

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: SB 1536

INTRODUCER: Senator Boyd

SUBJECT: Money Services Businesses

DATE: January 14, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

SB 1536 makes a number of revisions to Florida law relating to money services business (MSB) licensure. The bill:

- Revises provisions and definitions regarding the persons in control of an MSB;
- Creates rulemaking authority to establish disqualifying periods for where an MSB is prohibited from licensure relating to violations of the persons in control of an MSB;
- Permits the Office of Financial Regulation (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, Florida Statutes (F.S.), agency rules or orders, or written agreement with the OFR;
- Permits the OFR to suspend the license of an MSB if its control person is arrested for certain offenses; and
- Makes conforming changes.

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

II. Present Situation:

Licensing of Money Services Businesses

The 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 office 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, is specified in 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 Florida Department of Law Enforcement 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, 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 sense 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.

Disciplinary Actions against Money Services Businesses

Section 560.114, F.S., authorizes the OFR to bring disciplinary action against MSBs, authorized vendors, and affiliated parties for large number of specified violations including:

- Failure to comply with any provision of ch. 560, F.S. or related rule or order, or any written agreement entered into with the OFR.¹⁰
- Having been convicted of, or entered a plea of guilty or nolo contendere to, any felony or crime punishable by imprisonment of 1 year or more which involves fraud, moral turpitude, or dishonest dealing, regardless of adjudication.¹¹
- Having been convicted of, or entered a plea of guilty or nolo contendere to, misappropriation, conversion, or unlawful withholding of moneys belonging to others, regardless of adjudication.¹²
- Any practice or conduct that creates the likelihood of a material loss, insolvency, or dissipation of assets of a money services business or otherwise materially prejudices the interests of its customers.¹³

For the violations specified in s. 560.114, F.S., the OFR may issue a cease and desist order; the issue a removal order; deny, suspend, or revoke of a license; or take other actions within its authority as provided by specific provisions of ch. 560, F.S. Additionally, under s. 120.60(6), F.S., a Florida agency (including the OFR) may suspend, restrict, or limit a license, by a procedure that is fair under the circumstances, if it finds there is an immediate serious danger to the public health, safety, or welfare that requires such an action.¹⁴

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).

¹⁰ Section 560.114(1)(a), F.S.

¹¹ Section 560.114(1)(o), F.S.

¹² Section 560.114(1)(q), F.S.

¹³ Section 560.114(1)(z), F.S.

¹⁴ Section 120.60(6), F.S., requires that an agency taking such action:

Rulemaking Authority in Regards to OFR Disciplinary Actions

Section 560.1141, F.S., requires the OFR to adopt, by rule, guidelines applicable to each ground for disciplinary action that it may impose. Further, the section requires that these guidelines specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses and that distinguish minor violations from those that endanger the public health, safety, or welfare; that provide reasonable and meaningful notice to the public of likely penalties; and that ensure penalties are imposed in a consistent manner by the OFR. Finally, the section requires that the OFR adopt, by rule, mitigating and aggravating circumstances allowing the office to impose a penalty other than that provided for in the guidelines—including variations and a range of penalties permitted under these circumstances.

Section 560.105, F.S., also provides general rulemaking authority to the OFR to adopt rules to implement ch. 560, F.S. However, such general grants of rulemaking authority have been held to be insufficient to allow an agency to engage in any specific rulemaking. Instead, agencies only have the authority to adopt rules citing to a “specific statute,” where such statute has “authorized the agency to implement it, and then only if the...rule implements or interprets specific powers or duties, as opposed to improvising in an area that can be said to fall only generally within some class of powers or duties the Legislature has conferred on the agency.”¹⁵

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 would be 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 by the money services business’s governing documents.
- A person holding any position named by the money services business’s directors and officers liability insurance coverage, if the business has such coverage; and
- A director of the money services business’s board of directors.

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- Utilize a procedure that provides the licensee at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
 - Take only that action necessary to protect the public interest under the emergency procedure; and
 - State in writing at the time of, or prior to, its action, the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency’s findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

¹⁵ *State, Bd. of Trustees v. Day Cruise Ass'n, Inc.*, 794 So. 2d 696, 700 (Fla. 1st DCA 2001).

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.
- 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 account.

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, maintaining the OFR's access to the FBI's CHRI.

Section 2 revises s. 506.105, F.S. to create rulemaking authority for the OFR to establish time periods during which an MSB is precluded from holding a license due to prior criminal convictions of or guilty or nolo contendere pleas by an MSBs control person. These periods are as follows:

- Fifteen years for felonies involving fraud, dishonesty, breach of trust, money laundering, or other acts of moral turpitude;
- Seven years for all other felonies; and
- Five years for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude;

The rules must also provide for additional qualification periods for misdemeanors involving fraud, dishonesty, or any other act of moral turpitude. Additionally, the rules must provide for the following mitigating factors that would reduce the disqualifying periods:

- Demonstration that the MSB applicant's control person would not pose a significant threat to the public welfare if the applicant were to be licensed as a money services business with said control person.
- Demonstration that the MSB applicant's control person was, at the time of the specified crime, impaired or substance abuse impaired as defined in s. 397.311, F.S., and that the control person has successfully completed a substance abuse treatment program with a licensed service provider.
- The MSB applicant's control person was under the age of 21 when committing the disqualifying crime.
- For the control person, the absence of any other disciplinary history involving any other license granted by the OFR or criminal history.

- Demonstration that the MSB applicant’s control person has timely made restitution or rectified the consequences of the crime committed.

Finally, the section specifies the dates a disqualifying period would begin; specifies that an MSB license may not be issued unless its control person has paid any related fines, court costs and fees, and court-ordered restitution; and states that MSB licenses are not subject to the provisions of 112.011, F.S., which provides specified licensing disqualifying periods for certain criminal convictions.

If passed, this section would require an amendment to Rule 69V-560.1021, Florida Administrative Code (F.A.C.). Specifically, the rule would be amended to conform to new language found in **Section 2** of the bill related to disqualifying periods and mitigating factors. Of concern, if passed, the mitigating factor relating to completion of a substance abuse program would likely require the OFR to obtain potentially sensitive medical information from MSB applicants. This information does not appear to be covered by any existing public records exemption.¹⁶

As currently written, it appears that the provisions would not allow for an MSB to revise their control person, or to remove a control person, before the MSB’s license is “disqualified.”

Section 3 revises s. 560.114, F.S., to permit OFR to bar from licensure, or from acting as a control person of an MSB, a person found to have violated any provision of ch. 560, F.S., any rule or order adopted by the Commission or the OFR, respectively, or any written agreement entered into with the OFR.

The section also permits the OFR to suspend the license of an MSB if a control person of said MSB is arrested for any of the extensive list of prohibited conduct specified in s. 560.114(1), F.S. If the OFR suspends a license pursuant to this authority, the order doing so must:

- Take effect only after a hearing, unless no hearing is requested by the licensee or unless the suspension is made in accordance with s. 120.60(6);
- Contain a finding that evidence of a prima facie case supports the charge made in the criminal prosecution; and
- Operate for no longer than 10 calendar days after receipt of notice by the office of termination of the pending criminal prosecution.

Sections 4, 5, 6, and 8 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 6** 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.

¹⁶ Under Rule 69V-560.1021(7)(a)4., F.A.C., the OFR already collects similar information. This information may also not be presently protected by a public records exemption.

Section 7 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 to **Section 1**.

Section 9 revises s. 560.143, F.S., to delete a cross-reference to conform to the changes in **Section 1**.

Section 10 re-enacts s. 559.952(4)(a), relating to the Financial Technology Sandbox, to incorporate the changes made to ss. 560.118 and 560.141, F.S.

Section 11 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:

In **Section 3** of the bill, the new s. 560.114(10), F.S., authorizes the OFR to suspend the license of an MSB “if a control person of a money services business is arrested for any conduct that would authorize revocation under subsection (1).” However, s. 560.114(1), F.S., does not specify which prohibited conduct would particularly authorize revocation versus the other potential punishments listed (such as the issuance of a cease and desist order, the issuance of a removal order, or the denial or suspension of a license).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 560.103, 560.105, 560.114, 560.118, 560.123, 560.126, 560.141, and 560.143.

This bill repeals section 560.127 of the Florida Statutes.

This bill reenacts section 559.952 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.