

STORAGE NAME: h1607a.fs

DATE: March 7, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: HB 1607 (PCB CP 00-04)

RELATING TO: Money Laundering

SPONSOR(S): Committee on Crime & Punishment and Representative Ball

TIED BILL(S):

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

- (1) CRIME & PUNISHMENT YEAS 6 NAYS 0
 - (2) FINANCIAL SERVICES YEAS 11 NAYS 0
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

HB 1607 incorporates many of the recommendations made by the Illicit Money Laundering Task Force including the following:

- Provides for graduated penalties for money laundering offenses and the assignment of higher sentencing rankings for those offenses.
- Provides for enhanced penalties for money transmitters and financial institutions who fail to file required reports of currency transactions in excess of \$10,000 or of suspicious currency transactions.
- Provides for graduated penalties for unlicensed money transmitters based on the amount of currency transmitted.
- Authorizes prosecutors and others to seek a temporary injunction to temporarily freeze assets suspected of being the proceeds of money laundering activity.
- Establishes minimum statewide standards for seaport security.
- Adds felony violations of the Money Transmitters' Code to the list of predicate offenses under Florida's RICO Act.
- Provides a penalty for failure of funds transmitter, payment instrument seller, foreign currency exchanger or check casher to keep required records for three years. Creates offense for money transmitter who files a financial statement with intent to deceive and with knowledge that the document is materially false.
- Adds the offense of structuring a financial transaction to evade the reporting and registration requirements of money transmitters and financial institutions to Florida's Money Laundering Act.
- Amends sections of the Money Transmitter Code relating to investigations of and disciplinary actions against money transmitters by the Department of Banking and Finance.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill allows for increased governmental regulation of money transmitters.

B. PRESENT SITUATION:

1. **Legislative Task Force on Illicit Money Laundering**

On March 10, 1999, the Speaker of the House of Representatives and the President of the Senate appointed members to the Legislative Task Force on Illicit Money Laundering. The task force was organized to study the extent of money laundering in Florida, particularly as it relates to the illicit drug trade and to make legislative and funding recommendations. Senator Brown-Waite served as the task force chairman and Representative Valdes served as the task force vice-chairman. Other members of the task force included Representative Ball, Senator Burt, Representative Byrd, Representative Crow, Senator Rossin and Senator Silver. The task force heard testimony from law enforcement officials, prosecutors, transportation officials, financial institutions and other businesses. The task force adopted 36 recommendations which were outlined in a report released in November of 1999.

2. **Definition of "Money Laundering"**

"Money laundering" is any method which is used to make illegally gained money appear to be legitimate money by passing it through a legitimate bank or business. It is often used by criminals involved in the illicit drug trade. According to the report of the Money Laundering Task Force, one estimate is that cocaine traffickers in Florida, including wholesalers and low-level dealers, earn \$5.4 billion a year. This vast amount of cash must be laundered before it can be used.

3. **Federal Law**

Under federal law, financial institutions are required to file a Currency Transaction Report (CTR) for each transaction involving more than \$10,000 in currency. 31 U.S.C. 5313. Any person engaged in trade or business who receives more than \$10,000 in cash payments in a single transaction or series of related transactions is required to file an IRS Form 8300. Financial institutions are also required to file a Suspicious Activity Report (SAR) when they receive suspicious currency transactions over \$5,000. 31 U.S.C. 5318(g). An individual who transports currency or monetary instruments over

\$10,000 into or out of the United States must file an International Transportation of Currency or Monetary Instruments Report (commonly referred to as a CMIR). 31 U.S.C. 5316. Further, no financial institution may issue or sell a bank check, cashier's check, traveler's check or money order to any individual in connection with a transaction which involves coins or currency in amounts \$3,000 or more unless the individual has an account with the financial institution and the financial institution records the method of identifying the individual. 31 U.S.C. 5325 These reporting requirements are intended to deter placement and transportation of large amounts of currency because persons engaged in illegal activity are reluctant to provide information about themselves.

"Smurfing" describes a process of structuring large pools of illicit money into amounts below \$10,000 and either depositing the money into bank accounts or purchasing bank checks or money orders, thus evading the currency reporting requirements. See, Israel Reyes Florida's Anti-Money Laundering Statutes, The Florida Bar Journal, July/August 1999. Federal law prohibits "smurfing" by making it illegal for a person to structure a transaction with a financial institution in order to avoid a reporting requirement. 31 U.S.C. 5324

4. Florida Statutes Chapter 560 - Money Transmitters' Code

Chapter 560 of the Florida Statutes, titled the "Money Transmitters' Code", is broken into three sections. The first section relates to money transmitters in general, the second section relates to payment instrument sellers and funds transmitters and the third section relates to check cashers and foreign currency exchangers. The Department of Banking and Finance regulates money transmitters. Banks and credit unions are exempt from regulations under Chapter 560. Sec. 560.104, F.S.

- a. Prohibited Acts: Section 560.111, F.S., provides that it is unlawful for any money transmitter¹ or money transmitter affiliated party² to commit a list of specified acts including: omitting a material entry in its books; embezzling any property of a money transmitter; making any false entry in a book with intent to deceive; engaging in any act which violates the state or federal money laundering provisions (18 U.S.C. s. 1956³ and 31 U.S.C. s. 5324⁴) and knowingly placing among the assets of the money transmitter any note or obligation that the money transmitter

¹The term "money transmitter" applies to any person in this state who acts as a payment instrument seller, foreign currency exchanger, check cashier or funds transmitter. Sec. 560.103(10), F.S.

² The term "money transmitter-affiliated party" is defined as any director, officer, responsible person, employee, authorized vendor, independent contractor of a money transmitter, or a person who has filed, is required to file, or is found to control a money transmitter or any person engaged in any jurisdiction, at any time, in the business of money transmission as a controlling shareholder, director, officer or responsible person who becomes involved in a similar capacity with a money transmitter registered in the state. Sec. 560.103(11), F.S.

³18 U.S.C. 1956 is the federal equivalent to section 896.101 and deals with money laundering.

⁴31 U.S.C. 5324 makes it unlawful to structure financial transactions in order to evade reporting requirements.

does not own or that the person knows is worthless. A violation of this section is a third degree felony.

- b. Disciplinary Actions: Section 560.114, F.S., provides a list of specified actions by a money transmitter or money transmitter affiliated party that are violations of the money transmitters' code. The following violations constitute grounds for the issuance of a cease and desist order, the issuance of a removal order, the denial of a registration application or the suspension or revocation of any registration previously issued:
1. Knowing failure to comply with any provision of the code.
 2. Fraud or gross negligence in any transaction involving money transmission.
 3. Fraudulent misrepresentation of any matter required to be furnished to a money transmitter customer pursuant to the code.
 4. False, deceptive, or misleading advertising by a money transmitter or authorized vendor.⁵
 5. Failure to maintain and keep available for examination all books, accounts, or other documents required by the code.
 6. A willful refusal to permit the examination or inspection of books and records in an investigation or examination by the department.
 7. Failure of the money transmitter or authorized vendor to pay a judgment.
 8. Failure by a money transmitter to remove a money transmitter-affiliated party after the department finds that the money transmitter-affiliated party has knowingly violated any provision of the code.

The section further provides a list of specified acts that are grounds for denial of registration or for revocation, suspension, or restriction of registration previously granted including: a material misstatement of fact in an initial or renewal application for registration and having been convicted of a crime involving fraud or a money laundering offense.

- c. Administrative Fines: Section 560.117, F.S., authorizes the department to initiate a proceeding pursuant to Chapter 120, F.S., to impose an administrative fine of up to 100 dollars a day against any person found to have violated any provision of the money transmitters' code. Before the proceeding may be initiated, the person must be notified in writing of the nature of the violation and be afforded a reasonable period of time to correct the violation.
- d. Examinations, Reports and Internal Audits: Section 560.118, F.S., authorizes the department to conduct an examination of a money transmitter or authorized vendor.

⁵The term "authorized vendor" means a person designated by a registrant to engage in the business of a money transmitter on behalf of the registrant. Sec. 560.103(2), F.S.

- e. Florida Control of Money Laundering in the Money Transmitters' Code: Section 560.123(2)(a), F.S., requires each money transmitter to keep a record of each financial transaction occurring in this state known to it to involve currency of a value in excess of \$10,000 (similar to the federal Currency Transaction Report), to involve the proceeds of specified unlawful activity (similar to the federal Suspicious Activity Report), or to be designed to evade the reporting requirements of this section or Chapter 896, F.S. Multiple transactions shall be treated as a single transaction if the money transmitter has knowledge that they are made by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any day. Each money transmitter must file a report with the department of these records but the timely filing of a report with the appropriate federal agency is deemed compliance with the reporting requirement unless the federal agency does not transmit such information to the Department of Banking and Finance.

The statute provides that a person who willfully violates any provision of this section or Chapter 896, F.S., (relating to money laundering) commits a first degree misdemeanor. Also, any person who willfully violates any provision of this section or Chapter 896, F.S., if the violation is:

1. Committed in furtherance of the commission of any other violation of any law of this state or committed as part of a pattern of illegal activity involving financial transactions exceeding \$399 but less than \$20,000 in any 12-month period, commits a third degree felony.
 2. Committed as part of a pattern of illegal activity involving financial transactions exceeding \$20,000 but less than \$100,000 in any 12-month period, commits a felony of the second degree.
 3. Committed as part of a pattern of illegal activity involving financial transactions exceeding \$100,000 in any 12-month period, commits a felony of the first degree.
- f. Unauthorized Money Transmitters: It is a third degree felony for a person other than a registered money transmitter or an authorized vendor to engage in the business of a money transmitter in this state. Sec. 560.125, F.S.
- g. Payment Instrument Sellers and Funds Transmitters Section 560.204, F.S., prohibits a person from engaging in the selling or issuing of payment instruments⁶ or in the activity of a funds transmitter⁷, without first obtaining registration. Each payment instrument seller or funds transmitter must make, keep and preserve specified books, accounts, and records for a period of three years. Sec. 560.211, F.S.

⁶The term "funds transmitter" is defined as a person who engages in the receipt of currency or payment instruments for the purpose of transmission by any means, including transmissions within this country to or from locations outside the country, by wire, by facsimile, electronic transfer, courier, or otherwise. Sec. 560.103(9), F.S.

⁷The term "payment instrument" is defined to mean a "check, draft, warrant, money order, travelers check or other instrument or payment of money, whether or not negotiable." Sec. 560.103(14), F.S.

h. Check Cashers and Foreign Currency Exchangers

Section 560.303, F.S., provides that no person shall engage in the business of a check casher⁸ or as a foreign currency exchanger⁹ without first registering with the department. Check cashers and foreign currency exchangers are required to maintain all books, accounts, records and documents necessary to determine their compliance with the provisions of the code for a period of three years. Sec. 560.310, F.S.

5. Florida Statutes Chapter 655 - Financial Institutions

Financial institutions¹⁰ have the same transaction reporting requirements as money transmitters. Sec. 655.50, F.S. Further, the punishment provided is the same as the punishment for a violation of the transaction reporting requirements for money transmitters.

6. Drug Paraphernalia

It unlawful to use or possess with intent to use, drug paraphernalia. Sec. 893.147, F.S. The term "drug paraphernalia" includes equipment, products, and materials which are used, intended for use, or designed for use in planting, growing, harvesting, manufacturing, processing, packaging, storing or concealing a controlled substance. Sec. 893.145, F.S. Section 893.146, F.S., provides a list of factors to be used in determining whether an object constitutes drug paraphernalia including the proximity of the object to controlled substances and the existence of any residue of controlled substances.

7. Florida Statutes Chapter 896 - Offenses Related to Financial Transactions

a. Money Laundering:

It is a second degree felony for a person to do any of the following:

⁸The term "check casher" is defined as "a person who, for compensation, sells currency in exchange for payment instruments received, except travelers checks and foreign-drawn payment instruments." Sec. 560.103(3), F.S.

⁹The term "foreign currency exchanger" means "a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government." Sec. 560.103(8)F.S.

¹⁰The term "financial institution" is defined in s. 655.50, F.S., as the term is defined in 31 U.S.C. 5312. The definition in 31 U.S.C. 5312 includes such institutions as banks, currency exchangers, payment instrument sellers, insurance companies, pawnbrokers, travel agencies, funds transmitters, automobile dealers, check cashers and casinos.

1. Attempt or conduct a financial transaction¹¹ knowing that the property involved represents the proceeds of some form of racketeering activity,¹² which actually involves the proceeds of a racketeering activity:
 - a. With the intent to promote the carrying on of the racketeering; or
 - b. Knowing the transaction was designed to conceal the nature, location, source, ownership or control of the proceeds; or
 - c. Knowing the transaction is designed to avoid transaction reporting requirements.

or

2. Transport or attempt to transport a monetary instrument or funds:
 - a. With the intent to promote the carrying on of racketeering activity; or
 - b. Knowing the transaction was designed to conceal the nature, location, source, ownership, or control of the proceeds; or
 - c. Knowing the transaction is designed to avoid transaction reporting requirements.

or

3. Attempt or conduct a financial transaction which involves property or proceeds which an investigative or law enforcement officer or someone acting under such officer's direction represents as being derived from or as being used to conduct or facilitate racketeering activity with the intent:
 - a. To promote the carrying on of the racketeering activity; or
 - b. To conceal or disguise the nature, location, source, ownership, or control of the proceeds or property believed to be racketeering activity proceeds; or
 - c. To avoid a transaction reporting requirement under state law.

Sec. 896.101(2), F.S.

¹¹The term "financial transaction" is defined to mean "a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, commerce in any way or degree." Sec. 896.101(1)(d), F.S.

¹²"Racketeering activity" is defined as follows, "to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit" one of a large number of specified crimes contained in s. 895.02, F.S. A felony violation of s. 655.50, F.S., relating to reports of currency transactions by financial institutions, is currently part of the specified list.

This offense is currently not ranked in the Criminal Punishment Code and is therefore, by default, scored as a level 4 offense. While the Criminal Punishment Code does authorize a prison sentence of up to 15 years in prison for a level 4 offense that is a second degree felony, it is very unlikely that a defendant would receive a prison sentence for that offense, particularly if the defendant is a first time offender and the level four offense is the only crime being scored.

- b. Reporting Requirement: Section 896.102, F.S., requires all persons engaged in a trade or business (except for financial institutions that report to the Comptroller pursuant to s. 655.50, F.S.) who receive more than \$10,000 in currency in one transaction or two or more related transactions to complete and file with the Department of Revenue a form similar to IRS Form 8300. Any person who willfully fails to comply with this reporting requirement is guilty of a first degree misdemeanor. Sec. 896.102(1), F.S.

C. EFFECT OF PROPOSED CHANGES:

1. Seaport Security

HB 1607 creates s. 311.12, F.S., which provides that the Florida Seaport Transportation and Economic Development Council (created in s. 311.09, F.S.), in conjunction with the Florida Department of Law Enforcement (FDLE), shall develop, by January 1, 2001, uniform statewide minimum security standards for the prevention of criminal activity, including money laundering in all Florida seaports represented by the Florida Seaport Transportation and Economic Development Council. Minimum standards must include:

- a. Perimeter security fencing with controlled access.
- b. Interior fencing, whenever practical, to enclose areas around restricted cargo areas and buildings.
- c. Gates and gatehouses located at all perimeter and interior access points to control access to restricted areas.
- d. Lighting sufficient to adequately illuminate terminal operations and cargo areas.
- e. Signs designating restricted areas.
- f. Closed circuit television cameras in sensitive security areas.
- g. The use of qualified, professional security personnel.
- h. An identification system to control port access to strategic work and cargo storage areas.
- i. Background checks for all personnel working in sensitive areas.

The section further provides that the affected ports shall implement the security standards developed under this section by July 1, 2001. FDLE must certify compliance with the minimum security standards for each affected port.

2. Florida Statutes Chapter 560 - Money Transmitters' Code

- a. Filing False or Misleading Statements or Supporting Documents: HB 1607 creates s. 560.1073, F.S., which provides that any person who files with the Department of Banking and Finance any financial statement or any document in support with intent to deceive and with knowledge that the statement or document is materially false or misleading, commits a third degree felony. The bill does not rank the offense in the Criminal Punishment Code and the offense would be scored, by default, as a level one offense.
- b. Definitions: The bill amends the definition of the term "authorized vendor" to require that the vendor must engage in business at locations in the state pursuant to a written contract with the money transmitter. Sec. 560.103(2), F.S.
- c. Disciplinary Actions: The bill also amends s. 560.114, F.S., which provides a list of actions by a money transmitter that violate the code and constitute grounds for disciplinary action by the department. The bill authorizes disciplinary action against a person who was convicted or pled guilty to a federal money laundering offense or any felony or crime punishable by imprisonment of one year or more which involves fraud regardless of whether adjudication was withheld.

The bill also adds language providing that money transmitters who commit the following acts are subject to disciplinary action:

- Having been convicted of or found guilty of or having pleaded guilty or nolo contendere to misappropriation, conversion, or unlawful withholding of moneys that belong to others received in the conduct of business.
- Failing to inform the department in writing within 15 days after being convicted or found guilty of specified crimes.
- Aiding, assisting, procuring, advising, or abetting any person in violating a provision of the code or any order or rule of the department.
- Failing to timely pay any fee, charge, or fine under the code.
- Failing to timely pay any judgment entered by any court.
- Engaging or holding oneself out to be engaged in the business of a money transmitter without the proper registration.

The bill expands current law by providing that each money transmitter is responsible for any act of its authorized vendors if the money transmitter should have known of the act or has actual knowledge of an act committed in violation of the code.

- d. Administrative Fines: The bill amends s. 560.117, F.S., which currently gives the department the authority to initiate a proceeding to impose administrative fines against a person found to have violated any provision of the code, provided the department notifies the person in writing and affords the person a reasonable amount of time to correct the violation. This bill revises that section by removing the general notification provision and only requiring the department to notify the person within 15 days if the department suspects the licensee of violating one of

the following specific provisions of the code: 1) failure to timely pay any fee, charge or fine under the code; 2) failure to timely pay any judgment entered by any court; 3) failure to timely notify the department of a change of control of a money transmitter; or 4) failure to timely notify the department of any change of address or fictitious name. Thus, it appears that the department could seek disciplinary action under this section for any violation of the code, other than just those listed, without first providing the licensee with notice and an opportunity to correct the violation.

- e. Examinations, Reports and Internal Audits: The bill amends s. 560.118, F.S., to specify the scope of an examination of money transmitters and authorized vendors. The bill provides that if the department suspects that a money transmitter or authorized vendor has violated any provision of the money transmitter code or any criminal law or is engaging in an unsafe and unsound practice, the department may, at any time without advanced notice, conduct an examination of the money transmitter or any money transmitter-affiliated party for the protection of the public. The department may administer oaths and examine the directors, officers, principal shareholders, employees, and vendors of a money transmitter or any of its affiliated parties concerning their operations and business activities and affairs.

The bill also requires people who are examined to make available to the department the accounts, records, documents, files, information, assets, and matters which are in their immediate possession or control and which relate to the subject of the examination. Those records that are not in the money transmitter's immediate possession must be made available to the department or its examiners within 10 days after actual notice is served.

The bill provides that the audit of a money transmitter required under this section may be performed by an independent third party approved by the department or by a certified public accountant authorized to do business in the United States. The examination of a money transmitter required under this section may be performed by an approved independent third party or by a certified public accountant.

The bill provides that annual financial reports required under the code must be audited by an approved independent third party or by a certified public accountant. The money transmitter or authorized vendor must bear the cost of the audit. This requirement does not apply to any seller of payment instruments who can prove to the satisfaction of the department that it has a combined total of fewer than 50 employees and authorized vendors or that its annual payment instruments issued from its activities as a payment instrument seller are less than \$200,000.

The bill provides that any person who willfully violates this section commits a third degree felony.

- f. Florida Control of Money Laundering in the Money Transmitters' Code

The bill amends s. 560.123, F.S., which provides penalties for money transmitters who fail to file required currency transactions reports and suspicious activity reports. The bill removes the requirement that the violation be in furtherance of the commission of a violation of another law or committed as part of a pattern of illegal activity. Rather, the bill provides that a person who willfully violates any provision of this section, if that violation involves:

1. Currency or payment instruments exceeding \$300 but less than \$20,000 in any twelve month period, commits a felony of the third degree. The bill ranks this offense in the Criminal Punishment Code as a Level 7 offense.
2. Currency or payment instruments totaling \$20,000 but less than \$100,00 in any 12-month period, commits a felony of the second degree. The bill ranks this offense in the Criminal Punishment Code as a Level 8 offense.
3. Currency or payment instruments totaling or exceeding \$100,000 in any 12-month period, commits a felony of the first degree. The bill ranks this offense in the Criminal Punishment Code as a Level 9 offense.

These offenses are currently not ranked in the Criminal Punishment Code. Increasing the rank of these violations will increase the likelihood that offenders will receive a prison sentence. The bill also removes the \$100,000 limit on the civil penalty for which a person who violates this section is liable and provides that the civil penalty can be no more than the greater of the value of the currency involved or \$25,000 whichever is greater.

- g. Unauthorized Money Transmitters: The bill amends s. 560.125, F.S., to provide increased penalties for a person who acts as a money transmitter and is not registered. The penalties are based on the amount of currency involved and are identical to those created by the bill in s. 560.123, F.S., for a person who fails to file required currency transaction or suspicious activity reports.
- h. Payment Instrument Sellers and Funds Transmitters The bill amends s. 560.205, F.S., which deals with qualifications for registration as payment instrument sellers or funds transmitters to permit the department to conduct an investigation. The investigation may include a criminal background investigation of all controlling shareholders, principals, officers, directors, members, and responsible persons of a funds transmitter or a payment instrument seller and all persons designated by a funds transmitter or payment instrument seller as a authorized vendor. The bill also requires each controlling shareholder, principal, officer, director, member, and responsible person of a funds transmitter or payment instrument seller, with certain exceptions, to file a complete set of fingerprints with the Department of Law Enforcement or the Federal Bureau of Investigation for state and federal processing.

The bill also amends s. 560.211, F.S., which requires payment instrument sellers and funds transmitters to keep certain records for 3 years to provide that any person who willfully fails to comply with the section commits a third degree felony.

- I. Check Cashers and Foreign Currency Exchangers: The bill amends s. 560.306, F.S., to provide that in order to qualify for registration as a check casher or a foreign currency exchanger, the applicant must meet the same qualifications as an applicant for a funds transmitter or payment instrument seller. Also, the bill makes the willful failure to maintain specified books and records for at least 3 years, a third degree felony. The bill does not rank this offense in the Criminal Punishment Code.
3. **Florida Statutes Chapter 655 - Financial Institutions** The bill amends s. 655.50, F.S., which requires financial institutions to file currency transaction reports and reports

of suspicious transactions to provide punishment based on the amount of money involved identical to the provisions regarding money transmitters.

4. **Drug Paraphernalia**

HB 1607 amends the definition of "drug paraphernalia" in s. 893.145, F.S., to include equipment used in the transporting of a controlled substance. The bill also amends s. 893.147, F.S., to provide that it is unlawful to use, possess with intent to use, or manufacture with the intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know that it will be used to transport: 1) a controlled substance or 2) contraband as defined in s. 932.701(2)(a)1, F.S. The definition of "contraband" includes "any controlled substance as defined in Chapter 893, F.S., or any substance, device, paraphernalia or currency or other means of exchange that was used, or was intended to be used in violation of any provision of chapter 893". A violation of this provision constitutes a third degree felony.

According to the report of the money laundering task force, automobile body shops have begun to specialize in manufacturing concealment areas in motor vehicles to be used in transporting illicit drugs and money. The amendment will make the construction of compartments with the specific intent to transport illicit drugs or money a third degree felony.

5. **Racketeering**: The bill amends s. 895.02, F.S., the Florida Racketeer Influenced and Corrupt Organization Act (RICO) to add felony violations of the Money Transmitters' Code (Chapter 560, F.S.) to the list of predicate offenses under the RICO statute. The RICO predicate offenses currently include money laundering violations under Chapter 896, F.S., and Chapter 655, F.S.

6. **Florida Statutes Chapter 896 - Offenses Related to Financial Transactions**

a. **Money Laundering**:

1. **Definitions**: The bill amends the definition of the term "transaction" contained in s. 896.101, F.S., to include "use of a safety deposit box". The definition of the term "financial transaction" is expanded to include a transaction involving the transfer of title to any real property, vehicle, vessel or aircraft. The definition of the term "knowing" is expanded to mean that a person knew; or with respect to any transaction or transportation involving more than \$10,000 in U.S. currency or foreign equivalent, means should have known after reasonable inquiry unless the person has a duty to file a federal currency transaction report and has complied with that duty.

Section 896.101, F.S., defines "specified unlawful activity" as "racketeering activity" as defined in s. 895.02, F.S. As discussed above, HB 1607 amends the definition of "racketeering activity" to include a felony violation of Chapter 560, F.S. As a result, conducting a financial transaction or transporting monetary instruments in order to promote the carrying on of a felony violation of the money transmitter code will be punishable under s. 896.101, F.S.

2. **Avoiding Money Transmitters' Registration Requirement**: The bill also amends s. 896.101, F.S., which currently prohibits conducting a financial transaction or transporting funds with the intent to avoid a transaction reporting requirement

to prohibit conducting a financial transaction or transporting funds in order to avoid the money transmitter's registration requirement.

3. Defenses: The bill also adds language to s. 896.101, F.S., which provides that it does not constitute a defense to a prosecution for any violation of Chapter 896, F.S., that:
 - a. Any stratagem or deception, including the use of an undercover operative or law enforcement officer, was employed.
 - b. A facility or an opportunity to engage in conduct in violation of this act was provided.
 - c. A law enforcement officer, or person acting under direction of a law enforcement officer, solicited a person predisposed to engage in conduct in violation of any provision of this chapter to commit a violation of this chapter in order to gain evidence against that person, provided such solicitation would not induce an ordinary law-abiding person to violate this chapter.

These defenses are patterned after the defenses which are precluded in Chapter 812, F.S., the theft chapter. Sec. 812.028, F.S. The bill further provides that this subsection does not preclude the defense of entrapment.

4. Corpus Delicti: The bill amends ss. 560.123, 560.125, 655.50 and 896.101, F.S., to provide that the common law "corpus delicti" rule does not apply to prosecutions brought under those sections. 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, before a confession or admission may be introduced.
5. Penalties: Section 896.101, F.S., currently provides that a violation of the section is a second degree felony, regardless of the amount of money involved. The offense is currently not ranked in the Criminal Punishment Code and is therefore, by default, scored as a level 4 offense. The bill divides the offenses based on the amount of money involved as follows:
 - a. A violation involving monetary instruments exceeding \$300 but less than \$20,000 in any 12-month period is a third degree felony and is ranked as a level 7 offense.
 - b. A violation involving monetary instruments totaling \$20,000 but less than \$100,000 in any 12-month period is a second degree felony and is ranked as a level 8 offense.
 - c. A violation involving monetary instruments totaling or exceeding \$100,000 in any twelve month period is a first degree felony and is ranked as a level 9 offense.

The bill further provides that in addition, a person who has violated this section may be sentenced to pay a fine not exceeding \$250,000 or twice the value of the monetary instruments, whichever is greater, except that for a second or subsequent violation of the section, the fine may be up to \$500,000 or quintuple the value of the monetary instruments, whichever is greater.

Additionally, the bill provides that a person who violates this section is liable for a civil penalty of not more than the value of the monetary instruments involved or \$25,000, whichever is greater. These punishments are identical to those provided for failure of a money transmitter or a financial institution to file a transaction report or a suspicious activity report.

6. Temporary Injunction: The bill allows any law enforcement agency, the Attorney General, any state attorney or any statewide prosecutor to seek a temporary injunction to “freeze” a bank account which contains more than \$10,000 worth of monetary instruments that are traceable to a money laundering violation, a violation of Chapter 560, F.S., s. 655.50, F.S., or other specified crimes. If a petitioner shows that a person is alienating or is likely to alienate monetary instruments that are traceable to money laundering violations, the injunction may be entered without notice or an opportunity for a hearing.

The court must take into account any anticipated impact the temporary injunction will have on innocent third parties or businesses, balanced against the petitioner’s need to preserve the monetary instruments. A temporary injunction must be granted without bond to the petitioner. The court may authorize respondent to post a bond equal to the amount to be enjoined and to have the injunction dissolved. The temporary order expires not more than 10 days after the date on which the order is served, unless extended for good cause or unless the party against whom it is entered consents to an extension for a longer period.

At the termination of the temporary injunction or at any time before the termination of the temporary injunction, the petitioner may:

- 1) Obtain a warrant or other court order and seize the monetary instruments or funds and initiate a civil forfeiture action.
- 2) Obtain a warrant or other court order and seize the monetary instruments or funds for any subsequent criminal prosecution; or
- 3) Petition the court to extend the order for a period not longer than 10 days from the original order’s termination date. The petitioner may not be granted any additional extensions.

The bill provides that within 24 hours after a temporary order is served pursuant to this section, the petitioner shall furnish to both the person or entity in possession of the monetary instruments (normally a bank) and to the owner of the monetary instruments, if known, a copy of the temporary order and a notice that the lawful owner of the monetary instruments may request a hearing to contest the order. The notice must also advise that the hearing will be held within 3 days after the request or as soon as practicable thereafter before the expiration of the temporary order.

The bill provides that only the lawful owner or the account holder of the monetary instruments or funds being enjoined may request a hearing to contest the order. Notice of the hearing must be provided to the petitioner who procured the temporary injunction not less than 24 hours before the scheduled hearing. At the hearing, the court may receive evidence that would be

inadmissible under the Florida Rules of Evidence. The bill also grants civil and criminal immunity to any financial institution, licensed money transmitter or other person complying with the terms of the temporary injunction.

The bill provides that the petitioner may request issuance of a warrant authorizing the seizure of property, monetary instruments or funds subject to civil forfeiture in the same manner as provided for search warrants in Chapter 933, F.S. Any financial institution that receives a seizure warrant has a right of setoff for any transaction involving a debit card occurring on or before the date of receipt of the warrant. This will allow a bank to be reimbursed for debit card transactions that occurred before the seizure warrant was issued. This right of set off is identical to the provision contained in the child support enforcement statute dealing with garnishing wages. Sec. 409.25656, F.S.

b. Structuring Transactions to Evade Reporting or Registration Requirements

HB 1607 creates s. 896.104, F.S. Section 896.104(1), F.S., is titled "Domestic Coin and Currency Transactions" and provides that a person may not, for the purpose of evading the reporting and registration requirements of Chapters 896, 655, or 560, F.S., or s. 5313(a)¹³ or s. 5325¹⁴ of Title 31, United States Code, or any rules or regulations adopted under those chapters and sections, when some portion of the activity by that person occurs in this state:

1. Cause or attempt to cause a person or financial institution in this state to fail to file an applicable report or registration required under those chapters and sections or any rule or regulation adopted under any of those chapters or sections;
2. Cause or attempt to cause a person or financial institution in this state to file an applicable report required under those chapters and sections or any rule or regulation adopted under those chapters and sections which contains a material omission or misstatement of fact; or
3. Structure, assist in structuring or attempt to structure any financial institution with or involving one or more financial institutions in this state.

HB 1607 also creates s. 896.104(2), F.S., which is titled "International Monetary Instrument Transactions" and provides that a person may not for the purpose of avoiding the reporting or registration requirements of Chapters 896, 655, or 560,

¹³31 U.S.C. 5313 provides that a financial institution must file a Currency Transaction Report (commonly referred to as a CTR) for each deposit, withdrawal or exchange of currency that involves more than \$10,000.

¹⁴ 31 U.S.C. 5325 provides that no financial institution may issue or sell a bank check, cashier's check, traveler's check or money order to any individual in connection with a transaction which involves coins or currency in amounts \$3,000 or more unless the individual has an account with the financial institution and the financial institution records the method of identifying the individual. At the request of the Secretary of the Treasury, the financial institution must report such information to the secretary.

F.S., or 31 U.S.C. 5316¹⁵, when some portion of the activity of that person occurs in the state:

1. Fail to file an applicable registration or report required by those chapters and sections, or cause or attempt to cause a person to fail to file such a report.
2. File or cause or attempt to cause a person to file an applicable registration or report required under those chapters and sections which contains a material omission or misstatement of fact; or
3. Structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of currency or monetary instruments to, from, or through financial institutions in this state.

These provisions are nearly identical to those contained in 18 U.S.C. 5324.

The bill provides that a violation of this section is a third degree felony. The bill does not rank the offense in the Criminal Punishment Code. The bill also provides that whoever commits a subsequent violation of this section or violates this section while violating another law of this state or of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period commits a second degree felony.

The bill provides that proof that a person engaged for monetary consideration in the business of a funds transmitter and who is transporting more than \$10,000 in currency, without being registered as a money transmitter or designated as an authorized vendor under the provisions of Chapter 560, F.S., gives rise to an inference that the transportation was done with knowledge of the registration requirements of Chapter 560, F.S., and the reporting requirements of this chapter.

- c. Law Enforcement Exemption: The bill creates s. 896.105, F.S., which provides that the penalty provisions of Chapter 896, F.S., including those directed at reporting violations or the conduct or attempted conduct of unlawful financial transactions, the unlawful transportation or attempted transportation of monetary instruments, and the concealment of unlawful proceeds or their ownership are not applicable to law enforcement officers who engage in aspects of such activity for bona fide undercover law enforcement purposes in the course of or in relation to an active criminal investigation, intelligence gathering or prosecution. This section is similar to 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."
- d. Fugitive Disentitlement: The bill creates s. 896.106, F.S., which provides that a person may not use the resources of the courts of this state in furtherance of a claim in any related civil forfeiture action or a claim in third-party proceeding in any related forfeiture action if that person purposely leaves the jurisdiction of this state or the United States, declines to enter or reenter this state to submit to its jurisdiction, or otherwise evades the jurisdiction of the court in which a criminal

¹⁵31 U.S.C. 5316 requires a person to file a report if the person knowingly transports or has transported monetary instruments of more than \$10,000 into or out of the United States.

case is pending against the person. This will prevent fugitives from justice from challenging money laundering forfeitures. This codifies the "fugitive disentitlement" doctrine which has developed in case law and holds that "a fugitive from justice is not entitled to call upon the resources of court for determination of his case." Garcia v. Metro-Dade Police Dept., 576 So.2d 751, 752 (Fla. 3rd DCA 1991).

- e. Rewards for Informants: The bill creates s. 896.107, F.S., which provides that a law enforcement agency conducting any investigation of a violation of this chapter may pay a reward to an individual who provides original information that leads to a recovery of a criminal fine, civil penalty, or forfeiture. The law enforcement agency shall determine the amount of a reward under this section. The law enforcement agency may not pay more than the amount of reward authorized for similar activity by any federal law or guideline in effect at the time the information was provided. An officer or employee of the United States, state or local government who in the performance of official duties provides the information is not eligible for a reward. Payment of a reward does not affect the admissibility of testimony in any court proceeding.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates s. 311.12, F.S., requiring Florida Seaport Transportation and Economic Development Council to develop uniform statewide minimum security standards for the prevention of criminal activity including money laundering at Florida seaports. Provides minimum standards.

Section 2: Amends s. 560.103 F.S.; requires that "authorized vendor" engage in the business of money transmitter on behalf of the registrant at locations in this state pursuant to a written contract with the registrant.

Section 3: Creates s. 560.1073 F.S.; provides that any person who files with the Department of Banking and Finance any financial statement or document with intent to deceive and with knowledge that the document is materially false or misleading, commits a third degree felony.

Section 4: Amends s. 560.111, F.S., relating to prohibited acts and practices of money transmitters.

Section 5: Amends 560.114, F.S.; amending list of actions by a money transmitter that are violations of code and constitute grounds for department issuing a cease and desist order.

Section 6: Amends 560.117, F.S.; relating to the department giving notice and an opportunity to correct the violation of certain provisions of code.

Section 7: Amends s. 560.118, F.S.; relating to examinations of money transmitters.

Section 8: Amends s. 560.123, F.S.; amending penalties for failing to file required currency transaction reports.

Section 9: Amends 560.125, F.S.; creates graduated scale of penalties for unauthorized money transmitters based on amount of currency involved.

Section 10: Amends s. 560.205, F.S.; relating to department investigation of applicants for registration as a funds transmitter or payment instrument seller.

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Section 11: Amends s. 560.211, F.S.; creating penalty for funds transmitter or payment instrument seller who fails to keep required records for three years

Section 12: Amends s. 560.306, F.S.; relating to standards for registration as check casher or foreign currency exchanger.

Section 13: Amends 560.310, F.S.; creating penalty for check casher or foreign currency exchanger who fails to keep required records for three years.

Section 14: Amends 655.50, F.S.; amending penalties for financial institution who fails to file required transaction reports. .

Section 15: Amends s. 893.145, F.S.; relating to definition of drug paraphernalia.

Section 16: Amends s. 893.147, F.S.; creating offense of transportation of drug paraphernalia.

Section 17: Amends 895.02, F.S.; adding offenses relating to money transmitters' code to list of offenses constituting racketeering activity.

Section 18: Amends s. 896.101, F.S.; amends definitions in "Florida Money Laundering Act"; adding subsection dealing with defenses to charge of money laundering; increasing penalties for money laundering based on the value of monetary instruments involved; creating subsection authorizing petitioner to obtain temporary injunction.

Section 19: Amends s. 896.103, F.S., to fix statutory reference.

Section 20: Creates s. 896.104, F.S.; creates crime of structuring transactions to evade reporting or registration requirements; creates penalties.

Section 21: Creates 896.105, F.S.; providing that penalties of chapter do not apply to law enforcement officers engaging in bona fide undercover activities.

Section 22: Creates s. 896.106, F.S.; relating to fugitive disentitlement.

Section 23: Creates 896.107, F.S.; relating to rewards for informants.

Section 24: Amending s. 921.0022, F.S., the Criminal Punishment Code.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

HB 1607 authorizes temporary injunctions to prohibit persons from withdrawing or removing monetary instruments used in violation of Chapters 560, 655, or 896, F.S. This provision may have an impact on the account holder.

The bill may also have a fiscal impact on money transmitters who, with certain exceptions, will be required to have annual financial reports audited by independent third parties approved by the Department of Banking and Finance or by a certified public accountant authorized to do business in the United States.

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has determined that this bill will have an indeterminate but likely minimal impact on the Department of Corrections. The bill gives the Department of Banking and Finance greater authority to regulate and enforce the provisions of the Money Transmitters' Code. A preliminary estimate by the department is that the bill will have an indeterminate fiscal impact.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 1607 does not require local governments to expend funds or to take any action requiring the expenditure of funds. Therefore, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Three related proposed committee bills have been approved by their respective councils. Transportation PCB 00-01 creates the "Federal Law Enforcement Trust Fund" within the Department of Transportation. This PCB authorizes the department to deposit into the trust fund receipts and revenues received as a result of federal criminal, administrative, or civil forfeiture proceedings and receipts and revenues received from federal asset-sharing programs. Transportation PCB 00-02 provides that seaport security plans of a seaport authority are exempt from public records provisions. The transportation PCBs were voted out of the committee on March 2, 2000.

Financial Services PCB 00-02 deals with the confidentiality of information concerning investigations conducted under Chapter 560, F.S.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 2, 2000 meeting of the Committee on Crime & Punishment, Representative Ball offered five amendments to PCB 4. The first amendment was a title amendment.

The second amendment provided that if a money transmitter does not have records or files in their immediate possession, the money transmitter must make the records available to the department or its examiners within 10 days after actual notice is served on the money transmitter.

The third amendment made a technical change by moving a sentence dealing with the corpus delicti rule to a new paragraph.

The fourth amendment deals with the "willful blindness" standard provided for in the money laundering statute, s. 896.101, F.S. As a result, the term "knowing" is defined to mean "that a person knew; or with respect to any transaction or transportation involving more than \$10,000 in U.S. currency or foreign equivalent, also means should have know after reasonable inquiry".

The fifth amendment amends s. 560.114, F.S., which deals with disciplinary actions against a money transmitter to provide that each money transmitter is responsible for any act of its authorized vendor if the money transmitter should have known of the act or has actual knowledge that such act is a violation of the code.

The amendments were approved by the committee and the PCB became HB 1607.

On March 7, 2000, the Committee on Financial Services adopted 10 amendments which are traveling with the bill. The amendments:

- Provide a procedure for establishing minimum seaport security standards and that all seaports have the ability to develop a security plan tailored to their individual needs. Also, seaport personnel will be required to have a criminal history check and identification cards for access to secure areas and FDLE will be able to conduct annual security inspections at each seaport.
- Provide that the rule of corpus delicti will not apply if the court finds in a hearing conducted outside of the presence of the jury that the defendant's testimony is trustworthy.
- Provide a definition for "structuring."
- Revise the penalties for violators of the structuring prohibitions by graduating the penalties for graduated values related to the violations.
- Conform the offense severity ranking chart with the new provisions for penalties for structuring.
- Reinstate the misdemeanor penalty provided for violations not related to certain levels of currency or payment instruments or those under \$300.
- Reinstate the misdemeanor penalty provided for violations not related to certain levels of financial transactions or those under \$300; distinguishes between willful violators who are defined as financial institutions under Chapter 655, F.S., and other violators; and uses that distinction to authorize a stronger penalty for violators other than financial institutions.
- Revise the ability of financial institutions to be held harmless for funds electronically withdrawn from an account prior to the time that account was frozen and provides immunity for the institution for any criminal or civil liability if the institution complied with the freeze warrant or order.
- Provide for two technical, conforming changes.

VII. SIGNATURES:

COMMITTEE ON CRIME & PUNISHMENT:

Prepared by:

Trina Kramer

Staff Director:

David De La Paz

AS REVISED BY THE COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Michael Kliner

Staff Director:

Susan F. Cutchins