

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 Banking and Insurance Committee

BILL: CS/SB 1586

INTRODUCER: Banking and Insurance Committee and Senator Thrasher

SUBJECT: Money Services Businesses

DATE: February 8, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.			BC	
3.				
4.				
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 Office of Financial Regulation (OFR) is responsible for the regulation of money services businesses.

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. In 2008, the grand jury issued its report: *Check Cashers: A Call for Enforcement*. In 2008, the Legislature enacted major reforms recommended in the report to provide greater regulatory and enforcement tools for the OFR.

In 2011, the Chief Financial Officer formed the Money Service Business Facilitated Workers' Compensation Work Group (work group) to study the issue of workers' compensation insurance premium fraud facilitated by check cashers. Currently, legitimate contractors are placed at a significant competitive disadvantage by unscrupulous contractors avoiding the payment of workers' compensation insurance as well as state and federal employment taxes. The bill incorporates the following consensus recommendations of the work group to provide increased

regulatory oversight of MSBs that are designed to provide greater prevention, detection, and prosecution of workers' compensation premium fraud:

- Authorizes the OFR to create an integrated statewide database to maintain information from check cashers for check transactions exceeding \$1,000. Check cashers will be required to enter this information into the database. This database will allow regulators and law enforcement to identify and target individuals who are engaging in criminal activity as these crimes are occurring instead of attempting to reconstruct the records and activities of defunct shell companies.
- Requires the Financial Services Commission to adopt rules requiring licensees to remit to the OFR a transaction fee, not to exceed \$3 per transaction, which would be used to support the statewide database.
- Eliminates the requirement that the OFR conduct examinations within the first 6 months of a check casher's licensure. The elimination of this requirement will provide the OFR with greater flexibility in the use of resources for purposes of enforcement.
- Requires licensees to maintain and deposit all checks accepted into a bank account in its own name and to report the termination of bank accounts to the OFR within five business days. This change will enhance the audit trail necessary to assist regulators, law enforcement, and prosecutors.
- Prohibits any money services business, its authorized vendor, or affiliated party to possess any fraudulent identification paraphernalia, or for someone other than the person who is presenting the check for payment to provide the customer's personal identification information to the check casher. A person who willfully violates these provisions commits a felony of the third degree.
- Authorizes the OFR to issue a cease and desist order; issue a removal order; the denial, suspension, or revocation of a license or any other action permitted by ch. 560, F.S., for noncompliance with the following: maintaining a federally insured depository account; depositing all checks accepted into its depository account; or submitting transactional information to the office.
- Requires a licensee to suspend its check cashing operations immediately if there is any interruption in its depository relationship and prohibits the resumption of check cashing operations until the licensee has secured a new depository relationship.

This bill substantially amends the following sections of the Florida Statutes: 560.103, 560.109, 560.111, 560.114, 560.126, 560.309, and 560.310.

The bill creates the following section of the Florida Statutes. 560.311

II. Present Situation:

Regulation of Check Cashers

The Office of Financial Regulation (OFR) is responsible for safeguarding the private financial interests of the public by licensing, examining, and regulating depository and nondepository financial institutions and financial service companies in the State. Among its responsibilities, the OFR regulates money service businesses, which are subject to the provisions of ch. 560, F.S.

Licensure of Check Cashers

Money service businesses are licensed under two license categories. Money transmitters and payment instrument issuers are licensed under part II of ch. 560, F.S., while check cashers and foreign currency exchangers are licensed under part III. Current law provides that the requirement for licensure 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.¹

Check Cashing Fees

Check cashers are limited in the fees they may charge. By law, a check casher may not charge fees:

- In excess of 5 percent of the face amount of the payment instrument, or \$5, whichever is greater.
- In excess of 3 percent of the face amount of the payment instrument, or \$5, whichever is greater, if the payment instrument is any kind of state public assistance or federal social security benefit.
- For personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or \$5, whichever is greater.²

In addition, check cashers are authorized to collect a fee linked to the direct costs of verifying a customer's identity or employment. That fee, established by rule,³ may not exceed \$5. Rule 69V-560.801, F.A.C., provides:

- In addition to the fees established in Section 560.309(8), F.S., a check casher or deferred presentment provider may collect the direct costs associated with verifying a payment instrument holder's identity, residence, employment, credit history, account status, or other necessary information, including the verification of a drawer's status on the Office administered database for deferred presentment transactions prior to cashing the payment instrument or accepting a personal check in connection with a deferred presentment transaction. Such verification fee shall be collected only when verification is conducted and shall not exceed \$5 per transaction. For example, a check casher shall not charge a drawer more than one (1) verification fee per diem, regardless of whether the check casher is cashing or has cashed more than one (1) of the drawer's payment instruments that day.
- For purposes of Section 560.309(8), F.S., and this rule, the "direct costs of verification" shall mean those costs that are allocated by the provider to a particular function or are readily ascertainable based upon standard commercial practices and include internal staff and infrastructure costs incurred by the provider in performing the verification function and payments to third party vendors who provide verification related services.

¹ Section 560.304, F.S.

² Section 560.309(8), F.S.

³ Id.

Examinations and Investigations

Section 560.109, F.S., authorizes the OFR to examine each licensee as often is warranted but at least once every 5 years. Generally, the OFR is required to provide licensees with at least 15 days advance notice of an examination. However, if the OFR “suspects that the money services business, authorized vendor, or affiliated party has violated or is about to violate any provisions of ch. 560, F.S., or any criminal laws of the state of Florida or of the U.S., the OFR is not required to provide advance notice of an examination or investigation. The OFR is also required to examine a licensee within 6 months of licensure.

Recordkeeping Requirements

Section 560.1105, F.S., requires each licensee and its authorized vendors to maintain specified records for a minimum of 5 years. In additions, s. 560.310, F.S., requires check casher licensees to maintain customer files for those who cash corporate or third party instruments exceeding \$1,000. Rule 69V-560.704, F.A.C., requires licensees to affix customer thumbprints to the original of each payment instrument exceeding \$1,000, as well as maintain a copy of the original payment instrument, a copy of the customer’s personal identification presented at the time of acceptance, and maintain customer files for those cashing corporate and third party payment instruments, which includes documentation from the Secretary of State verifying the corporate registration, articles of incorporation, information from the Department of Financial Services Compliance Proof of Coverage Query Page, and documentation of those authorized to negotiate payment instruments on the corporation of fictitious entity’s behalf. Customer files must be updated annually.

Further, Rule 69V-560.704, F.A.C., requires that for payment instruments of \$1,000 or more, the check casher must maintain an electronic log of payment instruments accepted, which includes, at a minimum, the following information:

- Transaction date,
- Payor name,
- Payee name,
- Conductor name, if other than the payee,
- Amount of payment instrument,
- Amount of currency provided,
- Type of payment instrument (personal, payroll, government, corporate, third-party, or other),
- Fee charged for the cashing of the payment instrument,
- Branch/location where instrument was accepted,
- Identification type presented by customer, and
- Identification number presented by customer.

Licensees must maintain this information in an electronic format that is “readily retrievable and capable of being exported to most widely available software applications including Microsoft EXCEL.” The maintenance of this information has been intended to be used in the audit process. While this can be useful, it does not allow regulators and law enforcement to analyze information

in a “real time” format through a central database, for the purpose of identifying and targeting persons engaged in violations of ch. 560, F.S., or other unlawful activity.

A check casher is required to deposit all checks into a commercial account with a financial institution or sell the payment instruments within 5 business days after acceptance, pursuant to s. 560.309(3), F.S. When money service businesses do not properly negotiate, endorse, or deposit checks, it may be difficult for the OFR to detect potential illegal activities.

Workers’ Compensation Insurance Fraud

In recent years, unscrupulous contractors and check cashiers have colluded on a scheme that allows these contractors to hide their payroll and obtain workers’ compensation coverage without purchasing such coverage. In addition to the workers’ compensation fraud, these contractors are avoiding the payment of state and federal taxes. For their participation and risk, the check cashers may receive a fee of 7 percent of the value of the check or more for cashing the checks, which exceeds the statutory limit check cashers are allowed to charge.⁴

A 2008 Statewide Grand Jury described a typical scheme.⁵ First, a "shell" company is formed in the name of a nominee owner, often a temporary resident of the U.S. This company has no real operations or employees. This shell company will then buy a minimum premium policy to procure the certificate of insurance that the contractor needs to document proof of workers’ compensation insurance coverage. A certificate of insurance does not show the amount of coverage because the number and class code of employees can vary throughout the year. The contractor then writes checks to this shell company playing the part of the phony subcontractor. According to the statewide grand jury, one indicted Miami check casher created mobile check cashing units that would provide check cashing at the contractor's construction site. In reality, the contractor is actually cashing the check that he or she has just written to the phony company and taking the cash back to pay his employees without maintaining any documentation regarding the actual payroll. On paper, however, it appears that the contractor is paying another company for their work on the project. According to the statewide grand jury, the amount of these checks is usually over the \$10,000 limit and must be reported on a Currency Transaction Report (CTR) to the federal government.⁶ The check casher actively participates in this scheme by either falsifying the CTR, claiming to have paid the money out to the phony subcontractor, or, in some cases, dispensing with the CTR altogether. Both of these actions are 3rd degree felonies.

The dollar magnitude of this fraud is tremendous. For example, the Division of Insurance Fraud of the Department of Financial Services collaborated with the North Florida High Intensity Drug Trafficking Area (HIDTA) Task Force last year on a case that targeted individuals who were

⁴ *Check Cashers: A Call for Enforcement*, Eighteenth Statewide Grand Jury, Case No. SC 07-1128, Second Interim Report of the Statewide Grand Jury, March 2008.

⁵ *Id.*

⁶ 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. For example, cash transaction reports (CTRs) are required to be filed for cash transactions involving more than \$10,000. Section 560.1235, F.S., requires MSBs to comply with all state and federal laws relating to the detection and prevention of money laundering.

running a shell company scheme using undocumented foreign national laborers to avoid paying workers' compensation insurance premiums and federal and state taxes. The suspects were documented to have cashed checks totaling approximately \$4 million at a check-cashing store to pay the workers under the table. The suspects were arrested; three vehicles and \$67 thousand in cash were seized.

Typically, the insurance company will attempt to conduct a premium audit of an insured, such as the shell company, after the end of the policy year. However, by this time, the shell company has ceased operating and the nominee owner has disappeared, having usually gone back to his home country. If any workers' compensation claims occur, the insurer is forced to try to offset such costs by increasing rates on legitimate contractors who secure adequate coverage.

III. Effect of Proposed Changes:

Section 1 amends s. 560.103, F.S., to create definitions.

Section 2 amends s. 560.109, F.S., to eliminate the general requirement to provide 15-days advance notice to a licensee regarding an examination or investigation by the OFR. Under current law, the OFR is authorized to conduct an examination or investigation unannounced if the OFR suspects the entity has violated or will violate ch. 560, F.S., or any criminal laws of Florida or any state or of the U.S. Additionally, this section eliminates the requirement for the OIR to conduct an examination of a business within 6 months of licensure. The bill retains the requirement for the OFR to examine each licensee at least once every 5 years.

Section 3 amends s. 560.111, F.S., to make it unlawful for any money services business, its authorized vendor, or affiliated party to possess any fraudulent identification paraphernalia, or for someone other than the person who is presenting the check for payment to provide the customer's personal identification information to the check casher. A person who willfully violates these provisions commits a felony of the third degree.

Section 4 amends s. 560.114, F.S., to provide the OIR the authority to issue a cease and desist order; issue a removal order; the denial, suspension, or revocation of a license or any other action permitted by the statute for the following:

1. Failure to maintain a federally insured depository account;
2. Failure to deposit all checks accepted into its depository account, or
3. Failure to submit transactional information to the office.

Additionally, this section provides that failure to maintain the required bank account or to submit transactional data to the statewide database would constitute an immediate harm, thereby allowing the OFR to suspend immediately the license of the check casher until the licensee can resolve these issues.

Section 5 amends s. 560.126, F.S., to require a licensee to provide notice to the OFR within 5 business days after the cessation of its depository banking account. Prior to resuming operations, the check casher must reestablish such account and notify the OFR of the account.

Section 6 amends s. 560.309, F.S., to require a licensee to suspend its check cashing operations immediately if the licensee ceases to have a depository account. The licensee may not resume check-cashing operations until it has secured a new depository relationship. Additionally, this section provides that a licensee may not cash payment instruments from any person who is not the original payee (including authorized individuals if the payee is a legal entity).

The bill also places a cap of \$5 on the verification fee that is currently authorized under s. 560.309(8), F.S. Under current law, a check casher may collect, in addition to fees established under s. 560.309, F.S., the direct costs of verification. The statute currently does not contain a cap on the amount of the verification fee. The Financial Services Commission has adopted Rule 69V-560.801, F.A.C., which provides that the direct costs of verification, which include verifying a customer's identity, employment, etc., may not exceed \$5 per transaction. The bill codifies this requirement.

Section 7 clarifies recordkeeping requirements under s. 560.310, F.S. The bill eliminates the requirement for an electronic payment instrument log for checks that exceed \$1,000. This provision is being replaced with the requirement for submission of the transaction information to a statewide database created in Section 8 of the bill. The bill eliminates the authority of check cashers to cash third party checks and eliminates the requirement that a corporate check in any amount must be reported. Instead, the reporting triggered by the check exceeding a threshold amount of \$1,000.

Section 8 creates s. 560.311, F.S., which establishes a statewide transactional database for all checks cashed by a licensed business that exceed \$1,000. The new section specifies the data elements to be collected, the authority of the OFR to administer the database, the power of the commission to make rules regarding the database, and requires the OIR to interface this information with existing databases maintained by the Division of Workers' Compensation in the Department of Financial Service and the Department of State (Sunbiz).

The Financial Services Commission is required to adopt rules requiring a licensee to remit to the OFR a transaction fee, as part of the direct costs of the verification fee, not to exceed \$3 per transaction.

Section 9 provides an effective date of July 1, 2012.

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:**

Check cashers may incur additional costs in connection with reporting the required data to the statewide database. In order to establish and maintain the database required under the bill, the bill requires a licensee to remit to the OFR a transaction fee not to exceed \$3, as part of the direct costs of verification, on checks exceeding \$1,000 that are cashed. It is unclear whether the check casher would incur this fee or pass it on to the customer.

According to the OIR, as of February 3, 2012, there were 1,508 licensees reporting under part III of ch. 560, F.S.; of which 1,065 have authority to engage in check cashing. Currently, approximately 90 percent of all licensees do not charge a verification fee. Approximately 4 percent of the checks cashed had a verification fee imposed.

B. Private Sector Impact:

It is unclear how many licensees will absorb the transaction fee not to exceed \$3 or pass this fee onto the customers. Presently, the OFR does not capture transactional data that would indicate the number of checks presented that exceed \$1,000, and that are assessed a fee by the check casher.

For checks cashed in excess of \$1,000, check cashers will need to report certain data to a statewide database. Currently, this data must be maintained by the check casher in an electronic format (i.e., excel spreadsheet) and made available to the OFR during the examination process. The database may reduce some administrative burden for licensees.

Elimination of the competitive advantage resulting from use of subcontractors without obtaining adequate workers' compensation insurance would create a more level playing field for law-abiding contractors.

C. Government Sector Impact:

The bill provides the OFR, law enforcement, and prosecutors with additional enforcement tools to detect and prosecute workers' compensation insurance fraud.

The OFR plans to use a third party administrator to establish and maintain the database similar to the procedure that was used to establish the deferred presentment database under s. 560.404(23), F.S. For the deferred presentment database, the vendor agreed to bear all of the initial development costs. Once the database was established, the OFR paid the vendor a portion of the transaction fees collected on each transaction to compensate the vendor for establishing, maintaining, and administering the database. Because of the uncertainty of the number of transactions, the contract provided for a review after the first year of operation to adjust the reimbursement rate if necessary.

The OFR will not require additional resources to administer the bill.

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.)

Banking and Insurance on January 7, 2012:

The CS makes the following changes:

- Eliminates the authority of check cashers to cash third party payment instruments.
- Eliminates the requirement that a corporate check in any amount must be reported.
- Requires check casher to report checks that exceeds \$1,000.
- Provides technical and conforming changes.

- B. **Amendments:**

None.