

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 Criminal Justice

BILL: SB 464

INTRODUCER: Senator Powell

SUBJECT: Payments to Prisoners Upon Release

DATE: November 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Jones	CJ	Favorable
2.			BI	
3.			RC	

I. Summary:

SB 464 prohibits a money services business from charging a fee to cash a payment instrument for funds issued to an inmate upon his or her release from a prison or municipal or county jail.

The bill may have a negative fiscal impact on a money services business. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2022.

II. Present Situation:

Money Services Businesses

A money services business (MSB) means any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.¹ In Florida, the Office of Financial Regulation (OFR) licenses and regulates MSBs.

Florida law governing MSBs does not apply to banks, credit card banks, credit unions, trust companies, associations, offices of an international banking corporation, Edge Act or agreement corporations, or other financial depository institutions organized under the laws of any state or the United States.² The federal government and its agency, as well as the state of Florida and its political subdivisions, are also exempt from MSB laws.³

¹ Section 560.103(22), F.S.

² Section 560.104, F.S.

³ *Id.*

Licensure as a Money Services Business

To qualify for licensure as a MSB, 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 MSB or deferred presentment provider (commonly known as “payday lenders”) shall be operated lawfully and fairly;
- Be legally authorized to do business in Florida;
- Be registered as a MSB with the Financial Crimes Enforcement Network as required under federal law, if applicable;
- Have an anti-money laundering program in place which meets the requirements of federal law; and
- Provide the OFR with all information required under Florida law and rules.⁴

The licensure requirement does not apply to a person cashing payment instruments⁵ 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 location does not exceed five percent of the total gross income from the retail sale of goods or services by such person during the preceding 60 days.⁶

Conduct of Business for Check Cashers

Each check casher⁷ licensed as a MSB must submit the following information to the check cashing database maintained by the OFR:

- Transaction date;
- Payor name as displayed on the payment instrument;
- Payee name as displayed on the payment instrument;
- Conductor name,⁸ if different from the payee name;
- Amount of payment instrument;
- Amount of currency provided;
- Type of payment instrument;
- Amount of the fee charged for cashing the payment instrument;
- Branch or location where the payment instrument was accepted;
- The type of identification and identification number presented by the payee or conductor;
- Payee’s workers’ compensation insurance policy number or exemption certificate number, if a corporate payment instrument and an active policy exists;
- Payee Corporate Document Number as issued by the Secretary of State, if a corporate payment instrument; and
- Payee’s Federal Employer Identification Number, if a corporate payment instrument.⁹

⁴ Section 560.1401, F.S.

⁵ Section 560.103(29), F.S., defines “payment instrument” as a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.

⁶ Section 560.304, F.S.

⁷ A “check casher” is a person who sells currency in exchange for payment instruments received, except travelers checks. *See* s. 560.03(6), F.S.

⁸ A “conductor” is a natural person who presents himself or herself to a licensed MSB for purposes of cashing a payment instrument. *See* s. 560.103(9), F.S.

⁹ Section 560.310, F.S., and Fla. Admin. Code R. 69V-560-704(5).

Additional requirements apply for payment instruments that exceed \$1,000.¹⁰

A MSB may be subject to disciplinary action against its license if it commits specific acts in s. 560.114, F.S., such as failure to comply with Florida law governing MSBs or any related rules or orders, or failure to comply with applicable federal law. The Financial Services Commission has adopted disciplinary guidelines for each ground for which disciplinary action may be imposed by the OFR.¹¹

Among other things, MSBs, authorized vendors, and affiliated parties are prohibited from engaging in specific acts in s. 560.111, F.S., such as embezzlement and making false entries in books and documents with the intent to deceive or defraud. These violations constitute a third degree felony.¹²

Check Cashing Fees

Florida law limits the fees a check casher, whether exempt or licensed, may charge. By law, an exempt or licensed check casher may not charge fees:

- In excess of 5 percent of the face value of the amount of the 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 payment of any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument; or
- In excess of 10 percent of the face amount of the payment instrument, or \$5, whichever is greater, if the payment instrument is a personal check or money order.¹³

Additionally, check cashers may collect a fee for the direct costs associated with verifying the customer's identity, residence, employment, credit history, account status, or other necessary information.¹⁴ The fee may only be collected when such verification is conducted, and the fee may not exceed \$5 per transaction.¹⁵

Currently, there are no statutory exemptions from the fee restrictions listed above.¹⁶ A person seeking to cash a payment instrument at a licensed or exempt money services business establishment may be charged a fee.

¹⁰ *Id.*

¹¹ Section 560.1141, F.S. *See also*, the OFR, *Form OFR-560-09, Disciplinary Guidelines for Money Services Businesses*, incorporated by reference in r. 69B-560.1000, F.A.C., available at <https://lofr.gov/sitePages/documents/FormOFR56009.pdf> (last visited Nov. 3, 2021). The Financial Services Commission is a body consisting of the Governor and the Cabinet, which appoints two officials who handle the regulation of banking, securities, and insurance. *See* Florida's Chief Financial Officer, *Financial Services Commission*, available at <https://www.myfloridacfo.com/division/guests.htm> (last visited Nov. 4, 2021).

¹² A felony of the third degree is punishable by up to five years imprisonment and a fine of up to \$5,000. *See* ss. 775.082 and 775.083, F.S.

¹³ Section 560.309(8), F.S.

¹⁴ Fla. Admin. Code R. 69V-560.801.

¹⁵ *Id.*

¹⁶ The OFR, *2022 Agency Legislative Bill Analysis for SB 464* (Nov. 18, 2022), p. 3 (on file with the Senate Committee on Criminal Justice).

Inmate Funds Upon Release

The Department of Corrections (DOC) provides \$50 in the form of a debit card when an inmate is released from one of its facilities.¹⁷ An inmate may also receive funds remaining in his or her trust fund account up to a maximum of \$500. The only inmates that are not eligible to receive funds on a debit card are minors under the age of 18, and for these inmates, a check is mailed to their place of residence.¹⁸ The DOC has issued approximately 15 paper checks to minors in the last three years.¹⁹ At the time of release, inmates also receive transportation to the closest bus station in the county of release, including another state, except for inmates who are being released to a detainer or who have adequate funds to pay for their own transportation. The discharge transportation is provided in the form of a non-negotiable voucher.²⁰

An inmate released from a county jail will generally leave with whatever funds he or she had in his or her possession when he or she entered the jail and any balance remaining on his or her canteen account.²¹ County jails differ on how such funds are disbursed at the time of release. Depending on the county, the funds may be released by check, debit card, or cash.²² If the inmate is released during a time that the check issuing administrator is unavailable, a check is mailed to the inmate's mailing address or the inmate may return during business hours to receive his or her check.²³

III. Effect of Proposed Changes:

The bill prohibits a MSB, such as a check casher, from charging a fee to cash a payment instrument for funds issued to an inmate upon his or her release from a prison or municipal or county jail.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None identified.

¹⁷ Department of Corrections, *2022 Agency Legislative Bill Analysis for SB 464* (Nov. 5, 2021), p. 2, (on file with the Senate Committee on Criminal Justice).

¹⁸ *Id.*

¹⁹ E-mail from Scotti P. Vaughn, Deputy Legislative Affairs Director, Florida Department of Corrections, (Nov. 15, 2021) (on file with the Senate Committee on Criminal Justice).

²⁰ *Id.* Inmates also receive a release packet that includes, but is not limited to, a transition plan, registration requirements, community supervision terms, and reporting instructions, as applicable. They also receive any personal identification, resume, community referrals, and brochures and flyers.

²¹ Email from Matt Dunagan, Deputy Executive Director of Operations, Florida Sheriff's Association, (Nov. 4, 2021) (on file with the Senate Committee on Criminal Justice).

²² Email from Isaiah Dennard, Jail Services Coordinator, Florida Sheriff's Association, (Nov. 4, 2021) (on file with the Senate Committee on Criminal Justice). Cash is issued very rarely and may only affect very small jails of 50 or fewer beds.

²³ *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A MSB that provides check cashing services may experience a loss in revenue as they will not be able to charge fees for cashing payment instruments issued to an inmate upon his or her release. A MSB may incur costs associated with verifying an individual's identity and whether or not the payment instrument presented for cashing was issued to an inmate upon his or her release from jail or prison.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The language, which governs the conduct of business by MSBs, is not located in the chapter of law governing MSBs. Chapter 560, F.S., authorizes the OFR to take actions against a licensee who violates the provisions of that chapter. Since the language of the bill does not place the prohibition against fees in ch. 560, F.S., the OFR may be unable to enforce the provision.²⁴

It is unclear how a MSB will determine whether a payment instrument is one issued to an inmate upon his or her release from jail or prison.²⁵

A Department of Juvenile Justice (DJJ) contracted residential program has a contract with the Department of Transportation that provides work opportunities for youth to allow for payment of

²⁴ *Supra* note 16 at pg. 5.

²⁵ *Supra* note 16 at pg. 7.

court costs, fines, and fees. In return for his or her work, a youth is paid a stipend which is held by the program until the youth is released. Upon release, court costs, fines, and fees are paid directly to court, and any remaining monies are remitted to the youth in the form of a check, which is mailed to them. These checks may also be subject to check cashing fees. However, DJJ releasees are not included in the bill.²⁶

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 944.6125 and 951.31.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²⁶ Email from Tyler Jefferson, Deputy Legislative Affairs Director, Florida Department of Juvenile Justice. (Nov. 16, 2021) (on file with the Senate Committee on Criminal Justice).