#### HOUSE OF REPRESENTATIVES STAFF ANALYSIS

#### BILL #: HB 1311 Check Cashing Services SPONSOR(S): McClure TIED BILLS: IDEN./SIM. BILLS: SB 1126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Hinshelwood	Luczynski
2) Commerce Committee			

#### SUMMARY ANALYSIS

A check casher is one type of money services business and is regulated under part III of ch. 560, F.S. As defined, 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, the check casher must maintain a copy of the photo identification presented by the customer; maintain the customer's thumbprint taken at the time the payment instrument was presented; and enter certain information into a statewide, real-time, online check cashing database administered by the Office of Financial Regulation (OFR.) The database is used to assist in detecting workers' compensation fraud and other financial crimes such as tax refund check fraud.

Florida law currently contains a retailer exemption for check cashing. The bill raises from \$2,000 to \$7,500 the payment instrument threshold for purposes of the retailer exemption for check cashing. In other words, a person cashing payment instruments does not need to be licensed as long as 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 instruments at each location does not exceed five percent of the total gross income from the retail sale of goods or services by such person during the last 60 days.

The bill has no impact on local governments. The bill has an indeterminate fiscal impact on the private sector and the state. The OFR believes that the bill would have a significantly negative impact on the number of checks entered into the check cashing database, thus rendering the database of no use to the point that subsequent legislation may be necessary to remove the database requirement from Florida law.

The bill provides an effective date of July 1, 2018.

### **FULL ANALYSIS**

### I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background: Florida Law on Check Cashers

The OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including persons engaged in the money services business. A check casher is one type of money services business and is regulated under part III of ch. 560, F.S. As defined, 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>1</sup>

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 whose compensation for cashing payment instruments at each site does not exceed five percent of the total gross income from the retail sale of goods or services by such person during the last 60 days. This exemption is often referred to as a "retailer exemption" for check cashing.

Regardless of whether a person is exempt from licensure as a check casher, a person engaging in the business of cashing payment instruments may not charge fees in excess of those provided below:<sup>2</sup>

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

While check cashers are generally subject to federal anti-money laundering laws,<sup>3</sup> Florida law contains many of the same anti-money laundering reporting requirements and recordkeeping requirements with the added benefit of state enforcement. A check casher applicant must have an anti-money laundering program which meets the requirements of federal law.<sup>4</sup> Pursuant to the Florida Control of Money Laundering in Money Services Business Act, a check casher must maintain 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.<sup>5</sup> A check casher must keep records of each transaction occurring in this state which it knows to involve currency or other payment instruments having a greater value than \$10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.<sup>6</sup> Additionally, a check casher must report all suspicious activity to the OFR, which may be accomplished by filing a suspicious activity report with the Financial Crimes Enforcement Network of the U.S. Department of Treasury.<sup>7</sup>

The OFR may, without advance notice, examine or investigate a check casher as often as is warranted for the protection of customers and in the public interest.<sup>8</sup> However, the office must examine each

DATE: 1/27/2018

<sup>&</sup>lt;sup>1</sup> s. 560.103(6), (29), F.S.

<sup>&</sup>lt;sup>2</sup> ss. 560.303(3) and 560.309, F.S.

<sup>&</sup>lt;sup>3</sup> 31 C.F.R. pt. 1022

<sup>&</sup>lt;sup>4</sup> s. 560.1401, F.S.

<sup>&</sup>lt;sup>5</sup> s. 560.123, F.S. <sup>6</sup> *Id.* 

<sup>&</sup>lt;sup>7</sup> s. 560.309, F.S. <sup>8</sup> s. 560.109(1), F.S. **STORAGE NAME**: h1311.IBS

licensee at least once every 5 years.<sup>9</sup> The OFR may take administrative action against a check casher for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.<sup>10</sup> The OFR may also take administrative action against a check casher for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.<sup>11</sup>

## **Background: Check Cashing Database**

In 2011, the Chief Financial Officer convened the Money Service Business Facilitated Workers' Comp Fraud Work Group ("Work Group") to study the issue of workers' compensation premium fraud in Florida, as facilitated by check cashers, and to develop recommendations to resolve the issue. It was comprised of representatives from state government and industry stakeholders. A report containing the work group's findings and recommendations is available online.<sup>12</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' comp 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 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.

As part of the scheme, two fees are deducted from the amount of the check: (1) a fee for cashing the check, usually between 1.5% to 2%, and (2) a fee between 6% to 8% for the facilitator's "rent" of the shell company and workers' comp insurance policy. The balance would then be paid in cash to the subcontractor under the guise of the shell company.

This type of fraud results in unreported payroll taxes, unreported premium taxes, and higher costs to insurance carriers who must process workers' comp claims from uninsured workers. The Work Group estimated that this fraud costs the state up to \$1 billion annually and places tremendous pressure on law-abiding businesses to absorb the costs of workers' compensation premium avoidance.

In 2012, the Florida Legislature enacted a number of measures designed to prevent workers' compensation premium fraud and specifically addressed the role played by unscrupulous check cashers.<sup>13</sup> For example, the law eliminated the requirement that the OFR provide a 15-day advance notice to money services business licensees prior to conducting an examination or investigation. Additionally, the law provided that a check casher may only accept or cash a payment instrument from the original payee or a customer who is an authorized officer of the corporate payee name on the instrument's face; acceptance and cashing of third-party checks is no longer authorized.

One of the Work Group's recommendations, which was not implemented in the 2012 legislation, was to create a statewide, real-time, online database for check cashing transactions above \$1,000 to facilitate the flow of information between check cashers, the OFR, and the Department of Financial Services' Division of Workers' Compensation and Division of Insurance Fraud.<sup>14</sup> As the Work Group noted, it is critical to have coordinated, real-time data to guickly identify and target persons engaged in violations

<sup>14</sup> Subsequently renamed the Division of Investigative and Forensic Services. Ch. 2016-132, Laws of Fla. STORAGE NAME: h1311.IBS

DATE: 1/27/2018

<sup>&</sup>lt;sup>9</sup> Id.

<sup>&</sup>lt;sup>10</sup> s. 560.114, F.S. <sup>11</sup> *Id.* 

<sup>&</sup>lt;sup>12</sup> Department of Financial Services et al., A Report by the Money Service Business Facilitated - Workers' Comp Fraud Work Group, http://www.myfloridacfo.com/sitepages/agency/sections/moneyservicebusiness.aspx (last visited Jan. 26, 2018).

<sup>&</sup>lt;sup>13</sup> Ch. 2012-85, Laws of Fla.

of the law or other unlawful activity as the fraud is occurring, instead of retracing the fraud after the fact. One illustration of this necessity is the generally brief life span of the shell corporations, which the perpetrators may form and dissolve in attempts to evade regulators and law enforcement.

Prior to the implementation of a statewide, real-time, online check cashing database, check cashers were required to maintain records of all payment instruments cashed, and for payment instruments of \$1,000 or more, were required to maintain a copy of the photo identification presented by the customer, the customer's thumbprint taken at the time the payment instrument was presented, and an electronic log of payment instruments accepted, which included 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);
- Fees charged for the cashing of the payment instrument;
- Branch or location where the instrument was accepted; and
- Identification type and number presented by the customer.

Such information had to be maintained in an electronic format that was readily retrievable and capable of being exported to most widely available software applications including Microsoft EXCEL. The information was reviewed during the OFR's examination process. However, as concluded by the Work Group, that information could serve a more proactive and efficient purpose if it were accessible to the other regulatory and law enforcement groups in a real-time database.

In 2013, the Florida Legislature directed the OFR to issue a competitive solicitation for a statewide, real-time, online check cashing database.<sup>15</sup> The database went live on September 3, 2015,<sup>16</sup> and check cashers are now 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 were previously 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. The 2013 law also required the OFR to ensure that the database would interface with databases maintained by 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.

In addition to assisting in the detection of workers' compensation fraud, the database is used to assist in detecting other financial crimes such as tax refund check fraud.<sup>17</sup> The OFR currently has a memorandum of understanding with the following agencies in order to permit the sharing of data from the check cashing database for the purpose identifying and prosecuting various forms of fraud:<sup>18</sup>

- 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
- Internal Revenue Service Criminal Investigations Miami
- Department of Financial Services, Division of Worker's Compensation
- Department of Financial Services, Division of Forensic and Investigative Services

<sup>17</sup> Id. <sup>18</sup> Id.

<sup>&</sup>lt;sup>15</sup> Ch. 2013-139, Laws of Fla.

<sup>&</sup>lt;sup>16</sup> Office of Financial Regulation, Agency Analysis of 2018 House Bill 1311 (Jan. 10, 2018).

According to the OFR, since the check cashing database went live on September 3, 2015:<sup>19</sup>

- Approximately 94% of all checks recorded in the check cashing database were under \$7,500.
- Over 86% of all corporate checks recorded in the check cashing database were under \$7,500.
- Over 93% of all Internal Revenue Service tax-refund checks recorded in the check cashing database were under \$7,500.

# Effect of the Bill

The bill raises from \$2,000 to \$7,500 the payment instrument threshold for purposes of the retailer exemption for check cashing. In other words, a person cashing payment instruments does not need to be licensed as long as 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 five percent of the total gross income from the retail sale of goods or services by such person during the last 60 days.

B. SECTION DIRECTORY:

Section 1. Amends s. 560.304, F.S., relating to exemption from licensure.

Section 2. Provides an effective date of July 1, 2018.

# **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

- A. FISCAL IMPACT ON STATE GOVERNMENT:
  - 1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments

- B. FISCAL IMPACT ON LOCAL GOVERNMENTS:
  - 1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The increased payment threshold for the retailer exemption may result in certain licensed check cashing businesses choosing to no longer be licensed under part III of ch. 560, F.S. This would result in decreased renewal fees of \$375 per check casher and \$38 per branch. The bill may result in other businesses entering the Florida check cashing market without seeking licensure under part III of ch. 560, F.S. This would result in decreased initial application fees of \$188 per applicant and \$38 per

branch. Conversely, if more businesses operate under the retailer exemption for check cashers, fees not collected by the state are a cost savings to the private sector, and the OFR would not incur costs of regulatory oversight for such businesses. It is unknown how many businesses would be able to operate under the exemption as revised by the bill. Therefore, the impact to the private sector and the state is indeterminate. However, the OFR believes that the bill would have a significantly negative impact on the number of checks entered into the check cashing database, thus rendering the database of no use to the point that subsequent legislation may be necessary to remove the database requirement from Florida law.

# **III. COMMENTS**

- A. CONSTITUTIONAL ISSUES:
  - 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

# **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**