

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 amendments made to the act; amending s.
20 560.114, F.S.; prohibiting certain acts by money
21 services businesses, authorized vendors, and
22 affiliated parties, for which penalties apply;
23 revising the conditions for which a money services
24 business license may be suspended; amending ss.
25 560.126 and 560.309, F.S.; requiring a money services
26 business licensee to maintain its own federally
27 insured depository account and deposit into the
28 account any payment instruments cashed; requiring a

29 | licensee to notify the office and cease to cash
 30 | payment instruments if the licensee ceases to maintain
 31 | the account; prohibiting a licensee from accepting or
 32 | cashing a payment instrument from a person who is not
 33 | the original payee; establishing a limit on the amount
 34 | of fees that licensees may charge for the direct costs
 35 | of verification of payment instruments cashed;
 36 | amending s. 560.310, F.S.; revising requirements for
 37 | the records that a money services business licensee
 38 | must maintain related to the payment instruments
 39 | cashed; providing an effective date.

40 |

41 | Be It Enacted by the Legislature of the State of Florida:

42 |

43 | Section 1. Subsections (9) and (10) of section 560.103,
 44 | Florida Statutes, are renumbered as subsections (11) and (12),
 45 | respectively, present subsections (11) through (14) are
 46 | renumbered as subsections (14) through (17), respectively,
 47 | present subsections (15) through (27) are renumbered as
 48 | subsections (19) through (31), respectively, present subsections
 49 | (28) through (30) are renumbered as subsections (33) through
 50 | (35), respectively, and new subsections (9), (10), (13), (18),
 51 | (32), and (36) are added to that section, to read:

52 | 560.103 Definitions.—As used in this chapter, the term:

53 | (9) "Conductor" means a natural person who presents
 54 | himself or herself to a licensee for purposes of cashing a
 55 | payment instrument.

56 | (10) "Corporate payment instrument" means a payment

57 instrument on which the payee named on the instrument's face is
 58 other than a natural person.

59 (13) "Department" means the Department of Financial
 60 Services.

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

66 (a) A signature stamp, thumbprint stamp, or other tool or
 67 device used to forge a customer's personal identification
 68 information.

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

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

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

81 (32) "Personal identification information" means a
 82 customer's name that, alone or together with any of the
 83 following information, may be used to identify that specific
 84 customer:

- 85 (a) Customer's signature.
- 86 (b) Photograph, digital image, or other likeness of the
- 87 customer.
- 88 (c) Unique biometric data, such as the customer's
- 89 thumbprint or fingerprint, voice print, retina or iris image, or
- 90 other unique physical representation of the customer.

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

93 560.109 Examinations and investigations.—The office may
 94 conduct examinations and investigations, within or outside this
 95 state to determine whether a person has violated any provision
 96 of this chapter and related rules, or of any practice or conduct
 97 that creates the likelihood of material loss, insolvency, or
 98 dissipation of the assets of a money services business or
 99 otherwise materially prejudices the interests of their
 100 customers.

101 (1) The office may, without advance notice, examine or
 102 investigate each licensee as often as is warranted for the
 103 protection of customers and in the public interest. However, the
 104 office must examine each licensee, ~~but~~ at least once every 5
 105 years. ~~A new licensee shall be examined within 6 months after~~
 106 ~~the issuance of the license. The office shall provide at least~~
 107 ~~15 days' notice to a money services business, its authorized~~
 108 ~~vendor, or license applicant before conducting an examination or~~
 109 ~~investigation. However,~~ The office may, without advance notice,
 110 examine ~~conduct an examination or investigate~~ investigation of a
 111 money services business, authorized vendor, ~~or~~ affiliated party,
 112 or license applicant at any time ~~and without advance notice~~ if

113 the office suspects that the money services business, authorized
 114 vendor, ~~or~~ affiliated party, or license applicant has violated
 115 or is about to violate any provision ~~provisions~~ of this chapter
 116 or any criminal law ~~laws~~ of this state or of the United States.

117 (7) Reasonable and necessary costs incurred by the office
 118 or third parties authorized by the office in connection with
 119 examinations or investigations may be assessed against any
 120 person subject to this chapter on the basis of actual costs
 121 incurred. Assessable expenses include, but are not limited to,
 122 expenses for: interpreters; certified translations of documents
 123 into the English language required by this chapter or related
 124 rules; communications; legal representation; economic, legal, or
 125 other research, analyses, and testimony; and fees and expenses
 126 for witnesses. The failure to reimburse the office is a ground
 127 for denial of a license application, denial of a license
 128 renewal, or for revocation of any approval thereof. Except for
 129 examinations authorized under this section ~~s. 560.109~~, costs may
 130 not be assessed against a person unless the office determines
 131 that the person has operated or is operating in violation of
 132 this chapter.

133 Section 3. Paragraph (g) is added to subsection (1) of
 134 section 560.111, Florida Statutes, subsection (3) is renumbered
 135 as subsection (4), present subsection (4) is renumbered as
 136 subsection (5) and amended, and a new subsection (3) is added to
 137 that section, to read:

138 560.111 Prohibited acts.—

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

141 (g) Knowingly possess any fraudulent identification
 142 paraphernalia. This paragraph does not prohibit the maintenance
 143 and retention of any records required by this chapter.

144 (3) A person other than the conductor of a payment
 145 instrument may not provide a licensee engaged in cashing the
 146 payment instrument with the customer's personal identification
 147 information.

148 (5)~~(4)~~ Any person who willfully violates any provision of
 149 s. 560.403, s. 560.404, or s. 560.405 commits a felony of the
 150 third degree, punishable as provided in s. 775.082, s. 775.083,
 151 or s. 775.084.

152 Section 4. Paragraph (h) of subsection (1) of section
 153 560.114, Florida Statutes, is reenacted, paragraphs (aa) and (bb)
 154 are added to that subsection, and subsection (2) of that section
 155 is amended, to read:

156 560.114 Disciplinary actions; penalties.—

157 (1) The following actions by a money services business,
 158 authorized vendor, or affiliated party constitute grounds for
 159 the issuance of a cease and desist order; the issuance of a
 160 removal order; the denial, suspension, or revocation of a
 161 license; or taking any other action within the authority of the
 162 office pursuant to this chapter:

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

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

166 (bb) Failure of a check casher to deposit into its own
 167 federally insured depository account any payment instrument
 168 cashed as required by s. 560.309.

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

171 (a) Provide to the office, upon written request, any of
 172 the records required by s. ~~ss.~~ 560.123, s. 560.1235, s. 560.211,
 173 or s. and 560.310 or any rule adopted under those sections. The
 174 suspension may be rescinded if the licensee submits the
 175 requested records to the office.

176 (b) Maintain a federally insured depository account as
 177 required by s. 560.309.

178
 179 For purposes of s. 120.60(6), failure to perform ~~provide~~ any of
 180 the acts specified in this subsection ~~above-mentioned records~~
 181 constitutes immediate and serious danger to the public health,
 182 safety, and welfare.

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

185 560.126 Required notice by licensee.—

186 (4) A licensee that engages in check cashing must notify
 187 the office within 5 business days after the licensee ceases to
 188 maintain a federally insured depository account as required by
 189 s. 560.309(3) and, before resuming check cashing, must
 190 reestablish such an account and notify the office of the
 191 account.

192 Section 6. Subsections (3), (4), and (8) of section
 193 560.309, Florida Statutes, are amended to read:

194 560.309 Conduct of business.—

195 (3) A licensee under this part must maintain and deposit
 196 payment instruments into its own ~~a~~ commercial account at a

197 federally insured financial institution. If a licensee ceases to
 198 maintain such a depository account, the licensee must not engage
 199 in check cashing until the licensee reestablishes such an
 200 account and notifies the office of the account as required by s.
 201 560.126(4) or sell payment instruments within 5 business days
 202 after the acceptance of the payment instrument.

203 (4) A licensee may not accept or cash a multiple payment
 204 instrument instruments from a person who is not the original
 205 payee; however, this subsection does not prohibit a licensee
 206 from accepting or cashing a corporate payment instrument from a
 207 conductor who is an authorized officer of the corporate payee
 208 named on the instrument's face, unless the person is licensed to
 209 cash payment instruments pursuant to this part and all payment
 210 instruments accepted are endorsed with the legal name of the
 211 person.

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

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

218 (b) Charge fees in excess of 3 percent of the face amount
 219 of the payment instrument, or \$5, whichever is greater, if such
 220 payment instrument is the payment of any kind of state public
 221 assistance or federal social security benefit payable to the
 222 bearer of the payment instrument; or

223 (c) Charge fees for personal checks or money orders in
 224 excess of 10 percent of the face amount of those payment

225 instruments, or \$5, whichever is greater.

226 Section 7. Section 560.310, Florida Statutes, is amended
227 to read:

228 560.310 Records of check cashers and foreign currency
229 exchangers.—

230 (1) ~~In addition to the record retention requirements~~
231 ~~specified in s. 560.1105,~~ A licensee engaged in check cashing
232 must maintain for the period specified in s. 560.1105 a copy of
233 each payment instrument cashed.

234 (2) If the payment instrument exceeds \$1,000, the
235 following additional information must be maintained the
236 following:

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

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

242 ~~1.~~ A copy of the personal identification that bears a
243 photograph of the customer used as identification and presented
244 by the customer. Acceptable personal identification is limited
245 to a valid driver ~~driver's~~ license; a state identification card
246 issued by any state of the United States or its territories or
247 the District of Columbia, and showing a photograph and
248 signature; a United States Government Resident Alien
249 Identification Card; a passport; or a United States Military
250 identification card.

251 ~~(c)2.~~ (c)2. A thumbprint of the customer taken by the licensee
252 when the payment instrument is presented for negotiation or

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253 payment.

254 (d)~~(e)~~ A payment instrument log that must be maintained
255 electronically as prescribed by rule. For purposes of this
256 paragraph, multiple payment instruments accepted from any one
257 person on any given day which total \$1,000 or more must be
258 aggregated and reported on the log.

259 (3)~~(2)~~ A licensee under this part may engage the services
260 of a third party that is not a depository institution for the
261 maintenance and storage of records required by this section if
262 all the requirements of this section are met.

263 Section 8. This act shall take effect July 1, 2012.