

STORAGE NAME: h0383a.fs

DATE: March 19, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 383

RELATING TO: Money Transmitters

SPONSOR(S): Representative Clemons

STATUTE(S) AFFECTED: ss. 560.103; 560.111; 560.114; 560.118; 560.128; and 560.205, F.S.

COMPANION BILL(S): SB 288 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 13 NAYS 0
- (2) FINANCE & TAXATION
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill brings persons receiving currency or payment instruments, such as checks, warrants, or money orders, for the purpose of transmission by any means under the scope of Chapter 560, F.S.--the money transmitter law. The bill also expands the Department of Banking and Finance's ability to base sanctions against Florida-registered companies on prior illegal conduct of the Florida licensee, its principles or affiliates, when the conduct occurred in another jurisdiction. The bill imposes additional disclosure requirements on money transmitters to facilitate more efficient investigation of industry practices. In order to increase scrutiny of the industry yet avoid undue expense to the department, the bill grants the department authority to privatize examination functions, and to consider these private examinations in lieu of an internal audit conducted by of the department.

The Committee on Financial Services adopted one amendment which is further explained in the amendments section (see Section VI. of this Analysis).

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 560, F.S., governs the conduct of the money transmitter industry, which includes electronic transmitters such as Western Union, check cashers such as Cash Cow, and money order issuers other than financial institutions. There are presently three hundred and fifty money transmitters registered in Florida, two hundred and eighty of which are check cashers. The law does not cover couriers, such as Brinks, who receive currency on consignment and provides transport services. Examples of payment instruments include checks, drafts, money orders and travelers' checks. Couriers are not required to comply with consumer protection and anti-money laundering provisions applicable to money transmitters, though they are actively involved in transactions in similar streams of commerce.

In addition to registering money transmitters, the Department of Banking and Finance must monitor compliance with federal and state money laundering and currency transaction reporting laws. In this capacity, the department is authorized to examine various aspects of the money transmitters' operations, and of their authorized vendors for compliance with these laws. The examination costs may be recovered from the industry. Costs charged against companies may be limited to one examination per 12 months, so long as the transmitter acts in compliance with the law. Generally, the examinations for this purpose are not as rigorous as financial audits, and do not require professional credentials. The department may receive audits of other regulatory agencies with jurisdiction over the money transmitter, or financial audits performed by a Certified Public Accountant, in lieu of conducting its own examination. According to the department, its resources are limited, preventing it from conducting broad sweeps of the industry simply to monitor compliance. It would rather focus its resources on circumstances where violations are suspected.

The department is without power to sanction a Florida licensee based upon a proven violation of federal law by the company or its principles, or laws outside of the state relevant to money transmission or currency reporting, except if the violation involved fraud or dishonest dealing. Moreover, funds transmitters are not required to display their registration in the course of business, requiring investigators to conduct time-consuming inquiries in order to effectively monitor vendor activities.

A specific concern in this area involves international transmission of the proceeds of illegal drug sales in the United States. Evidence from law enforcement agencies and from the department indicates that parties operating as couriers have at times purchased unsophisticated payment instruments, specifically money orders, with illegal proceeds, for the purpose of evading money laundering and currency reporting statutes at the border.

B. EFFECT OF PROPOSED CHANGES:

Couriers who transport currency or payment instruments must register as a money transmitter under this bill. They must comply with state and federal consumer protection and anti-money laundering provisions by virtue of that registration. According to the department, the larger, legitimate couriers are pursuing registration already. Couriers engaging in the transmission of payment instruments in amounts meeting federal

thresholds will be required to make disclosures and file notices required by anti-money laundering and currency reporting laws.

Florida money transmitters found to have violated federal money laundering or currency transaction statutes, or, state or federal laws related to the industry, may have their Florida registration revoked based on the prior illegal conduct. The Florida registration may be revoked in this instance if the previous violation subjected the transmitter to sanctions in the jurisdiction where the violation occurred. A Florida money transmitter's registration may also be revoked if one of its affiliated parties, including controlling shareholders, directors, officers or responsible parties, who while involved in the business of money transmission in another jurisdiction other than Florida, violated state or federal law.

Private firms may be approved under this bill to conduct examinations of money transmitters, or their authorized vendors, at the direction of the department. Money transmitters are likely to be examined more frequently by having independent examinations, done at the money transmitter's expense, rather than having them done by the department. All money transmitters are required under the bill to display a copy of their registration at each of business locations, and the location of its authorized vendors. The independent examiners will find it much easier to verify that a vendor is operating with proper authority.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. While the department has existing authority to promulgate rules regulating money transmitters, this bill directly expands the reach of that authority by including transmitters of financial instruments other than currency.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Couriers must register as money transmitters, and comply with applicable state and federal laws. Additionally, the DBF will direct private examiners to examine money transmitters. These private firms will in essence then be hired by the transmitters to review their operations, in lieu of a examination by the DBF.

(3) any entitlement to a government service or benefit?

Not applicable.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Couriers transmitting funds will be required to comply with regulations that now extend to firms that transfer payment instruments. The regulation will include examinations of their operations.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

Not applicable.

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

Not applicable.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

Not applicable.

- (1) parents and guardians?

Not applicable.

- (2) service providers?

Not applicable.

- (3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Expands the definition of “funds transmitter” in subsection (9) of s. 560.103, F.S., to include firms that receive currency or payment instruments, thereby bringing couriers under money transmitter regulation. This will enable the Department to identify couriers, in particular, who seek to evade money laundering and currency reporting statutes. Also amends the definition of “money transmitter-affiliated party” in subsection (11), to include any person operating in any jurisdiction in the business of money transmission as a controlling shareholder, director, officer or responsible person, thereby subjecting these parties to the jurisdiction of the department should they be involved in the money transmitter industry.

Section 2. Creates paragraph (f) in subsection (1) of s. 560.111, F.S., expanding the list of prohibited acts under Florida’s money transmitter law to include the violation of federal anti-money laundering or currency transaction reporting statutes, or any violation of other federal or state laws. The list of prohibited acts govern registered money transmitters and their affiliated parties, and apply to proven violations of other federal or state laws relating to the business of money transmission, which may cause the denial or revocation of the money transmitter’s license in the jurisdiction where the violation occurred.

Section 3. Amends subsection (1), and creates paragraphs (d), (e) and (f) in subsection (2) of s. 560.114, F.S. Amendments to subsection (1) subject money transmitters, now including those who receive payment instruments for the purpose of transmission, and money transmitter-affiliated parties to the department’s disciplinary authority.

Subsection (2) is amended to expand the department's disciplinary authority so that it may base Florida sanctions on: (i) a prior denial, suspension, revocation or disciplinary action against a money transmitter in any jurisdiction, where the action taken related to licensure as a money transmitter, where the underlying violation was based on federal money laundering or currency transaction reporting statutes, or, where the underlying violation involved any state or federal provision dealing with the business of money transmission and allowed the regulatory body to deny or revoke licensure in that jurisdiction; (ii) entry of a plea, a verdict or a conviction on criminal charges involving money laundering or currency transaction reporting; or (iii) any action which under Part III [of Chapter 560] subjects the money transmitter to denial, revocation, suspension or restriction of licensure.

Section 4. Amends subsection (1) in s. 560.118, F.S., to authorize the department to direct independent private firms to conduct compliance examinations of money transmitters, at the expense of the transmitter/examinee. Further authorizes the department to receive the results of examinations completed by such firms in lieu of its own examination.

Section 5. Creates subsection (2) in s. 560.128, F.S., authorizing the department to require money transmitters to display a copy of their registration at any location where they operate pursuant to that registration, to include the locations of all authorized vendors. The general public, and examiners will find it easier to identify money transmitters and hold them accountable to the law.

Section 6. Amends subsection (3) in s. 560.205, FS, to require money transmitters to file additional information in their application for registration describing corporate directors, including any history of criminal proceedings against the director.

Section 7. Provides that the bill shall take effect on October 1, 1977.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

To the extent the department has conducted audits of money transmitters in the past, it will save an estimated \$250 per audit now funded through the Financial Institutions Regulatory Trust Fund. This is based on a rate of \$20 per day over a period of twelve days, plus miscellaneous expense. The total recurring savings is indeterminate because it will depend on the total number of audits the department would have conducted in lieu of those conducted by an independent firm at the expense of the money transmitter.

According to the department, it will also incur indeterminate minimal additional costs to monitor the private examinations. However, the department believes the overall

costs of oversight will decrease as more audits of money transmitters are performed by independent firms, with greater frequency, at the expense of the examinees. The department will continue to conduct follow-up activities where violations are suspected.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See III.A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

To the extent that operators in the industry do not fully comply with the law at present, some may experience sanctions due to more careful scrutiny of the industry. Money transmitters will also incur minimal costs to meet the disclosure requirements. The independent firms that conduct examinations and audits will incur some costs, the level of which are undetermined at this time. However, the costs will be recovered from the examinees who will ultimately incur the costs of these examinations.

2. Direct Private Sector Benefits:

The industry and the general public should benefit from a money transmitter industry that operates consistent with law, and free from the illegal or illegitimate money transmission facilities. Additionally, private auditing firms will have the opportunity to conduct examinations of money transmitters.

3. Effects on Competition, Private Enterprise and Employment Markets:

The expanded enforcement of money laundering and currency transaction reporting statutes, and the prosecution of violators, is designed to remove improper influences from the marketplace and emphasize orderly, consistent operations.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

None.

V. COMMENTS:

According to Black's legal dictionary, the term "money" generally connotes currency. However, the department indicates that no difficulty or confusion is caused by regulating couriers of "payment instruments" under the term "money transmitter."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Financial Services adopted one amendment at its meeting on March 18, 1997, which clarifies the definition of "money transmitter-affiliated party" to specify that jurisdiction over such actors in other states is invoked when the party becomes involved with a money transmitter registered in Florida.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

E. Leon Jacobs, Jr.

Stephen Hogge