HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 955 Money Services Businesses
SPONSOR(S): Richter
TIED BILLS: **IDEN./SIM. BILLS:** SB 2158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Financial Institutions		Holt/Bradford	Haug
2) Jobs & Entrepreneurship Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HB 955 substantially rewrites chapter 560, Money Transmitters' Code (Code). The bill renames the Code "An Act Relating to Money Services Businesses." The goal of the bill is to enhance the regulatory framework by providing better tools for the detection, referral, and prosecution of crimes such as money laundering, fraud, and tax evasion. The bill is also intended to improve consumer protection by increasing financial requirements for funds transmitters. Many of the bill provisions codify federal regulations. In summary, the bill:

General Provisions

- Requires as a Money Service Business (MSB) licensure condition, an applicant must establish, maintain, and update, as necessary, an anti-money laundering program in accordance with federal regulations. Also, if applicable, an applicant must register as an MSB with the Financial Crimes Enforcement Network of the U.S. Department of Treasury.

- Expands MSB prohibited acts to include violations under 18 U.S.C. s. 1957, which pertains to engaging in monetary transactions in property derived from specified unlawful activity. This violation would be punishable as a third-degree felony.

- Requires examination of a licensee at least once every 5 years. Currently, there is not a statutorily mandated schedule.

- Increases the record retention for licensees and the Office of Financial Regulation (OFR) from 3 to 5 years. The federal Bank Secrecy Act requires MSBs registered with the federal government to retain records for 5 years. Generally, the statute of limitations for financial crimes is 5 years.

- Requires OFR to make referrals of violations of law that may be a felony with the appropriate criminal agency.

- Requires the office to submit an annual report to the Legislature summarizing its activities relating to the regulation of ch. 560 entities, including examinations, investigations, referrals and the disposition of such referrals.

Money Transmitter Provisions.

- Increases the maximum net worth requirements for a licensee from $500,000 to $2,000,000. The net worth requirements per location is reduced from $50,000 to $10,000. Net worth requirements have not been adjusted since 1994.

- Increases bonding requirements by raising the cap from $500,000 to $2 million. The amount of the bond will be based on the financial condition, locations, and volume of business. Bonding requirements have not been adjusted since 1994.

- Requires all licensees to submit annual financial audit reports, which are used to determine whether net worth and other safety and soundness requirements are met.

Check Casher Provisions

- The bill requires identification to cash a check, and therefore eliminates the ability to charge a higher fee if the person presenting the check does not provide identification.

- Requires check cashers subject to licensure to submit suspicious activity reports (SARs) to the federal government, if applicable. Currently, check cashers may, but are not required to submit SARs under federal MSB laws and regulations. There is no requirement under state law for check cashers to file SARs.

- Eliminates the 5% retail exemption from check cashing.

- Requires check cashers to maintain detailed customer files on corporate entities cashing checks exceeding $1,000.

- Check cashers will also be required to maintain an electronic payment instrument log for checks cashed over $1,000.

- The bill prohibits a check casher from accepting multiple checks from any person who is not the original payee, unless the person is licensed under Part III, and the checks are endorsed with the legal name of such person.

The Office of Financial Regulation (OFR) has estimated an additional 1,480 hours will be required to perform business examinations to comply with this bill. The fiscal impact to the OFR to contract with third parties for the exams is estimated to be $185,000 in Regulatory Trust Fund. However, the OFR will cover the additional costs with existing resources.

Except as otherwise expressly provided, this act shall take effect October 1, 2008..

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain public security: 1) The bill provides OFR authority to seek restitution on behalf of injured consumers, 2) Money services businesses are required to establish and maintain an anti-money laundering program, and 3) The increases the net worth for funds transmitter.

Empower families: 1)The bill prohibits a check casher from accepting multiple checks from any person who is not the original payee, unless the person is licensed under Part III, and the checks are endorsed with the legal name of such person; 2)The bill eliminates the ability to charge a higher fee if the person presenting the check does not provide identification; and 3) The provision states that if a check is returned to a licensee from a payor's financial institution for certain reasons, i.e. lack of funds, a closed account, or a stop-payment order, the licensee may not engage in any conduct that would violate state or federal law dealing with debt collection practices, i.e. harassment.

B. EFFECT OF PROPOSED CHANGES:

Background

Chapter 560, F.S., Money Transmitters Code (Code) was enacted in 1994, in response to the developing segment of money services businesses. Although modified a number of times since enactment, the Office of Financial Regulation (OFR) staff considers the 1994 enactment the only comprehensive evaluation of the chapter. Florida Statutes define the term "Money transmitter" 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.

According to OFR, national data indicate approximately 75 million individuals in the United States lack checking or savings accounts. These "un-banked or underbanked" individuals rely on MSBs to obtain money orders, to pay their bills, wire funds to families; and cash checks. Many of these un-banked individuals do not use traditional banking services because they cannot maintain minimum balances or they simply choose not to do business with a traditional financial institution. Moreover, MSBs are usually open on the weekend and other times when traditional financial institutions are closed. Similarly, these services are also used by commercial businesses that use check cashers, for example, because no holds are placed on their checks when they need to make payroll on a Friday afternoon.

Federal Regulations

The Currency and Foreign Transactions Reporting Act, also known as the Bank Secrecy Act (BSA), and its implementing regulation, 31 CFR 103, are tools the U.S. government uses to fight drug trafficking, money laundering, and other crimes. The BSA is viewed as the nation's first and most comprehensive federal anti-money laundering/counter-terrorist financing statute. Administered by the Financial Crimes Enforcement Network of the U.S. Department of Treasury (FinCEN), enactment of the BSA primarily is to avert criminal elements from using banks and other financial service providers as conduits to transfer, to deposit, or to hide money derived from illegal activities. These goals may be accomplished by increasing financial system transparency in order to generate paper trails —that law enforcement and intelligence agencies can use to track criminals, their activities, and their assets.

In general, the reporting and recordkeeping provisions of the BSA apply to banks, savings and loans, credit unions and other depository institutions, and to other businesses defined as financial institutions, including casinos, brokers and dealers in securities, and money services businesses (collectively referred to as —non-banks). In 2001, the BSA of 1970 was strengthened by the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act," (USA PATRIOT ACT).

Federally, money services businesses (MSBs) comprise a separate category of certain non-bank financial institutions. These businesses, including the United States Postal Service, provide one or more of the following products or services which places them under the definition of a MSB for purposes of the Bank Secrecy Act (BSA):

Product or Service	Capacity (Type of MSB)
Money Orders	Issuer, Seller, or Redeemer of money orders
Traveler's Checks	Issuer, Seller, Redeemer of traveler's checks
Money Transmission	Money Transmitter
Check Cashing	Check Casher
Currency Exchange	Currency Exchanger
Currency Dealing	Currency Dealer
Stored Value	Issuer, Seller or Redeemer of stored value

The BSA requires traditional banks and MSBs, as defined by federal regulations, to establish written anti-money laundering programs, maintain certain records, and file reports that have a high degree of usefulness in criminal and regulatory proceedings. The PATRIOT ACT included additional measures to prevent, detect, and prosecute terrorism activities and international money laundering.

In addition to meeting the MSB BSA requirements for a financial institution, each type of MSB must meet other separate requirements. For example, the following requirements:

Each MSB, with some exception, must register with the U.S. Department of the Treasury, if it conducts more than $1,000 in business with one person in one or more transactions on the same day. Registration renewal is biennially. Civil fines or criminal prosecution may be imposed for willful violation of the registration requirement.

Subsequent to registration, each MSB must prepare and maintain a list of its agents. Agent listings have a five year retention period.

MSB Reporting Requirements – There are multiple reports required under the BSA. There is generally a five year retention period for reporting and recordkeeping documents, i.e. Currency Transaction Report (CTR): A CTR must be filed for each currency transaction of more than $10,000. Multiple transactions are treated as a single transaction, Suspicious Activity Report (SAR): A SAR must be filed for any perceived suspicious transaction related to unlawful activity.

Anti-Money Laundering Compliance (AML) Program – Pursuant —section 352 of the USA PATRIOT Act and implemented by regulation at 31 CFR 103.125 each MSB is required to develop and implement an AML compliance program proportionate with location size, nature of services, and volume of services. Procedures in an AML program, should allow for a MSB to verify a customer's identity and it should document other identifying customer information.

<u>State Regulations</u>

The Office of Financial Regulation (OFR) has oversight regulation of the financial services industries in Florida. According to OFR, the regulations under its jurisdiction assist in detecting and deterring money laundering. Recordkeeping and reporting requirements help OFR create a financial paper trail that law enforcement and intelligence agencies can use to track criminals, their activities, and their assets.

The examination process is the primary activity of OFR's ability to ensure AML compliance by the entities it regulates. Violation enforcement tools are administrative, and they include powers to issue cease and desist orders; impose administrative fines; suspension, denial or revocation of registration for MSBs, securities dealer, or entity associated persons. Removal of an individual from working in a state-chartered financial institution is also within its enforcement purview. (See chapter 655, F.S., Financial Institutions Generally and chapter 896, F.S., Offenses Related to Financial Transactions).

Among its responsibilities, OFR has primary regulatory authority for Chapter 560, F.S., Money Transmitters Code (Code). Chapter 560, F.S. has four parts: Part I General Provisions 560.101-560.129), Part II Payment Instruments and Funds Transmissions (ss. 560.200-560.213), Part III Check Cashing and Foreign Currency Exchange (ss. 560.301-560.310), Part IV Deferred Presentment (Payday Loans) (ss. 560.401-560.408). Parts II-III each has state registration requirements and applicable fees. In Florida, as of

December 31, 2007, there were 1,546 MSBs with 2,250 branch offices registered through OFR. Additionally, these firms have 35,616 authorized vendors.

Effect of Proposed Changes

HB 955 substantially rewrites chapter 560, Money Transmitters' Code, and renames it an act relating to Money Services Businesses. Many of the bill provisions correlate with federal regulations.

Sections 1-22 amend Chapter 560, F.S., Part I , General Provisions

Section 1: Amends s. 560.103, F.S., Definitions – This section revises and defines terms for the entire definition section. Noteworthy changes: The bill creates a definition for the term, "money services businesses," to replace the term, "money transmitter." Since 1994, federal laws and regulations and other states, have replaced the term, "money transmitter," with the term, "money services business" or "MSB," which would include part II and part III registrants. The term, "money services business" excludes deferred presentment providers since the federal law does not include such entities in its definition. The bill also creates a definition for the term "Licensee" which means "a person licensed under this chapter," and deletes the "term "Registrant" which means "a person registered by the office pursuant to the code." Former registrants under the code are not licensee under the chapter.

The industry has expressed concern that amending all the definitions may create unintended consequences.

Section 2: Amends s. 560.104, F.S., Exemptions – OFR cites this change as clarifying the exemption pertaining to financial institutions. As currently worded, the exemption is confusing because it references authorized vendors. The bill also conforming changes.

Section 3: Amends s. 560.105, F.S. Supervisory powers; rulemaking – This section is amended to clarify that the general provisions of Part I are applicable to Parts II-IV. Terms are also revised to conform to definition changes.

Section 4: Amends s. 560.109, F.S., Investigations, subpoenas, hearings, and witnesses — This section is renamed Examinations and Investigations. Current provisions in this section authorize OFR to conduct investigations and examinations to determine whether a person is compliant with the Code. The specific terms and criteria regarding examinations and reports are outlined in s. 560.118, F.S., titled Examinations, reports, and internal audits; penalty. The bill combines provisions in s. 560.118(1) relating to conducting an examination with s. 590.109, and renames s. 560.118 as "Reports."

Additionally, OFR is required by the bill to report any felony violation of law to the appropriate criminal investigation agency. Also, an annual report to the Legislature that outlines specific details about examinations, investigations, referrals, dispositions, as well as, fines assessed and collected is required to be compiled and submitted by OFR on January 1.

Section 5: Creates s. 560.1091, F.S., Contracted Examinations — OFR may enter into contracts with third parties to conduct examinations. The bill outlines criteria that must be met by individuals selected as contract examiners, such as no conflict of interest that affects performance, must be an independent CPA or information technologist. The licensee subject to examination must pay to OFR the expenses of examination at rates adopted by rule. Rates charged for examinations shall be comparable to other such exams. With OFR approval, travel and living expenses, per diem, administrative costs, examiner fee are allowable expenses. Funds collected from a licensee shall be deposited into the Regulatory Trust Fund and used by OFR to pay examiners. The Financial Services Commission (Commission) is granted rulemaking authority to administer this section.

Section 6: Creates s. 560.110, F.S., Records retention.-- A 5-year retention must be maintained by each licensee and its authorized agents for all books, accounts, documents, files, and other information necessary for determining chapter compliance. This time frame corresponds with federal requirements. Rulemaking authority is granted to the commission to administer this section. Individuals commit a third degree felony for violations of this section.

Section 7: Amends s. 560.111, F.S., Prohibited acts and practices.— This section expands prohibited acts to include violations under 18 U.S.C. s. 1957, which pertains to engaging in monetary transactions in property derived from specified unlawful activity. This violation would be punishable as a third-degree felony. The bill also makes conforming and technical changes.

Section 8: Amends s. 560.113, F.S., Injunctions; receiverships; restitution.— This section currently reads:

> 560.113 Injunctions.—Whenever a violation of the code is threatened or impending and such violation will cause substantial injury to any person, the circuit court has jurisdiction to hear any complaint filed by the office and, upon proper showing, to issue an injunction restraining such violation or granting other such appropriate relief.

This section is amended to clarify and strengthen the injunctive provision, and gives authority to OFR to seek restitution on behalf of consumers. It also provides for OFR to appointment of a receiver in cases other than those cases requiring appointment by a circuit court judge

Section 9: Amends s. 560.114, F.S., Disciplinary actions.— This section sets forth the grounds for taking disciplinary action against a licensee. The bill adds additional grounds for taking disciplinary action against a licensee. The new violation provisions generally address maintenance of records; being the subject of any final agency action; failure to pay fines; failure by part II MSBs to supervise their authorized agents or provide all required agent information; practices or conduct that creates the likelihood of material loss.

Additionally, the bill provides for OFR to deny licensure if the applicant or an affiliated party is the subject of a pending criminal prosecution or governmental enforcement action in any jurisdiction until the conclusion of the prosecution or action. Further, OFR may, in addition to or in lieu of the denial, suspension, or revocation of a license, impose a fine of up to $10,000 for each violation of this chapter. Moreover, in addition to any other provision of this chapter, OFR may impose a fine of up to $1,000 per day for each day that a person engages in the business of a money services business or deferred presentment provider without being licensed.

Section 10: Amends s 560.115, F.S., Surrender of registration.— This section makes conforming changes.

Section 11: Amends s. 560.116, F.S., Civil immunity.— This section makes conforming change in terminology and clarifies civil immunity provision.

Section 12: Amends s. 560.118, F.S., Examinations, reports, and internal audits; penalty.—

This section currently sets forth requirements regarding examinations, audited financial statements, and certain reports. The examination provisions contained in subsection (1) are deleted and incorporated into s. 560.109, relating to investigations, subpoenas, hearings, and witnesses.

Current law, requires licensees to file audited financial statements with OFR within 120 days of the end of the entity's fiscal year; however, part II registrants with less than 50 employees or that issue less than $200,000 in payment instruments per year are not required to comply with this requirement. The bill eliminates the exception.

The section is renamed "Reports," and adds a new provision that requires the licensee to incur the cost of an audit, and each licensee must submit a quarterly report in a format prescribed by rule.

Section 13: Section 560.119, F.S., is transferred, renumbered as section 560.144, F.S., and amended to read: s. 560.144 Deposit of fees and assessments.—Fees and assessments collected pursuant this chapter are to be deposited into the Regulatory Trust Fund, and the proceeds are to pay the costs of the OFR's responsibilities under this chapter.

Section 14: Amends s. 560.121, F.S., Records; limited restrictions upon public access.— This section amends this section to read: Access to records; record retention; penalties. Subsection (3) currently provides as follows: "A copy of any document on file with the office which is certified by the office as being a true copy may be introduced in evidence as if it were the original. The commission shall establish a schedule of fees for preparing true copies of documents." This provision is deleted and provisions regarding the authentication of documents are provided under the Florida Evidence Code. Terminology and retention period is amended to correlate with definition changes and 5-year record retention requirement.

Section 15: Amends s. 560.123, F.S., Florida control of money laundering in the Money Transmitters' Code; reports of transactions involving currency or monetary instruments; when required; purpose;

definitions; penalties; corpus delicti— Generally, this act requires the maintenance of each financial transaction known to involve currency or other monetary instrument in excess of $10,000, and procedures to maintain compliance. It also authorizes OFR to impose administrative fines against violations of this section in an amount not to exceed $10,000 per day for each willful violation or $500 a day for each negligent violation. A person who willingly violates any provision of s. 560.123, F.S., commits a felony and is subject to criminal penalties, based on the value of the transaction.

The bill renames the section "The Florida Control of Money Laundering in Money Services Business Act," and it makes other conforming terminology changes. The bill broadens the scope of records requirements to include that all MSBs maintain certain records of transactions involving currency or payment instruments, with a $10,000 threshold, and to ensure record availability for regulatory investigations or proceeding. MSBs must file a report with OFR any records required by this subsection as prescribed by rule. The timely filing of federal reports with the appropriate federal agency shall be deemed compliance with the reporting requirements of this subsection, unless the reports are not regularly and comprehensively transmitted by the federal agency to OFR. A MSB must comply with the money laundering, enforcement, and reporting provisions of s. 655.50, relating to reports of transactions involving currency transactions and payment monetary instruments, and of chapter 896, concerning offenses relating to financial transactions. The OFR record retention for these transaction reports is amended from 3 years to 5 years.

Section 16: Creates s. 560.1235, F.S., Money laundering requirements.-- This section requires a licensee to comply with all applicable state and federal laws and rules relating to the detection and prevention of money laundering. A licensee must also maintain an anti-money laundering program in accordance with federal regulations. The program must be reviewed and updated for continuous effectiveness in detecting and deterring money laundering activities.

Section 17: Amends s. 560.124, F.S., Sharing of information.-- This section provides that any person may provide information to a MSB, its authorized agent, law enforcement agency, prosecutorial agency, or appropriate regulator, or these entities may provide information to any person information about any other person to be involved with activity in violation of any state, federal, or foreign law, rule, or regulation relating to the business of a MSB or deferred present provider which has been reported to state, federal, or foreign authorities. This information sharing does not subject these individuals or entities to any civil liability.

Section 18: Amends s. 560.125, F.S., Money transmitter business by unauthorized persons; penalties.— Provisions in the bill require that any person engaged in the business of a MSB or deferred presentment provider in Florida must be licensed. Currently, check cashers, part III registrants, can have authorized agents. The bill eliminates this option. Section 560.125(4), F.S., currently provides that OFR may take an enforcement action or impose a fine for violations of this section. This provision is deleted. Enforcement provisions pertaining to all sections of the chapter are contained in s. 560.114, which provides for the issuance of cease and desist orders and imposition of administrative fines.

Section 19: Amends s. 560.126, F.S., Significant events; notice required.— Currently a registrant must provide notice to OFR of certain significant events that are enumerated in the section. The bill requires the licensee to provide notice by registered mail. The bill adds a paragraph (g) for an additional significant event to section:

> Notification by a law enforcement or prosecutorial agency that the licensee or its authorized agent is under criminal investigation including, but not limited to, subpoenas to produce records or testimony and warrants issued by a court of competent jurisdiction which authorize the search and seizure of any records relating to a business activity regulated under this chapter.

The bill makes conforming terminology and technical changes.

Section 20: Amends s. 560.127, F.S., Control of a money transmitter.— Presently, this section sets forth the criteria for determining whether a person has control over a money transmitter business. This section is updated to reflects the current terminology, in the bill, as well as clarifies that limited liability companies are a form of business entity that may also control a MSB. Section 560.127,(2), F.S., reads:

The office determines, after notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the activities of the money transmitter.

This subsection is deleted; because, the criteria for determining whether someone holds a controlling interest is set forth in the section. All individuals meeting definitions enumerated in the section are to be disclosed by the licensee on the application or on an amendment. According to OFR, if there is evidence of improper disclosure, the normal course of action will be followed and an administrative complaint will be filed based on a material misrepresentation in the application or failure to maintain an accurate application.

Section 21: Amends s. 560.128, F.S., Consumer disclosure.— This section makes technical conforming changes.

Section 22: Amends s. 560.129, F.S., Confidentiality.— This section clarifies information that is confidential and exempt from s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution. Other changes are conforming.

Section 23: Creates s. 560.140, F.S., Licensing standards.-- to qualify for licensure as a MSB, the bill outlines a list of criteria. Most importantly included in the criteria are the requirements to be registered as a MSB with the Financial Crimes Enforcement Network as required by 31 C.F.R. s. 103.41, if applicable, and the requirement to establish and maintain an anti-money laundering program.

Section 24: Creates s. 560.141 License application.-- This section lists the procedures for making application for licensure as a MSB. Fee requirements are outlined in s. 560.143, F.S.

Section 25: Creates s. 560.142, License renewal.-- A license may be renewed for a subsequent 2-year as established by rule requirements. In addition to the renewal fee, each part II licensee must pay a 2-year nonrefundable renewal fee for each authorized agent or location operating within this state. A licensee who has on file with OFR a declaration of intent to engage in deferred presentment transactions may renew a declaration upon license renewal by submitting a nonrefundable renewal fee. The commission is granted rulemaking authority to administer this section.

Section 26: Creates s. 560.143, Fees.-- This section outlines the applicable licensure and renewal fees.

Sections 27-36 amend Chapter 560, F.S., Part II , Payment Instruments and Funds Transmission

Section 27: Amends s. 560.203, F.S., Exemptions.— This section makes conforming terminology changes.

Section 28: Amends s. 560.205, F.S., Requirement of registration.— Currently, this section refers to engaging in certain MSB activities for "consideration." The term "consideration" is stricken and replaced with "compensation." The bill provides that "compensation" includes profit or loss on the exchange of currency. Also, the bill clarifies that a licensee under part II may also engage in activities authorized under part III without any additional licensee fees.

Section 29: Amends s. 560.205, F.S., Qualifications of applicant for registration; contents.— This section currently set forth qualifications for registration. The majority of the provisions have been moved to newly created ss. 560.140 and 560.141. The remaining provisions are requirements that are currently requirements under the chapter. These requirements include:

1) A sample authorized agent contract, if applicable. (s. 560.205(2)(d))

2) A sample form of payment instrument, if applicable. (s. 560.205(2)(e))

3) Documents demonstrating that the net worth and bonding requirements specified in s. 560.209 have been fulfilled. (s. 560.205(2)(g)

4) A copy of the applicant's financial audit report for the most recent fiscal year. (s. 560.205(4)(d)).

Section 30: Amends s. 560.208, F.S., Conduct of business.— Current law provides that a registrant may conduct business at one or more locations through branches or by means of authorized vendors, as designated by the registrant. A registrant is given 60-days to notify OFR that it has opened a new location or has designated a new vendor. The bill eliminates the 60-day grace period. Authorized agents will now be approved by the OFR prior to the vendor transacting business in the state. According to OFR, the change to an approval process can ensure all the required agent information is provided.

Additionally, new requirements are placed on a licensee under this part as follows:

- Is responsible for the acts of its authorized agents within the scope of its written contract with the agent.
- Shall place assets that are the property of a customer in a segregated account in a federally insured financial institution and shall maintain separate accounts for operating capital and the clearing of customer funds.
- Shall, in the normal course of business, ensure that money transmitted is available to the designated recipient within 10 business days after receipt.
- Shall immediately upon receipt of currency or payment instrument provide a confirmation number to the customer verbally, by paper, or electronically.

These provisions are effective January 1, 2009.

Section 31: Creates 560.2085 Authorized agents.-- The bill outlines the nature and scope for the contractual relationship between a licensee and an authorized agent, including the terms and conditions of performance.

These provisions are effective January 1, 2009.

Section 32: Amends s. 560.209, F.S., Net worth; corporate surety bond; collateral deposit in lieu of bond.— The bill increases financial requirements for part II licensees to increase consumer protection.

Currently the minimum bond required is $50,000, which is set by rule. The current cap is $250,000, but it can be raised to $500,000, if certain criteria are met. The bill codifies the $50,000 minimum, and raises the cap to $2 million. The amount of the bond will be based on the financial condition, number of locations, and anticipated volume of business.

Presently, there is a net worth requirement $50,000 per location with a $500,000 cap. The bill decreases the per location requirement to $10,000 per location but raises the cap to $2 million. The bill revises the calculation of net worth to exclude “soft” assets (e.g., goodwill, receivables from officers and other affiliated parties, personal homes and furnishings). Such assets are currently not exclusions. Also, the required adjusted net worth must be maintained at all times. Further, a licensee, unless exempt, is required by the bill to submit to OFR an annual financial audit report within 120 days after the end of the disclosed fiscal year. The reports are to be used to determine whether net worth and other safety and soundness requirements are met.

Section 33: Amends s. 560.210 Permissible investments.—The bill makes clarifying and technical changes. However, a substantive change is made regarding whether a receivable is a permissible asset. Currently, if the receivable is more than 30 days past due it cannot be counted as a permissible asset. The bill changes this to 90 days. The rationale OFR uses for this change is so that the liquidity calculation will be consistent with the net worth calculation.

Section 34: Amends s. 560.211 Records.— The bill clarifies records requirements, and increases the retention period for records from 3 years to 5 years to reflect current federal requirements. The following new records requirements are added:

- Records that document the establishment, monitoring, and termination of relationships with authorized agents and foreign affiliates.
- Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

Sections 35-36: The bill makes technical and conforming changes.

Sections 37-40 amend Chapter 560, F.S., Part III , Check Cashing and Foreign Current Exchange

Section 37: Amends s. 560.303, F.S., Requirement of registration.— This section makes conforming and technical changes.

Section 38: Amends s. 560.304, F.S., Exceptions to registration.— This section eliminates the 5% retail exemption from check cashing. This provision is replaced with the following: “The requirement for licensure under provisions of this part does do not apply to a person, at a location, cashing payment instruments that have an aggregate face value of less than $2,000 per person per day. The burden of establishing the right to the exemption is on the party claiming the exemption."

Section 39: Amends s. 560.309, F.S., Rules.— This section requires a check casher at the time a check is presented that the item be endorsed with the actual legal name under which such licensee is licensed to conduct business. A licensee under this part must deposit or sell payment instruments within 5 business days after the acceptance of the payment instrument. This is a new requirement. The current requirement is for the check to be endorsed before deposit. The bill prohibits a check casher from accepting multiple checks from any person who is not the original payee, unless the person is licensed under Part III, and the checks are endorsed with the legal name of such person. The bill requires check chasers to file suspicious activity reports (SARs) in accordance with federal regulations. However, in lieu of filing SARs, the commission may prescribe by rule that the licensee may file such reports with an appropriate regulator. Currently, check cashers may file a SAR, but they are not required to do so under state or federal law. The section also eliminates the ability to charge a higher fee if the person presenting the check does not provide identification. The bill provides that:

> (8) A licensee cashing payment instruments may not assess the cost of collections, other than fees for insufficient funds as provided by law, without a judgment from a court of competent jurisdiction.

An additional provision is added which is currently in part IV. The provision states that if a check is returned to a licensee from a payor's financial institution for certain reasons, i.e. lack of funds, a closed account, or a stop-payment order, the licensee may not engage in any conduct that would violate state or federal law dealing with debt collection practices, i.e. harassment. OFR cites situations in which a check casher has posted the names of customers on a sign to indicate that these customers had written a bad check.

Section 40: Amends s. 560.310, F.S., Records of check cashers and foreign currency exchangers.— In addition to the extension of the records retention from 3 years to 5 years, the bill imposes additional records and identification requirements for commercial or third-party payment instruments exceeding $1,000.

Sections 41-45 amend Chapter 560, F.S., Part IV , Deferred Presentment

Section 41: Amends s. 560.402, F.S., Definitions.— This section clarifies that these definitions are for the purpose of part IV.

Section 42: Amends s. 560.403, F.S., Requirements of registration; declaration of intent.— The bill deletes subsections (2)-(5) that deal with renewal procedures and fees. These provisions were moved to part II. Moreover, deferred presentment providers are required to be licensed as a MSB under part II or part III, regardless of any licensure exemption. Also, the bill states that a declaration of intent expires after 24 months and must be renewed.

Section 43: Amends s. 560.404, F.S., Requirements for deferred presentment transactions.— The OFR maintains a database of deferred presentment transactions to ensure that consumers do not have more than one outstanding transaction at any one time. Problems have been encountered by OFR whereby a vendor has stopped operating and has failed to close-out a transaction in the database. The bill requires a 15 business day notification to OFR after ceasing operations and in a manner prescribed by rule. If a provider fails to provide notice, OFR shall administratively release all open and pending transaction after it has determined closure. This provision does not affect the rights of the provider to enforce the contractual provision of the deferred presentment agreement through civil action. The bill also includes a provision that a provider may not accept more than one check or authorization to initiate more than one automated clearinghouse transaction to collect on a deferred present transaction for a single transaction. OFR cites incidents where the consumer takes out a $500 loan, but the provider has the consumer issue 5 separate checks. This practice has resulted in the loan being collected multiple times accumulating multiple insufficient fund fees.

Section 44: Amends s. 560.405, F.S., Deposit; redemption.— This section makes clarifying and technical changes.

Section 45: Amends s. 560.406, F.S., Worthless checks.— This section provides that no deferred presentment provider may assess the cost of collections, other than charges for insufficient funds as allowed by law, without a judgment form a court of competent jurisdiction.

Sections 46-52: These sections make technical and conforming changes.

Section 53: Several sections are repealed.

Section 54: Except as otherwise expressly provided, this act shall take effect October 1, 2008.

C. SECTION DIRECTORY:

Section 1: Amends s. 560.103, F.S., Definitions
Section 2: Amends s. 560.104, F.S., Exemptions
Section 3: Amends s. 560.105, F.S. Supervisory powers; rulemaking
Section 4: Amends s. 560.109, F.S., Investigations, subpoenas, hearings, and witnesses
Section 5: Creates s. 560.1091, F.S., Contracted Examinations
Section 6: Creates s. 560.110, F.S., Records retention
Section 7: Amends s. 560.111, F.S., Prohibited acts and practices
Section 8: Amends s. 560.113, F.S., Injunctions; receiverships; restitution
Section 9: Amends s. 560.114, F.S., Disciplinary actions
Section 10: Amends s 560.115, F.S., Surrender of registration
Section 11: Amends s. 560.116, F.S., Civil immunity
Section 12: Amends s. 560.118, F.S., Examinations, reports, and internal audits; penalty
Section 13: Section 560.119, F.S., is transferred, renumbered as section 560.144, F.S., and amended to read: s. 560.144, Deposit of fees and assessments
Section 14: Amends s. 560.121, F.S., Records; limited restrictions upon public access
Section 15: Amends s. 560.123, F.S., Florida control of money laundering in the Money Transmitters' Code
Section 16: Creates s. 560.1235, F.S., Money laundering requirements
Section 17: Amends s. 560.124, F.S., Sharing of information
Section 18: Amends s. 560.125, F.S., Money transmitter business by unauthorized persons; penalties
Section 19: Amends s. 560.126, F.S., Significant events; notice required
Section 20: Amends s. 560.127, F.S., Control of a money transmitter
Section 21: Amends s. 560.128, F.S., Consumer disclosure
Section 22: Amends s. 560.129, F.S., Confidentiality
Section 23: Creates s. 560.140, F.S., Licensing standards
Section 24: Creates s. 560.141 License application
Section 25: Creates s. 560.142, License renewal
Section 26: Creates s. 560.143, Fees
Section 27: Amends s. 560.203, F.S., Exemptions
Section 28: Amends s. 560.205, F.S., Requirement of registration
Section 29: Amends s. 560.205, F.S., Qualifications of applicant for registration; contents
Section 30: Amends s. 560.208, F.S., Conduct of business
Section 31: Creates 560.2085 Authorized agents
Section 32: Amends s. 560.209, F.S., Net worth; corporate surety bond; collateral deposit in lieu of Bond
Section 33: Amends s. 560.210, F.S., Permissible investments
Section 34: Amends s. 560.211, F.S., Records
Sections 35-36: The bill makes technical and conforming changes
Section 37: Amends s. 560.303, F.S., Requirement of registration
Section 38: Amends s. 560.304, F.S., Exceptions to registration
Section 39: Amends s. 560.309, F.S., Rules
Section 40: Amends s. 560.310, F.S., Records of check cashers and foreign currency exchangers
Section 41: Amends s. 560.402, F.S., Definitions (Deferred Presentment)
Section 42: Amends s. 560.403, F.S., Requirements of registration; declaration of intent

Section 43: Amends s. 560.404, F.S., Requirements for deferred presentment transactions
Section 44: Amends s. 560.405, F.S., Deposit; redemption
Section 45: Amends s. 560.406, F.S., Worthless checks
Sections 46-52: These sections make technical and conforming changes.
Section 53: Several sections are repealed.
Section 54: Except as otherwise expressly provided, this act shall take effect October 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The number of check cashers required to submit the $250.00 license fee and $500.00 biannual renewal fee will increase but the actual number is indeterminate.

2. Expenditures:

The Office of Financial Regulation (OFR) has estimated an additional 1,480 hours will be required to perform business examinations to comply with this bill. The fiscal impact to the OFR to contract with third parties for the exams is estimated to be $185,000 in Regulatory Trust Fund. However, the OFR will cover the additional costs with existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Although the OFR is allowed to charge each licensee for the cost of third party exams, the anticipated revenues from current license and renewal fees are sufficient to cover the cost.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rule-making authority is granted to the Financial Services Commission to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES