

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 Committee on Commerce and Tourism

BILL: SB 1758

INTRODUCER: Senator Brandes

SUBJECT: Money Services Businesses

DATE: March 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1758 makes several amendments to the Money Services Businesses statutes related to virtual currency. The bill:

- Defines virtual currency as a medium of exchange in electronic or digital format that is not currency;
- Subjects money transmitters to licensing requirements when transacting business involving a virtual currency; and
- Prohibits payment instruments sellers from transacting business involving virtual currency.

The bill makes additional revisions to definitions and conforming changes.

The bill takes effect January 1, 2022.

II. Present Situation:

Background on Virtual Currencies

Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and a store of value other than a representation of the U.S. dollar or a foreign currency.¹ Cryptocurrency is a type of virtual currency that utilizes cryptography to secure transactions that are digitally recorded on a distributed ledger, such as a blockchain.² Units of cryptocurrency are generally referred to as coins or tokens. Distributed ledger technology uses independent digital systems to record, share, and synchronize transactions, the details of which are recorded in multiple places at the same time with no central data store or administration functionality.

¹ Internal Revenue Service, Rev. Rul. 2019-24, <https://www.irs.gov/pub/irs-drop/rr-19-24.pdf> (last visited March 26, 2021).

² *See Id.*

U.S. regulators generally agree that virtual currency does not have legal tender status, even when it has an equivalent value in real currency or acts as substitute for real currency, as in the case of convertible virtual currencies like Bitcoin. The U.S. Internal Revenue Service classifies virtual currency as property.³ The U.S. Commodity Futures Trading Commissions (CFTC) classifies virtual currency as a commodity.⁴

While the U.S. Security and Exchange Commission has recently signaled that some virtual currencies may meet the definitions of a security subject to its regulation,⁵ most state securities administrators generally agree that virtual currency is not a security, even when purchased for investment purposes.⁶

Recent actions by Florida to begin addressing virtual currencies highlight the challenges authorities face in keeping up with emerging technologies. In 2017, the Florida Money Laundering Act was amended to include virtual currency,⁷ which is defined to mean a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country.⁸ In 2018, the Chief Financial Officer announced the appointment of a cryptocurrency chief for the purpose of ensuring that cryptocurrencies are reliable forms of payment that do not expose Floridians to financial fraud.⁹ The Seminole County Tax Collector's Office in April 2018, began accepting bitcoin and bitcoin cash as payment for new identification cards, license plates, and property taxes.¹⁰ In 2019, the Florida Third District Court of Appeal in *State v. Espinoza*,¹¹ a criminal case involving laundering of a virtual currency, ruled that virtual currency falls within the express definitions of "monetary value" and "payment instruments" under ch. 560, F.S., governing money services businesses, thereby requiring registration of money services businesses engaged in virtual currency transactions.

Florida's Regulation of Money Services Businesses

The Office of Financial Regulation (OFR) is responsible for the administration and enforcement of ch. 560, F.S. Under the law, a person must be licensed or exempt from licensure to engage in

³ Internal Revenue Service, Notice 2014-21, <https://www.irs.gov/pub/irs-drop/n-14-21.pdf> (last visited March 26, 2021).

⁴ U.S. Commodities Futures Trading Commission, *CFTC Backgrounder on Oversight of and Approach to Virtual Currency Futures Markets* (January 4, 2018), https://www.cftc.gov/sites/default/files/idc/groups/public/%40customerprotection/documents/file/backgrounder_virtualcurrency01.pdf (last visited March 26, 2021).

⁵ U.S. Securities and Exchange Commission, *Remarks at the Yahoo Finance All Markets Summit: Crypto* (June 14, 2018)(Statement of Director William Hinman), <https://www.sec.gov/news/speech/speech-hinman-061418> (last visited March 26, 2021).

⁶ North American Securities Administrators Association, *Informed Investor Advisory: Cryptocurrencies*, <https://www.nasaa.org/44848/informed-investor-advisory-cryptocurrencies/> (last visited March 26, 2021).

⁷ Ch. 2017-155, Laws of Fla.

⁸ Section 896.101(2)(j), F.S.

⁹ Department of Financial Services, *CFO Jimmy Patronis: Florida Needs Cryptocurrency Oversight* (June 26, 2018) <https://www.myfloridacfo.com/sitePages/newsroom/pressRelease.aspx?id=5057> (last visited March 26, 2021).

¹⁰ Martin E. Comas, *Seminole Tax Collector Joel Greenberg Hires Blockchain Director as Legislators Study Technology*, Orlando Sentinel (March 4, 2019) <https://www.orlandosentinel.com/news/seminole/os-ne-seminole-tax-collector-greenberg-blockchain-20190304-story.html> (last visited March 26, 2021).

¹¹ *State v. Espinoza*, 264 So.3d 1055 (Fla. 3d DCA 2019).

the activities of a money services business.¹² State and federally chartered financial depository institutions, banks, credit card banks, credit unions, trust companies, associations, and international banking corporations are exempt from licensure under ch. 560, F.S.¹³

Under pt. II of ch. 560, F.S., corporations, limited liability companies, limited liability partnerships, and foreign entities who, for compensation,¹⁴ engage in, or in any manner advertise that they engage in the activities of a “payment instrument seller” or in the activity of a “money transmitter,” must be licensed as a money services business.

Payment Instrument Sellers

A payment instrument seller is a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which sells a payment instrument.¹⁵ A payment instrument is a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value¹⁶ whether or not negotiable, and does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit.¹⁷

Current law does not address virtual currency related to payment instrument services under part II of ch. 560, F.S. However in *State v. Espinoza*,¹⁸ the court interpreted the term “monetary value” to contemplate virtual currency under s. 560.105, F.S., governing money services business, thus requiring licensure as a payment instrument seller with the OFR for transactions involving a virtual currency.

Money Transmitters

A money transmitter is a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency,¹⁹ monetary value,²⁰ or payment instruments²¹ for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment

¹² The term “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. *See* Section 560.103(22), F.S.

¹³ Section 560.104, F.S.

¹⁴ The term “compensation” includes profit or loss on the exchange of currency. Section 560.204(1), F.S.

¹⁵ Section 560.103(30), F.S.

¹⁶ The term “monetary value” means a medium of exchange, whether or not redeemable in currency.

¹⁷ Section 560.103(29), F.S.

¹⁸ *State v. Espinoza* at 1067.

¹⁹ 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. *See* Section 560.103(11), F.S.

²⁰ The term “monetary value” means a medium of exchange, whether or not redeemable in currency. *See* s. 560.103(21), F.S.

²¹ The term “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. *See* Section 560.103(14), F.S.

services or other businesses that facilitate such transfer within the United States (U.S.), or to or from the U.S.²² In contrast to the federal definition of money transmitter,²³ Florida's definition does not include a third-party transmission requirement.

Current law does not address virtual currency related to money transmitters under part II of ch. 560, F.S. However in *State v. Espinoza*,²⁴ the court interpreted the term "medium of exchange" within the definition of "monetary value" to contemplate virtual currency under ch. 560, F.S., governing money services business, thus requiring licensure as a money transmitter with the OFR for transactions involving a virtual currency.

Requirements of Payment Instrument Seller and Money Transmitter Applicants

To qualify as a payment instrument seller or money transmitter, an applicant must:

- Submit an application with the OFR and pay a nonrefundable application fee. If the application is approved, the payment instrument seller or money transmitter may, without incurring additional licensing fees, engage in the activities of a check casher or foreign currency exchanger as authorized under pt. III of ch. 560, F.S. Additionally, the payment instrument seller or money transmitter may operate through authorized vendors. Authorized vendors acting within the scope of authority conferred by the licensee are exempt from licensure but are otherwise subject to the provisions of ch. 560, F.S.;
- Submit fingerprints for live-scan processing for persons who have a controlling interest²⁵ in the applicant;
- Demonstrate to the OFR the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business shall be operated lawfully and fairly;²⁶
- Be legally authorized to do business in Florida;²⁷
- Be registered as a money services business with the Financial Crimes Enforcement Network as required by 31 C.F.R. s. 1022.380, if applicable;²⁸
- Have an anti-money laundering program (AML) which meets the requirements of 31 C.F.R. s. 1022.210.²⁹ The AML program is a licensee's written program designed to deter money laundering and the financing of terrorist activities by requiring certain record-keeping, reporting, and compliance measures; and
- Have a corporate surety bond in an amount between \$50,000 and \$2 million.³⁰ In lieu of a corporate surety bond, an applicant may deposit collateral cash, securities, or alternative security devices with a federally insured financial institution.³¹

²² Section 560.103(23), F.S.

²³ 31 CFR 1010.100(ff)(5)(i)(A)(2014).

²⁴ *State v. Espinoza* at 1067.

²⁵ The term "controlling interest" is defined in section 560.127, F.S.

²⁶ Section 560.1401(1), F.S.

²⁷ Section 560.1401(2), F.S.

²⁸ Section 560.1401(3), F.S.

²⁹ Section 560.1401(4), F.S.

³⁰ Section 560.209(3)(a), F.S.

³¹ Section 560.209(4), F.S.

Requirements of Payment Instrument Seller and Money Transmitter Licensees

A licensee must at all times maintain a net worth of at least \$100,000 and an additional \$10,000 per location in Florida, up to a maximum of \$2 million.³²

Pursuant to s. 560.123, F.S., the Florida Control of Money Laundering in Money Services Business Act, a licensee is required to maintain certain records of each transaction involving currency or payments 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.

Additionally, a licensee must keep records of each transaction occurring in Florida which 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 s. 560.123, F.S., and ch. 896, F.S.³³

Permissive Investments

A licensee must at all times possess permissible investments (e.g. cash, certificates of deposit, shares in a money market mutual fund, etc.) with an aggregate market value, calculated in accordance with generally accepted accounting principles, 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 U.S.³⁴ The 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 posted by the licensee.³⁵

Permissible investments include:

- Cash;
- Certificates of deposit or other deposit liabilities of a domestic or foreign financial institution;
- Bankers' acceptances eligible for purchase by member banks of the Federal Reserve System;
- An investment bearing a rating of one of the three highest grades as defined by a nationally recognized rating service of such securities;
- Investment securities that are obligations of the U.S., its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the U.S., or any obligations of any state or municipality, or any political subdivision thereof;
- Shares in a money market mutual fund;
- A demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;
- Receivables that are due to a licensee from the licensee's authorized vendors except those that are more than 90 days past due or are doubtful of collection; and
- Any other investment approved by rule.

³² Section 560.209(1), F.S.

³³ Section 560.209(3), F.S.

³⁴ Section 560.210(1), F.S.

³⁵ Section 560.210(3), F.S.

Current law does not address virtual currency for accounting and investment purposes under s. 560.210, F.S.

Financial Technology Sandbox

In 2020, the Legislature created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible, regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions.³⁶

Currently, Financial Technology Sandbox licensees are exempt from the licensing requirements for payment instrument sellers and money transmitters under s. 560.204(1), F.S., only to the extent that the requirements 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 24-month³⁷ sandbox period.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 559.952, F.S., related to licensing exceptions for payment instrument sellers under the Financial Technology Sandbox, to conform with changes made to the referenced licensing requirement statute in Section 3 of the bill.

Section 2 amends s. 560.103, F.S., to define “virtual currency” to mean a medium of exchange in electronic or digital format that is not currency as defined in subsection (11). “Currency” is 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. The term “virtual currency” 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.

The bill amends s. 560.103(14), F.S., to revise the definition of “electronic instrument” by inserting references to currency.

The bill amends s. 560.103(21), F.S., to revise the definition of “monetary value” by inserting references to virtual currency, distinguishing it from currency.

The bill amends s. 560.103(23), F.S., to revise the definition of “money transmitter” by inserting references to payment instrument, virtual currency, currency, monetary value, and payment instruments and inserting a third-party transmission requirement. This revision has the effect of

³⁶ See s. 559.952, F.S.

³⁷ Section 559.952(3)(k), F.S.

³⁸ Section 559.952(4)(11), F.S.

subjecting a money transmitter to licensing requirements for transactions involving a virtual currency.

The bill amends s. 560.103(29), F.S., to revise the definition of “payment instrument” by inserting references to methods of transmission and exchange and inserting references to currency. This revision, paired with the other revisions to definitions in this section, has the effect of prohibiting payment instrument sellers from selling, issuing, providing, or delivering virtual currency.

The bill amends s. 560.103(35), F.S., to revise the definition of “stored value” by inserting references to currency.

Section 3 amends s. 560.204, F.S., to make a technical change to a reference to payment instrument sellers and to revise the definition of “compensation” by inserting references to monetary value and virtual currency.

Section 4 amends s. 560.210, F.S., related to permissible investments, to require a money transmitter to hold virtual currency in the same type and amount as owed or obligated to the other location of person. The held virtual currency may not be calculated as a permissible investment for purposes of equaling the aggregate face amount of all outstanding money transmission issued by the licensee.

Section 5 provides an effective date of January 1, 2022.

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:**

None.

B. Private Sector Impact:

Section 560.143, F.S., requires the following fees for money services businesses:

- For initial licensure:
 - Application fee of \$375.
 - Fingerprinting fees, to authorized live scan vendors, that average \$65 per individual with a controlling interest.
 - Fingerprint retention fees as required by rule - \$6 per individual with a controlling interest.
- Bi-annual renewal fees:
 - \$750 renewal fee
 - Fingerprint retention fees as required by rule - \$6 per individual with a controlling interest.

Additionally, licensees are required to reimburse the OFR for examination expenses. The average examination fee imposed by the office for fiscal year 2019-20 (pre-COVID) was \$3800.³⁹ This fee would be imposed on average once every five years.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 559.952, 560.103, 560.204, and 560.210.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

³⁹ Office of Financial Regulation, *Bill Analysis of SB 1758* (March 5, 2021)(On file with the Senate Committee on Banking and Insurance.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
