

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 45.00: THE LICENSING AND REGULATION OF CHECK CASHERS

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45.01: Purpose and Scope

The purpose of 209 CMR 45.00 is to establish procedures and requirements for the licensing, regulation and supervision of check cashers under the provisions of M.G.L. c. 169A.

Nothing contained in 209 CMR 45.00 shall limit the ability of the Commissioner to consider other information in determining whether or not to approve an application, or to require additional information from applicants and licensees for the enforcement of M.G.L. c. 169A.

45.02: Definitions

As used in 209 CMR 45.00 the following words shall, unless the context otherwise requires, have the following meanings:-

Applicant, any person submitting an application for a license as a check casher pursuant to M.G.L. c. 169A and any casher of checks who is required to be licensed under the provisions of M.G.L. c. 169A, § 2. The term shall include partners or members, if the applicant is a partnership or association, and officers, directors and principal employees, if the applicant is a corporation.

Casher of checks, a person or entity engaged in cashing checks, drafts or money orders for a consideration in excess of \$1.00 per item.

Clear and conspicuous, shall mean that the material representation being disclosed is of such size, color or contrast and is presented as to be readily noticed and understood by a reasonable person to whom it is being disclosed.

Commissioner, the commissioner of banks.

Division, the Division of Banks and Loan Agencies.

Licensee, any person who is licensed by the Commissioner as a check casher under M.G.L. c. 169A and 209 CMR 45.00.

45.02: continued

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

Net Worth, the applicant's or licensee's total assets less total liabilities, omitting the following assets:

- (a) that portion of an applicant's assets pledged to secure obligations of any person or entity other than that of the applicant;
- (b) any assets due from officers or stockholders of the applicant or persons in which the applicant's officers or stockholders have an interest;
- (c) an amount in excess of the lower of the cost or fair market value of real property;
- (d) an investment shown on the balance sheet in joint ventures, subsidiaries, or affiliates, which is greater than the fair market value of the assets;
- (e) goodwill or value placed on insurance renewals or other similar intangible value;
- (f) organization costs;
- (g) any other intangible asset, as may be determined by the Commissioner.

Patron, shall mean a person

Person, a natural person or an organization including a corporation, partnership, association, cooperative or trust.

45.03: Applicability

No person or entity shall engage in cashing checks, drafts or money orders for a consideration in excess of \$1.00 per item without first obtaining a license from the Commissioner. The provisions of 209 CMR 45.00 shall not apply to a bank, as defined in M.G.L. c. 167, § 1, a national banking association, a federally chartered credit union, a federal savings and loan association or a federal savings bank.

45.04: Application Procedures

(1) Applications. Each Applicant for a license as a check casher shall submit a written application on a form prescribed by the Commissioner signed under the pains and penalties of perjury, containing such information as the Commissioner may from time to time require.

(2) Requirements. An Applicant shall be required to submit detailed information supporting the following general requirements:

(a) Financial responsibility. An Applicant shall demonstrate and provide the Commissioner with evidence of its financial responsibility and submit a sworn statement which states that the Applicant meets the following requirements. An Applicant shall demonstrate and maintain a net worth of not less than \$25,000 and maintain adequate liquidity for the nature and volume of the Applicant's business.

(b) Financial statements. An Applicant shall submit financial statements prepared in accordance with generally accepted accounting principles meeting the following minimum requirements:

1. Contents. The financial statements required by 209 CMR 45.00 shall include, but are not limited to, a Balance Sheet, Statement of Income, and Statement of Cash Flows, and all relevant notes thereto. An Applicant shall also submit financial statements for the preceding fiscal year and such other financial information as the Commissioner may require.

2. Initial Application. An Applicant shall submit audited or reviewed financial statements for its preceding fiscal year or such other financial information as the Commissioner may authorize.

3. Renewal Applications. An Applicant for a license shall submit financial statements audited by an independent certified public accountant within 120 days of the close of its fiscal year. If audited financial statements were not prepared, an Applicant shall submit financial statements reviewed by an independent certified public accountant within 120 days of the close of its fiscal year.

45.04: continued

4. Scope. Audited financial statements shall be prepared in accordance with generally accepted auditing standards and reviewed financial statements shall be prepared in accordance with Statements of Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants.
 - (c) Character and Fitness. An Applicant shall submit information demonstrating that the Applicant:
 1. possesses the character, reputation, integrity, and fitness to engage in the business of a casher of checks in an honest, fair, sound and efficient manner;
 2. does not have an adverse credit history as determined by the Commissioner in a current credit report; and
 3. does not have a criminal record as set out in M.G.L. c. 169, § 3 second paragraph, clause (b).
 - (d) Public Need. An Applicant, if applicable, shall demonstrate to the Commissioner's satisfaction that the public need for the establishment of a check cashing business in the area specified in the application is consistent with the provisions of M.G.L. c. 169A, § 3.
 - (e) Business Experience. An Applicant shall demonstrate to the Commissioner's satisfaction that the Applicant, and its applicable officers and employees, possess the necessary educational and business experience to engage in the business of check cashing.
 - (f) Other Information. An Applicant shall submit such other information the Commissioner may deem necessary to properly evaluate an application.
- (3) Waiver. The Commissioner may waive the requirements of 209 CMR 45.04, in whole or in part, for an Applicant or Licensee currently licensed by the Division under another provision of law; provided, that, such Applicant or Licensee is in compliance with such other law and applicable regulations, as determined by the Commissioner.

45.04A: Mobile Units

- (1) In addition to the information required under 209 CMR 45.04, an application for a mobile unit shall include:
 - (a) the Massachusetts motor vehicle registration number or other satisfactory identification of the mobile unit; and
 - (b) a description of the area in which the applicant seeks to utilize the mobile unit.
- (2) Information shall also be submitted which:
 - (a) describes the adequacy of the vehicle for the transaction of cashing a check, draft or money order including provisions relative to security; and
 - (b) other information which the Commissioner may require.
- (3) A licensee shall immediately notify the Commissioner of any change in the mobile unit used for the cashing of a check, draft or money order and include the information required in 209 CMR 45.04A(1)(a) and (2) with said notice.

45.05: Licensing Standards

- (1) A license to engage in the business of check cashing will be issued to an Applicant if the Commissioner, upon review of the application and all other relevant information, determines that all of the requirements of M.G.L. c. 169A and 209 CMR 45.04 have been met.
- (2) (a) The Commissioner may deny an application to engage in the business of check cashing, if the Commissioner upon review of the application and other relevant information, determines that the Applicant has not satisfied the requirements of M.G.L. c. 169A or 209 CMR 45.04.
 - (b) The Commissioner may also deny such an application or the renewal thereof if the Applicant has:

45.05: continued

1. violated any provisions of M.G.L. c. 169A or 209 CMR 45.00;
2. violated or engaged in a pattern of violations of any state or federal law applicable to the conduct of a business of a casher of checks or any rule, regulation or administrative order or directive promulgated thereunder;
3. conducted or will conduct its business in an unsafe or unsound manner; and
4. engaged in conduct which has resulted in the suspension or revocation of its license to engage in the business of a casher of checks or any other business by any licensing authority of any other state.

(3) An Applicant whose application has been denied under 209 CMR 45.05(2) may appeal the Commissioner's action under M.G.L. c. 169A, § 4 and c. 30A.

45.06: Schedule of Fees and Hours of Operations

(1) A Licensees shall use the Uniform Check Cashing Fee Schedule set out in Appendix A;

- (a) A Licensee may add or delete columns as necessary;
- (b) The content of all reproductions of the Uniform Check Cashing Fee Schedule shall strictly conform to Appendix A.
- (c) A Licensee at its discretion may employ any reasonable format and graphic designs in reproductions of Appendix A. Any such reproductions, however, must clearly and unambiguously convey the required information.

(2) A licensee shall file a complete schedule in the form required by 209 CMR 45.06(1) of all fees and charges which may be assessed a person for the cashing of checks, drafts, or money orders with the Division by April 1st of each year.

(3) Any amendment to the schedule submitted under 209 CMR 45.06(2) shall be filed with the Division forthwith and in writing. Such filing shall state the date on which the amended schedule of fees and charges became or will become effective.

(4) A Licensee shall post the schedule of fees and charges filed under 209 CMR 45.06(2) and any amendments thereto filed under 209 CMR 45.06(3) in each of its places of business.

- (a) All such postings shall be clear and conspicuous; and
- (b) All such postings shall be within the immediate area in which the check, draft or money order will be cashed.
- (c) The posting provisions of 209 CMR 45.06(4) shall not apply to a person engaged in the business of selling negotiable checks, drafts and money orders licensed under the provisions of M.G.L. c. 167F, § 4 and its implementing regulation 209 CMR 13:00 which cashes only travelers checks and checks drawn on institutions outside the United States and in denominations of foreign currency.

(5) A Licensee shall provide in writing, without charge, a copy or copies of the schedule of fees and charges and amendments thereto filed under 209 CMR 45.06(2) and (3) upon the request of any person and such person shall be able to retain such copy or copies. All Licensees shall maintain on hand sufficient quantities of its schedule of fees and charges as to ensure compliance with 209 CMR 45.00.

(6) A Licensee is encouraged to make its best efforts to communicate the fees and charges which may be assessed for the cashing of a check, draft or money order in languages other than English which meet the needs of the non-English speaking patrons in the service area of the Licensee. Such efforts which comply with 209 CMR 45.00 may include but shall not be limited to:

- (a) using multi-lingual staff; and
- (b) providing copies of its fee schedule in languages other than English.

45.06: continued

(7) A Licensee shall forthwith file notice, in writing, of any change in its hours of operation from those specified in its application for a license or the renewal thereof with the Division. A Licensee currently licensed by the Division, under another provision of law shall be deemed to have complied with this provision if such information was filed in a notice required under another regulation of the Division.

45.07: Transaction Receipts

(1) A licensee shall provide each person cashing a check, draft or money order with a receipt of each transaction stating thereon:

- (a) the name and license type and number of the licensee;
- (b) the amount of each check, draft or money order to be cashed;
- (c) the fee charged for each check, draft or money order;
- (d) the total amount received by the customer for each check, draft or money order cashed; and
- (e) the date of the transaction.

(2) A licensee may aggregate the sums of all checks, drafts or money orders to be cashed only if the fee for each transaction is the same.

45.08: Security and Insurance Requirements

(1) A Licensee shall maintain adequate security for the protection of its patrons and employees.

(2) A Licensee shall maintain in force adequate blanket fidelity bond coverage for any of its officers and employees having access to cash for the purpose of cashing a check, draft or money order.

45.09: Office Locations

Relocations and Closings. A Licensee shall obtain the Commissioner's written prior approval of any change in or closing of a Massachusetts location. Written applications to the Commissioner shall be made prior to any such change or closing and shall contain such other information as the Commissioner may require.

45.10: Books and Records

(1) Each Licensee shall keep and use within the Commonwealth its books, records and accounts in a manner which will allow the Commissioner to determine whether the Licensee is complying with the provisions of M.G.L. c. 169A and 209 CMR 45.00 and applicable state and federal laws and regulations. At a minimum, the following records shall be maintained:

(a) A daily record of checks cashed shall be maintained as a record of all check cashing transactions occurring each day. Such daily record shall be limited to the following provided a sufficient audit trail is available through records obtainable from the licensee's bank of account.

1. Amount of the check cashed; and
2. Amount of fee charged for cashing the check.

(b) A daily cash reconciliation shall be maintained summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation shall separately reflect cash received from the redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, and bank cash deposits.

(c) Records required under 209 CMR 45.10(1) and (2) may be maintained in combined form, hand or machine posted, or automated.

45.10: continued

(d) A general ledger containing records of all assets, liabilities, capital, income, and expenses shall be maintained. The general ledger shall be posted from the daily record of checks cashed or other record of original entry, at least monthly, and shall be maintained in such manner as to facilitate the preparation of an accurate trial balance of accounts in accordance with generally accepted accounting practices. A consolidated general ledger reflecting activity at two or more locations by the same licensee may be maintained provided books of original entry are separately maintained for each location.

(2) Every Licensee shall preserve its books and records for inspection for a minimum of three years.

(3) In addition to the reports required by law, a Licensee shall make such other statements and reports to the Commissioner as he or she may require. The Commissioner may furnish blank forms for all such statements or reports.

45.11: Annual Reports

(1) On or before March 1, each Licensee shall file an annual report with the Commissioner for the preceding calendar year. The annual report shall be in writing, subscribed by the Licensee under the pains and penalty of perjury.

(2) The form of such annual report shall be prescribed by the Commissioner and may provide differentiations or adjustments for a Licensee required to submit annual reports to the Commissioner under other provisions of law or regulations of the Division.

45.12: Notice of Significant Events and Proposed Change in Ownership or Personnel

(1) A Licensee shall be required to notify the Division in writing within one business day of the occurrence of any of the following significant developments:

- (a) Licensee filing for bankruptcy or reorganization.
- (b) Notification of the institution of license revocation procedures in any state against the Licensee.
- (c) The filing of a criminal indictment any way related to check cashing and/or selling activities of a licensee, an officer, director, or principal, including, but not limited to, the handling and/or reporting of moneys received and/or instruments sold.
- (d) A Licensee, officer, director, or principal being convicted of a crime.

(2) (a) 30 days prior to any proposed change in control occurs in the ownership of a Licensee, or among the officers, partners or directors of a Licensee, a notice shall forthwith be filed with the Commissioner who may thereupon cause such investigation to be made as he deems necessary, as if it were a new license. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire 10% of the stock, or the ability of a person or group acting in concert to elect a majority of the directors or otherwise effect a change in policy of the corporation.

- (b) A notice of change in personnel or ownership shall contain the following information:
- 1. the name, address and occupation of each proposed officer, partner, director or shareholders; and
 - 2. provide such other information as the Commissioner may require.

45.13: License Disclosure

A Licensee shall disclose the type and number of its license(s) to all patrons as required under M.G.L. c. 169A and 209 CMR 45.00. A Licensee shall also disclose the type and number of its license(s) in all advertisements used in the Commonwealth which advertise or refer to the licensee's business of cashing of checks, drafts or money orders.

45.14: Prohibited Practices

Grounds for license revocation under M.G.L. c. 169A, § 8 and the issuance of cease and desist orders under M.G.L. c. 169A, § 9 shall include, but are not limited to, the following prohibited acts and practices by Licensees:

- (1) implying that such Licensee is a branch of or associated with any agency or department of the Federal Government or of any state or municipal government, or use of any seal, insignia, envelope or other format which simulates that of any government department or agency unless licensed by, under contract with or authorized in writing by said department or agency.
- (2) implying that it is a bank or to act in any manner so as to lead the public to believe that its business is that of a bank or otherwise violate the unauthorized banking provisions of M.G.L. c. 167, § 37.
- (3) failing to disclose the type and number of its license(s) in all advertisements.
- (4) failing to provide a receipt for checks, drafts or money orders cashed.
- (5) knowingly assisting in fraud.
- (6) advertising for or making payment of utility bills unless such Licensee is an agent of each such utility or if the payment of any such bill requires the purchase of any services of the Licensee.
- (7) failing to maintain adequate liquidity for the nature and volume of the Licensee's business.
- (8) engaging in the business of a small loan agency as defined in M.G.L. c. 140, § 96 unless a license for such activity has been obtained under applicable law.
- (9) accepting any fees or charges which were not disclosed in accordance with M.G.L. c. 169A or 209 CMR 45.00.
- (10) failing to comply with the notice requirements of 209 CMR 45.12(1) and (2).

45.15: Other Posted Disclosures

(1) A Licensee shall prominently post the license or authorized copy issued by the Commissioner under 209 CMR 45.05 in its place of business. No Licensee shall operate under a name other than the name on the license issued by the Commissioner.

(2) A Licensee shall post, in a clear and conspicuous manner, in its office within the immediate area of its check cashing business a notice which contains:

- (a) the name of the licensed person or corporation and of its parent corporation, if any;
- (b) the name, address and telephone number of the manager or other designated person to whom inquiries or complaints should be directed; and
- (c) the following statement:

If you have an unresolved complaint you may contact the Division of Banks by calling the Division's Consumer Assistance Section at (800) 495-2265 ext. 501 within Massachusetts, outside of Massachusetts call (617) 956-1500 ext. 501, or by sending a written complaint to the Division of Banks, 1 South Station, Boston, Massachusetts 02110.

45.16: Temporary Licenses

A temporary license for six months or for such other period as the Commissioner may designate may be issued and subsequently renewed by the Commissioner, at his or her discretion, to any Applicant for an original license in order to conduct an inspection under M.G.L. c. 169A, § 10. Said inspection shall be for the purpose of determining whether the temporary licensee is conducting its business in accordance with M.G.L. c. 169A other state and federal laws and regulations applicable to a casher of checks.

45.17: Annual License Expiration

Notwithstanding the issuance of any temporary license under 209 CMR 45.16 or a license under 209 CMR 45.04, all licenses will expire annually on April 1st pursuant to the provisions of M.G.L. c. 169A, § 5.

45.18: Effective Date

209 CMR 45.00 shall become effective May 20, 1994.

45.19: Transitional Rules

~~(1) The provisions of 209 CMR 45.06 become effective on August 1, 1994.~~

~~(2) Licensees are encouraged to comply immediately with the provisions of 209 CMR 45.13. However, compliance with such provision does not become mandatory until November 1, 1994.~~

~~(3) The annual report to be submitted under the provisions of 209 CMR 45.11 on or before March 1, 1995 shall cover the period from July 1 to December 31, 1994.~~

REGULATORY AUTHORITY

209 CMR 45.00: M.G.L. c. 169A, § 2.

45.99: Appendix A

UNIFORM CHECK CASHING FEE SCHEDULE

FEEES CHARGED TO CASH A CHECK MAY VARY AMONG BUSINESSES.
 YOU MAY WISH TO COMPARE THESE CHARGES TO THOSE OF
 OTHER CHECK CASHERS AND FINANCIAL INSTITUTIONS IN
 CONSIDERING THE TOTAL COST OF YOUR TRANSACTION.

COMPLETE FEE SCHEDULE OF

Name of Licensee & License #

<u>Check</u>	<u>Percent Charged For Checks of \$ to \$</u>	<u>Percent Charged For Checks of \$ to \$</u>	<u>Percent Charged For Checks of \$ to \$</u>
Payroll	_____ %	_____ %	_____ %
Insurance	_____ %	_____ %	_____ %
Government	_____ %	_____ %	_____ %
Lottery	_____ %	_____ %	_____ %
Personal	_____ %	_____ %	_____ %
Drafts	_____ %	_____ %	_____ %
Money Orders	_____ %	_____ %	_____ %
Other (Specify)	_____ %	_____ %	_____ %
_____	_____ %	_____ %	_____ %
_____	_____ %	_____ %	_____ %

EXAMPLE: FOR A CHECK OF \$100.00 ON WHICH THE FEE CHARGED IS 1% YOUR TOTAL CHARGE IS \$1.00 AND THE AMOUNT YOU RECEIVE BACK IS \$99.00.