

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: CS/CS/SB 1536

INTRODUCER: Commerce and Tourism Committee, Banking and Insurance Committee, and Senator Boyd

SUBJECT: Money Services Businesses

DATE: February 1, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1536 revises provisions and definitions regarding the persons in control of a money services business (MSB) and makes conforming changes. The purpose of these revisions is to more specifically define the persons subject to fingerprinting and background checks pursuant to an MSB application.

The effective date of the bill is October 1, 2022.

II. Present Situation:

Licensing of Money Services Businesses

The Office of Financial Regulation (OFR) is responsible for the regulatory oversight of Florida's financial services industry. As part the OFR's responsibilities, OFR oversees MSBs, which are regulated under three license categories created under ch. 560, F.S. The first category, money transmitters and persons selling or issuing payment instruments, is regulated under part II of ch. 560, F.S. The second category, check cashers and foreign currency exchangers, is regulated under part III of ch. 560, F.S.

To be licensed under ch. 560, F.S., an MSB applicant must:

- Demonstrate to the OFR the character and general fitness necessary to command the confidence of the public and warrant the belief that the MSB or deferred presentment provider shall be operated lawfully and fairly;
- Be legally authorized to do business in Florida;
- Be registered as a money services business with the Financial Crimes Enforcement Network as required by 31 C.F.R. s. 1022.380, if applicable;
- Have an anti-money laundering program in place which meets the requirements of 31 C.F.R. s. 1022.210; and
- Provide the OFR with all the information required under this chapter and related rules.¹

To apply as a money services business under ch. 560, F.S., a person must submit:

- An application to OFR for an MSB license that must include, on a form prescribed by rule, all of the following:
 - The legal name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business;
 - The date of the applicant's formation and the state where the applicant was formed, if applicable;
 - The name, social security number, alien identification or taxpayer identification number, business and residence addresses, and employment history for the past 5 years for each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127, F.S.;
 - A description of the organizational structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded;
 - The applicant's history of operations in other states, if applicable, and a description of the money services business or deferred presentment provider activities the applicant proposes to conduct in Florida;
 - If the applicant or its parent is a publicly traded company, for the preceding year, copies of all filings made by the applicant with the United States Securities and Exchange Commission (SEC); or, if publicly traded in a country other than the United States, such filings with that country's regulator similar to the SEC;
 - The location at which the applicant proposes to establish its principal place of business and any other location, including branch offices and authorized vendors operating within Florida. For each branch office and each location of an authorized vendor, the applicant must include the nonrefundable fee required by s. 560.143, F.S.;
 - The name and address of the clearing financial institution or financial institutions through which the applicant's payment instruments are drawn or through which the payment instruments are payable;
 - The history of the applicant's material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld;
 - The history of material litigation, arrests, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each executive officer, director, controlling shareholder, and responsible person;

¹ Section 560.1401, F.S.

- The name of the registered agent in this state for service of process unless the applicant is a sole proprietor; and
- Any other information specified in ch. 560, F.S. or by rule.²
- A nonrefundable application fee, as specified in s. 560.143, F.S.³
- Fingerprints, for live-scan processing in accordance with rules adopted by the Financial Services Commission (Commission), for each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127, F.S.
Regarding such fingerprints:
 - They may be submitted through a third-party vendor authorized by the Florida Department of Law Enforcement (FDLE) to provide live-scan fingerprinting. The FDLE must also conduct the state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The OFR must review the results of this background check
 - The cost of processing and retaining the fingerprints are borne by the person subject to the background checks to determine license eligibility.
 - Fingerprints are not required from publicly traded corporations.⁴
- A copy of the applicant's written anti-money laundering program required under 31 C.F.R. s. 1022.210.⁵
- Within the time allotted by rule, any information needed to resolve any deficiencies found in the application.⁶

Licenses issued to MSBs cannot be for more than 2 years,⁷ after which, the MSB must reapply for licensure pursuant to s. 560.142, F.S.

Federal Bureau of Investigation Determination Regarding Access to Criminal History Record Information

As stated above, MSB applicant fingerprints must be submitted to FDLE for a state and federal criminal history background check. The federal check is conducted through the FBI, which manages a criminal history record information (CHRI) system, through which this information can be obtained. The purpose the CHRI system is to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.⁸ Federal Public Law 92-544 authorizes the exchange of CHRI with officials of state and local governmental agencies for licensing and employment purposes. However, this access can only be authorized by a state statute which has been subsequently approved by the Attorney General of the United States. Section 560.141, F.S. (the statute authorizing background

² Section 560.141(1)(a), F.S.

³ Section 560.141(1)(b), F.S.

⁴ Section 560.141(1)(c), F.S.

⁵ Section 560.141(1)(d), F.S.

⁶ Section 560.141(1)(e), F.S.

⁷ Section 560.141(2), F.S.

⁸ 28 C.F.R. s. 20.1.

checks for MSB applicants), had been previously approved for access to CHRI; however, the situation has recently changed.

In an effort to obtain CHRI for applicants to a recently created (in 2020) Financial Technology Sandbox under s. 559.952, F.S., the FDLE sent correspondence to the FBI's Criminal Justice Information Law Unit (CJILU) to obtain an Originating Agency Identifier (ORI). The ORI validates legal authorization to access criminal justice information and identifies the specific agency requesting the information. CJILU reviewed s. 559.952, F.S., which derives its fingerprinting authority from s. 560.141, F.S. CJILU responded to this request stating that s. 560.141, F.S. did not qualify for CHRI because the terms "responsible person" and "control of a money services business" as used in section 560.141, F.S., were overly broad and, thus, did not sufficiently define the categories of people subject to the background check.⁹ The CJILU did express that since it had previously approved s. 560.141, F.S., it would continue to honor fingerprints submitted for MSB applicants during a grace period in order to allow Florida to amend 560.141, F.S., but it would not extend this grace period to other types of applicants.

III. Effect of Proposed Changes:

Section 1 amends s. 560.103, F.S., to revise certain definitions relating to MSBs in order to better define the persons subject to fingerprinting under the chapter. The section creates an extensive definition of a "control person" for an MSB. Such person is defined as a person who possesses the power, directly or indirectly, to direct the management or policies of an MSB, whether through ownership of securities, by contract, or through other means, and regardless of whether such person has an official title or receives a salary or other compensation. The definition also provides that the following persons are presumed to be control persons:

- The president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, and chief compliance officer;
- A person holding any of the officer positions named in the money services business's governing documents;
- A person holding any position named by the money services business's liability insurance coverage for directors and officers, if the business has such coverage; and
- A director of the money services business's board of directors.

The definition also provides that for certain specified entities, additional persons are control persons. These are:

- For corporations that are not publicly traded: Any shareholder that owns 25 percent or more or that has the power to vote 25 percent or more of a class of voting securities is a control person.
- For partnerships: All general partners and limited or special partners that have contributed 25 percent or more, or that have the right to receive, upon dissolution, 25 percent or more of the partnership's capital.
- For trusts: Each trustee.

⁹ Office of Financial Regulation, Senate Bill 1536 Analysis (January 12, 2022) (on file with the Senate Committee on Banking and Insurance), and Letter from Heather R. Postletwait, Paralegal Specialist for the FBI CJILU, to Nathan Pate, Florida Dept. of Law Enforcement, (Mar. 22, 2022) (on file with the Senate Committee on Banking and Insurance).

- For limited liability companies: All managers and those members that have contributed 25 percent or more or that have the right to receive, upon dissolution, 25 percent or more of the limited liability company's capital.

The section also simplifies the definition of "affiliated party" to be a control person, employee, or foreign affiliate of an MSB. Finally, the section deletes the definitions of "officer" and "responsible person."

The intent of the revisions in this section is to more specifically define the persons subject to fingerprinting and background checks pursuant to an MSB application and to make this definition less broad. The purpose of which is to address the specificity concerns of the CJILU and, thereby, maintain the OFR's access to the FBI's CHRI.

Sections 2, 3, 4, and 6 revise s. 560.118, F.S. (relating to the filing of quarterly reports by MSBs), s. 560.123, F.S. (the Florida Control of Money Laundering in Money Services Business Act), s. 560.126, F.S., (required noticing by MSBs), and s. 560.141, F.S. (relating to MSB license applications), respectively, to conform to the revisions made in **Section 1**. **Section 4** also deletes provisions requiring persons proposing to acquire a controlling interest in an MSB to file a new application with the OFR, and deletes a rulemaking authorization regarding waivers of this application requirement. **Section 6** also deletes an obsolete provision relating to fingerprinting for money services business licenses approved prior to October 1, 2013.

Section 5 repeals s. 560.127, F.S., to delete a provision that establishes when a person controls an MSB, as this section is no longer necessary with the revisions in **Section 1**.

Section 7 revises s. 560.143, F.S., to delete a cross-reference to conform to the changes in **Section 1** and to make a conforming change deleting a provision regarding license application fees relating to a change in control of a money services business.

Section 8 re-enacts s. 559.952(4)(a), F.S., relating to the Financial Technology Sandbox, to incorporate the changes made to ss. 560.118 and 560.141, F.S.

Section 9 re-enacts s. 560.114(2)(c), F.S., relating to disciplinary actions and penalties, to incorporate the changes made to s. 560.114, F.S.

Section 10 provides an effective date of October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 560.103, 560.118, 560.123, 560.126, 560.141, and 560.143.

This bill repeals section 560.127 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes. 559.952 and 560.114.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on January 18, 2022:

The committee substitute deletes from SB 1536 the following provisions:

- Creation of rulemaking authority to establish disqualifying periods for where a money services business is prohibited from licensure for specified violations.

- Authorization for the OFR to bar a person from licensure, or from acting as a control person of an MSB, for that person's violation of ch. 560, F.S., agency rules or orders, or written agreement with the OFR; and
- Authorization for OFR to suspend the license of an MSB if its control person is arrested for certain offenses.

CS by Commerce and Tourism on January 31, 2022:

The committee substitute makes the following changes:

- Makes technical changes.
- Deletes an obsolete provision in s. 560.141(1)(c)7., F.S., relating to fingerprinting for money services business licenses approved prior to October 1, 2013.
- Makes a conforming change deleting a provision in s. 560.143(1)(g), F.S., regarding license application fees relating to a change in control of a money services business.

B. Amendments:

None.