

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	<u>6 Y, 0 N</u>	<u>Holt/Bradford</u>	<u>Haug</u>
2) <u>Jobs &amp; Entrepreneurship Council</u>	<u>15 Y, 0 N, As CS</u>	<u>Holt/Topp</u>	<u>Thorn</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

CS/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, and authorizing Office of Financial Regulation (OFR) to seek restitution on behalf of injured consumers. More specifically, the bill:

#### General Provisions

- Clarifies the general provisions of Part I are applicable to Parts II-IV
- Requires a Money Services Business (MSB) applicant for licensure to establish and maintain an anti-money laundering program in accordance with federal regulations, and if applicable, register as a MSB with the Financial Crimes Enforcement Network (FinCen) of the U.S. Department of Treasury.
- Creates a third degree felony for violations under 18 U.S.C. s. 1957, pertaining to the engagement in monetary transactions in property derived from specified unlawful activity.
- Requires licensees be examined at least once every five years, and new licensees examined within 6 month after issuance of a license.
- Increases licensee record retention from 3 to 5 years. Creates a 3<sup>rd</sup> degree felony for violation.
- Authorizes OFR to seek restitution on behalf of injured consumers.
- Adds additional causes for disciplinary action and penalties, and establishes a range for fines from \$1,000 to \$10,000 based on severity and frequency.
- Provides civil liability protection to MSBs, law enforcement, prosecutors and regulators regarding the sharing of information.
- Requires OFR to provide a written report of any violations that may be a felony to the appropriate criminal investigatory agency. Requires OFR to submit an annual report to the President of the Senate and Speaker of the House.
- Requires the Financial Service Commission (Commission) to establish disciplinary guidelines.

#### Money Transmitter Provisions

- Requires notice by registered mail to OFR if a licensee is under criminal investigation.
- Specifies licensing standards, procedures and renewal provisions.
- Provides that a licensee is responsible for the acts of its authorized vendor in accordance with its written contract.
- Provides provisions that are to be included in the contract provisions.
- Increases the maximum net worth requirements for a licensee from \$500,000 to \$2 million. The net worth requirements per location is reduced from \$50,000 to \$10,000.

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- 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.
- Requires all licensees to submit annual financial audit reports.

#### Check Cashier Provisions

- Provides a licensure exemption for a person cashing payment instruments that have an aggregate face value of less than \$2,000 per person per day.
- Requires identification in order to cash a check.
- Requires licensee to submit suspicious activity reports to the federal government, as applicable.
- Requires licensees to maintain detailed customer files, photo identification, and thumb print for certain instruments exceeding \$1,000.
- Requires a licensee to deposit payment instruments into a commercial account at a federally insured financial institution or sell them within 5 business days after the acceptance
- Prohibits the acceptance or cashing of multiple payment instruments from a person who is not the original payee, except under certain circumstances.
- Requires each location of a licensee where checks are cashed to be equipped, as outlined in the bill, with a security camera system or bullet-resistant partition or enclosure.

#### Deferred Presentment

- Requires 15 days notification after ceasing operation
- Authorizes OFR to take action that administratively releases certain transactions
- Expires declaration of intent after 24 months, requiring renewal

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.

This act shall take effect January 1, 2009.

## 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; 3) The bill increases the net worth for funds transmitter; and 4) Authorizes OFR to seek restitution on behalf of consumers.

Empower families: 1) The bill provides 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; 2) Ensures consumers do not have more than one outstanding deferred presentment transaction at any one time.

#### 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 money services businesses (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, 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 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 Cashier
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 includes 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:

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.

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 its 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.

### State Regulations

The Office of Financial Regulation (OFR) has oversight regulation of the financial services industries in Florida. According to OFR, its recordkeeping and reporting requirements help 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 OFR uses to ensure AML compliance. 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 registered branch offices.

### Effect of Proposed Changes

## **Sections 1-28 amend Chapter 560, F.S., Part I, General Provisions**

**Section 1:** Amends s. 560.103, F.S., Definitions – The bill revises the entire definition section. Noteworthy changes: The term “affiliated party” is a revision of the current term “money transmitter affiliated party,” and it is expanded to include “foreign affiliate. The term “electronic instrument” is based on the Uniform Act, and it is expanded to include “stored value.” The FinCen has issued guidance on foreign agents, and the bill ties into that guidance by adding a specific definition for “foreign affiliate.” The term “Location” was moved from s. 560.102 which was repealed. “Money value” is also an added term that is based on the Uniform Act. The term “money transmitter” is based on the current “funds transmitter” definition, and the bill adds to its definition monetary value, Internet, and bill payment services. Currently, a money services business includes part II and part III registrants, but it excludes deferred presentment providers since the federal law does not recognize such entities in its definition.<sup>1</sup>

The bill also creates a definition for the term “Licensee” which means “a person licensed under this chapter” to replace the deleted term “Registrant.” This change addresses former registrants under the code who were not licensees under the chapter, i.e. deferred presentment.

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

**Section 2:** Amends s. 560.104, F.S., Exemptions – The bill amends this section to clarify the exemption pertaining to financial institutions. As currently worded, the exemption is confusing as to its applicability. The bill also makes conforming changes.

**Section 3:** Amends s. 560.105, F.S. Supervisory powers; rulemaking – This bill amends this section 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 by the bill to read “Examinations and Investigations”. Currently, provisions in this section authorize OFR to conduct investigations to determine whether a person is compliant with the chapter. At present, s. 560.118, F.S., sets forth specific provisions, as well as, specifies certain reports that are required under the chapter

The bill moves the examination provisions of s. 560.118, F.S., to this section for clarity. Further, the bill provides that OFR may conduct examinations of any person to determine whether a person has violated any provision of this chapter and related rule, or any practice or conduct that creates the likelihood material loss or prejudices the interest of their customers. The bill additionally specifies that examination of licensees will be conducted at least once every 5 years, and a new licensee will be examined within 6 months after the issuance of the license. Currently, there is no statutory examination schedule. Prior to an examination or investigation, the bill requires a 15-day notice is provided to a MSB, its authorized vendor, or a license applicant. However, if OFR suspects chapter or criminal violations by a licensee or applicant, the notice requirement is waived.

The bill also provides that OFR may conduct joint or concurrent examinations with any state or federal regulatory agency, and the exam findings may be shared with other appropriate regulators as long as proper confidentiality measures are observed. The OFR may also accept an examination from any appropriate regulator, or pursuant to s. 560.1091, from an OFR approved independent third party. Persons subject to this chapter, licensed or unlicensed, who are examined or investigated shall make specified records available that are in their immediate possession or control, or within 3 days, currently it is within 10 days, of OFR notification.

For records written in a language other than English, the bill provides that a certified translation is to accompany the records; the translation costs are to be incurred by the examinee. The term “certified translation” is defined by the bill. The bill further provides that reasonable and necessary cost incurred by an OFR authorized third party in connection with an examination may be accessed against the person subject to the chapter. Failure to reimburse OFR is a ground for denial of a license. Except for

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<sup>1</sup> Since 1994, federal laws and regulations and other states, have replaced the term, “money transmitter,” with the term, “money services business” or “MSB.”

examinations authorized under this section, costs may not be assessed unless OFR determines the person has operated or is operating in violation of the chapter. The bill further requires OFR to provide a written report to the appropriate criminal investigatory agency any violations that may be a felony.

Moreover, the bill requires OFR to submit an annual report to the President of the Senate and Speaker of the House of Representatives beginning January 1, 2009 through January 1, 2014. In general, the report is to capture OFR enforcement activities relating to the regulation of ch. 560 entities. The bill provides the report criteria.

**Section 5:** Creates s. 560.1091, F.S., Contracted examinations — The bill authorizes that OFR may enter into contracts with third parties to conduct examinations. The bill outlines criteria that must be met by third parties selected as contract examiners. As to be established by commission rule, the examination rates charged are to be consistent with rates charged by other firms in similar other professions. Also, the licensee incurs the examination rates and terms.

**Section 6:** Creates s. 560.1092, F.S., Examination expenses — Currently, the costs of examinations are funded by licensing and renewal fees. The bill imposes separate charges for examinations. All moneys collected from a licensee for examination expenses shall be deposited into the Regulatory Trust Fund, and OFR may pay examiners from the trust fund. Billable expenses are outlined in the section. Also, OFR may make deposits into the fund from moneys appropriated for the operation of the office. Rulemaking authority is granted to the commission.

**Section 7:** Creates s. 560.110, F.S., Records retention — The bill establishes a five year records retention which correlates with federal requirements. The bill describes the records required under this section which are to be maintained at the location identified in the license application. A licensee must make any required records available for examination or investigation within 3 business days after receipt of a written request. The bill expresses acceptable record storage formats. Rulemaking authority is granted to the commission to administer this section. Individuals who willfully fail to comply with this section, or s. 560.211, F.S., Required records, and s. 560.310, F.S., Records of check cashers and foreign currency exchangers commit a felony of the third degree. Although, the bill creates this section both ss. 560.211 and 560.310, F.S., currently provide for criminal penalties.

**Section 8:** Amends s. 560.111, F.S., Prohibited acts and practices. — The bill renames this section: Prohibited acts. This section is amended to expand prohibited acts to include felony<sup>2</sup> violations under 18 U.S.C. s. 1957, which pertains to engaging in monetary transactions in property derived from specified unlawful activity and 18 U.S.C. s 1960 which pertains to prohibition of unlicensed money transmitting businesses. Any person who violates any provision of this section commits a felony of the third degree. The bill also makes conforming and technical changes.

**Section 9:** Amends s. 560.113, F.S., Injunctions — The bill renames this section: Injunction, receivership; restitution. The bill amends this section to clarify and strengthen the injunctive provision. It gives authority to OFR to seek restitution on behalf of consumers, and it also provides for OFR to appoint a receiver in cases other than those cases requiring appointment by a circuit court judge

**Section 10:** Amends s. 560.114, F.S., Disciplinary actions. — This section sets forth the grounds for taking disciplinary action against a licensee. The bill expands the title of the section to read: “Disciplinary actions; penalties.” The bill adds additional causes for disciplinary action and penalties by an MSB or deferred presentment provider. The new violations generally address maintenance and production of records; refusal to allow examination and inspection of accounts, files or other documents; failure by a MSB to remove an affiliate after a finding of its violation of the chapter; making an omission from an application for licensure; being the subject of a final agency action, or its equivalent, for engaging in unlicensed activity; license being revoked; violation of 18 U.S.C. s. 1957, which pertains to engaging in monetary transactions in property derived from specified unlawful activity and 18 U.S.C. s 1960 which pertains to prohibition of unlicensed money transmitting businesses; failing to pay an OFR fine within 30 days of a due date (a current ground for disciplinary action under s. 560.117, F.S., but no timeframe

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<sup>2</sup> 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, “if the financial institution has knowledge of: (a) they are conducted by or on behalf of the same person; and (b) they result in cash received or disbursed by the financial institution of more than \$10,000.

provided); specified violations of the Code of Federal Regulations; practices or conduct that may create a material loss or insolvency (Most of these practices outlined in the bill are current grounds for disciplinary action under s. 560.114, F.S.) .

Additionally, the bill grants OFR authority to immediately suspend any MSB license, if it fails to provide, upon written request, any required records. The suspension may be rescinded if the licensee complies. For purposes of 120.60(6), failure to provide any required records constitutes immediate and serious danger to the public health, safety, and welfare.

Also, OFR is granted authority to deny an applicant or affiliate party licensure if there is a pending criminal prosecution or governmental enforcement action in any jurisdiction until the conclusion of the action. This provision was previously only in Part III, but it has been moved to this section so it is applicable to both Part II and Part III.

Further, OFR may, in addition to or in lieu of licensure denial, suspension, or revocation, may impose a fine of at least \$1,000 up to \$10,000 for each violation of this chapter. Current law provides for the \$10,000 fine, but without a minimum. 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 an MSB or deferred presentment provider without being licensed. This provision was moved from s. 560.117, F.S., which will be repealed.

**Section 11:** Creates s. 560.1141, F.S., Disciplinary guidelines. --- The bill authorizes the commission to adopt by rule disciplinary guidelines applicable to each ground for disciplinary action that may be imposed by OFR. The guidelines shall specify a range of designated penalties based upon the severity and repetition of specific offenses. The commission shall adopt by rule mitigating and aggravating circumstances that allow the office to impose a penalty other than that provided for in the guidelines.

**Section 12:** Amends s 560.115, F.S., Surrender of registration. — The bill renames this section: Surrender of license. This section is amended to make conforming changes.

**Section 13:** Amends s. 560.116, F.S., Civil immunity. — This section makes conforming changes in terminology and clarifies civil immunity provision.

**Section 14:** Amends s. 560.118, F.S., Examinations, reports, and internal audits; penalty.—

The bill renames this section: Reports. This section currently sets forth requirements regarding examinations, audited financial statements, and certain reports. The examination provisions contained in subsection (1) are deleted by the bill and moved to s. 560.109, relating Examinations and investigations.

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.

This section is renamed "Reports," and a new provision is added 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 15:** Section 560.119, F.S., is transferred and renumbered as s. 560.144, F.S., and reads: 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 16:** Amends s. 560.121, F.S., Records; limited restrictions upon public access. — This section is amended 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 by the bill and provisions regarding the authentication of documents are provided under the Florida Evidence Code. Retention period and terminology are amended to correlate with definition changes and the new 5-year record retention requirement.

**Section 17:** 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. — The bill renames this section: Florida Control of Money Laundering in Money Services Business Act. Generally, this act requires the maintenance of each financial transaction known to involve currency or other monetary instrument in excess of \$10,000, and the procedures to maintain compliance. The bill requires an MSB to file reports as required by this subsection; however, the timely filing of reports required by 31 U.S.C. s. 5313, Reports on domestic coins and currency transactions, may substitute for the section filing requirements, under circumstances. The bill increases the record retention to 5 years. The bill also makes conforming and clarifying changes.

**Section 18:** Creates s. 560.1235, F.S., Anti-money laundering requirements. -- This bill requires a licensee and authorized vendor to comply with all applicable state and federal laws and rules relating to the detection and prevention of money laundering. A licensee and an authorized vendor must maintain an anti-money laundering (AML) program in accordance with federal regulations. The AML must be reviewed and updated for continuous effectiveness in detecting and deterring money laundering activities. The bill further requires a licensee to comply with United States Treasury Interpretive Release 2004-1 pertaining to Anti-Money Laundering Program Requirements for Money Services Businesses with respect to Foreign Agents or Foreign Counterparties.

**Section 19:** Amends s. 560.124, F.S., Sharing of information.-- This section is amended to clarify information sharing among the MSBs, their authorized vendors, law enforcement entities, prosecutorial agencies, and regulators about any other person 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. This information sharing does not subject these individuals or entities to any liability in a civil action.

**Section 20:** Amends s. 560.125, F.S., Money transmitter business by unauthorized persons; penalties.— The bill renames this section: Unlicensed activity; penalties. Provisions in the bill require that a person may not engage in the business of a money service business or deferred presentment provider unless licensed or exempt from licensure under this chapter. The bill provides that only an MSB licensed under part II may appoint an authorized vendor. Additionally, the bill amends this section to include that any person acting as the vendor of an unlicensed money transmitter or payment instrument issuer becomes the principal thereof and is liable to the holder or remitter as a principal payment instrument seller. The bill authorizes OFR to impose an administrative fine as provided in s. 560.114.

**Section 21:** Amends s. 560.126, F.S., Significant events; notice required. — The bill amends this section title to read: Required notice by licensee. 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) as 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.

For purposes of subsection (3)(c), the bill provides that upon approval of an application filed after April 1, 2008, as a result of a change in controlling interest of a MSB, the active appointment of all authorized vendors and active licenses of all branch offices affiliated with the affected MSB will be transferred to the new license without necessitating the filing of new applications and fees on behalf of such authorized vendors and branch offices.

The bill also makes conforming terminology and technical changes.

**Section 22:** Amends s. 560.127, F.S., Control of a money transmitter. — The bill amends this section title to read: Control of a money services business. Presently, this section sets forth the criteria for determining whether a person has control over a money transmitter business. The bill updates this section to reflect conforming terminology, as well as, clarifying that businesses incorporated as limited liability companies are a form of business entity that also may 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 to remove redundancy relating to controlling interest as set forth in the section.

**Section 23:** Amends s. 560.128, F.S., Consumer disclosure.— The bill renames this section Consumer contact; license display. This section is also amended to make technical conforming changes.

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

**Section 25:** Creates s. 560.140, F.S., Licensing standards.— In order 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 FinCen as required by 31 C.F.R. s. 103.41, if applicable, and the requirement to establish and maintain an anti-money laundering program. Currently, an anti-money laundering program is not a condition for licensure.

**Section 26:** 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 27:** Creates s. 560.142, License renewal.-- A license may be renewed for a subsequent 2-year as established by rule. In addition to the renewal fee, each part II licensee must pay a 2-year nonrefundable renewal fee for each authorized vendor 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 as provided in s.560.143. The commission is granted rulemaking authority to administer this section.

**Section 28:** Creates s. 560.143, Fees.-- This section outlines the applicable licensure and renewal fees.

### **Sections 29-38 amend Chapter 560, F.S., Part II , Payment Instruments and Funds Transmission**

**Section 29:** Amends s. 560.203, F.S., Exemptions.— The bill renames this section: Exemptions from licensure. These amendments to this section make conforming terminology changes.

**Section 30:** Amends s. 560.204, F.S., Requirements of registration. The bill renames this section: License required. The bill provides that unless exempted, a person may not engage in, or advertise in any manner, the selling or issuing of payment instrument or in the activity of a money transmitter, for compensation without first obtaining a license. For purposes of this section, the bill clarifies the term “compensation” includes profit or loss on the exchange of currency. A licensee under this part may also engage in activities authorized under part III without additional licensing fees.

**Section 31:** Amends s. 560.205, F.S., Qualifications of applicant for registration; contents.— The bill renames this section: Additional license application requirements. The bill provides that in addition to the license application requirements under part I of this chapter, an applicant must submit to OFR additional items that are listed as follows:

- 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, F.S., have been fulfilled. (s. 560.205(2)(g))
- 4) A copy of the applicant’s financial audit report for the most recent fiscal year. If the applicant is a wholly owned subsidiary of an o t her corporation, the financial audit report on the parent corporation’s financial statements shall satisfy. (s. 560.205(4)(d)).

The above list items are current requirements as indicated. Several other provisions are deleted from this section and moved to s. 560.140, Licensing standards and s. 560.141, License application.

**Section 32:** 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; a similar provision is now found in s. 560.2085, F.S. Additionally, with the exception of one provision, 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. (s. 560.114)
- 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.

**Section 33:** Creates 560.2085 Authorized vendor.-- The bill provides that within 60 days after an authorized vendor commences business it file with OFR such information as prescribed by rule together with the nonrefundable appointment fee as prescribed by s. 560.143, F.S. This requirement also applies to vendors who are terminated within the 60-day period. The bill additionally outlines the nature and scope for the contractual relationship between a licensee and its authorized vendor, including the terms and conditions of performance. Current law requires a contract, but the law does not specify what it must contain.

**Section 34:** 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 enhance and 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 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. However, if the applicant is a wholly owned subsidiary of another corporation, the financial audit report on the parent corporation’s financial statements shall satisfy this requirement. The reports will be used to determine whether net worth and other safety and soundness requirements are being met.

**Section 35:** Amends s. 560.210, F.S., 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 36:** Amends s. 560.211, F.S., Records. — The bill clarifies record 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 37-38:** The bill makes technical and conforming changes.

**Sections 39-42 amend Chapter 560, F.S., Part III , Check Cashing and Foreign Current Exchange**

**Section 39:** Amends s. 560.303, F.S., Requirement of registration.— This section amendments make conforming and technical changes.

**Section 40:** Amends s. 560.304, F.S., Exceptions to registration.— The bill renames this section: Exemption from licensure. The bill provides that the requirement for licensure under this part does not apply to:

a person cashing payment instruments that have an aggregate face value of less than \$2,000 per person per that are incidental to the retail sale of goods or services whose compensation for cashing payment instruments at each site does not exceed 5 percent of the total gross income from the retail sale of goods or services by such person during the last 60 days.

**Section 41:** Amends s. 560.309, F.S., Rules.— This section is amended to read: Conduct of business. The bill provides that a licensee may transact business under this part only under the legal name under which the person is licensed. The use of a fictitious name is allowed if the fictitious name has been registered with the Department of State and disclosed to the office as part of an initial license application, or subsequent amendment to the application, prior to the name being used. Other new business requirements in the bill generally include:

- (1) A licensee under this part must deposit payment instruments into a commercial account at a federally insured financial institution or sell them within 5 business days after the acceptance of the payment instrument.
- (2) A licensee may not accept or cash multiple payment instruments from a person who is not the original payee, unless the person is licensed to cash payment instruments, and all payment instruments accepted are endorsed with the legal name of the person.
- (3) A licensee must report all suspicious activity to the OFR in accordance with the criteria set forth in 31 C.F.R. s. 103.20. In lieu of filing such reports, 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.)
- (4) Each location of a licensee where checks are cashed must be equipped with a security camera system that is capable of recording and retrieving an image. The licensee does not have to install a security camera system if the licensee has installed a bulletproof or bullet-resistant partition or enclosure in the area where checks are cashed.
- (5) 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.
- (6) If a check is returned to a licensee from a payor's financial institution due to lack of funds, a closed account, or a stop-payment order, the licensee may seek collection pursuant to s. 68.065. In seeking collection, the licensee must comply with the prohibitions against harassment or abuse, false or misleading representations, and unfair practices in the Fair Debt Collections Practices Act, 15 U.S.C. ss. 1692d, 1692e, and 1692f. A violation of this subsection is a deceptive and unfair trade practice and constitutes a violation of the Deceptive and Unfair Trade Practices Act under part II of chapter 501. In addition, a licensee must comply with the applicable provisions of the Consumer Collection Practices Act under part VI of chapter 559, including s. 559.77. This provision is new to this part, but it is currently contained in s. 560.406, F.S.

Moreover, exclusive of direct cost of verification, a check casher may not cash checks without obtaining identification. The bill deletes the increased percentages check cashers may impose on customers who lack identification.

**Section 42:** 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 provides that a licensee engaged in check cashing must generally maintain the following:

(a) Customer files on all customers who cash corporate or third-party payment instruments exceeding \$1,000.

(b) For any payment instrument accepted having a face value of \$1,000 or more:

1. A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer

2. A thumbprint of the customer taken by the licensee.

(c) For purposes of this paragraph, a payment instrument log of multiple payment instruments accepted from any one person on any given day which total \$1,000 or more must be aggregated and reported on the log.

Also, the bill provides that a licensee under this part may engage the services of a third party that is not a depository institution for the maintenance and storage of records required by this section if all the requirements of this section are met.

### **Sections 43-47 amend Chapter 560, F.S., Part IV , Deferred Presentment**

**Section 43:** Amends s. 560.402, F.S., Definitions.— This section amendments revise and define terms that are used for purposes of part IV.

**Section 44:** Amends s. 560.403, F.S., Requirements of registration; declaration of intent.— The bill renames this section: Declaration of intent. The bill provides that except for defined financial institutions is s. 655.005, F.S., a person may not engage in a deferred presentment transaction unless the person is licensed as a MSB, regardless of licensure exemption. The declaration of intent must be filed along with a nonrefundable filing fee as provided in s. 560.143, F.S. The bill further provides that a declaration of intent expires after 24 months and must be renewed. Several provisions are deleted and moved to licensure requirements.

**Section 45:** 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 vendors have stopped operating and have failed to close-out transactions in the database.

The bill replaces “shall” with “may not” in several provisions. The bill requires a deferred presentment provider notify OFR within 15 business days after ceasing operations or no longer holding a license under part II or part III of this chapter. OFR is authorized to take action that administratively releases open and pending transactions in the database, after it becomes aware of a provider’s closure. This section does not affect the rights of the provider to enforce the contractual provisions of the deferred presentment agreements through any civil action allowed by law.

Also, a deferred presentment provider may not accept more than one check or authorization to initiate more than one automated clearinghouse transaction to collect on a deferred transaction for a single deferred presentment.

**Section 46:** Amends s. 560.405, F.S., Deposit; redemption.— This section make clarifying and technical changes.

**Section 47:** Amends s. 560.406, F.S., Worthless checks.— This bill 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. Other amendments in this section are clarifying and technical.

**Sections 48-54:** These sections are amended to make technical, conforming, and cross-reference changes.

**Section 55:** The bill repeals several sections.

**Section 56:** Except as otherwise expressly provided, this act shall take effect January 1, 2009.

**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. 560.1092, F.S., Examination expenses
- Section 7: Creates s. 560.110, F.S., Records retention
- Section 8: Amends s. 560.111, F.S., Prohibited acts and practices
- Section 9: Amends s. 560.113, F.S., Injunctions
- Section 10: Amends s. 560.114, F.S., Disciplinary actions
- Section 11: Creates 560.1141, F.S., Disciplinary guidelines
- Section 12: Amends s 560.115, F.S., Surrender of registration
- Section 13: Amends s. 560.116, F.S., Civil immunity
- Section 14: Amends s. 560.118, F.S., Examinations, reports, and internal audits; penalty
- Section 15: Section 560.119, F.S., is transferred, renumbered as s. 560.144, F.S., and amended to read: s. 560.144, Deposit of fees and assessments
- Section 16: Amends s. 560.121, F.S., Records; limited restrictions upon public access
- Section 17: Amends s. 560.123, F.S., Florida Control of Money Laundering in the Money Transmitters' Code
- Section 18: Creates s. 560.1235, F.S., Anti-money laundering requirements
- Section 19: Amends s. 560.124, F.S., Sharing of information
- Section 20: Amends s. 560.125, F.S., Money transmitter business by unauthorized persons; penalties
- Section 21: Amends s. 560.126, F.S., Significant events; notice required
- Section 22: Amends s. 560.127, F.S., Control of a money transmitter
- Section 23: Amends s. 560.128, F.S., Consumer disclosure
- Section 24: Amends s. 560.129, F.S., Confidentiality
- Section 25: Creates s. 560.140, F.S., Licensing standards
- Section 26: Creates s. 560.141 License application
- Section 27: Creates s. 560.142, License renewal
- Section 28: Creates s. 560.143, Fees
- Section 29: Amends s. 560.203, F.S., Exemptions
- Section 30: Amends s. 560.204, F.S., Requirements of registration
- Section 31: Amends s. 560.205, F.S., Qualifications of applicant for registration; contents
- Section 32: Amends s. 560.208, F.S., Conduct of business
- Section 33: Creates 560.2085, F.S., Authorized vendors
- Section 34: Amends s. 560.209, F.S., Net worth; corporate surety bond; collateral deposit in lieu of bond
- Section 35: Amends s. 560.210, F.S., Permissible investments
- Section 36: Amends s. 560.211, F.S., Records
- Sections 37-38: The bill makes technical and conforming changes
- Section 39: Amends s. 560.303, F.S., Requirement of registration
- Section 40: Amends s. 560.304, F.S., Exceptions to registration
- Section 41: Amends s. 560.309, F.S., Rules
- Section 42: Amends s. 560.310, F.S., Records of check cashers and foreign currency exchangers
- Section 43: Amends s. 560.402, F.S., Definitions (Deferred Presentment)
- Section 44: Amends s. 560.403, F.S., Requirements of registration; declaration of intent
- Section 45: Amends s. 560.404, F.S., Requirements for deferred presentment transactions
- Section 46: Amends s. 560.405, F.S., Deposit; redemption
- Section 47: Amends s. 560.406, F.S., Worthless checks
- Sections 48-54: These sections make technical and conforming changes.

Section 55: Several sections are repealed.

Section 56: Except as otherwise expressly provided, this act shall take effect January 1, 2009.

## 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

On March 13, 2008, the Committee on Financial Institutions voted to recommend an amendment to the Jobs & Entrepreneurship Council. The amendment changes the bill by:

- Deletes the definition for “adjusted net worth”. Changes the term “authorized agent” back to current term “authorized vendor” but the amended definition remains. Revises the definition for “money transmitter” and “payment instrument seller.” Add a definition for “net worth.” A major aspect of these definition revisions is deletion of sole proprietorship. This change correlates with the deletion of exemptions to GAAP in determining “net worth.”
- Adds Section 2 relating to the effective date for use of the terms “money transmitter” and “payment instrument seller.”
- Provides a definition for “certified translation” as it relates to records for examinations.
- Re-establishes that failure to reimburse the office is a ground for denial of registration (licensure). Except for exam authorized under this chapter cost not be assessed unless OFR determines the person operated or is operating in violation of the chapter.
- Provides a 5-year sunset on the report that is provided to the Legislature.
- Allows OFR to also obtain contracted examinations by specialists it designates by rule.
- Creates s. 560.1092, F.S., related to examination expenses.
- Deletes disciplinary action for failure by a MSB licensed under part II to supervise its authorized agents.
- Renames s. 560.124, F.S., to “Anti-money laundering requirements.” Requires authorized vendors to also comply with the requirements.
- Removes OFR prior approval of authorized vendors.
- Requires an authorized vendor to file prescribed documentation with OFR within 60-days of commencing business.
- Requires check cashers to obtain a thumbprint from customers for checks greater than \$1,000.

On April 8, 2008, the Jobs & Entrepreneurship Council adopted a substitute amendment. The substitute amendment changed the amendment by:

- Revising the definitions of: “Location,” “Money transmitter,” “Payment instrument seller”
- Deleting Section 2 relating to use of the definitions: “Money transmitter” and “Payment instrument seller” effective January 1, 2009.
- Requiring new licensees to be examined within 6 months after license issuance.
- Clarifying OFR is to provide a written report of any violation of law that may be a felony to the appropriate criminal investigatory agency.
- Clarifying that the Commission is to adopt rules relating to examination expenses
- Authorizing OFR to immediately suspend the license of any MSB that fails to provide required records
- Creating a minimum fine amount of \$1,000 for each violation of the chapter.
- Creates s. 560.1141, F.S., relating to disciplinary guidelines
- Correcting inadvertent deletions of section cites.
- Requiring the Commission to adopt rules for the waiver of the license application, under certain circumstances, if there is a change in controlling interest.
- Reduces fees for applications and renewals.

- Providing that the audit of a parent corporation shall satisfy the audit requirements of a wholly owned subsidiary.
- Removing the effective date applicable to s. 560.208, F.S., Conduct of business.
- Removing the effective date applicable to s. 560.2085, F.S., Authorized vendors.
- Specifying a licensee under Part II must deposit payment instruments into a commercial account at a federally insured financial institution.
- Requiring that each location of a licensee where checks are cashed must be equipped with a security camera system that is capable of recording and retrieving an image, unless the licensee installs a bulletproof partition or enclosure where checks are cashed.