to the renewal of his license based upon the violation of this act or upon the licensee's failure any longer to have the qualifications required for the issuance of a license, the license shall be renewed upon the payment of the renewal fee.
- (b) The renewal application shall be accompanied by a bond or evidence of the maintenance with the State Treasurer of a deposit of securities in conformity with the requirements applicable to an original application for license. The bond or securities shall be in the same amounts and subject to the same terms and conditions as in the case of an original application, unless an additional bond or deposit of securities is required under the provisions of subsection (c) of section 6.
- (c) No investigation fee shall be payable to the Department of Banking upon the filing of an application for license renewal.

(9 amended July 9, 1977, P.L. 70, No. 25)

Section 10. Authority of the Department of Banking.

- (a) The Department of Banking shall have the right to suspend or revoke the original or any renewed license granted under this act if
 - (1) the licensee's bond or securities become inadequate and the licensee after notice fails forthwith to furnish an adequate bond or securities in the amount required by this act; or
 - (2) the licensee shall violate any provision of the act or any rule or regulation issued by the Department of Banking under authority of this act; or
 - (3) the licensee shall fail to comply with any demand, rule or regulation lawfully made by the Department of Banking under authority of this act; or
 - (4) the licensee shall refuse to permit the Department of Banking or its designated representative to make any examination authorized by this act;
 - (5) if any fact or condition is discovered which, if it had been known at the time of the filing of the application for the license, would have warranted the Department of Banking in denying the application.
 - (b) The Department of Banking may release reports and other pertinent information if it determines that release of such information is reasonably necessary for the protection of the public and in the interest of justice. In which case, the information may be released only to a representative of an agency, department or instrumentality of this Commonwealth, another state or Federal Government.
- ((b) added July 2, 1996, P.L. 486, No. 79)

Section 11. Liability of Licensees.

- (a) Every licensee shall be liable for the payment of all moneys covered by transmittal instruments which he issues in this Commonwealth whether directly or through an agent and whether as a maker or a drawer.
- (b) Every transmittal instrument sold by a licensee directly or through an agent shall bear the name of the licensee clearly imprinted thereon.

Section 12. Agents and Subagents.

A licensee may conduct his business at one or more locations within the Commonwealth through such agents and subagents as he may from time to time appoint. No license under this act or any license fee shall be required of any such agent or subagent.

Section 13. Hearing and Appeal.

- (a) No license shall be revoked except after a hearing. The Department of Banking shall hold a hearing when properly requested to do so by an applicant whose application for a license has been denied. A licensee whose license is suspended by the Department of Banking shall be entitled to a hearing. The Department of Banking shall give the applicant or licensee twenty days' written notice of the time and place of hearing by registered or certified mail addressed to the principal place of business of the applicant or licensee.
- (b) A full and complete record of all hearings shall be made, and the cost of such record shall be borne by the applicant or licensee.
- (c) All adjudications shall be in writing, shall contain findings and the reason for the adjudication, and shall be served upon all parties or their counsel personally or by registered or certified mail.
- (d) ((d) repealed Apr. 28, 1978, P.L. 202, No. 53 and Oct. 5, 1980, P.L. 693, No. 142)
(13 amended July 9, 1977, P.L. 70, No. 25)

Section 13.1. Injunctions.

If it appears to the Department of Banking based upon consumer complaints, audits or evaluations that any person has committed or continues to commit a violation of any provision of this act or of any rule or order issued by the department, then the department may apply to the Commonwealth Court for an order enjoining that person from violating or continuing to violate this act or any rule or order and for injunctive or other relief as the nature of the case may require.

(13.1. added July 2, 1996, P.L. 486, No. 79)

Section 14. Rules and Regulations.

The Department of Banking is hereby authorized to make such rules and regulations as may be necessary or appropriate for the enforcement of this act.

Section 15. Examinations by the Secretary of Banking.

The Secretary of Banking, and any person designated by him for that purpose, shall at least once every two calendar years investigate the business and affairs and examine the books, accounts, papers, records, documents, and files of every licensee and of every person who shall be engaged in business contemplated by this act. For this purpose, the Secretary of Banking shall have free access to the offices and places of business, books, accounts, papers, records, documents, files, safes and vaults of all such persons. A person, who is not licensed under this act, shall be presumed to be engaged in business contemplated by this act if he advertises or solicits business for which a license is required by the provisions of this act, and the Secretary of Banking, and any person designated by him for that purpose, is in such cases authorized to examine the books, accounts, papers, records, documents, files, safes and vaults of such persons for the purpose of discovering violations of this act. The cost for examinations shall be paid by the licensee, or a person who is not licensed under this act but presumed to be engaged in business contemplated by this act.
(15 amended July 9, 1977, P.L. 70, No. 25)
(15 amended July 2, 1996, P.L. 486, No. 79)

Section 16. Penalties.

Any person who directly or through another violates or attempts to violate any provision of this act shall be guilty of a misdemeanor, and shall be fined not less than two thousand five hundred dollars (\$2,500), nor more than five thousand dollars (\$5,000) or shall be imprisoned not less than six months nor more than two years in the discretion of the court. Any person, whether licensed or not licensed under the provisions of this act, or any director, officer, employee or agent of any such person, who shall violate the provisions of this act or shall direct or consent to such violations shall be subject to a fine levied by the Department of Banking of up to two thousand dollars (\$2,000) for each offense.
(16 amended July 2, 1996, P.L. 486, No. 79)

Section 17. Severability.

If any provision of this act or the application thereof to any person or circumstances is held unconstitutional, such unconstitutionality shall not affect or impair the remaining provisions of this act.

Section 18. Effective Date.

This act shall become effective on January 1, 1966.