

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1171 w/CS Financial Transactions
SPONSOR(S): Baker
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2562

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Banking & Securities (Sub)	7 Y, 0 N	Billmeier	Billmeier
2) Commerce	19 Y, 0 N w/CS	Billmeier	Billmeier
3) Commerce & Local Affairs Apps. (Sub)	8 Y, 0 N	Rayman	Belcher
4) Appropriations	39 Y, 0 N w/CS	Belcher	Baker
5)			

SUMMARY ANALYSIS

Chapter 560, F.S., provides regulatory code for the money transmitter industry. Money transmitters are regulated by the Office of Financial Regulation of the Financial Services Commission. HB 1171 provides the Office of Financial Regulation with the ability to take enforcement or disciplinary actions against money transmitters that violate certain provisions of the Code of Federal Regulations. Money transmitters are already required to comply with federal regulations. This bill will permit the state to take enforcement actions against money transmitters which do not comply with relevant Code provisions. The bill provides that the Office of Financial Regulation may make investigations or conduct examinations to determine whether violations of certain provisions of the Code of Federal Regulations have occurred. The bill includes provisions that allow a registrants who sell or issue payment instruments or transmit funds to conduct business through electronic transfer.

The Office of Financial Regulation can accomplish the provisions of the bill within existing appropriations. The bill does not impact local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1171f.ap.doc
DATE: April 26, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

Chapter 560, F.S., is Florida’s Money Transmitters’ Code. “Money Transmitter” is defined as any person located in or doing business in this state who acts as a payment instrument seller, foreign currency exchanger, check casher, funds transmitter, or deferred presentment provider.¹ Money transmitters are regulated by the Office of Financial Regulation of the Financial Services Commission.²

Section 560.144(1)(i), F.S., provides that a money transmitter is subject to disciplinary action for operating in an “unsafe and unsound” manner and section 560.118, F.S., provides that the Office of Financial Regulation may conduct an examination of a money transmitter if it believes the money transmitter is engaging in an “unsafe and unsound” practice.” Section 560.103(21), F.S., defines “unsafe or unsound practice”³ as:

any practice or conduct found by the office to be contrary to generally accepted standards applicable to the specific money transmitter, or a violation of any prior order of an appropriate regulatory agency, which practice, conduct, or violation creates the likelihood of material loss, insolvency, or dissipation of assets of the money transmitter or otherwise materially prejudices the interests of its customers. In making this determination, the office must consider the size and condition of the money transmitter, the magnitude of the loss, the gravity of the violation, and the prior conduct of the person or business involved.⁴

This bill revises the definition of “unsafe and unsound practice” to include provisions outlined in the Code of Federal Regulations (CFR). The CFR provisions are outlined in general terms below:

31 CFR s. 103.20 – This section requires money transmitters to report suspicious transactions to the United States Treasury Department. Transactions which must be reported include those the money transmitter knows, suspects or has reason to suspect involve funds derived from illegal activity, is designed to evade regulation, serves no business or lawful purpose, or involves the use of the money transmitter to facilitate illegal activity.

31 CFR s. 103.22 – This section requires reporting of transactions of more than \$10,000 in certain situations.

31 CFR s. 103.27 – This section requires the filing of specified reports under the CFR.

¹ See s. 560.103(11), F.S.

² See ss. 560.103, 560.112, 560.114, 560.117, F.S.

³ Section 560.103, F.S., uses the phrase “unsafe or unsound” practice while ss. 560.114(1)(i), F.S., and 560.118, F.S. use the phrase “unsafe **and** unsound” practice. This bill changes the conjunction “or” in s. 560.103, F.S., to “and” to conform s. 560.103, F.S., to the rest of the chapter.

⁴ See s. 560.103(21), F.S.

31 CFR s. 103.28 – This section requires a money transmitter to verify the name and address of persons involved in transactions if the transaction must be reported under 31 CFR s. 103.28.

31 CFR s. 103.29 – This section requires a money transmitter to collect information, such as the name of the purchaser and the amount and type of transaction if the transaction amount exceeds \$3,000.

31 CFR s. 103.33 – This section requires a money transmitter to keep certain records relating to transactions in excess of \$10,000.

31 CFR s. 103.37 – This section requires recordkeeping related to exchanges of currency.

31 CFR s. 103.41 – This sections requires money transmitters to register with the United States Department of the Treasury.

31 CFR s. 103.125 – This section requires the implementation of anti-money laundering programs.

This bill will permit the Office of Financial Regulation to investigate and take disciplinary actions against money transmitters who violate the relevant provisions of the CFR. According to a representative of the Office of Financial Regulation, money transmitters are already required to comply with the CFR provisions. This bill gives the Office of Financial Regulation enforcement authority and subjects a money transmitter to discipline by the state for violations of these federal requirements.

Section 560.118, F.S., describes the conditions under which the Office of Financial Regulation can make examinations or conduct investigations of money transmitters. This bill allows the Office of Financial Regulation to make examinations or conduct investigations of money transmitters to determine if a money transmitter has violated the above-cited provisions of the CFR.

Section 560.129, F.S., provides a public records exemption for certain records of the Office of Financial Regulation. Section 560.129(2), F.S., permits the Office of Financial Regulation to furnish confidential records to regulatory agencies if the agencies adhere to the relevant confidentiality provisions. This bill permits records to be furnished to law enforcement agencies if the law enforcement agencies adhere to the relevant confidentiality provisions.

Section 560.208, F.S., allows commerce by electronic transfer in the business that registrants who sell or issue payment instruments or transmit funds may conduct, authorizing registrants to charge different prices for funds transmission services based on modes of transmission.

This bill takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1. Amends s. 560.103, F.S., to revise the definition of “unsafe or unsound” to include failures to adhere to certain federal rules.

Section 2. Amends s. 560.109, F.S., authorizing the office to conduct examinations pursuant to s. 560.118, F.S., in order to determine violations of certain federal rules.

Section 3. Amends s. 560.114, F.S., providing for disciplinary action for failure to maintain records required by federal law.

Section 4. Amends s. 560.129, F.S., clarifying that the office can provide documents to law enforcement agencies if the agency adheres to confidentiality provisions of the code.

Section 5. Amends s. 560.208, F.S., including business by electronic transfer in the business that registrants who sell or issue payment instruments or transmit funds may conduct, authorizing registrants to charge different prices for funds transmission services based on modes of transmission.

Section 6. This bill shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Fines and penalties collected as a result of enforcement actions cannot be determined.

2. Expenditures:

The Office of Financial Regulation responded that it can accomplish the provisions of the bill within existing appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local governments.

2. Expenditures:

This bill does not appear to have a fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

This bill fiscal impact on state government is unknown. It is not known how many additional disciplinary actions will be taken due to the new enforcement provisions. It is not known how much money, if any, the state will collect in fines and penalties due to this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Commerce considered this bill on March 17, 2004. The committee adopted an amendment that removed a reference to a definitions section within the Code of Federal Regulations. This bill, as amended, was reported favorably with a committee substitute.

On April 2, 2004, the Subcommittee on Commerce and Local Affairs adopted a “remove everything after the enacting clause” amendment that added section 5 stating a money transmitter registrant is authorized to conduct business within the state by means of electronic transfer, and to charge a different price for funds transmission based on the mode of transportation used in the transaction, so long as the price charges for a service paid with a credit card is not greater than a price charged when the service is paid by currency or similar means accepted with the same mode of transmission. The amendment also provides that this provision would not be deemed a violation of section 501.0117, F.S., which prohibits the imposition of a surcharge on a transaction if the transaction is paid by a credit card in lieu of cash or currency. The bill, as amended, was favorably reported.

On April 23, 2004, the Committee on Appropriations adopted a strike-all amendment to expand provisions that authorizes the Office of Financial Regulation take regulatory action on money transmitters who fail to adhere to federal regulations. The strike-all includes provisions that allow a registrants who sell or issue payment instruments or transmit funds to conduct business through electronic transfer and charge different prices for funds transmission services based upon different modes of transmission. The bill, as amended, was favorably reported.