

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/CS/SB 590

INTRODUCER: Criminal Justice Committee; Banking and Insurance Committee; and Senator Richter

SUBJECT: Check Cashing Services

DATE: February 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 590 revises provisions relating to the regulation of money services businesses by the Office of Financial Regulation (OFR). Money services businesses (MSBs) offer financial services such as check cashing, money transmittals (wire transfers), sales of monetary instruments and currency exchange, and deferred presentment transactions (“payday loans”) outside the traditional banking environment. The bill provides the following changes:

- Allows the OFR to suspend the license of a MSB immediately pursuant to s. 120.60(6), F.S., if specified criminal charges are filed against a natural person listed on the application or if such person is arrested for specified crimes.
- Expands prohibited acts to include a violation under s. 560.310(2)(d), F.S., relating to the OFR database reporting requirements applicable to check cashers. A person who knowingly and willfully violates this provision commits a third-degree felony.
- Provides that a deferred presentment transaction is void if the person conducting the transaction is not authorized pursuant to ch. 560, F.S., and such person has no right to collect funds relating to such a transaction.
- Updates outdated cross references to federal regulations.

II. Present Situation:

Regulation of Money Services Businesses

The Office of Financial Regulation (OFR) is responsible for safeguarding the financial interests of the public by licensing, examining, and regulating depository institutions and other entities, such as money service businesses, which are subject to the provisions of ch. 560, F.S. Money service businesses (MSB) are regulated under two license categories.¹ Money transmitters and payment instrument issuers are regulated under part II of ch. 560, F.S., while check cashers and foreign currency exchangers are regulated under part III. To qualify for licensure as a MSB under ch. 560, F.S., an applicant must meet the following requirements:

- Demonstrate to the OFR the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business or deferred presentment provider will operate lawfully.
- Be legally authorized to do business in Florida.
- Be registered as a money services business with the federal Financial Crimes Enforcement Network (FinCEN) as required by 31 C.F.R. s. 103.41, if applicable.
- Have an anti-money laundering program in place that meets the requirements of 31 C.F.R. s. 103.125.
- Provide the OFR with information required under ch. 560, F.S., and related rules.²

The Federal Bank Secrecy Act of 1970 (BSA) established the regulatory framework to prevent and detect money laundering. The BSA³ requires certain MSBs to register with FinCEN, if they conduct more than \$1,000 in business (with one person in one or more transactions on the same day) in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing or exchange. However, if a business provides money transfer services in any amount, registration is required. A business that meets the definition of a MSB must comply with both the general obligations that apply to all financial institutions and the specific obligations that apply to MSBs.

The U.S. Department of Treasury has adopted regulations to implement the provisions of the Bank Secrecy Act under 31 C.F.R. s. 103. These regulations require MSBs to maintain certain records and report certain currency transactions and suspicious activities. The MSBs are required to establish an anti-money laundering program (AML), to obtain and verify customer identity, and to document certain information concerning the transactions.

Section 560.111, F.S., specifies prohibited acts under ch. 560, F.S., and provides penalties for noncompliance. Section 560.114, F.S., authorizes the OFR to take disciplinary actions if a MSB violates provisions of ch. 560, F.S., and 31 C.F.R. Pursuant to s. 560.114, F.S., the OFR may immediately suspend the license of a MSB that fails to provide the office specified records or

¹ Section 560.104, F.S., provides that banks, credit unions, trust companies, offices of an international banking corporation, or other financial depository institutions organized under the laws of any state of the United States are exempt from the provisions of ch. 560, F.S.

² Section 560.1401, F.S.

³ The Bank Secrecy Act (BSA) is the name commonly given to a federal statute codified at Title 31, U.S. Code, sections 5311-5330.

fails to maintain a federally insured depository account. For purposes of s. 120.60(6), F.S., the failure to provide such records or maintain the account constitutes immediate and serious danger to the public health, safety, and welfare. Section 120.60(6), F.S., provides:

- (6) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:
 - (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
 - (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
 - (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57, F.S., shall also be promptly instituted and acted upon.

Licensure of Check Cashers

Generally, a person may not engage in the business of cashing payment instruments without obtaining a license from the OFR.⁴ However, current law provides that the requirement for licensure as a check casher does not apply to a person cashing payment instruments that have an aggregate face value of less than \$2,000 per person, per day and that are incidental to the retail sale of goods or services, within certain parameters.⁵

Licensed check cashers are required to comply with federal MSB requirements, if applicable, and state requirements, such as maintaining specified records and reporting information to the OFR. Section 560.310, F.S., requires licensed check cashers to maintain copies of cashed checks, and for checks exceeding \$1,000, the check casher must submit certain transactional data to an electronic log or check-cashing database.⁶

Deferred Presentment Providers

A deferred presentment provider (DPP) must be licensed under part II or part III, ch. 560, F.S., file a declaration of intent with the OFR, and meet other requirements. Part IV of ch. 560, F.S., regulates DPPs and deferred presentment transactions. A deferred presentment transaction means

⁴ Section 560.303, F.S.

⁵ Section 560.304, F.S.

⁶ Last year, legislation was enacted (Chapter 2013-139, L.O.F.) that provides for the establishment of a check-cashing database within the OFR. Regulators and law enforcement agencies will use the database to target and identify persons involved in workers' compensation insurance premium fraud and other criminal activities. The act authorized the OFR to issue a competitive solicitation for a statewide, real time, online check cashing database. After completion of the competitive solicitation for the database, the OFR may include a request for funding in their FY 2014-2015 Legislative Budget Request. After the implementation of the new database, licensed check cashers will be required to enter specified transactional information into the database. Currently, for checks exceeding \$1,000, licensed check cashers are required to record certain data in an electronic log.

providing currency or a payment instrument in exchange for a person's check and agreeing to hold the person's check for a period prior to presentment, deposit, or redemption.⁷ The face amount of a check taken for a deferred presentment may not exceed \$500.⁸ A DPP may charge a maximum fee of 10 percent of the currency or payment instrument provided (exclusive of the verification fee). Section 560.404(19), F.S., prohibits a DPP from entering into a deferred presentment agreement with a customer if the customer has an outstanding deferred presentment agreement with any DPP, or terminated an agreement within the previous 24 hours.

III. Effect of Proposed Changes:

Authority to Suspend License of a Money Services Business

The bill revises the Office of Financial Regulation's (OFR's) authority to suspend the license of a money services business (MSB) if the OFR has reason to believe that a licensee poses an immediate, serious danger to the public health, safety, and welfare pursuant to s. 120.60(6), F.S. The bill authorizes the OFR to suspend the license of a MSB immediately if a natural person required to be listed on the application pursuant to s. 560.141(1)(a)3., F.S.,⁹ is criminally charged with, or arrested for a crime described in s. 560.114(1)(o),¹⁰ s. 560.114(1)(p),¹¹ or s. 560.114(1)(q).¹² Under current law and for purposes of s. 120.60(6), F.S., the OFR is authorized to suspend the license of a MSB immediately if the MSB fails to provide to the OFR specified records required under s. 560.123, s. 560.1235, s. 560.211, or s. 560.310, F.S., or fails to maintain a federally insured depository account as required by s. 560.309, F.S. The bill requires the commissioner of the OFR, or his or her designee, to conduct such a proceeding and issue the final order. Currently, s. 20.121(3)(c), F.S., designates the director (commissioner) as the agency head for purposes of final agency action under ch. 120, F.S.

Prohibited Acts/Check Cashers

The bill creates an additional prohibited act and a new criminal violation. Any licensed check casher who knowingly and willfully violates the check casher database or electronic log reporting requirements of s. 560.310(2)(d), F.S., commits a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S. Current law authorizes the OFR to take certain disciplinary actions, such as denying, suspending, or revoking a license, if a check casher fails to maintain and provide specified records.¹³ The OFR is also authorized to impose a fine of at least \$1,000 but not more than \$10,000 for each violation of ch. 560, F.S.¹⁴ Section 560.1105, F.S., relating to retention of records, provides that any person who willfully

⁷ Section 560.402(3), F.S.

⁸ Section 560.404(5), F.S.

⁹ These persons include each officer, director, responsible person, compliance officer, controlling shareholder, and any other person who has a controlling interest in the MSB as provided in section 560.127, F.S.

¹⁰ Having been convicted of, or entered a plea of guilty or nolo contendere to, any felony or crime punishable by imprisonment of 1 year or more under the law of any state or the United States, which involves fraud, moral turpitude, or dishonest dealing, regardless of adjudication.

¹¹ Having been convicted of, or entered a plea of guilty or nolo contendere to, a crime under 18 U.S.C. s. 1956 or 31 U.S.C. s. 5324, regardless of adjudication.

¹² Having been convicted of, or entered a plea of guilty or nolo contendere to, misappropriation, conversion, or unlawful withholding of moneys belonging to others, regardless of adjudication.

¹³ Section 560.114(2)(a), F.S.

¹⁴ Section 560.114(7), F.S.

fails to comply with s. 560.1105, F.S., or ss. 560.211, F.S.,¹⁵ and 560.310, F.S., commits a felony of the third degree.

Deferred Presentment Providers

The bill provides that a deferred presentment transaction conducted by a person not authorized under ch. 560, F.S., to conduct such transaction as a DPP is void, and the unauthorized person has no right to collect, receive, or retain any principal, interest, or charges relating to such transactions.

Code of Federal Regulations Updates

The bill updates cross references to the Code of Federal Regulations to incorporate updates by FinCEN.¹⁶ On March 1, 2011, FinCEN transferred its regulations from 31 CFR Part 103 to 31 CFR Chapter X.

Effective Date

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Any deferred presentment transaction conducted by a person who is not authorized by the Office of Financial Regulation pursuant to ch. 560, F.S., to engage in such transactions is

¹⁵ Section 560.211, F.S., specifies recordkeeping and document retention requirements applicable to money transmitters and payment instrument issuers.

¹⁶ FinCEN is the Financial Crimes Enforcement Network.

void and such person has no right to collect, receive, or retain any funds relating to such transaction. Consumers who have entered into such agreements would benefit.

C. Government Sector Impact:

The bill provides that any licensed check casher who knowingly and willfully violates the check casher database or electronic log reporting requirements of s. 560.310(2)(d), F.S., commits a third degree felony.

The Criminal Justice Impact Conference (CJIC) provides the final, official estimate of the prison bed impact, if any, of legislation. The CJIC has not yet reviewed the bill. However, the Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 560.111, 560.114, 560.1235, 560.125, 560.1401, 560.141, and 560.309.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Criminal Justice on February 17, 2014:

The CS corrects references to the Code of Federal Regulations throughout the bill.

CS by Banking and Insurance on February 4, 2014:

The CS provides the following changes:

- Expands prohibited acts to include violations under s. 560.310(2)(d), F.S., relating to the database/electronic log reporting requirements applicable to check cashers. A person who knowingly and willfully violates this provision commits a third-degree felony.
- Reinstates current law that provides if a MSB willfully violates s. 560. 114(5), F.S., relating to certain ch. 560, F.S., requirements,¹⁷ the MSB commits a third-degree felony.

¹⁷ Section 560.403, F.S., requires that persons engaging in deferred presentment transactions must be licensed under part II or III, ch. 560.403, F.S., and file a declaration of intent with the OFR and meet other requirements. Section 560.404, F.S., specifies disclosures for DPP written agreements, terms and conditions of such transactions, and prohibitions relating to such

- Reinstates current law relating to exemptions from licensure for check cashers, which provides that licensure as a check casher does not apply to a person cashing payment instruments that have an aggregate face value of less than \$2,000 per person, per day and that are incidental to the retail sale of goods or services, within certain parameters.
- Provides technical changes to correct cross references.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

transactions. Section 560.405, F.S., specifies requirements and prohibitions relating to the deposit and redemption of a deferred presentment transaction.