

CHAPTER 97-59

Committee Substitute for Senate Bill No. 288

An act relating to money transmitters; amending s. 560.103, F.S.; redefining terms; amending s. 560.111, F.S.; providing that violations of certain statutes of other jurisdictions by money transmitters and money transmitter-affiliated parties are unlawful in this state; providing penalties; amending s. 560.114, F.S.; prescribing additional grounds for disciplinary action against persons registered as money transmitters or money transmitter-affiliated parties; amending s. 560.118, F.S.; revising standards for examinations and audits of money transmitters and authorized vendors; amending s. 560.128, F.S.; authorizing the Department of Banking and Finance to require money transmitters to display their registration; amending s. 560.205, F.S.; requiring additional information from applicants for registration; providing an effective date.

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

Section 1. Subsections (9) and (11) of section 560.103, Florida Statutes, are amended to read:

560.103 Definitions.—As used in the code, unless the context otherwise requires:

(9) “Funds transmitter” means a person who engages in the receipt of currency or payment instruments ~~money~~ for the purpose of transmission by any means, including transmissions within this country or to or from locations outside this country, by wire, facsimile, electronic transfer, courier, or otherwise.

(11) “Money transmitter-affiliated party” means any director, officer, responsible person, employee, authorized vendor, independent contractor of a money transmitter, or a person who has filed, is required to file, or is found to control a money transmitter pursuant to s. 560.127, or any person engaged in any jurisdiction, at any time, in the business of money transmission as a controlling shareholder, director, officer, or responsible person who becomes involved in a similar capacity with a money transmitter registered in this state.

Section 2. Section 560.111, Florida Statutes, is amended to read:

560.111 Prohibited acts and practices.—

(1) It is unlawful for any money transmitter or money transmitter-affiliated party to:

(a) Knowingly receive or possess itself of any property otherwise than in payment of a just demand, and, with intent to deceive or defraud, to omit to make or cause to be made a full and true entry thereof in its books and accounts, or to concur in omitting to make any material entry thereof;

(b) Embezzle, abstract, or misapply any money, property, or thing of value of the money transmitter or authorized vendor with intent to deceive or defraud such money transmitter or authorized vendor;

(c) Make any false entry in any book, report, or statement of such money transmitter or authorized vendor with intent to deceive or defraud such money transmitter, authorized vendor, or another person, or with intent to deceive the department, any other appropriate regulatory agency, or any authorized representative appointed to examine or investigate the affairs of such money transmitter or authorized vendor;

(d) Engage in an act that violates 18 U.S.C. s. 1956, 31 U.S.C. s. 5324, or any other law of another state or of the United States relating to the business of money transmission which may cause the denial or revocation of a money transmitter license or registration in such jurisdiction;

~~(e)~~ Deliver or disclose to the department or any of its employees any examination report, report of condition, report of income and dividends, audit, account, statement, or document known by it to be fraudulent or false as to any material matter; or

~~(f)~~ Knowingly place among the assets of such money transmitter or authorized vendor any note, obligation, or security that the money transmitter or authorized vendor does not own or that to the person's knowledge is fraudulent or otherwise worthless, or for any such person to represent to the department that any note, obligation, or security carried as an asset of such money transmitter or authorized vendor is the property of the money transmitter or authorized vendor and is genuine if it is known to such person that such representation is false or that such note, obligation, or security is fraudulent or otherwise worthless.

(2) It is unlawful for any person to knowingly execute, or attempt to execute, a scheme or artifice to defraud a money transmitter or authorized vendor, or to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a money transmitter or authorized vendor, by means of false or fraudulent pretenses, representations, or promises.

(3) Any person who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Subsections (1) and (2) of section 560.114, Florida Statutes, are amended to read:

560.114 Disciplinary actions.—

(1) The following actions by a money transmitter or money transmitter-affiliated party are violations of the code and constitute grounds for the issuance of a cease and desist order, the issuance of a removal order, the denial of a registration application or the suspension or revocation of any registration previously issued pursuant to the code, or the taking of any other action within the authority of the department pursuant to the code:

(a) Knowing failure to comply with any provision of the code, any rule or order adopted pursuant thereto, or any written agreement entered into with the department.

(b) Fraud, misrepresentation, deceit, or gross negligence in any transaction involving money transmission, regardless of reliance thereon by, or damage to, a money transmitter customer.

(c) Fraudulent misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a money transmitter customer pursuant to the code, regardless of reliance thereon by, or damage to, such customer.

(d) False, deceptive, or misleading advertising by a money transmitter or authorized vendor.

(e) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by the code, by any rule or order adopted pursuant to the code, or by any agreement entered into with the department.

(f) Any fact or condition that exists that, if it had existed or had been known to exist at the time the money transmitter applied for registration, would have been grounds for denial of registration.

(g) A willful refusal to permit the examination or inspection of books and records in an investigation or examination by the department, pursuant to the provisions of the code, or to comply with a subpoena issued by the department.

(h) Failure of the money transmitter or authorized vendor to pay a judgment recovered in any court in this state by a claimant in an action arising out of a money transmission transaction within 30 days after the judgment becomes final.

(i) Engaging in a prohibited act or practice.

(j) Insolvency or operating in an unsafe and unsound manner.

(k) Failure by a money transmitter to remove a money transmitter-affiliated party after the department has issued and served upon the money transmitter a final order setting forth a finding that the money transmitter-affiliated party has knowingly violated any provision of the code.

(2) In addition to the acts specified in subsection (1), the following acts are grounds for denial of registration or for revocation, suspension, or restriction of registration previously granted:

(a) A material misstatement of fact in an initial or renewal application for registration.

(b) Having an application for registration, or a registration or its equivalent, to practice any profession or occupation denied, suspended, revoked, or

otherwise acted against by a registering authority in any jurisdiction for fraud or dishonest dealing.

(c) Having a registration or its equivalent, or an application for registration, to practice any profession or occupation denied, suspended, or otherwise acted against by a registering authority in any jurisdiction for a violation of 18 U.S.C. s. 1956, 31 U.S.C. s. 5324, or any other law of another state or of the United States relating to the business of money transmission which may cause the denial or revocation of a money transmitter license or registration in such jurisdiction.

~~(d)~~(e) Having been convicted of or found guilty of, or having pleaded guilty or nolo contendere to, a crime involving fraud or dishonest dealing.

(e) Having been convicted of or found guilty of, or having pleaded guilty or nolo contendere to, a crime under 18 U.S.C. s. 1956 or 31 U.S.C. s. 5324.

(f) Any action that would be grounds for denial of a registration or for revocation, suspension, or restriction of a registration previously granted under part III of this chapter.

Section 4. Subsection (1) of section 560.118, Florida Statutes, is amended to read:

560.118 Examinations, reports, and internal audits; penalty.—

(1)(a) The department may conduct an examination of a money transmitter or authorized vendor by providing not less than 15 days' advance notice to the money transmitter or authorized vendor; however, whenever the department has reason to believe that a money transmitter or authorized vendor is engaging in an unsafe and unsound practice, or has violated or is violating any provision of the code, the department may make an examination of such money transmitter or authorized vendor without providing advance notice. The department may accept an audit or examination from ~~of any appropriate regulatory agency or an audit from an independent third party a certified public accountant~~ with respect to the operations of a money transmitter or an authorized vendor. The department may also make a joint or concurrent examination with any appropriate regulatory agency. The department may furnish a copy of all examinations made of such money transmitter or authorized vendor to the money transmitter and any appropriate regulatory agency provided that such agency agrees to abide by the confidentiality provisions as set forth in chapter 119.

(b) The department may require an examination or audit of a money transmitter or authorized vendor by an independent third party that has been approved by the department. The cost of such an independent examination or audit shall be directly borne by the money transmitter or authorized vendor.

~~(c)~~(b) The department may recover the costs of a regular examination and supervision of a money transmitter or authorized vendor; however, the department may not recover the costs of more than one examination in any 12-month period unless the department has determined that the money

transmitter or authorized vendor is operating in an unsafe or unsound or unlawful manner.

(d)(e) The department may, by rule, set a maximum per-day examination cost for a regular examination. Such per-day cost may be less than that required to fully compensate the department for costs associated with the examination. For the purposes of this section, “costs” means the salary and travel expenses directly attributable to the field staff examining the money transmitter or authorized vendor, and the travel expenses of any supervisory staff required as a result of examination findings. Reimbursement for such costs incurred under this subsection must be postmarked no later than 30 days after the date of receipt of a notice stating that such costs are due. The department may levy a late payment penalty of up to \$100 per day or part thereof that a payment is overdue, unless the late payment penalty is excused for good cause. In excusing any such late payment penalty, the department may consider the prior payment history of the money transmitter or authorized vendor.

Section 5. Section 560.128, Florida Statutes, is amended to read:

560.128 Consumer disclosure.—

(1) Every money transmitter and authorized vendor shall provide each consumer of a money transmitter transaction a toll-free telephone number for the purpose of consumer contacts; however, in lieu of such toll-free telephone number, the money transmitter or authorized vendor may provide the address and telephone number of the department.

(2) The department may by rule require every money transmitter to display its registration at each location, including the location of each person designated by the registrant as an authorized vendor, where the money transmitter engages in the activities authorized by the registration.

Section 6. Subsection (3) of section 560.205, Florida Statutes, is amended to read:

560.205 Qualifications of applicant for registration; contents.—

(3) Each application for registration by an applicant that is a corporation shall also set forth such information as the department reasonably requires, including, but not limited to:

(a) The date of the applicant’s incorporation and state of incorporation.

(b) A certificate of good standing from the state or country in which the applicant was incorporated.

(c) A description of the corporate 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 on any stock exchange.

(d) The name, business and residence addresses, and employment history for the past 5 years for each executive officer, each director, each con-

trolling ~~shareholder~~ shareholders, and the responsible person who will be in charge of all the applicant's business activities in this state.

(e) The history of material litigation and criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each executive officer, each director, each controlling shareholder, and the responsible person who will be in charge of the applicant's registered activities.

(f) Copies of the applicant's audited financial statements for the current year and, if available, for the immediately preceding 2-year period. In cases where the applicant is a wholly owned subsidiary of another corporation, the parent's consolidated audited financial statements may be submitted to satisfy this requirement. An applicant may satisfy this requirement by filing unaudited financial statements verified under penalty of perjury, as provided by the department by rule.

(g) Copies of the applicant's unconsolidated, unaudited financial statements for the current year and, if available, for the immediately preceding 2-year period.

(h) If the applicant is a publicly traded company, copies of all filings made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application.

Section 7. This act shall take effect October 1, 1997.

Became a law without the Governor's approval May 15, 1997.

Filed in Office Secretary of State May 12, 1997.