

Insurance & Banking Subcommittee

Wednesday, December 1, 2021
11:00 AM - 12:30 PM
Morris Hall (17 HOB)

Meeting Packet

Chris Sprowls
Speaker

Nick DiCeglie
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

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Meeting Agenda

Wednesday, December 1, 2021
11:00 AM – 12:30 PM
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 123 Consumer Finance Loans by Stevenson
- HB 273 Money Services Businesses by Aloupis

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 123 Consumer Finance Loans
SPONSOR(S): Stevenson
TIED BILLS: **IDEN./SIM. BILLS:** SB 546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Hinshelwood	Luczynski
2) Commerce Committee			

SUMMARY ANALYSIS

The Florida Consumer Finance Act, ch. 516, F.S., permits licensed lenders to make secured or unsecured loans up to $25,000 with a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.

Consumer finance lenders must maintain liquid assets of at least $25,000 per location. The bill authorizes consumer finance lenders to provide a surety bond, certificate of deposit, or letter of credit of a specified amount in lieu of maintaining liquid assets.

Consumer finance lenders are permitted to charge a borrower certain fees, including up to $25 for investigating the credit and character of the borrower. The exclusion of "prepayment penalties" from the list of permissible fees implies that consumer finance lenders are prohibited from charging prepayment penalties. The bill provides an express prohibition on prepayment penalties for consumer finance loans.

The bill has no fiscal impact on state or local governments and an indeterminate but likely positive impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Consumer Finance Loans

The Office of Financial Regulation's (OFR's) Division of Consumer Finance is responsible for the licensing and regulation of non-depository financial service entities and individuals, and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law.

One of the loan products regulated by the OFR's Division of Consumer Finance is the Florida Consumer Finance Act, ch. 516, F.S. ("the Act"). Loans permitted under the Act are commonly referred to as "consumer finance loans", which are "loan[s] of money, credit, goods, or choses in action,[1] including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."[2] Although consumer finance loans may be secured or unsecured, the Act prohibits lenders from taking a security interest in certain types of collateral.[3]

Consumer finance loans made pursuant to the Act must be repaid in periodic installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments.[4] Installments may be due every two weeks, semimonthly, or monthly.[5] There is no minimum or maximum loan term under the Act. Consumer finance loans have a tiered interest rate structure such that the maximum annual interest rate allowed on each tier decreases as principle amounts increase:

- 30 percent on the first $3,000.
- 24 percent on principal above $3,000 and up to $4,000.
- 18 percent on principal above $4,000 and up to $25,000.[6]

The original principal amount is the amount financed, as defined by the federal Truth in Lending Act (TILA)[7] and TILA's federal implementing regulations.[8] For the purpose of determining compliance with these statutory maximum interest rates, the interest rate computations used must be simple interest.[9] In the event that two or more interest rates are applied to the principal amount of a loan,[10] a lender may charge interest at a single annual percentage rate (APR) which would produce at maturity the total amount of interest as permitted by the tiered interest rate structure above.[11] The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its

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[1] "Chose in action" is defined as "1. A property right in personam, such as a debt owed by another person . . . 2. The right to bring an action to recover a debt, money, or thing. 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit." BLACK'S LAW DICTIONARY 101 (3d ed. 1996).

[2] S. 516.01(2), F.S.

[3] *See* s. 516.031(1), F.S. (prohibition on taking a security interest in land for a loan less than $1,000); s. 516.17, F.S. (prohibition on assignment of, or order for payment of, wages given to secure a loan).

[4] S. 516.36, F.S. This section does not apply to lines of credit.

[5] *Id.*

[6] S. 516.031(1), F.S.

[7] Codified at 15 U.S.C. § 1601 *et seq.*

[8] Currently, the statute references TILA's implementing regulations as "Regulation Z of the Board of Governors of the Federal Reserve System." s. 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the "Dodd-Frank Act", transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. *See also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).

[9] *Id.*

[10] For example, on a principle amount of $3,500, an interest rate of 30 percent per annum may be applied to $3,000 of the principle amount, and an interest rate of 24 percent per annum may be applied to the remaining $500 of the principal amount.

[11] S. 516.031(1), F.S.

implementing regulations.[12] A licensee may not induce or permit a borrower to divide a loan and may not induce or permit a person to become obligated to the licensee under more than one loan contract for the purpose of obtaining a greater finance charge than would otherwise be permitted under the parameters described above.[13]

If consideration for a new loan contract includes the unpaid principal balance of a prior loan with the licensee, then the principal amount of the new loan contract may not include more than 60 days' unpaid interest accrued on the prior loan.[14]

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following allowable fees:

- Up to $25 for investigating the credit and character of the borrower;
- A $25 annual fee on the anniversary date of each line-of-credit account;
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security;
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property;
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan;
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan;
- Actual and reasonable attorney fees and court costs;
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security;
- Depending on the frequency of payments, a delinquency charge of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed; and
- A bad check charge of up to $20.[15]

The exclusion of "prepayment penalties" from the list of permissible fees implies that consumer finance lenders are prohibited from charging prepayment penalties.[16]

Optional credit property, credit life, and disability insurance may be provided at the borrower's expense via a deduction from the principal amount of the loan.[17]

Licenses granted under the Act are for a single place of business[18] and must be renewed every two years.[19] As of October 28, 2021, there are 188 licensed consumer finance loan companies operating across a total of 389 locations in Florida.[20]

The historical yearly licensing data for ch. 516, F.S., is contained in the charts below.

Chapter 516, F.S., Licenses by Year										
	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10
Applications Received	318	44	136	82	48	72	192	30	52	32
Applications Approved	228	136	125	76	43	64	95	29	18	19
Active Licenses	589	607	568	609	532	584	626	600	390	386

[12] S. 516.031(2), F.S.
[13] S. 516.031(4), F.S.
[14] S. 516.031(5), F.S.
[15] S. 516.031(3), F.S.
[16] *Id.*; Office of Financial Regulation, Agency Analysis of 2022 Senate Bill 546, pp. 2-3 (Nov. 19, 2021).
[17] S. 516.35(2), F.S.
[18] Ss. 516.01(1) and 516.05(3), F.S.
[19] Ss. 516.03(1) and 516.05(1) & (2), F.S.
[20] Office of Financial Regulation, *supra* note 16 at p. 2.

Renewals & Reactivations	496	1	542	0	523	1	569	0	388	0

Chapter 516, F.S., Licenses by Year (Cont'd)										
	10-11	**11-12**	**12-13**	**13-14**	**14-15**	**15-16**	**16-17**	**17-18**	**18-19**	**19-20**
Applications Received	175	41	82	116	66	102	55	96	109	100
Applications Approved	137	37	53	113	37	81	36	83	104	98
Active Licenses	347	303	293	349	331	349	338	373	348	390
Renewals & Reactivations	226	0	258	0	312	0	326	0	342	0

An application to become a consumer finance lender must be accompanied by a nonrefundable application fee of $625 and a nonrefundable investigation fee of $200.[21] Licenses must be renewed biennially, at which time the licensee must pay a nonrefundable biennial license fee of $625.[22] At the time of application, the applicant must provide evidence of liquid assets of at least $25,000, and a licensee must at all times maintain such liquid assets.[23] Each location of a consumer finance lender must be separately licensed.[24]

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[25]

Deferred Presentment Transactions (Payday Loans)

Although the bill relates only to consumer finance loans under ch. 516, F.S., questions often arise as to how consumer finance loans compare to other consumer loans authorized in statute, particularly payday loans. Deferred presentment transactions, commonly referred to as "payday loans", are a small-dollar loan product under the OFR's regulatory authority. These transactions are governed by ch. 560, part IV, F.S.

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's (borrower's) check and agreeing to hold the check for a number of days until depositing, presenting, or redeeming the payment instrument.[26] The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,[27] and money services business licensed under ch. 560, part II[28] or part III,[29] F.S.

There are two types of payday loan products permitted in Florida:

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[21] S. 516.03(1), F.S.
[22] *Id.*; s. 516.05(1), F.S.
[23] Ss. 516.03(1) and 516.07(1)(b), F.S.
[24] S. 516.05(3), F.S.
[25] S. 516.02(4), F.S.
[26] S. 560.402(2) & (3), F.S.
[27] Section 655.005, F.S., defines a "financial institution" to mean a state or federal savings or thrift association, bank, savings back, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 *et seq*. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 *et seq*.
[28] Licensure as a money transmitter. A money transmitter is defined by s. 560.103(23), F.S., as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under ch. 560, part III, F.S.
[29] Licensure as a check casher. A check casher is defined by s. 560.103(6), F.S., as a person who sells currency in exchange for payment instruments received, except travelers checks.

- *Deferred presentment transaction not repayable in installments*: The face amount of a check taken for deferred presentment may not exceed $500, exclusive of fees.[30] Fees may not exceed 10 percent of the payment provided to the drawer plus a verification fee of up to $5.[31] The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.[32]
- *Deferred presentment installment transaction*: A deferred presentment installment transaction is repayable in installments, has a term of 60 to 90 days, and may have an outstanding transaction balance (exclusive of fees) of up to $1,000.[33] The permissible fees are a verification fee of up to $5 and up to 8 percent of the outstanding transaction balance on a biweekly basis.[34] The installment periods must be 13 days to one calendar month, except that the first installment period may be longer than the remaining installment periods by not more than 15 days.[35] Prepayment penalties are prohibited.[36]

A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.[37] In order to enforce this restriction, the OFR maintains a database against which a deferred presentment provider must verify each transaction before entering into the deferred presentment agreement.[38] A deferred presentment provider may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.[39]

For deferred presentment transactions not repayable in installments, if the drawer, by the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days.[40] As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.[41]

If the drawer in a deferred presentment installment transaction informs the deferred presentment provider in writing or in person by noon of the business day before a scheduled payment that the drawer cannot pay in full the scheduled payment, the provider must give the drawer one opportunity to defer a scheduled payment for no additional fee or charge.[42] The deferred payment is due after the last scheduled installment payment, at an interval which is no shorter than the intervals between the originally scheduled payments.[43] Thus, for a deferred presentment installment transaction in which payments are due once every two weeks, the deferred payment would be due at least two weeks after the final installment payment is due.

A deferred presentment provider may not include in the agreement a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the agreement or any provision of ch. 560, part IV, F.S.[44] A deferred presentment provider must comply

[30] S. 560.404(5), F.S.
[31] S. 560.404(6), F.S.
[32] S. 560.404(8), F.S.
[33] S. 560.404(5) & (8), F.S.
[34] S. 560.404(6), F.S.
[35] S. 560.404(26), F.S.
[36] S. 560.404(6)(c), F.S.
[37] S. 560.404(19), F.S.
[38] S. 560.404(19)(a) & (23), F.S.
[39] S. 560.404(18), F.S.
[40] S. 560.404(22), F.S.
[41] *Id.*
[42] S. 560.404, F.S.
[43] *Id.*
[44] S. 560.404(10), F.S.

with state and federal disclosure requirements.[45]

Effect of the Bill

The bill amends various provisions related to consumer finance loans under ch. 516, F.S.

Surety Bond, Certificate of Deposit, or Letter of Credit in Lieu of Liquid Assets

The bill authorizes consumer finance lenders to provide the OFR a surety bond, certificate of deposit, or irrevocable letter of credit in lieu of maintaining liquid assets. The surety bond must be issued by a bonding company or insurance company authorized to do business in this state. The certificate of deposit must be deposited in a financial institution.[46]

The surety bond, certificate of deposit, or letter of credit must be in the amount of at least $25,000. However, a company with multiple licensed locations is authorized to provide a rider or surety bond, certificate of deposit, or letter of credit in the amount of at least $5,000 for each additional license after the first. The aggregate amount of the surety bond, certificate of deposit, or letter of credit required for a company with multiple licenses is capped at $100,000.

The surety bond, certificate of deposit, or letter of credit must name the OFR as beneficiary and must be for the use and benefit of any borrower who is injured by acts of a licensee involving fraud, misrepresentation, or deceit, including willful imposition of illegal or excessive charges; or misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower, where such acts are in connection with making a consumer finance loan. The OFR, or any claimant, may bring an action in a court of competent jurisdiction on the surety bond, certificate of deposit, or letter of credit. The surety bond, certificate of deposit, or letter of credit must be payable on a pro rata basis, but the aggregate amount may not exceed the amount of the surety bond, certificate of deposit, or letter of credit.

The surety bond, certificate of deposit, or letter of credit may not be canceled by the licensee, bonding or insurance company, or financial institution except upon notice to the OFR by certified mail. A cancellation may not take effect until 30 calendar days after receipt by the OFR of the written notice.

If the bonding or insurance company or financial institution pays a claim, it must give written notice by certified mail to the OFR within 10 calendar days after it pays the claim. The notice must contain details sufficient to identify the claimant and the claim or judgment paid. If the principal sum of the surety bond, certificate of deposit, or letter of credit is reduced by one or more recoveries or payments, the consumer finance lender must furnish to the OFR a new or additional surety bond, certificate of deposit, or letter of credit so that the total or aggregate principal sum equals the required amount. Alternatively, a licensee may furnish an endorsement executed by the bonding or insurance company or financial institution reinstating the required principal amount.

The required surety bond, certificate of deposit, or letter of credit must remain in place for two years after the consumer finance lender ceases licensed operations in this state. During the two-year period, the OFR may allow for a reduction or elimination of the surety bond, certificate of deposit, or letter of credit to the extent the consumer finance lender's outstanding consumer finance loans in this state are reduced.

Failure to maintain the existing liquid asset requirement or the proposed alternatives of the surety bond, certificate of deposit, or letter of credit in the required amount is grounds for denial of license application and grounds for disciplinary action against a consumer finance lender.

The bill makes conforming changes under the Financial Technology Sandbox in s. 559.952, F.S.

[45] S. 560.404(13) & (20), F.S.
[46] As defined in s. 655.005(1)(i), F.S.

Express Prohibition on Prepayment Penalties

The bill provides an express prohibition on prepayment penalties for consumer finance loans.

Effective Date

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

Comparison Chart

Below is a chart comparing existing law regarding payday loans and consumer finance loans with the changes proposed by the bill.

	Payday Loans (Ch. 560, Part IV, F.S.)		**Consumer Finance Loans (Ch. 516, F.S.)**	
	Payday Loans (Non-Installment)	**Payday Loans (Installment)**	**Current Law**	**HB 123 Proposed Changes**
Loan Amount	$500 (max)	$1,000 (max)	$25,000 (max)	(No change)
Length of Term	7 - 31 days	60 - 90 days	No min. or max.	(No change)
Payments	• Lump sum at end of loan term	• Installments with 13 days to 1 month in between each, except that the first installment period may be longer than the remaining installment periods by a maximum of 15 days	• Installments due monthly, semi-monthly, or every 2 weeks	(No change)
Interest Rate	• APR equivalent (assuming $500 loan amount and $5 verification fee): 129.52% for a 31 day loan, 573.57% for a 7 day loan	• 8% biweekly on the outstanding transaction balance • APR equivalent: approx. 208% (will be slightly higher as a result of the $5 verification fee)	• 30% per year on the first $3,000 of principal • 24% per year on principal above $3,000 and up to $4,000 • 18% per year on principal above $4,000 and up to $25,000	(No change)
Other Upfront Fees Permitted	• 10% of loan amount • $5 verification fee • No additional fees permitted	• $5 verification fee • No additional fees permitted	• Fees specified in s. 516.031(3), F.S., including up to $25 for investigating the credit and character of the borrower • No additional fees permitted	• Adds express prohibition on prepayment penalties

B. SECTION DIRECTORY:

Section 1. Amends s. 516.03, F.S., relating to application for license; fees; etc.

Section 2. Amends s. 516.031, F.S., relating to finance charge; maximum rates.

Section 3. Amends s. 516.05, F.S., relating to license.

Section 4. Amends s. 516.07, F.S., relating to grounds for denial of license or for disciplinary action.

Section 5. Amends s. 559.952, F.S., relating to Financial Technology Sandbox.

Section 6. Provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. The bill will require minimal changes to the OFR's Regulatory Enforcement and Licensing (REAL) system, but the cost of such changes can be implemented as part of the OFR's existing budget resources.[47]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's provisions that would allow a consumer finance lender to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets may have a positive impact on consumer finance lenders and consumers. Shifting from maintaining liquid assets will free up capital for lending activity. In the event that consumer harm coincides with a consumer finance lender's bankruptcy, the surety bond, certificate of deposit, or letter of credit may provide consumers greater means of compensation as compared to the liquid assets. The bill's overall impact on the private sector, while likely positive, is indeterminate.

D. FISCAL COMMENTS:

None.

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:

[47] Office of Financial Regulation, *supra* note 16 at p. 5.

None.

B. RULE-MAKING AUTHORITY:

The bill expressly grants the Financial Services Commission[48] authority to prescribe by rule forms and procedures to implement the provisions relating to a consumer finance lender providing a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill should be amended to clarify that the letter of credit must be issued by a financial institution.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[48] The Financial Services Commission (commission) is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are the OFR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.

A bill to be entitled

An act relating to consumer finance loans; amending s. 516.03, F.S.; authorizing an applicant for a license to make and collect loans under the Florida Consumer Finance Act to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets; amending s. 516.031, F.S.; prohibiting a person licensed to make and collect consumer finance loans from charging prepayment penalties for loans; amending s. 516.05, F.S.; authorizing an applicant for a license to make and collect consumer finance loans or a licensee to provide a surety bond, certificate of deposit, or letter of credit in lieu of liquid assets; providing requirements for such bonds, certificates of deposit, and letters of credit; providing rulemaking authority; amending s. 516.07, F.S.; revising grounds for denial of license or disciplinary action; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; providing an effective date.

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

Section 1. Subsection (1) of section 516.03, Florida Statutes, is amended to read:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

516.03 Application for license; fees; assets, bonds, certificates of deposit, or letters of credit; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in the form prescribed by rule of the commission. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or concerning any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, residential history, qualifications, educational and business history, and disciplinary and criminal history. The applicant must provide evidence of liquid assets of at least $25,000 or documents satisfying the requirements in s. 516.05(10). At the time of making such application the applicant shall pay to the office a nonrefundable biennial license fee of $625. Applications, except for applications to renew or reactivate a license, must also be accompanied by a nonrefundable investigation fee of $200. An

application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of $625, and any other fee prescribed by law. The commission may adopt rules requiring electronic submission of any form, document, or fee required by this act if such rules reasonably accommodate technological or financial hardship. The commission may prescribe by rule requirements and procedures for obtaining an exemption due to a technological or financial hardship.

Section 2. Subsection (6) is added to section 516.031, Florida Statutes, to read:

516.031 Finance charge; maximum rates.—

(6) PREPAYMENT PENALTIES PROHIBITED.—A licensee may not require a borrower to pay a prepayment penalty for paying all or part of the loan principal before the date on which the payment is due.

Section 3. Subsection (10) is added to section 516.05, Florida Statutes, to read:

516.05 License.—

(10)(a) In lieu of the $25,000 liquid asset requirement in s. 516.03(1):

1. An applicant or a licensee may provide to the office a surety bond in the amount of at least $25,000, issued by a bonding company or insurance company authorized to do business in this state.

2. A company with at least one currently licensed location must provide to the office a rider or surety bond in the amount of at least $5,000 for each additional license issued by a bonding company or insurance company authorized to do business in this state. However, in no event may the aggregate amount of the surety bond required for a company with multiple licenses exceed $100,000.

(b) In lieu of a surety bond, the applicant or the licensee may provide evidence of a certificate of deposit or an irrevocable letter of credit in the same amount of the surety bond required under paragraph (a). The certificate of deposit must be deposited in a financial institution, as defined in s. 655.005(1)(i).

(c) The original surety bond, certificate of deposit, or letter of credit must be filed with the office, and the office must be named as beneficiary. The surety bond, certificate of deposit, or letter of credit must be for the use and benefit of any borrower who is injured by acts of a licensee involving fraud, misrepresentation, or deceit, including willful imposition of illegal or excessive charges; or misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to a borrower, where such acts are in connection with a loan made under this chapter. The office, or any claimant, may bring an action in a court of competent jurisdiction on the surety bond, certificate of

deposit, or letter of credit. The surety bond, certificate of deposit, or letter of credit must be payable on a pro rata basis, but the aggregate amount may not exceed the amount of the surety bond, certificate of deposit, or letter of credit.

(d) The surety bond, certificate of deposit, or letter of credit may not be canceled by the licensee, bonding or insurance company, or financial institution except upon notice to the office by certified mail. A cancellation may not take effect until 30 calendar days after receipt by the office of the notice.

(e) The bonding or insurance company or financial institution must, within 10 calendar days after it pays a claim, give notice to the office by certified mail of such payment with details sufficient to identify the claimant and the claim or judgment paid.

(f) If the principal sum of the surety bond, certificate of deposit, or letter of credit is reduced by one or more recoveries or payments, the licensee must furnish to the office a new or additional surety bond, certificate of deposit, or letter of credit so that the total or aggregate principal sum equals the amount required under this subsection. Alternatively, a licensee may furnish an endorsement executed by the bonding or insurance company or financial institution reinstating the required principal amount.

(g) The required surety bond, certificate of deposit, or

letter of credit must remain in place for 2 years after the licensee ceases licensed operations in this state. During the 2-year period, the office may allow for a reduction or elimination of the surety bond, certificate of deposit, or letter of credit to the extent the licensee's outstanding consumer finance loans in the state are reduced.

(h) The commission may prescribe by rule forms and procedures to implement this subsection.

Section 4. Paragraph (b) of subsection (1) of section 516.07, Florida Statutes, is amended to read:

516.07 Grounds for denial of license or for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(b) Failure to maintain liquid assets of at least $25,000 or a surety bond, certificate of deposit, or letter of credit in the amount required by s. 516.05(10) at all times for the operation of business at a licensed location or proposed location.

Section 5. Paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is amended to read:

559.952 Financial Technology Sandbox.—

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE

REQUIREMENTS.—

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

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000 or documents satisfying the requirements in s. 516.05(10), and the office's authority to investigate the applicant's background. The office may prorate the license renewal fee for an extension granted under subsection (7).

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

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

4. Section 560.118(2).

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

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized

vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

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

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

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

11. Section 560.204(1), only to the extent that the subsection would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

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

under this section.

Section 6. This act shall take effect October 1, 2022.

INSURANCE & BANKING SUBCOMMITTEE

HB 123 by Rep. Stevenson
Consumer Finance Loans

AMENDMENT SUMMARY
December 1, 2021

Amendment 1 by Rep. Stevenson (Line 88): Whereas the bill authorizes a consumer finance lender to provide a letter of credit in lieu of the current statutory requirement to maintain liquid assets, the amendment clarifies that such letter of credit must be issued by a financial institution.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Stevenson offered the following:

Amendment

Remove line 88 and insert:

655.005(1)(i). The letter of credit must be issued by a financial institution, as defined in s. 655.005(1)(i).

HB 273

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 273 Money Services Businesses
SPONSOR(S): Aloupis
TIED BILLS: **IDEN./SIM. BILLS:** SB 486

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Hinshelwood	Luczynski
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

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 7 years OFR has received over 70 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 enumerated assets. 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, 2023.

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 instruments[4] 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 7 years OFR has received over 70 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 cashers[11] and foreign currency exchangers[12] without paying additional licensing fees.[13]

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[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.

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[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.

Recent Case Law: State v. Espinoza

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]

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[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]

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" currency[49] (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 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

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[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 Nov. 23, 2021).
[49] Also often referred to as "fiat" currency.
[50] IRS, *supra* note 48.
[51] *Id.*
[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 Nov. 23, 2021).

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 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

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[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.
[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.

currency of the United States or any other country."[71] This definition was added in 2017[72] 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]

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)

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[71] *Id*.
[72] Ch. 2017-155, Laws of Fla.
[73] FinCEN, *What We Do*, https://www.fincen.gov/what-we-do (last visited Nov. 23, 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, s*upra* 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 Nov. 23, 2021); FinCEN Notice of Proposed Rulemaking, *supra* note 53.
[82] 31 U.S.C. § 1960.

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 another medium of exchange in electronic or digital format that is not currency and that is not used solely within online gaming platforms.

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 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 enumerated assets. 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, 2023.

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, 2023.

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. Businesses that apply for a money transmitter license would be subject to fees for initial licensure ($375), biannual renewal ($750), fingerprinting of control persons (approximately $65 per individual for initial fingerprinting plus $6 per individual biannually for fingerprint retention), and examination expenses every 5 years (approximately $3,800).[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. OFR has 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.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[83] Office of Financial Regulation (OFR), Agency Analysis of 2022 Senate Bill 486, pp. 9-10 (Nov. 19, 2021).
[84] OFR, *supra* note 83, at p. 9.

A bill to be entitled

An act relating to money services businesses; amending s. 559.952, F.S.; revising exceptions for a licensee during the Financial Technology Sandbox period; amending s. 560.103, F.S.; revising and providing definitions; amending s. 560.123, F.S.; revising the purpose of the Florida Control of Money Laundering in Money Services Business Act; revising duties of money services businesses; revising provisions related to violations of money services business activities and penalties for such violations; amending s. 560.125, F.S.; revising provisions related to violations of money services business activities and penalties for such violations; amending s. 560.204, F.S.; revising provisions related to certain prohibited activities without a license; revising the definition of the term "compensation"; amending s. 560.208, F.S.; revising requirements for a money transmitter or payment instrument seller to conduct business; amending s. 560.2085, F.S.; revising requirements for a written contract between a money transmitter or payment instrument seller and an authorized vendor; amending s. 560.210, F.S.; providing requirements for a money transmitter that receives virtual currency; excluding virtual currency in the calculation of permissible

investments under certain circumstances; amending s. 560.211, F.S.; revising recordkeeping requirements for a money transmitter or payment instrument seller; amending s. 560.212, F.S.; revising financial liability requirements for a money transmitter or payment instrument seller; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 559.952, Florida Statutes, is amended to read:

559.952 Financial Technology Sandbox.—

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

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

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

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

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

4. Section 560.118(2).

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

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

7. Section 560.128.

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

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

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

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

subsection would prohibit a licensee from engaging in, or advertising that it engages in, ~~the selling or issuing of payment instruments or in~~ the activity of a payment instrument seller or money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

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

Section 2. Subsections (14), (21), (23), (29), and (35) of section 560.103, Florida Statutes, are amended, and subsection (36) is added to that section, to read:

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

(14) "Electronic instrument" means a card, tangible object, or other form of electronic payment used for the transmission, ~~or~~ payment, ~~of money~~ or ~~the~~ exchange of currency or 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.

(21) "Monetary value" means a medium of exchange, other than virtual currency, regardless of whether it is ~~or not~~ redeemable in currency.

(23) "Money transmitter" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, a ~~or~~ payment instrument, or virtual currency ~~instruments~~ for the purpose of acting as an intermediary to transmit currency, monetary value, a payment instrument, or virtual currency from one person to another location or person ~~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. The term includes only an intermediary that has the ability to unilaterally execute or indefinitely prevent a transaction.

(29) "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument used for the transmission, exchange, or payment of currency ~~money,~~ or monetary value, regardless of whether it is ~~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.

(35) "Stored value" means currency ~~funds~~ or monetary value

represented in digital electronic format, regardless of whether it is ~~or not~~ specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.

(36) "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:

(a) Solely within online gaming platforms with no market or application outside such gaming platforms; or

(b) 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 another medium of exchange in electronic or digital format that is not currency and that is not used solely within online gaming platforms.

Section 3. Subsections (2), (3), and (4) and paragraphs (b), (c), and (d) of subsection (8) of section 560.123, Florida Statutes, are amended to read:

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

(2) The purpose of this section is to require the maintenance of certain records of transactions involving currency, monetary value, ~~or~~ payment instruments, or virtual currency 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.

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

(a) Multiple financial transactions shall be treated as a single transaction if the money services business has knowledge that they are made by or on behalf of any one person and result in value ~~cash~~ in or value ~~cash~~ out totaling a value of more than $10,000 during any day.

(b) A money services business may keep a record of any financial transaction occurring in this state, regardless of the value, if it suspects that the transaction involves the proceeds of unlawful activity.

(c) The money services business must file a report with the office of any records required by this subsection, at such time and containing such information as required by rule. The

timely filing of the report required by 31 U.S.C. s. 5313 with the appropriate federal agency shall be deemed compliance with the reporting requirements of this subsection unless the reports are not regularly and comprehensively transmitted by the federal agency to the office.

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

(4) A money services business must comply with the money laundering, enforcement, and reporting provisions of s. 655.50 relating to reports of transactions involving currency transactions and payment instruments, as applicable, and of chapter 896 concerning offenses relating to financial transactions.

(8)

(b) A person who willfully violates any provision of this section, if the violation involves:

1. Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. Currency, monetary value, ~~or~~ payment instruments, or

virtual currency of a value totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) In addition to the penalties authorized by s. 775.082, s. 775.083, or s. 775.084, a person who has been convicted of, or entered a plea of guilty or nolo contendere, regardless of adjudication, to having violated paragraph (b) may be sentenced to pay a fine of up to the greater of $250,000 or twice the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~, except that on a second or subsequent conviction for or plea of guilty or nolo contendere, regardless of adjudication, to a violation of paragraph (b), the fine may be up to the greater of $500,000 or quintuple the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~.

(d) A person who violates this section is also liable for a civil penalty of up to ~~not more than~~ the greater of the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency involved or $25,000.

Section 4. Subsections (5), (6), and (7) of section

560.125, Florida Statutes, are amended to read:

560.125 Unlicensed activity; penalties.—

(5) A person who violates this section, if the violation involves:

(a) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value exceeding $300 but less than $20,000 in any 12-month period, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $20,000 but less than $100,000 in any 12-month period, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Currency, monetary value, ~~or~~ payment instruments, or virtual currency of a value totaling or exceeding $100,000 in any 12-month period, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) In addition to the penalties authorized by s. 775.082, s. 775.083, or s. 775.084, a person who has been convicted of, or entered a plea of guilty or nolo contendere to, having violated this section may be sentenced to pay a fine of up to the greater of $250,000 or twice the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~, except that on a second or subsequent violation of this section~~,~~ the fine may be up to the greater of

$500,000 or quintuple the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency ~~whichever is greater~~.

(7) A person who violates this section is also liable for a civil penalty of up to the greater of ~~not more than~~ the value of the currency, monetary value, ~~or~~ payment instruments, or virtual currency involved or $25,000~~, whichever is greater~~.

Section 5. Subsection (1) of section 560.204, Florida Statutes, is amended to read:

560.204 License required.—

(1) Unless exempted, a person may not engage in, or in any manner advertise that they engage in, ~~the selling or issuing of payment instruments or in~~ the activity of a payment instrument seller or money transmitter, for compensation, without first obtaining a license under this part. For purposes of this subsection ~~section~~, the term "compensation" includes profit or loss on the exchange of currency, monetary value, or virtual currency.

Section 6. Subsections (5) and (6) of section 560.208, Florida Statutes, are amended to read:

560.208 Conduct of business.—In addition to the requirements specified in s. 560.1401, a licensee under this part:

(5) Shall, in the normal course of business, ensure that currency, monetary value, payment instruments, or virtual

currency ~~money~~ transmitted is available to the designated recipient within 10 business days after receipt.

(6) Shall immediately upon receipt of currency, monetary value, a ~~or~~ payment instrument, or virtual currency provide a confirmation or sequence number to the customer verbally, by paper, or electronically.

Section 7. Paragraph (b) of subsection (2) of section 560.2085, Florida Statutes, is amended to read:

560.2085 Authorized vendors.—A licensee under this part shall:

(2) Enter into a written contract, signed by the licensee and the authorized vendor, which:

(b) Includes contract provisions that require the authorized vendor to:

1. Report to the licensee, immediately upon discovery, the theft or loss of currency, monetary value, a payment instrument, or virtual currency received for a transmission or for a payment instrument sold;

2. Display a notice to the public, in such form as prescribed by rule, that the vendor is the authorized vendor of the licensee;

3. Remit all amounts owed to the licensee for all transmissions accepted and all payment instruments sold in accordance with the contract between the licensee and the authorized vendor;

4. Hold in trust all currency, monetary value, ~~or~~ payment instruments, or virtual currency received for transmissions or for the purchase of payment instruments from the time of receipt by the licensee or authorized vendor until the time the transmission obligation is completed;

5. Not commingle the currency, monetary value, payment instruments, or virtual currency ~~money~~ received for transmissions accepted or payment instruments sold on behalf of the licensee with the assets ~~money~~ or property of the authorized vendor, except for making change in the ordinary course of the vendor's business;~~, and~~

6. Ensure that the currency, monetary value, payment instruments, or virtual currency received for transmissions accepted or payment instruments sold ~~money~~ is accounted for at the end of the business day;

7.~~6.~~ Consent to examination or investigation by the office;

8.~~7.~~ Adhere to the applicable state and federal laws and rules pertaining to a money services business; and

9.~~8.~~ Provide such other information or disclosure as may be required by rule.

Section 8. Subsections (2) and (3) of section 560.210, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to that section to read:

560.210 Permissible investments.—

(2) Each money transmitter that receives virtual currency, either directly or through an authorized vendor, for the purpose of transmitting such virtual currency from one person to another location or person must at all times, until the transmission obligation is completed, hold virtual currency of the same type and amount owed or obligated to the other location or person. Virtual currency received and held under this subsection is not included in the amount of outstanding money transmissions for purposes of calculating the permissible investments required by subsection (1).

Section 9. Paragraphs (a), (e), and (f) of subsection (1) of section 560.211, Florida Statutes, are amended, and paragraph (j) is added to subsection (1) of that section, to read:

560.211 Required records.—

(1) In addition to the record retention requirements under s. 560.1105, each licensee under this part must make, keep, and preserve the following books, accounts, records, and documents for 5 years:

(a) A daily record of payment instruments sold and of currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted.

(e) Records of outstanding payment instruments and of currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted.

(f) Records of each payment instrument paid and of currency, monetary value, payment instruments, or virtual currency transmitted ~~money transmission delivered~~.

(j) Any additional records, as prescribed by rule, related to virtual currency.

Section 10. Section 560.212, Florida Statutes, is amended to read:

560.212 Financial liability.—A licensee under this part is liable for the payment of all currency, monetary value, payment instruments, or virtual currency ~~money~~ transmitted and payment instruments that it sells, in whatever form and whether directly or through an authorized vendor, as the maker, drawer, or principal thereof, regardless of whether such items are ~~item is~~ negotiable or nonnegotiable.

Section 11. This act shall take effect January 1, 2023.

INSURANCE & BANKING SUBCOMMITTEE

HB 273 by Rep. Aloupis
Money Services Businesses

AMENDMENT SUMMARY
December 1, 2021

Amendment 1 by Rep. Aloupis (Line 139): Amends the definition of “virtual currency” to clarify the exclusion of consumer affinity or rewards programs.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Aloupis offered the following:

Amendment

Remove lines 139-141 and insert:

into or redeemed for currency or another medium of exchange.