

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 729

Money Services Businesses

SPONSOR(S): Carroll

TIED BILLS:

IDEN./SIM. BILLS: SB 1534

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	20 Y, 0 N, As CS	Barnum	Cooper
2)	General Government Policy Council	16 Y, 0 N	Barnum	Hamby
3)	Full Appropriations Council on General Government & Health Care			
4)				
5)				

SUMMARY ANALYSIS

Money services businesses offer financial services such as check cashing, sale of money orders, foreign currency exchange, etc., outside of the traditional banking or credit union environment. In 2008, the Florida Legislature enacted legislation designed to strengthen the regulatory oversight of money services businesses. Where appropriate, it consolidated areas within ch. 560, F.S., and updated terminology.

CS/HB 729 clarifies language related to assessing fees associated with authorized vendors of businesses licensed under ch. 560, F.S. Without this clarification, the Office of Financial Regulation (OFR) has indicated that, if current law was construed to mean fees are to be assessed based upon each authorized vendor rather than each location of an authorized vendor, OFR would lose revenue of approximately \$1,240,000 annually.

In addition, it re-establishes previously existing record keeping and accompanying reporting requirements inadvertently modified during the 2008 revision of ch. 560, F.S.

The bill is effective upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

The Office of Financial Regulation (OFR) is responsible for regulatory oversight of money services businesses. License application and renewal procedures, and associated fees, are consolidated in Part I, ch. 560, F.S. Money services businesses include payment instrument sellers, foreign currency exchangers, check cashers, and money transmitters. Prior to January 1, 2009, the fee provisions for Payment Instruments and Funds Transmission were contained within Part II and those for Check Cashing and Foreign Currency Exchange were found within Part III of the chapter.

Fees for authorized vendors of businesses licensed under Part II, ch. 560, F.S., have historically been assessed on a per location basis. OFR has been authorized to charge registration fees for each location of an authorized vendor since 2001¹ and renewal fees based on each location since 1994.²

Persons licensed under Part II ch. 560, F.S., may conduct business at one or more locations³ through branches, or through authorized vendors⁴ such as convenience stores which sell their products (e.g., money orders). Authorized vendors may have multiple locations throughout the state. As of January 2009, there were 165 businesses licensed under Part II ch. 560, F.S., with 38,003 authorized locations.⁵

Prior to January 1, 2009, money services businesses were required to maintain records of each transaction occurring in Florida known to involve currency or monetary instrument of a value in excess of \$10,000, the proceeds of specific unlawful activity⁶, or designed to evade reporting requirements of s. 560.123, F.S. or ch. 896, F.S. This was consistent with record keeping requirements for financial institutions.⁷

¹ s. 7, ch 2001-119, Laws of Florida

² s. 2, ch 94-238, Laws of Florida

³ s. 560.103(16), F.S. defines "location" as "a branch office, mobile location, or location of an authorized vendor whose business activity is regulated under this chapter."

⁴ s. 560.103(3), F.S. defines "authorized vendor" as "a person designated by a money services business licensed under part II of this chapter to act on behalf of the licensee at locations in this state pursuant to a written contract with the licensee."

⁵ Office of Financial Regulation Bill Analysis and Fiscal Impact Statement dated March 9, 2009 on file with the Insurance, Business and Financial Affairs Policy Committee.

⁶ s. 896.101(2)(g), F. S. defines "specified unlawful activity" as "any 'racketeering activity' as defined in s. 895.02."

⁷ s. 655.50(4)(a), F.S.

As part of legislation enacted in 2008⁸, the record keeping requirements were inadvertently lessened. The revision effective January 1, 2009, required money services businesses to maintain records of each transaction occurring in Florida known to involve currency or monetary instrument of a value greater than \$10,000 and involving the proceeds of specific unlawful activity, or designed to evade reporting requirements of s. 560.123, F.S. or ch. 896, F.S. The linkage resulting from inserting the word “and” into the statute creates a potential issue for the Office of Statewide Prosecution.⁹

Effect of Proposed Change:

CS/HB 729 clarifies terminology relating to license application and renewal fees for money services businesses’ authorized vendors. It does not impose any new fees. In order to remove any ambiguity regarding the terminology used in assessing fees, the bill replaces the term “appointment”, which is not defined, with “location”, a defined term.¹⁰ Fees have been and will continue to be assessed on a per location basis.

The bill re-establishes previously existing record keeping and accompanying reporting requirements, making them consistent with record keeping requirements for financial institutions. It provides the clarity needed by the Office of Statewide Prosecution.

B. SECTION DIRECTORY:

Section 1. Amends s. 560.123(3), F.S., by requiring a money services business keep records of certain transactions.

Section 2. Amends s. 560.41(1)(a), F.S., by revising terminology related to fees for authorized vendors.

Section 3. Amends s. 560.143(1)(d) and s. 560.143(2)(d), F.S., by revising terminology related to fees for authorized vendors.

Section 4. Amends s. 560.2085(1), F.S., by revising terminology to conform to authorized vendor fees.

Section 5. Provides for an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁸ s. 17, ch. 2008-177, Laws of Florida

⁹ The Office of Statewide Prosecution is within the Office of the Attorney General of Florida. The Statewide Prosecutor is appointed by the Attorney General from a list of nominees selected by the Florida Supreme Court Judicial Nominating Commission.

¹⁰ s. 560.103(16), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Office of Financial Regulation (OFR) has noted that if "...current law was construed to assess fees based on each authorized vendor rather than each location of an authorized vendor, OFR would lose renewal revenue of approximately \$350,000, and application revenue of \$890,000 in a fiscal year – a total of \$1,240,000 on an annual basis."¹¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

At the March 19, 2009 meeting of the Insurance, Business and Financial Affairs Policy Committee, one amendment was proposed and adopted.

The amendment re-establishes previously existing record keeping, and thus reporting, requirements inadvertently omitted during last year's revision of Chapter 560, F.S., and provides conforming terminology.

The analysis is drafted to the committee substitute.

¹¹ Office of Financial Regulation Bill Analysis and Fiscal Impact Statement dated March 9, 2009 on file with the Insurance, Business and Financial Affairs Policy Committee.