

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: CS/SB 1126

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Licensure of Check Cashers and Foreign Currency Exchangers

DATE: February 8, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1126 exempts additional check cashers from licensure by the Office of Financial Regulation (OIR) if the aggregate amount of payment instruments cashed is between \$2,000 and \$7,500 per person per day, and the check cashers meet certain additional conditions. These conditions include that the payment instruments are incidental to the retail sale of goods or services; and the person's compensation for cashing payment instruments at each location does not exceed 5 percent of the total gross income from the retail sale of goods or services by such person during the last 60 days. Further, these authorized check cashers must also comply with data submission and recordkeeping requirements prescribed by rule.

Current law provides an exemption from the check cashing licensure requirements for a person who cashes payment instruments that have an aggregate face value of less than \$2,000 per person per day that are incidental to the retail sale of goods; and whose compensation for cashing payment instruments at each site does not exceed 5 percent of the total gross income from the retail sale of goods or services provided by such person during the last 60 days.

II. Present Situation:

Legitimate check cashing businesses serve a widely recognized social and economic purpose for a significant number of people, many of whom are economically disadvantaged and cannot or do not maintain accounts with traditional financial institutions. However, in recent years, two

primary categories of criminals, drug diverters¹ defrauding Medicaid and employers defrauding workers' compensation carriers, have been identified as relying on check cashing stores to enable their criminal activity. Further, parts of Florida continue to be identified as high intensity drug trafficking areas and high intensity financial crime areas.

The United States Drug Enforcement Agency has identified Florida as a significant center of illegal drug production, manufacturing, importation, or distribution. The High Intensity Drug Trafficking Areas (HIDTA) program, created by Congress with the Anti-Drug Abuse Act of 1988, provides assistance to federal, state, local, and tribal law enforcement agencies operating in areas determined to be critical drug-trafficking regions of the United States. There are currently 28 HIDTAs, which include approximately 18 percent of all counties in the United States and 66 percent of the U.S. population. HIDTA-designated counties are located in 49 states.² Florida contains four HIDTA-designated counties.³ Further, the United States Financial Crimes Enforcement Network has designated eight counties in south Florida⁴ as High Intensity Financial Crime Areas (HIFCAs)⁵ in the United States. The HIFCAs are a means of concentrating law enforcement efforts at the federal, state, and local levels in high intensity money laundering zones.⁶

2008 Statewide Grand Jury Report on Check Cashers

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*.⁷ The report documented hundreds of millions of dollars in illicit profits were being laundered in check cashing stores. This laundering was facilitating hundreds of millions of dollars in Medicaid and Medicare fraud, workers' compensation fraud, and many other types of criminal activity.

The dollar magnitude of this fraud is tremendous. The report noted that in one investigation, the Department of Financial Services found that 10 construction companies funneled \$1 billion through check cashing stores over a 3-year period.⁸ 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' compensation insurance. After the

¹ Drug diversion is the practice of diverting pharmaceutical drugs from legitimate sources and reselling them on the black market. See 2008 Statewide Grand Jury Report on Check Cashers section, below, for further discussion.

² U.S. Drug Enforcement Agency, HIDTA Areas, (Feb. 2017) available at <https://www.dea.gov/ops/hidta.shtml> (last viewed Jan. 29, 2018).

³ *Id.*

⁴ Broward, Miami-Dade, Indian River, Martin, Monroe, Okeechobee, Palm Beach and St Lucie counties.

⁵ Financial Crimes Enforcement Network, HIFCA, available at <https://www.fincen.gov/hifca> (last viewed Jan. 30, 2018).

⁶ The Money Laundering and Financial Crimes Strategy Act of 1998, P.L. 105-310 (October 30, 1998), requires the designation of certain areas as areas in which money laundering and related financial crimes are extensive or present a substantial risk shall be an element of the national strategy developed pursuant to section 5341(b) of the Act. See 31 U.S. Code 5341(b) and 5342(b).

⁷ Eighteenth Statewide Grand Jury, Case No. SC 07-1128, Second Interim Report of the Statewide Grand Jury, *Check Cashers: A Call for Enforcement*, (Mar. 2008) (on file with Senate Banking and Insurance Committee).

⁸ *Id.*

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. In response, the Legislature enacted legislation in 2008 to provide the OFR and law enforcement with additional tools to combat these fraudulent activities.⁹ However, workers' compensation fraud involving shell companies continued to increase.

Chief Financial Officer's Work Group

In 2011, the Chief Financial Officer convened a work group¹⁰ 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 report noted that one shell company alone accounted for \$27 million worth of checks in excess of \$10,000 over a 4-year period. In addition, the Work Group estimated that this fraud costs the state up to \$1 billion annually. The resulting unreported payroll taxes, unreported premium taxes, and higher costs to insurance carriers who must process workers' compensation claims from uninsured workers adversely affect law-abiding businesses, which absorb the resulting costs of this fraud.

The work group provided a number of significant recommendations to fight workers' compensation fraud, which were enacted by the Legislature in 2012.¹¹ However, one recommendation of the work group, the establishment of a statewide, real-time database for regulators and law enforcement to quickly and effectively detect and deter workers' compensation premium fraud was not enacted until 2013.¹²

Florida's Regulation of Check Cashers

The Office of Financial Regulation (OFR) regulates the money services businesses, which covers payment instrument sellers, check cashers, foreign currency exchangers, and deferred presentment providers, pursuant to ch. 560, F.S., the Money Services Business Act (act). A check casher is a person who sells currency in exchange for receiving a check, draft, warrant, money order, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable.¹³

Section 560.304, F.S., provides an exemption from the check cashing licensure requirements for a person:

- Who cashes payment instruments that have an aggregate face value of less than \$2,000 per person per day that are incidental to the retail sale of goods; and

⁹ Ch. 2008-177, Laws of Fla.

¹⁰ Department of Financial Services, *A Report by the Money Services Business-Facilitated Workers' Compensation Fraud Work Group*, (2011) (on file with the Senate Committee on Banking and Insurance).

¹¹ Ch. 2012-85, Laws of Fla.

¹² Ch. 2013-139, Laws of Fla.

¹³ Section 560.103, F.S.

- Whose compensation for cashing payment instruments at each site does not exceed 5 percent of the total gross income from the retail sale of goods or services provided by such person during the last 60 days.

Section 560.1401, F.S., provides that an applicant for licensure as a money services business must:

- Demonstrate the character and general fitness to command the confidence of the public and warrant the belief that the money services business shall operate lawfully and fairly;
- Be legally authorized to do business in this state;
- Be registered as a money services business with the Financial Crimes Enforcement Network;¹⁴ and,
- Have an anti-money laundering program, which meets the requirements of 31 C.F.R. s. 1022.210.

Section 560.309, F.S., prohibits licensed check cashers from charging fees in excess of:

- 10 percent of the face amount of a personal check, or \$5, whichever is greater;
- 3 percent of the face amount of public assistance or federal social security benefit checks, or \$5, whichever is greater; or
- 5 percent of the face amount of all other checks, or \$5, whichever is greater.

Section 560.123, F.S., requires the maintenance of certain records of each transaction involving currency or payments instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings. For example, a money services business must keep records of each transaction occurring in this state that it knows to involve currency or other payment instruments having a greater value than \$10,000.

Further, s. 560.310, F.S., requires licensees engaged in check cashing to maintain specific documents and enter information into the CCDB, as applicable. Licensed check cashers are required to enter the following transactional data into the check-cashing database (CCDB) before cashing a check over \$1,000:

- Transaction date;
- Payor name;
- Conductor¹⁵ name, if different from payee name;
- Type of payment instrument, amount of payment instrument and amount of currency provided;
- Amount of fee charged;
- Location where the check was cashed; and
- The type of identification and identification number presented by the payee or conductor.

¹⁴ See 31 C.F.R. 1010.100 and 31 C.F.R. 1022.380. These provisions defines money service businesses subject to registration with the Financial Crimes Enforcement Network (FinCEN), to include persons that cash checks or monetary instruments in an amount greater than \$1,000 per person, per day.

¹⁵ Section 560.103(9), F.S., defines a “conductor” as a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.

OFR Check Cashing Database

According to a recent statistical analysis by the OFR of data contained in the check-cashing database (CCDB) and reported by licensed check cashers:

- Approximately 94 percent of all checks recorded in the CCDB since inception date of September 3, 2015, were under \$7,500.
- Over 86 percent of all corporate checks recorded in the CCDB since the inception date of September 3, 2015, were under \$7,500.
- Over 93 percent of all Internal Revenue Service tax-refund checks recorded in the CCDB since the inception date of September 3, 2015, were under \$7,500.¹⁶

The OFR has eight memorandum's of understanding (MOU) that allow sharing of data from the CCDB with federal, state, or local governments that use this information to identify and prosecute various forms of fraud:

- Office of the State Attorney – 17th Judicial Circuit
- Broward County Sherriff's Office
- Department of Economic Opportunity
- Fort Lauderdale Police Department
- Internal Revenue Service – Criminal Investigations – Tampa and Miami Offices
- Department of Financial Services, Division of Workers' Compensation and the Division of Forensic and Investigative Services.

The Department of Financial Services uses the CCDB to assist them in investigating compliance with workers' compensation coverage requirements, insurance fraud, and other illegal activities.¹⁷ The Division of Workers' Compensation (DWC) uses the OFR's check cashing store database, which contains critical financial information on the amount of payments cashed by employers to identify employers who may be underreporting payroll and initiate the DWC's enforcement actions against these employers. The DWC has used the check cashing store database to issue approximately 30 Stop-Worker Orders against employers who have underreported payroll to their insurance companies. The amount of unreported payroll was approximately \$323 million. The Division of Investigative and Forensic Services of the Department of Financial Services uses the information contained in the database to assist them in their investigation of money laundering, workers' compensation premium fraud, and Medicaid fraud.

III. Effect of Proposed Changes:

Section 1 amends s. 560.304, F.S., to create a new exemption from licensure under part III of ch. 560, F.S., for a person who is authorized by the office to cash payment instruments that have an aggregate face value of between \$2,000 and \$7,500 per person per day and that are incidental to the retail sale of goods or services, and whose compensation for cashing payment instruments at each site does not exceed 5 percent of the total gross income from the retail sale of goods or services by such business during the last 60 days.

¹⁶ Office of Financial Regulation, *Analysis of SB 1126*, (Jan. 9, 2018) (on file with Senate Committee on Banking and Insurance).

¹⁷ Department of Financial Services, *Analysis of SB 1126* (Dec. 21, 2017) (on file with Senate Committee on Banking and Insurance).

The OIR must authorize such person if the person:

- Submits all data collected in the course of business for checks with a face value exceeding \$2,000 on a daily basis to support the detection and prosecution of financial crime and workers' compensation violations;
- Provides records prescribed by commission rule and requested by the office in the course of a criminal investigation;
- Establishes limits on the aggregate value of cashed instruments over a monthly and yearly timeframe which do not exceed the maximum amount specified in this paragraph, and reports the limits to the office pursuant to commission rule; and
- Does not cash corporate instruments.

Under current law, an exemption from licensure as a check casher is provided for a person whose cash payment instruments have an aggregate face value of less than \$2,000, per person per day that are incidental to the retail sale of goods; and the compensation for cashing payment instruments at each site does not exceed 5 percent of the total gross income from the retail sale of goods or services provided by such person during the last 60 days.

Section 2 provides the bill will take effect July 1, 2018.

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:

Dependent upon the number of licensed check cashers that could avail themselves of the new exemption from licensure under the bill, an indeterminate number of businesses would no longer be subject to OFR licensure application and renewal fees. There is no fee required for the authorization process.

C. Government Sector Impact:

The impact is indeterminate since the number of businesses that could operate under the new exemption is unknown. The OFR states one FTE (Financial Specialist) is required to implement the provisions of the bill. Total recurring costs for this position would be \$64,042.

D. Constitutional Issues:

The bill may raise the issue of an unlawful delegation of legislative authority to the executive branch. On lines 17-39, the bill provides that the Financial Services Commission will adopt rules to administer the authorization program and to implement recordkeeping requirements. However, the bill does not provide standards or conditions that would allow the OFR to deny authorizing, nonrenewing, or deauthorizing a check casher. Further, it is unclear whether the OFR could examine an authorized check casher to determine compliance with the provisions of the bill or impose administrative penalties or fines for noncompliance.

Article II, Section 3, of the Florida Constitution, establishes a doctrine of separation of powers, providing that no branch may exercise powers appertaining to the other branches. Interpreting this doctrine in the context of the Legislature delegating authority to the executive, the Florida Supreme Court has stated that, “where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine.” *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978). However, “[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be.” *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla. 1968).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides an effective date of July 1, 2018; however, this may not allow adequate time to adopt rules to implement the bill.

VIII. Statutes Affected:

This bill substantially amends section 560.304 of the Florida Statutes.

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

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

CS by Banking and Insurance on February 6, 2018:

The CS creates a new exemption from licensure under part III of ch. 560, F.S., for a person who is authorized by the Office of Financial Regulation to cash payment instruments that have an aggregate face value of between \$2,000 and \$7,500 per person per day and that are incidental to the retail sale of goods or services, and whose compensation for cashing payment instruments at each site does not exceed 5 percent of the total gross income from the retail sale of goods or services by such business during the last 60 days.

B. Amendments:

None.