

CHAPTER 16

H.B. No. 64

AN ACT

relating to regulation of providers of financial services; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), is amended by adding Subsection (h) to read as follows:

(h) "Traveler's check" means an instrument for the payment of money that:

(1) is a multiple of any denomination;

(2) provides for a signature of the purchaser to be completed at the time of purchase of the instrument; and

(3) provides for a countersignature of the purchaser to be completed when the instrument is negotiated.

SECTION 2. Section 4, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. EXEMPTION FROM LICENSING. No license to sell checks as aforesaid shall be required hereunder of any of the following:

- (a) Banks, credit unions [~~trust companies~~], building and loan associations, and savings and loan associations, whether organized under the laws of this state or of the United States; provided, however, that *they do not issue or sell checks, other than traveler's checks, off premises and that they do not issue or sell checks, other than traveler's checks, through agents who are not directly or indirectly owned by them* [~~nothing herein shall be deemed to enlarge the powers of the foregoing persons~~];
- (b) Incorporated telegraph companies insofar as they receive money at any of their respective offices or agencies for immediate transmission by telegraph; [~~or~~]
- (c) Agents of a licensee, as provided in Section 11; or
- (d) *The United States or any department or agency of the United States.*

SECTION 3. Section 5, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. QUALIFICATIONS. To qualify for a license hereunder an applicant shall meet the following requirements:

- (a) The applicant shall have a net worth of at least *Two Hundred Fifty Thousand Dollars (\$250,000)* [~~Ten Thousand Dollars (\$10,000)~~], computed according to generally accepted accounting principles.
- (b) The financial responsibility, financial condition, and business experience, and character and general fitness of the applicant shall be such as reasonably to warrant the belief that applicant's business will be conducted honestly, carefully and efficiently. To the extent deemed advisable by the Commissioner, the Commissioner may investigate and consider the qualifications of officers and directors of an applicant in determining whether this qualification has been met.

SECTION 4. Effective January 1, 1988, Section 5, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. QUALIFICATIONS. To qualify for a license hereunder an applicant shall meet the following requirements:

- (a) The applicant shall have a net worth of at least *Five Hundred Thousand Dollars (\$500,000)* [~~Ten Thousand Dollars (\$10,000)~~], computed according to generally accepted accounting principles.
- (b) The financial responsibility, financial condition, and business experience, and character and general fitness of the applicant shall be such as reasonably to warrant the belief that applicant's business will be conducted honestly, carefully and efficiently. To the extent deemed advisable by the Commissioner, the Commissioner may investigate and consider the qualifications of officers and directors of an applicant in determining whether this qualification has been met.

SECTION 5. Section 7, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. ACCOMPANYING FEE, STATEMENTS AND BOND. Each application for a license shall be accompanied by:

- (a) An investigation fee of *Five Hundred [Fifty] Dollars (\$500) [(\$50)]* which shall not be subject to refund but which, if the license be granted, shall constitute the license fee for the first license year or part thereof;
- (b) *Audited financial [Financial]* statements reasonably satisfactory to the Commissioner;
- (c) A surety bond issued by a bonding company or insurance company authorized to do business in this state, in the principal sum of *One Hundred Thousand Dollars (\$100,000)* [~~Twenty-five Thousand Dollars (\$25,000)~~], and an additional principal sum of *Fifty Thousand Dollars (\$50,000)* [~~Five Thousand Dollars (\$5,000)~~] for each location, in excess of one, at which the applicant proposes to sell checks in this state, but in no event shall the bond be required to be in excess of *Five Hundred Thousand Dollars (\$500,000)* [~~Two Hundred Fifty Thousand Dollars (\$250,000)~~]. If the bond accompanying the application

be in a principal sum of less than *Five Hundred Thousand Dollars (\$500,000)* [~~Two Hundred Fifty Thousand Dollars (\$250,000)~~], the application shall also be accompanied by a list of the locations at which the business is to be conducted. The bond shall be in form satisfactory to the Commissioner and shall run to the state for the benefit of any claimants against the applicant or his agents to secure the faithful performance of the obligations of the applicant and his agents with respect to the receipt, handling, transmission and payment of money in connection with the sale of checks. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Such claimants against the applicant or his agents may themselves bring suit directly on the bond, or the Attorney General may bring suit thereon in behalf of such claimants, either in one action or successive actions; or

(d) In lieu of such corporate surety bond or bonds, or of any portion of the principal thereof as required by this Section, the applicant may deposit with the Commissioner or with such banks or trust companies or national banks in this state as such applicant may designate and the Commissioner may approve interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, village, school district or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. The securities shall be deposited as aforesaid and held to secure the same obligations as would the surety bond, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the Commissioner, to substitute other securities for those deposited, and shall be required so to do on written order of the Commissioner made for good cause shown.

~~[(e) Notwithstanding the provisions of (c) above, when the Commissioner determines with respect to any applicant or licensee that a bond or equivalent deposit of less than the sums prescribed therein will be sufficient to fully secure the faithful performance of the obligations of the applicant or licensee and his agents with respect to the receipt, handling, transmission and payment of money in connection with the sale of checks, then he is authorized to reduce the bond or equivalent deposit required of such applicant or licensee to such sums as will be sufficient. In making such determination, the Commissioner may consider the maximum sums of checks sold or to be sold by the applicant or licensee and which are or can reasonably be expected to be outstanding at any one time and all other relevant facts. Nothing herein shall be deemed to restrict or limit the authority of the Commissioner to require the filing of a new or supplemental bond or the deposit of new or additional securities as provided for in subsection (b) of Section 9.]~~

SECTION 6. Section 9, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. *OBLIGATIONS OF LICENSEE* [~~MAINTENANCE OF BOND OR SECURITIES~~]. *Each person holding a license under this Act shall at all times when the license is in effect:*

(a) *Maintain the* [~~After a license has been granted, the licensee shall maintain said~~] bond or securities in the amount prescribed by Section 7, [~~as follows:~~]

(b) *If the* [(a) ~~Each~~] licensee [who] does not have on file or deposit a bond or securities, as aforesaid, in the undiminished principal sum of *Five Hundred Thousand Dollars (\$500,000)* [~~Two Hundred Fifty Thousand Dollars (\$250,000)~~], [shall] file quarterly reports with the Commissioner setting forth the locations at which he sells checks in this state as of January 1, April 1, July 1, and October 1 in each year, the report for each such date being due on or before the 15th day thereafter, [.]

(1) Within ten (10) days following the filing of such a report, the principal sum of the bond or securities shall be increased to reflect any increase in the number of locations, and may be decreased to reflect any decrease in the number of locations, [.]

(2) [(b)] If the Commissioner shall at any time reasonably determine that the bond or securities aforesaid are insecure, deficient in amount, or exhausted in whole or part, he may by written order require the filing of a new or supplemental bond or the deposit of

new or additional securities in order to secure compliance with this Act, such order to be complied with within thirty (30) days following service thereof upon the licensee;

(c) *Maintain a net worth equal to or greater than the amount then currently prescribed by Section 5 for license applicants; and*

(d) *Have on hand permissible investments in an amount equal to the aggregate face amount of all outstanding checks sold in the United States, except traveler's checks, for which the licensee is liable for payment; however, this subsection does not apply to any licensee with a net worth of not less than Five Million Dollars (\$5 million) as shown by audited financial statements reasonably satisfactory to the Commissioner; statements filed under Section 9B of this Act may be used to satisfy this requirement.*

SECTION 7. The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes) is amended by adding Sections 9A, 9B, and 9C to read as follows:

Sec. 9A. **PERMISSIBLE INVESTMENTS.** (a) *In this Act, "permissible investments" means:*

(1) *cash;*

(2) *investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state, municipality or of any political subdivision thereof; or*

(3) *any other investments approved by the Commissioner.*

(b) *To prevent unsafe and unsound practices with respect to the required permissible investments, the Commissioner may adopt and enforce reasonable rules to implement this section.*

Sec. 9B. **PERIODIC REPORTS AND AUDITS.** (a) *Each year, on a quarterly basis not later than May 15, August 15, November 15, and February 15, each licensee shall file with the Commissioner an unconsolidated financial statement, including balance sheet, and required reports regarding maintaining permissible investments pursuant to Section 9 for the preceding calendar quarter submitted on forms furnished by the Commissioner. Each year at least one of these unconsolidated financial statements must have been audited before filing. Licensees who maintain a corporate surety bond or securities, as described by Section 7(c), in a principal sum of at least Five Hundred Thousand Dollars (\$500,000) are required, however, only to file the annual audited unconsolidated financial statement.*

(b) *The Commissioner annually shall conduct a financial audit of each licensee at the sole cost and expense of the licensee. In lieu of that audit, the Commissioner may accept an annual report and audit of the affairs of any licensee under this Act if made by a nationally recognized certified public accounting firm or by a bank commissioner or comparable officer of another state.*

Sec. 9C. **TRUST IMPOSED ON SALES PROCEEDS.** *Agents of licensees shall hold in trust from the moment of receipt the proceeds of a sale or delivery of the licensee's checks. An agent may not commingle the proceeds with his own property or funds, except to use the funds in the ordinary course of its business for the purpose of making change. If any agent of a licensee commingles any proceeds received from the sale of checks issued by the licensee with any other funds or property owned or controlled by the agent, all commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee from the sale of checks less the amount due the agent from the sale. In the event that a licensee's license is revoked by the Commissioner pursuant to Section 14, all sales proceeds then held in trust by agents of that licensee shall be deemed to have been assigned to the Commissioner.*

SECTION 8. Section 10, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. ANNUAL LICENSE FEE. Each licensee shall pay to the Commissioner annually on or before April 15 of each year a license fee of *Five Hundred Dollars (\$500)* [~~Fifty Dollars (\$50)~~].

SECTION 9. Section 14, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. REVOCATION OF LICENSE; INVESTIGATIONS. (a) The Commissioner may revoke a license on any ground on which he may refuse to grant a license or for violation of any provision of this Act. In furtherance of the foregoing, the Commissioner, if he has reasonable cause to believe that the grounds for revocation exist, may investigate the business, books and records of the licensee.

(b) *If the Commissioner determines that the net worth of a licensee is reduced below the amount prescribed by Section 5, the Commissioner shall revoke the license of that licensee.*

SECTION 10. Section 15, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. HEARINGS. No license shall be denied or revoked except after a hearing thereon. The Commissioner shall give the applicant or licensee at least twenty (20) days written notice of the time and place of such hearing by registered or certified mail addressed to the principal place of business of such applicant or licensee. Any order of the Commissioner denying or revoking such license shall state the grounds upon which it is based and shall not be effective until twenty (20) days after written notice thereof has been sent by registered or certified mail to the applicant or licensee at such principal place of business. *A licensee may seek court review of the Commissioner's findings and order.*

SECTION 11. Section 16, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. PENALTIES. (a) *A person commits an offense if the person intentionally:*

(1) *makes an untrue statement of a material fact in an application or report required to be filed with the Commissioner under this Act; or*

(2) *violates Section 3 of this Act.*

(b) *An offense under subsection (a) of this section is a felony of the third degree.*

(c) *If, after notice and a hearing, the Commissioner finds that a person has violated this Act or a rule adopted under this Act, the Commissioner may order the person to pay to the Commissioner a civil penalty in the amount that the Commissioner specifies, except that the amount of the civil penalty may not exceed One Thousand Dollars (\$1,000) for each violation or, in the case of a continuing violation, One Thousand Dollars (\$1,000) for each day that the violation continues [~~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 One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500) or imprisoned in the county jail for not more than ninety (90) days, or both. Each transaction in violation of this Act and each day that a violation continues shall be a separate offense].~~*

SECTION 12. On or before April 15, 1987, each person holding a valid license under The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes) shall obtain a surety bond or deposit securities in the manner and amount required by Section 7, The Sale of Checks Act (Article 489d, Vernon's Texas Civil Statutes), as amended by this Act.

SECTION 13. Chapter 8, Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes), is amended by adding Section 8.12 to read as follows:

Sec. 8.12. CLOSING OF ASSOCIATION BY COMMISSIONER OR DIRECTORS.

(a) *Notwithstanding any other provision of this chapter, the commissioner or the commissioner's authorized representative may close an association if, after an examination, the commissioner determines that:*

(1) *the interests of the depositors and creditors of the association are jeopardized because of the association's insolvency or imminent insolvency, or because of a*

substantial dissipation of assets or earnings of the association due to a violation of law, rules, or regulations or due to an unsafe or unsound practice; and

(2) it is in the best interest of the depositors and creditors that the association be closed and its assets liquidated.

(b) On closing an association under this section the commissioner may liquidate the association as provided by this chapter or may tender the assets and all affairs of the association to the Federal Savings and Loan Insurance Corporation and appoint the Federal Savings and Loan Insurance Corporation as receiver or liquidating agent to act in accordance with this chapter or federal law. If the Federal Savings and Loan Insurance Corporation accepts the tender and appointment, it may act without bond or other security as to the appointment, and, without court supervision, may exercise all rights, powers, and privileges provided by the laws of this state to a receiver or liquidating agent, as applicable, and any applicable right, power, or privilege available under federal law. On acceptance of the appointment, the possession of and title to all the assets, business, and property of the association pass to the Federal Savings and Loan Insurance Corporation without the execution of instruments of conveyance, assignment, transfer, or endorsement. If the Federal Savings and Loan Insurance Corporation pays the insured deposit liabilities of an association that has been closed or is being liquidated pursuant to this chapter, whether or not the Federal Savings and Loan Insurance Corporation has become receiver or liquidating agent, the Federal Savings and Loan Insurance Corporation shall be subrogated, to the extent of the payment, to all rights that the owners of the accounts or deposits have against the association.

(c) Not later than two days, excluding legal holidays, after the day that the commissioner closes an association under this section, the association, acting by resolution of its board of directors, may sue in the district court of Travis County to enjoin the commissioner from taking further action under this section. The court, without notice or hearing, may restrain the commissioner from taking further action until after a hearing on the merits. If the court restrains the commissioner, it shall instruct the commissioner to hold the assets and affairs of the association in the commissioner's possession until disposition of the suit. On receipt of this instruction the commissioner shall refrain from taking further action, except that the commissioner, with the approval of the district judge, may take action as necessary or proper to prevent loss or depreciation in the value of the assets. The court as soon as possible shall hear the suit on its merits and shall enter a judgment enjoining or refusing to enjoin the commissioner from proceeding under this section. This judgment may be appealed as in other civil cases, but the commissioner, regardless of the judgment entered by the trial court or any supersedeas bond filed, shall retain possession of the assets of the association until final disposition on appeal.

(d) The board of directors may, by resolution and with the consent of the commissioner, close the association and tender its assets and all its affairs to the commissioner for disposition as authorized by this section.

SECTION 14. Except as otherwise provided by this Act, this Act takes effect January 1, 1987.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed by the House on September 1, 1986, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 64 on September 4, 1986, by the following vote: Yeas 123, Nays 0, 1 present, not voting. Passed by the Senate, with amendments, on September 3, 1986, by the following vote: Yeas 28, Nays 0.

Approved Sept. 23, 1983.

Effective Jan. 1, 1987, except § 4 effective Jan. 1, 1988.