

## CHAPTER 217

### SELLER OF CHECKS

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**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) "Authorized agent" is a person who is authorized by a licensee to sell its checks.

(2) "Check" means any check, draft, money order, traveler's check, personal money order or other instrument for the transmission or payment of money.

(3) "General order" means an order of the office other than a special order.

(4) "Licensee" means a person licensed under this chapter.

(5) "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.

(6) "Office" means the office of the commissioner of banking.

(7) "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 the purchaser's or remitter's 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.

(8) "Sell" means to sell, issue or deliver a check.

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

*History:* 1983 a 189; 1991 a 316

**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 office to do so. Any person lawfully engaged in said business on March 18, 1968 may continue to engage therein without a license until the office has acted upon the person's application for a license, provided such application is filed within 30 days after March 18, 1968.

(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 office in lieu of a license from the office, 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.

*History:* 1991 a 316.

Wisconsin has a compelling interest in applying statutory regulations to banking activities on Indian reservations. 80 Atty Gen. 337.

**217.04 Exemptions.** This chapter does not apply to any of the following:

(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.

(5) Savings banks with respect to checks sold in the savings bank office, except as provided under s. 214.04 (20).

*History:* 1991 a 221

**217.05 Application and fees.** Each application for a license shall be made in writing and under oath to the office 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, limited liability company 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 office.

(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 office for investigating the application. If the cost of the investigation exceeds \$100, the applicant shall, upon demand of the office, 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 March 18, 1968 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.

History: 1993 a 112.

**217.06 Licenses, how granted; conditions.** Every license issued shall be in the form prescribed by the office 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 office, as to command the confidence of the public and to warrant belief that the business will be conducted honestly and efficiently. The office 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 office 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 office and shall run to the state for the benefit of any claimants against the applicant or the applicant's agents to secure the faithful performance of the obligations of the applicant and the applicant's agents with respect to the receipt, handling, transmission and payment of money in connection with the sale of checks and to reimburse the office 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 office, 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 canceled. Such claimants against the applicant or the applicant's agents may themselves bring suit directly on the bond, or the attorney 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 office 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 office to substitute other securities for those deposited, and shall be required to do so on written order of the office. The licensee shall pay all expenses of maintaining the deposit of obligations deposited in lieu of a corporate surety bond.

History: 1991 a 316

**217.07 Order denying application.** If the office 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 office 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 office 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 office 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 office.

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

**217.09 Revocation; suspension; reinstatement and term of licenses.** (1) The office shall, after complaint, notice and hearing, following the procedure in s. 217.19 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 office to refuse to issue such license.

(2) If the office 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 office 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 office 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 office finds that such grounds for revocation or suspension apply to more than one location operated by such licensee, then the office 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 office that the licensee surrenders such license and returns the license therewith.

(6) The office 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.

History: 1971 c. 211; 1973 c. 3; 1991 a. 316.

**217.10 Powers of office.** The office 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, at any time, the business and examine the books, accounts, records and files used therein of every licensee or agent thereof. The cost of each such examination shall be paid by every licensee so examined within 30 days after demand therefor by the office, 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, including the words authorized under s. 221.49 (2) if applicable.

(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 acknowledgment upon receiving funds from such customer. Such receipt or other acknowledgment 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, the licensee shall deposit the licensee's 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 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.

History: 1981 c. 259; 1991 a. 316.

**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 alcohol beverages for consumption on the premises.

(4) NAME, FORBIDDEN USE. 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.

History: 1981 c. 79 s. 17.

**217.13 Other statutes applicable.** Sections 220.037 and 220.06 apply to this chapter.

History: 1973 c. 3; 1987 a. 252.

**217.14 Liability of licensees.** 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 banking 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.

**217.17 Testimonial powers.** (1) The office may, in relation to any matter within the office's powers, issue subpoenas and take testimony.

(2) Witnesses shall be entitled to the same fees as are allowed to witnesses in courts of record. Such fees shall be audited and paid by the state in the same manner as other expenses of the office are audited and paid. No witness subpoenaed at the instance of any party other than the office shall be entitled to payment of fees by the state, unless the office certifies that the testimony of such witness was material to the hearing or proceeding.

(3) No person shall, without reasonable cause, fail to comply with a subpoena issued under this section, nor refuse to be sworn or to be examined, or to answer a proper question, or produce a pertinent document, when ordered to do so by the official conducting the investigation or proceeding.

History: 1973 c. 3 s. 10; Stats. 1973 s. 217.17.

**217.18 Power to secure evidence.** (1) The office may, by general or special order require licensees to file with the office at such time and in such manner as it may direct, sworn or unsworn reports, or sworn or unsworn answers in writing to specific questions as to any matter upon which the office may demand information under this chapter.

(2) The office or any official, employe or agent authorized by it may, for purposes within the office's powers, have access during business hours to the offices and places of business, books, accounts, papers, records, files, safes and vaults of persons engaged in business as a seller of checks, whether licensees or not.

(3) No person shall refuse, neglect or fail to render any reports or answer required under this section at such time and in such manner as the office may prescribe. No person shall wilfully make any false entry or statement in any report or answer, nor shall wilfully fail to make full and true entries and statements in any report or answer required under authority of this chapter.

History: 1973 c. 3 s. 11; Stats. 1973 s. 217.18.

**217.19 Office orders; rules of procedure.** (1) The office, prior to the issuance of any general order under this chapter, shall hold a public hearing.

(2) The office, prior to the issuance of any special order, shall serve a complaint, prepared in the name of the office, upon the person against whom the complaint is made and shall accompany such complaint by notice of a public hearing to be held in the matter not sooner than 10 days after such service. The person against

whom the complaint is made shall be entitled to be heard in person, or by agent or attorney, and shall have the benefit of subpoena process to compel the attendance of witnesses.

(4) The office shall serve a copy of any special order upon the person against whom the order is issued and such an order shall be effective upon such service, unless otherwise indicated in the order.

(5) A complaint, notice of hearing, subpoena, special order or any other process issued by the office may be served in the same manner that process in a civil action is served.

(6) The office shall make its own rules of practice and procedure for the conduct of hearings and other proceedings before it, not inconsistent with any provision of this chapter or with any other provision of law governing such practice or procedure.

History: 1973 c. 3 s. 12; State 1973 s. 217.19.

**217.20 Court review.** Orders of the office under this chapter shall be subject to review in the manner provided in ch. 227.

History: 1973 c. 3 s. 13; Stats 1973 s. 217.20

**217.21 Records; reports.** (1) The licensee shall keep and use in the licensee's business such books, accounts and records as the office, by general or special order, may find to be necessary and require to enable it to determine whether such licensee is complying with this chapter and with the lawful orders issued hereunder.

(2) Each licensee shall annually, on or before March 15, file a report with the office giving such reasonable and relevant information as the office may, by general or special order, require concerning the business and operations conducted by such licensee within the state. Such report shall be made under oath and shall be in the form prescribed by the office and shall be subject to public inspection in the discretion of the office. The office shall make and publish annually an analysis and recapitulation of such reports.

(3) Reports and records referred to in this section shall be maintained for not less than 6 years by each licensee.

History: 1973 c. 3 ss 13, 17; Stats. 1973 s. 217.21; 1991 a 316.