

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 Banking and Insurance

BILL: SB 590

INTRODUCER: Senator Richter

SUBJECT: Check Cashing Services

DATE: January 31, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Pre-meeting
2.			CJ	
3.				
4.				
5.				
6.				

I. Summary:

SB 590 revises provisions relating to the regulation of money services businesses by the Office of Financial Regulation (OFR). Money services businesses (MSBs) offer financial services such as check cashing, money transmittals (wire transfers), sales of monetary instruments and currency exchange, and deferred presentment transactions (“payday loans”) outside the traditional banking environment. The bill provides the following changes:

- Allows the OFR to suspend the license of a MSB immediately pursuant to s. 120.60(6), Florida Statutes, if criminal charges are filed against a natural person listed on the application or if such person is arrested for specified crimes.
- Expands prohibited acts to include violations under s. 560.310, F.S., relating to records retention and OFR database reporting requirements applicable to check cashers. A violation of this act would be a third-degree felony.
- Provides that a deferred presentment transaction is void if the person conducting the transaction is not authorized under ch. 560, F.S., and such person has no right to collect funds relating to such transaction.
- Requires additional persons to be licensed as check cashers since the bill lowers the dollar threshold amount of a payment instrument that an exempt check casher may cash per person from less than \$2,000 to \$1,000 per day.
- Updates outdated cross references to federal regulations.

II. Present Situation:

Regulation of Money Services Businesses

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. Money service businesses are regulated under two license categories.¹ Money transmitters and payment instrument issuers are regulated under part II of ch. 560, F.S., while check cashers and foreign currency exchangers are regulated under part III. To qualify for licensure as a MSB under ch. 560, F.S., an applicant must meet the following requirements:

- Demonstrate to the OFR the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business or deferred presentment provider will operate lawfully.
- Be legally authorized to do business in Florida.
- Be registered as a money services business with the Financial Crimes Enforcement Network (FinCEN) as required by 31 C.F.R. s. 103.41, if applicable.
- Have an anti-money laundering program in place that meets the requirements of 31 C.F.R. s. 103.125.
- Provide the OFR with information required under ch. 560, F.S., and related rules.²

The Federal Bank Secrecy Act of 1970 (BSA) established the regulatory framework to prevent and detect money laundering. The BSA requires certain MSBs to register with the Financial Crimes Enforcement Network (FinCEN), of the U.S. Department of the Treasury³ if they conduct more than \$1,000 in business with one person in one or more transactions on the same day in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing or exchange. However, if a business provides money transfer services in any amount, registration is required. A business that meets the definition of a MSB must comply with both the general obligations that apply to all financial institutions and the specific obligations that apply to MSBs.

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. These regulations require MSBs to maintain certain records and report certain currency transactions and suspicious activities. The MSBs are required to establish an anti-money laundering program (AML), to obtain and verify customer identity, and to document certain information concerning the transactions.

Section 560.111, F.S., specifies prohibited acts under ch. 560, F.S., and provides penalties for noncompliance. Section 560.114, F.S., authorizes the OFR to take disciplinary actions if a MSB violates provisions of ch. 560, F.S., and 31 C.F.R. Pursuant to s. 560.114, F.S., the OFR may

¹ Section 560.104, F.S., provides that banks, credit unions, trust companies, offices of an international banking corporation, or other financial depository institutions organized under the laws of any state of the United States are exempt from the provisions of ch. 560, F.S.

² Section 560.1401, F.S.

³ The Bank Secrecy Act (BSA) is the name commonly given to a federal statute codified at Title 31, U.S. Code, sections 5311-5330.

immediately suspend the license of a MSB that fails to provide to provide the office specified records or fails to maintain a federally insured depository account. For purposes of s. 120.60(6), F.S., the failure to provide such records or maintain the account constitutes immediate and serious danger to the public health, safety, and welfare. Section 120.60(6), F.S., provides:

- (6) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:
 - (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
 - (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
 - (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

Licensure of Check Cashers

Generally, a person may not engage in the business of cashing payment instruments without being licensed by the OFR.⁴ However, current law provides that the requirement for licensure as a check casher 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.⁵ Licensed check cashers are required to comply with federal requirements, if applicable, and state requirements, such as maintaining specified records and reporting information to the OFR. Section 560.310, F.S., requires licensed check cashers to maintain copies of cashed checks, and for checks exceeding \$1,000, the check casher must submit certain transactional data to an electronic log or check-cashing database.

Deferred Presentment Providers

A deferred presentment provider (DPP) must be licensed under part II or part III, ch. 560, F.S., file a declaration of intent with the OFR, and meet other requirements. Part IV of ch. 560, F.S., regulates DPPs and deferred presentment transactions. A deferred presentment transaction means providing currency or a payment instrument in exchange for a person's check and agreeing to hold the person's check for a period prior to presentment, deposit, or redemption.⁶ The face amount of a check taken for a deferred presentment may not exceed \$500.⁷ A DPP may charge a maximum fee of 10 percent of the currency or payment instrument provided (exclusive of the verification fee). Section 560.404(19), F.S., prohibits a DPP from entering into a deferred

⁴ Section 560.303, F.S.

⁵ Section 560.304, F.S.

⁶ Section 560.402(3), F.S.

⁷ Section 560.404(5), F.S.

presentment agreement with a customer if the customer has an outstanding deferred presentment agreement with any DPP, or terminated an agreement within the previous 24 hours.

III. Effect of Proposed Changes:

Prohibited Acts

The bill provides that any licensed check casher who willfully and knowingly violates the check casher record retention or database reporting requirements of s. 560.310, F.S., commits a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.0784, F.S.

The bill also revises the standard for violations under subsection (5) by providing that a person must not only willfully violate but also knowingly violate such provisions (ss. 560.310, 560.403, 560.404, or 560.405, F.S.).⁸

Authority to Suspend License

The bill revises the provision relating to the OFR's authority to suspend the license of a MSB if the OFR has reason to believe that a licensee poses an immediate, serious danger to the public health, safety, and welfare pursuant to s. 120.60(6), F.S. The bill authorizes the OFR to suspend the license of a MSB immediately if criminal charges are filed against a natural person required to be listed on the application pursuant to s. 560.141(1)(a)3., F.S.,⁹ or if such person is arrested for a crime listed in section 560.114(1)(o), 560.114(1)(p), or section 560.114(1)(q). Under current law and for purposes of s. 120.60(6), F.S., the OFR is authorized to suspend the license of any MSB immediately if the MSB fails to provide to the OFR specified records required under s. 560.123, s. 560.1235, s. 560.211, or s. 560.310, F.S., or fails to maintain a federally insured depository account. The bill requires the commissioner of the OFR, or his or her designee, to conduct such a proceeding and issue the final summary order. Under current law, s. 20.121(3)(c), F.S., designates the director (commissioner) as the agency head for purposes of final agency action under ch. 120, F.S.

Deferred Presentment Providers

The bill provides that a deferred presentment transaction conducted by a person not licensed (authorized by the OFR under ch. 560, F.S.) as a DPP is void, and the unlicensed person has no right to collect, receive, or retain any principal, interest, or charges relating to such transactions.

⁸ Section 560.310, F.S., relates to records retention and database reporting requirements. Section 560.403, F.S., requires that persons engaging in deferred presentment transactions must be licensed under part II or III, ch. 560.403, F.S., and file a declaration of intent with the OFR and meet other requirements. Section 560.404, F.S., specifies disclosures for DPP written agreements, terms and conditions of such transactions, and prohibitions relating to such transactions. Section 560.405, F.S., specifies requirements and prohibitions relating to the deposit and redemption of a deferred presentment transaction.

⁹ These persons include each officer, director, responsible person, compliance officer, controlling shareholder, and any other person who has a controlling interest in the MSB as provided in section 560.127, F.S.

Check Cashers

The bill requires additional check cashers to be licensed by lowering the check cashing licensure exemption threshold from less than \$2,000 to less than \$1,000 per person per day. Current law provides that the requirement for licensure as a check casher 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

Code of Federal Regulations Updates

The bill updates cross references to the Code of Federal Regulations to incorporate updates by FinCEN. On March 1, 2011, FinCEN transferred its regulations from 31 CFR Part 103 to 31 CFR Chapter X.

Effective Date

The bill takes effect July 1, 2014.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues

Article III, s. 6, of the Florida Constitution requires every law to embrace only one subject and matter properly connected. Sections 1-6 of the bill affect all MSBs, including check cashers. The title of the bill is “an act relating to check cashers.”

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill would require additional check cashers to be licensed, thereby subject to a licensure fee and other requirements since the exemption threshold would be decreased from \$2,000 to \$1,000. The number of impacted persons is indeterminate.

B. Private Sector Impact:

Any deferred presentment transaction conducted by a person who is not authorized by the OFR pursuant to ch. 560, F.S., to engage in such transactions is void and such person has no right to collect, receive, or retain any funds relating to such transaction. Consumers who have entered into such agreements would benefit.

C. Government Sector Impact:

Revenues and expenditures associated with the required licensure of additional check cashers is indeterminate.

VI. Technical Deficiencies:

Sections 1-6 of this bill are not germane to the title of the bill (“an act relating to check cashers”) as it affects more categories of MSBs than only check cashers. A germane title might be “an act relating to money services businesses.”

Section 4 references the licensure of DPPs. However, the OFR does not license DPPs as a separate licensure category. A deferred presentment provider must be licensed under part II or part III, ch. 560, F.S., and file a declaration of intent with the OFR and meet other requirements to engage in deferred presentment transactions.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 560.111, 560.114, 560.1235, 560.125, 560.1401, 560.141, 560.304, and 560.309.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.