

## CHAPTER 533D

## DELAYED DEPOSIT SERVICES

Referred to in §524.211, 524.606, 533C.103, 537.7102, 546.3, 669.14

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**533D.1 Title.**

This chapter shall be known and may be cited as the “*Delayed Deposit Services Licensing Act*”.

95 Acts, ch 139, §1

**533D.2 Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. “*Check*” means a check, draft, share draft, or other instrument for the payment of money.

2. “*Delayed deposit services business*” means a person who for a fee does either of the following:

a. Accepts a check dated subsequent to the date it was written.

b. Accepts a check dated on the date it was written and holds the check for a period of time prior to deposit or presentment pursuant to an agreement with, or any representation made to, the maker of the check, whether express or implied.

3. “*Licensee*” means a person licensed to operate pursuant to this chapter.

4. “*Person*” means an individual, group of individuals, partnership, association, corporation, or any other business unit or legal entity.

5. “*Superintendent*” means the superintendent of banking.

95 Acts, ch 139, §2

**533D.3 License required — application process — display.**

1. A person shall not operate a delayed deposit services business in this state unless the person is physically located in this state and licensed by the superintendent as provided in this chapter.

2. An applicant for a license shall submit an application to the superintendent on forms prescribed by the superintendent. The forms shall contain such information as the superintendent may prescribe.

3. The application required by this section shall be submitted with the following:

a. An application fee of one hundred dollars.

b. A surety bond executed by a surety company authorized to do business in this state in the sum of twenty-five thousand dollars, which bond shall be continuous in nature until canceled by the surety. A surety shall provide at least thirty days’ notice in writing to the licensee and to the superintendent indicating the surety’s intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon the licensee’s willingness to comply with this chapter, the faithful performance by the licensee of the duties and obligations pertaining to the delayed

deposit services business so licensed, and the prompt payment of any judgment recovered against the licensee. The surety's liability under this chapter is limited to the amount of the bond regardless of the number of years the bond is in effect.

4. The superintendent shall issue a license to an applicant if the superintendent finds all of the following:

a. The experience, character, and general fitness of the applicant and its officers, directors, shareholders, partners, or members are such as to warrant a finding that the applicant will conduct the delayed deposit services business honestly, fairly, and efficiently.

b. The applicant and its officers, directors, shareholders, partners, or members have not been convicted of a felony in this state, or convicted of a crime in another jurisdiction which would be a felony in this state.

c. The applicant is financially responsible and will conduct the delayed deposit services business pursuant to this chapter and other applicable laws.

d. The applicant has unencumbered assets of at least twenty-five thousand dollars available for operating the delayed deposit services business.

5. The superintendent shall approve or deny an application for a license by written order not more than ninety days after the filing of an application. An order of the superintendent issued pursuant to this section may be appealed pursuant to chapter 17A.

6. a. A license issued pursuant to this chapter shall be conspicuously posted at the licensee's place of business. A license shall remain in effect until the next succeeding January 1, unless earlier suspended or revoked by the superintendent.

b. A license shall be renewed annually by filing with the superintendent on or before December 1 an application for renewal containing such information as the superintendent may require to indicate any material change in the information contained in the original application or succeeding renewal applications and a renewal fee of two hundred fifty dollars.

c. The superintendent may assess a late fee of ten dollars per day for applications submitted and accepted for processing after December 1.

7. The superintendent may authorize applicants and licensees to be licensed through a nationwide licensing system and to pay the corresponding system processing fees. The superintendent may establish by rule or order new requirements as necessary, including but not limited to requirements that applicants, including officers and directors and those who have control of the applicant, submit to fingerprinting and criminal history checks.

8. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may be required to maintain for purposes of subsection 7, the superintendent may use the nationwide licensing system as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agency, or to or from any other source so directed by the superintendent.

95 Acts, ch 139, §3; 2006 Acts, ch 1042, §25 – 27; 2008 Acts, ch 1160, §12; 2013 Acts, ch 5, §15 – 17

[T] For provisions relating to licenses expiring on or before July 1, 2013, see 2013 Acts, ch 5, §30

[T] Subsection 3, unnumbered paragraph 1 amended

[T] Subsection 6 amended

[T] NEW subsections 7 and 8

#### **533D.4 Surrender of license.**

A licensee may surrender a delayed deposit services license by delivering to the superintendent written notice that the license is surrendered. The surrender does not affect the licensee's civil or criminal liability for acts committed prior to such surrender, the liability of the surety on the bond, or entitle such licensee to a return of any part of the annual license fee. The superintendent may establish procedures for the disposition of the books, accounts, and records of the licensee and may require such action as deemed necessary for the protection of the makers of checks which are outstanding at the time of surrender of the license.

95 Acts, ch 139, §4

**533D.5 Change in circumstances — notification of superintendent.**

A licensee is to notify the superintendent in writing within thirty days of the occurrence of a material development affecting the licensee, including, but not limited to, any of the following:

1. Filing for bankruptcy or reorganization.
2. Reorganization of the business.
3. Commencement of license revocation or any other civil or criminal proceedings by any other state or jurisdiction.
4. The filing of a criminal indictment or complaint against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents.
5. A felony conviction against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents.

95 Acts, ch 139, §5

**533D.6 Continued operation after change in ownership — approval of superintendent required.**

1. The prior written approval of the superintendent is required for the continued operation of a delayed deposit services business whenever a change in control of a licensee is proposed. The person requesting such approval shall pay to the superintendent a fee of one hundred dollars. Control in the case of a corporation means direct or indirect ownership of, or the right to control, ten percent or more of the voting shares of the corporation, or the ability of a person to elect a majority of the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive. The superintendent may require information deemed necessary to determine whether a new application is required. Costs incurred by the superintendent in investigating a change of control request shall be paid by the person requesting such approval.

2. A license issued pursuant to this chapter is not transferable or assignable.

95 Acts, ch 139, §6; 2006 Acts, ch 1042, §28; 2007 Acts, ch 22, §94

**533D.7 Principal place of business — branch offices authorized.**

1. Except as provided in subsection 2, a licensee may operate a delayed deposit services business only at an office designated as its principal place of business in the application. The licensee shall maintain its books, accounts, and records at its designated principal place of business. A licensee may change the location of its designated principal place of business with the prior written approval of the superintendent. The superintendent shall establish forms and procedures for determining whether the change of location should be approved.

2. A licensee may operate branch offices only in the same county in which the licensee's designated principal place of business is located. The licensee may establish a branch office or change the location of a branch office with the prior written approval of the superintendent. The superintendent shall establish forms and procedures for determining whether the location of a branch office should be approved.

3. A fee of twenty-five dollars shall be paid to the superintendent for each request made pursuant to subsection 1 or 2 for a change of location. For each new branch office established, a fee of two hundred fifty dollars shall be paid to the superintendent.

95 Acts, ch 139, §7; 2006 Acts, ch 1042, §29

**533D.7A Notice of name change.**

A licensee shall notify the superintendent thirty days in advance of the effective date of a change in the name of the licensee. With the notice of change, the licensee shall submit a fee of twenty-five dollars per license to the superintendent.

2006 Acts, ch 1042, §30

**533D.8 Other business operations at same site — restrictions.**

1. A licensee may operate a delayed deposit services business at a location where any other business is operated or in association or conjunction with any other business

with the written approval of the superintendent and consistent with both of the following requirements:

a. The books, accounts, and records of the delayed deposit services business are kept and maintained separate and apart from the books, accounts, and records of the other business.

b. The other business is not of a type which would tend to enable the concealment of acts engaged in to evade the requirements of this chapter. If the superintendent determines upon investigation that the other business is of a type which would conceal such acts the superintendent shall order the licensee to cease the operation of the delayed deposit services business at the location.

2. The department may order the licensee to cease operations of the business if it fails to obtain written approval of the superintendent before operating a business in association or conjunction with services provided under this chapter.

95 Acts, ch 139, §8

### **533D.9 Fee restriction — required disclosure.**

1. A licensee shall not charge a fee in excess of fifteen dollars on the first one hundred dollars on the face amount of a check or more than ten dollars on subsequent one hundred dollar increments on the face amount of the check for services provided by the licensee, or pro rata for any portion of one hundred dollars face value.

2. A licensee shall give to the maker of the check, at the time any delayed deposit service transaction is made, or if there are two or more makers, to one of them, notice written in clear, understandable language disclosing all of the following:

a. The fee to be charged for the transaction.

b. The annual percentage rate as computed pursuant to the federal Truth in Lending Act.

c. The date on which the check will be deposited or presented for negotiation.

d. Any penalty, not to exceed fifteen dollars, which the licensee will charge if the check is not negotiable on the date agreed upon. A penalty to be charged pursuant to this section shall only be collected by the licensee once on a check no matter how long the check remains unpaid. A penalty to be charged pursuant to this section is a licensee's exclusive remedy and if a licensee charges a penalty pursuant to this section no other penalties under this chapter or any other provision apply.

3. In addition to the notice required by subsection 2, every licensee shall conspicuously display a schedule of all fees, charges, and penalties for all services provided by the licensee authorized by this section. The notice shall be posted at the office and every branch office of the licensee.

95 Acts, ch 139, §9; 2006 Acts, ch 1042, §31

Referred to in §533D.10

### **533D.10 Prohibited acts by licensee.**

1. A licensee shall not do any of the following:

a. Hold from any one maker more than two checks at any one time.

b. Hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars at any one time.

c. Hold or agree to hold a check for more than thirty-one days.

d. Require the maker to receive payment by a method which causes the maker to pay additional or further fees and charges to the licensee or another person.

e. Repay, refinance, or otherwise consolidate a postdated check transaction with the proceeds of another postdated check transaction made by the same licensee.

f. Receive any other charges or fees in addition to the fees listed in section 533D.9, subsections 1 and 2.

2. For purposes of this section, "licensee" includes a person related to the licensee by common ownership or control, a person in whom the licensee has any financial interest, or any employee or agent of the licensee.

95 Acts, ch 139, §10

**533D.11 Examination of records by superintendent — fees.**

1. The superintendent shall examine the books, accounts, and records of each licensee at least once a year and as needed to secure information required pursuant to this chapter and to determine whether any violations of this chapter have occurred. The licensee shall pay the cost of the examination.

2. The superintendent may examine or investigate complaints or reports concerning alleged violations of this chapter or any rule adopted or order issued by the superintendent. The superintendent may order the actual cost of the examination or investigation to be paid by the person who is the subject of the examination or investigation, whether or not the alleged violator is licensed.

3. The superintendent shall determine the cost of the examination or investigation based upon the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of administrative expenses in the operation of the banking division attributable to the finance bureau as determined by the superintendent, incurred in the discharge of duties imposed upon the superintendent by this chapter.

4. Failure to pay the examination or investigation fee within thirty days of receipt of demand from the superintendent shall subject the licensee to a late fee of up to five percent of the amount of the examination or investigation fee for each day the payment is delinquent.

5. The superintendent may disclose information to representatives of other state or federal regulatory authorities. The superintendent may release summary complaint information so long as the information does not specifically identify the complainant. The superintendent may prepare and circulate reports reflecting financial information and examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information. The superintendent may prepare and circulate reports provided by law. The superintendent may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the superintendent. The superintendent may also provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

6. The superintendent may receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, through a nationwide licensing system and from other local, state, federal, or international regulatory agencies, the conference of state bank supervisors and its affiliates and subsidiaries, the national association of consumer credit administrators and its affiliates and subsidiaries, and any other regulator association, and shall maintain as confidential and privileged any such document, material, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

95 Acts, ch 139, §11; 2006 Acts, ch 1042, §32; 2013 Acts, ch 5, §18

[T] NEW subsection 6

**533D.12 Disciplinary action.**

1. The superintendent may, after notice and hearing pursuant to chapter 17A, take disciplinary action against a licensee if the superintendent finds any of the following:

a. The licensee or any of its officers, directors, shareholders, partners, or members has violated this chapter, any rule adopted by the superintendent, or any other state or federal law applicable to the conduct of its business.

b. The licensee has failed to pay a license fee required under this chapter or to maintain in effect the bond or bonds required under this chapter.

c. A fact or condition existing which, if it had existed at the time of the original application for the license, would have resulted in the denial of issuance of a license.

d. The licensee has abandoned its place of business for a period of sixty days or more.

e. The licensee fails to pay an administrative penalty or the cost of investigation as ordered by the superintendent.

f. The licensee has violated an order of the superintendent.

2. The superintendent may impose one or more of the following disciplinary actions against a licensee:

- a. Revoke a license.
- b. Suspend a license until further order of the superintendent or for a specified period of time.
- c. Impose a period of probation under specified conditions.
- d. Impose civil penalties in an amount not to exceed five thousand dollars for each violation.
- e. Issue a citation and warning respecting licensee behavior.
- f. Order the licensee to pay restitution.

3. The superintendent may order an emergency suspension of a licensee's license pursuant to section 17A.18A. A written order containing the facts or conduct which warrants the emergency action shall be timely sent to the licensee by restricted certified mail. Upon issuance of the suspension order, the licensee must also be notified of the right to an evidentiary hearing. A suspension proceeding shall be promptly instituted and determined.

4. Except as provided in this section, a license shall not be revoked or suspended except after notice and a hearing thereon in accordance with chapter 17A.

5. A licensee may surrender a license by delivering to the superintendent written notice of surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

6. A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a debtor.

95 Acts, ch 139, §12; 2008 Acts, ch 1160, §13

### **533D.13 Cease and desist order — injunction.**

If the superintendent believes that any person has engaged in or is about to engage in an act or practice constituting a violation of this chapter or any rule adopted or order issued by the superintendent, the superintendent may issue and serve on the person a cease and desist order. Upon entry of a cease and desist order the superintendent shall promptly notify in writing all persons to whom the order is directed that it has been entered and the reasons for the order. Any person to whom the order is directed may request in writing a hearing within fifteen business days after the date of the issuance of the order. Upon receipt of the written request, the matter shall be set for hearing within fifteen business days of the receipt by the superintendent, unless the person requesting the hearing consents to a later date. If a hearing is not requested within fifteen business days and none is ordered by the superintendent, the order of the superintendent shall automatically become final and remain in effect until modified or vacated by the superintendent. If a hearing is requested or ordered, the superintendent, after notice and hearing, shall issue written findings of fact and conclusions of law and shall affirm, vacate, or modify the order.

The superintendent may vacate or modify an order if the superintendent finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so. Any person aggrieved by a final order of the superintendent may appeal the order as provided in chapter 17A.

If it appears that a person has engaged in or is engaging in an act or practice in violation of this chapter, the attorney general may initiate an action in the district court to enjoin such acts or practices and to enforce compliance with this chapter. Upon a showing of a violation of this chapter, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted or a receiver or conservator may be appointed to oversee the person's assets. The attorney general shall not be required to post a bond.

95 Acts, ch 139, §13

### **533D.14 Administrative penalty.**

1. If the superintendent finds, after notice and hearing as provided in this chapter, that a person has violated this chapter, a rule adopted pursuant to this chapter, or an order of the

superintendent, the superintendent may order the person to pay an administrative fine of not more than five thousand dollars for each violation, in addition to the costs of investigation.

2. If a person fails to pay an administrative fine and the costs of investigation ordered pursuant to subsection 1, a lien in the amount of the fine and costs may be imposed upon all assets and property of the person in this state and may be recovered in a civil action by the superintendent. Failure of the person to pay the fine and costs constitutes a separate violation of this chapter.

95 Acts, ch 139, §14

**533D.15 Criminal violation — operation of business without license — injunction.**

A person required to be licensed under this chapter who operates a delayed deposit services business in this state without first obtaining a license under this chapter or while such license is suspended or revoked by the superintendent is guilty of a serious misdemeanor. In addition to the criminal penalty provided for in this section, the superintendent may also commence an action to enjoin the operation of the business.

95 Acts, ch 139, §15

**533D.16 Applicability.**

This chapter does not apply to a bank incorporated under the provisions of any state or federal law, a savings and loan association incorporated under the provisions of any state or federal law, a credit union organized under the provisions of any state or federal law, a corporation licensed as an industrial loan company under chapter 536A, or an affiliate of a bank, savings and loan association, credit union, or industrial loan company.

95 Acts, ch 139, §16