

Assembly Bill 607

Date published:
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CHAPTER 288, LAWS OF 1967

AN ACT to repeal 218.05 (7); to amend 115.09 (3) (e), 186.33, 218.05 (3) (c) and (5) and 220.02 (3) and (4); to repeal and recreate chapter 217 and 218.05 (1) (b); and to create 215.13 (41) of the statutes, relating to sellers of checks, granting rule-making power, and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 115.09 (3) (e) of the statutes is amended to read:

115.09 (3) (e) A licensee may conduct, and permit others to conduct, at the location specified in its license ~~hereunder~~, any one or more of the following businesses: A loan, finance or discount business under s. 115.07 (4), ~~or under section 218.01, or under ch. 214,~~ or an insurance business, or a currency exchange under s. 218.05, *or a seller of checks business under ch. 217*; but merchandise shall not be sold at such location; and no other business shall be conducted at such location unless written authoriza-

tion is granted the licensee by the commissioner. ~~The foregoing provisions shall not bar licensees under s. 115.09 or permit holders under 115.07 (4) (formerly s. 115.07 (3a) who operated under such licenses or permits on January 1, 1947, from continuing their operation at the same location.~~

SECTION 2. 186.33 of the statutes is amended to read:

186.33 Credit unions may engage in the business and functions provided for in s. 218.05 *and ch. 217* for their members upon receiving a certificate of authority from the commissioner of banks. Such certificate of authority shall be issued by the commissioner upon application of a credit union whenever the commission ~~shall find~~ *finds* that the credit union has adequate clerical facilities and has provided for the keeping of adequate accounts and for the segregation of the funds used in carrying on such business and functions apart from the funds used in carrying on its ordinary business as a credit union. *Such applicants shall meet the same requirements as other applicants under ch. 217, but no investigation fee shall be charged of credit union applicants.* The commissioner may revoke a certificate of authority following a hearing held by it upon 10 days' notice to the credit union for any reason which would have justified the rejection of an application or on the ground that the continued operation of such business threatens the solvency of the credit union.

SECTION 2m. 215.13 (41) of the statutes is created to read:

215.13 (41) SELLER OF CHECKS. To engage as an authorized agent in the business and functions provided for in ch. 217 for their members upon receiving a certificate of authority from the commissioner. Such applicants shall be under the jurisdiction and supervision of the commissioner and meet the same requirements as other applicants under ch. 217, but no license or investigation fee shall be charged savings and loan association applicants. The commissioner has the authority to enforce ch. 217 as it applies to savings and loan associations, the same as that granted the commissioner of banks in enforcing ch. 217. The commissioner shall determine the records that shall be maintained and he shall require the segregation of such funds as is necessary for operations permitted savings and loan associations under this subsection and ch. 217.

SECTION 3. Chapter 217 of the statutes is repealed and recreated to read:

CHAPTER 217
SELLER OF CHECKS.

217.01 TITLE. This chapter shall be known and may be cited as the "Seller of Checks Law."

217.02 DEFINITIONS. In this chapter, unless the context requires otherwise:

- (1) "Department" means the state banking department.
- (2) "Licensee" means a person licensed under this chapter.
- (3) "Authorized agent" is a person who is authorized by a licensee to sell its checks.
- (4) "Check" means any check, draft, money order, traveler's check, personal money order or other instrument for the transmission or payment of money.
- (5) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission or handling of money, whether such instrument is signed by the seller or by the purchaser or remitter or some other person.
- (6) "Sell" means to sell, issue or deliver a check.

(7) "Special order" means an order of the department to or affecting a person.

(8) "General order" means an order of the department other than a special order.

(9) "Seller of checks" means a person who, as a service or for a fee or other consideration, engages in the business of selling and issuing checks or the receiving of money for transmission or the transmitting of money, or the transmitting of money to foreign countries, but does not include the business of a telegraph company in receiving money for immediate transmission by telegraph.

(10) "Location" includes each place in this state where business as a seller of checks is conducted, including any office of the licensee and the place of business of any authorized agent of the licensee.

217.03 LICENSE REQUIRED. (1) No person shall, as a service or for a fee or other consideration, engage in the business as a seller of checks without first securing a license from the department to do so. Any person lawfully engaged in said business on the effective date of this chapter (1967) may continue to engage therein without a license until the department has acted upon his application for a license, provided such application is filed within 30 days after the effective date of this chapter.

(2) The licensee shall be liable on checks duly issued for it by each authorized agent and shall furnish each such agent not exempt under s. 217.04 with an authorization in the form approved by the department in lieu of a license from the department, to be displayed in the agent's place of business indicating that it is an authorized agent of the licensee. An agent so authorized by a licensee shall not be required to secure a license.

217.04 EXEMPTIONS. This chapter does not apply to:

(1) Banks organized under the laws of this state or authorized to do business in this state with respect to checks sold in a bank;

(2) Credit unions, with respect to checks sold in the credit union office, except as provided in s. 186.33;

(3) Savings and loan associations with respect to checks sold in the savings and loan office, except as provided by s. 215.13 (41);

(4) U.S. post-office money orders.

217.05 APPLICATION AND FEES. Each application for a license shall be made in writing and under oath to the department and shall contain such information and be in such form as it prescribes. The application shall state the full name and business address of:

(1) The applicant, if the applicant is an individual.

(2) Every member, if the applicant is a partnership or association.

(3) Every trustee and officer if the applicant is a trust.

(4) The corporation and each officer and director thereof, if the applicant is a corporation.

(5) Each application for a license shall be accompanied by:

(a) *Financial statements*. Financial statements reasonably satisfactory to the department.

(b) *Locations*. A list of the locations in this state at which the applicant or its authorized agents, listing them by name, is engaged or proposes to engage in the business of selling checks but such list shall not be required of an applicant which tenders the maximum license fee and agrees to file or deposit, and does file or deposit, a bond or securities in the maximum sum of \$300,000 as provided in s. 217.06.

(c) *Investigation fee*. A fee of \$100 to the department for investigating the application. If the cost of the investigation exceeds \$100, the

applicant shall, upon demand of the department, pay the excess cost. No investigation fee shall be required for renewal of a license. Any person holding a license as a community currency exchange or a foreign exchange company on the effective date of this chapter (1967) is not required to pay an investigation fee nor a license fee for a single location for the remainder of the current licensing year.

(d) License fee. An annual license fee of \$50 for each location not exceeding 6. If the applicant has more than 6 locations, a license fee of \$50 each for the first 6 locations plus \$2 for each location in excess of 6 locations up to and including a total of 100 locations and \$1 for each location in excess of 100 with a maximum annual fee of \$1,000. For each single location license issued between January 1 and June 30 of any year, the licensee shall pay the full annual license fee for the year ending December 31; for each license issued between July 1 and December 31 of any year, the licensee shall pay one-half of the annual license fee except for multiple office locations, for which the full annual fee shall be charged. No license fee shall be payable with respect to the location of any agent who is exempted from this chapter by s. 217.04.

217.06 LICENSES, HOW GRANTED; CONDITIONS. Every license issued shall be in the form prescribed by the department and shall be issued to the applicant if:

(1) The applicant has filed the required application and paid the required fee.

(2) The financial responsibility, financial condition, business experience, character and general fitness of the applicant are such, in the opinion of the department, as to command the confidence of the public and to warrant belief that the business will be conducted honestly and efficiently. The department may investigate and consider the qualifications, character and general fitness of officers and directors or others associated with the applicant in determining whether this qualification has been met.

(3) (a) A surety bond issued by a bonding company or insurance company authorized to do business in this state has been filed in the minimum principal sum of \$10,000 for the first location and an additional sum of \$5,000 for each additional location unless the department determines that a bond in such amount is insufficient in which event it may require a bond in a larger sum, but in no event shall the bond exceed \$300,000. The bond shall be in a form satisfactory to the department 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 and to reimburse the department for any examination or liquidation expense. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety shall have the right to cancel such bond upon giving not less than 60 days' written notice to the department, but such cancellation shall not release the surety from any liability that may arise with respect to obligations of the licensee outstanding on or prior to the effective day that such bond is cancelled. Such claimants against the applicant or his agents may themselves bring suit directly on the bond, or the attorney in general may bring suit thereon in behalf of such claimants, either in one action or successive actions.

(b) In lieu of such corporate surety bond, or of any portion of the principal thereof as required by this section, the applicant may deposit with such banks or trust companies in this state as the applicant designates and the department approves, interest-bearing 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 held to secure the same obligations as would the surety bond but the depositor shall be entitled to receive all interest thereon, shall have the right with the approval of the department to substitute other securities for those deposited, and shall be required to do so on written order of the department. The licensee shall pay all expenses of maintaining the deposit of obligations deposited in lieu of a corporate surety bond.

217.07 ORDER DENYING APPLICATION. If the department is not satisfied as to all matters specified in s. 217.06, it shall enter a special order denying the application for a license and shall return the license fee to the applicant and retain the investigation fee. The department shall make findings of fact as part of and in support of its orders denying any application for a license.

217.08 LICENSE PROCEDURES. (1) LICENSE POSTING. Every license issued shall state the office either within or without the state, where the records are maintained. The license and the authorizations as agent shall be kept conspicuously posted at the respective locations, and no such license or authorization shall be transferable or assignable. Nothing herein shall prevent a licensee from appointing new agents or from terminating the authorization of any existing agent.

(2) ANNUAL LICENSE FEE; ADDITIONS AND DELETIONS OF LOCATIONS. Each licensee shall file with the department on or before December 1 of each year a statement listing the locations of the offices of the licensee and the names and locations of the agents authorized by the licensee. Every licensee shall also on or before December 1 of each year file a financial statement of its assets and liabilities as of a date not earlier than the preceding August 31 or, if the licensee is audited annually by an independent public accountant at the end of each fiscal year, the licensee may submit financial statements certified by said accountant for the licensee's latest fiscal year. Such statement shall be accompanied by the annual licensee fee for the calendar year beginning the following January 1 in an amount determined under s. 217.05. The amount of the surety bond or deposit of securities required by s. 217.06 shall be adjusted to reflect the number of such locations. Licensees which do not pay the maximum license fee under s. 217.05 and which do not maintain a bond or deposit of securities in the maximum sum of \$300,000 as provided in s. 217.06, shall also file a supplemental statement setting forth any changes in the list of offices and agents with the department on or before April 1, July 1 and October 1 of each year, and the principal sum of the corporate surety bond or deposit of securities required by s. 217.06 shall be adjusted to reflect any increase or decrease in the number of such locations. Any additional license fees which may become due under s. 217.05 shall be paid to the department.

(3) REMOVAL CONSENT. Whenever a licensee changes its single or principal office location to another location it shall give written notice thereof to the department, which shall amend the license accordingly without charge.

217.09 REVOCATION; SUSPENSION; REINSTATEMENT AND TERM OF LICENSES. (1) The department shall, after complaint, notice and hearing, following the procedure in s. 214.10 so far as applicable, revoke any license in the following cases:

(a) If the licensee has failed to pay any examination cost, the license fees or to file a bond or deposit securities in lieu of a bond;

(b) If the licensee has violated this chapter or any valid order issued hereunder;

(c) If any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the department to refuse to issue such license.

(2) If the department finds cause for revocation of a license, it shall issue a special order revoking the license, which includes its findings of fact upon which such order is based.

(3) The department may, for reasonable cause and after a hearing on 5 days' notice, suspend any license for a period not exceeding 30 days, pending further investigation, and in so doing shall issue a special order including its findings of fact upon which such order is based.

(4) The department shall revoke or suspend only the authorization to operate at the location with respect to which grounds for revocation or suspension apply, but if the department finds that such grounds for revocation or suspension apply to more than one location operated by such licensee; then the department shall revoke or suspend all of the authorizations of the licensee to which such grounds apply.

(5) Any licensee may surrender any license by giving written notice to the department that he surrenders such license and returns the license therewith.

(6) The department may on its own motion issue a new license when a license has been revoked.

(7) Every license shall remain in force until it expires or is revoked or suspended or surrendered by the licensee.

217.10 POWERS OF DEPARTMENT. The department may:

(1) Issue general or special orders in execution of this chapter, but not in conflict therewith, to prevent deceptive practices of licensees;

(2) Investigate the business and examine the books, accounts, records and files used therein of every licensee or agent thereof whenever it has reasonable cause to believe that there are grounds for revocation or suspension of license. The cost of each such examination shall be paid by every licensee so examined within 30 days after demand therefor by the department, and the state may maintain an action for recovery of such costs in any court of competent jurisdiction;

(3) Make such rules not inconsistent with this chapter as it deems necessary for the administration of this chapter.

217.11 DUTIES OF LICENSEES. (1) Every check sold by any licensee shall bear the name of the licensee clearly imprinted thereon.

(2) Any money received by a seller of checks to be transmitted to a foreign country shall be so transmitted within 5 days from the receipt thereof.

(3) Every licensee shall furnish a customer with a receipt or other acknowledgement upon receiving funds from such customer. Such receipt or other acknowledgement shall be numbered serially.

(4) Each licensee shall have at all times a minimum of \$1,000 of its own cash funds available for the uses and purposes of its business which minimum sum shall be exclusive of and in addition to funds received for exchange or transfer and in addition thereto each such licensee who does not maintain a bond in the maximum sum of \$300,000 or securities in lieu of such bond as required by s. 217.06 (3) shall have at all times an amount of liquid funds which may include investments readily convertible into cash sufficient to pay on demand all outstanding money orders issued by it.

(5) If a licensee ceases to do business in this state, he shall deposit

his records and proceeds of checks and remittances relating to checks sold in this state with the state treasurer. On claim and submission of proof of ownership satisfactory to the treasurer, the treasurer shall pay such amount of the funds deposited as are owing to a person. Such funds as are not paid out within 20 years from the date of deposit shall escheat to and become the property of the state, and shall be paid by the treasurer and be dealt with in the same manner as other escheated property.

217.12 PROHIBITIONS. (1) **LICENSEE FORBIDDEN TO ACT AS DEPOSITORY.** No licensee may accept money or evidences of money as a deposit to be returned to the depositor or upon the depositor's order except as permitted by this chapter, and no seller of checks may act as bailee or agent for persons to hold money or evidences of money or proceeds therefrom for the use and benefit of the owners and to deliver such money, evidences or proceeds upon request of the owner. Nothing in this subsection shall prevent a seller of checks from selling or issuing checks as authorized under this chapter.

(2) **TOKENS.** No licensee shall issue script or tokens other than checks to be used in lieu of money for the purchase of goods or services from any enterprise.

(3) **OTHER BUSINESS FORBIDDEN.** No seller of checks shall conduct its business, directly or through agents, on the same premises with a business whose chief source of revenue is derived from the sale of intoxicating liquor or fermented malt beverages for consumption on the premises.

(4) No company shall use a name which indicates that it is a branch of the state or federal government or of any department or branch thereof.

217.13 OTHER STATUTES APPLICABLE. Sections 214.08 to 214.12 and 220.037 shall apply to this chapter so far as applicable, except that the records and reports referred to in s. 214.12 shall be maintained by each licensee for a period of not less than 6 years.

217.14 LIABILITY OF LICENSES. Each licensee shall be liable for the payment of all checks which it sells, in whatever form and whether directly or through an agent, as the maker or drawer of the check according to the negotiable instrument laws of this state.

217.15 DELINQUENT SELLER OF CHECKS. The commissioner of banks may take possession of any insolvent seller of checks under the circumstances and utilizing the procedure prescribed in s. 218.04 (9m), so far as applicable.

217.16 PENALTIES. Any person who directly or through another violates or attempts to violate this chapter may be fined not more than \$500 or imprisoned not more than 6 months or both. Each transaction in violation of this chapter and each day that a violation continues is a separate offense.

SECTION 4. 218.05 (1) (b) of the statutes is repealed and recreated to read:

218.05 (1) (b) "Community currency exchange" means any person, except banks incorporated under the laws of this state and national banks organized pursuant to the laws of the United States and any credit union operating under ch. 186 which obtains a certificate of authority from the commissioner of banks, engaged in the business of and providing facilities for cashing checks, drafts, money orders and all other evidences of money acceptable to such community currency exchange for a fee, service charge or other consideration. Nothing in this section shall be held to apply to any person engaged in the business of transporting for hire, bullion, currency, securities, negotiable or nonnegotiable documents, jewels or other property of great monetary value nor to any person engaged in the business of selling tangible personal property at retail nor to any person lic-

ensed to practice a profession or licensed to engage in any business in this state, who, in the course of such business or profession and, as an incident thereto, cashes checks, drafts, money orders or other evidences of money.

SECTION 5. 218.05 (3) (c) and (5) of the statutes are amended to read:

218.05 (3) (c) Before any license ~~shall be~~ is issued to a community currency exchange the applicant shall file annually with and have approved by the commissioner a surety bond, issued by a bonding company or insurance company authorized to do business in this state in the principal sum of \$5,000. Such bond shall run to the state of Wisconsin and shall be for the benefit of any creditors of such community currency exchange for any liability incurred ~~on any money orders issued by the community currency exchange and any liability~~ for any sum or sums due to any payee of any check, draft or money order left with the community currency exchange for collection, and also for any penalties that may be imposed hereunder. If the commissioner ~~shall find~~ finds at any time the bond is insecure or exhausted or otherwise doubtful, an additional bond in like amount to be approved by the commissioner shall be filed by the licensee within 30 days after written demand therefor by the commissioner.

(5) No community currency exchange shall be permitted to accept money or evidences of money as a deposit to be returned to the depositor or upon the depositor's order; and no community currency exchange shall be permitted to act as bailee or agent for persons, ~~firms, partnerships, associations or corporations~~ to hold money or evidences thereof or the proceeds therefrom for the use and benefit of the owners thereof and deliver such money or proceeds of evidence of money upon request or direction of such owner ~~or owners. Nothing contained herein shall prevent a community currency exchange from issuing money orders.~~

SECTION 6. 218.05 (7) of the statutes is repealed.

SECTION 7. 220.02 (3) and (4) of the statutes are amended to read:

220.02 (3) The commissioner of banks shall enforce all laws relating to banks and banking in this state, including those relating to state banks in chs. 220 and 221, mutual savings banks in ch. 222 and trust company banks in ch. 223; all laws relating to credit unions in ch. 186 and the business done by them in this state; and all laws relating to small loan companies in ch. 214 or other laws relating to the lending of money in ss. 115.07 and 115.09 or those relating to finance companies, motor vehicle dealers, adjustment service companies, *community currency exchanges* and collection agencies in ch. 218; and those relating to ~~persons desiring to or who are engaged in the foreign exchange business contained~~ *sellers of checks* in ch. 217; and he shall enforce and cause to be enforced every law relating to the supervision or control thereof.

(4) It is the intent of sub. (3) to give the commissioner of banks power and jurisdiction to enforce and carry out all laws relating to banks or banking in this state, including those relating to state banks, mutual savings banks, trust company banks, and also all laws relating to credit unions, small loan companies or other loan companies or agencies, finance companies, motor vehicle dealers, adjustment service companies, *community currency exchanges* and collection agencies, investment associations and those relating to ~~persons desiring to or who are engaged in the foreign exchange business as provided in~~ *sellers of checks under* ch. 217, whether doing business as corporations, individuals or otherwise, but to exclude laws relating to savings and loan associations.

SECTION 8. This act shall take effect 60 days after passage and publication.

Approved December 28, 1967.