

BANKING

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF BANKING

Check Cashing

Fees

Adopted New Rule: N.J.A.C. 3:24-4.1

Adopted Recodification: N.J.A.C. 3:24-4.1 as 4.3

Adopted Amendments: N.J.A.C. 3:24-1.3, 4.2 and 5.2

Proposed: December 21, 2009 at 41 N.J.R 4583(a).

Adopted: June 9, 2010 by Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Filed: June 10, 2010 as R. 2010 d. 140, **without change**.

Authority: N.J.S.A. 17:1-8.1 and 15e; 17:15A-43e and f; and 17:15A-52.

Effective Date: July 6, 2010

Expiration Date: November 21, 2010.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance received written comments from New Jersey Financial Service Centers, formerly known as the New Jersey Check Cashers Association, by their Deputy General Counsel Scott K. McClain, Esq. of the law firm Winne, Banta, Hetherington, Basralian and Kahn, P.C.

COMMENT: The commenter stated their agreement that the increase is clearly warranted as it is proposed and that it should be implemented as soon as practicable.

RESPONSE: The Department thanks the commenter for its support.

COMMENT: The commenter stated they are in agreement with the Department and the analysis performed by the Department of the factors required to be considered and that they support an increase in the present check cashing rates.

RESPONSE: The Department thanks the commenter for its support.

COMMENT: The commenter stated that their position is that the proposed increase is not sufficient to fully reflect the increase in operating costs and declining profitability experienced by the industry since 1993. The commenter stated the check cashing industry has experienced declines in revenue and profitability due to various factors including increased costs of labor, insurance, real estate taxes, banking, technology, Bank Secrecy Act regulatory compliance and other factors. The industry has seen an increased number of license locations but an overall decrease of checks processed per location. The reduction in the number of check transactions is primarily due to the migration of transactions to electronic payment systems, including direct deposit and stored value cards for delivery of government benefits and employee wages.

RESPONSE: The rate increase is supported by the data reviewed and analyzed by the Department. In addition, to adjust the increase at this stage would require reproposal of the rules, thus delaying any increase.

COMMENT: The commenter stated that the long-term viability of the check cashing industry can not be sustained unless an appropriate adjustment of the current two percent base rate is made. The commenter believes an increase between 2.5 percent and 2.69 percent is necessary in order to provide a necessary profit margin. The commenter urged the Department to adopt the current proposal but make further adjustments to the current fee structure in the near future.

RESPONSE: The Department repeats the Response provided to the prior Comment. Any future adjustments will require the Commissioner to conduct an analysis and adopt rule amendments supported by updated data in accordance with N.J.S.A. 17:15A-43e and f.

COMMENT: The commenter suggests one such adjustment to the current fee structure that should be considered would be the adoption of a regulatory provision to annually adjust the check cashing rate to correspond with increases in the applicable regional Consumer Price Index (CPI) as reported by the U.S. Department of Labor. The commenter stated that the New Jersey check casher industry has experienced increased operational costs in virtually all categories, that it is reasonable to assume that operational costs will continue to increase and, in order to maintain industry stability and keep pace with inflation, that there should be this process for an automatic periodic adjustment in check cashing fees. The commenter stated that a similar process has been adopted by the Superintendent of the New York Banking Department.

RESPONSE: The Department does not have the authority by regulation to adopt such an automatic increase methodology. Such a change in the Department's authority would require a statutory amendment. The Department is constrained by N.J.S.A. 17:15A-43e and f, as to the analysis it must specifically undertake each time it may propose to increase rates for regular, non-governmental checks. Reliance on the administrative undertaking by New York to use an automatic increase tied to the CPI is misplaced. New York Banking Law at Section 372 grants very broad authority to the New York Superintendent of Banking to set maximum check cashing fees by regulation. This gave the Superintendent the authority to adopt rules to permit the use in New York of a CPI-based annual adjustment.

COMMENT: The commenter stated that making future adjustments in the rate based on the CPI will allow the industry fee structure to keep pace with inflation and future cost increases and will help avoid a serious future imbalance in the cost-to-profitability ratio as is currently being experienced in the New Jersey industry. The commenter asserted that the resulting increases are likely to be modest and that using a CPI-based annual rate adjustment will greatly reduce the need for future rate increase applications while stabilizing profitability within the industry, thereby ensuring the continued availability of this type of financial service to New Jersey consumers.

RESPONSE: As noted in the prior Response, given current statutory law, the Department lacks the authority to, through rulemaking, establish a CPI-based methodology for adjusting the

maximum fees that New Jersey licensed check cashers can charge on non-governmental checks. Conferring such authority on the Department would require action by the New Jersey Legislature.

Federal Standards Statement

The adopted new rule and amendments are not subject to any Federal Standards or requirements. Therefore a Federal standards analysis is not required.

Full text of the adoption follows:

TEXT