

**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 General Government Appropriations Committee

BILL: CS/CS/CS/SB 2158

INTRODUCER: General Government Appropriations Committee, Finance and Tax Committee, Banking and Insurance Committee, and Banking and Insurance Committee

SUBJECT: Money Services Businesses

DATE: April 8, 2008                      REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|----------------|----------------|-----------|------------------|
| 1. | Johnson        | Deffenbaugh    | BI        | <b>Fav/CS</b>    |
| 2. | Erickson       | Cannon         | CJ        | <b>Favorable</b> |
| 3. | ODonnell       | Johansen       | FT        | <b>Fav/CS</b>    |
| 4. | Johnson/Kynoch | DeLoach        | GA        | <b>Fav/CS</b>    |
| 5. |                |                |           |                  |
| 6. |                |                |           |                  |

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Money services businesses (MSBs), also known as money transmitters, offer financial services, such as check cashing, money transmittals (wire transfers), sales of monetary instruments, and currency exchange outside the traditional banking environment. The MSB industry is expanding rapidly with limited supervision and has become an increasingly prevalent conduit for laundering illicit proceeds.

This bill incorporates recommendations from a recently released statewide grand jury report, *Check Cashers: A Call for Enforcement* and from the Senate Interim Project 2008-101, *Regulation of Money Services Businesses*, the Office of Financial Regulation (office), and other stakeholders, designed to enhance the regulation of money services businesses in Florida. The bill provides the following changes.

**General Provisions**

- Reduces application and renewal fees for part II and part III licensees by 25 percent.

- Expands prohibited acts to include violations under 18 U.S.C., s. 1957, which pertains to engaging in monetary transactions in property derived from specified unlawful activity. This violation would be punishable as a third-degree felony.
- Makes it a violation of state law, subject to administrative sanctions, for a licensee to fail to comply with federal regulations relating to the prevention of money laundering such as maintaining records and preparing reports.
- Authorizes the office to immediately suspend or revoke a license if a licensee fails to provide requested records at the time of an exam.
- Requires licensees to incur the costs of an examination. An examination of a licensee is required at least once every five years. Currently, there is not a statutory schedule and less than 40 percent of licensees have been examined in the last five years.
- Requires the office to examine a new licensee within six months of being licensed.
- Increases the record retention requirements for licensees from three to five years. The federal Bank Secrecy Act requires MSBs registered with the federal government to retain records for five years.
- Requires the office to make referrals of violations of law that may be a felony to the appropriate criminal investigatory agency having jurisdiction.
- Requires the office to adopt disciplinary rules concerning violation of the law.
- Requires the office to submit an annual report to the Legislature summarizing its activities relating to the regulation of ch. 560 entities, including examinations, investigations, referrals and the disposition of such referrals.
- Provides technical, conforming changes to reflect changes in terminology and technology.

### **Money Transmitter Provisions**

- Requires a money transmitter to be organized as a limited liability company, limited liability partnership, or a corporation to assist in the determination of net worth requirements.
- Creates a definition for net worth and increases the maximum net worth requirements to \$2 million. The net worth requirements per location is reduced from \$50,000 to \$10,000.
- Revises the requirement for the registration of authorized vendors to require licensees to notify the office within 60 days after the authorized vendor engages in business on behalf of the licensee. Currently, a licensee is required to notify the office within 60 days after opening a location or authorizing an authorized vendor to operate on behalf of the licensee.
- Requires all licensees to submit annual audited financial reports that are used to determine whether net worth and other safety and soundness requirements are met.
- Clarifies the responsibilities of licensees for the acts of its vendors.

### **Check Cashier Provisions**

- Eliminates the “incidental business” exemption from registration. Currently, the law provides that a person is engaged in check cashing which is incidental to its retail business if the check cashing compensation at each location does not exceed five percent of the total gross income of the retail business for the prior year. The bill exempts from licensure a check cashier that engages in a check cashing transaction that is less than \$2,000 per person per day, or a person cashing federal tax refunds checks in an amount of less than \$4,000 per person.

- Requires a customer to present an acceptable identification and provide a thumbprint for checks greater than \$1,000.
- Increases security at licensed check cashing locations by requiring the installation of security cameras or bullet-proof glass.
- Requires check cashers subject to licensure to submit suspicious activity reports (SARs) to the federal government, if applicable. Currently, check cashers are not required to submit SARs under federal MSB laws and regulations.
- Requires a licensed check casher to have a commercial account with a federally insured financial institution.

**Deferred Presentment Providers Provisions:**

- Requires a deferred presentment provider to notify the office within 15 business days after ceasing operations. The bill authorizes the Financial Services Commission to adopt rules regarding the reconciliation of open transactions. If the deferred presentment provider does not comply with the notice requirement, the office is authorized to take administrative action to release all open and pending transactions in the database after the office becomes aware of the closure.
- Prohibits a deferred presentment provider from accepting more than one check or authorization to initiate more than one automated clearinghouse transaction to collect on a deferred presentment transaction for a single transaction.
- Prohibits a deferred presentment provider from assessing the costs of collections, other than charges for insufficient funds as allowed by law, without a judgment from a court of competent jurisdiction. This same provision is also added to s. 560.309, F.S., relating to check cashers.

This bill substantially amends the following sections of the Florida Statutes: 560.103, 560.104, 560.105, 560.109, 560.111, 560.113, 560.114, 560.115, 560.116, 560.118, 560.119, 560.121, 560.123, 560.124, 560.125, 560.126, 560.127, 560.128, 560.129, 560.203, 560.204, 560.205, 560.208, 560.209, 560.210, 560.211, 560.212, 560.213, 560.303, 560.304, 560.309, 560.310, 560.402, 560.403, 560.404, 560.405, 560.406, 499.005, 499.0691, 501.95, 538.03, 896.101, 896.104, and 921.0022. The bill creates the following sections of the Florida Statutes: 560.1091, 560.1092, 560.110, 560.1235, 560.140, 560.141, 560.142, 560.143, and 560.2085. The bill repeals the following sections of the Florida Statutes: 560.101, 560.102, 560.106, 560.1073, 560.108, 560.112, 560.117, 560.200, 560.202, 560.206, 560.207, 560.301, 560.302, 560.305, 560.306, 560.307, 560.308, 560.401, and 560.407.

**II. Present Situation:**

The MSB industry assists in the remittance of funds within the U.S. and to other countries and also provides check cashing and payment instrument issuing services, such as traveler's checks and money orders. Persons without checking or savings accounts comprise an estimated ten million households or approximately 75 million individuals in the U.S.

Currently, Florida ranks first in the nation with respect to the total number of MSB firms, branches, and vendors (approximately 35,000) registered with the state regulator, the Office of Financial Regulation. In recent years, an increasing number of state and federal law enforcement

actions have been taken against MSBs. Many of these actions have targeted those entities attempting to avoid the payments of state and federal taxes and workers' compensation premiums. Check cashers, in particular, can be used, knowingly or unknowingly, as facilitators of fraudulent insurance activity or money laundering activities.

### **Federal Regulation**

The Financial Crimes Enforcement Network of the U.S. Department of Treasury (FinCEN) serves as the nation's financial intelligence unit and is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crimes. The FinCEN administers the Bank Secrecy Act.

The federal Bank Secrecy Act of 1970, which established the regulatory framework to prevent and detect money laundering, was strengthened in 2001 by the U.S. Patriot Act. The Bank Secrecy Act requires traditional banks and MSBs, as defined by federal regulations, to establish written anti-money laundering programs, maintain certain records, and file reports that have a high degree of usefulness in criminal and regulatory proceedings. The 2001 law included additional measures to prevent, detect, and prosecute terrorism activities and international money laundering. Many of the federal provisions of the Bank Secrecy Act have been codified in ch. 560, F.S., which has provided the Office of Financial Regulation, the state regulator, with additional compliance and enforcement tools.

Generally, a MSB is required to register with FinCEN if it conducts 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, it is required to be registered.

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, which requires MSBs to maintain certain records and report certain currency transactions and suspicious activities. A MSB is also required to establish an anti-money laundering program, to obtain and verify customer identity, and to document certain information concerning the transactions.

Currency dealers or exchangers, issuers, sellers or redeemers of money orders or traveler's checks, money transmitters, and the U.S. Postal Service are required to file suspicious activity reports if a transaction is suspicious and the transaction involves \$2,000 or more. However, if the transaction involves an issuer of traveler's checks or money orders, the threshold is \$5,000. Presently, the SAR requirement does not apply to check cashers or to a seller or redeemer of stored-value cards. Cash transaction reports are required to be filed for cash transactions involving more than \$10,000.

### **State Regulation of Money Services Businesses**

In 1994 the Legislature enacted the Money Transmitters' Code, (code) ch. 560, F.S. The code defines the term "money transmitter" to mean any person located in or doing business in this state who acts as a payment instrument seller, foreign currency exchanger, check casher, funds

transmitter, or deferred presentment provider (payday loan lender). The office is responsible for the regulation of the money transmitter industry (or money services businesses), which includes payment instrument sellers, foreign currency exchangers, check cashers, funds transmitters, and deferred presentment providers under the provisions of the code.

#### *Licensure Requirements*

In the last five years, the number of regulated entities has experienced dramatic growth. In fiscal year 2002-03, there were 690 licensed check cashers and money transmitters. For fiscal year ending 2006-07, there were 1,435 licensees.

Money transmitters or MSBs are registered under the following license categories: wire transfer businesses and money order sellers (Part II of ch. 560, F.S.) and check cashers and foreign currency exchangers (Part III of ch. 560, F.S.). Authorized vendors of a funds transmitter or payment instrument seller (part II registrant) acting within the scope of authority conferred by the registrant are exempt from regulation. Banks, credit unions, trust companies, associations, 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.

Part IV of ch. 560, F.S., regulates deferred presentment provider transactions (payday loans). A "deferred presentment provider" is a person who engages in a deferred presentment transaction, which is to provide currency or a payment instrument in exchange for a person's check and agreeing to hold the person's check for a period of time prior to presentment, deposit, or redemption. A deferred presentment provider must be licensed as a money transmitter pursuant to part II or part III of ch. 560, F.S.

#### *Examinations*

Currently there are 20 positions dedicated to the regulation of MSB activities. The examination process is intended to provide ongoing regulatory oversight. There is no examination schedule mandated by law. The office is authorized to contract with an independent third-party to conduct such examinations. However, the office has never exercised this option.

#### *Recordkeeping and Reporting Requirements*

Generally, fund transmitters and check cashers are required to maintain specified accounts, books, and other records for a period of at least three years, pursuant to ss. 560.211(1) and 560.310(1), F.S. Any person who willfully fails to comply with this requirement commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. Failure to maintain, preserve, and keep available for examination all books, accounts, or documents required by specified federal provisions may result in disciplinary action by the office.

Section 560.123, F.S., "The Florida Control of Money Laundering in Money Transmitters Act," requires money transmitters to submit reports of certain financial transactions and maintain specified records and provides administrative and criminal penalties for noncompliance.

Specifically, the section requires MSBs to comply with the enforcement, and reporting provisions of s. 655.50, F.S., relating to reports of transactions of currency reports and monetary instruments. A licensee must file a cash transaction report if the value of a transaction involving currency or a payment instrument is in excess of \$10,000. A person who willingly violates any provision of s. 560.123, F.S., commits a felony and is subject to criminal penalties, based on the value of the transaction.

Section 560.123, F.S., also authorizes the office to impose an administrative fine against any person found to have violated any provision of this section in an amount not to exceed \$10,000 per day for each willful violation or \$500 a day for each negligent violation. In addition, pursuant to s. 560.117, F.S., the office may impose an administrative fine, not to exceed \$10,000, for each violation of the code.

#### *Referrals by the Office*

According to the office, a referral resulting from examination or an investigation case is made when violations of law or administrative rules have been documented by evidence and the office seeks legal assistance in taking enforcement action. The office stated that “criminal referrals are frequently made to the State Attorney’s office, the Office of Statewide Prosecution, and the United States Attorney’s office.”

Committee staff reviewed the disposition of referrals made to state and federal agencies during the last four fiscal years (2003-2004 through 2006-2007). During that period, the office indicated that a total of 11 referrals were made to one or more state or federal law enforcement agencies.

#### *Recent Law Enforcement Efforts in Florida Related to MSB Activities*

In 2006, the Department of Financial Services, Division of Insurance Fraud, together with the Broward County Sheriff’s office, the Palm Beach County Sheriff’s office, and the Office of the Statewide Prosecutor arrested six people for racketeering and conspiracy to commit racketeering. Shell corporations were used to hide uninsured construction workers, thereby avoiding the payment of state and federal taxes and workers’ compensation insurance premiums. The shell companies, which had no employees, were used to secure minimum workers’ compensation insurance coverage. Contractors engaged these shell companies because of their low bids, which were due to the misrepresentation of workers’ compensation premium. A contractor would write a check to the shell company and then representatives of the shell company would cash the check at a check cashing store. A local check cashing company would charge a fee for cashing the check. The shell company would also take a fee for providing the certificate of insurance to the contractor. The remaining cash would be given to the contractor who wrote the check. The construction day laborers were then paid in cash with the remaining funds. It is estimated that at least \$15 million was laundered through this scheme.

#### **2008 Statewide Grand Jury Related to Check Cashing Activities**

In August 2007, the Supreme Court of Florida ordered the empanelment of a statewide grand jury to investigate various criminal offenses, including activities relating to check cashers. The

grand jury has recently issued its report: *Check Cashers: A Call for Enforcement*. The findings of the report have been incorporated into the bill.

### **III. Effect of Proposed Changes:**

#### **Part I – General Provisions**

The bill reduces the application and renewal fees for a part II and part III licensees by 25 percent since a licensee will now be incurring the costs of an examination.

The bill expands prohibited acts delineated in s. 560.111, F.S., to include violations under 18 U.S.C. s. 1957, which pertains to engaging in monetary transactions in property derived from specified unlawful activity. This violation would be punishable as a third-degree felony. The bill also expands the acts, under s. 560.114, F.S., that would be grounds for taking disciplinary action against a licensee to include: conviction of a crime under 18 U.S.C., ss. 1957 or 1960 (unlicensed activity); failure to pay a fine assessed by the office within 30 days of the due date; noncompliance with recordkeeping requirements relating to reports of transportation of current or monetary instruments, being the subject of final agency action issued by an appropriate regulator for engaging in unlicensed activity as a MSB or deferred presentment provider, and failure by a licensee to supervise its authorized vendors pursuant to s. 560.208, F.S., or s. 560.2088, F.S.

The bill creates a definition for the term, “money services businesses,” which is based on the current definition of the term, “money transmitter,” in s. 560.113(11), F.S., that was created in 1994. Since that time, federal laws and regulations and other states have replaced the term, “money transmitter,” with the term, “money services business” or “MSB,” which includes part II and part III registrants. The term, “money services business” excludes deferred presentment providers since the federal law does not include such entities in its definition of an MSB. The term, “affiliated party,” is added, which is similar to the current definition of the term, “money transmitter affiliated party,” in s. 560.113(12), F.S.; however, it excludes an authorized vendor and an independent contractor of a money transmitter (or MSB). These persons are excluded from the definition of affiliated party since they do not generally exercise financial or management control of a licensee.

Section 560.140, F.S., clarifies that an applicant must establish an anti-money laundering program, as a condition of licensure. Also, an applicant must be registered with FinCEN, if applicable. A licensee and authorized vendor must maintain and update, as necessary, an anti-money laundering program in accordance with 31 CFR s. 103.125. The office is required to adopt disciplinary rules.

A licensee would be required to incur the costs of an examination. The office is authorized to immediately suspend or revoke a license for failure to provide records on request. Presently, the licensure and renewal fees are the only funding sources available for this regulatory program. However, the revenue derived from fees does not adequately fund or allow for the establishment of a comprehensive, risk-based examination schedule by in-house examiners. The last increase in fees for ch. 560 licensees occurred in 2001. The bill requires the office to conduct an examination of a licensee at least once every five years. Currently, there is no statutory schedule

and less than 40 percent of licensees have been examined during the last five years. Additionally, the office is required to examine a new licensee within six months under the bill. Although the office currently has the authority to contract with third parties to conduct examinations, which could address some of their staffing issues, the office has never engaged contract examiners. The bill also provides criteria relating to fees and the use of contract examiners.

The bill increases the record retention period for licensees from three to five years. The federal Bank Secrecy Act requires MSBs registered with the federal government to retain records for five years. The office is authorized to require a licensee, at the licensee's expense, to provide a certified translation of records that are written in a language other than English.

The bill requires the office to make referrals of alleged violations of law that may be a felony to the appropriate criminal investigatory agency having jurisdiction. Only 11 referrals were made to one or more state or federal law enforcement agencies during the last four fiscal years (2003-04 through 2006-07).

The bill authorizes the office to seek restitution on behalf of customers and allows the office to request the appointment of a receiver. Currently, these provisions are not addressed in ch. 560, F.S.

To evaluate the performance and resource needs of this regulatory program, the bill requires the office to submit an annual report to the Legislature summarizing its activities relating to the regulation of ch. 560 entities, including examinations, investigations, referrals and the disposition of such referrals.

## **Part II – Payment Instruments and Funds Transmission**

The definition of the term, “money transmitter,” is revised to require money transmitters to be organized as corporations, limited liability companies, or limited liability partnerships. Currently, sole proprietors are also eligible for licensure as money transmitters. This change is made to address safety and soundness concerns regarding personal assets or other assets not in the name of a business being used for purposes of calculating or artificially inflating net worth.

Section 560.103, F.S., establishes the definition of the term, “net worth,” to mean assets minus liabilities as determined in accordance with generally accepted accounting principals. The bill increases the maximum net worth requirement per licensee from \$500,000 to \$2,000,000. The bill also reduces the net worth requirements per location from \$50,000 to \$10,000 per location.

To provide greater consumer protection, the bill requires all part II licensees to submit annual financial audit reports, which are used to determine whether net worth and other safety and soundness requirements are met. Generally, a part II registrant is required to submit annual, audited financial statements unless it is exempt pursuant to s. 560.118(2)(a), F.S. The current exemption applies to licensees with 50 or fewer employees and vendors and licensees with less than \$200,000 in transactions.

The bill revises the notification process and requirements for a licensee pertaining to the registration of authorized agents is revised. Licensees would be required to notify the office



within 60 days after an authorized vendor commences business on behalf of a licensee. The bill clarifies that the registration fee of \$50 is due even if the authorized vendor is terminated within the 60-day period. Currently, a licensee must notify the office within 60 days after opening a location or authorizing an authorized vendor to operate on behalf of the licensee.

The bill requires a licensee to place customer assets in a segregated account and maintain separate accounts for operating capital and the clearing of customer funds. The bill requires that transmitted funds be available to the designated recipient within ten business days after receipt.

Section 560.2085, F.S., specifies certain information that must be contained in the licensee's written contract with an authorized vendor. These items include the scope and nature of the relationship and responsibilities of the vendor. The licensee is required to develop and implement written policies and procedures to monitor compliance with applicable state and federal laws by its authorized agents.

### **Part III – Check Cashing and Foreign Currency Exchange**

The bill eliminates the incidental business exemption from licensure for certain check cashers. Currently, the law provides that a person is engaged in check cashing which is incidental to its retail business if the check cashing compensation at each location does not exceed five percent of the total gross income of the retail business for the prior year. The bill would require a check casher to register if it engages in a check cashing transaction that exceeds \$2,000 per person per day. A person cashing federal income tax refund checks in an amount of less than \$4,000 per person would also be exempt from the licensure requirements.

The bill requires a customer to present an acceptable form of identification, as specified in the bill, and provide a thumbprint for checks with a face value that exceeds \$1,000. Under current law, identification is not required to be provided by the customer. In fact, s. 560.309, F.S., allows a licensee to charge a higher fee if the customer does not provide proof of identification. The bill increases security at licensed check cashing locations by requiring the installation of security cameras, or bullet-proof glass. A licensed check casher is required to place assets that are the property of a customer in a segregated account in a federally insured financial institution and maintain separate accounts.

The bill eliminates the ability of a check casher to charge a higher fee if the customer presenting the check does not provide identification. The federal Bank Secrecy Act requires check cashers and other MSBs to verify the identity of their customers. Currently, a check casher may charge up to five percent of the face amount of a payment instrument, or six percent without the provision of an identification or five dollars, whichever is greater, if such payment instrument is not the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument. For such state or federal payments, the fees are capped at three and four percent, respectively. The bill also requires check cashers to maintain customer files on all customers who cash corporate or third party checks exceeding \$1,000.

The bill requires check cashers, subject to licensure requirements, to submit suspicious activity reports to the federal government, if applicable. Currently, check cashers are not required to

submit SARs under state or federal MSB laws. However, part II registrants are subject to the SARs requirements under state and federal laws.

#### **Part IV – Deferred Presentment Provider Transactions (“Payday Loans”)**

The bill requires a deferred presentment provider to notify the office within 15 business days after ceasing operations. Pursuant to s. 560.404, F.S., the office maintains a database of deferred presentment transactions to ensure that consumers do not have more than one outstanding transaction at any one time. The deferred presentment provider is required to enter certain data regarding a transaction and verify whether any open deferred presentment transactions exist for a particular person. The office has encountered problems in which the vendor has ceased operations and has failed to reconcile open transactions in the database. The bill authorizes the Financial Services Commission to adopt rules regarding the reconciliation of open transactions. If the deferred presentment provider does not comply with the notice requirement, the office is authorized to take administrative action to release all open and pending transactions in the database after the office becomes aware of the closure.

Section 560.404(24), F.S., prohibits a deferred presentment provider from accepting more than one check or authorization to initiate more than one automated clearinghouse transaction to collect on a deferred presentment transaction for a single transaction. The office noted situations in which the consumer takes out a \$500 loan, but the payday lender has the customer issue five separate checks. This practice has resulted in the payday lender being able to collect multiple insufficient fund fees if the consumer does not have sufficient funds in their account to cover the multiple checks.

The bill provides that no deferred presentment provider shall assess the costs of collections, other than charges for insufficient funds as allowed by law, without a judgment from a court of competent jurisdiction. This provision addresses the situation in which a check is dishonored and the deferred presentment provider charges an extra fee, in addition to the insufficient funds fee, because the licensee has turned the issue over to a collection agency. This same provision has been added to s. 560.309, F.S., relating to check cashers.

#### **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:**

The bill requires that every licensee must be examined within six months of licensure and at least once every five years by the office or contract examiners and requires licensees to incur the costs of an examination. Presently, the licensee does not pay an examination fee and only pays license application and renewal fees. Application and renewal fees for part II and III licensees are reduced by 25 percent to offset the costs of the examinations that will be incurred by the licensees. It is anticipated that the reduction in fee revenues will be revenue neutral and offset by the examination charges paid by licensees.

**B. Private Sector Impact:**

The increased requirements and regulatory oversight of MSBs may result in greater prevention, detection, and prosecution of money laundering activities and avoidance of paying worker's compensation premiums and state and federal taxes. Currently, legitimate contractors are placed at a significant competitive disadvantage by contractors avoiding the payment of workers' compensation insurance and state and federal taxes.

The oversight and regulation of MSBs would be enhanced by mandating that every licensee must be examined within six months of licensure and at least once every five years by the office or contract examiners.

The bill requires licensees to incur the costs of an examination, as noted in Tax/Fee Issues, above. The current revenues derived from license registration and renewal fees do not adequately fund examination by in-house staffing. The office is presently authorized to contract with third parties to conduct such examinations; however, the office has never exercised this option.

An indeterminate number of check cashers who are currently exempt from licensure would be required to be licensed and subject to examination due to the change in the exemption criteria. These entities would be required to submit a \$250 fee for initial licensure and a renewal fee of \$500 every two years and to otherwise meet licensure requirements.

The bill eliminates the additional fee that can be imposed on a customer cashing a check without providing a form of identification at the time of the transaction. The bill requires customers to present an acceptable form of identification together with a thumbprint for checks that exceed \$1,000.

The bill requires part II registrants to be organized as a corporation, limited liability company, or a limited liability partnership. The bill eliminates the option for a licensee to be a sole proprietorship. The office is unable to estimate the number of current licensees by business structure. However, the majority of the licensees are organized as corporations or limited liability companies. Industry representatives are unaware of any

entity currently organized as a limited liability partnership. The filing fees for a new corporation and limited liability company are \$70 and \$125, respectively.

The bill increases security requirements at licensed check cashing facilities and requires use of separate accounts at a federally insured financial institution.

**C. Government Sector Impact:**

The office may derive indeterminate increased application fee revenue from check cashers. The number of additional check cashers that would be subject to regulation under the provisions of the bill is unknown.

The bill requires licensees to incur the costs of examinations. Prior to the enactment of ch. 2001-119, L.O.F., the office had the authority to charge licensees for examinations. This authority, however, was eliminated in 2001, and the licensing and renewal fees were increased in anticipation that they would be set at a rate adequate to fund the examination function. However, the fee revenues have never been adequate to fund or allow for the establishment of a comprehensive, risk-based examination schedule by in-house examiners.

Future reductions to the application and renewal fees are likely as the bill requires licensees to incur the cost of examinations. Revenues associated with the cost recovery of examinations will enable fee reductions.

The bill requires the office to make referrals of alleged felony violations to the appropriate law enforcement agency, which will greatly assist law enforcement in tracking down and ultimately prosecuting persons engaged in criminal activities in a timely manner.

The bill creates several third degree felonies. On March 31, 2008, the Criminal Justice Impact Conference determined the bill has an insignificant impact on the number of prison beds.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

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

**CS/CS/CS by General Government Appropriations on April 8, 2008:**

The committee substitute provides the following changes:

- Reduces the application and renewal fees for part II and III licensees by 25 percent.
- Changes the effective of the bill from October 1, 2008 to January 1, 2009.

**CS/CS by Finance and Tax on March 26, 2008:**

The committee substitute provides the following changes:

- Provides that an examination of a new licensee is required within six months after the issuance of a license.
- Provides for the emergency suspension of the license of a money service business for the failure to provide required records.
- Provides for imposition of a minimum fine of \$1,000 for violation of the chapter.
- Provides rulemaking authority for the adoption of disciplinary guidelines and criteria.
- Provides that the financial audit report of a parent corporation satisfies the statutory requirement.
- Requires a licensed check casher to have a commercial account with a federally insured financial institution.
- Replaces "authorized agent" with "authorized vendor" as used in current law.
- Requires installation of security cameras at locations where checks are cashed that lack bullet-proof glass or partitioning.

**CS by Banking and Insurance on March 11, 2008:**

The Committee Substitute provides the following changes.

- Requires authorized agents to comply with federal anti-money laundering regulations.
- Requires part II licensees (money transmitters) to be organized as a corporation, limited liability company, or limited liability partnership.
- Revises the requirement for the registration of authorized agents by requiring the licensees to notify the office within 60 days after, rather than before, the agent engages in business as an authorized agent.
- Defines the term, net worth, to mean asset minus liabilities, as determined in accordance with generally accepted accounting principles.
- Clarifies responsibilities of the licensees for its authorized agents.
- In addition to exempting a business that cashes a check in an amount of \$2,000 or less per person from licensure, the CS also exempts a business that cashes federal tax refund checks in an amount of less than \$4,000 per person from licensure as a check casher.

B. Amendments:

None.

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

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