

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2562

SPONSOR: Banking and Insurance Committee and Senator Dockery

SUBJECT: Money Transmitters

DATE: March 25, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Office of Financial Regulation (OFR) of the Financial Services Commission regulates the money transmitter industry, which includes payment instrument sellers, foreign currency exchangers, check cashers, funds transmitters, and deferred presentment providers (payday loans) under the provisions of ch. 560, F.S. The Committee Substitute for SB 2562 provides the OFR with additional compliance and enforcement tools to assist in the regulation of money transmitters by requiring money transmitters to comply with certain federal regulations and authorizing the OFR to take enforcement action against money transmitters for noncompliance. The bill makes the following changes related to the regulation of money transmitters:

- Requires money transmitters to develop and implement anti-money laundering programs pursuant to federal regulations;
- Requires money transmitters to develop and implement customer identification procedures for new accounts pursuant to federal regulations;
- Authorizes the OFR to take disciplinary action if a money transmitter fails to maintain records or make available documents required by certain federal regulations;
- Authorizes the OFR to conduct investigations or conduct examinations pursuant to s. 560.118, F.S., to determine whether violations of applicable provisions of the Code of Federal Regulations have occurred; and
- Expands the definition of “unsafe and unsound” to include the failure to adhere to certain federal regulations which would authorize the OFR to take regulatory action.

The bill also authorizes a money transmitter to conduct business within the state by means of electronic transfer and to charge a different price for funds transmission based on the mode of transmission used in the transaction so long as the price charged for a service paid with a credit card is not greater than a price charged when that service is paid by currency or similar means.

This bill amends the following sections of the Florida Statutes: 560.103, 560.109, 560.114, and 560.129.

II. Present Situation:

The Office of Financial Regulation (OFR) of the Financial Services Commission is responsible for the regulation of the money transmitter industry, as provided in ch. 560, F.S., the Money Transmitters' Code.¹ The code defines the term, "money transmitter," to mean any person located in or doing business in this state who acts as a payment instrument seller, foreign currency exchanger, check casher, funds transmitter, or deferred presentment provider (payday loans).² Certain entities, including banks and credit unions are exempt from the provisions of the code.³ To qualify for registration as a money transmitter, an applicant must meet certain requirements under ch. 560, F.S. Money transmitters are regulated at the state and federal levels.

Section 560.124, F.S., the Florida Control of Money Laundering in Money Transmitters Act," requires money transmitters to submit reports of certain financial transactions and maintain specified records and provides penalties for noncompliance. The OFR is authorized to conduct examinations and investigations to determine compliance with the Code.

Section 560.114, F.S., provides that money transmitters are subject to disciplinary action for operating in an "unsafe and unsound manner" and s. 560.118, F.S., provides that the OFR may conduct an examination of a money transmitter if it believes the money transmitter is engaging in an "unsafe and unsound practice." Section 560.103(21), F.S., defines "unsafe and unsound practice" as:

any practice or conduct found by the office to be contrary to generally accepted standards applicable to the specific money transmitter, or a violation of any prior order of an appropriate regulatory agency, which practice, conduct, or violation creates the likelihood of material loss, insolvency, or dissipation of assets of the money transmitter or otherwise materially prejudices the interests of its customers.

Federal Regulation of Money Transmitters

The Federal Bank Secrecy Act of 1970 (Act) established the regulatory framework to fight money laundering and other financial crimes.⁴ This legislation was in response to growing concerns regarding money being "laundered" to conceal illegal activity, including the crimes that generate the money itself, such as drug trafficking.

The Act requires certain financial institutions to comply with record keeping and reporting requirements and provides civil and criminal penalties for noncompliance with reporting requirements. The reporting and record keeping requirements of the Act apply to "banks" (banks, savings and loans, and credit unions), as well as other financial institutions, including money services businesses (MSBs) or "non-banks." Entities subject to the Act, including the MSBs, are

¹ Chapter 94-238, L.O.F.

² Section 560.103(11), F.S., (2003)

³ Section 560.104, F.S. (2003)

⁴ 31 C.F.R. § 5311-5330.

generally businesses that provide money orders, traveler's checks, money transfers, check cashing, and currency exchanges. The Act requires certain money service businesses to register with the United States Department of Treasury's Financial Crimes Enforcement Network (FinCEN), and prepare and maintain a list of agents, if any, and to report suspicious activity to FinCEN. The FinCEN collects and analyzes the information to support law enforcement efforts in conducting criminal, tax, and regulatory investigations.

The United States Department of Treasury has adopted regulations to implement the Bank Secrecy Act under 31 C.F.R. § 103 which requires MSBs to maintain certain records and report currency transactions. The U.S.A. Patriot Act, which was enacted in 2001, strengthened measures to prevent, detect, and prosecute terrorism and international money laundering. The 2001 Act included provisions that amended the Bank Secrecy Act by requiring all money service businesses to develop and implement anti-money laundering programs and customer identification procedures for new accounts.⁵ Regulations to implement these provisions of the 2001 Act were adopted under 31 C.F.R. § 103.125 and 31 C.F.R. § 103.28, respectively.

III. Effect of Proposed Changes:

The bill expands the authority of the Office of Financial Regulation to enforce compliance with certain federal regulations relating to money service businesses, which includes money transmitters regulated under ch. 560, F.S., the Money Transmitters' Code.

Section 1 amends s. 560.103, F.S., to expand the definition of "unsafe and unsound" to include the failure to adhere to certain federal regulations, summarized below:

31 C.F.R. § 103.20 – Requires money transmitters to report suspicious transactions to the United States Treasury Department. Transactions which must be reported include those the money transmitter knows, suspects or has reason to suspect involve funds derived from illegal activity, is designed to evade regulation, serves no business or lawful purpose, or involves the use of the money transmitter to facilitate illegal activity.

31 C.F.R. § 103.22 – Requires reporting of transactions of more than \$10,000 in certain situations.

31 C.F.R. § 103.27 – Provides the filing requirements for specified reports under 31 C.F.R. § 103.

31 C.F.R. § 103.28 – Requires a money transmitter to verify the name and address and other specified information of persons involved in transactions if the transaction must be reported under 31 C.F.R. § 103.22.

31 C.F.R. § 103.29 – Requires a money transmitter to collect information, such the name of the purchaser and the amount and type of transaction if the transaction amount exceeds \$3,000.

⁵ "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" known as The USA PATRIOT Act of 2001 (P.L. 107-56).

31 C.F.R. § 103.33 – Requires a money transmitter to maintain certain records relating to transactions in excess of \$10,000.

31 C.F.R. § 103.37 – Requires record keeping relating to exchanges of currency.

31 C.F.R. § 103.41 – Requires money transmitters to register with the United States Department of the Treasury.

31 C.F.R. § 103.125 – Requires the implementation of an anti-money laundering program that is designed to prevent a money services business from being used to facilitate money laundering and the financing of terrorist activities.

Section 2 amends s. 560.109, F.S., to authorize the OFR to conduct examinations pursuant to s. 560.118, F.S., in order to determine violations of certain federal regulations specified in section 1 of the bill (see above). Section 560.118, F.S., describes the conditions under which the OFR can make examinations or conduct investigations of money transmitters. This bill allows the OFR to make examinations or conduct investigations of money transmitters to determine if a money transmitter has violated the above-cited provisions of federal regulations.

Section 3 amends s. 560.114, F.S., to authorize the OFR to take disciplinary action if a money transmitter fails to maintain records or make available documents required by federal regulations that are delineated in section 1 of the bill.

Section 4 amends s. 560.129, F.S., to authorize the OFR to provide documents to a law enforcement agency if the agency adheres to confidentiality provisions of the code.

Section 5 amends s. 560.208, F.S., to authorize a money transmitter to conduct business within the state by means of electronic transfer and to charge a different price for funds transmission based on the mode of transmission used in the transaction so long as the price charged for a service paid with a credit card is not greater than a price charged when that service is paid by currency or similar means accepted within the same mode of transmission. This section also provides that this provision would not be deemed a violation of s. 501.0117, F.S., which prohibits the imposition of a surcharge on a transaction if the transaction is paid by credit card in lieu of cash or currency.

Section 6 provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Since money transmitters are generally required to register as money services businesses with the United States Department of Treasury's Financial Crimes Enforcement Network and comply with the applicable federal regulations, which include the regulations cited in the bill, it is anticipated that the bill would not impose any additional regulatory burden on money transmitters.

The bill would allow money transmitters to charge different fees based on the mode of transmission of the transaction. The price charged for services could not be greater in instances in which services were paid for with a credit card, as provided in s. 501.0117, F.S., rather than by currency or similar means accepted within the same mode of transmission.

C. Government Sector Impact:

This bill will permit the Office of Financial Regulation (OFR) to investigate and take disciplinary actions against money transmitters who violate the relevant provisions of federal regulations. This bill gives the OFR additional enforcement authority and subjects a money transmitter to discipline by the OFR for violations of these federal requirements.

Section 560.129, F.S., provides a public records exemption for certain records of the OFR. Section 560.129(2), F.S., permits the OFR to furnish confidential records to regulatory agencies if the agencies adhere to the relevant confidentiality provisions. This bill permits records to be shared with law enforcement agencies if the law enforcement agencies adhere to the relevant confidentiality provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
