

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 486

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Agriculture, Environment, and General Government); and Senator Brodeur

SUBJECT: Money Services Businesses

DATE: February 11, 2022

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 486 amends the Money Services Businesses statutes related to virtual currency. The bill:

- Defines virtual currency as a medium of exchange in electronic or digital format that is not currency;
- Subjects money transmitters to licensing requirements when transacting business involving a virtual currency; and
- Prohibits payment instrument sellers from transacting business involving virtual currency.

The bill makes additional revisions to definitions and conforming changes.

The bill has an indeterminate impact to state funds or expenditures. (See section **V. Fiscal Impact** below.)

The bill takes effect January 1, 2023.

## II. Present Situation:

### Regulation of Money Transmitters and Payment Instrument Sellers

#### *State Regulation*

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.<sup>1</sup> The Division of Consumer Finance within the OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs, and both are regulated under part II of ch. 560, F.S.

A money transmitter receives currency,<sup>2</sup> monetary value,<sup>3</sup> or payment instruments<sup>4</sup> for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country.<sup>5</sup> A payment instrument seller sells, issues, provides, or delivers a payment instrument.<sup>6</sup> State and federally chartered depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.<sup>7</sup> Currently, virtual currency is not *expressly* within ch. 560, F.S., though in the last seven years the OFR has received over 70 petitions for declaratory statement relating to whether and how virtual currency is regulated under that chapter.<sup>8</sup>

An applicant for a MSB license under ch. 560, F.S., must file an application with the OFR and pay an application fee of \$375.<sup>9</sup> The license must be renewed every two years by paying a renewal fee of \$750.<sup>10</sup> Money transmitters and payment instrument sellers may operate through authorized vendors by providing the OFR with specified information about the authorized vendor and by paying a fee of \$38 per authorized vendor location at the time of application and

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<sup>1</sup> Section 20.121(3)(a)2., F.S.

<sup>2</sup> The term “currency” means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. Section 560.103(11), F.S.

<sup>3</sup> The term “monetary value” means a medium of exchange, whether or not redeemable in currency. Section 560.103(21), F.S.

<sup>4</sup> The term “payment instrument” means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. Section 560.103(29), F.S.

<sup>5</sup> Section 560.103(23), F.S.

<sup>6</sup> Section 560.103(30) and (34), F.S.; definition of “payment instrument,” *supra* note 4.

<sup>7</sup> Section 560.104, F.S.

<sup>8</sup> See Florida House, *HB 1351 (2021) Bill Analysis*,

[https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h1351\\_IBS.DOCX&DocumentType=Analysis&BillNumber=1351&Session=2021](https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h1351_IBS.DOCX&DocumentType=Analysis&BillNumber=1351&Session=2021) (last visited Jan. 10, 2021), and Florida House, *Meeting of the Subcommittee on Insurance and Banking* (Feb. 3, 2021) (statement of Russell Weigel, Commissioner, Florida Office of Financial Regulation). Declaratory statements can be found by accessing Florida Division of Administrative Hearings at <https://www.doah.state.fl.us/FLAIO/>.

<sup>9</sup> Sections 560.141 and 560.143, F.S.

<sup>10</sup> *Id.*; s. 560.142, F.S.

renewal.<sup>11</sup> A money transmitter or payment instrument seller may also engage in the activities authorized for check cashers<sup>12</sup> and foreign currency exchangers<sup>13</sup> without paying additional licensing fees.<sup>14</sup>

A money transmitter or payment instrument seller must at all times:

- Have a net worth of at least \$100,000 and an additional net worth of \$10,000 per location in this state, up to a maximum of \$2 million.<sup>15</sup>
- Have a corporate surety bond in an amount between \$50,000 and \$2 million depending on the financial condition, number of locations, and anticipated volume of the licensee.<sup>16</sup> In lieu of a corporate surety bond, the licensee may deposit collateral such as cash or interest-bearing stocks and bonds with a federally insured financial institution.<sup>17</sup>
- Possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States.<sup>18</sup> The OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit.<sup>19</sup>

While MSBs are generally subject to federal anti-money laundering laws,<sup>20</sup> Florida law contains many of the same anti-money laundering reporting requirements and recordkeeping requirements with the added benefit of state enforcement. An MSB applicant must have an anti-money laundering program that meets the requirements of federal law.<sup>21</sup>

Pursuant to the Florida Control of Money Laundering in Money Services Business Act, an MSB must maintain certain records of each transaction involving currency or payment instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.<sup>22</sup> An MSB must keep records of each transaction occurring in this state that it knows to involve currency or other payment instruments having a greater value than \$10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.<sup>23</sup> The OFR may take administrative action against an MSB for failure to maintain

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<sup>11</sup> *Id.*; ss. 560.203, 560.205, and 560.208, F.S.

<sup>12</sup> The term "check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks. Section 560.103(6), F.S.

<sup>13</sup> The term "foreign currency exchanger" means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. Section 560.103(17), F.S.

<sup>14</sup> Section 560.204(2), F.S.

<sup>15</sup> Section 560.209, F.S.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Section 560.210, F.S.

<sup>19</sup> *Id.*

<sup>20</sup> 31 C.F.R. pt. 1022.

<sup>21</sup> Section 560.1401, F.S.

<sup>22</sup> Section 560.123, F.S.

<sup>23</sup> *Id.*

or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.<sup>24</sup> The OFR may also take administrative action against an MSB for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.<sup>25</sup>

A money transmitter or payment instrument seller must maintain specified records for at least five years, including the following:<sup>26</sup>

- A daily record of payment instruments sold and money transmitted;
- A general ledger containing all asset, liability, capital, income, and expense accounts, which must be posted at least monthly;
- Daily settlement records received from authorized vendors;
- Monthly financial institution statements and reconciliation records;
- Records of outstanding payment instruments and money transmitted;
- Records of each payment instrument paid and money transmission delivered;
- A list of the names and addresses of the licensee's authorized vendors;
- Records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates; and
- Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

***Recent Case Law: State v. Espinoza***

Through an online directory of buyers and sellers of bitcoin, a detective with the Miami Beach Police Department arranged to meet a person with the username Michelhack, which turned out to be the defendant Michell Espinoza (defendant), in order to purchase bitcoin.<sup>27</sup> The detective arranged multiple transactions with the defendant as follows:

- During the course of the first transaction, the detective made clear his desire to remain anonymous and implied that he was involved in illicit activity.<sup>28</sup> The detective paid Mr. Espinoza \$500 in cash and received a portion of a bitcoin valued at \$416.12, thus earning Mr. Espinoza a profit of \$83.67.<sup>29</sup>
- The detective arranged a second transaction with Mr. Espinoza during which he told Mr. Espinoza that he needed the bitcoins to pay for stolen credit card numbers, since he was in the business of buying and selling stolen credit card numbers from Russian sellers.<sup>30</sup> The detective paid Mr. Espinoza \$1,000 in cash and received one bitcoin, thus earning Mr. Espinoza a profit of approximately \$167.56.<sup>31</sup>
- The detective then arranged a third transaction with Mr. Espinoza.<sup>32</sup> The detective inquired how fast the transaction could be completed because his "Russian buddies" would not send

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<sup>24</sup> Section 560.114, F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Sections 560.1105 and 560.211, F.S.

<sup>27</sup> *State v. Espinoza*, 264 So. 3d 1055, 1059-60 (Fla. 3d DCA 2019).

<sup>28</sup> *Id.* at 1060.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

him his “[stuff] until they get the coin.”<sup>33</sup> The detective deposited \$500 into Mr. Espinoza’s bank account, and Mr. Espinoza transferred 0.54347826 bitcoins to the detective.<sup>34</sup>

- In the fourth and final transaction, the detective negotiated the transfer of bitcoins worth \$30,000 and represented to Mr. Espinoza that it was to pay for a new batch of stolen credit card numbers acquired from a recent data breach.<sup>35</sup> Although Mr. Espinoza questioned the authenticity of the \$30,000 roll of money that the detective gave him, he otherwise remained ready and willing to consummate the entire transaction.<sup>36</sup> Mr. Espinoza was then taken into custody.<sup>37</sup>

Mr. Espinoza was charged with: one count of unlawfully engaging in the business of a money transmitter and acting as a payment instrument seller as a result of not being licensed to conduct such activity (count one); and two counts of money laundering (counts two and three).<sup>38</sup>

Mr. Espinoza filed a motion to dismiss as to all counts, which the trial court granted for the following reasons:

- As to count one, the trial court found that neither bitcoin nor Mr. Espinoza’s conduct fell within the ambit of ch. 560, F.S., requiring registration as a money services business.<sup>39</sup> Regarding Mr. Espinoza’s conduct, the trial court reasoned that a “money transmitter” would necessarily operate like a middleman in a financial transaction, much like how Western Union accepts money from person A, and at the direction of person A, transmits it to person or entity B.<sup>40</sup> Mr. Espinoza was not acting as a middleman; rather the transactions with the detective were two-party transactions in which Mr. Espinoza sold his own bitcoin to the detective and received U.S. Dollars in return; and
- As to counts two and three, the trial court found that the conduct at issue qualifies as a “financial transaction” under the money laundering statutes but that Mr. Espinoza lacked the requisite intent to be guilty of money laundering.<sup>41</sup>

The state then appealed the trial court’s dismissal of the information.<sup>42</sup> On appeal, the Third District Court of Appeal (court) held that:

- The trial court erred in dismissing count one because Mr. Espinoza acted as both a money transmitter and a payment instrument seller and, as such, was required to be licensed as a money services business;<sup>43</sup> and
- The trial court erred in dismissing counts two and three on the basis that Mr. Espinoza lacked the requisite intent to be guilty of money laundering.<sup>44</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 1060-61.

<sup>36</sup> *Id.* at 1061.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1057 and 1061.

<sup>39</sup> *Id.* at 1057 and 1061.

<sup>40</sup> *Id.* at 1065.

<sup>41</sup> *Id.* at 1057 and 1061.

<sup>42</sup> *Id.* at 1061.

<sup>43</sup> *Id.* at 1057 and 1061-62.

<sup>44</sup> *Id.*

In the reasoning as to count one, the court determined that bitcoin is both “monetary value” and a “payment instrument” under ch. 560, F.S.<sup>45</sup> This interpretation illustrates the need to expressly provide whether and how virtual currency falls within ch. 560, F.S. The court’s interpretation also illustrates the need to clarify the definition of “payment instrument.” “Monetary value” is akin to “currency” within ch. 560, F.S. Conceptually, a payment instrument is an instrument *denominated in* currency (or monetary value), but currency and monetary value should not in and of themselves be a payment instrument.

Another important aspect of the *Espinoza* case is that in determining that Mr. Espinoza acted as a money transmitter, the court addressed whether the definition of “money transmitter” covers only third-party intermediaries, in which case Mr. Espinoza selling his own bitcoins to the detective would not have run afoul of the prohibition on unlicensed money transmission.<sup>46</sup> On this point, the court held that “[t]he statute’s plain language clearly contains no third party transmission requirement in order for an individual’s conduct to fall under the ‘money transmitter’ definition. As such, we decline to add any third party or ‘middleman’ requirement to the money transmitter definition found in section 560.103(23).”<sup>47</sup> The court’s holding illustrates the need to clarify the definition of “money transmitter” such that a money transmitter license is only required for a person acting as an intermediary between two parties, but neither person in a two-party transaction is required to be licensed.<sup>48</sup>

### ***Virtual Currency***

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.<sup>49</sup> In some environments, it operates like “real” currency<sup>50</sup> (i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance), but it does not have legal tender status in any jurisdiction.<sup>51</sup> Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as “convertible” virtual currency.<sup>52</sup> Bitcoin is one example of a convertible virtual currency, as it can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies.<sup>53</sup>

Virtual currencies generally consist of computers operating the network software (nodes) that enable, validate, and store transaction records on a distributed digital ledger (a blockchain).<sup>54</sup> To transfer an asset on a blockchain, a person enters an alphanumeric code known only to the

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<sup>45</sup> *Id.* at 1064.

<sup>46</sup> *Id.* at 1065.

<sup>47</sup> *Id.* (citations omitted).

<sup>48</sup> This is consistent with the historical interpretation of the money transmitter definition by OFR and industry, and it avoids the untenable result of requiring persons in a two-party transaction to be licensed. Additionally, this is consistent with the substance of the money transmitter regulations.

<sup>49</sup> IRS, *Virtual Currencies: What is virtual currency?*, <https://www.irs.gov/businesses/small-businesses-self-employed/virtual-currencies> (last visited Dec. 29, 2021).

<sup>50</sup> Also often referred to as “fiat” currency.

<sup>51</sup> IRS, *supra* note 48.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> FinCEN, *Notice of Proposed Rulemaking: Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets*, <https://www.govinfo.gov/content/pkg/FR-2020-12-23/pdf/2020-28437.pdf> (last visited Dec. 29, 2021).

transferor (a private key) into a cryptographic hash function enabled by the network software, which allows the transferor to request that the network software validate a new entry on the ledger showing that control of an asset has been assigned to the recipient.<sup>55</sup> Once the network software has validated this transfer, the ledger is altered and the recipient may transfer the asset to another recipient using their own private key.<sup>56</sup> Ledger entries are cryptographically secured, and accounts are identified on a blockchain by alphanumeric “public keys”—not by the owner’s name.<sup>57</sup>

Some persons use the services of a third-party to acquire or transact in virtual currency.<sup>58</sup> For example, certain third-parties provide custody services for their customers’ virtual currency in so called “hosted wallets.”<sup>59</sup> In such arrangements, the third-party wallet host may execute transactions on a blockchain on behalf of a customer using a private key controlled by the third-party wallet host.<sup>60</sup> Other persons do not use the services of such a third-party, in which case they use the private key controlling their virtual currency to transact directly on a blockchain.<sup>61</sup> Such persons may store the private key in a software program or written record, often referred to as an “unhosted wallet.”<sup>62</sup>

Virtual currency networks present opportunities as well as risks.<sup>63</sup> The G7 Finance Ministers and Central Bank Governors<sup>64</sup> recently noted that “[t]he widespread adoption of digital payments...has the potential to address frictions in existing payment systems by improving access to financial services, reducing inefficiencies, and lowering costs.”<sup>65</sup> At the same time, however, virtual currencies are used in illicit financial activity that presents substantial national security concerns.<sup>66</sup>

Determining the true amount of illicit activity that is conducted in virtual currency is challenging.<sup>67</sup> One industry estimate is approximately one percent of overall market transaction volume, or \$10 billion, in virtual currency activity conducted globally in 2019 was illicit.<sup>68</sup> This figure, however, may underestimate such illicit activity.<sup>69</sup> Despite significant underreporting due to compliance challenges in parts of the virtual currency sector, in 2019, the U.S. Financial

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> The G7 comprises the United Kingdom, the United States of America, Canada, Japan, Germany, and Italy plus the European Union. The G7 Finance Ministers are jointly led by Chancellor of the Exchequer, Rishi Sunak and Governor of the Bank of England, Andrew Bailey. See G7, *What is the G7*, <https://www.g7uk.org/what-is-the-g7/> and G7, *Finance Ministers*, <https://www.g7uk.org/finance-ministers/> (last visited Jan. 18, 2022).

<sup>65</sup> *Id.* (citing the G7 Finance Ministers and Central Bank Governors’ Statement on Digital Payments on Oct. 13, 2020).

<sup>66</sup> FinCEN Notice of Proposed Rulemaking, *supra* note 53.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* (citing Chainalysis, *2020 Crypto Crime Report* (Jan. 2020), <https://go.chainalysis.com/2020-CryptoCrime-Report.html>).

<sup>69</sup> FinCEN Notice of Proposed Rulemaking, *supra* note 53.

Crime Enforcement Network (FinCEN)<sup>70</sup> received approximately \$119 billion in suspicious activity reporting associated with virtual currency activity taking place wholly or in substantial part in the United States.<sup>71</sup> By industry measures, this would equate to approximately 11.9 percent of total virtual currency market activity being relevant to a possible violation of law or regulation.<sup>72</sup>

### ***Virtual Currency in Florida Statutes***

Currently, Florida law includes virtual currency as a type of monetary instrument under the Florida Money Laundering Act (act).<sup>73</sup> Thus, Florida law criminalizes the use of virtual currency for illicit purposes in the same manner that the law criminalizes use of fiat currency for illicit purposes. Under that act, “virtual currency” means a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country.”<sup>74</sup> This definition was added in 2017<sup>75</sup> and is the only instance of “virtual currency” in Florida Statutes.

### ***Federal Regulation of MSBs***

The Financial Crimes Enforcement Network of the United States Department of Treasury (FinCEN) serves as the nation’s financial intelligence unit and is charged with safeguarding the United States financial system from the abuses of money laundering, terrorist financing, and other financial crimes.<sup>76</sup> The basic concept underlying FinCEN’s core activities is “follow the money” because criminals leave financial trails as they try to launder the proceeds of crimes or attempt to spend their ill-gotten profits.<sup>77</sup> To that end, FinCEN administers the Bank Secrecy Act (BSA).<sup>78</sup> BSA regulations require banks and other financial institutions, including MSBs, to take a number of precautions against financial crime.<sup>79</sup> BSA regulations require financial institutions to establish an anti-money laundering program (such as verifying customer identity), maintain certain records (such as transaction related data), and file reports (such as suspicious activity reports and currency transaction reports) that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations, as well as in certain intelligence and counter-terrorism matters.<sup>80</sup>

Generally, an MSB is required to register with FinCEN, regardless of whether the MSB is licensed with the state, if it conducts more than \$1,000 in business with one person in one or

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<sup>70</sup> The mission of the U.S. Financial Crime Enforcement Network (FinCEN) is to safeguard the financial system from illicit use, combat money laundering and its related crimes, including terrorism, and promote national security through the strategic use of financial authorities and the collection, analysis and dissemination of financial intelligence. FinCEN, *Mission*, <https://www.g7uk.org/what-is-the-g7/> (last visited Jan. 18, 2022).

<sup>71</sup> *Id.* FinCEN notes that a significant majority of this \$119 billion related to suspicious activity that took place before 2019 based on subsequent lookbacks. *Id.* FinCEN anticipates that in the future it will receive additional suspicious activity reporting for activity that took place in 2019 but that has not yet been recognized as suspicious.

<sup>72</sup> *Id.* Suspicious activity is not a clear indication of a crime but is activity that is potentially illicit.

<sup>73</sup> Section 896.101, F.S.

<sup>74</sup> *Id.*

<sup>75</sup> Chapter 2017-155, Laws of Fla.

<sup>76</sup> FinCEN, *What We Do*, <https://www.fincen.gov/what-we-do> (last visited Jan. 19, 2021).

<sup>77</sup> *Id.*

<sup>78</sup> Many of the federal provisions of the BSA have been codified in ch. 560, F.S., which has provided OFR with additional compliance and enforcement tools.

<sup>79</sup> FinCEN, *supra* note 73.

<sup>80</sup> *Id.*



more transactions on the same day, in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing, or exchange.<sup>81</sup> However, an MSB must register with FinCEN if it provides money transfer services in any amount.<sup>82</sup>

BSA regulations define “money transmission services” as “the acceptance of currency, funds, or *other value that substitutes for currency* from one person and the transmission of currency, funds, or *other value that substitutes for currency* to another location or person by any means.”<sup>83</sup> Depending on the facts and circumstances surrounding a transaction, a person transmitting virtual currency may fall under FinCEN's BSA regulations.<sup>84</sup>

Federal law criminalizes money transmission if the money transmitting business:<sup>85</sup>

- Is operated without a license in a state where such unlicensed activity is subject to criminal sanctions;
- Fails to register with FinCEN; or
- Otherwise involves the transportation or transmission of funds that are known to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.

### **Financial Technology Sandbox**

In 2020, the Legislature created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible, regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions.<sup>86</sup>

Currently, Financial Technology Sandbox licensees are exempt from the licensing requirements for payment instrument sellers and money transmitters under s. 560.204(1), F.S., only to the extent that the requirements would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the 24-month<sup>87</sup> sandbox period.<sup>88</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 559.952, F.S., related to licensing exceptions for payment instrument sellers under the Financial Technology Sandbox, to conform with changes made to the referenced licensing requirement statute in s. 560.204, F.S., (Section 5 of the bill).

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<sup>81</sup> 31 C.F.R. §§ 1010.100 and 1022.380.

<sup>82</sup> *Id.*

<sup>83</sup> 31 C.F.R. § 1010.100 (emphasis added).

<sup>84</sup> FinCEN Guidance, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies*, FIN-2019-G001 (May 9, 2019), <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf> (last visited December 29, 2021); FinCEN Notice of Proposed Rulemaking, *supra* note 53.

<sup>85</sup> 31 U.S.C. § 1960.

<sup>86</sup> *See* s. 559.952, F.S.

<sup>87</sup> Section 559.952(3)(k), F.S.

<sup>88</sup> Section 559.952(4)(11), F.S.

**Section 2** amends s. 560.103, F.S., to create a definition for “virtual currency” and amend multiple other definitions in the section. The definitions are revised in order to subject money transmitters to licensing requirements for transactions involving a virtual currency, and prohibit payment instrument sellers from selling, issuing, providing, or delivering virtual currency.

New subsection (36) defines “virtual currency” to mean a medium of exchange in electronic or digital format which is not currency as defined in subsection (11). “Currency” is the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. The term “virtual currency” does not include a medium of exchange in electronic or digital format which is:

- Issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform; or
- Used exclusively as part of a consumer affinity or rewards program and which can be applied solely as payment for purchases with the issuer or other designated merchants, but cannot be converted into or redeemed for currency, monetary value, or virtual currency.

The bill revises definitions of the following terms as follows:

- “Electronic instrument” by inserting a reference to currency and deleting a reference to “money,” which is not defined in the chapter.
- “Monetary value” to mean a medium of exchange other than virtual currency. Accordingly, references to monetary value exclude virtual currency.
- “Money transmitter” by inserting references to payment instrument, virtual currency, currency, monetary value, and payment instruments and inserting a third-party transmission requirement. The added reference to virtual currency, subjects a money transmitter to licensing requirements for transactions involving a virtual currency.
- “Payment instrument” by inserting references to methods of transmission and exchange and inserting a reference to currency in addition to the existing reference to “monetary value.” This revision, paired with the other revisions to definitions in this section, has the effect of prohibiting payment instrument sellers from selling, issuing, providing, or delivering virtual currency.
- “Stored value” by inserting references to currency.

**Section 3** amends s. 560.123, F.S., related to Florida Control of Money Laundering in Money Services Business Act, to conform with changes made to definitions in Section 2, and to changes made to required recordkeeping in Section 9, of the bill. This has the effect of applying the statute to specified virtual currency transactions.

**Section 4** amends s. 560.125, F.S., related to penalties for unlicensed activity, to conform with changes made to the referenced licensing requirement statute in s. 560.204, F.S., (Section 5 of the bill), thus applying the penalties to unlicensed activity involving virtual currency.

**Section 5** amends s. 560.204, F.S., related to licensing requirements, to revise the definition of “compensation” by inserting references to monetary value and virtual currency. This has the

effect of requiring licensure as a money transmitter to receive compensation related to the exchange of virtual currency.

**Section 6** amends s. 560.208, F.S., to conform with changes made to the licensing requirement statute in s. 560.204, F.S. (Section 5 of the bill). With regard to the transmission of virtual currency, this requires that the transmitted virtual currency is available to the designated recipient within 10 business days after receipt, and that immediately upon the receipt of virtual currency, the customer must be provided a confirmation or sequence number.

**Section 7** amends s. 560.2085, F.S., to conform with changes made to the referenced licensing requirement statute in s. 560.204, F.S. (Section 5 of the bill). This has the effect of applying to money transmitters of virtual currency the statute's requirements related to the contracts between the licensee and authorized vendors.

**Section 8** amends s. 560.210, F.S., related to permissible investments, to require a money transmitter to hold virtual currency in the same type and amount as owed or obligated to the other location of person. The held virtual currency may not be calculated as a permissible investment for purposes of equaling the aggregate face amount of all outstanding money transmission issued by the licensee.

**Section 9** amends s. 560.211, F.S., related to required recordkeeping, to add rulemaking authority of recordkeeping requirements related to payment instruments and virtual currency.

The bill also conforms with changes made to definitions in Section 2.

**Section 10** amends s. 560.212, F.S., related to financial liability for licensees, to conform with changes made to definitions in Section 2 of the bill.

**Section 11** provides an effective date of January 1, 2023.

#### **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:

Section 560.143, F.S., requires the following fees for money services businesses, which will now be applied to money transmitters of virtual currency:

- For initial licensure:
  - Application fee of \$375.
  - Fingerprinting fees, to authorized live scan vendors, that average \$65 per individual with a controlling interest.
  - Fingerprint retention fees as required by rule - \$6 per individual with a controlling interest.
- Bi-annual renewal fees:
  - \$750 renewal fee
  - Fingerprint retention fees as required by rule - \$6 per individual with a controlling interest.

Additionally, licensees are required to reimburse the OFR for examination expenses. The average examination fee imposed by the office for Fiscal Year 2019-20 (pre-COVID) was \$3,800. This fee would be imposed on average once every five years.<sup>89</sup>

C. Government Sector Impact:

The impact to state funds and expenditures is indeterminate. The Florida Department of Law Enforcement may see an increase in fingerprinting applications and the impact to technology systems is unknown.<sup>90</sup>

The Office of Financial Regulation expects the bill will prompt an increase in money transmitter applications and the amount of increased revenue is unknown at this time.<sup>91</sup> Should new licensees dealing in virtual currency significantly increase, the OFR may need additional staffing.<sup>92</sup>

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<sup>89</sup> Office of Financial Regulation, *Bill Analysis of SB 468* (Nov. 19, 2021)(on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>90</sup> Florida Department of Law Enforcement, *Bill Analysis of SB 486* (Nov 8, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Federal Bureau of Investigation (FBI) has tentatively approved screenings of financial technology sandbox applications for fingerprint-based state and national criminal history record checks under s. 559.952, F.S. If s. 559.952, F.S., is modified, the Florida Department of Law Enforcement (FDLE) may be required to notify the FBI of such change. The FBI will then consider whether the language meets the criteria of federal Public Law 92-544<sup>93</sup> and determine if the Office of Financial Regulation (OFR) is permitted to continue screening financial technology sandbox applicants through state and national criminal history checks.<sup>94</sup>

Upon enactment, there would be greater parity between state and federal law related to the definition of money transmitter as both Florida's definition under s. 560, F.S., and FinCEN's definition of money transmitter, would explicitly include a third-party intermediary and contemplate the use of virtual currency.<sup>95</sup>

Additionally, the bill seeks to impose Bank Secrecy Act (BSA) reporting requirements on virtual currency transactions. Subsection 560.123(3)(c), F.S., provides the timely filing of reports required by 31 U.S.C. s. 5313 (filing currency transaction reports with FinCEN) will satisfy this requirement. FinCEN issued a Notice of proposed rulemaking on December 23, 2020, and on January 15, 2021, reopened the comment period for 15 days for comments on the proposed reporting requirements. To date, FinCEN has not finalized the proposed rules, thereby leaving the reporting guidance unresolved. A challenge could evolve if the bill passes and becomes effective before FinCEN's rules become final and provide a mechanism for BSA reporting of virtual currency transactions.<sup>96</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 559.952, 560.103, 560.123, 560.125, 560.204, 560.208, 560.2085, 560.210, 560.211, and 560.212.

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<sup>93</sup> Public Law 92-544, available at <https://www.govinfo.gov/content/pkg/STATUTE-86/pdf/STATUTE-86-Pg1109.pdf#page=7> (last visited Jan. 19, 2022). See also, *FBI, Archives, Testimony, Before the House Financial Services Committee, Dennis Lormel, Section Chief, Financial Crimes Section, Current Enforcement Activities* (March 6, 2001), <https://www.govinfo.gov/content/pkg/STATUTE-86/pdf/STATUTE-86-Pg1109.pdf#page=7> (last visited Jan. 19, 2022).

<sup>94</sup> See *supra* note 90, p. 4.

<sup>95</sup> See *supra* note 89, p. 10.

<sup>96</sup> *Id.*

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Appropriations on February 9, 2022:**

The committee substitute amends the definition of virtual currency as it relates to excluding mediums of exchange in an electronic or digital format that are used in game platforms.

- B. **Amendments:**

None.