

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1351 Money Services Businesses

SPONSOR(S): Commerce Committee, Insurance & Banking Subcommittee, Aloupis and others

TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|------------------|-------------|--|
| 1) Insurance & Banking Subcommittee | 16 Y, 1 N, As CS | Hinshelwood | Luczynski |
| 2) State Administration & Technology Appropriations Subcommittee | 12 Y, 0 N | Lee | Topp |
| 3) Commerce Committee | 20 Y, 0 N, As CS | Hinshelwood | Hamon |

SUMMARY ANALYSIS

The Office of Financial Regulation's (OFR) Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs. Currently, virtual currency is not expressly within ch. 560, F.S., though in the last 6 years OFR has received approximately 64 petitions for declaratory statement relating to whether and how virtual currency is regulated under that chapter.

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. In some environments, it operates like "fiat" currency (i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance), but it does not have legal tender status in any jurisdiction. Bitcoin is one example of a virtual currency.

In a recent case, the Third District Court of Appeal's holdings related to Bitcoin illustrate the need to expressly provide whether and how virtual currency falls within ch. 560, F.S., as well as the need to clarify certain definitions in that chapter. In particular, the court held that the definition of "money transmitter" requires licensure for third-party intermediaries as well as for individuals in a two-party transaction.

Within ch. 560, F.S., the bill adds a definition for "virtual currency" and amends the definitions of "electronic instrument", "monetary value", "money transmitter", "payment instrument", and "stored value". The amendments to these definitions provide clarity as to their meaning; make virtual currency expressly subject to money transmitter regulations but not regulations for other types of licenses under ch. 560, F.S.; and clarify that a money transmitter license is only required for a person acting as an intermediary between two parties, meaning that neither person in a two-party transaction is required to be licensed. As a result of the addition of virtual currency to ch. 560, F.S., the bill makes conforming changes to the prohibition on unlicensed activity, adds rulemaking authority for recordkeeping requirements related to virtual currency, and amends the permissible investments statute. Without a change to the permissible investments statute, the effect would be to require a money transmitter that transmits virtual currency to not only have control over the virtual currency being transmitted but also hold the equivalent value in cash or other assets on the list of permissible investments. Instead, the bill would only require that, during the period of transmission, the money transmitter must hold virtual currency of the same type and amount owed or obligated to the other location or person on the receiving end of the transmission. Lastly, the bill makes conforming changes under the Financial Technology Sandbox in s. 559.952, F.S., as well as other conforming changes within ch. 560, F.S., to reflect the addition of virtual currency to money transmitter regulations.

The bill has no fiscal impact on local governments and an indeterminate fiscal impact on the private sector and the state. See *Fiscal Analysis & Economic Impact Statement*.

The bill provides an effective date of January 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Money Transmitters and Payment Instrument Sellers

State Regulation

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.¹ The Division of Consumer Finance within OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs, and both are regulated under part II of ch. 560, F.S.

A money transmitter receives currency,² monetary value,³ or payment instruments⁴ 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.⁵ A payment instrument seller sells, issues, provides, or delivers a payment instrument.⁶ State and federally chartered depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.⁷ Currently, virtual currency is not expressly within ch. 560, F.S., though in the last 6 years OFR has received approximately 64 petitions for declaratory statement relating to whether and how virtual currency is regulated under that chapter.

An applicant for an MSB license under ch. 560, F.S., must file an application with OFR and pay an application fee of \$375.⁸ The license must be renewed every 2 years by paying a renewal fee of \$750.⁹ Money transmitters and payment instrument sellers may operate through authorized vendors by providing OFR with specified information about the authorized vendor and by paying a fee of \$38 per authorized vendor location at the time of application and renewal.¹⁰ A money transmitter or payment instrument seller may also engage in the activities authorized for check cashers¹¹ and foreign currency exchangers¹² without paying additional licensing fees.¹³

¹ S. 20.121(3)(a)2., F.S.

² The term “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. S. 560.103(11), F.S.

³ The term “monetary value” means a medium of exchange, whether or not redeemable in currency. S. 560.103(21), F.S.

⁴ The term “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. S. 560.103(29), F.S.

⁵ S. 560.103(23), F.S.

⁶ S. 560.103(30) and (34), F.S.; definition of “payment instrument”, *supra* note 4.

⁷ S. 560.104, F.S.

⁸ Ss. 560.141 and 560.143, F.S.

⁹ *Id.*; s. 560.142, F.S.

¹⁰ *Id.*; ss. 560.203, 560.205, and 560.208, F.S.

¹¹ The term “check casher” means a person who sells currency in exchange for payment instruments received, except travelers checks. S. 560.103(6), F.S.

¹² The term “foreign currency exchanger” means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. S. 560.103(17), F.S.

¹³ S. 560.204(2), F.S.

A money transmitter or payment instrument seller must at all times:

- Have a net worth of at least \$100,000 and an additional net worth of \$10,000 per location in this state, up to a maximum of \$2 million.¹⁴
- Have a corporate surety bond in an amount between \$50,000 and \$2 million depending on the financial condition, number of locations, and anticipated volume of the licensee.¹⁵ In lieu of a corporate surety bond, the licensee may deposit collateral such as cash or interest-bearing stocks and bonds with a federally insured financial institution.¹⁶
- Possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States.¹⁷ OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit.¹⁸

While MSBs are generally subject to federal anti-money laundering laws,¹⁹ Florida law contains many of the same anti-money laundering reporting requirements and recordkeeping requirements with the added benefit of state enforcement. An MSB applicant must have an anti-money laundering program that meets the requirements of federal law.²⁰

Pursuant to the Florida Control of Money Laundering in Money Services Business Act, an MSB must maintain certain records of each transaction involving currency or payment instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.²¹ An MSB must keep records of each transaction occurring in this state that it knows to involve currency or other payment instruments having a greater value than \$10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.²² OFR may take administrative action against an MSB for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.²³ OFR may also take administrative action against an MSB for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.²⁴

A money transmitter or payment instrument seller must maintain specified records for at least 5 years, including the following:²⁵

- A daily record of payment instruments sold and money transmitted.
- A general ledger containing all asset, liability, capital, income, and expense accounts, which must be posted at least monthly.
- Daily settlement records received from authorized vendors.
- Monthly financial institution statements and reconciliation records.
- Records of outstanding payment instruments and money transmitted.
- Records of each payment instrument paid and money transmission delivered.
- A list of the names and addresses of the licensee's authorized vendors.
- Records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates.
- Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

¹⁴ S. 560.209, F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ S. 560.210, F.S.

¹⁸ *Id.*

¹⁹ 31 C.F.R. pt. 1022.

²⁰ S. 560.1401, F.S.

²¹ S. 560.123, F.S.

²² *Id.*

²³ S. 560.114, F.S.

²⁴ *Id.*

²⁵ Ss. 560.1105 and 560.211, F.S.

Through an online directory of buyers and sellers of bitcoin, a detective with the Miami Beach Police Department arranged to meet a person with the username Michelhack, which turned out to be the defendant Michell Espinoza, in order to purchase bitcoin.²⁶ The detective arranged multiple transactions with the defendant as follows:

- During the course of the first transaction, the detective made clear his desire to remain anonymous and implied that he was involved in illicit activity.²⁷ The detective paid Mr. Espinoza \$500 in cash and received a portion of a bitcoin valued at \$416.12, thus earning Mr. Espinoza a profit of \$83.67.²⁸
- The detective arranged a second transaction with Mr. Espinoza during which he told Mr. Espinoza that he needed the bitcoins to pay for stolen credit card numbers, since he was in the business of buying and selling stolen credit card numbers from Russian sellers.²⁹ The detective paid Mr. Espinoza \$1,000 in cash and received one bitcoin, thus earning Mr. Espinoza a profit of approximately \$167.56.³⁰
- The detective then arranged a third transaction with Mr. Espinoza.³¹ The detective inquired how fast the transaction could be completed because his “Russian buddies” would not send him his “[stuff] until they get the coin.”³² The detective deposited \$500 into Mr. Espinoza’s bank account, and Mr. Espinoza transferred 0.54347826 bitcoins to the detective.³³
- In the fourth and final transaction, the detective negotiated the transfer of bitcoins worth \$30,000 and represented to Mr. Espinoza that it was to pay for a new batch of stolen credit card numbers acquired from a recent data breach.³⁴ Although Mr. Espinoza questioned the authenticity of the \$30,000 roll of money that the detective gave him, he otherwise remained ready and willing to consummate the entire transaction.³⁵ Mr. Espinoza was then taken into custody.³⁶

Mr. Espinoza was charged with: (1) one count of unlawfully engaging in the business of a money transmitter and acting as a payment instrument seller as a result of not being licensed to conduct such activity (Count one); and (2) two counts of money laundering (Counts two and three).³⁷ Mr. Espinoza filed a motion to dismiss as to all counts, which the trial court granted for the following reasons:

- As to Count one, the trial court found that neither Bitcoin nor Mr. Espinoza’s conduct fell within the ambit of ch. 560, F.S., requiring registration as a money services business.³⁸ Regarding Mr. Espinoza’s conduct, the trial court reasoned that a “money transmitter” would necessarily operate like a middleman in a financial transaction, much like how Western Union accepts money from person A, and at the direction of person A, transmits it to person or entity B.³⁹ Mr. Espinoza was not acting as a middleman; rather the transactions with the detective were two-party transactions in which Mr. Espinoza sold his own bitcoin to the detective and received U.S. Dollars in return.
- As to Counts two and three, the trial court found that the conduct at issue qualifies as a “financial transaction” under the money laundering statutes but that Mr. Espinoza lacked the requisite intent to be guilty of money laundering.⁴⁰

²⁶ *State v. Espinoza*, 264 So. 3d 1055, 1059-60 (Fla. 3d DCA 2019).

²⁷ *Id.* at 1060.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 1060-61.

³⁵ *Id.* at 1061.

³⁶ *Id.*

³⁷ *Id.* at 1057 and 1061.

³⁸ *Id.* at 1057 and 1061.

³⁹ *Id.* at 1065.

⁴⁰ *Id.* at 1057 and 1061.

The state then appealed the trial court's dismissal of the information.⁴¹ On appeal, the Third District Court of Appeal (court) held that:

- The trial court erred in dismissing Count one because Mr. Espinoza acted as both a money transmitter and a payment instrument seller and, as such, was required to be licensed as a money services business.⁴²
- The trial court erred in dismissing Counts two and three on the basis that Espinoza lacked the requisite intent to be guilty of money laundering.⁴³

Most importantly, in the reasoning as to count one, the court determined that Bitcoin is both "monetary value" and a "payment instrument" under ch. 560, F.S.⁴⁴ This interpretation illustrates the need to expressly provide whether and how virtual currency falls within ch. 560, F.S. The court's interpretation also illustrates the need to clarify the definition of "payment instrument". "Monetary value" is akin to "currency" within ch. 560, F.S. Conceptually, a payment instrument is an instrument *denominated in* currency (or monetary value), but currency and monetary value should not in and of themselves be a payment instrument.

Another important aspect of the Espinoza case is that in determining that Mr. Espinoza acted as a money transmitter, the court addressed whether the definition of "money transmitter" covers only third-party intermediaries, in which case Mr. Espinoza selling his own bitcoins to the detective would not have run afoul of the prohibition on unlicensed money transmission.⁴⁵ On this point, the court held that "[t]he statute's plain language clearly contains no third party transmission requirement in order for an individual's conduct to fall under the 'money transmitter' definition. As such, we decline to add any third party or 'middleman' requirement to the money transmitter definition found in section 560.103(23)."⁴⁶ The court's holding illustrates the need to clarify the definition of "money transmitter" such that a money transmitter license is only required for a person acting an intermediary between two parties, but neither person in a two-party transaction is required to be licensed.⁴⁷

Virtual Currency

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.⁴⁸ In some environments, it operates like "real" currency⁴⁹ (i.e., the coin and paper money of the United States or of any other country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance), but it does not have legal tender status in any jurisdiction.⁵⁰ Virtual currency that has an equivalent value in real currency, or that acts as a substitute for real currency, is referred to as "convertible" virtual currency.⁵¹ Bitcoin is one example of a convertible virtual currency, as it can be digitally traded between

⁴¹ *Id.* at 1061.

⁴² *Id.* at 1057 and 1061-62.

⁴³ *Id.*

⁴⁴ *Id.* at 1064.

⁴⁵ *Id.* at 1065.

⁴⁶ *Id.* (citations omitted).

⁴⁷ This is consistent with the historical interpretation of the money transmitter definition by OFR and industry, and it avoids the untenable result of requiring persons in a two-party transaction to be licensed. Additionally, this is consistent with the substance of the money transmitter regulations.

⁴⁸ IRS, *Virtual Currencies: What is virtual currency?*, <https://www.irs.gov/businesses/small-businesses-self-employed/virtual-currencies> (last visited Mar. 14, 2021).

⁴⁹ Also often referred to as "fiat" currency.

⁵⁰ IRS, *supra* note 48.

⁵¹ *Id.*

users and can be purchased for, or exchanged into, U.S. dollars, Euros, and other real or virtual currencies.⁵²

Virtual currencies generally consist of computers operating the network software (nodes) that enable, validate, and store transaction records on a distributed digital ledger (a blockchain).⁵³ To transfer an asset on a blockchain, a person enters an alphanumeric code known only to the transferor (a private key) into a cryptographic hash function enabled by the network software, which allows the transferor to request that the network software validate a new entry on the ledger showing that control of an asset has been assigned to the recipient.⁵⁴ Once the network software has validated this transfer, the ledger is altered and the recipient may transfer the asset to another recipient using their own private key.⁵⁵ Ledger entries are cryptographically secured, and accounts are identified on a blockchain by alphanumeric “public keys”—not by the owner’s name.⁵⁶

Some persons use the services of a third-party to acquire or transact in virtual currency.⁵⁷ For example, certain third-parties provide custody services for their customers’ virtual currency in so called “hosted wallets.”⁵⁸ In such arrangements, the third-party wallet host may execute transactions on a blockchain on behalf of a customer using a private key controlled by the third-party wallet host.⁵⁹ Other persons do not use the services of such a third-party, in which case they use the private key controlling their virtual currency to transact directly on a blockchain.⁶⁰ Such persons may store the private key in a software program or written record, often referred to as an “unhosted wallet.”⁶¹

Virtual currency networks present opportunities as well as risks.⁶² The G7 Finance Ministers and Central Bank Governors recently noted that “[t]he widespread adoption of digital payments . . . has the potential to address frictions in existing payment systems by improving access to financial services, reducing inefficiencies, and lowering costs.”⁶³ At the same time, however, virtual currencies are used in illicit financial activity that presents substantial national security concerns.⁶⁴

Determining the true amount of illicit activity that is conducted in virtual currency is challenging.⁶⁵ One industry estimate is that approximately 1 percent of overall market transaction volume, or \$10 billion, in virtual currency activity conducted globally in 2019 was illicit.⁶⁶ This figure, however, may underestimate such illicit activity.⁶⁷ Despite significant underreporting due to compliance challenges in parts of the virtual currency sector, in 2019, FinCEN received approximately \$119 billion in suspicious activity reporting associated with virtual currency activity taking place wholly or in substantial part in the

⁵² *Id.*

⁵³ FinCEN, *Notice of Proposed Rulemaking: Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets*, <https://www.govinfo.gov/content/pkg/FR-2020-12-23/pdf/2020-28437.pdf> (last visited Mar. 14, 2021).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* (citing the G7 Finance Ministers and Central Bank Governors’ Statement on Digital Payments on Oct. 13, 2020).

⁶⁴ FinCEN Notice of Proposed Rulemaking, *supra* note 53.

⁶⁵ *Id.*

⁶⁶ *Id.* (citing Chainalysis, *2020 Crypto Crime Report* (Jan. 2020), <https://go.chainalysis.com/2020-CryptoCrime-Report.html>).

⁶⁷ FinCEN Notice of Proposed Rulemaking, *supra* note 53.

United States.⁶⁸ By industry measures, this would equate to approximately 11.9 percent of total virtual currency market activity being relevant to a possible violation of law or regulation.⁶⁹

Virtual Currency in Florida Statutes

Currently, Florida law includes virtual currency as a type of monetary instrument under the Florida Money Laundering Act.⁷⁰ Thus, Florida law criminalizes the use of virtual currency for illicit purposes in the same manner that the law criminalizes use of fiat currency for illicit purposes. Under that act, “virtual currency” means a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country.”⁷¹ This definition was added in 2017⁷² and is the only instance of “virtual currency” in Florida Statutes.

Federal Regulation of MSBs

The Financial Crimes Enforcement Network of the United States Department of Treasury (FinCEN) serves as the nation’s financial intelligence unit and is charged with safeguarding the United States financial system from the abuses of money laundering, terrorist financing, and other financial crimes.⁷³ The basic concept underlying FinCEN’s core activities is “follow the money” because criminals leave financial trails as they try to launder the proceeds of crimes or attempt to spend their ill-gotten profits.⁷⁴ To that end, FinCEN administers the Bank Secrecy Act (BSA).⁷⁵ BSA regulations require banks and other financial institutions, including MSBs, to take a number of precautions against financial crime.⁷⁶ BSA regulations require financial institutions to establish an anti-money laundering program (such as verifying customer identity), maintain certain records (such as transaction related data), and file reports (such as suspicious activity reports and currency transaction reports) that have been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations, as well as in certain intelligence and counter-terrorism matters.⁷⁷

Generally, an MSB is required to register with FinCEN, regardless of whether the MSB is licensed with the state, if it conducts more than \$1,000 in business with one person in one or more transactions on the same day, in one or more of the following services: money orders, traveler’s checks, check cashing, currency dealing, or exchange.⁷⁸ However, an MSB must register with FinCEN if it provides money transfer services in any amount.⁷⁹

BSA regulations define “money transmission services” as “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.”⁸⁰ Depending on the facts and circumstances surrounding a transaction, a person transmitting virtual currency may fall under FinCEN’s BSA regulations.⁸¹

⁶⁸ *Id.* FinCEN notes that a significant majority of this \$119 billion related to suspicious activity that took place before 2019 based on subsequent lookbacks. *Id.* FinCEN anticipates that in the future it will receive additional suspicious activity reporting for activity that took place in 2019 but that has not yet been recognized as suspicious. *Id.*

⁶⁹ *Id.* Suspicious activity is not a clear indication of a crime but is activity that is potentially illicit. *Id.*

⁷⁰ S. 896.101, F.S.

⁷¹ *Id.*

⁷² Ch. 2017-155, Laws of Fla.

⁷³ FinCEN, *What We Do*, <https://www.fincen.gov/what-we-do> (last visited Mar. 14, 2021).

⁷⁴ *Id.*

⁷⁵ Many of the federal provisions of the BSA have been codified in ch. 560, F.S., which has provided OFR with additional compliance and enforcement tools.

⁷⁶ FinCEN, *supra* note 73.

⁷⁷ *Id.*

⁷⁸ 31 C.F.R. §§ 1010.100 and 1022.380.

⁷⁹ *Id.*

⁸⁰ 31 C.F.R. § 1010.100 (emphasis added).

⁸¹ FinCEN Guidance, *Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies*, FIN-2019-G001 (May 9, 2019), <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf> (last visited Mar. 14, 2021); FinCEN Notice of Proposed

Rulemaking, *supra* note 53.

Federal law criminalizes money transmission if the money transmitting business:⁸²

- Is operated without a license in a state where such unlicensed activity is subject to criminal sanctions;
- Fails to register with FinCEN; or
- Otherwise involves the transportation or transmission of funds that are known to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.

Effect of the Bill

Definitions (Section 2)

The bill makes the following changes to definitions in ch. 560, F.S.:

- Amends the definition of “electronic instrument” to replace the undefined term “money” with the defined term “currency”. Leaving an undefined term such as “money” in statute may lead to confusion as to whether the term includes virtual currency. The definition of “electronic instrument” is also reworded for clarity.
- Excludes virtual currency from the definition of “monetary value” in order to narrow the regulation of virtual currency to only regulations for money transmitters but not other types of licenses under ch. 560, F.S.
- Amends the definition of “money transmitter” to expressly include virtual currency and to clarify that a money transmitter license is only required for a person acting an intermediary between two parties if the intermediary has the ability to unilaterally execute or indefinitely prevent a transaction; neither person in a two-party transaction is required to be licensed.
- Amends the definition of “payment instrument” to replace the undefined term “money” with the defined term “currency”. Leaving an undefined term such as “money” in statute may lead to confusion as to whether the term includes virtual currency. The definition of “payment instrument” is also amended to clarify that the term means an instrument that is *used for* the transmission, exchange, or payment of currency or monetary value, but a payment instrument is not the currency or monetary value itself.
- Amends the definition of “stored value” to replace the undefined term “funds” with the defined term “currency”. Leaving an undefined term such as “funds” in statute may lead to confusion as to whether the term includes virtual currency.
- Adds the following definition of “virtual currency” – Virtual currency means 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 used:
 - Solely within online gaming platforms with no market or application outside such gaming platforms; or
 - Exclusively as part of a consumer affinity or rewards program 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, monetary value, or virtual currency.

Prohibition on Unlicensed Activity (Section 5)

The bill amends the prohibition on unlicensed money transmitter activity and payment instrument selling in order to better align the wording with the definition of payment instrument seller. One element of the prohibition is that a person is doing such activity *for compensation*, and “compensation” includes profit or loss on the exchange of currency. The bill adds that “compensation” includes profit or loss on the exchange of monetary value or virtual currency.

Permissible Investments (Section 8)

The bill amends the permissible investments statute in relation to virtual currency. Under current law, a money transmitter must possess permissible investments, such as cash and certificates of deposit, with

⁸² 31 U.S.C. § 1960.

an aggregate market value of at least the aggregate face amount of all outstanding money transmissions. Without an amendment to this statute, the effect would be to require a money transmitter that transmits virtual currency to not only have control over the virtual currency being transmitted but also hold the equivalent value in cash or other assets on the list of permissible investments. Instead, the bill would only require that, during the period of transmission, the money transmitter must hold virtual currency of the same type and amount owed or obligated to the other location or person on the receiving end of the transmission.

Required Records (Section 9)

The bill adds rulemaking authority for recordkeeping requirements related to virtual currency.

Conforming Changes (Sections 1, 3, 4, 6, 7, 9, 10)

The bill amends the Financial Technology Sandbox in s. 559.952, F.S., in order to conform to changes made to s. 560.204, F.S. The bill also conforms portions of ss. 560.123, 560.125, 560.208, 560.2085, 560.211, 560.212, F.S., to reflect the addition of virtual currency to money transmitter regulations.

Effective Date (Section 11)

The bill provides an effective date of January 1, 2022.

B. SECTION DIRECTORY:

Section 1. Amends s. 559.952, F.S., relating to Financial Technology Sandbox.

Section 2. Amends s. 560.103, F.S., relating to definitions.

Section 3. Amends s. 560.123, F.S., relating to Florida Control of Money Laundering in Money Services Business Act.

Section 4. Amends s. 560.125, F.S., relating to unlicensed activity; penalties.

Section 5. Amends s. 560.204, F.S., relating to license required.

Section 6. Amends s. 560.208, F.S., relating to conduct of business.

Section 7. Amends s. 560.2085, F.S., relating to authorized vendors.

Section 8. Amends s. 560.210, F.S., relating to permissible investments.

Section 9. Amends s. 560.211, F.S., relating to required records.

Section 10. Amends s. 560.212, F.S., relating to financial liability.

Section 11. Provides an effective date of January 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's overall impact on the private sector, while likely positive, is indeterminate. The bill provides regulatory clarity as to the way in which virtual currency is regulated under ch. 560, F.S. To the extent that the Espinoza case may have caused some businesses to become licensed out of an abundance of caution when buying and selling virtual currency in two-party transactions, the regulatory clarity provided by the bill may result in such businesses foregoing licensure. Additionally, the bill may lead to greater protection for consumers transacting in virtual currency through third-party intermediaries. The regulatory clarity provided by the bill may lead to more money transmitter licensees, especially those that deal in virtual currency. Those businesses must apply for a money transmitter license and would be subject to initial licensure (\$375) and biannual renewal (\$750) fees, and reimbursing OFR for examinations expenses every 5 years.⁸³

D. FISCAL COMMENTS:

The fiscal impact on OFR is indeterminate. The regulatory clarity provided by the bill may lead to more money transmitter licensees, especially those that deal in virtual currency. This may increase revenues in the Regulatory Trust Fund, though OFR would incur additional costs for examination expenses associated with the new licensees. However, to the extent that the Espinoza case may have caused some businesses to become licensed out of an abundance of caution when buying and selling virtual currency in two-party transactions, the regulatory clarity provided by the bill may result in such businesses foregoing licensure.

Since the potential number of additional licensees and corresponding expenses for oversight is unknown, the fiscal impact on the Regulatory Trust Fund is indeterminate. While OFR has indicated that any fiscal impact can be handled within existing resources, the agency noted that additional staff and funding may be required in the future if the number of new licensees dealing in virtual currency significantly increases beyond its capacity to absorb the additional workload.⁸⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill adds rulemaking authority for recordkeeping requirements related to virtual currency. Other changes made by the bill may necessitate amendment to current rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁸³ Office of Financial Regulation (OFR), Agency Analysis of 2021 House Bill 1351, p. 6 (Mar. 4, 2021).

⁸⁴ OFR, *supra* note 83, at 6-7.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 17, 2021, the Insurance & Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Clarifies that a money transmitter license is only required for an intermediary that has *control* over the currency, monetary value, payment instrument, or virtual currency in transmission. This clarification is important especially in the realm of virtual currency. Without this clarification, there may be confusion as to whether a node on a blockchain network or a computer program that matches buyers and sellers would count as an intermediary and thus be required to have a money transmitter license.
- Conforms other sections of ch. 560, F.S., to reflect the addition of virtual currency to money transmitter regulations.

On April 19, 2021, the Commerce Committee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute adds the phrase “until the transmission obligation is completed” to the permissible investments statute in relation to virtual currency transmission. This change clarifies that the amount of virtual currency a money transmitter is required to hold is that which is in the process of transmission.

The staff analysis has been updated to reflect the committee substitute.