

## CHAPTER 2022-135

### Committee Substitute for Committee Substitute for House Bill No. 389

An act relating to money services businesses; amending s. 560.103, F.S.; defining the terms “control person” and “publicly traded”; revising and deleting definitions; amending s. 560.118, F.S.; providing that a rule may require certain reports to the Office of Financial Regulation to contain declarations by control persons, rather than officers or other responsible persons; amending s. 560.123, F.S.; providing that control persons, rather than officers, are not liable for loss or damages under certain circumstances; amending s. 560.126, F.S.; requiring licensees to report changes in control persons, rather than in certain other entities or persons; providing that the addition of a control person, rather than certain other entities or persons, is subject to certain requirements; amending s. 560.141, F.S.; revising requirements for applications for licensure as a money services business; deleting the definition of the term “publicly traded”; reenacting s. 559.952(4)(a), F.S., relating to the Financial Technology Sandbox, to incorporate the amendments made to ss. 560.118 and 560.141, F.S., in references thereto; reenacting s. 560.114(2)(c), F.S., relating to disciplinary actions and penalties, to incorporate the amendment made to s. 560.141, F.S., in a reference thereto; providing an effective date.

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

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

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

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

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

(3) “Authorized vendor” means a person designated by a money services business licensed under part II of this chapter to act on behalf of the licensee at locations in this state pursuant to a written contract with the licensee.

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

(5) “Cashing” means providing currency for payment instruments except for travelers checks.

(6) “Check casher” means a person who sells currency in exchange for payment instruments received, except travelers checks.

(7) “Commission” means the Financial Services Commission.

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

(9) “Conductor” means a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.

(10) “Control person” means any of the following:

(a) 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.

(b) A person who holds any of the officer positions named in the money services business’s governing documents.

(c) 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.

(d) A director of the money services business’s board of directors.

(e) 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.

(f) 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.

(g) 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 partnership’s capital.

(h) 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.

~~(11)~~(10) “Corporate payment instrument” means a payment instrument on which the payee named on the instrument’s face is other than a natural person.

~~(12)~~(11) “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.

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

~~(14)~~(13) “Department” means the Department of Financial Services.

~~(15)~~(14) “Electronic instrument” means a card, tangible object, or other form of electronic payment for the transmission or payment of money or the exchange of monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use.

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

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

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

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

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

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

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

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

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

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

~~(20)~~(19) “Licensee” means a person licensed under this chapter.

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

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

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

~~(24)~~(23) “Money transmitter” means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments 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.

~~(25)~~(24) “Net worth” means assets minus liabilities, determined in accordance with United States generally accepted accounting principles.

~~(26)~~(25) “Office” means the Office of Financial Regulation of the commission.

~~(26) “Officer” means an individual, other than a director, who participates in, or has authority to participate in, the major policymaking functions of a money services business, regardless of whether the individual has an official title or receives a salary or other compensation.~~

(27) “Outstanding money transmission” means a money transmission to a designated recipient or a refund to a sender that has not been completed.

(28) “Outstanding payment instrument” means an unpaid payment instrument whose sale has been reported to a licensee.

(29) “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.

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

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

(32) “Personal identification information” means a customer’s name that, alone or together with any of the following information, may be used to identify that specific customer:

(a) Customer’s signature.

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

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

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

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

(34) “Sells” means to sell, issue, provide, or deliver.

(35) “Stored value” means funds or monetary value represented in digital electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.

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

560.118 Reports.—

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

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

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

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

(d) A money services business, or control person ~~officer~~, employee, or agent thereof, that files a report in good faith pursuant to this section is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.

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

560.126 Required notice by licensee.—

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

(a) If any person, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a licensee, such person or group must submit an application for licensure as a money services business or deferred presentment provider before such

purchase or acquisition at such time and in such form as prescribed by rule. As used in this subsection, the term “controlling interest” means the same as described in s. 560.127.

(b) Upon the addition of a control person, the office shall evaluate the added control person and ensure that such person has submitted fingerprints for processing pursuant to s. 560.141(1)(c) partner, officer, member, joint venturer, director, controlling shareholder, or responsible person of the applicant who does not have a controlling interest and who has not previously complied with the applicable provisions of ss. 560.1401 and 560.141 is subject to such provisions. If the office determines that the addition of the control person would cause the money services business to no longer the licensee does not continue to meet the licensure requirements under this chapter, the office may bring an administrative action in accordance with s. 560.114 to enforce the provisions of this chapter.

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

Section 5. Paragraphs (a) and (c) of subsection (1) of section 560.141, Florida Statutes, are amended to read:

560.141 License application.—

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

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

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

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

3. 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 officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127.

4. 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.

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

6. If the applicant or its parent 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 preceding year.

7. 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 in this state. For each branch office and each location of an authorized vendor, the applicant shall include the nonrefundable fee required by s. 560.143.

8. 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.

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

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

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

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

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

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

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

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

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

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

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

7. Licensees initially approved before October 1, 2013, who are seeking renewal must submit fingerprints for each person listed in subparagraph (a) 3. for live-scan processing pursuant to this paragraph. Such fingerprints must be submitted before renewing a license that is scheduled to expire between April 30, 2014, and December 31, 2015.

Section 6. For the purpose of incorporating the amendments made by this act to sections 560.118 and 560.141, Florida Statutes, in references thereto, paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is reenacted to read:

559.952 Financial Technology Sandbox.—

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

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

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

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

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

4. Section 560.118(2).

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

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

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

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

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

11. Section 560.204(1), only to the extent that the subsection 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 sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the factors under paragraph (5)(c) and the maximum number of consumers authorized to receive the financial product or service under this section.

Section 7. For the purpose of incorporating the amendment made by this act to section 560.141, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 560.114, Florida Statutes, is reenacted, to read:

560.114 Disciplinary actions; penalties.—

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

health, safety, and welfare, and the office may immediately suspend the license of a money services business if:

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

Section 8. This act shall take effect October 1, 2022.

Approved by the Governor May 25, 2022.

Filed in Office Secretary of State May 25, 2022.