

**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 1126

INTRODUCER: Senator Brandes

SUBJECT: Licensure of Check Cashers and Foreign Currency Exchangers

DATE: February 5, 2018

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1126 exempts additional check cashers from regulation by the Office of Financial Regulation by increasing the aggregate amount of payment instruments a person can cash and be exempt from licensure from less than \$2,000 to \$7,500 per person per day. As a result, the bill would require a person cashing payment instruments to be licensed if the payment instruments have an aggregate face value of less than \$7,500 (rather than \$2,000) per person per day; 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.

Under Florida law, 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. Check cashers are required to comply with state and federal anti-money laundering laws. For checks cashed over \$1,000, a licensed check casher must maintain certain documentation; and enter certain transactional information into a statewide, real-time, online check-cashing database administered by the OFR for use by federal, state, and local governmental agencies to assist in the detection of workers' compensation fraud and other financial crimes such as tax refund fraud. According to the OFR, the bill effectively deregulates check cashing for checks cashed below \$7,500 and significantly reduces the number of transactions captured in the database, thereby making the database obsolete.

**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 diverters<sup>1</sup> defrauding Medicaid and employers defrauding

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<sup>1</sup> 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.

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.<sup>2</sup> Florida contains four HIDTA-designated counties.<sup>3</sup> Further, the United States Financial Crimes Enforcement Network has designated eight counties in south Florida<sup>4</sup> as High Intensity Financial Crime Areas (HIFCAs)<sup>5</sup> 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.<sup>6</sup>

### **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*.<sup>7</sup> 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.<sup>8</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' compensation 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

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

<sup>3</sup> *Id.*

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

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

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> *Id.*

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.<sup>9</sup> 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 group<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

### **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.<sup>13</sup>

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
- 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.

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<sup>9</sup> Ch. 2008-177, Laws of Fla.

<sup>10</sup> 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).

<sup>11</sup> Ch. 2012-85, Laws of Fla.

<sup>12</sup> Ch. 2013-139, Laws of Fla.

<sup>13</sup> Section 560.103, F.S.

Section 560.1401, F.S., states 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;<sup>14</sup> 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;
- Conductor<sup>15</sup> 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.

### ***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.

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<sup>14</sup> 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.

<sup>15</sup> 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.

- 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.<sup>16</sup>

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.<sup>17</sup> 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. 560.303, F.S., to allow an exemption from licensure under part III of ch. 560, F.S., for a person who meets the following conditions:

- The cash payment instruments have an aggregate face value of less than \$7,500 (instead of \$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.

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

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

**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 exemption under the bill, an indeterminate number of businesses would no longer be subject to licensure application and renewal fees.

**C. Government Sector Impact:**

The impact is indeterminate since the number of businesses that could operate under the revised exemption is unknown.

The OFR currently contracts with a technology vendor to host and maintain the check cashing database (CCDB). Implementation of the bill legislation would likely render the database obsolete, as discussed below. If that occurs, the OFR would need subsequent legislation to remove the requirement to maintain the check cashing database and decrease the corresponding expense. The OFR currently contracts with Veritec Solutions, LLC at an annual cost of \$151,000.

According to the OFR, increasing the threshold for exemptions would effectively deregulate check cashing for checks cashed below \$7,500 and the OFR's ability to identify and prevent money laundering, identify and combat workers' compensation fraud, and fight financial crime overall. Individuals and businesses would be enticed to cash checks with entities exempt from licensure.

Further, implementation of the bill would result in the amount of data and the usefulness of the check-cashing database (CCDB) being reduced and its fraud-detection capabilities would be virtually eliminated. The OFR states that the majority of tax refund checks cashed would not be recorded in the CCDB. Florida is already fighting tax-refund fraud, and the CCDB helps the OFR identify this type of financial crime.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.)

None.

**B. Amendments:**

None.