

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 662

INTRODUCER: Banking and Insurance Committee and Senator Burton

SUBJECT: Virtual Currency Kiosk Businesses

DATE: February 12, 2024 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Senate Bill 662 establishes a regulatory framework for virtual currency kiosk businesses, and provides protections for users of the kiosks by requiring such businesses to register with the Office of Financial Regulation (OFR), requiring certain disclosures, restricting the name under which such business may transact, and providing penalties for specified violations of the part. The Legislative intent of the bill is, in summary, to reduce unlawful and fraudulent activities. The bill provides the OFR is responsible for supervising virtual currency kiosk businesses, and authorizes the Financial Services Commission (commission) to adopt rules to regulate them.

Registration requirement

The bill prohibits, effective March 1, 2025, a virtual currency kiosk business from operating in Florida without first registering, or renewing its registration, with the OFR. A money transmitter licensed as a money services business (MSB) is exempt from registering as a virtual currency kiosk business. An entity that acts as an intermediary in specified circumstances and or otherwise meets the definition of a money transmitter must be licensed as a money services business. For an applicant to register a virtual currency kiosk business, the applicant must submit specified information relating to the proposed applicant and business, attest to specified information relating to blockchain analytics, and within a specified time, any supplemental information required by the OFR. A virtual currency kiosk business operating in Florida on or before January 1, 2025, must submit a registration application to the OFR within 30 days after that date.

Disclosures, Attestations, and Confirmations

The bill requires that owner-operators:

- Display a disclosure warning consumers about potential dishonest schemes and requiring the customer to acknowledge that they have read the disclosure.
- Display a disclosure that funds lost due to user error or fraud may not be recoverable.
- With respect to virtual currency kiosk businesses, confirm whether the customer is using the kiosk to send virtual currency to a wallet owned by someone else and, if so, terminate the transaction unless the owner-operator is a licensed money transmitter.
- Display a disclosure of a toll-free telephone number the kiosk user may call to learn about the risks of the transaction; and
- Require an attestation to specified information, without which the transaction must be terminated.

The bill authorizes the commission to adopt rules to administer the section on disclosures, including to ensure the disclosures are responsive to consumer fraud and emerging technology.

Conduct of Business

An owner-operator may transact business only under the legal name by which it is registered, except a fictitious name may be used in specified circumstances. An owner-operator must maintain clearly documented policies, processes, and procedures regarding how blockchain analytics activity integrates into their compliance, and must apply such blockchain analytics to prevent transfers to wallet addresses linked to known criminal activity.

Penalties

The bill provides criminal penalties for violating the disclosure requirements, operating under any name other than that designated in the registration (unless written notification is given to the OFR), assigning or attempting to assign a registration, and operating a virtual currency kiosk without using the required blockchain analytics.

The bill has a minimal impact on state revenue and expenditures. *See* Section V. Fiscal Impact Statement.

Except as otherwise provided, the bill is effective January 1, 2025.

II. Present Situation:

A virtual currency kiosk, also known as a cryptocurrency kiosk or a Bitcoin automatic teller machine (ATM), is a physical machine that enables customers to exchange virtual currencies for fiat currency or other virtual currencies.¹ As of 2022, there were over 30,000 virtual currency

¹ National Association of Attorneys General, *Your Bitcoin on Every Block: An Introduction to Cryptocurrency Kiosks*, May 4, 2022, available at [Your Bitcoin on Every Block: An Introduction to Cryptocurrency Kiosks \(naag.org\)](https://naag.org/your-bitcoin-on-every-block-an-introduction-to-cryptocurrency-kiosks) (last visited Jan. 31, 2024) (hereinafter cited as “Attorneys General Article on Cryptocurrency Kiosks”).

kiosks in the United States.² Consumers are typically charged fees between nine percent and 12 percent of the value of the transaction but such fees may range from four percent to greater than 20 percent of the value of a transaction.³

A virtual currency kiosk may be unidirectional, only allowing the sale of virtual currency, or bidirectional, allowing for both the sale and purchase of virtual currency.⁴ To purchase virtual currency from a kiosk, a consumer may store the purchased virtual currency in their own wallet or send the currency to a third party's wallet if the purchaser has a quick response (QR) code to that person's wallet.⁵ To sell virtual currency from a kiosk, a user deposits virtual currency into the machine's wallet, which is usually done by use of a QR code displayed on the kiosk's screen, and the kiosk dispenses cash when the transaction is completed.⁶

Federal Regulation

Financial Crimes Enforcement Network (“FinCEN”), a bureau of the United States Department of Treasury⁷ is responsible for safeguarding the financial system from illegal use, combatting money laundering and related crimes, and promoting national security.⁸ Unless an exception applies, a money services business⁹ (MSB) must register with FinCEN.¹⁰ A MSB must registration period is a two-calendar-year period.¹¹ Any person who fails to comply with the registration requirements is liable for a civil penalty of \$5,000 for each violation.¹² A MSB must develop, implement, and maintain an anti-money laundering program, which includes, amongst other things, verifying customer identification.¹³ A MSB must also comply with anti-money laundering reporting requirements, such as reporting certain payment transactions by, though, or to the MSB which involves a transaction more than \$10,000.¹⁴

² McDonnell, S., *United States: US GAO Urges New Virtual Currency Regulations to Counter Human Trafficking and Drug Cartels*, Jan. 2022, available at [US GAO Urges New Virtual Currency Regulations To Counter Human Trafficking And Drug Cartels - Fin Tech - United States \(mondaq.com\)](https://www.mondaq.com/us-gao/financial-crimes-enforcement-network/1022210) (last visited Jan. 31, 2024) (hereinafter cited as “Article on US GAO Urges New Virtual Currency Regulations”).

³ Attorneys General Article on Cryptocurrency Kiosks

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ 31 C.F.R. s. 1010.100(s).

⁸ The U.S. Treasury Financial Crimes Enforcement Network, *Financial Crimes Enforcement Network: Mission*, available at [Mission | FinCEN.gov](https://www.fincen.gov) (last visited Jan. 24, 2024).

⁹ “Money services business” is defined as a person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities specified under federal law. 31 C.F.R. s. 1010.100(ff).

¹⁰ 31 C.F.R. s. 1022.380(a).

¹¹ 31 C.F.R. s. 1022.380(b).

¹² 31 C.F.R. s. 1022.380(e) (providing that each day a violation continues constitutes a separate violation).

¹³ 31 C.F.R. s. 1022.210.

¹⁴ 31 C.F.R. s. 1010.311.

FinCEN has issued guidance that, unless an exception applies, an administrator¹⁵ or exchanger¹⁶ that: (a) accepts or transmits, or (b) buys or sells, virtual currency¹⁷ is a money transmitter that are subject to money services business registration, reporting, and recordkeeping requirements.¹⁸ Therefore, FinCEN treats virtual currency kiosk operators as MSBs, subject to registration regulations.¹⁹ Notwithstanding this requirement, the United States Government Accountability Office (“GAO”) reports that only 164 of the estimated 297 kiosk operators in the United States were registered, which has contributed to federal agencies, such as FinCEN, facing challenges in identifying virtual currency kiosk locations.²⁰

Florida Regulation of Consumer Finance

The Florida Office of Financial Regulation (OFR) is responsible for all activities of the Financial Services Commission (commission) relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.²¹

Money Services Businesses

As part the OFR’s responsibilities, the OFR oversees MSBs. As of December 31, 2023, there were a total of 723 MSBs licensed by the OFR.²² A MSB includes any person located or doing business in Florida who acts as, amongst other things, a money transmitter.²³ “Money transmitter” means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in Florida which receives currency, monetary value, a payment instrument, or virtual currency²⁴ for the purpose of acting as an intermediary to transmit

¹⁵ “Administrator” is defined as a person engaged as a business in issuing (putting into circulation) a virtual currency, and who has the authority to redeem (to withdraw from circulation) such virtual currency. The U. S. Treasury FinCEN, *Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies*, Mar. 18, 2013, available at [Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies | FinCEN.gov](https://www.fincen.gov/application-of-fincen-s-regulations-to-persons-administering-exchanging-or-using-virtual-currencies) (last visited Jan. 31, 2024) (hereinafter cited as “FinCEN Guidance on Persons Administering, Exchanging, or Using Virtual Currency”).

¹⁶ “Exchanger” is defined as a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency. *Id.*

¹⁷ “Virtual Currency” is defined as a medium of exchange that operates like a currency in some environments, but does not have all of attributes of real currency. “Convertible” virtual currency has an equivalent value in real currency, or acts as a substitute for real currency. *Id.*

¹⁸ FinCEN Guidance on Persons Administering, Exchanging, or Using Virtual Currency. “Money transmitter” is defined as a person who provides money transmitter services, which means the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. “Any means” includes, but is not limited to, a financial agency or institution, a Federal Reserve Bank, an electronic funds transfer network, or an informal value transfer system.

³¹ C.F.R. s. 1010.100(ff)(5)(A).

¹⁹ *Id.*; See also Article on US GAO Urges New Virtual Currency Regulations.

²⁰ The GAO, *Virtual Currencies Additional Information Could Improve Federal Agency Efforts to Counter Human and Drug Trafficking [Reissued with Revisions Feb. 7, 2022]*, GAO-22-105462, Published: Dec. 8, 2021, Publicly Released: Jan. 10, 2022, available at <https://www.gao.gov/products/gao-22-105462> (last visited Jan. 31, 2024).

²¹ Section 20.121(3)(a)2., F.S.

²² The OFR, *2024 Agency Legislative Bill Analysis Florida Office of Financial Regulation SB 662*, p. 2, Jan. 8, 2024 (on file with the Senate Committee on Banking and Insurance) (hereinafter cited as “2024 OFR Agency Analysis for SB 662”).

²³ Section 560.103(23), F.S.

²⁴ Section 560.103(36), F.S., defines “virtual currency” as a medium of exchange in electronic or digital format that is not currency. The term does not include a medium of exchange in electronic or digital format that is: (a) issued by or on behalf of a publisher or offered on the same game platform; or (b) used exclusively as part of a consumer affinity or rewards program

currency, monetary value, a payment instrument, or virtual currency from one person to another location or person by 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. The term includes only an intermediary that has the ability to unilaterally execute or indefinitely prevent a transaction.²⁵ Money transmitters reported \$423,270,012,517 in transmissions during the Fiscal Year 2022-2023.²⁶

Licenses issued to MSBs are valid until April 30 of the second year following the date of issuance and are valid for two years.²⁷ A MSB that does not renew its license by April 30 of their expiration year are deemed inactive and, if the license is not reactivated within 60 days, the license will permanently expire.²⁸ An MSB need only pay the renewal or reactivation fee online via the Regulatory Enforcement and Licensing (REAL) System to renew or reactivate a license.²⁹

Once licensed, an MSB is required to report any change in control persons.^{30,31} 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.³² 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.³³ A change

and can be applied solely as payment for purchases with the issuer or other designated merchants but cannot be converted into or redeemed for currency or another medium of exchange.

²⁵ Section 560.103(24), F.S.

²⁶ 2024 OFR Agency Analysis for SB 662 at p. 3.

²⁷ Section 560.141(2), F.S.

²⁸ Section 560.142(4), F.S.

²⁹ 2024 OFR Agency Analysis for SB 662 at p. 3.

³⁰ Section 560.103(10), F.S., defines “Control person,” with respect to a money services business, as any of the following: (a) A person who holds the title of president, treasurer, 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, general partner, manager, or managing member positions named in the money services business’s governing documents. As used in this paragraph, the term “governing documents” includes bylaws, articles of incorporation or organization, partnership agreements, shareholder agreements, and management or operating agreements; (c) A director of the money services business’s board of directors; (d) A shareholder in whose name shares are registered in the records of a corporation for profit, whether incorporated under the laws of this state 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; (e) A general partner or a limited partner, as those terms are defined in s. 620.1102, F.S., who has a 25 percent or more transferable interest, as defined in s. 620.1102, F.S., of a limited partnership, limited liability limited partnership, foreign limited partnership, or foreign limited liability limited partnership, as those terms are defined in s. 620.1102, F.S. (f) A member, who is a person that owns a membership interest in a limited liability company or a foreign limited liability company, as those terms are defined in s. 605.0102(36) and (26), F.S., respectively, that holds a 25 percent or more membership interest in such company. As used in this subsection, the term “membership interest” means a member’s right to receive distributions or other rights, such as voting rights or management rights, under the articles of organization; (g) A natural person who indirectly owns 25 percent or more of the shares or stock interest, transferable interest as defined in s. 620.1102, F.S., or membership interest as defined in paragraph (f), of any legal entities referred to in paragraphs (d)-(f).

³¹ Section 560.126(3), F.S.

³² Section 560.126(3)(a), F.S.; r. 69v-560.201(4), F.A.C.

³³ Section 560.126(3)(c), F.S.; r. 69v-560.201(6), F.A.C.

of control application must be accompanied by the payment of an initial licensing fee³⁴ and a fee per branch or authorized vendor,³⁵ up to a maximum of \$20,000.³⁶

The OFR has enforcement authority against MSBs for violating any state law relating to the detection and prevention of money laundering.³⁷

Virtual Currency Kiosk Businesses

OFR reports that there are currently 26 operators and a total of 2,785 kiosks in Florida.³⁸ Under current Florida law, an operator of a virtual currency kiosk that falls within the definition of a money transmitter is required to be licensed as a MSB. Florida does not have a separate regulatory regime for virtual currency businesses or virtual currency kiosk businesses.³⁹

The OFR reports that the Federal Bureau of Investigation (FBI) and the Federal Trade Commission (FTC) have received complaints from Florida of alleged victim losses totaling between \$16 and \$21 million from January 2020 to present.⁴⁰ Since April 2023, the OFR has opened approximately 40 investigations relating to virtual currency kiosk losses.⁴¹

III. Effect of Proposed Changes:

Section 1 amends s. 560.103, F.S., relating to definitions, by creating the following definitions:

- “Blockchain analytics” refers to the process of examining, monitoring, and gathering insights from the data and transaction patterns on a blockchain network. The primary aim of blockchain analytics is to understand and monitor the network’s health, track money flows, and identify potential security threats, including illicit activity, to extract actionable insights;
- “Owner-operator” means a registrant or a licensed money services business;
- “Virtual currency kiosk” means an electronic terminal that acts as a mechanical agent of the owner-operator, enabling the owner-operator to facilitate the exchange of virtual currency for fiat currency or other virtual currency for a customer;
- “Virtual currency kiosk business” or “registrant” means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state

³⁴ 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.

³⁵ Section 560.143(1)(c) and (d), F.S., provides that both the per branch fee and the authorized vendor fee are \$38.

³⁶ Section 560.143(1)(g), F.S.

³⁷ Section 560.123, F.S.

³⁸ The OFR, *OFR – The Sunrise Act Responses to 11.62(4)(5), F.S. for SB 662/HB 977* (on file with the Senate Committee on Banking and Insurance) (hereinafter cited as “The OFR Sunrise Act Responses”).

³⁹ California and Connecticut are the only two states that have adopted legislation to expressly regulate virtual currency kiosks. See Cal. Fin. Code s. 3901; Conn. Gen. Stat. 36a-595 to 36a-612; Conn. P.A. 23-82 (Reg. Sess.), *An Act Concerning Digital Assets*.

⁴⁰ Email from Jason Holloway, Director of Fintech Policy, OFR, to Jacqueline Moody, Florida Senate Committee on Banking and Insurance, Senior Attorney, *Fwd: Kiosk Data*, (Jan. 17, 2024) (on file with Senate Committee on Banking and Insurance) (noting that, from January 2020 to the present, the FBI and the FTC reports for losses from Bitcoin and Crypto ATMs total approximately \$16 and \$5.8 million, respectively; if an alleged victim reported losses to both the FBI and the FTC then the data could be duplicative so the range of loss reported from both agencies is between \$16 and \$21 million).

⁴¹ *Id.*

which operates a virtual currency kiosk and which is not a money transmitter as defined in this section.

- “Virtual currency kiosk transaction” means the process in which a customer uses a virtual currency kiosk to exchange virtual currency for fiat currency or other virtual currency. A transaction begins at the point at which the customer is able to initiate a transaction, after the customer is given the option to select the type of transaction or account, and does not include any of the screens that display the required terms and conditions, disclaimers, or attestations.
- “Wallet” means hardware or software that enables customers to store and use virtual currency.

The bill also modifies the definition of “control person” to apply to virtual currency kiosk businesses.

Section 2 amends s. 560.105, F.S., relating to supervisory powers. The bill authorizes the Office of Financial Regulation’s (OFR) to supervise virtual currency kiosk businesses, have access to their books and records, and enforce ch. 560, F.S. The bill also authorizes the Financial Services Commission (commission) to adopt rules to regulate virtual currency kiosk businesses.

Section 3 creates Part V of ch. 560, F.S., and names it the “Virtual Currency Kiosk Businesses.” Establishes Part V of ch. 560, F.S., consists of ss. 560.501 – 560.506, F.S.

Section 4 creates s. 560.01, F.S., relating to legislative intent. As it relates to virtual currency kiosk businesses regulation, the bill specifically states:

The Legislature intends to reduce unlawful and fraudulent activities by requiring virtual currency kiosk businesses to register with the state and by requiring such businesses and money transmitter licensees to regularly and consistently disclose to all customers of virtual currency kiosks certain specified risks relating to virtual currency kiosk transactions.

Section 5 creates s. 560.02, F.S., relating to registration required; exemptions; penalties. The bill provides an effective date of March 1, 2025. The bill prohibits a virtual currency kiosk business from operating in Florida without first registering, or renewing its registration. The OFR is required to provide written notification, in person or by email, to each applicant that the agency has granted or denied the application for registration.

The bill exempts a money transmitter licensed as a money service business (MSB) from registering as a virtual currency kiosk business but makes such money transmitter subject to the disclosure (**Section 7**), conduct (**Section 8**), and enhanced due diligence (**Section 9**) requirements of the bill.

If an entity, in the course of its business, acts as an intermediary with the ability to unilaterally execute or indefinitely prevent a virtual currency kiosk transaction, or otherwise meets the definition of a money transmitter, the entity must be licensed as a MSB.

Unless licensed as a money services business, a money transmitter that operates or solicits business as a virtual currency kiosk business without first being issued a certificate of

registration by the OFR or without maintaining a certificate of registration commits a felony of the third degree.⁴² A person who registers or attempts to register as a virtual currency kiosk business by means of fraud, misrepresentation, or concealment commits a felony of the third degree.⁴³

A virtual currency kiosk business registration issued under this part is not transferable or assignable.

Section 6 creates s. 560.503, F.S., relating to registration applications. The bill provides virtual currency kiosk businesses' registration applicants must submit to the OFR a completed registration application form, as prescribed by rule of the commission, and which must include:

- The legal name, including any fictitious or trade names used by the applicant in the conduct of its business, and the physical and mailing address of the applicant;
- The date of the applicant's formation and the state in which the applicant was formed, if applicable;
- The name, social security number, alien identification or taxpayer identification number, business and residence address, and employment history for the past five years for each person who meets the definition of a 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 name of the registered agent in this state for service of process;
- The physical address of the location of each virtual currency kiosk through which the applicant proposes to conduct or is conducting business in this state;
- An attestation that the application has developed documented policies, processes, and procedures regarding the use to blockchain analytics to prevent transfers to wallet addresses linked to known criminal activity and that the applicant will maintain and comply with such policies, processes, and procedures;
- Any other information as required ch. 560, F.S., or commission rule; and
- Any information needed to resolve any deficiencies found in the application, which must be submitted within a time period prescribed by rule.

A virtual currency kiosk business operating in Florida on or before January 1, 2025, must submit a registration application to the OFR within 30 days.

A registrant shall report, on a form prescribed by rule of the commission, any change in the information contained in an initial application form, or an amendment thereto, within 30 days after the change is effective. A registrant must renew its registration annually on or before December 31 each year, and submit a renewal application that provides:

⁴² A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S. Under s. 775.084, violent career criminals, habitual felony offenders, habitual violent felony offenders or three-time felony offenders, the court may sentence such third degree felony offenders to five to 10 years, not exceeding 15 years, imprisonment.

⁴³ *Id.*

- The information required by a virtual currency kiosk business for an initial registration application, if there are changes in the application information, or an affidavit signed by the registrant that the information remains the same as the prior year.
- Upon request by OFR, evidence that the registrant has been operating in compliance with the disclosure (**Section 7**) and conduct (**Section 8**) requirements of the bill. Such evidence may be prescribed by rule by the commission and may include, but is not limited to:
 - Current disclosures presented to customers during the transaction process; and
 - Current use of blockchain analytics to prevent transfers to wallet addresses linked to known criminal activity.

A renewal application becomes effective upon the date the OFR approves the application for registration, which must be determined within a time period prescribed by rule. A virtual currency kiosk business's renewal application that fails to provide any requested evidence of compliance must be denied by the OFR.

The registration of a virtual currency kiosk business that does not renew its registration by December 31 each year must be made inactive for 60 days. A virtual currency kiosk business may not conduct business while its registration is inactive.

Within 60 days after the registration becoming inactive, a virtual currency kiosk business must renew its registration by submitting all of the information required in the paragraph above, and the registration will become effective upon the date of any certificate of registration that is issued by the OFR. Failure to submit an application to renew the virtual currency kiosk business's registration within 60 days after the registration becoming inactive will result in the registration becoming null and void. If the registration is null and void, a new application to register the virtual currency kiosk business must be submitted to the OFR and a certification of registration must be issued by the OFR before the virtual currency kiosk business may resume conducting business in Florida.

If a control person of a prospective registrant has engaged in any unlawful business practices, or been convicted or found guilty, pled guilty or nolo contendere to, regardless of adjudication, of a crime involving dishonest dealing, fraud, acts of moral turpitude, or other acts that reflect an inability to engage lawfully in the business of a registered virtual currency kiosk business, the OFR may not accept the prospective registrant's initial or renewal registration application.

Any false statement made by a virtual currency kiosk business with respect to the name of the business or its business address or location in any application for registration renders the registration void. A void registration may not be construed as creating a defense to any prosecution for violation of this chapter.

The commission may adopt rules to administer the provisions of **Section 6** of the bill.

Section 7 creates s. 560.504, F.S., relating to disclosures. The bill sets out disclosure requirements with which virtual currency kiosk businesses must comply, including all of the following:

- Be full and complete;
- Contain no material misrepresentations;

- Be readily understandable and in the language in which the virtual currency kiosk transaction is conducted; and
- Be displayed in at least 14-point type.

Before authorizing a customer to initiate a virtual currency kiosk transaction, the owner-operator must ensure that the virtual currency kiosk displays the disclosures in this section on two separate screens:

The first disclosure must be in substantially the following form:

WARNING: CONSUMER FRAUD OFTEN STARTS WITH CONTACT FROM A STRANGER WHO IS INITIATING A DISHONEST SCHEME.

I UNDERSTAND THAT DISHONEST SCHEMES MAY APPEAR IN MANY FORMS, INCLUDING, BUT NOT LIMITED TO:

1. Claims of a frozen bank account or credit card.
2. Fraudulent bank transactions.
3. Claims of identity theft or job offerings in exchange for payments.
4. Requests for payments to government agencies or companies.
5. Requests for disaster relief donations or loans.
6. Offers to purchase tickets for lotteries, sweepstakes, or drawings for vehicles.
7. Prompts to click on desktop pop-ups, such as virus warnings or communication from alleged familiar merchants.
8. Communication from someone impersonating a representative of your bank or a law enforcement officer.
9. Requests from persons who are impersonating relatives or friends in need or promoting investment or romance scams.

PROTECT YOURSELF FROM FRAUD. NEVER SEND MONEY TO SOMEONE YOU DON'T KNOW.

The second disclosure must be in substantially the following form:

WARNING: FUNDS LOST DUE TO USER ERROR OR FRAUD MAY NOT BE RECOVERABLE. TRANSACTIONS CONDUCTED ON THIS VIRTUAL CURRENCY KIOSK ARE IRREVERSIBLE. I UNDERSTAND THESE RISKS AND WISH TO CONTINUE WITH CONDUCTING MY VIRTUAL CURRENCY KIOSK TRANSACTION.

PROTECT YOURSELF FROM FRAUD. NEVER SEND MONEY TO SOMEONE YOU DON'T KNOW.

In addition to these two disclosure requirements, the virtual currency kiosk business (not a money transmitter licensed as a MSB) must ensure that the virtual currency kiosk displays on a pop-up window the following question to the customer:

“ARE YOU USING THIS KIOSK TO SEND VIRTUAL CURRENCY TO A WALLET OWNED BY SOMEONE ELSE?”

The virtual currency kiosk business must require the customer to respond to this question in the negative before the customer can proceed with the virtual currency kiosk transaction. The virtual currency kiosk business must ensure that the virtual currency kiosk terminates a customer’s virtual currency kiosk transaction if the customer has provided a “yes” response to this question.

After these required disclosures or affirmation, the owner-operator must ensure that the virtual currency kiosk provides the customer with a toll-free number to contact regarding the risks of engaging in virtual currency transactions and displays, on a screen by itself, the following attestation in substantially the following form:

I ATTEST THAT I HAVE BEEN GIVEN A TOLL-FREE NUMBER AND THAT I HAVE HAD AN OPPORTUNITY TO CALL THE NUMBER TO SPEAK WITH SOMEONE REGARDING THE RISKS OF ENGAGING IN VIRTUAL CURRENCY KIOSK TRANSACTIONS. I FURTHER ATTEST THAT I UNDERSTAND THAT I MAY BE SOLELY RESPONSIBLE FOR LOSS OF FUNDS DUE TO USER ERROR OR FRAUD.

If a customer makes this attestation, the owner-operator may allow the customer to proceed with the virtual currency kiosk transaction. If the customer does not make the attestation, the owner-operator must ensure that the virtual currency kiosk terminates the customer’s virtual currency kiosk transaction.

The bill authorizes the commission to adopt rules to administer this section and to ensure that virtual currency kiosk disclosures are responsive to consumer fraud and emerging technology.

Section 8 creates s. 560.505, F.S., relating to conduct of business. The bill requires an owner-operator to transact business only under the legal name under which it is registered. The use of a fictitious name is allowed if the fictitious name has been registered with the Department of State and disclosed to the OFR as part the owner-operator’s registration or application (including any supplemental information) before its use.

An owner operator must maintain clearly documented policies, processes, and procedures with regard to the manner in which the blockchain analytics activity integrates into their compliance controls, and must use blockchain analytics to prevent transfers to wallet addresses linked to known criminal activity.

Section 9 creates s. 560.506, F.S., relating to penalties. The bill provides an owner-operator that violates the disclosure requirements under **Section 7** of the bill commits a felony of the third

degree as punishable under ss. 775.082, 775.083, and 775.084, F.S.⁴⁴ The bill also provides each of the following violations constitutes a second degree misdemeanor:⁴⁵

- Operating under any name other than that designated in the registration, unless written notification is given to the OFR;
- Assigning or attempting to assign a virtual currency kiosk business registration issued; and
- Operating a virtual currency kiosk without the use of the required blockchain analytics.

In addition to the criminal penalties provided, a court may invalidate the registration of any registrant under this part who has been found guilty of such prohibited conduct.

Section 10 provides that except as otherwise provided, the bill is effective January 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Article VII, section 19, of the Florida Constitution requires that a new state tax or fee, as well as an increased state tax or fee, must be approved by two-thirds of the membership of each house of the Legislature and must be contained in a separate bill that contains no other subject. Article VII, section 19(d)(1), of the Florida Constitution defines “fee” to

⁴⁴ A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Under s. 775.084, violent career criminals, habitual felony offenders, habitual violent felony offenders or three-time felony offenders, the court may sentence such third degree felony offenders to five to 10 years, not exceeding 15 years, imprisonment.

⁴⁵ A second degree misdemeanor is punishable by up to 60 days imprisonment and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

mean “any charge or payment required by law, including any fee for services, fee or cost for licenses, and charge for service.

The bill requires virtual currency kiosk businesses to be licensed as a money services business under Part II of ch. 560, F.S. An initial registration application, and subsequent renewal application, must be filed for those seeking to register as a virtual currency kiosk business. The underlying bill does not expressly state the cost for registration or renewing; however, it would appear a fee for registration is implied.

SB 1182 is the companion fee bill related to SB 662. SB 1182 establishes a nonrefundable fee for initial registration in accordance with s. 560.143(1)(b), F.S., but does not address registration renewal application costs. The fee for licensure under s. 560.143(1)(b), F.S., is \$188. Applicants for registration as virtual currency kiosk businesses could be subject to the fees proscribed under ch. 560, F.S.; therefore, the constitutional requirements related to new or increased taxes or fees could apply should SB 1182 be implemented.

B. Private Sector Impact:

The Office of Financial Regulation (OFR) reports there would be de minimis costs to businesses and consumers to implement the provisions of the bill. The bill requires virtual currency kiosk businesses to use blockchain analytics software to prohibit transactions to addresses that are linked to criminal activity, but there are free versions of the required software that can be utilized.⁴⁶ In addition, should an application fee be required for registration as a virtual currently kiosk business, applicants would be required to pay a nonrefundable registration and renewal fees.

C. Government Sector Impact:

The bill has a minimal impact to state revenues and expenditures. The OFR reports the fiscal cost for rulemaking, and the fiscal impact to update the OFR’s technology (e.g. the OFR’s Regulatory Enforcement and Licensing (REAL) system and website), would be minimal and can be absorbed within current resources.⁴⁷

The bill creates a new third degree felony for violation of s. 560.04, F.S., which is punishable by up to five years in prison. The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the prison bed impact, if any, of legislation, has met and determined that the bill has a positive indeterminate prison bed impact (an unquantifiable increase in prison beds) on the Department of Corrections.⁴⁸ The CJIC provides the following additional information regarding its estimate: There are currently 26 known owner-operators for virtual currency kiosks in Florida.⁴⁹ There is potentially a

⁴⁶ The OFR Sunrise Act Responses.

⁴⁷ 2024 OFR Agency Analysis for SB 662 at p. 8.

⁴⁸ Office of Economic and Demographic Research, *Criminal Justice Impact Conference Preliminary Estimate Narrative Analysis for SB 662* (Feb. 5, 2024).

⁴⁹ *Id.*

larger unknown quantity. In Fiscal Year 2022-2023, the incarceration rate for a Level 1, third degree felony was 9.5 percent.⁵⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

The underlying bill does not address costs associated with a virtual currency kiosk business registration application or renewal application. Section 560.143, F.S., outlines, in part, application and renewal fees associated with Part II and Part III of ch. 560, F.S., Money Services Businesses. SB 1182, the companion fee bill related to SB 662, requires applicants for a virtual currency kiosk business to submit a nonrefundable application fee in accordance with s. 560.143(1)(b), F.S.

If it is the intent of the bill to require a fee associated with registration and renewal, s. 560.143, F.S., relating to fees, may need to be amended to include registration and renewal fees related to the new Part V, Virtual Currency Kiosk Businesses, or contemplated in the companion fee bill.

VIII. Statutes Affected:

This bill substantially amends sections 560.103 and 560.105 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 560.501, 560.502, 560.503, 560.504, 560.505, and 560.506.

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 January 22, 2024:

The committee substitute:

- Provides the Office of Financial Regulation (OFR) supervisory powers and rulemaking authority over virtual currency kiosk businesses;
- Provides an effective date of March 1, 2025 for registration requirements, and amends the method with which the OFR must notify an applicant whether its registration has been approved or denied;
- Deletes the provision that requires virtual currency kiosk businesses who are currently operating in Florida to register within 30 days of the bill's effective date;
- Amends the registration application requirements to:
 - Require an attestation with respect to blockchain analytics;
 - Remove the application fee;

⁵⁰ *Id.*

- Modify the timeframe to provide supplemental information from 30 days to within a time prescribed by rule;
- Require virtual currency kiosk businesses operating in Florida on or before January 1, 2025 to submit a registration application within 30 days; and
- Requires the OFR to determine whether an application for a renewal registration will be approved or denied within a time period prescribed by rule.
- Expands the grounds for which the OFR must deny an application to include when a control person has pled guilty or nolo contendere to specified crimes;
- Clarifies that the disclosure and attestation requirements, conduct of business, and penalties apply to owner-operators, which includes money services businesses rather than only virtual currency kiosk businesses, except for limited provisions with respect to an attestation requirement;
- Removes the requirement to attest whether the customer is younger than 60 years of age;
- Requires an owner-operator to develop and use policies, processes, and procedures to prevent transfers to wallet addresses that are linked to criminal activity, and makes the failure to do so a second degree misdemeanor; and
- Amends and creates a new definition; makes technical changes.

B. Amendments:

None.