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CS/HB 1277

2012 Legislature

1
2 An act relating to money services businesses; amending
3 s. 560.103, F.S.; defining terms for purposes of
4 provisions regulating money services businesses;
5 amending s. 560.109, F.S.; revising the frequency and
6 notice requirements for examinations and
7 investigations by the Office of Financial Regulation
8 of money services business licensees; amending s.
9 560.111, F.S.; prohibiting money services businesses,
10 authorized vendors, and affiliated parties from
11 knowingly possessing certain paraphernalia used or
12 intended or designed for use in misrepresenting a
13 customer's identity, for which penalties apply;
14 prohibiting certain persons from providing a
15 customer's personal identification information to a
16 money services business licensee and providing
17 penalties; reenacting s. 560.114(1)(h), F.S., relating
18 to penalties for certain prohibited acts by money
19 services businesses, to incorporate amendments made by
20 the act to s. 560.111, F.S., in a reference thereto;
21 amending s. 560.114, F.S.; prohibiting certain acts by
22 money services businesses, authorized vendors, and
23 affiliated parties, for which penalties apply;
24 revising the conditions for which a money services
25 business license may be suspended; amending ss.
26 560.126 and 560.309, F.S.; requiring a money services
27 business licensee to maintain its own federally
28 insured depository account and deposit into the

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 account any payment instruments cashed; requiring a
30 licensee to notify the office and cease to cash
31 payment instruments if the licensee ceases to maintain
32 the account; prohibiting a licensee from accepting or
33 cashing a payment instrument from a person who is not
34 the original payee except under certain circumstances;
35 establishing a limit on the amount of fees that
36 licensees may charge for the direct costs of
37 verification of payment instruments cashed; amending
38 s. 560.310, F.S.; revising requirements for the
39 records that a money services business licensee must
40 maintain related to the payment instruments cashed;
41 providing an effective date.

42

43 Be It Enacted by the Legislature of the State of Florida:

44

45 Section 1. Subsections (9) and (10) of section 560.103,
46 Florida Statutes, are renumbered as subsections (11) and (12),
47 respectively, present subsections (11) through (14) are
48 renumbered as subsections (14) through (17), respectively,
49 present subsections (15) through (27) are renumbered as
50 subsections (19) through (31), respectively, present subsections
51 (28) through (30) are renumbered as subsections (33) through
52 (35), respectively, and new subsections (9), (10), (13), (18),
53 and (32) are added to that section, to read:

54 560.103 Definitions.—As used in this chapter, the term:

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55 (9) "Conductor" means a natural person who presents
56 himself or herself to a licensee for purposes of cashing a
57 payment instrument.

58 (10) "Corporate payment instrument" means a payment
59 instrument on which the payee named on the instrument's face is
60 other than a natural person.

61 (13) "Department" means the Department of Financial
62 Services.

63 (18) "Fraudulent identification paraphernalia" means all
64 equipment, products, or materials of any kind that are used,
65 intended for use, or designed for use in the misrepresentation
66 of a customer's identity. The term includes, but is not limited
67 to:

68 (a) A signature stamp, thumbprint stamp, or other tool or
69 device used to forge a customer's personal identification
70 information.

71 (b) An original of any type of personal identification
72 listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully
73 issued.

74 (c) A blank, forged, fictitious, or counterfeit instrument
75 in the similitude of any type of personal identification listed
76 in s. 560.310(2)(b) which would in context lead a reasonably
77 prudent person to believe that such instrument is an authentic
78 original of such personal identification.

79 (d) Counterfeit, fictitious, or fabricated information in
80 the similitude of a customer's personal identification
81 information that, although not authentic, would in context lead
82 a reasonably prudent person to credit its authenticity.

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83 (32) "Personal identification information" means a
84 customer's name that, alone or together with any of the
85 following information, may be used to identify that specific
86 customer:

87 (a) Customer's signature.

88 (b) Photograph, digital image, or other likeness of the
89 customer.

90 (c) Unique biometric data, such as the customer's
91 thumbprint or fingerprint, voice print, retina or iris image, or
92 other unique physical representation of the customer.

93 Section 2. Subsections (1) and (7) of section 560.109,
94 Florida Statutes, are amended to read:

95 560.109 Examinations and investigations.—The office may
96 conduct examinations and investigations, within or outside this
97 state to determine whether a person has violated any provision
98 of this chapter and related rules, or of any practice or conduct
99 that creates the likelihood of material loss, insolvency, or
100 dissipation of the assets of a money services business or
101 otherwise materially prejudices the interests of their
102 customers.

103 (1) The office may, without advance notice, examine or
104 investigate each licensee as often as is warranted for the
105 protection of customers and in the public interest. However, the
106 office must examine each licensee, ~~but~~ at least once every 5
107 years. ~~A new licensee shall be examined within 6 months after~~
108 ~~the issuance of the license. The office shall provide at least~~
109 ~~15 days' notice to a money services business, its authorized~~
110 ~~vendor, or license applicant before conducting an examination or~~

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111 ~~investigation. However,~~ The office may, without advance notice,
 112 examine ~~conduct an examination or investigate~~ investigation of a
 113 money services business, authorized vendor, ~~or~~ affiliated party,
 114 or license applicant at any time ~~and without advance notice~~ if
 115 the office suspects that the money services business, authorized
 116 vendor, ~~or~~ affiliated party, or license applicant has violated
 117 or is about to violate any provision ~~provisions~~ of this chapter
 118 or any criminal law ~~laws~~ of this state or of the United States.

119 (7) Reasonable and necessary costs incurred by the office
 120 or third parties authorized by the office in connection with
 121 examinations or investigations may be assessed against any
 122 person subject to this chapter on the basis of actual costs
 123 incurred. Assessable expenses include, but are not limited to,
 124 expenses for: interpreters; certified translations of documents
 125 into the English language required by this chapter or related
 126 rules; communications; legal representation; economic, legal, or
 127 other research, analyses, and testimony; and fees and expenses
 128 for witnesses. The failure to reimburse the office is a ground
 129 for denial of a license application, denial of a license
 130 renewal, or for revocation of any approval thereof. Except for
 131 examinations authorized under this section ~~s. 560.109~~, costs may
 132 not be assessed against a person unless the office determines
 133 that the person has operated or is operating in violation of
 134 this chapter.

135 Section 3. Paragraph (g) is added to subsection (1) of
 136 section 560.111, Florida Statutes, subsections (3) and (4) are
 137 renumbered as subsections (4) and (5), respectively, and a new
 138 subsection (3) is added to that section, to read:

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139 560.111 Prohibited acts.—

140 (1) A money services business, authorized vendor, or
141 affiliated party may not:

142 (g) Knowingly possess any fraudulent identification
143 paraphernalia. This paragraph does not prohibit the maintenance
144 and retention of any records required by this chapter.

145 (3) A person other than the conductor of a payment
146 instrument may not provide a licensee engaged in cashing the
147 payment instrument with the customer's personal identification
148 information.

149 Section 4. Paragraph (h) of subsection (1) of section
150 560.114, Florida Statutes, is reenacted, paragraphs (aa) and (bb)
151 are added to that subsection, and subsection (2) of that section
152 is amended, to read:

153 560.114 Disciplinary actions; penalties.—

154 (1) The following actions by a money services business,
155 authorized vendor, or affiliated party constitute grounds for
156 the issuance of a cease and desist order; the issuance of a
157 removal order; the denial, suspension, or revocation of a
158 license; or taking any other action within the authority of the
159 office pursuant to this chapter:

160 (h) Engaging in an act prohibited under s. 560.111.

161 (aa) Failure of a check casher to maintain a federally
162 insured depository account as required by s. 560.309.

163 (bb) Failure of a check casher to deposit into its own
164 federally insured depository account any payment instrument
165 cashed as required by s. 560.309.

166 (2) The office may immediately suspend the license of any

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167 money services business if the money services business fails to:
168 (a) Provide to the office, upon written request, any of
169 the records required by s. ~~ss.~~ 560.123, s. 560.1235, s. 560.211,
170 or s. ~~and~~ 560.310 or any rule adopted under those sections. The
171 suspension may be rescinded if the licensee submits the
172 requested records to the office.

173 (b) Maintain a federally insured depository account as
174 required by s. 560.309.

175
176 For purposes of s. 120.60(6), failure to perform ~~provide~~ any of
177 the acts specified in this subsection ~~above-mentioned records~~
178 constitutes immediate and serious danger to the public health,
179 safety, and welfare.

180 Section 5. Subsection (4) is added to section 560.126,
181 Florida Statutes, to read:

182 560.126 Required notice by licensee.—

183 (4) A licensee that engages in check cashing must notify
184 the office within 5 business days after the licensee ceases to
185 maintain a federally insured depository account as required by
186 s. 560.309(3) and, before resuming check cashing, must
187 reestablish such an account and notify the office of the
188 account.

189 Section 6. Subsections (3), (4), and (8) of section
190 560.309, Florida Statutes, are amended to read:

191 560.309 Conduct of business.—

192 (3) A licensee under this part must maintain and deposit
193 payment instruments into its own a commercial account at a
194 federally insured financial institution. If a licensee ceases to

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195 maintain such a depository account, the licensee must not engage
 196 in check cashing until the licensee reestablishes such an
 197 account and notifies the office of the account as required by s.
 198 560.126(4) ~~or sell payment instruments within 5 business days~~
 199 after the acceptance of the payment instrument.

200 (4) A licensee may not accept or cash a multiple payment
 201 instrument ~~instruments~~ from a person who is not the original
 202 payee; however, this subsection does not prohibit a licensee
 203 from accepting or cashing a corporate payment instrument from a
 204 conductor who is an authorized officer of the corporate payee
 205 named on the instrument's face, unless the person is licensed to
 206 cash payment instruments pursuant to this part and all payment
 207 instruments accepted are endorsed with the legal name of the
 208 person.

209 (8) Exclusive of the direct costs of verification, which
 210 shall be established by rule not to exceed \$5, a check casher
 211 may not:

212 (a) Charge fees, except as otherwise provided by this
 213 part, in excess of 5 percent of the face amount of the payment
 214 instrument, or \$5, whichever is greater;

215 (b) Charge fees in excess of 3 percent of the face amount
 216 of the payment instrument, or \$5, whichever is greater, if such
 217 payment instrument is the payment of any kind of state public
 218 assistance or federal social security benefit payable to the
 219 bearer of the payment instrument; or

220 (c) Charge fees for personal checks or money orders in
 221 excess of 10 percent of the face amount of those payment
 222 instruments, or \$5, whichever is greater.

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223 Section 7. Section 560.310, Florida Statutes, is amended
224 to read:

225 560.310 Records of check cashers and foreign currency
226 exchangers.—

227 ~~(1) In addition to the record retention requirements~~
228 ~~specified in s. 560.1105,~~ A licensee engaged in check cashing
229 must maintain for the period specified in s. 560.1105 a copy of
230 each payment instrument cashed.

231 (2) If the payment instrument exceeds \$1,000, the
232 following additional information must be maintained ~~the~~
233 ~~following:~~

234 (a) Customer files, as prescribed by rule, on all
235 customers who cash corporate ~~or third-party~~ payment instruments
236 that exceed ~~exceeding~~ \$1,000.

237 ~~(b) For any payment instrument accepted having a face~~
238 ~~value of \$1,000 or more:~~

239 ~~1.~~ A copy of the personal identification that bears a
240 photograph of the customer used as identification and presented
241 by the customer. Acceptable personal identification is limited
242 to a valid driver ~~driver's~~ license; a state identification card
243 issued by any state of the United States or its territories or
244 the District of Columbia, and showing a photograph and
245 signature; a United States Government Resident Alien
246 Identification Card; a passport; or a United States Military
247 identification card.

248 (c)2. A thumbprint of the customer taken by the licensee
249 when the payment instrument is presented for negotiation or
250 payment.

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251 (d)~~(e)~~ A payment instrument log that must be maintained
252 electronically as prescribed by rule. For purposes of this
253 paragraph, multiple payment instruments accepted from any one
254 person on any given day which total \$1,000 or more must be
255 aggregated and reported on the log.

256 (3)~~(2)~~ A licensee under this part may engage the services
257 of a third party that is not a depository institution for the
258 maintenance and storage of records required by this section if
259 all the requirements of this section are met.

260 Section 8. This act shall take effect July 1, 2012.