March 24, 2023 10:53 AM

Check-cashing shops sue state over new fee caps

NICK GARBER

Buck Ennis

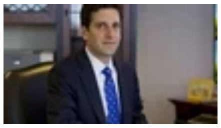
Consumer advocates celebrated in January when the state put a cap on the fees that check-cashing businesses can charge to customers, saying the policy would protect the pocketbooks of the low-income New Yorkers who rely on the businesses.

But check cashers said the cap would decimate an industry already on the decline. Now, seeking to overturn the new rule, a group of check-cashing businesses has filed a lawsuit against the state's Department of Financial Services, whom they accuse of being "dead-set on destroying the industry by regulatory fiat."

"We're struggling to begin with, and this was just the last straw that kind of put us over the edge," said Andrew Siegel, the owner of a group of check-cashing businesses in Brooklyn and Queens. His was one of five businesses to sign onto the lawsuit, a copy of which was shared with *Crain's*.

RELATED

How the state's new finance regulator is approaching the booming crypto scene



Check cashers try lending a hand

As cashless stores proliferate, so does the backlash

The lawsuit, filed Thursday in a Manhattan state court, is led by the Financial Service Centers of New York, a trade group for the check-cashing industry. It argues that the new percentage ceilings were picked arbitrarily, based only on DFS' "ill will toward the industry."

The suit also says the policy's impact runs counter to state law, pointing to a 1994 amendment to New York's banking law stating "it is in the public interest to promote the stability of the check-cashing business." It seeks an injunction to roll back the new rule, followed by a permanent annulment.

"This already-imperiled industry will be further decimated in the coming months and years, with many more companies and stores being forced out of business," the suit reads.

Ubiquitous in poorer neighborhoods and heavily used by people of color, check-cashing stores cater to people who do not have a bank account. The businesses describe themselves as community pillars that provide crucial services, even as advocates assail them as "predatory" for the fees they charge.

Since 2005 New York had allowed check-cashing fees to grow annually by the rate of inflation—the only state in the nation to guarantee such an increase. As a result, by 2021 check-cashing businesses collected $2.27 for every $100.

But Adrienne Harris, the state's financial services commissioner, froze the fee weeks after taking office in early 2022. She cited consumer complaints and the pandemic. Soon after she proposed a permanent rule scrapping the annual raise altogether, replacing it with a two-tiered system that would cap fees at 1.5% for government-issued checks like Social Security or unemployment benefits, and 2.2% or $1—whichever is greater—for all other checks.

"Check cashers are frequently the only way that many underserved New Yorkers–particularly members of immigrant communities and people of color–can access their money," Harris said at the time, calling the existing scheme "punitive" for consumers.

Office of Gov. Kathy Hochul

Adrienne Harris, the state's financial services superintendent, put the new check-cashing fee caps in place

The new caps took effect in January, following a public comment period. The rule won support from a coalition of neighborhood nonprofits, good-government groups and banks. The coalition, led by *Consumer Reports*, agreed that the state should adopt the policy.

“Many users of check-cashing services are unfairly burdened by financial fees that eat away at their limited incomes,” the coalition wrote in a September letter to DFS.

The check-cashing industry pushed just as hard against it, commissioning a report by the accounting firm Ernst & Young that concluded that New York should raise fees to 2.53% to give check cashers the same profitability levels they enjoy in neighboring states.

The new rules hit check cashers at the worst possible time, they argue. Statewide, the number of check-cashing stores fell by 21% from 2010 to 2019, declining to 540 total locations, according to the Ernst & Young report. The total dollar volume of checks fell by about 30% in that span—a drop driven partly by the decline of paper checks and the rise of direct deposit and online bill-paying.

Check cashers who signed onto the lawsuit say the new regulations have already had an impact. RiteCheck, a family-owned firm that runs 13 stores in Harlem and the Bronx, estimates the caps will cost the firm $200,000 in annual revenue. The small chain David's Check Cashing puts its annual losses at up to $660,000, saying the cap caused the company to drop below profitability.

Siegel said his company, Check Changers, has closed three of its six locations since last year and had to forego an employee pay raise, due in part to the new rule.

Responding to consumer criticism, Siegel said his stores do more than charge fees for checks. Many have expanded their offerings in recent years, helping New Yorkers make rent payments or send money to relatives.

"No one's forcing you to use a check-cashing service. They use our services because they like our extended hours, that we're open late, that we speak the language," he said. "Our fees are upfront. At a bank, you don't know what you're paying till you get your statement."

State regulators have not shown much sympathy for check cashers' pleas. In a response to public comments on the proposed caps, DFS shot back that "it is not the job of the department to ensure that any industry is profitable."

The state also accused check cashers of being overly dramatic in their reaction to an 0.07% drop in their fees. By contrast, regulators noted, the larger inflation-adjusted increase from 2.27 to 2.37% that would have occurred this year under the old policy was dismissed by check cashers as "negligible" to consumers.

The department declined to comment on the lawsuit Friday.

Industry groups have had some success challenging DFS rules in the past. In 2018 a state judge struck down a regulation that prevented title insurance companies from passing entertainment and marketing fees on to customers in the form of fees—holding that state legislators, not regulators, would need to implement such a change.