

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 217 Money Services Businesses

**SPONSOR(S):** Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Cummings

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 2 N, As CS	Bauer	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates Chapter 560, F.S., the Money Services Businesses Act (the Act), which covers payment instrument sellers, check cashers, foreign currency exchangers, and deferred presentment providers. Currently, licensed check cashers are required to maintain specified records, such as copies of all checks cashed, and for checks exceeding \$1,000, certain transactional data in an electronic log. These records are reviewed as part of OFR's examination authority under the Act.

In 2011, the Chief Financial Officer convened a work group of regulators (including the OFR), law enforcement, and industry stakeholders to study the issue of workers' compensation premium fraud, with particular regard to the role that check cashers play in facilitating the fraudulent schemes. The work group made a number of findings and recommendations, including the establishment of a statewide, real-time database for regulators and law enforcement to quickly and effectively detect and deter workers' compensation premium fraud. The work group recommended that the database interface with the Secretary of State's database for verifying corporate registration records and with the Department of Financial Services' database for verifying workers' compensation coverage.

Currently, the Act requires deferred presentment providers (DPPs; commonly known as payday lenders) to use a database that is maintained by a service provider contracted with OFR. This database enables DPPs to comply with the Act's prohibition against entering into a deferred presentment agreement with a customer if the customer already has an outstanding deferred presentment agreement, or terminated an agreement within less than 24 hours. The Act specifies that DPPs can charge \$1 for each transaction, which partly supports the operation and maintenance of the database and partly supports the OFR's regulatory functions.

The bill authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database. The bill also requires check cashers, after implementation of the new check cashing database, to enter specified transactional information into the database. In addition, the bill grants authority to the Financial Services Commission to adopt rules to implement the bill.

The bill has no fiscal impact on state government. Upon implementation of the database, there may be an indirect positive impact on the private sector as a result of simplified recordkeeping.

The bill provides an effective date of July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

The Florida Office of Financial Regulation (“OFR” or “the Office”) regulates and licenses a wide range of entities and individuals in the banking, securities, and consumer finance industries. Chapter 560, Florida Statutes, is the Money Services Business Act (“the Act”), which the OFR is responsible for administering and enforcing. The Act consists of four parts: (I) general provisions, (II) payment instruments and funds transmission; (III) check cashing and foreign currency exchange; and (IV) deferred presentment. The Act does not apply to state and federally chartered banks, credit unions, trust companies, and other financial depository institutions, nor does it apply to the sovereign.<sup>1</sup> Part I of the Act gives supervisory, licensing, and enforcement authority to the OFR, and authorizes the OFR’s rulemaking body, the Financial Services Commission (Commission), to adopt rules to implement the Act’s requirements regarding books and records, examinations, forms, and fees.

Money services businesses (“MSBs”) are persons who act as one or more of the following:

- **Part II:**
  - *Payment instrument seller*: a qualified entity that sells instruments like checks, money orders, and travelers checks. Payment instruments do not include gift cards, credit card vouchers, and letters of credit.
  - *Money transmitter*: a qualified entity that receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means to, within, or from the U.S.
  
- **Part III:**
  - *Foreign currency exchanger*: a person who exchanges currency of one country to that of another for compensation.
  - *Check casher*: a person who sells currency in exchange for payment instruments received, excluding travelers checks.
  
- **Part IV:**
  - *Deferred presentment provider (“DPP”, commonly known as payday lenders)*: DPPs are a MSB designation, not a separate license. DPPs are persons licensed under part II or part III of the Act, and have filed a declaration of intent with the OFR to engage in *deferred presentment transactions*, which means providing currency or a payment instrument in exchange for a customer’s check and agreeing to hold the check for a deferment period.

According to the OFR, these are the number of licensees, categorized by license type:<sup>2</sup>

Part II	163 licensees
Part III	1,133 licensees
Part IV	162 total declarations of intent <sup>3</sup> <ul style="list-style-type: none"><li>• 21 DPPs are licensed under Part II</li><li>• 141 DPPs are licensed under Part III</li></ul>

The Office’s MSB program is self-sustaining in that the operating revenues come from the regulated entities and individuals. License application and renewal fees, administrative fines, and other fees,

<sup>1</sup> Section 560.104, F.S.

<sup>2</sup> Information from the OFR (February 25, 2013), on file with the Insurance & Banking Subcommittee staff. It should be noted that MSBs may also designate branches and authorized vendor locations under their Part II or Part III licenses, pursuant to s. 560.141, F.S. More information on those numbers can be found at OFR Money Services Business Statistics: <http://www.flofr.com/PDFs/mtstats.pdf>

<sup>3</sup> Information provided by the OFR (March 11, 2013), on file with the Insurance & Banking Subcommittee staff.

costs, or penalties provided for in the Act are deposited into the OFR's Regulatory Trust Fund, which is used to pay the costs of the OFR as necessary to carry out its responsibilities under the Act.<sup>4</sup>

### **2012 Legislation – CS/HB 1277 as a Response to Workers' Compensation Fraud**

In 2011, the Chief Financial Officer convened the Money Service Business Facilitated Workers' Comp Fraud Work Group ("Work Group") to study the issue of workers' compensation premium fraud in Florida, as facilitated by check cashers, and to develop recommendations to resolve the issue. It was comprised of representatives from state government and industry stakeholders. A report containing the work group's findings and recommendations is available online<sup>5</sup>.

A typical fraud scheme involves a facilitator's creation of a fake shell company and purchase of a minimal workers' compensation insurance policy in the name of the shell company. The facilitator then "rents" the shell company's name and workers' compensation insurance policy to uninsured subcontractors, who are otherwise unable to find work without the workers' comp insurance. After the subcontractor completes work under the guise of the shell company, the general contractor pays the subcontractor wages with a company check made payable to the shell company. However, most banks generally do not cash checks made out to businesses or third parties, but rather will require that the check be deposited into the payee's bank account. Thus, the subcontractors take their checks to nonbank check cashers, who, until 2012, could cash third-party business-to-business checks by certain persons "authorized" by the payee.

As part of the scheme, check cashers would withhold two fees from the checks: (1) a fee for cashing the check, usually between 1.5% to 2%, and (2) a fee between 6% to 8% for the facilitator's "rent" of the shell company and workers' comp insurance policy. The balance would then be paid in cash to the subcontractor under the guise of the shell company.

The resulting unreported payroll taxes, unreported premium taxes, and higher costs to insurance carriers who must process workers' comp claims from uninsured workers adversely impact law-abiding businesses, which absorb the resulting costs of this fraud. In addition, the Work Group estimated that this fraud costs the state up to \$1 billion annually.

In 2012, the Florida Legislature enacted CS/HB 1277, an act relating to money services businesses.<sup>6</sup> The bill provided for prevention of workers' compensation premium fraud, and specifically addresses the role played by unscrupulous check cashers. CS/HB 1277, which became effective July 1, 2012, made the following changes to the Act:

- Eliminated the requirement that the OFR provide a 15-day advance notice to MSB licensees prior to conducting an examination or investigation;
- Eliminated the requirement that the OFR conduct an initial examination of a MSB within 6 months of the MSB obtaining a license, while retaining the requirement that each MSB be examined at least once every five years;
- Required check cashers to deposit payment instruments into its own commercial account at a federal insured financial institution, which licensees must maintain as a licensure requirement and must notify the OFR if such account is closed;
- Authorized the OFR to take administrative action against a check casher if it fails to maintain a depository account in its own name or fails to deposit all payment instruments into its own account.
- Defined "fraudulent identification paraphernalia" and specifies that possession and use of fraudulent identification paraphernalia is a prohibited act punishable as a felony of the third degree.
- Stated that a check casher may only accept or cash a payment instrument from the original payee or a customer who is an authorized officer of the corporate payee name on the instrument's face. Acceptance and cashing of third-party checks is no longer authorized.

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<sup>4</sup> Section 560.144, F.S.

<sup>5</sup> Money Service Business Workers' Comp Fraud Work Group,

<http://www.myfloridacfo.com/sitepages/agency/sections/moneyservicebusiness.aspx> (last accessed February 26, 2013).

<sup>6</sup> CS/1277 was codified at Ch. 2012-85, L.O.F.

- Codified a maximum \$5 fee to customers, currently established by rule, which is linked to the direct of verifying such things as a customer's identity or employment.

### **Current Situation**

One of the Work Group's recommendations, which was not implemented in the 2012 legislation, was to create a statewide, real-time, online database for check-cashing transactions above \$1,000 to facilitate the flow of information between check cashers, the OFR, and the Department of Financial Services' Division of Workers' Compensation and Division of Insurance Fraud. As the Work Group noted, it is critical to have coordinated, real-time data to quickly identify and target persons engaged in violations of the Code or other unlawful activity the fraud is occurring, instead of retracing the fraud after the fact. One illustration of this necessity is the generally brief life span of the shell corporations, which the perpetrators may form and dissolve in attempts to evade regulators and law enforcement.

Currently, the Act requires check cashers to maintain records of all payment instruments cashed, and for payment instruments of \$1,000 or more, are required to maintain an electronic log of payment instruments accepted, which includes the following information at a minimum:<sup>7</sup>

- 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),
- Fees charged for the cashing of the payment instrument,
- Branch or location where the instrument was accepted, and
- Identification type and number presented by the customer.

Check cashers 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." This information is reviewed during the OFR's examination process. However, as concluded by the Work Group, that information could serve a more proactive and efficient purpose if it were accessible to the other regulatory and law enforcement groups in a real-time database.

### **Deferred Presentment Transaction Database**

Currently, the Act requires DPPs to utilize an online database with real-time access.<sup>8</sup> DPPs are required to submit specified transactional data into the database. The database enables DPPs to comply with the Act's prohibition against entering into a deferred presentment transaction if a borrower already has an outstanding deferred presentment transaction or terminated any transaction within the previous 24 hours.<sup>9</sup> As stated in s. 560.408, F.S., the legislative intent of Part IV is "to prevent fraud, abuse, and other unlawful activity associated with deferred presentment transactions in part by: (1) Providing for sufficient regulatory authority and resources to monitor deferred presentment transactions. (2) Preventing rollovers.<sup>10</sup> (3) Regulating the allowable fees charged in connection with a deferred presentment transaction."

<sup>7</sup> Section 560.310, F.S. and Rule 69V-560.704, F.A.C. In addition, the federal Bank Secrecy Act and U.S. Treasury regulations require financial institutions, including MSBs, to file currency transaction reports for any cash transaction over \$10,000 a day. 31 U.S.C. §§ 5311-5330 and 31 C.F.R. § 103.22. Section 560.123, F.S. requires MSBs to comply with these CTR requirements.

<sup>8</sup> State of Florida Deferred Presentment Transaction System, <https://www.fladpp.com/> (last accessed February 26, 2013). The DPP legislation was enacted in 2001, codified at Ch. 2001-119, L.O.F

<sup>9</sup> Section 560.404(19), F.S.

<sup>10</sup> Section 560.402(6), F.S. defines a "rollover" as the termination or extension of a deferred presentment agreement by the payment of an additional fee and the continued holding of the check, or the substitution of a new check by the drawer pursuant to a new deferred presentment agreement. Rollovers occur when the customer is unable to redeem a check and has insufficient funds on deposit to cover the check if present, and so negotiates an extension by paying additional fees. Because this practice can implicate violations of interest rate caps, rollovers are prohibited by s. 560.404(18), F.S.

The OFR (and its predecessor agency, the Department of Banking and Finance) has contracted with Veritec Solutions, LLC, to develop and maintain the DPP database.<sup>11</sup> There was no initial development cost for the DPP database, but Veritec recovered the cost over the term of the initial contract and over subsequent renewals.<sup>12</sup>

The Act also authorizes the Financial Services Commission to impose, by rule, a fee of up to \$1 per transaction for the data that DPPs are required to submit.<sup>13</sup> The Commission rule states that the database transaction fee shall be \$1.00 per transaction, and each DPP will be assessed this fee for each transaction registered and recorded on the database. The rule also states that the database vendor (Veritec) shall collect all transaction fees on behalf of the OFR.

The DPP database generates between \$7.2 million to \$7.6 million in total fee revenue annually. The current DPP contract (between Veritec and the OFR) gives Veritec 41 cents for every dollar collected to manage the DPP database, leaving the remaining 59 cents to go into the OFR's Regulatory Trust Fund.<sup>14</sup> Assuming revenue of \$7.6 million for the DPP database, OFR receives \$4.48 million and Veritec receives \$3.12 million annually.<sup>15</sup> According to information from the OFR, the Regulatory Trust Fund supports the operation of the OFR's Division of Consumer Finance, which includes the MSB program, as well as the other program areas of mortgage brokering and lending, consumer finance lending, retail installment sales finance, title loans, and collection agencies. The Division of Consumer Finance includes licensing, enforcement, and legal staff, who provide services for all of these regulatory programs.<sup>16</sup>

The Act does not require a specific DPP license, but does require a money service business to be licensed either under Part II (payment instrument issuers and funds transmitters) or Part III (check cashers and foreign currency exchangers), and to file a declaration of intent to act as a DPP.<sup>17</sup>

Currently, 142 licensed check cashers are authorized to act as DPPs, and thus are already using the DPP database.<sup>18</sup>

### **Effect of Proposed Changes**

The bill authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database. Upon implementation of the database, check cashers are required to enter specified transactional information into the real-time, online database for payment instruments exceeding \$1,000. The transactional information is substantially similar to what check cashers are currently required to maintain in electronic logs, with the addition of a payee's workers' compensation insurance policy or exemption certificate number and any additional information required by rule. In addition, the bill requires the OFR to ensure that the database would interface with databases maintained by DFS, for purposes of determining proof of coverage for workers' compensation<sup>19</sup>, and by the Secretary of State<sup>20</sup> for purposes of verifying corporate registration and articles of incorporation.

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<sup>11</sup> About Veritec Solutions, <https://www.veritecs.com/About.aspx> (last accessed February 26, 2013). Veritec also provides database services to 13 other states with similar DPP laws.

<sup>12</sup> Information provided by the OFR (dated March 8, 2013), on file with the Insurance & Banking Subcommittee staff.

<sup>13</sup> Rule 69V-560.910, F.A.C.

<sup>14</sup> Information provided by the OFR (dated February 8, 2013), on file with the Insurance & Banking Subcommittee staff.

<sup>15</sup> It is noted that the current DPP contract between Veritec and OFR is currently in renegotiation. According to the OFR, the parties have until August or September of this year to finalize renegotiations

<sup>16</sup> Information provided by OFR, on file with the Insurance & Banking Subcommittee staff.

<sup>17</sup> Section 560.403, F.S.

<sup>18</sup> See footnote 2 above.

<sup>19</sup> DFS Division of Workers' Compensation Compliance Proof of Coverage Search Page, at

<https://apps8.fldfs.com/proofofcoverage/Search.aspx> (last accessed March 9, 2013).

<sup>20</sup> Florida Department of State, Division of Corporations Document Searches, at <http://www.sunbiz.org/search.html> (last accessed March 9, 2013).

The bill provides that after completing the competitive solicitation, but prior to execution of any contract, the OIR may request funds in the Fiscal Year 2014-2015 Legislative Budget Request and submit any necessary draft conforming legislation needed to implement the act.

The bill also grants rulemaking authority to the Commission to administer the section, to require additional information to be submitted into the database, and to ensure that licensees are using the database in accordance with the section.

The bill provides an effective date of July 1, 2013.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 560.310, F.S., relating to records of check cashers and foreign currency exchangers; upon implementation of a check cashing database, requires licensed check cashers to submit certain transaction information to the OFR related to payment instruments cashed; authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database; and provides rulemaking authority.

**Section 2:** Provides an effective date of July 1, 2013.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

As a regulatory and law enforcement tool, the check-cashing database may indirectly benefit the law-abiding businesses that have been negatively impacted by workers' compensation insurance fraud.

The bill will also facilitate recordkeeping requirements for licensed check cashers.

**D. FISCAL COMMENTS:**

The bill has no fiscal impact on state or local government.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or

municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

## 2. Other:

### Public Records

Currently, Part IV of the Act provides that information identifying a drawer (customer) or a deferred presentment provider contained in the DPP database is confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution. It does not appear that there is a corresponding statutory or constitutional exemption for similar information (or any other information) that the bill requires to be entered into the check-cashing database.

As noted above, check cashers are currently required to maintain and produce copies of all checks cashed, which contain bank account numbers and customer names, and amounts of fees charged. Also, check cashers must maintain certain transactional data for checks exceeding \$1,000. Neither current law nor the bill specifically exempts these records. However, current law does provide that:

- Bank account numbers are exempt from ch. 119, F.S.<sup>21</sup> Under the Act, bank account numbers would be confidential and exempt as “personal financial information,” if part of an investigation or examination.<sup>22</sup>
- Motor vehicle records pertaining to a driver’s license or I.D. card issued by the Department of Highway Safety and Motor Vehicles are confidential and exempt.<sup>23</sup> However, it is unclear whether this exemption applies only to motor vehicle records held by the DHSMV or provided by DHSMV, or held by other agencies such as the OFR.
- The remaining information, i.e., amounts of the payment instrument and amounts of currency provided, payor and payee names, fees charged, and type of payment instruments could arguably be protected under the Act to varying degrees, if part of an investigation or examination.
  - The Act provides that all information relating to an “active” investigation or examination is confidential and exempt, and remains confidential and exempt even after an investigation or examination is no longer active, to the extent disclosure would reveal personal financial information, would jeopardize the integrity of another active examination, and under other limited conditions.<sup>24</sup>
  - However, whether current law would require OFR to disclose other check-cashing transactional data in response to a public records request would depend on the particular facts, including whether the information was part of an investigation or examination. The confidentiality would be a legal determination for the OFR, and potentially and ultimately for the courts.

If the Legislature wishes all or part of the check-cashing transaction information to be specifically confidential after it is provided to the OFR, a statutory exemption must be enacted. Under s. 24(c), Art. I of the State Constitution, a separate bill creating this exemption would need to be introduced.

## B. RULE-MAKING AUTHORITY:

The bill gives rulemaking authority to the Financial Services Commission to administer s. 560.310, F.S., to specify the type of data to be entered into the database, and ensure that the database is used by the licensee in accordance with this section.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>21</sup> Section 119.071(5)(b), F.S.

<sup>22</sup> Section 560.129(2) and (4)(c), F.S.

<sup>23</sup> Section 119.0712(2), F.S.; Driver’s Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 *et seq.*

<sup>24</sup> Section 560.129, F.S.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Insurance and Banking Subcommittee considered and adopted a strike-all amendment to the bill. The amendment retained the provisions of the bill, and made the following changes:

- Eliminated current law's requirement for check cashers to maintain transactional information in an electronic log format. This will avoid duplication of recordkeeping requirements for check cashers since the bill will require check cashers to enter the same information into the database instead.
- Clarified that the bill's database requirements apply only to payment instruments exceeding \$1,000.
- Clarified the type of transactional information that the bill requires check cashers to enter into the database.
- Clarified that the bill requires the check-cashing database to maintain an electronic log of the cashing of payment instruments, as opposed to the "sale of issuance" of payment instruments.
- Deleted language that is substantially similar to language in current statute under s. 560.404(23), F.S., regarding a DPP's reliance on database information and the right of a DPP to enforce deferred presentment agreements. This language is inapplicable to the check-cashing context.
- Clarified that the bill gives rulemaking authority to the Financial Services Commission, not the OFR, to adopt rules to administer this section.

On April 10, 2013, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment;

- Authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database.
- Lists requirements for the types of data to be input into the database upon implementation.
- Authorizes the Financial Services Commission to adopt rules to administer this section of law.

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.