

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 Appropriations

BILL: SB 410

INTRODUCER: Senator Bean

SUBJECT: Money Services Businesses

DATE: April 20, 2013

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Burgess	BI	Favorable
2. Davis	DeLoach	AGG	Fav/CS
3. Davis	Hansen	AP	Pre-meeting
4.			
5.			
6.			

I. Summary:

SB 410 establishes a check-cashing database within the Office of Financial Regulation (OFR) for regulators and law enforcement to access in order to target and identify persons involved in workers' compensation insurance premium fraud and other criminal activities documented in a statewide grand jury report and a subsequent Chief Financial Officer Work Group. The OFR regulates money services businesses (MSBs) that offer financial services, such as check cashing, money transmittals (wire transfers), sales of monetary instruments, and currency exchange outside the traditional banking environment.

The check-cashing database created by SB 410 would be part of the existing deferred presentment database currently operated by the OFR. The bill would require check cashers to submit check cashing transactional data to OFR. The OFR would create and maintain a check-cashing transactional database for check cashers to submit specified data for transactions exceeding \$1,000. The OFR would be required to interface the database with information maintained at the websites of the Department of State and the Department of Financial Services. The bill allows the Financial Services Commission to authorize, by rule, use up to \$0.25 of an existing fee authorized for the operation of the deferred presentment database for the use of implementing and operating the check-cashing database.

The bill would increase the OFR's expenditures by an estimated \$1.9 million from revenue that is currently deposited into the OFR's Regulatory Trust Fund. The OFR does not have an appropriation sufficient to fund the cost of the operation and maintenance of the new check-cashing database created by the bill. Additionally, the OFR indicates it will need an additional appropriation of \$329,634 and 5.00 full-time-equivalent positions for the workload associated with the new database. See Section V.

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

II. Present Situation:

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.

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 Deferred presentment providers (DPPs; commonly known as payday lenders) are subject to regulation under part II or part III and part IV of chapter 560, F.S.² As of February 27, 2013, OFR indicated there were 159 companies in Florida that had filed a notice of intent with OFR to engage in deferred presentment transactions. In addition, 1,115 companies were licensed to conduct check-cashing transactions.³

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.⁴

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,⁵ may not exceed \$5. Rule 69V-560.801, F.A.C., provides:

¹ Section 560.304, F.S.

² Section 560.403, F.S., provides a DPP is required to be licensed under part II or part III of chapter 560, F.S., and have on file with the OFR a declaration of intent to engage in deferred presentment transactions.

³ Information provided by OFR on March 29, 2013, and on file with Banking and Insurance Committee Staff.

⁴ Section 560.309(8), F.S.

⁵ Id.

- In addition to the fees established in s. 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 OFR's administered database for DPP transactions prior to cashing the payment instrument or accepting a personal check in connection with a DPP transaction. Such verification fee shall be collected only when verification is conducted and shall not exceed \$5 per transaction. For example, a check casher may not charge a drawer more than one (1) verification fee per day, 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 s. 560.309(8), F.S., and this rule, the "direct costs of verification" are the 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.

Section 560.1105, F.S., requires each licensee and its authorized vendors to maintain specified records for a minimum of five years. In addition, s. 560.310, F.S., requires check casher licensees to maintain customer files on all customers cashing corporate instruments exceeding \$1,000. Rule 69V-560.704, F.A.C., requires licensees to maintain a copy of the original payment instrument, a copy of the customer's personal identification presented at the time of acceptance, and customer files for those cashing corporate and third party payment instruments. Further, the rule 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,
- Location where instrument was accepted, and
- Identification type and 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." This information was intended to be reviewed during OFR's examination 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.

Workers' Compensation Insurance Fraud

In recent years, unscrupulous contractors and check cashers have colluded on a scheme allowing 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.⁶

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*. The Statewide Grand Jury report described a typical scheme.⁷ First, a "shell" company is formed in the name of a nominee owner, often a temporary resident of the United States. 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 report, 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 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.⁸ 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 third degree felonies. In 2008, the Legislature enacted major reforms recommended in the report to provide greater regulatory and enforcement tools for the OFR. However, the fraud continues.

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 in 2011 on a case that targeted individuals who were 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

⁶ *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.

⁷ *Id.*

⁸ 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.

pay the workers under the table. The suspects were arrested; three vehicles and \$67,000 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.

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. Subsequently, in 2012, legislation⁹ was enacted that incorporated consensus recommendations of the work group. These changes increase the regulatory oversight of MSBs and provide greater prevention, detection, and prosecution of workers' compensation premium fraud by:

- Requiring 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.
- Prohibiting any money services business, its authorized vendor, or affiliated party from possessing 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.
- Authorizing the OFR to issue a cease and desist order, to issue a removal order, to deny, suspend, or revoke a license, or to take any other action permitted by ch. 560, F.S., for failing to maintain a federally insured depository account, deposit all checks accepted into a depository account or submit transactional information to the office.
- Requiring a licensee to suspend its check cashing operations immediately if there is any interruption in its depository relationship and to prohibit the resumption of check cashing operations until the licensee has secured a new depository relationship.

The work group also recommended the establishment of a statewide database for regulators and law enforcement to access for the detection of workers' compensation insurance fraud.

Deferred Presentment Provider Database

Part IV of chapter 560, F.S., regulates deferred presentment providers (DPPs). Section 560.404, F.S., requires payday lenders to access a database that is maintained by an OFR service provider. This database allows DPPs to comply with s. 560.404(19), F.S., which prohibits a DPP from entering into a deferred presentment agreement with a customer if the customer already has an outstanding deferred presentment agreement, or terminated an agreement within the previous 24 hours. Section 560.404(23), F.S., 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.

⁹ Ch. 2012-85, L.O.F.

III. Effect of Proposed Changes:

Section 1 amends s. 560.103, F.S., to define the term, “database” to mean the deferred presentment transaction database, implemented pursuant to s. 560.404(23), F.S., that maintains transactional information submitted by deferred presentment provider licensees.

Section 2 amends s. 560.309, F.S., relating to check cashers, to authorize the Financial Services Commission by rule to use up to \$0.25 of the existing deferred presentment fee authorized under s. 560.404(23), F.S., for data that is required to be submitted by a licensee for the check cashing database. The check-cashing database would be part of the current deferred presentment database.

Section 3 revises recordkeeping requirements of check cashers under s. 560.310, F.S. Licensees are required to submit specific transaction information to the OFR database created in this section. Currently, Rule 560.704, F.A.C., requires licensees to maintain similar information via an Excel spreadsheet. A licensee would be required to submit the following information to the OFR database:

- 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;
- Fee charged for the cashing of the payment instrument;
- Branch/Location where instrument was accepted;
- Type of identification and identification number presented by the payee or customer
- Payee’s workers’ compensation insurance policy number if the payee is a business.

The OFR is required to maintain the database and ensure that the database provides various interfaces with the Department of State and the Department of Financial Services, for purposes of verifying corporate information and workers’ compensation coverage, respectively. The database must also have the capability to maintain an electronic log of the sale or issuance of payment instruments.

The section also provides that a licensee may rely on the information contained in the database as accurate, and that the licensee is not subject to any administrative penalty or civil liability due to the reliance on inaccurate information contained in the database. Lastly, the section does not affect the rights of licensees to enforce contractual provisions of the money services businesses agreements through any civil action allowed by law.

The OFR is authorized to adopt rules to implement and administer provisions of this section.

Section 4 provides that the act will take effect July 1, 2013.

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:

The database will aid in the detection and deterrence of unscrupulous contractors committing workers' compensation insurance fraud, thereby creating a more level playing field for legitimate contractors.

For checks cashed in excess of \$1,000, check cashers will need to report certain data to the database. Currently, this data is 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.

C. Government Sector Impact:

The bill will provide regulators and law enforcement with additional enforcement tools to detect and prosecute workers' compensation insurance fraud and other criminal activities.

The bill would increase the OFR's expenditures by an estimated \$1.9 million from revenue that is currently deposited into the OFR's Regulatory Trust Fund. The OFR does not have an appropriation sufficient to fund the cost of the operation and maintenance of the new check-cashing database created by the bill. Additionally, the OFR indicates it will need an additional appropriation of \$329,634 and 5.00 full-time-equivalent positions for the workload associated with the new database.

Office of Financial Regulation's Fiscal Analysis¹⁰

The OFR provided the following estimates concerning the Deferred Presentment Provider Database, based on current law:

¹⁰ Office of Financial Regulation, Financial Services Commission, *2013 Bill Analysis*, March 29, 2013. Report on file with Banking and Insurance Committee staff.

Estimated operation and maintenance costs FY 2013-2014

Projected transactions: 7.6 million @ \$1.00

Projected revenue: \$7.6 million

Current operation and maintenance cost: \$0.41 per \$1.00

\$7,600,000 * \$0.41 = \$3,116,000.

Proposed Check Cashing Database

The OFR provided the following estimates assuming that \$0.25 of the \$1.00 fee currently collected from customers seeking payday loans would be used to fund the new check-cashing database:

Projected transactions: 7.6 Million at \$1.00 per check

Projected revenue: \$7.6 Million

Operation and maintenance cost: \$0.25 per \$1.00

\$7,600,000 * \$0.25 = \$1,900,000.

The number of checks cashed that exceed \$1,000 is currently unknown. For calendar year 2012, OFR estimates that 17 million checks were cashed by registered check cashers in Florida. These checks cashed represent approximately \$8 billion with an average check amount cashed of \$470.60.

While the number of checks cashed over \$1,000 is indeterminate at this time, the OFR provided three possible scenarios of the projected costs, contingent upon the number of check cashing transactions involving a check over \$1,000.

Potential estimate based on 5 percent of checks cashed that exceed \$1,000

Additional Check Transactions: 17,000,000 * 5% = 850,000

Additional Cost per Transaction: \$1,900,000 / 850,000 = \$2.24

Potential estimate based on 10 percent of checks cashed that exceed \$1,000

Additional Check Transactions: 17,000,000 * 10% = 1,700,000

Additional Cost per Transaction: \$1,900,000 / 1,700,000 = \$1.12

Potential estimate based on 15 percent of checks cashed that exceed \$1,000

Additional Check Transactions: 17,000,000 * 15% = 2,550,000

Additional Cost per Transaction: \$1,900,000 / 2,550,000 = \$0.75

ORF's Total Projected Cost for Both Databases FY 2013-2014 = \$5,016,000

The OFR is requesting \$329,634 and five positions to analyze the data collected and to respond to information requests from regulatory and law enforcement agencies.

According to the OFR, the positions are needed to conduct examinations and investigations when data anomalies or indicators of unlawful conduct are present in the data. The OFR's request is based on the following:

Fiscal Impact of SB 410	Financial Specialist	Financial Control Analyst	Senior Financial Investigator	Total
Salary & Benefits	\$59,113	\$62,377	\$53,000	\$174,490
Adjusted S&B to Hire 10 percent above minimum salary	\$65,024	\$68,615	\$58,300	\$191,939
Expenses	\$1,800	\$1,800	\$1,800	\$5,400
Transfer to DMS - HR	\$356	\$356	\$356	\$1,068
Cost per FTE	\$67,180	\$70,771	\$60,456	\$198,407
Requested number of FTEs	1	2	2	5
Total Cost of Requested FTEs	\$ 67,180	\$141,542	\$120,912	\$329,634

VI. Technical Deficiencies:

The bill tracks a provision in s. 560.404, F.S., relating to the deferred presentment database, which provides that a licensee would not be subject to any administrative penalty “due to relying on inaccurate information in the database.” According to the OFR, this language is unnecessary for the check-cashing database, as licensees do not have any reason to rely on other entries in the system such as in the deferred presentment database. The OFR suggests this language be removed because it could result in the OFR being precluded from assessing penalties or taking other administrative actions if a licensee intentionally enters its own information inaccurately in the database.

Lines 119-123 require the OFR to adopt rules to implement the provisions of the bill. However, the OFR reports to the Financial Services Commission, which has rulemaking authority for the OFR.¹¹

VII. Related Issues:

According to the OFR, an effective date of July 1, 2013, will not provide sufficient time for OFR to develop a database and adopt rules. It is also unclear whether a July 1, 2013 effective date would provide adequate time for check cashing companies to be trained to use the new database.

VIII. Additional Information:

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

None.

¹¹ Section 20.121(3), F.S.

B. Amendments:

None.

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