

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 Commerce and Tourism

BILL: CS/SB 532

INTRODUCER: Banking and Insurance Committee and Senator Burton

SUBJECT: Money Services Businesses

DATE: March 24, 2023

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 532 revises the definition of a “control person” and defines several terms used in the revised definition in ch. 560, F.S., the money services business (MSB) chapter. The purpose of the bill is to clarify terms within the definition of “control person” to ensure compliance with federal law.

This bill has no fiscal impact on the state, local governments, or the private sector.

The bill takes effect on July 1, 2023.

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, the OFR oversees MSBs, which are regulated under two license categories created pursuant to 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 MSB 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 ch. 560, F.S., and related rules.¹

To apply as a money services business a person must submit:

- An application to the 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 control person;
 - 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 control person;
 - The name of the registered agent in this state for service of process unless the applicant is a sole proprietor; and

¹ Section 560.1401, F.S.

- 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 control person. 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 (FBI). 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.

Once licensed, an MSB is required to report any change in control persons.⁸ If any person, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in an MSB, such person or group must submit a new application for licensure at least 30 days before such purchase or acquisition.⁹ Such a change of control application is not required where the person or group of persons has previously complied with applicable licensing provisions, provided that they are currently affiliated with the MSB, or where the person or group of persons is currently licensed with the OFR as an MSB.¹⁰ A change of control application must be accompanied by the payment of an initial licensing fee¹¹ and a fee per branch or authorized vendor¹², up to a maximum of \$20,000.¹³

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 Section 560.126(3), F.S.

⁹ Section 560.126(3)(a), F.S.; r. 69v-560.201(4), F.A.C.

¹⁰ Section 560.126(3)(c), F.S.; r. 69v-560.201(6), F.A.C.

¹¹ Fees are determined by whether the MSB is licensed under Part II or Part III of Chapter 560. Initial licensing fees under Part II licenses require a \$375 license application fee per s. 560.143(1)(a), F.S. Part III licenses require a \$188 license application fee per s. 560.143(b), F.S.

¹² Section 560.143(1)(c) and (d), F.S., provides that both the per branch fee and the authorized vendor fee are \$38.

¹³ Section 560.143(1)(g), 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 of 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.¹⁴ 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. One of the primary purposes for enacting Pub. L. 92-544 was to establish a national policy with adequate sanctions and administrative safeguards regarding the dissemination of the FBI's CHRI data to state and local governments for non-criminal justice licensing and employment purposes.¹⁵ The FBI, with the assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544.¹⁶ The criteria for granting access to the FBI's CHRI data are as follows:

- The state's statute requiring fingerprinting must exist as a result of a legislative enactment;
- It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
- It must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants;
- It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding over breadth;
- It must not be against public policy; and
- It may not authorize receipt of the CHRI data by a private entity.

Section 560.141, F.S. (the statute authorizing background checks for MSB applicants), was 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. On March 22, 2021, CJILU responded to this request stating that s. 560.141, F.S. did not qualify for CHRI because certain terms were overly broad and, thus, did not sufficiently define the categories of people subject to the background

¹⁴ 28 C.F.R. s. 20.1.

¹⁵ Federal Bureau of Investigation, *Testimony of Dennis Lormel Before the House Financial Services Committee* (Mar. 06, 2001), available at <https://archives.fbi.gov/archives/news/testimony/fbis-perspective-on-criminal-history-record-information-checks-on-individuals-conducting-insurance-business> (last visited Mar. 24, 2023).

¹⁶ Email from Heather R. Postlethwait, FBI Office of the General Counsel, to Nathan Pate, Florida Department of Law Enforcement, RE: ORI Request - Florida Office of Financial Regulation (Mar. 22, 2021) (on file with the Senate Committee on Banking and Insurance).

check.¹⁷ The CJILU did express that since it had previously approved s. 560.141, F.S., it would continue to honor fingerprints submitted under ch. 560, F.S., during a grace period in order to allow Florida to amend 560.103, F.S.¹⁸ CJILU will not allow fingerprinting of additional categories of applicants (i.e., those applying under the Financial Technology Sandbox) during this grace period.¹⁹

These concerns raised by the FBI resulted in the adoption of a new definition of the term “control person” that was codified in 2022 which describes all persons subject to fingerprinting under ch. 560, F.S.,²⁰ to mean any of the following:

- A person who holds the title of president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, or compliance officer for a money services business.
- A person who holds any of the officer positions named in the money services business’s governing documents.
- A person who holds any position named by the money services business’s liability insurance coverage for directors and officers, if the business has such coverage.
- A director of the money services business’s board of directors.
- A person who directs the affairs of a money services business or who participates in, or has authority to participate in, the major policymaking functions of a money services business, regardless of whether the person has an official title or receives a salary or other compensation.
- For a money services business that is a corporation, all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities.
- For a money services business that is a partnership, all general partners, and those 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 limited liability company’s capital.
- For a money services business that is a limited liability company, 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.²¹

The FBI determined that this definition of “control person” does not meet the requirements of Public Law 92-544 because it does not ““identify the specific category(ies) of licensees/employees falling within its purview,””²² and has continued the grace period while revisions are made to meet the requirements of federal law.

¹⁷ 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).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Chapter 2022-135, L.O.F.

²¹ Section 560.103(10), F.S.

²² Email from Amanda Brooke Taylor, FDLE Operations & Management Consultant Manager, to Russell Weigel, Commissioner of Office of Financial Regulation, RE: OFR Request – FBI approval of HB 389 language (August 9, 2022) (on file with the Senate Committee on Banking and Insurance).

III. Effect of Proposed Changes:

On February 17, 2023, the FBI asked questions and provided comments on SB 532. The FBI noted “the inclusion of terms that are overly broad and undefined do not meet the requirements of Public Law 92-544.” The FBI also noted that they would need to review the entire statute to make a final determination on whether the proposed bill language would be approved.²³ The revisions to the bill in CS/SB 532 are intended to address the concerns communicated by the FBI regarding the bill as filed.

Section 1 amends the definition of a “control person,” with respect to MSB, to include:

- A person who holds the title of treasurer.
- A person who holds general manager, manager or managing member positions named in the MSB governing documents. “Governing documents” is defined, as used in s. 560.103(10)(b), F.S., to mean bylaws, articles of incorporation or organization, partnership agreements, shareholder agreements, and management or operating agreement.
- A shareholder whose name shares are registered in the records of a corporation²⁴ for profit, whether incorporated under the laws of Florida or organized under the laws of any other jurisdiction and existing in that legal form, who owns 25 percent or more of a class of the company’s equity securities. The bill clarifies paragraph (d) of the definition in that it: (a) specifies that a shareholder is the title of the interest holder of a corporation, (b) incorporates the definition of foreign corporation within the definition of “control person” and (c) clarifies that equity securities are the type of interest held in a corporation.

²³ Email from CJILU to Charles Murphy, Deputy Director, Florida Department of Law Enforcement Criminal Justice Information Services, (Feb. 17, 2023) (on file with the Senate Committee on Banking and Insurance).

²⁴ Section 607.01401(13), F.S., defines “corporation” as a corporation for profit, which is not a foreign corporation, incorporated under this chapter.

- A general partner,²⁵ limited partner,²⁶ or special partner who has a 25 percent or greater transferable interest²⁷ of a limited partnership,²⁸ limited liability limited partnership,²⁹ foreign limited partnership,³⁰ or foreign limited liability limited partnership,³¹ which is substantially the same as current law except that the bill: (a) describes the types of partnerships that fall within the definition of “control person,” (b) defines the types of partners, including general partner, limited partner, or special partners, and (c) provides for a partner who has a 25 percent or greater transferable interest, which is defined in the bill, rather than a right to receive upon dissolution 25 percent or more of the partnership’s capital. The bill defines “special partner,” for purposes of s. 560.103(10)(e), F.S., as having the same meaning as a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

²⁵ Section 620.1102(9), F.S., defines “general partner” as (a) with respect to a limited partnership, a person that: 1. Becomes a general partner under s. 620.1401, F.S.; or 2. Was a general partner in a limited partnership when the limited partnership became subject to this act under s. 620.2204(1) or (2), F.S., (b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership. Section 620.1401, F.S., provides that a person becomes a general partner: (1) as provided in the partnership agreement; (2) under s. 620.1801(1)(c), F.S., following the dissolution of a limited partnership’s last general partner; (3) as a result of a conversion or merger involving the limited partnership under the Florida Revised Uniform Limited Partnership Act of 2005 (FRULPA) as provided for in the plan of conversion or merger; or (4) with the consent of all partners.

²⁶ Section 620.1102(11), F.S., defines “limited partner” to mean (a) with respect to a limited partnership, a person that: 1. Becomes a limited partner under s. 620.1301, F.S.; or 2. was a limited partner in a limited partnership when the limited partnership became subject to this act under s. 620.2204(1) or (2), F.S. (b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership. Section 620.1301, F.S., provides that a person becomes a limited partner: (1) as provided in the partnership agreement; (2) as a result of a conversion or merger involving the limited partnership under FRULPA as provided in the plan of conversion or merger; or (3) with the consent of all the partners.

²⁷ Section 620.1102(25), F.S., defines “transferable interest” as a partner’s right to receive distributions.

²⁸ Section 620.1102(12), F.S., defines “limited partnership,” except in the phrase “foreign limited partnership” and “foreign limited liability limited partnership,” means an entity, having one or more general partners and one or more limited partners, which is formed under this act by two or more persons or becomes subject to this act as the result of a conversion or merger under this act, or which was a limited partnership governed by the laws of this state when this act became a law and became subject to this act under s. 620.2204(1) and (2). The term includes a limited liability limited partnership.

²⁹ Section 620.1102(10), F.S., defines “limited liability limited partnership,” except in the phrase “foreign limited liability limited partnership,” means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership, or which was a limited liability limited partnership when the limited partnership became subject to this act under s. 620.2204(1) or (2).

³⁰ Section 620.1102(8), F.S., defines “foreign limited partnership” as a partnership formed under the laws of a jurisdiction other than this state and required by those laws to have one or more general partners and one or more limited partners. The term includes a foreign limited liability limited partnership.

³¹ Section 620.1102(7), F.S., defines “foreign limited liability limited partnership” as a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to s. 620.1404(3).

- A member³² who holds a 25 percent or more membership interest in a limited liability company³³ or a foreign limited liability company,³⁴ as that term is defined in s. 605.0102, F.S.. The bill defines “membership interest,” as used in s. 560.103(10)(f), F.S., to mean a member’s right to receive distributions or other rights, such as voting rights or management rights, under the articles of organization. The bill differs from current law in that the bill: (a) includes members of a foreign limited liability company, (b) defines member, membership interest, limited liability company, and foreign limited liability company, and (c) provides for a member who holds a 25 percent or more membership interest rather than a right to receive 25 percent or greater of the limited liability company’s capital upon dissolution.
- A beneficial owner of any legal entity of the corporations, partnerships, and limited liability companies noted above. Defines “beneficial owner” as each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, or relationship other than a revocable proxy, owns 25 percent or more of the shares or stock interest, transferable interest, or membership interest of a legal entity.

The bill removes the following persons from within the definition of “control person”:

- A person who holds any position named in the MSB’s liability insurance coverage for directors and officers, if the business has such coverage; and
- A person who directs the affairs of a MSB or who participates in, or has authority to participate in, the major policymaking functions of a money service business, regardless of whether the person has an official title or receives a salary or other compensation.

Section 2 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³² Section 605.0102,(40), F.S., defines “member” as a person who (a) is a member of a limited liability company under s. 605.0401 or was a member in a company when the company became subject to this chapter; and (b) has not dissociated from the company under s. 605.0602, F.S. Section 605.0401(3), F.S., provides that, after formation of a limited liability company, a person becomes a member: (a) as provided in the operating agreement; (b) as the result of a merger, interest exchange, conversion, or domestication under ss. 605.1001-605.1072, F.S., as applicable; (c) with the consent of all members; or (d) as provided in s. 605.0701(3), F.S.

³³ Section 605.0102(36), F.S., defines “limited liability company” as an entity formed or existing under ch. 605, F.S., or an entity that becomes subject to ch. 605, F.S., pursuant to ss. 605.1001-605.1072, F.S.

³⁴ Section 605.0102(26), F.S., defines “foreign limited liability company” as an unincorporated entity that was formed in a jurisdiction other than this state and is denominated by that law as a limited liability company.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

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 section 560.103 of the Florida Statutes.

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 Committee on March 15, 2023:

The committee substitute makes the following changes to the definition of “control person” under s. 560.103(10), F.S.:

- Adds a person who holds the title of treasurer;
- Adds a person who holds general manager, manager or managing member positions named in the MSB governing documents;
- With respect to MSB’s that are corporations:
 - Specifies that a shareholder is the title of the interest holder of a corporation;

- Incorporates the definition of foreign corporation within the definition of “control person” with referencing the term or cross-referencing the definition of “foreign corporation;” and
 - Clarifies that equity securities are the type of interest held in a corporation.
- With respect to partnerships:
 - Describes the types of partnerships that fall within the definition of “control person;” and
 - Provides for a partner who has a 25 percent or greater transferable interest rather than a right to receive upon dissolution 25 percent or more of the partnership’s capital;
- With respect to limited liability companies:
 - Includes members of a foreign limited liability company; and
 - Provides for a member who holds a 25 percent or more membership interest rather than a right to receive 25 percent or greater of the limited liability company’s capital upon dissolution;
- Provides that a “control person” includes a beneficial owner of corporations, partnerships, and limited liability companies covered under the definition of “control person;”
- Defines the terms “governing documents,” “special partner,” and “membership interest,” and “beneficial owner” within the definition of “control person;” and
- Defines “general partner,” “limited partner,” “transferable interest,” “limited partnership,” “limited liability partnership,” “foreign limited partnership,” “foreign limited liability partnership,” “member,” “limited liability company,” and “foreign limited liability company” by cross-referencing the definitions of these terms in Title XXXVI Business Organizations of the Florida Statutes.

B. Amendments:

None.