

1 A bill to be entitled

2 An act relating to money services businesses; amending
3 s. 560.103, F.S.; defining the terms "control person"
4 and "publicly traded"; revising and deleting
5 definitions; amending s. 560.118, F.S.; providing that
6 a rule may require certain reports to the Office of
7 Financial Regulation to contain declarations by
8 control persons, rather than officers or other
9 responsible persons; amending s. 560.123, F.S.;
10 providing that control persons, rather than officers,
11 are not liable for loss or damages under certain
12 circumstances; amending s. 560.126, F.S.; requiring
13 licensees to report changes in control persons, rather
14 than certain other entities or persons; deleting a
15 requirement for certain persons to submit a licensure
16 application under certain circumstances; deleting the
17 definition of the term "controlling interest";
18 providing that the addition of a control person,
19 rather than certain other entities or persons, is
20 subject to certain requirements; deleting a
21 requirement for the Financial Services Commission to
22 adopt rules; repealing s. 560.127, F.S., relating to
23 control of a money services business; amending s.
24 560.141, F.S.; revising requirements for applications
25 for licensure as a money services business; amending

26 s. 560.143, F.S.; revising a limitation for certain
 27 fees to apply to a change in control, rather than in a
 28 controlling interest; reenacting s. 559.952(4)(a),
 29 F.S., relating to the Financial Technology Sandbox, to
 30 incorporate the amendments made to ss. 560.118 and
 31 560.141, F.S., in references thereto; reenacting s.
 32 560.114(2)(c), F.S., relating to disciplinary actions
 33 and penalties, to incorporate the amendment made to s.
 34 560.141, F.S., in a reference thereto; providing an
 35 effective date.

36
 37 Be It Enacted by the Legislature of the State of Florida:

38
 39 Section 1. Section 560.103, Florida Statutes, is amended
 40 to read:

41 560.103 Definitions.—As used in this chapter, the term:

42 (1) "Affiliated party" means a control ~~director, officer,~~
 43 ~~responsible~~ person, employee, or foreign affiliate of a money
 44 services business, ~~or a person who has a controlling interest in~~
 45 ~~a money services business as provided in s. 560.127.~~

46 (2) "Appropriate regulator" means a state, federal, or
 47 foreign agency that has been granted authority to enforce state,
 48 federal, or foreign laws related to a money services business or
 49 deferred presentment provider.

50 (3) "Authorized vendor" means a person designated by a

51 money services business licensed under part II of this chapter
 52 to act on behalf of the licensee at locations in this state
 53 pursuant to a written contract with the licensee.

54 (4) "Branch office" means the physical location, other
 55 than the principal place of business, of a money services
 56 business operated by a licensee under this chapter.

57 (5) "Cashing" means providing currency for payment
 58 instruments except for travelers checks.

59 (6) "Check casher" means a person who sells currency in
 60 exchange for payment instruments received, except travelers
 61 checks.

62 (7) "Commission" means the Financial Services Commission.

63 (8) "Compliance officer" means the individual in charge of
 64 overseeing, managing, and ensuring that a money services
 65 business is in compliance with all state and federal laws and
 66 rules relating to money services businesses, as applicable,
 67 including all money laundering laws and rules.

68 (9) "Conductor" means a natural person who presents
 69 himself or herself to a licensee for purposes of cashing a
 70 payment instrument.

71 (10) "Control person" means:

72 (a) A person that possesses the power, directly or
 73 indirectly, to direct the management or policies of a money
 74 services business, whether through ownership of securities, by
 75 contract, or through other means, and regardless of whether such

76 person has an official title or receives a salary or other
77 compensation. The following persons are each presumed to be a
78 control person:

79 1. The president, chief executive officer, chief financial
80 officer, chief operations officer, chief legal officer, and
81 compliance officer.

82 2. A person holding any of the officer positions named in
83 the money services business's governing documents.

84 3. A person holding any position named by the money
85 services business's liability insurance coverage for directors
86 and officers, if the business has such coverage.

87 4. A director of the money services business's board of
88 directors.

89 (b) For a corporation that is not publicly traded, all
90 shareholders that, directly or indirectly, own 25 percent or
91 more or that have the power to vote 25 percent or more of a
92 class of voting securities.

93 (c) For a partnership, all general partners, and those
94 limited or special partners that have contributed 25 percent or
95 more or that have the right to receive, upon dissolution, 25
96 percent or more of the partnership's capital.

97 (d) For a trust, all trustees.

98 (e) For a limited liability company, all managers, and
99 those members that have contributed 25 percent or more or that
100 have the right to receive, upon dissolution, 25 percent or more

101 of the limited liability company's capital.

102 (11)~~(10)~~ "Corporate payment instrument" means a payment
 103 instrument on which the payee named on the instrument's face is
 104 other than a natural person.

105 (12)~~(11)~~ "Currency" means the coin and paper money of the
 106 United States or of any other country which is designated as
 107 legal tender and which circulates and is customarily used and
 108 accepted as a medium of exchange in the country of issuance.
 109 Currency includes United States silver certificates, United
 110 States notes, and Federal Reserve notes. Currency also includes
 111 official foreign bank notes that are customarily used and
 112 accepted as a medium of exchange in a foreign country.

113 (13)~~(12)~~ "Deferred presentment provider" means a person
 114 who is licensed under part II or part III of this chapter and
 115 has filed a declaration of intent with the office to engage in
 116 deferred presentment transactions as provided under part IV of
 117 this chapter.

118 (14)~~(13)~~ "Department" means the Department of Financial
 119 Services.

120 (15)~~(14)~~ "Electronic instrument" means a card, tangible
 121 object, or other form of electronic payment for the transmission
 122 or payment of money or the exchange of monetary value, including
 123 a stored value card or device that contains a microprocessor
 124 chip, magnetic stripe, or other means for storing information;
 125 that is prefunded; and for which the value is decremented upon

126 each use.

127 (16)~~(15)~~ "Financial audit report" means a report prepared
128 in connection with a financial audit that is conducted in
129 accordance with generally accepted auditing standards prescribed
130 by the American Institute of Certified Public Accountants by a
131 certified public accountant licensed to do business in the
132 United States, and which must include:

133 (a) Financial statements, including notes related to the
134 financial statements and required supplementary information,
135 prepared in conformity with accounting principles generally
136 accepted in the United States. The notes must, at a minimum,
137 include detailed disclosures regarding receivables that are
138 greater than 90 days, if the total amount of such receivables
139 represents more than 2 percent of the licensee's total assets.

140 (b) An expression of opinion regarding whether the
141 financial statements are presented in conformity with accounting
142 principles generally accepted in the United States, or an
143 assertion to the effect that such an opinion cannot be expressed
144 and the reasons.

145 (17)~~(16)~~ "Foreign affiliate" means a person located
146 outside this state who has been designated by a licensee to make
147 payments on behalf of the licensee to persons who reside outside
148 this state. The term also includes a person located outside of
149 this state for whom the licensee has been designated to make
150 payments in this state.

151 (18)~~(17)~~ "Foreign currency exchanger" means a person who
 152 exchanges, for compensation, currency of the United States or a
 153 foreign government to currency of another government.

154 (19)~~(18)~~ "Fraudulent identification paraphernalia" means
 155 all equipment, products, or materials of any kind that are used,
 156 intended for use, or designed for use in the misrepresentation
 157 of a customer's identity. The term includes, but is not limited
 158 to:

159 (a) A signature stamp, thumbprint stamp, or other tool or
 160 device used to forge a customer's personal identification
 161 information.

162 (b) An original of any type of personal identification
 163 listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully
 164 issued.

165 (c) A blank, forged, fictitious, or counterfeit instrument
 166 in the similitude of any type of personal identification listed
 167 in s. 560.310(2)(b) which would in context lead a reasonably
 168 prudent person to believe that such instrument is an authentic
 169 original of such personal identification.

170 (d) Counterfeit, fictitious, or fabricated information in
 171 the similitude of a customer's personal identification
 172 information that, although not authentic, would in context lead
 173 a reasonably prudent person to credit its authenticity.

174 (20)~~(19)~~ "Licensee" means a person licensed under this
 175 chapter.

176 (21)~~(20)~~ "Location" means a branch office, mobile
 177 location, or location of an authorized vendor whose business
 178 activity is regulated under this chapter.

179 (22)~~(21)~~ "Monetary value" means a medium of exchange,
 180 whether or not redeemable in currency.

181 (23)~~(22)~~ "Money services business" means any person
 182 located in or doing business in this state, from this state, or
 183 into this state from locations outside this state or country who
 184 acts as a payment instrument seller, foreign currency exchanger,
 185 check casher, or money transmitter.

186 (24)~~(23)~~ "Money transmitter" means a corporation, limited
 187 liability company, limited liability partnership, or foreign
 188 entity qualified to do business in this state which receives
 189 currency, monetary value, or payment instruments for the purpose
 190 of transmitting the same by any means, including transmission by
 191 wire, facsimile, electronic transfer, courier, the Internet, or
 192 through bill payment services or other businesses that
 193 facilitate such transfer within this country, or to or from this
 194 country.

195 (25)~~(24)~~ "Net worth" means assets minus liabilities,
 196 determined in accordance with United States generally accepted
 197 accounting principles.

198 (26)~~(25)~~ "Office" means the Office of Financial Regulation
 199 of the commission.

200 ~~(26) "Officer" means an individual, other than a director,~~

201 ~~who participates in, or has authority to participate in, the~~
202 ~~major policymaking functions of a money services business,~~
203 ~~regardless of whether the individual has an official title or~~
204 ~~receives a salary or other compensation.~~

205 (27) "Outstanding money transmission" means a money
206 transmission to a designated recipient or a refund to a sender
207 that has not been completed.

208 (28) "Outstanding payment instrument" means an unpaid
209 payment instrument whose sale has been reported to a licensee.

210 (29) "Payment instrument" means a check, draft, warrant,
211 money order, travelers check, electronic instrument, or other
212 instrument, payment of money, or monetary value whether or not
213 negotiable. The term does not include an instrument that is
214 redeemable by the issuer in merchandise or service, a credit
215 card voucher, or a letter of credit.

216 (30) "Payment instrument seller" means a corporation,
217 limited liability company, limited liability partnership, or
218 foreign entity qualified to do business in this state which
219 sells a payment instrument.

220 (31) "Person" means an individual, partnership,
221 association, trust, corporation, limited liability company, or
222 other group, however organized, but does not include a public
223 agency or instrumentality thereof.

224 (32) "Personal identification information" means a
225 customer's name that, alone or together with any of the

226 following information, may be used to identify that specific
 227 customer:

228 (a) Customer's signature.

229 (b) Photograph, digital image, or other likeness of the
 230 customer.

231 (c) Unique biometric data, such as the customer's
 232 thumbprint or fingerprint, voice print, retina or iris image, or
 233 other unique physical representation of the customer.

234 ~~(33) "Responsible person" means an individual who is~~
 235 ~~employed by or affiliated with a money services business and who~~
 236 ~~has principal active management authority over the business~~
 237 ~~decisions, actions, and activities of the money services~~
 238 ~~business in this state.~~

239 (33) "Publicly traded" means a stock is currently traded
 240 on a national securities exchange registered with the Securities
 241 and Exchange Commission, or traded on an exchange in a country
 242 other than the United States regulated by a regulator equivalent
 243 to the Securities and Exchange Commission and the disclosure and
 244 reporting requirements of such regulator are substantially
 245 similar to those of the Securities and Exchange Commission.

246 (34) "Sells" means to sell, issue, provide, or deliver.

247 (35) "Stored value" means funds or monetary value
 248 represented in digital electronic format, whether or not
 249 specially encrypted, and stored or capable of storage on
 250 electronic media in such a way as to be retrievable and

251 transferred electronically.

252 Section 2. Subsection (2) of section 560.118, Florida
 253 Statutes, is amended to read:

254 560.118 Reports.—

255 (2) Each licensee must submit quarterly reports to the
 256 office in a format and include information as specified by rule.
 257 The rule may require the report to contain a declaration by a
 258 control ~~an officer, or any other responsible~~ person authorized
 259 to make such declaration, that the report is true and correct to
 260 the best of her or his knowledge and belief.

261 Section 3. Paragraph (d) of subsection (3) of section
 262 560.123, Florida Statutes, is amended to read:

263 560.123 Florida Control of Money Laundering in Money
 264 Services Business Act.—

265 (3) A money services business shall keep a record of each
 266 financial transaction occurring in this state which it knows to
 267 involve currency or other payment instrument, as prescribed by
 268 the commission, having a value greater than \$10,000; to involve
 269 the proceeds of specified unlawful activity; or to be designed
 270 to evade the reporting requirements of this section or chapter
 271 896. The money services business must maintain appropriate
 272 procedures to ensure compliance with this section and chapter
 273 896.

274 (d) A money services business, or control person ~~officer,~~
 275 employee, or agent thereof, that files a report in good faith

276 | pursuant to this section is not liable to any person for loss or
277 | damage caused in whole or in part by the making, filing, or
278 | governmental use of the report, or any information contained
279 | therein.

280 | Section 4. Subsection (3) of section 560.126, Florida
281 | Statutes, is amended to read:

282 | 560.126 Required notice by licensee.—

283 | (3) Each licensee must report any change in the control
284 | ~~partners, officers, members, joint venturers, directors,~~
285 | ~~controlling shareholders, or responsible persons~~ of the licensee
286 | or changes in the form of business organization by written
287 | amendment in such form and at such time as specified by rule.

288 | ~~(a) If any person, directly or indirectly or acting by or~~
289 | ~~through one or more persons, proposes to purchase or acquire a~~
290 | ~~controlling interest in a licensee, such person or group must~~
291 | ~~submit an application for licensure as a money services business~~
292 | ~~or deferred presentment provider before such purchase or~~
293 | ~~acquisition at such time and in such form as prescribed by rule.~~
294 | ~~As used in this subsection, the term "controlling interest"~~
295 | ~~means the same as described in s. 560.127.~~

296 | ~~(b) The addition of a control person partner, officer,~~
297 | ~~member, joint venturer, director, controlling shareholder, or~~
298 | ~~responsible person of the applicant who does not have a~~
299 | ~~controlling interest and who has not previously complied with~~
300 | the applicable provisions of ss. 560.1401 and 560.141 is subject

301 to such provisions. If the office determines that the licensee
302 does not continue to meet the licensure requirements, the office
303 may bring an administrative action in accordance with s. 560.114
304 to enforce the provisions of this chapter.

305 ~~(c) The commission shall adopt rules providing for the~~
306 ~~waiver of the license application required by this subsection if~~
307 ~~the person or group of persons proposing to purchase or acquire~~
308 ~~a controlling interest in a licensee has previously complied~~
309 ~~with the applicable provisions of ss. 560.1401 and 560.141 under~~
310 ~~the same legal entity or is currently licensed under this~~
311 ~~chapter.~~

312 Section 5. Section 560.127, Florida Statutes, is repealed.

313 Section 6. Paragraphs (a) and (c) of subsection (1) of
314 section 560.141, Florida Statutes, are amended to read:

315 560.141 License application.—

316 (1) To apply for a license as a money services business
317 under this chapter, the applicant must submit:

318 (a) An application to the office on forms prescribed by
319 rule which includes the following information:

320 1. The legal name and address of the applicant, including
321 any fictitious or trade names used by the applicant in the
322 conduct of its business.

323 2. The date of the applicant's formation and the state in
324 which the applicant was formed, if applicable.

325 3. The name, social security number, alien identification

326 or taxpayer identification number, business and residence
327 addresses, and employment history for the past 5 years for each
328 control person ~~officer, director, responsible person, the~~
329 ~~compliance officer, each controlling shareholder, and any other~~
330 ~~person who has a controlling interest in the money services~~
331 ~~business as provided in s. 560.127.~~

332 4. A description of the organizational structure of the
333 applicant, including the identity of any parent or subsidiary of
334 the applicant, and the disclosure of whether any parent or
335 subsidiary is publicly traded.

336 5. The applicant's history of operations in other states
337 if applicable and a description of the money services business
338 or deferred presentment provider activities proposed to be
339 conducted by the applicant in this state.

340 6. If the applicant or its parent is a publicly traded
341 company, copies of all filings made by the applicant with the
342 United States Securities and Exchange Commission, or with a
343 similar regulator in a country other than the United States,
344 within the preceding year.

345 7. The location at which the applicant proposes to
346 establish its principal place of business and any other
347 location, including branch offices and authorized vendors
348 operating in this state. For each branch office and each
349 location of an authorized vendor, the applicant shall include
350 the nonrefundable fee required by s. 560.143.

351 8. The name and address of the clearing financial
 352 institution or financial institutions through which the
 353 applicant's payment instruments are drawn or through which the
 354 payment instruments are payable.

355 9. The history of the applicant's material litigation,
 356 criminal convictions, pleas of nolo contendere, and cases of
 357 adjudication withheld.

358 10. The history of material litigation, arrests, criminal
 359 convictions, pleas of nolo contendere, and cases of adjudication
 360 withheld for each control ~~executive officer, director,~~
 361 ~~controlling shareholder, and responsible~~ person.

362 11. The name of the registered agent in this state for
 363 service of process unless the applicant is a sole proprietor.

364 12. Any other information specified in this chapter or by
 365 rule.

366 (c) Fingerprints for each person listed in subparagraph
 367 (a)3. for live-scan processing in accordance with rules adopted
 368 by the commission.

369 1. The fingerprints may be submitted through a third-party
 370 vendor authorized by the Department of Law Enforcement to
 371 provide live-scan fingerprinting.

372 2. The Department of Law Enforcement must conduct the
 373 state criminal history background check, and a federal criminal
 374 history background check must be conducted through the Federal
 375 Bureau of Investigation.

376 3. All fingerprints submitted to the Department of Law
377 Enforcement must be submitted electronically and entered into
378 the statewide automated fingerprint identification system
379 established in s. 943.05(2)(b) and available for use in
380 accordance with s. 943.05(2)(g) and (h). The office shall pay an
381 annual fee to the Department of Law Enforcement to participate
382 in the system and shall inform the Department of Law Enforcement
383 of any person whose fingerprints no longer must be retained.

384 4. The costs of fingerprint processing, including the cost
385 of retaining the fingerprints, shall be borne by the person
386 subject to the background check.

387 5. The office shall review the results of the state and
388 federal criminal history background checks and determine whether
389 the applicant meets licensure requirements.

390 6. For purposes of this paragraph, fingerprints are not
391 required to be submitted if the applicant is a publicly traded
392 corporation or is exempted from this chapter under s.
393 560.104(1). ~~The term "publicly traded" means a stock is~~
394 ~~currently traded on a national securities exchange registered~~
395 ~~with the federal Securities and Exchange Commission or traded on~~
396 ~~an exchange in a country other than the United States regulated~~
397 ~~by a regulator equivalent to the Securities and Exchange~~
398 ~~Commission and the disclosure and reporting requirements of such~~
399 ~~regulator are substantially similar to those of the commission.~~

400 7. Licensees initially approved before October 1, 2013,

401 who are seeking renewal must submit fingerprints for each person
402 listed in subparagraph (a)3. for live-scan processing pursuant
403 to this paragraph. Such fingerprints must be submitted before
404 renewing a license that is scheduled to expire between April 30,
405 2014, and December 31, 2015.

406 Section 7. Subsection (1) of section 560.143, Florida
407 Statutes, is amended to read:

408 560.143 Fees.—

409 (1) LICENSE APPLICATION FEES.—The applicable non-
410 refundable fees must accompany an application for licensure:

411 (a) Part II..... \$375.

412 (b) Part III..... \$188.

413 (c) Per branch office \$38.

414 (d) For each location of an authorized
415 vendor \$38.

416 (e) Declaration as a deferred presentment
417 provider \$1,000.

418 (f) Fingerprint retention fees as prescribed by rule.

419 ~~(g) License application fees for branch offices and~~
420 ~~authorized vendors are limited to \$20,000 when such fees are~~
421 ~~assessed as a result of a change in control controlling interest~~
422 ~~as defined in s. 560.127.~~

423 Section 8. For the purpose of incorporating the amendments
424 made by this act to sections 560.118 and 560.141, Florida
425 Statutes, in references thereto, paragraph (a) of subsection (4)

426 of section 559.952, Florida Statutes, is reenacted to read:

427 559.952 Financial Technology Sandbox.—

428 (4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE
429 REQUIREMENTS.—

430 (a) Notwithstanding any other law, upon approval of a
431 Financial Technology Sandbox application, the following
432 provisions and corresponding rule requirements are not
433 applicable to the licensee during the sandbox period:

434 1. Section 516.03(1), except for the application fee, the
435 investigation fee, the requirement to provide the social
436 security numbers of control persons, evidence of liquid assets
437 of at least \$25,000, and the office's authority to investigate
438 the applicant's background. The office may prorate the license
439 renewal fee for an extension granted under subsection (7).

440 2. Section 516.05(1) and (2), except that the office shall
441 investigate the applicant's background.

442 3. Section 560.109, only to the extent that the section
443 requires the office to examine a licensee at least once every 5
444 years.

445 4. Section 560.118(2).

446 5. Section 560.125(1), only to the extent that the
447 subsection would prohibit a licensee from engaging in the
448 business of a money transmitter or payment instrument seller
449 during the sandbox period.

450 6. Section 560.125(2), only to the extent that the

451 subsection would prohibit a licensee from appointing an
 452 authorized vendor during the sandbox period. Any authorized
 453 vendor of such a licensee during the sandbox period remains
 454 liable to the holder or remitter.

455 7. Section 560.128.

456 8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-
 457 10. and (b), (c), and (d).

458 9. Section 560.142(1) and (2), except that the office may
 459 prorate, but may not entirely eliminate, the license renewal
 460 fees in s. 560.143 for an extension granted under subsection
 461 (7).

462 10. Section 560.143(2), only to the extent necessary for
 463 proration of the renewal fee under subparagraph 9.

464 11. Section 560.204(1), only to the extent that the
 465 subsection would prohibit a licensee from engaging in, or
 466 advertising that it engages in, the selling or issuing of
 467 payment instruments or in the activity of a money transmitter
 468 during the sandbox period.

469 12. Section 560.205(2).

470 13. Section 560.208(2).

471 14. Section 560.209, only to the extent that the office
 472 may modify, but may not entirely eliminate, the net worth,
 473 corporate surety bond, and collateral deposit amounts required
 474 under that section. The modified amounts must be in such lower
 475 amounts that the office determines to be commensurate with the

476 factors under paragraph (5) (c) and the maximum number of
477 consumers authorized to receive the financial product or service
478 under this section.

479 Section 9. For the purpose of incorporating the amendment
480 made by this act to section 560.141, Florida Statutes, in a
481 reference thereto, paragraph (c) of subsection (2) of section
482 560.114, Florida Statutes, is reenacted, to read:

483 560.114 Disciplinary actions; penalties.—

484 (2) Pursuant to s. 120.60(6), the office may summarily
485 suspend the license of a money services business if the office
486 finds that a licensee poses an immediate, serious danger to the
487 public health, safety, and welfare. A proceeding in which the
488 office seeks the issuance of a final order for the summary
489 suspension of a licensee shall be conducted by the commissioner
490 of the office, or his or her designee, who shall issue such
491 order. The following acts are deemed to constitute an immediate
492 and serious danger to the public health, safety, and welfare,
493 and the office may immediately suspend the license of a money
494 services business if:

495 (c) A natural person required to be listed on the license
496 application for a money services business pursuant to s.
497 560.141(1)(a)3. is criminally charged with, or arrested for, a
498 crime described in paragraph (1)(o), paragraph (1)(p), or
499 paragraph(1)(q).

500 Section 10. This act shall take effect October 1, 2022.