SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1258

SPONSOR: Committee on Criminal Justice

SUBJECT: Money Laundering

DATE: March 8, 2000 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich/Erickson	Cannon	CJ	Favorable/CS
2.			BI	
3.			FP	
4.				
5.				

I. Summary:

Committee Substitute for Senate Bill 1258 contains recommendations of the Joint Legislative Task Force on Illicit Money Laundering which was established last year by Senate President Jennings and House Speaker Thrasher to address the money laundering problem in Florida. The Task Force heard extensive testimony from criminal justice officials, transportation representatives, banking and business persons, state and local government officers, and community leaders. In November 1999, the Task Force issued its final report (*Money Laundering in Florida: Report of the Legislative Task Force*) which contained numerous proposals impacting the areas of law enforcement and prosecution, transportation and distribution, and financial institutions and businesses.

The key provisions of the CS which relate to legislative recommendations of the Task Force report are summarized below:

Law Enforcement and Prosecution

- Provide a uniform sentencing scheme by adopting graduated penalties based upon the amount of the financial transaction involved in the money laundering. Rank these felony violations under the Criminal Punishment Code based upon their felony degree and thereby significantly increase the penalties for convicted money launderers.
- Define “structuring” and create a new offense of unlawful structuring of financial transactions.
- Define “transaction” and “financial transaction” to include using safe deposit boxes and transferring title to any real property or vehicle, vessel, or aircraft.
- Authorize law enforcement to temporarily “freeze” certain bank accounts suspected of containing assets received through money laundering activities and provide statutory authority for law enforcement to obtain a seizure warrant in money laundering forfeiture cases.

- Authorize the use of “rewards” to informants who provide information pertaining to money laundering.
- Abolish the “corpus delicti rule” for felony violations of ch. 896, F.S., and ss. 560.123, 560.125 and 655.50, F.S. Require a hearing to determine the trustworthiness of the confession or admission against interest. Require the state to prove the trustworthiness of the confession or admission by a preponderance of the evidence.
- Codify the “fugitive disentitlement” doctrine to prevent fugitives from justice from challenging money laundering forfeitures.
- Create a statutory inference of a person’s knowledge of money transmitter reporting and registration requirements, by proof that someone engaged in the business of money transmitting and for monetary consideration, transported more than $10,000 in currency.
- Preclude the use of certain defenses in a money laundering prosecution.
- Clarify that specified undercover law enforcement activity is authorized in connection with legitimate money laundering investigations.

Transportation and Distribution

- Establish minimum statewide standards for seaport security and a compliance mechanism.
- Designate a state agency to be responsible for seaport security.
- Provide an affirmative burden of reasonable inquiry as to persons in situations involving suspicious transactions or transportation of monetary instruments (“knew or should have known” in certain circumstances).
- Expand the definition of “drug paraphernalia” to include hidden compartments in vehicles used, intended for use, or designed for use in transporting controlled substances and illicit proceeds. Provide that it is a third degree felony to use drug paraphernalia for the purpose of transporting a controlled substance or contraband (including illicit proceeds).

Financial Institutions and Businesses

- Strengthen the regulatory and enforcement role of the Department of Banking and Finance in its administration of the Money Transmitters’ Code under ch. 560, F.S.
- Add felony violations of ch. 560, F.S., to the list of predicate offenses under the Racketeer Influenced and Corrupt Organization (RICO) Act and criminalize certain violations of ch. 560, F.S., which do not currently constitute a crime and carry a criminal penalty.
- Add avoidance of money transmitters’ registration requirements to the activity that is prohibited in s. 896.101, F.S. (Florida Money Laundering Act).
- Amend ch. 560, F.S., to require that the Department of Banking and Finance prove willfulness on the part of a registered money transmitter who violates the Money Transmitters’ Code and authorize additional disciplinary penalties under the Code chapter.
- Clarify that an “authorized vendor” must engage in business at locations within Florida pursuant to a written contract with the registrant. Clarify that compliance with registration requirements is required for any money transmitting activity in this state.
- Authorize the Department of Banking and Finance to conduct background investigations and require the filing of fingerprints under ch. 560, F.S. Provide that the department may deny a renewal license for the same reasons it can deny an initial license application.

The CS takes effect July 1, 2000.

This CS amends the following sections of the Florida Statutes: 560.103, 560.111, 560.114, 560.117, 560.118, 560.123, 560.125, 560.205, 560.211, 560.306, 560.310, 655.50, 893.145, 893.147, 895.02, 896.101, 896.103, and 921.0022. The CS also creates the following sections of the Florida Statutes: 311.12, 560.1073, 896.104, 896.105, 896.106, and 896.107.

II. Present Situation:

The Problem of Money Laundering and Creation of a Florida Task Force

Money laundering is a major problem in Florida as well as across the country. Law enforcement agencies estimate that more than $5.4 billion are laundered each year in this state due to the drug trade alone while almost $100 billion are laundered nationwide and nearly three times that amount worldwide. The illicit drug trade relies heavily on money laundering because it is almost exclusively a cash business. Drug interdiction, while an essential component of attacking the illicit drug trade cannot, standing alone, reverse the tide of illicit drugs. Combating money laundering, combined with strong interdiction efforts, offers a more effective law enforcement response. *Money Laundering in Florida: Report of the Legislative Task Force* (November 1999).

Money laundering generally involves a series of multiple transactions used to disguise the source of financial assets so that those assets may be used without compromising the criminal enterprise seeking to use the funds. Through money laundering, the person engaged in illegal activity tries to transform the monetary proceeds derived from that activity into funds with an apparently legal source.

The Senate President and House Speaker created the Legislative Task Force on Illicit Money Laundering last interim to study and recommend ways to enhance the state's strategy in combating this problem. The Task Force was charged with developing legislative and funding recommendations to aid law enforcement agencies, prosecutors, and state regulatory agencies in their efforts to attack money laundering. Extensive testimony was presented to the Task Force from law enforcement and prosecutors, transportation representatives, state and local government officers, and banking and business officials. After considerable debate and deliberation, the Task Force adopted 36 recommendations. The majority of recommendations requiring legislation are contained in this CS. The remaining legislative recommendations are contained in three other Committee Bills (SB's 1262, 1260 & 1256). The remaining Task Force recommendations are funding recommendations, recommendations to Congress, or non-legislative recommendations.

Task Force Findings

Law enforcement officials and prosecutors presented compelling testimony to the Task Force indicating that although Florida generally has strong money laundering laws there are some provisions that could be amended to enhance the effectiveness of those laws, particularly as to enforcement and prosecution issues. The Task Force found that convicted money launderers rarely receive state prison sentences and prosecutors believe that this is a result of the existing sentencing scheme. The Task Force was presented substantial testimony that enhanced state money laundering enforcement and prosecution efforts which will have a positive impact on investigation and enforcement efforts aimed at a broad range of criminal activities that exact economic and other costs on Floridians.

In exploring transportation and distribution issues, the Task Force discovered that Florida's large, diverse and mobile population provides drug traffickers with an opportunity to transport their illicit drugs and proceeds while avoiding detection. Florida's drug interdiction efforts are daunting because of the State's highly populated roadways, seaports and airports. The Task Force members were concerned that significant security gaps exist at Florida's seaports and airports and these transportation gateways have been exploited by drug traffickers. Several recommendations, including the expanded use of canines, are aimed at securing the ports.

The Task Force furthermore found that Florida's financial institutions and businesses are major conduits for money laundering operations because they provide a variety of services and products that can be used to conceal the source of illicit money. Financial entities and the self-described "non-banking" community offer services and instruments (bank accounts, cashiers' checks, travelers' checks, wire transfers) that are utilized in laundering activities. Likewise, merchants and retailers sell products used as vehicles for money laundering. The Task Force heard considerable testimony from state regulators, including banking, revenue, insurance, and real estate representatives, about their respective efforts to combat money laundering through their regulatory role of overseeing the state's financial and business community.

During its deliberations, the Task Force was mindful to strike a balance between the interests of law enforcement officials, prosecutors, and state regulators with the legitimate concerns of the banking and business community. The Task Force recommendations were forged with all sides endeavoring to compromise to achieve the goal of providing a stronger framework to combat money laundering in the state.

III. Effect of Proposed Changes:

Section 1. Creates s. 311.12, F.S., relating to seaport security, to provide that by January 1, 2001, the Office of Drug Control (ODC), in consultation with the Florida Seaport Transportation and Economic Development Council (FSTEDC), and in conjunction with the Florida Department of Law Enforcement (FDLE) and local law enforcement agencies having primary authority over the affected seaports, shall develop, by January 1, 2001, a statewide security plan.

Affected seaports, in conjunction with and pending review and approval of the ODC and FDLE, and in consultation with the FSTEDC, shall, no later than January 31, 2001, develop and draft individual seaport security plans. These plans must adhere to uniform statewide minimum security standards and incorporate the security recommendations of the Florida Seaport Security Assessment 2000. The affected seaports must implement their seaport security plans by December 31, 2001. The FDLE (or other entity selected by FDLE) is required to conduct no less than one annual unannounced inspection of each affected seaport to determine whether those seaports are in compliance with the minimum statewide standards. FDLE shall have unimpeded access to the affected seaports for this purpose.

By December 31 of each year, the FDLE, in consultation with the ODC, must complete a report on the results of its inspections and suggestions or concerns raised by reason of the report. To the extent possible, the report shall include responses from the chief administrators of the affected seaports regarding actions taken in response to the report. The new section does not prohibit seaports from implementing tougher security standards than the minimum statewide standards.

A fingerprint-based criminal history check must be performed on all applicants for employment and current employees at the affected seaports, as designated by the security plan, who will be working on seaport property or have regular access to the seaport. Costs of this check shall be borne by the seaport, employing entity, or person being checked. A complete set of fingerprints must be submitted in the manner required by FDLE and the security plan. The fingerprints shall be submitted to FDLE for state processing and to the FBI for federal processing. Results of the checks shall be reported to the seaports in the manner designated by the security plan.

United States Customs' officials asserted that poor seaport security is a major reason for smuggling of illicit drugs and proceeds. Unlike airports, there is no viable system of federal regulations mandating specific security standards for seaports and marine terminals. The Port of Miami, Port Everglades and the Jacksonville Port Authority have instituted seaport security measures to reduce criminal activities including drug smuggling. While the measures taken at these seaports are not exactly the same, each measure reduces access to the seaports by unauthorized personnel. Each of these seaports recommended to the Task Force the establishment of minimum security standards for all seaports in Florida and oversight by the state to ensure compliance.

Task Force Recommendation 8.

Section 2. Amends s. 560.103, F.S., to clarify the definition of an "authorized vendor" who must be engaged in the business of a money transmitter on behalf of the registrant and have locations in Florida pursuant to a written contract with the registrant.

Under current law, an authorized vendor is a person designated by a money transmitter registrant to engage in money transmitting on behalf of the registrant. There is no requirement that such vendors do business at locations in this state or have written contracts. The Task Force heard testimony from the Department of Banking and Finance about the importance of having authorized vendors established within Florida pursuant to written contracts. Many registrants have taken advantage of the current provision which provides for sending the department a letter indicating that they have appointed an authorized vendor and have listed foreign money exchange businesses as authorized vendors, when in fact the businesses have nothing to do with the registrant. This practice makes it possible for a money transmitter to easily transport illicit money from his "home" country into Florida, because he does not have to supply the department or law enforcement, with identifying information. The Task Force received testimony that this identifying information is critical to money laundering investigations.

Task Force Recommendation 27.

Section 3. Creates s. 560.1073, F.S., to provide for the imposition of a third degree felony for persons who file financial statements or relevant supporting documents with the Department of Banking and Finance with the intent to deceive and with knowledge that the document is materially false.

Currently, there is no criminal penalty under the Money Transmitters' Code (ch. 560, F.S.) for persons who file false information on financial statements provided to the department. Department representatives told the Task Force that this provision would encourage honest bookkeeping and

would make employees think twice before they aid in falsifying records to conceal the source and destination of money.

Task Force Recommendation 6.

Section 4. Amends s. 560.111, F.S., pertaining to the Money Transmitters' Code, to remove the requirement that the Department of Banking and Finance prove knowledge on the part of a Code violator who receives or possesses property with intent to deceive or defraud, fails to make a true entry in books and accounts, or places among the assets of a money transmitter or vendor any notes or obligations that such transmitter does not own or which are fraudulent or otherwise worthless.

Officials with the department state that they would still be required to prove that the violator either intended to deceive or defraud or had knowledge that such notes or obligations were worthless.

Task Force Recommendation 25.

Section 5. Amends s. 560.114, F.S., which relates to disciplinary actions under the Money Transmitters' Code, to expand the number of activities that are violations of the Code and which constitute grounds for the department to issue cease and desist orders, to suspend or revoke registrations, or to take other actions. The activities include: committing acts of fraud or misrepresentation; engaging in unlicensed activity within other jurisdictions; being convicted or guilty of certain crimes; aiding or abetting persons to violate the Code; failing to timely pay certain fees or judgments; or engaging in the business of a money transmitter without the proper registration.

The amendment further provides that a money transmitter is responsible for any act of its authorized vendors if the transmitter should have known that the act was a Code violation.

Testimony before the Task Force by department officials emphasized the importance of making certain activities Code violations and providing the department with the ability to enforce the various provisions of the Code.

Task Force Recommendations 6 and 25.

Section 6. Amends s. 560,117, F.S., to allow the Department of Banking and Finance to bring enforcement actions against money transmitter violators without providing advance written notice to such violators, except in limited circumstances. Under these limited circumstances, the department must provide notice to the suspected violator and allow the violator 15 days to correct the violation before bringing disciplinary action. The limited circumstances involve the failure to make certain payments and the failure to notify the department of certain changes within specified time periods.

Under current law, the department must give advance written notice to an alleged offender and allow reasonable time for the person to correct the wrongdoing before the department can take administrative action. This results in allowing a wrongdoer to commit violations while the

department waits for that person to cease committing the offense. According to representatives with the department, this provision greatly hampers their ability to initiate effective enforcement action against violators. This amendment also allows the department to impose a fine of up to $10,000 for each violation of the chapter.

Task Force Recommendation 11.

Section 7. Amends s. 560.118, F.S., to authorize the Department of Banking and Finance to conduct an examination of the activities and transactions of a money transmitter or vendor without providing a 15-day advance notice, if the department "suspects" that the person has violated the Money Transmitters' Code, criminal laws of this state, or engaged in unsound practices.

Current law requires the department to provide a 15-day advance examination notice, unless the department has "reason to believe" that the transmitter or vendor engaged in unsafe and unsound practices or had violated the Code. Representatives with the department informed the Task Force that they needed more effective tools to monitor the activities of transmitters and vendors and the advance notice provision hampered their efforts to initiate administrative action. However, agents representing money transmitters explained that advance notice was necessary in order to collect books and records which were often kept at different locations. Concerned about establishing a level playing field between the department and money transmitters, the Task Force required the department to give advance notice except in cases where the agency "suspects" that the transmitter has violated certain provisions.

The amendment also requires that persons subject to ch. 560, F.S., who are examined shall make available to the department their accounts, documents and records which are in their immediate possession or control; such records not in their immediate possession shall be made available to the department within 10 days after notice is served on such persons.

The amendment further provides that examinations may be performed by an independent third party approved by the department or by a certified public accountant. Additionally, an audit of a money transmitter may be performed by a certified public accountant. Furthermore, annual financial reports must be audited by an independent third party or by a certified public accountant with the transmitter or vendor bearing the cost of the audit. An exception to the auditing of annual financial reports is provided for a seller of payment instruments who has a combined total of fewer than 50 employees and vendors, or whose annual payment instruments issued are less than $200,000. These payment instrument sellers, e.g., persons who sell items like travelers checks, are exempt due to their small size, however, they still are required to complete unaudited financial reports.

Finally, the amendment provides for a third degree felony violation for any person who is not a registered money transmitter and who violates, or any registered money transmitter who willfully violates, this section or fails to comply with any lawful written order or demand of the department.

Task Force Recommendations 6, 12, and 14.

Section 8. Amends s. 560.123, F.S., the Florida Control of Money Laundering in the Money Transmitters' Act, to specify that certain violations involve currency or payment instruments and to provide that the common law "corpus delicti rule" is inapplicable to prosecutions brought under this section. The defendant's confession or admission is admissible during trial without the state having to prove the corpus delicti if the court finds in a hearing conducted outside the presence of the jury that the defendant's confession or admission is trustworthy.

Before the court admits the defendant's confession or admission the state must prove by a preponderance of the evidence that there is sufficient corroborating evidence that tends to establish the trustworthiness of the statement by the defendant. Hearsay evidence is admissible during the presentation of the evidence at the hearing. In making its determination, the court may consider all relevant corroborating evidence, including the defendant's statements. This provision is identical to language contained under sections 9, 14 and 18 of this CS.

The Task Force heard testimony from the Attorney General's Office and the Miami-Dade State Attorney's Office indicating the Florida courts' use of the "corpus delicti rule" has made it unnecessarily difficult to introduce confessions and admissions against interest into evidence in money laundering or related offenses. The "corpus delicti" of a crime is the body or substance of a crime, ordinarily including the act itself which constitutes the crime and the criminal agency of the act. The "corpus delicti rule" is a common law rule which requires the state to show by evidence, independent of a confession or admission, the existence of each element of the crime (the "corpus delicti"), before a confession or admission may be introduced.

According to testimony to the Task Force, while Florida courts adhere to the corpus delicti rule, other state courts and the federal courts only require that the state introduce substantial independent evidence tending to establish the trustworthiness of the defendant's confession or admission, an alternative rule which those courts have determined affords ample protection for the defendant. Abolishing the corpus delicti rule for this offense does not relieve the state of its burden to prove each element of a crime beyond a reasonable doubt.

Task Force Recommendation 20.

Section 9. Amends s. 560.125, F.S., relating to money transmitter business by unauthorized persons, to provide a uniform sentencing scheme of graduated penalties based upon the amount of the transaction involved in the violation. For example, it would be a third degree felony if the amount was more than $300 but less than $20,000; a second degree felony if the amount was $20,000 or more, but less than $100,000; and a first degree felony if the amount involved was $100,000 or more. A person found guilty of violating this section may be sentenced to pay a fine not exceeding $250,000 or twice the value of the currency or payment instruments, whichever is greater. On a second or subsequent violation, the fine may be up to $500,000, or quintuple the value of the currency or payment instruments, whichever is greater. Additionally, a civil penalty may be imposed of not more than the value of the currency or payment instrument involved or up to $25,000, whichever is greater.

Finally, it is provided that the common law "corpus delicti rule" is inapplicable to this section. A hearing is required to determine the trustworthiness of the confession or admission before it may be admitted. This provision is identical to language in section 8.

The effect of graduated penalties is to reflect, in terms of the sanction imposed, the seriousness of the particular violation. Prosecutors told the Task Force that restructuring of penalties will increase the deterrent value of these penalties by significantly increasing the likelihood that money laundering offenders will receive a prison sentence.

Task Force Recommendations 1, 20, and 28.

Section 10. Amends s. 560.205, F.S., relating to qualifications of applicants for registration as fund transmitters and payment instrument sellers, to authorize the Department of Banking and Finance to conduct background investigations and require the filing of fingerprints.

Department officials offered testimony to the Task Force that they needed further authority to conduct criminal background checks of fund transmitters and payment instrument sellers, including a requirement for certain officers, directors, and controlling shareholders to file fingerprints. The amendment also clarifies that applicants do not need to file audited financial statements but may file unaudited statements with the department.

Task Force Recommendation 30.

Section 11. Amends s. 560.211, F.S., relating to record keeping for payment instrument sellers and fund transmitters, to provide that any person who is not a registered money transmitter and who violates this section, or any registered money transmitter who willfully violates this section, commits a third degree felony.

The Task Force heard testimony from officials with the Department of Banking and Finance that stronger penalties were needed for persons who failed to comply with record keeping requirements.

Task Force Recommendation 6.

Section 12. Amends s. 560.306, F.S., pertaining to qualifications for registration of check cashers and foreign currency exchangers, to authorize the Department of Banking and Finance to conduct background investigations and require the filing of fingerprints.

Department officials offered testimony to the Task Force that they needed statutory authority to conduct more thorough investigations. This is similar to the provisions under section 10.
The amendment also clarifies that the department may deny a license renewal for the same reasons it can deny an initial license application. The current law had the effect of allowing a licensed check casher or foreign currency exchanger to violate the law and get his or her license renewed.

Task Force Recommendation 30.

Section 13. Amends s. 560.310, F.S., relating to the maintenance of records of check cashers and foreign currency exchangers, to specify that it is a third degree felony for a person who is not a registered money transmitter to violate, or a registered money transmitter to willfully violate, this section or fail to comply with any lawful written demand or order of the Department of Banking and Finance. This is similar to the provisions under section 11.

Task Force Recommendation 6.

Section 14. Amends s. 665.50, F.S., the Florida Control of Money Laundering in Financial Institutions Act, to specify violations involving monetary instruments, and also to provide that the common law "corpus delicti rule" is inapplicable to prosecutions brought under this section. A hearing is required to determine the trustworthiness of the confession or admission before it may be admitted. This provision is identical to language in section 8.

Task Force Recommendation 20.

Section 15. Amends s. 893.145, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act, to expand the definition of "drug paraphernalia" to include a compartment used to "transport" a controlled substance or "contraband" (including illicit proceeds).

According to testimony to the Task Force by representatives of the Florida Highway Patrol (FHP) and the Motor Carrier Compliance Office (MCCO), drug couriers must move illicit drugs and proceeds on our highways in order to stay in business and those persons are ingenious in creating compartments to conceal their illicit drugs and proceeds. Officials must look beyond the routine traffic stop or commercial inspection for indicators of trafficking of illicit drugs or money. The FHP estimates that at least 80 percent of drug and money seizures on our highways involve the use of hidden compartments. Law enforcement intelligence in Florida reported that some legitimate body shops, particularly in the South Florida area, have begun to specialize in manufacturing non-factory concealment areas to be used in transporting illicit contraband. The construction or use of these compartments to transport illicit drugs and money is currently not a violation. The effect of this proposal and a newly-created drug paraphernalia transportation offense (see section 16) makes it illegal to construct or use such compartments with the specific intent to transport illicit drugs or money.

Task Force Recommendation 3.

Section 16. Amends s. 893.147, F.S., to provide that it is a third degree felony to use, possess with intent to use, or manufacture with intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know the paraphernalia will be used to transport a controlled substance or contraband.

Task Force Recommendation 3.

Section 17. Amends s. 895.02, F.S., the Florida Racketeer Influenced and Corrupt Organization (RICO) Act, to add felony violations of ch. 560, F.S. (Money Transmitters' Code), to the list of predicate offenses under the RICO statute.

The Statewide Prosecutor proposed this recommendation to the Task Force to expand RICO's scope of predicate offenses to include felony offenses under ch. 560, F.S., for the purpose of RICO prosecutions. The RICO predicate offenses already include money laundering violations under ch. 896, F.S., and ch. 655, F.S. Violations under ch. 560, F.S., are not currently covered.

Task Force Recommendation 5.

Section 18. Amends s. 896.101, F.S., to cite this section as the "Florida Money Laundering Act" and provide an affirmative burden of reasonable inquiry on persons in situations involving suspicious transactions. The amendment defines "transaction" and "financial transaction" to include using safe deposit boxes or transferring title to any real property, vehicle, vessel, or aircraft, and also adds the avoidance of money transmitters' registration requirements to the activity that is prohibited under this section. The amendment precludes the use of certain defenses in a money laundering prosecution that would include utilizing an undercover law enforcement officer or where such officer solicited a person predisposed to engage in conduct violating this chapter. However, the amendment does not preclude the defense of entrapment.

The amendment further provides for a uniform sentencing scheme by adopting graduated penalties based upon the amount of the transaction involved in the money laundering activity as follows:

- a third degree felony, if more than $300 but less than $20,000;
- a second degree felony, if $20,000 or more, but less than $100,000; and
- a first degree felony, if $100,000 or more.

The amendment also authorizes any law enforcement agency, the Attorney General, any state attorney, or any statewide prosecutor to seek a temporary injunction to "freeze" bank accounts of suspected money launderers for 10 days, providing certain conditions are met to protect innocent persons. Specifically, the amendment allows prosecutors to commence a civil action to obtain a temporary injunction to prohibit a person from withdrawing or removing monetary instruments used in violation of ch. 560, F.S. (Money Transmitters' Code), s. 655.50, F.S. (Florida Control of Money Laundering in Financial Institutions Act), or other specifically listed crimes. This injunction, which could be obtained ex parte and without bond, would be granted only for amounts more than $10,000, where it appears likely that a person would dispose of such monetary instruments. The court must take into account any anticipated impact the injunction would have on innocent third parties or businesses. Within 24 hours after the injunction order is served, the prosecutor (or other petitioner) must furnish a copy of the injunction order to both the person in possession of the monetary instruments (normally a bank) and the actual owner. A hearing to contest the injunction order may be held within three days after a request for hearing is made. Financial institutions, licensed money transmitters, or other persons served with and complying with a warrant, temporary injunction, or other court order, including a subpoena, obtained in furtherance of a money laundering investigation, have immunity from civil and criminal liability for lawful actions taken in such compliance.

The amendment further allows law enforcement to obtain a seizure warrant in money laundering forfeiture cases. Any financial institution that receives a seizure warrant has a right of set off for any transaction involving a debit card occurring on or before the date of receipt of such warrant.

Finally, the amendment provides that the common law "corpus delicti rule" is inapplicable to prosecutions brought under ch. 896, F.S., and provides for a hearing to determine the trustworthiness of the confession or admission before it may be admitted. This provision is identical to language in section 8.

The Task Force heard testimony as to the necessity to place an affirmative burden of reasonable inquiry (knew, or in transactions or transportation involving more than $10,000, should have

known after reasonable inquiry, unless the person has a duty to file a federal currency transaction report or similar state report) on persons in situations involving suspicious transactions or transportation of monetary instruments. A Miami-Dade Police Department official asserted that this new language would clear up the issue of "willful blindness" frequently encountered as a defense in money laundering investigations.

The Task Force further considered testimony from FDLE concerning the need to define "transaction" and "financial transaction" to parallel the federal money laundering statute. These additions would address the problem of multiple signers to a safe deposit box, and would also add transactions that do not involve currency, such as the common place practice of transferring goods or car titles, to the list of money laundering activities. The testimony presented also revealed that money launderers often purchase a set of safety deposit boxes for the safekeeping of large sums of cash until the launderers decide how to dispose of it. Safety deposit boxes are also frequently used as a transhipment point in the money laundering process.

The Task Force heard testimony from a Miami-Dade Police Department official that avoidance of the money transmitter *registration* requirement should be added as an element which may prove a violation of s. 896.101, F.S. This would help make the money laundering statute more effective. The statute already prohibits the transportation of cash, with knowledge that the cash being transported is the proceeds of some form of illegal activity and with knowledge that the transportation is meant in whole or in part to evade a transaction *reporting* requirement.

Representatives with FDLE told the Task Force about the importance of putting individuals on notice of what does not constitute a defense in a money laundering prosecution. The defense should be precluded from arguing that law enforcement employed deception, such as use of an undercover agent; provided an opportunity to engage in the money laundering conduct; or solicited a person predisposed to engage in money laundering conduct, as long as the solicitation would not induce a law-abiding person to violate the law. These precluded defenses are patterned after the defenses found in the theft chapter, ch. 812, F.S. (at s. 812.028, F.S.) However, the Task Force made clear that its recommendation did not preclude the defense of entrapment.

The Task Force heard testimony from the Miami-Dade County State Attorney's Office and other law enforcement officials about the need to modify the money laundering penalties to parallel the penalty scheme in ch. 560, F.S., and s. 655.50, F.S. This would more accurately reflect, in terms of the sanction imposed, the seriousness of the particular violation.

The Task Force received testimony from the Miami-Dade County State Attorney's Office indicating that giving prosecutors the statutory authority to apply to the court for a temporary injunction to "freeze" the bank account of a suspected money launderer for 10 days would prevent the liquidation of the suspect's bank account. Prosecutors provided anecdotal evidence of cases where money launderers transferred large sums of money when they discovered law enforcement was investigating. Currently, before prosecutors can seize accounts, they must develop probable cause and have a judge issue a search warrant. In developing probable cause, the account information must be subpoenaed and analyzed and sometimes, during this process, the funds are transferred out of the bank account and law enforcement is unable to trace the new location of the funds. This mechanism for temporarily freezing accounts currently exists under federal law.

Testimony before the Task Force revealed it would be helpful for law enforcement to have statutory authority to obtain a warrant authorizing the seizure of property during a money laundering forfeiture. Currently, prosecutors are using modified search warrants as seizure warrants because there is no specific statutory authority for a seizure warrant under Florida law.

Task Force Recommendations 1, 4, 16, 17, 19, 20, 22, and 24.

Section 19. Amends s. 896.103, F.S., to correct a cross-reference to s. 893.101, F.S., which clarifies that financial transactions in violation of s. 896.101(3), F.S., constitute a separate, punishable offense.

Task Force Recommendation 1.

Section 20. Creates s. 896.104, F.S., to create a new third degree felony offense of unlawful structuring of financial transactions to avoid the reporting requirements under ch. 896, F.S. The terms “structure” and “structuring” are defined (mirroring the federal definition in 31 CFR 103.11(gg)). Graduated penalties are provided, identical to those penalties provided in s. 896.101, F.S., and other sections amended by the CS.

A statutory inference is created of a person’s knowledge of money transmitter reporting and registration requirements by proof that someone engaged in the business of money transmitting and for monetary consideration, transported more than $10,000 in currency.

The FDLE recommended to the Task Force that a new offense be created to address unlawful structuring of financial transactions, which would be similar to the federal law provisions. This offense makes the pattern of intentionally avoiding reporting requirements a criminal act in and of itself under Florida law. A question was raised by the banking industry as to whether this new offense would impose duplicate reporting requirements under both state and federal laws. It appears from all the testimony received that duplicate reporting requirements would not result from this new offense. However, to ensure there would be no additional reporting requirements as a result of this new offense, the Task Force clarified the language indicating its intent not to create an additional reporting burden.

The Task Force heard testimony by the FDLE and the Miami-Dade Police Department on the need to further assist money laundering prosecutions by providing evidentiary aides. Law enforcement officials encouraged the creation of an inference that proof of transportation of more than $10,000 in currency, by someone engaged in the business of money transmitting and for monetary consideration, who did not register as a money transmitter or authorized vendor, was done with knowledge of the reporting and registration requirements in the money laundering statutes. The rationale for this inference is that frequently money couriers claim lack of notice as a defense and this inference would make it more difficult for them to so claim. Before adopting this recommendation, the Task Force engaged in extended deliberation over proposed statutory language to ensure it would not inadvertently apply to innocent persons who were simply transporting large sums of money.

Task Force Recommendations 2 and 23.

Section 21. Creates s. 896.105, F.S., to clarify that specified undercover law enforcement activity is authorized in connection with legitimate money laundering investigations. The provision is patterned after s. 893.13(8)(h), F.S., which provides that offenses and penalties are not applicable to the delivery or actual or constructive possession of controlled substances by "law enforcement officers for bona fide law enforcement purposes in the course of an active criminal investigation."

An FDLE representative told the Task Force that codifying the principle that specified undercover law enforcement activity is allowed in legitimate money laundering investigations would be helpful in assisting investigators who are questioned about how law enforcement officers can engage in undercover activities that facilitate a money laundering investigation. Law enforcement would be able to cite to a statute rather than having to rely on developing case law for their authority.

Task Force Recommendation 29.

Section 22. Creates s. 896.106, F.S., which codifies the "fugitive disentitlement" doctrine to prevent fugitives from challenging money laundering forfeitures.

Testimony was offered by FDLE and other law enforcement agencies to the Task Force on the need to codify the "fugitive disentitlement" doctrine to prevent fugitives from challenging money laundering forfeitures. This doctrine has been adopted in some case law and holds that a fugitive from justice cannot advance legal claims or defenses in a money laundering forfeiture while absent from the jurisdiction of the court or unavailable for discovery by the plaintiff. Counsel for FDLE asserted that this doctrine would provide guidance for law enforcement and prosecutors.

Task Force Recommendation 21.

Section 23. Creates s. 896.107, F.S., to authorize agencies to reward informants who provide information leading to recovery of fines, penalties and forfeitures involving money laundering.

The Task Force heard testimony from the FDLE concerning the need to statutorily authorize "rewards" to informants who provide information leading to the recovery of fines, penalties and forfeitures involving money laundering. According to the FDLE, confidential informants play an important role in obtaining relevant evidence in money laundering investigations. The new section provides that law enforcement agencies may not pay more than the amount of reward authorized for similar activity by any federal law or guideline at the time the information was provided. Current federal law caps informant rewards.

Although informants can currently be paid by law enforcement agencies out of investigative and evidence funds, the codification of this authority would reportedly assist law enforcement in combating money laundering.

Task Force Recommendation 18.

Section 24. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code under the Offense Severity Ranking Chart, by ranking felony violations, e.g., ss. 560.123, 560.125, 655.50, 896.101 and 896.104, F.S., in levels 7-9 based upon their felony degree as follows:

- a third degree felony, ranked in level 7;
- a second degree felony, ranked in level 8; and
- a first degree felony, ranked in level 9.

Currently, a number of money laundering offenses are unlisted in the Criminal Punishment Code offense severity ranking chart and are ranked according to their felony degree pursuant to s. 921.0023, F.S. Often, this ranking by ‘default’ of an unlisted offense is considerably lower than the ranking the offense might receive if specifically ranked in the chart. State prosecutors informed the Task Force of the importance of specifically ranking certain offenses at levels significantly above their current default ranking. Miami-Dade prosecutors asserted that current default rankings create a disincentive to prosecuting money launderers.

Miami-Dade prosecutors also asserted that the restructuring of rankings will increase the deterrent value of these penalties by significantly increasing the likelihood that offenders will receive a prison sentence. It will also send a strong message that Florida is serious about controlling money laundering within its borders. In addition, the proposed rankings for these offenses are more reflective of the seriousness of the criminal activities than the current default rankings. Although the observation was made at the Miami Task Force meeting that under the Criminal Punishment Code, theoretically, a judge could sentence a person convicted of a third degree felony money laundering offense to the statutory maximum allowed under law (five years in prison), testimony was received indicating that, as a practical matter, this is very rare.

Task Force Recommendation 1.

Section 25. Provides that this act shall take effect July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

During its deliberations, the Task Force was mindful to strike a balance between the legitimate concerns of the banking and business community with the interests of law enforcement officials, prosecutors, and state regulators. Task Force recommendations were forged with all sides endeavoring to compromise to achieve the goal of providing a stronger framework to combat money laundering and yet balance the privacy concerns of individuals and businesses in the state.

Committee Substitute for Senate Bill 1258 authorizes temporary injunctions to prohibit persons from withdrawing or removing monetary instruments suspected of being tied to money laundering activity. This provision may have an impact on the instrument holder and third parties or businesses. There may also be legal costs to the instrument holder if the holder contests the validity of the injunction.

The CS also provides, with some exceptions, that annual financial reports required to be filed under the Money Transmitters' Code or any rules adopted thereunder must be audited by an independent third party approved by the Department of Banking and Finance or by a certified public accountant authorized to do business in the United States. This requirement will have a fiscal impact on those persons mandated to file such reports. The exceptions to filing financial reports apply to sellers of payment instruments who can prove to the satisfaction of the department that they have a combined total of fewer than 50 employees or that their annual payment instruments issued from their activities as payment instrument sellers are less than $200,000.

The CS will also impact those persons applying for registration under the Money Transmitters' Code, in that such persons must file fingerprints and be subject to a more thorough background review by the Department of Banking and Finance.

The CS also provides for the creation and implementation of statewide security standards for Florida's seaports. It is possible that implementation of these standards may have a fiscal impact on the state, the county where the seaport is located, and on the shipping industry, if some costs are passed down to the industry through fees.

C. Government Sector Impact:

In general, law enforcement officials and state attorneys are provided with more effective tools to investigate and prosecute persons violating the various anti-money laundering provisions. Likewise, the Department of Banking and Finance is given greater authority to regulate and enforce the provisions of the Money Transmitters' Code.

The Criminal Justice Estimating Conference estimates that the CS will have an indeterminate, but likely minimal, fiscal impact.

The Florida Department of Law Enforcement estimates that the CS will have an insignificant fiscal impact on the department.

A preliminary estimate by the Department of Banking and Finance is that the CS will have an indeterminate fiscal impact on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.