



BULLETIN C-15-1

To: All Persons Engaged in Any Activity Defined in Tenn. Code Ann. § 45-18-102(3)

Subject: Application of the Check Cashing Act of 1997

Date: June 9, 2015

This Bulletin is issued for the purpose of clarifying the application of the Check Cashing Act of 1997, Tenn. Code Ann. §§ 45-18-101, *et seq.* (the "Check Cashing Act").

The Check Cashing Act provides, in general, that no person shall engage in, or in any manner advertise engagement in, the business of cashing payment instruments without first obtaining a license under the provisions of the Check Cashing Act, and that a separate license shall be required for each location from which the business is conducted [*see* Tenn. Code Ann. § 45-18-104(a)].

Tenn. Code Ann. § 45-18-103(1) provides that the Check Cashing Act does not apply to any bank, trust company, credit union, building and loan association, savings bank or mutual bank organized under the laws of any state or the United States.

Tenn. Code Ann. § 45-18-103(2) provides that the Check Cashing Act does not apply to persons who offer a check cashing service without receiving, directly or indirectly, any consideration or fee.

Tenn. Code Ann. § 45-18-103(3) provides that the Check Cashing Act does not apply to persons engaged in the cashing of payment instruments that is incidental to the retail sale of goods or services, whose compensation for cashing payment instruments at each site does not exceed five percent (5%) of the gross receipts from the retail sale of goods or services by the person during the person's most recently completed fiscal year.

The determination of whether the Check Cashing Act applies to a particular person pursuant to Tenn. Code Ann. § 45-18-103(3) involves a two-step analysis, and is not simply a question of gross receipts and revenues. It must first be determined whether the person's cashing of

payment instruments is *incidental* to the person's retail sale of goods or services. If the cashing of payment instruments is not incidental, then the Check Cashing Act applies, and the second step of the analysis (the receipts and revenue analysis) is not necessary. If the cashing of payment instruments is incidental, then the second step of the analysis applies, and it must be determined whether the person's compensation for cashing payment instruments at each site exceeds five percent (5%) of the gross receipts from the retail sale of goods or services by the person during the person's most recently completed fiscal year. If so, the Check Cashing Act applies; otherwise, it does not apply.

The Department will be promulgating rules to, among other things, provide guidance regarding the term *incidental* in the context of Tenn. Code Ann. § 45-18-103(3).

Any questions regarding this Bulletin should be directed to the Department's Compliance Division, via telephone at (615) 253-2862, or via e-mail at ask.Licensing@tn.gov.

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Commissioner