

HB 1277

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1 A bill to be entitled
2 An act relating to money services businesses; amending
3 s. 560.103, F.S.; defining terms for purposes of
4 provisions regulating money services businesses;
5 amending s. 560.109, F.S.; revising the frequency and
6 notice requirements for examinations and
7 investigations by the Office of Financial Regulation
8 of money services business licensees; amending s.
9 560.111, F.S.; prohibiting money services businesses,
10 authorized vendors, and affiliated parties from
11 possessing certain paraphernalia used or intended or
12 designed for use in misrepresenting a customer's
13 identity, for which penalties apply; prohibiting
14 certain persons from providing a customer's personal
15 identification information to a money services
16 business licensee and providing penalties; reenacting
17 s. 560.114(1)(h), F.S., relating to penalties for
18 certain prohibited acts by money services businesses,
19 to incorporate the amendment made by the act to s.
20 560.111, F.S., in a reference thereto; amending s.
21 560.114, F.S.; prohibiting certain acts by money
22 services businesses, authorized vendors, and
23 affiliated parties, for which penalties apply;
24 revising the conditions for which a money services
25 business license may be suspended; amending ss.
26 560.126 and 560.309, F.S.; requiring a money services
27 business licensee to maintain its own federally
28 insured depository account and deposit into the

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29 | account any payment instruments cashed; requiring a
30 | licensee to notify the office and cease to cash
31 | payment instruments if the licensee ceases to maintain
32 | the account; prohibiting a licensee from accepting or
33 | cashing a payment instrument from a person who is not
34 | the original payee; establishing a limit on the amount
35 | of fees that licensees may charge for the direct costs
36 | of verification of payment instruments cashed;
37 | amending s. 560.310, F.S.; revising requirements for
38 | the records that a money services business licensee
39 | must maintain related to the payment instruments
40 | cashed; creating s. 560.311, F.S.; requiring money
41 | services business licensees to submit certain
42 | transaction information to the Office of Financial
43 | Regulation related to the payment instruments cashed;
44 | requiring the office to maintain the transaction
45 | information in a centralized database; authorizing the
46 | Financial Services Commission to prescribe the time,
47 | format, and manner for licensees to submit the
48 | transaction information; requiring that the database
49 | be designed to interface with certain other state
50 | databases; providing a transaction fee for the
51 | submission of transaction information; authorizing the
52 | commission to adopt rules for the operation and
53 | security of the database; providing an effective date.

54 |
55 | Be It Enacted by the Legislature of the State of Florida:
56 |

57 Section 1. Subsections (9) and (10) of section 560.103,
 58 Florida Statutes, are renumbered as subsections (11) and (12),
 59 respectively, present subsections (11) through (14) are
 60 renumbered as subsections (14) through (17), respectively,
 61 present subsections (15) through (27) are renumbered as
 62 subsections (19) through (31), respectively, present subsections
 63 (28) through (30) are renumbered as subsections (33) through
 64 (35), respectively, and new subsections (9), (10), (13), (18),
 65 (32), and (36) are added to that section, to read:

66 560.103 Definitions.—As used in this chapter, the term:

67 (9) "Conductor" means a natural person who presents
 68 himself or herself to a licensee for purposes of cashing a
 69 payment instrument.

70 (10) "Corporate payment instrument" means a payment
 71 instrument on which the payee named on the instrument's face is
 72 other than a natural person.

73 (13) "Department" means the Department of Financial
 74 Services.

75 (18) "Fraudulent identification paraphernalia" means all
 76 equipment, products, or materials of any kind that are used,
 77 intended for use, or designed for use in the misrepresentation
 78 of a customer's identity. The term includes, but is not limited
 79 to:

80 (a) A signature stamp, thumbprint stamp, or other tool or
 81 device used to forge a customer's personal identification
 82 information.

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83 (b) An original of any type of personal identification
84 listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully
85 issued.

86 (c) A blank, forged, fictitious, or counterfeit instrument
87 in the similitude of any type of personal identification listed
88 in s. 560.310(2)(b) which would in context lead a reasonably
89 prudent person to believe that such instrument is an authentic
90 original of such personal identification.

91 (d) Counterfeit, fictitious, or fabricated information in
92 the similitude of a customer's personal identification
93 information that, although not authentic, would in context lead
94 a reasonably prudent person to credit its authenticity.

95 (32) "Personal identification information" means a
96 customer's name that, alone or together with any of the
97 following information, may be used to identify that specific
98 customer:

99 (a) Customer's signature.

100 (b) Photograph, digital image, or other likeness of the
101 customer.

102 (c) Unique biometric data, such as the customer's
103 thumbprint or fingerprint, voice print, retina or iris image, or
104 other unique physical representation of the customer.

105 (36) "Third-party payment instrument" means a payment
106 instrument being negotiated by a party other than the payee
107 named on the instrument's face.

108 Section 2. Subsections (1) and (7) of section 560.109,
109 Florida Statutes, are amended to read:

110 560.109 Examinations and investigations.—The office may

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111 | conduct examinations and investigations, within or outside this
112 | state to determine whether a person has violated any provision
113 | of this chapter and related rules, or of any practice or conduct
114 | that creates the likelihood of material loss, insolvency, or
115 | dissipation of the assets of a money services business or
116 | otherwise materially prejudices the interests of their
117 | customers.

118 | (1) The office may, without advance notice, examine or
119 | investigate each licensee as often as is warranted for the
120 | protection of customers and in the public interest. However, the
121 | office must examine each licensee, ~~but~~ at least once every 5
122 | years. ~~A new licensee shall be examined within 6 months after~~
123 | ~~the issuance of the license. The office shall provide at least~~
124 | ~~15 days' notice to a money services business, its authorized~~
125 | ~~vendor, or license applicant before conducting an examination or~~
126 | ~~investigation. However,~~ The office may, without advance notice,
127 | examine ~~conduct an examination or investigate~~ investigation of a
128 | money services business, authorized vendor, ~~or~~ affiliated party,
129 | or license applicant at any time ~~and without advance notice~~ if
130 | the office suspects that the money services business, authorized
131 | vendor, ~~or~~ affiliated party, or license applicant has violated
132 | or is about to violate any provision ~~provisions~~ of this chapter
133 | or any criminal law ~~laws~~ of this state or of the United States.

134 | (7) Reasonable and necessary costs incurred by the office
135 | or third parties authorized by the office in connection with
136 | examinations or investigations may be assessed against any
137 | person subject to this chapter on the basis of actual costs
138 | incurred. Assessable expenses include, but are not limited to,

139 expenses for: interpreters; certified translations of documents
 140 into the English language required by this chapter or related
 141 rules; communications; legal representation; economic, legal, or
 142 other research, analyses, and testimony; and fees and expenses
 143 for witnesses. The failure to reimburse the office is a ground
 144 for denial of a license application, denial of a license
 145 renewal, or for revocation of any approval thereof. Except for
 146 examinations authorized under this section ~~s. 560.109~~, costs may
 147 not be assessed against a person unless the office determines
 148 that the person has operated or is operating in violation of
 149 this chapter.

150 Section 3. Paragraph (g) is added to subsection (1) of
 151 section 560.111, Florida Statutes, subsection (3) is renumbered
 152 as subsection (4), present subsection (4) is renumbered as
 153 subsection (5) and amended, and a new subsection (3) is added to
 154 that section, to read:

155 560.111 Prohibited acts.—

156 (1) A money services business, authorized vendor, or
 157 affiliated party may not:

158 (g) Possess any fraudulent identification paraphernalia.

159 This paragraph does not prohibit the maintenance and retention
 160 of any records required by this chapter.

161 (3) A person other than the conductor of a payment
 162 instrument may not provide a licensee engaged in cashing the
 163 payment instrument with the customer's personal identification
 164 information.

165 (5)~~(4)~~ Any person who willfully violates any provision of
 166 s. 560.311(1), s. 560.403, s. 560.404, or s. 560.405 commits a

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167 felony of the third degree, punishable as provided in s.
168 775.082, s. 775.083, or s. 775.084.

169 Section 4. Paragraph (h) of subsection (1) of section
170 560.114, Florida Statutes, is reenacted, paragraphs (aa), (bb),
171 and (cc) are added to that subsection, and subsection (2) of
172 that section is amended, to read:

173 560.114 Disciplinary actions; penalties.—

174 (1) The following actions by a money services business,
175 authorized vendor, or affiliated party constitute grounds for
176 the issuance of a cease and desist order; the issuance of a
177 removal order; the denial, suspension, or revocation of a
178 license; or taking any other action within the authority of the
179 office pursuant to this chapter:

180 (h) Engaging in an act prohibited under s. 560.111.

181 (aa) Failure of a check casher to maintain a federally
182 insured depository account as required by s. 560.309.

183 (bb) Failure of a check casher to deposit into its own
184 federally insured depository account any payment instrument
185 cash as required by s. 560.309.

186 (cc) Failure to submit transaction information to the
187 office as required by s. 560.311 for any payment instrument
188 cash.

189 (2) The office may immediately suspend the license of any
190 money services business if the money services business fails to:

191 (a) Provide to the office, upon written request, any of
192 the records required by s. ~~ss.~~ 560.123, s. 560.1235, s. 560.211,
193 or s. ~~and~~ 560.310 or any rule adopted under those sections. The
194 suspension may be rescinded if the licensee submits the

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195 requested records to the office.

196 (b) Maintain a federally insured depository account as
 197 required by s. 560.309.

198 (c) Submit transaction information to the office as
 199 required by s. 560.311 for any payment instrument cashed.

200
 201 For purposes of s. 120.60(6), failure to perform ~~provide~~ any of
 202 the acts specified in this subsection ~~above-mentioned records~~
 203 constitutes immediate and serious danger to the public health,
 204 safety, and welfare.

205 Section 5. Subsection (4) is added to section 560.126,
 206 Florida Statutes, to read:

207 560.126 Required notice by licensee.—

208 (4) A licensee that engages in check cashing must notify
 209 the office within 5 business days after the licensee ceases to
 210 maintain a federally insured depository account as required by
 211 s. 560.309(3) and, before resuming check cashing, must
 212 reestablish such an account and notify the office of the
 213 account.

214 Section 6. Subsections (3), (4), and (8) of section
 215 560.309, Florida Statutes, are amended to read:

216 560.309 Conduct of business.—

217 (3) A licensee under this part must maintain and deposit
 218 payment instruments into its own ~~a~~ commercial account at a
 219 federally insured financial institution. If a licensee ceases to
 220 maintain such a depository account, the licensee must not engage
 221 in check cashing until the licensee reestablishes such an
 222 account and notifies the office of the account as required by s.

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223 560.126(4) ~~or sell payment instruments within 5 business days~~
 224 ~~after the acceptance of the payment instrument.~~

225 (4) A licensee may not accept or cash a multiple payment
 226 instrument ~~instruments~~ from a person who is not the original
 227 payee, ~~unless the person is licensed to cash payment instruments~~
 228 ~~pursuant to this part and all payment instruments accepted are~~
 229 ~~endorsed with the legal name of the person.~~

230 (8) Exclusive of the direct costs of verification, which
 231 shall be established by rule not to exceed \$5, a check casher
 232 may not:

233 (a) Charge fees, except as otherwise provided by this
 234 part, in excess of 5 percent of the face amount of the payment
 235 instrument, or \$5, whichever is greater;

236 (b) Charge fees in excess of 3 percent of the face amount
 237 of the payment instrument, or \$5, whichever is greater, if such
 238 payment instrument is the payment of any kind of state public
 239 assistance or federal social security benefit payable to the
 240 bearer of the payment instrument; or

241 (c) Charge fees for personal checks or money orders in
 242 excess of 10 percent of the face amount of those payment
 243 instruments, or \$5, whichever is greater.

244 Section 7. Section 560.310, Florida Statutes, is amended
 245 to read:

246 560.310 Records of check cashers and foreign currency
 247 exchangers.—

248 (1) ~~In addition to the record retention requirements~~
 249 ~~specified in s. 560.1105,~~ A licensee engaged in check cashing
 250 must maintain for the period specified in s. 560.1105 a copy of

251 each payment instrument cashed.

252 (2) If the payment instrument exceeds \$1,000 or is a
 253 corporate or third-party payment instrument, the following
 254 additional information must be maintained ~~the following:~~

255 (a) Customer files, as prescribed by rule, on all
 256 customers who cash corporate or third-party payment instruments
 257 that exceed ~~exceeding~~ \$1,000.

258 ~~(b) For any payment instrument accepted having a face~~
 259 ~~value of \$1,000 or more:~~

260 ~~1-~~ A copy of the personal identification that bears a
 261 photograph of the customer used as identification and presented
 262 by the customer. Acceptable personal identification is limited
 263 to a valid driver ~~driver's~~ license; a state identification card
 264 issued by any state of the United States or its territories or
 265 the District of Columbia, and showing a photograph and
 266 signature; a United States Government Resident Alien
 267 Identification Card; a passport; or a United States Military
 268 identification card.

269 (c)2- A thumbprint of the customer taken by the licensee
 270 when the payment instrument is presented for negotiation or
 271 payment.

272 ~~(c) A payment instrument log that must be maintained~~
 273 ~~electronically as prescribed by rule. For purposes of this~~
 274 ~~paragraph, multiple payment instruments accepted from any one~~
 275 ~~person on any given day which total \$1,000 or more must be~~
 276 ~~aggregated and reported on the log.~~

277 (3) ~~(2)~~ A licensee under this part may engage the services
 278 of a third party that is not a depository institution for the

279 maintenance and storage of records required by this section if
 280 all the requirements of this section are met.

281 Section 8. Section 560.311, Florida Statutes, is created
 282 to read:

283 560.311 Reporting of payment instruments cashed; database
 284 of payment instrument transactions.-

285 (1) A licensee that cashes a payment instrument that
 286 exceeds \$1,000, a corporate payment instrument, or a third-party
 287 payment instrument must submit the following transaction
 288 information about the payment instrument to the office within
 289 the time and in the format and manner prescribed by commission
 290 rule:

291 (a) Transaction date.

292 (b) Payor name.

293 (c) Payee name.

294 (d) Conductor name, if different from the payee name.

295 (e) Amount of the payment instrument.

296 (f) Amount of the currency provided.

297 (g) Type of payment instrument, which may include, as
 298 prescribed by commission rule, but is not limited to, a personal
 299 check, payroll check, government check, corporate check, or
 300 third-party check.

301 (h) Location or branch where the payment instrument is
 302 accepted.

303 (i) Payee's workers' compensation policy number, if the
 304 payment instrument is a corporate payment instrument.

305 (j) Any other transaction information that may be required
 306 by commission rule.

307
308 If, on any given day, a licensee cashes multiple payment
309 instruments that collectively exceed \$1,000 for any payor-payee
310 combination, the licensee must aggregate the payment instruments
311 as one transaction and submit the aggregated transaction
312 information as prescribed by commission rule.

313 (2) (a) The office shall establish and administer a
314 centralized database that maintains and provides real-time
315 access to the transaction information submitted to the office
316 under subsection (1). The commission may require licensees to
317 submit the transaction information through the Internet or by
318 other electronic means that provide for inclusion of the
319 submitted information in the database.

320 (b) The office shall design and administer the database to
321 interface with other government databases, including, but not
322 limited to:

323 1. The department's workers' compensation proof of
324 coverage database.

325 2. The Department of State's database of corporations,
326 partnerships, limited liability companies, corporations not for
327 profit, trusts, associations, cooperatives, and other business
328 organizations registered with the Department of State.

329 (3) The commission shall adopt rules requiring a licensee
330 to remit to the office a transaction fee, as part of the direct
331 costs of verification authorized under s. 560.309(8), not to
332 exceed \$3 per transaction submitted under subsection (1).

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333 (4) The commission may adopt rules to administer this
334 section, including, but not limited to, rules governing the
335 operation and security of the database.

336 Section 9. This act shall take effect July 1, 2012.