A Report on the Money Service Business
Workers’ Comp Fraud Work Group

A presentation for the House Insurance & Banking Committee
November 2, 2011
The Scheme

• “Facilitators” of this fraud incorporate a shell company, and designate a nominee/transient or fictitious owner.
  ➢ The inability to locate the owner once the scheme is detected is a critical element of this fraud’s success.

• A facilitator will then procure a minimal workers’ compensation insurance policy for a small company performing a low-risk trade. In doing so, the facilitator secures a certificate of insurance, which includes minimal information about the coverage available under the policy.
  ➢ The affordability of a small, low-risk policy, and the ease at which a facilitator can duplicate a certificate of insurance is another critical element in perpetrating this fraud.

• The facilitator makes the certificate of insurance available to uninsured subcontractors, who use the shell company’s name, and provide a copy thereof to a general contractor for whom they are attempting to secure work.
  ➢ The lack of information regarding the number of employees or the trade covered allows this certificate to be used for many different subcontractors.
The Scheme, continued

- Checks, representing payment from a general contractor to the subcontractor, are negotiated at a money service business, or check cashing store.
  - The ability to cash third-party checks at check cashing stores, and the subcontractor’s designation as an “authorized payee” by the facilitator, is important in ensuring that the check cashing store will honor the check.

- The check cashing store will take the customer service charge, and check cashing stores complicit in the scheme will also take out a second fee, usually between 3-8%, as the fee for the use of the shell company and its workers’ compensation policy.
  - Law enforcement has identified many check cashing stores to be at least aware, if not helpful, in perpetrating this fraud by allowing the checks to be cashed. However, sometimes facilitators become so adept at this scheme that even the check cashing store is unaware of its own participation in the scheme.

- The facilitator makes the same certificate of insurance available until such point as detection is feared. Then, the facilitator will “burn” the shell company, and law enforcement will be remiss to identify him/her, as the person listed as the owner of the company will be either a nominee/transient person, or altogether fictitious.
  - The use of nominee & fictitious owners allows the facilitator to avoid detection, so that he/she can start the entire process anew.
Facilitator

Sets up a shell company with a fictitious owner → Shell Company

Insurance Agent

Facilitator with Shell Company Name Obtains Minimal W/C Insurance → Shell Company

General Contractor

General Contractor

Hires Un-Insured Subcontractor → Subcontractor

Facilitator

Issues COI to a General Contractor → General Contractor

Subcontractor

Provides Labor → Subcontractor

Facilitator

Issues COI to a General Contractor

Facilitator takes the Shell Company's Check to a Money Service Business → Money Service Business

Facilitator Takes a Percentage and gives Remainder to Un-Insured Sub to Pay Employees in Cash → Money Service Business

The Facilitator Repeats this Process Over and Over with Other Un-Insured Subcontractors Seeking to “Rent” the Shell Company Name and Insurance Policy.
How Taxpayers and Small Businesses Pick up the Tab

• In order to make this fraud viable, not only do the facilitators have to avoid detection by insurance companies, but they also have to avoid detection from authorities. This translates into making cash payments to employees, thereby avoiding social security, Medicare, and federal & state unemployment payments, as well as income taxes.

• Further, the facilitators avoid the expense of workers’ compensation premiums. By achieving this ultimate goal of premium avoidance, the risk pool of premium payers is constricted.

• Fewer people in the risk pool means higher premiums for those in the pool. It is difficult to quantify the cost of premium avoidance, but one thing is certain: small businesses, particularly those in the construction industry who do the right thing and purchase workers’ compensation insurance in order to protect their employees, pay higher premiums because of those who cheat the system.
Prior Reform Efforts

• In 2008, the Attorney General impaneled the Eighteenth Statewide Grand Jury, which focused on structural vulnerabilities in the check cashing industry’s regulatory framework. The Grand Jury’s report also discussed this particular type of workers’ compensation fraud, which is facilitated by a number of check cashing companies.

• Subsequently, the Legislature passed CS/CS/CS/SB 2158, “An act relating to money service businesses,” and it was signed by the Governor. While this wholesale reform package addressed structural failings in the regulatory framework and strengthened the money service business industry, unfortunately, it did not put an end to this particular scheme.
Current Efforts

• Since taking office, CFO Atwater has taken an active interest in eradicating all types of fraud. This type of fraud is particularly offensive, because during these challenging economic times, the costs are being borne by law-abiding and hardworking business owners, many of whom are struggling to get by:
  ➢ Economic data shows that construction employment in Florida has fallen by 52% from its peak in 2006.
  ➢ Fortunately, building permits for new homes in Florida have increased about 5% over this last year, and we need to do more to remove cost drivers so that law-abiding businesses can reap the benefits of further growth.

• Workers’ compensation fraud accounts for roughly 27% of the arrests made by detectives in the Department of Financial Services’ Division of Insurance Fraud.

• Workers’ compensation rates have started to rise in recent years, indicating a real need to aggressively attack cost drivers, such as this type of fraud:
  ➢ 8.9% to become effective January 1, 2012
  ➢ 7.8% rate increase last year.
Workgroup Participants

- Department of Financial Services’ Division of Insurance Fraud, Division of Workers’ Compensation, and Division of Insurance Agents and Agency Services
- Office of the Florida Insurance Consumer Advocate
- Office of Financial Regulation
- Attorney General’s Office of the Statewide Prosecutor
- Office of Insurance Regulation
- Department of State’s Division of Corporations
- Broward County Sheriff’s Office
- Florida Carpenters Regional Council
- Florida Home Builders Association
- Associated Builders & Contractors
- Florida Roofing & Sheet Metal Association
- United Brotherhood of Carpenters and Joiners of America
- Powertech Interiors
- Financial Service Centers of America
- AmScot
- Dollar Financial
- Florida Chamber of Commerce
- Associated Industries of Florida
- Florida United Businesses Association
- National Federation of Independent Businesses
- National Council on Compensation Insurance
- Bridgefield Employers Insurance Company
- FCCI Insurance Company
- Zenith Insurance Company
- FFVA Mutual Insurance Company
- Twin City Fire Insurance Company
- Contego Group
- Summit Holdings
- Florida Association of Insurance Agents
- Professional Insurance Agents of Florida
- Florida Retail Federation
- Publix Supermarkets
- Walmart
Workgroup Participants

• The Workgroup was diverse, and members spent 12+ hours in meetings, not to mention countless hours traveling, researching, and articulating recommendations.

• In fact, the Workgroup was so diverse that it included a man who had been previously convicted of committing this type of fraud. Mr. Mario Turcotte provided extremely valuable insight into the prevalence of this fraud (in his estimations, this scheme exists in nearly 80% of the construction industry), and provided context as to how contractors feel compelled to commit this fraud — in other words, how they have to “cheat to compete.”
Recommendations from the Workgroup

• Recommendation: Implement a statewide real-time database for check cashing transactions above $1,000. In the alternative, provide the Office of Financial Regulation (the Office) with the ability to collect specified information on a regular basis.
  ➢ Expected Outcome: Improved flow of information regarding commercial/third-party checks between check cashers, the Office, the Division of Workers’ Compensation, and the Division of Insurance Fraud.

• Recommendation: Include payroll information on DFS’ Division of Workers’ Compensation’s Proof of Coverage website.
  ➢ Expected Outcome: All parties who have a need for this information to make sound business decisions will have the ability to check the database.
  ➢ Early Accomplishment: As of this week, payroll information is now live on the site: https://apps8.fldfs.com/proofofcoverage/Search.aspx
Recommendations from the Workgroup, continued

• Recommendation: Require licensed check cashers to provide the workers’ compensation policy number, under which a corporate payment instrument is cashed, to the Office. The Office will provide for this information through a data interface with the Division of Workers’ Compensation policy information database.
  ➢ *Expected Outcome:* Payroll amounts would be tied to the amount of insurance coverage secured by facilitators thereby initiating investigation of suspected fraud.

• Recommendation: Modify the check cashing statute to simplify audit trails.
  ➢ *Expected Outcome:* Allow for efficient examinations of check cashing licensees, and required licensed entities to maintain commercial banking relationships at all times.

• Recommendation: Allow the Office to focus their efforts more efficiently.
  ➢ *Expected Outcome:* Examination resources will be focused on high-risk licensees.

• Recommendation: Allow the Office to make unannounced visits to conduct examinations.
  ➢ *Expected Outcome:* Examinations will yield better results when they are risk targeted and unannounced.
Non-Consensus Recommendations

• Recommendation: Create an endorsement to the money service business’ license for commercial check cashing.
  ➢ *Potential Outcome: Provide heightened scrutiny for high dollar corporate checks.*

• Recommendation: Ban, or implement a monetary threshold, for cashing business-to-business checks.
  ➢ *Potential Outcome: Eliminate the ability for facilitators to easily access cash and thus avoid detection.*

• Recommendation: Change how certificates of insurance are issued.
  ➢ *Potential Outcome: Proof of adequate insurance coverage would be centrally stored, and therefore, easier to verify.*
One thing is clear: this fraud cannot be tolerated as a cost of doing business passed onto law-abiding and hardworking Floridians.

Hopefully, the efforts of the workgroup will be a step forward in making it easier to detect, investigate, and prosecute this fraud so that authorities can be better armed to root it out, wherever it exists.

Questions?