

CHAPTER 2012-85

Committee Substitute for House Bill No. 1277

An act relating to money services businesses; amending s. 560.103, F.S.; defining terms for purposes of provisions regulating money services businesses; amending s. 560.109, F.S.; revising the frequency and notice requirements for examinations and investigations by the Office of Financial Regulation of money services business licensees; amending s. 560.111, F.S.; prohibiting money services businesses, authorized vendors, and affiliated parties from knowingly possessing certain paraphernalia used or intended or designed for use in misrepresenting a customer's identity, for which penalties apply; prohibiting certain persons from providing a customer's personal identification information to a money services business licensee and providing penalties; reenacting s. 560.114(1)(h), F.S., relating to penalties for certain prohibited acts by money services businesses, to incorporate amendments made by the act to s. 560.111, F.S., in a reference thereto; amending s. 560.114, F.S.; prohibiting certain acts by money services businesses, authorized vendors, and affiliated parties, for which penalties apply; revising the conditions for which a money services business license may be suspended; amending ss. 560.126 and 560.309, F.S.; requiring a money services business licensee to maintain its own federally insured depository account and deposit into the account any payment instruments cashed; requiring a licensee to notify the office and cease to cash payment instruments if the licensee ceases to maintain the account; prohibiting a licensee from accepting or cashing a payment instrument from a person who is not the original payee except under certain circumstances; establishing a limit on the amount of fees that licensees may charge for the direct costs of verification of payment instruments cashed; amending s. 560.310, F.S.; revising requirements for the records that a money services business licensee must maintain related to the payment instruments cashed; providing an effective date.

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

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

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

(9) “Conductor” means a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.

(10) “Corporate payment instrument” means a payment instrument on which the payee named on the instrument’s face is other than a natural person.

(13) “Department” means the Department of Financial Services.

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

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

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

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

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

(32) “Personal identification information” means a customer’s name that, alone or together with any of the following information, may be used to identify that specific customer:

(a) Customer’s signature.

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

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

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

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

(1) The office may, without advance notice, examine or investigate each licensee as often as is warranted for the protection of customers and in the public interest. However, the office must examine each licensee, but at least

~~once every 5 years. A new licensee shall be examined within 6 months after the issuance of the license. The office shall provide at least 15 days' notice to a money services business, its authorized vendor, or license applicant before conducting an examination or investigation. However, The office may, without advance notice, examine conduct an examination or investigate investigation of a money services business, authorized vendor, or affiliated party, or license applicant at any time and without advance notice if the office suspects that the money services business, authorized vendor, or affiliated party, or license applicant has violated or is about to violate any provision provisions of this chapter or any criminal law laws of this state or of the United States.~~

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

Section 3. Paragraph (g) is added to subsection (1) of section 560.111, Florida Statutes, subsections (3) and (4) are renumbered as subsections (4) and (5), respectively, and a new subsection (3) is added to that section, to read:

560.111 Prohibited acts.—

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

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

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

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

560.114 Disciplinary actions; penalties.—

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

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

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

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

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

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

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

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

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

560.126 Required notice by licensee.—

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

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

560.309 Conduct of business.—

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

required by s. 560.126(4) or sell payment instruments within 5 business days after the acceptance of the payment instrument.

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

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

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

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

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

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

560.310 Records of check cashers and foreign currency exchangers.—

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

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

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

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

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

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

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

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

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

Approved by the Governor April 6, 2012.

Filed in Office Secretary of State April 6, 2012.