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# CHECK CASHERS: AN EXPANDING FINANCIAL SERVICE

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## I. INTRODUCTION

In recent years, the check cashing business, both in Mississippi and around the United States, has experienced a rapid increase in the demand for its services. As more banks close and continue to increase the fees they charge for checking accounts, more individuals turn to check cashers to meet their basic financial needs.<sup>1</sup> Contrary to their historical reputation as predators on the poor, check cashing outlets, as well as other alternate financial institutions, “play a key financial role” by serving the needs of both the working population and minority and other disadvantaged groups.<sup>2</sup> Also, as the public perception of the check cashing industry transforms, more state legislatures are recognizing the business as a necessary alternative to traditional banking and are enacting statutes and regulations to insure that consumers who choose to use check cashers for their financial needs are served with fair, consistent, and reliable services.

This Article attempts to educate the reader about the changes and improvements in the growing check cashing business, both in the State of Mississippi and elsewhere, through a presentation of its history and data demonstrating the growth of the business, as well as a discussion of the reasons for the rapid growth and a description of the services check cashers provide. The Article also discusses recently enacted regulations of the check cashing business and important regulations being considered at the federal level.

## II. HISTORY OF THE CHECK CASHING INDUSTRY

Check cashers have existed since the 1930s, serving as an alternative to banks for individuals in large cities. The check cashing business started as a response to the breakdown of the banking system and the corresponding poor cash distribution suffered during the Great Depression.<sup>3</sup> The industry flourished in the 1980s, partly as a response to the deregulation of the banking industry and the resulting consumer confusion about the cost of traditional banking services. Since the early 1980s, the industry has expanded, both in terms of the number of facilities available to consumers and in terms of the kinds of neighborhoods these facilities serve.

Significantly, the bank deregulation legislation of the 1980s removed deposit rate ceilings and the imposition of fees on bank accounts. Basic banking services became more expensive for the small depositor and middle-class individ-

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1. David Brindley & Fred Vogelstein, *The Check Is Not in the Mail*, U.S. NEWS AND WORLD REPORT (Apr. 14, 1997) <<http://www.usnews.com>>.

2. JOHN P. CASKEY, *FRINGE BANKING: CHECK-CASHING OUTLETS, PAWNSHOPS, AND THE POOR* (Russell Sage Foundation 1996).

3. Brindley, *supra* note 1.

ual. A growing number of Americans currently report that they live on a cash-only basis and have no association with a mainstream credit facility or banking service. In the past fifteen years alone, the portion of American families without a bank account has increased from 9% to 14%.<sup>4</sup> Some reports state the percentage as high as 25%.<sup>5</sup> At the same time, retail stores, particularly in large urban areas, have become reluctant to cash paychecks for fear of fraud or bad checks, or because they no longer carry excessive amounts of cash.<sup>6</sup>

Not surprisingly, the number of check cashing outlets around the country has more than doubled over the past ten years, from 2,151 to more than 5,000.<sup>7</sup> Despite the often higher service fees at check cashing businesses, the growing nonbanking population is more often turning to check cashing businesses and other financial alternatives. As the study conducted by the Consumer Federation of America concluded, “[c]heck cashing is a necessary service and the industry performs a useful service in communities where banks are not accessible geographically or economically.”<sup>8</sup>

### III. EXPANSION OF THE CHECK CASHING BUSINESS

Ironically, banks, traditionally very vocal opponents of the check cashing business, are partially responsible for the massive growth in the check cashing business. The lack of available financial services, particularly in urban areas of the Midwest and Northeast, has been created, in large part, by the downsizing of the traditional consumer bank business and the inaccessibility of banks to a large segment of the population. For example, in the State of New Jersey, the six largest cities, which house a fifth of the state’s population, have lost more than 18% of their bank branches.<sup>9</sup> Immigrants, many of whom settle in the large urban areas, also tend not to have bank accounts. Banks have made little or no effort to try to serve the growing immigrant population around the country, leaving them with few financial opportunities.<sup>10</sup>

In addition, the amount that banks charge in service charges and other fees has steadily increased during the past ten years—a time period which has shown little growth in personal income levels among low and moderate income customers.<sup>11</sup> While banks have been unable to adequately serve the public, check cashing entities have moved into both the underserved areas and malls and other places where large numbers of people congregate. This includes both single check cashing operators who put up a shingle, as well as large, publicly traded

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4. Michael Hudson, *Should Regulators Check Up on Check Cashers?*, 86 BUSINESS AND SOCIETY REVIEW 47-50, 48 (1993).

5. Warren Bonney, *National On-Site Check Cashing—Overview* (Nov. 7, 1997) (on file with author).

6. Caskey, *supra* note 2.

7. Fred Katayama, *Check Cashing Outlets Move Into Your Neighborhood*, CNN Financial Network (June 18, 1996); Hudson, *supra* note 4, at 47.

8. Jean Ann Fox, Matt Gordon & Leslie Borja, *The High Cost of Banking at the Corner Check Casher: Check Cashing Outlet Fees and Payday Loans*, Consumer Federation of America 6 (Aug. 1977).

9. PAUL D’AMBROSIO, *THIS BRANCH CLOSED* (Ashbury Park Press, Sept. 10, 1995).

10. *Id.*

11. Fox, Gordon & Borja, *supra* note 8, at 2.

check cashing businesses. ACE Cash Express, the largest check cashing chain in the country, is a publicly traded company with more than 600 outlets. Between June 1996 and March 1997 alone, ACE cashed more than 6.6 million checks with a face value of 1.947 billion dollars and sold over 10 million money orders worth 1.356 billion dollars.<sup>12</sup> Dollar Finance Group also has numerous outlets in the United States and Canada.

#### IV. SERVICE PROVIDERS IN A CHANGING CONSUMER BANKING ENVIRONMENT

##### *A. Accessibility and Convenience*

The traditional banking industry's failure to serve all segments of society is only one reason individuals are opting out of the traditional banking network and turning to other financial services. A growing number of Americans are also using check cashing outlets because they are more accessible and offer a broader range of services. In addition, many people find banks intimidating, whereas check cashing outlets typically offer personal, face-to-face interaction with the customer—an element missing as more banks open automatic teller machines (ATMs), instead of bank branches, to serve customers. Check cashing outlets are also thought to handle a customer's cash needs faster and more efficiently.<sup>13</sup> Both consumers with no bank accounts and others who maintain checking accounts, but frequently use check cashing outlets for their basic financial needs, have indicated that they prefer check cashing centers because of their accessibility and personal service.<sup>14</sup>

The essence of the check cashing business consists of cashing payroll checks, government checks, personal checks, and insurance drafts.<sup>15</sup> Many check cashing outlets also sell prepaid telephone debit cards and money wire transfers. Other services include the sale of stamps, lottery tickets, subway tokens, and photocopies. Check cashing entities also handle bill payments for their customers.<sup>16</sup>

Check cashing outlets can be found in small towns, minority sections of urban areas, malls, convenience stores, and gas stations. A year ago, the Circle K convenience store teamed with Mr. Payroll Corporation to bring check cashing centers into Circle K stores in Louisiana and other places in the South.<sup>17</sup> Importantly, check cashers also offer much longer business hours. Typically, they open earlier, close later, and offer both Saturday and Sunday service.<sup>18</sup> This accessibility, both in location and hours, is welcomed by the working public, which does not have the flexibility to take advantage of hours banks offer.

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12. *Id.* at 3.

13. *Id.*

14. *Id.*

15. *Id.* at 2.

16. *Id.* at 2-3.

17. Mr. Payroll Press Release (Oct. 16, 1996) (on file with author).

18. *Id.*

### *B. Expanding Services in the Future*

While many loyal check cashing customers enjoy the kind of personal relationship they find at local check cashing outlets, the check cashing industry is cognizant of the fact that it must integrate into the ATM market in order to best serve a wide range of customers. Chase Manhattan Bank is currently working with New York check cashers so that cardholders for ATMs that are part of the NYCE teller-machine network will be able to get cash at check cashing outlets, just as they would at ATMs.<sup>19</sup>

Similarly, BancOne Corporation recently signed an agreement with a Texas firm to install Mr. Payroll check cashing machines in retail stores under the name "Rapid Cash." Customers who use the new ATMs will pay fees ranging from 1% to 3% of the face value of the check. Unlike bank ATMs, which typically give cash out in \$10 increments, these check cashing ATMs will dispense the exact amount of the check, minus the service fee, including coins.<sup>20</sup> This improvement in the technology of the check cashing ATM sets this service apart from the typical bank ATM.<sup>21</sup>

## V. FEDERAL AND STATE REGULATIONS AFFECTING THE CHECK CASHING INDUSTRY

### *A. State Regulations*

No one is more aware of the tarnished image of the check cashing business than the check cashers themselves. This image, however, stands in stark contrast to the reality of the established check cashing industry, particularly in states where check cashers are regulated. In recent years, check casher associations in more than twenty states have been successful in enacting legislation to establish a uniform, fair, and reliable regulatory framework within which the check cashing businesses can operate and better serve their customers.

Most of the state statutes regulating check cashers have been enacted only within the past five years. Of the states that regulate check cashers, nearly all require, at a minimum, that check cashing outlets be licensed or otherwise registered with their particular state corporation commission.<sup>22</sup> In addition, all of the statutes require check cashing outlets clearly and conspicuously to post notices of the fees charged for check cashing services. At least three states—Kentucky, Virginia, and Washington—require some form of registration, but few additional regulations.<sup>23</sup>

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19. Brindley & Vogelstein, *supra* note 1, at 2.

20. Kathy Hoke, *BancOne Meets Mr. Payroll*, BUSINESS FIRST (Delta Airlines, October 20, 1997), <<http://www.deltaairlines.com.97.10.20>>.

21. *Id.*

22. The State of Illinois does not require licensing, but does impose a cap of 1% of the face value of the check cashed on the fees charged. 815 ILL. COMP. STAT. ANN. 315/0.01 (West 1993).

23. KY. REV. STAT. ANN. §§ 368.010, *et seq.* (Michie 1996); VA. CODE ANN. § 6.1-432 (Michie 1997); WASH. REV. CODE ANN. §§ 31.45.010, *et seq.* (West 1997).

Other states which have enacted laws regulating the check cashing industry have imposed caps on the amount check cashing outlets can charge for cashing checks. There is no clear uniformity in these regulations, however.

There is an important ongoing debate concerning the effect of mandated caps on check cashing fees. Check cashers impose service fees on the services they provide because of the high risks involved in cashing certain checks. Some argue that if state legislatures impose low service fee rates, many check cashing outlets, in both urban and rural areas, will simply be unable to cash the riskier checks and will not be able to serve the population which is dependent upon their business.<sup>24</sup> Those arguing that states need not extend regulations on the service fees charged by check cashing outlets, particularly in urban areas, contend that the competition which exists among the check cashing outlets will adequately control the fees charged through the market system, without government intervention.<sup>25</sup>

Many established and successful check cashing business owners believe that some form of regulation will provide a more uniform and predictable financial service to the consumers who use check cashing outlets. Most check cashing businesses would nevertheless like to see higher caps, if any, on service fees so that they can continue to serve the high-risk cases and, at the same time, prevent unscrupulous check cashing outlets from charging the less sophisticated customers higher fees.<sup>26</sup>

### B. Federal Electronic Transfers

In an effort to cut the cost of government payments, Congress enacted legislation requiring the United States Department of the Treasury to electronically transfer all federal checks by the year 1999. This Act,<sup>27</sup> passed in 1996, provides that recipients of federal wage, salary, or retirement payments shall designate financial institutions to receive the payments. The legislation applies not only to federal wage and retirement payments, but extends to federal benefit checks as well, including Social Security checks. It is estimated that there are approximately ten million "unbanked" consumers who receive Social Security, SSI, and pension checks. For this reason, the Treasury Department is considering a proposal which would include check cashers and other financial institutions that serve as banking alternatives to be included in the group of designated financial institutions to receive these electronic transfers by the year 1999.

Some consumer groups and, of course, the banking industry are lobbying the Treasury Department against allowing check cashers to receive electronic transfer payments of federal government benefits.<sup>28</sup> While attorneys with the National

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24. Caskey, *supra* note 2, at 125.

25. *Id.*

26. *Id.* at 126.

27. 31 U.S.C. § 3332 (1997).

28. Edward Mason, *Plan to Send Benefits to Check Stores Rapped*, *Banker and Tradesman* (June, 1997), <<http://web2.boston.com/realestate/bt/news/97.6>>.

Consumer Law Center acknowledge that the electronic transfer of benefits makes sense, this organization will not support the proposal to include check cashers in the group of designated recipient institutions.

One of the complaints raised by the banking industry and consumer groups is that check cashers are in the business to make money and will charge the customer for the service.<sup>29</sup> Of course, banks are also in the business of making money and, indeed, charge all of their customers for the services they provide. Bank officials also openly acknowledge that they are in the business of making money, which explains why they continue to close down branches in disadvantaged neighborhoods and small towns. "Banks say [closing branches] is just business. When companies and people move from urban areas to suburbia, banks must follow in order to remain profitable. The industry, facing increasing competition from mortgage companies and mutual funds, must streamline in order to remain competitive."<sup>30</sup>

Treasury Department officials are currently drafting regulations to make the implementation of the electronic transfer legislation as smooth as possible. They are considering ways to alleviate the concerns of the organized banking industry and consumer protection groups about including check cashers in the regulations.

There is no compelling reason why banks and check cashing businesses, as well as other financial alternatives to banks, cannot all be available as designated recipients of federal payments in accordance with the recipients' wishes. As this Article demonstrates, the elimination of check cashers from this federal mandate would clearly fly in the face of reality and deprive millions of federal payment recipients of their choice of financial service.

## VI. CONCLUSION

While there have been few comprehensive studies of the check cashing business to date, no one can ignore the growing influence the business has had and will continue to have on the consumer financial market. Both state and federal legislators have been confronted, in recent years, with the necessity of acknowledging the important and necessary role check cashers have in contemporary American society. In so acknowledging this role, legislatures must also accept the task of properly regulating the industry by striking the best balance between controlling the unscrupulous check cashing outlets and, at the same time, not squelching the necessary high-risk aspects of the check cashing business.

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29. *Id.* at 2.

30. D'Ambrosio, *supra* note 9, at 1.