

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: PCS/SB 410 (783148)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government) and 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.				

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:

PCS/SB 410 provides for the establishment of 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. 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 ch. 560, F.S.

After completion of the competitive solicitation for the database, the OFR may include a request for funding in their FY 2014-2015 Legislative Budget Request. The bill has no fiscal impact on state government for the 2013-2014 fiscal year.

The bill authorizes the OFR to issue a competitive solicitation for a statewide, real time, on-line check cashing database. The bill requires that check cashers, after implementation of the new check cashing database, to enter specified transactional information into the database.

This bill amends section 560.310, Florida Statutes.

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:

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 the DFS, for purposes of determining proof of coverage for workers' compensation and by the Secretary of State for purposes of verifying corporate registration and articles of incorporation.

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

The bill also grants rulemaking authority to the Financial Services 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 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. The database may also 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 has no fiscal impact on state or local government.

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.)

Recommended CS by Appropriations Subcommittee on General Government on April 17, 2013:

The committee substitute:

- 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.
- Deletes the term “database” and its definition.
- Deletes authority of the Financial Services Commission to 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.
- Deletes 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.

B. Amendments:

None.