

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 607 Money Services Businesses
SPONSOR(S): Commerce Committee, Steele
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 532

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 607 passed the House on April 20, 2023, and subsequently passed the Senate on April 26, 2023.

The Office of Financial Regulation (OFR) licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. MSB applicants must submit fingerprints to the Florida Department of Law Enforcement (FDLE) for a state criminal history background check, and the fingerprints must be submitted to the Federal Bureau of Investigation (FBI) for a federal criminal history background check. OFR must review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.

Access to the FBI's criminal history record information (CHRI) system is authorized for fingerprints pursuant to current law. However, in order to gain access to CHRI data for applicants to the recently created Financial Technology Sandbox, FDLE sent correspondence to the FBI to obtain a new non-criminal justice Originating Agency Identifier (ORI). ORI validates legal authorization to obtain criminal justice information and identifies the specific agency requesting the information. The Financial Technology Sandbox derived its CHRI access from the preexisting Money Services Businesses law, which as of 2021, authorized the Office to request fingerprints of each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in an MSB.

FBI responded to the Financial Technology Sandbox ORI request by stating that the MSB licensing statute does not qualify for access to CHRI data because the terms "responsible person" and "control of a money services business", as used in that statute to specify persons who are required to submit fingerprints, are overly broad and, thus, do not sufficiently define the categories of people subject to the background check. To address this issue the Florida Legislature passed Chapter 2022-135, Laws of Florida, which created the term "control person" to replace the use of "officer" and "responsible person," as well as various other terms. However, this new "control person" term was still too broad for FBI approval, and thus OFR still lacks ORI approval.

FBI acknowledged that MSB fingerprinting was previously approved, and that the FBI will continue to honor fingerprints submitted for MSB licensure. However, FBI has placed MSB fingerprinting on a grace period of unspecified length in order to allow Florida to amend MSB fingerprinting statutes such that the statutes specifically identify the categories of licensees or employees falling within the purview of the statutes; FBI will not allow fingerprinting of additional categories of applicants (i.e., those applying under the Financial Technology Sandbox) during this grace period.

The bill revises the term "control person" to create a more definite list of individuals who are subject to required fingerprinting to better meet the requirements of federal law while also ensuring appropriate consumer protection.

The bill has no fiscal impact on the state, local governments, or the private sector.

The bill was approved by the Governor on May 24, 2023, ch. 2023-125, and will become effective on July 1, 2023.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

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DATE: 5/25/2023

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

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.

An MSB is any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as the following:²

- *Payment instrument seller*. A payment instrument seller sells, issues, provides, or delivers payment instruments.³
- *Foreign currency exchanger*. A foreign currency exchanger exchanges, for compensation, currency⁴ of the United States or a foreign government to currency of another government.⁵
- *Check casher*. A check casher sells, issues, provides, or delivers currency⁶ in exchange for payment instruments⁷ received, except travelers checks.⁸
- *Money transmitter*. A money transmitter receives currency,⁹ monetary value,¹⁰ or payment instruments¹¹ 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.¹²

An MSB may engage in deferred presentment transactions, commonly known as “payday loans”, by filing a declaration of intent to engage in deferred presentment transactions with OFR.¹³ A money transmitter or payment instrument seller may engage in the activities authorized for check cashers and foreign currency exchangers without paying additional licensing fees.¹⁴ State and federally chartered depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.¹⁵

¹ S. 20.121(3)(a)2., F.S.

² S. 560.103(23), F.S.

³ S. 560.103(30) and (34), F.S. 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.

⁴ 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(12), F.S.

⁵ S. 560.103(18), F.S.

⁶ Definition of “currency”, *supra* note 4.

⁷ Definition of “payment instrument”, *supra* note 3.

⁸ S. 560.103(6) and (34), F.S.

⁹ Definition of “currency”, *supra* note 4.

¹⁰ The term “monetary value” means a medium of exchange, whether or not redeemable in currency. S. 560.103(22), F.S.

¹¹ Definition of “payment instrument”, *supra* note 3.

¹² S. 560.103(24), F.S.

¹³ S. 560.403, F.S.

¹⁴ S. 560.204(2), F.S.

¹⁵ S. 560.104, F.S.

An applicant for an MSB license must submit the following to OFR:

- An application;¹⁶
- A nonrefundable application fee;¹⁷
- A copy of the applicant's written anti-money laundering program required by federal law;¹⁸ and
- Fingerprints for the following individuals:¹⁹
 - A person who holds the title of president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, or compliance officer for a money services business.²⁰
 - A person who holds any of the officer positions named in the money services business's governing documents.²¹
 - A person who holds any position named by the money services business's liability insurance coverage for directors and officers, if the business has such coverage.²²
 - A director of the money services business's board of directors.²³
 - A person who directs the affairs of a money services business or who participates in, or has authority to participate in, the major policy making functions of a money services business, regardless of whether the person has an official title or receives a salary or other compensation.²⁴
 - For a money services business that is a corporation, all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities.²⁵
 - For a money services business that is a partnership, all general partners, and those limited or special partners that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the partnership's capital.²⁶
 - For a money services business that is a limited liability company, all managers, and those members that have contributed 25 percent or more or that have the right to receive upon dissolution 25 percent or more of the limited liability company's capital.²⁷

Fingerprints are not required if the applicant is a publicly traded corporation.²⁸

If fingerprints are required, the fingerprints must be submitted for live-scan processing.²⁹ Live-scan is a device that electronically takes fingerprints and other information and uploads that information to the Florida Department of Law Enforcement (FDLE) who, in turn, sends the fingerprints to the Federal Bureau of Investigation (FBI) for a fingerprint background check.³⁰ The fingerprints may be submitted through a third-party vendor authorized by FDLE to provide live-scan fingerprinting.³¹ FDLE must conduct the state criminal history background check, and a federal criminal history background check must be conducted through the FBI.³²

¹⁶ S. 560.141(1)(a), F.S.

¹⁷ Ss. 560.141(1)(b) and 560.143, F.S.

¹⁸ S. 560.141(d), F.S.

¹⁹ Ss. 560.141(c) and 560.127, F.S.

²⁰ S. 560.103(10)(a), F.S.

²¹ S. 560.103(10)(b), F.S.

²² S. 560.103(10)(c), F.S.

²³ S. 560.103(10)(d), F.S.

²⁴ S. 560.103(10)(e), F.S.

²⁵ S. 560.103(10)(f), F.S.

²⁶ S. 560.103(10)(g), F.S.

²⁷ S. 560.103(10)(h), F.S.

²⁸ S. 560.141(1)(c)6., F.S.

²⁹ S. 560.141(1)(c), F.S.

³⁰ Florida Live Scan,

<https://livescanflorida.com/#:-:text=LiveScan%20is%20a%20device%20that,for%20a%20fingerprint%20background%20check>. (last visited Feb. 27, 2023).

³¹ S. 560.141(1)(c)1., F.S.

³² S. 560.141(1)(c)2., F.S.

The costs of fingerprint processing, including the cost of retaining the fingerprints, must be borne by the person subject to the background check.³³ OFR must review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.³⁴

An MSB license must be renewed every two years.³⁵

Once licensed, an MSB is required to report any change in control persons.³⁶ If any person, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in an MSB, such person or group must submit a new application for licensure at least 30 days before such purchase or acquisition.³⁷ Such a change of control application is not required where the person or group of persons has previously complied with applicable licensing provisions, provided that they are currently affiliated with the MSB, or where the person or group of persons is currently licensed with OFR as an MSB.³⁸ A change of control application must be accompanied by the payment of an initial licensing fee³⁹ and a fee per branch or authorized vendor⁴⁰, up to a maximum of \$20,000.⁴¹

As previously mentioned, when fingerprinting is required, the fingerprints must be submitted to FDLE for a state and federal criminal history background check. The federal background check is conducted through the FBI's criminal history record information (CHRI) system. Federal law Pub. L. 92-544 authorizes the exchange of CHRI data with officials of state and local governmental agencies for licensing and employment purposes.⁴² One of the primary purposes for enacting Pub. L. 92-544 was to establish a national policy with adequate sanctions and administrative safeguards regarding the dissemination of the FBI's CHRI data to state and local governments for non-criminal justice licensing and employment purposes.⁴³ The FBI, with the assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544.⁴⁴ The criteria for granting access to the FBI's CHRI data are as follows:

- The state's statute requiring fingerprinting must exist as a result of a legislative enactment;
- It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
- It must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants;
- It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding over breadth;
- It must not be against public policy; and
- It may not authorize receipt of the CHRI data by a private entity.

³³ S. 560.141(1)(c)4., F.S.

³⁴ S. 560.141(1)(c)5., F.S.

³⁵ Ss. 560.141(2) and 560.142, F.S.

³⁶ S. 560.126(3), F.S.

³⁷ S. 560.126(3)(a), F.S.; r. 69v-560.201(4), F.A.C.

³⁸ S. 560.126(3)(c), F.S.; r. 69v-560.201(6), F.A.C.

³⁹ Fees are determined by whether the MSB is licensed under Part II or Part III of Chapter 560. Initial licensing fees under Part II licenses require a \$375 license application fee per § 560.143(1)(a). Part III licenses require a \$188 license application fee per § 560.143(b).

⁴⁰ Both the per branch fee and the authorized vendor fee are \$38. § 560.143(1)(c); § 560.143(1)(d).

⁴¹ Ss. 560.126(3) and 560.143(1), F.S.

⁴² 20 C.F.R. § 20.33.

⁴³ Federal Bureau of Investigation, *Testimony of Dennis Lormel Before the House Financial Services Committee (Mar. 06, 2001)*, <https://archives.fbi.gov/archives/news/testimony/fbis-perspective-on-criminal-history-record-information-checks-on-individuals-conducting-insurance-business> (last visited Feb. 27, 2023).

⁴⁴ Email from Heather R. Postlethwait, FBI Office of the General Counsel, to Nathan Pate, Florida Department of Law Enforcement, RE: ORI Request - Florida Office of Financial Regulation (Mar. 22, 2021).

Access to the FBI's CHRI data is authorized for fingerprints pursuant to ch. 560, F.S. However, in order to gain access to CHRI data for applicants to the recently created Financial Technology Sandbox under s. 559.952, F.S., created in the 2020 legislative session,⁴⁵ FDLE sent correspondence to the FBI's Criminal Justice Information Law Unit (CJILU) to obtain an Originating Agency Identifier (ORI). The ORI validates legal authorization to obtain criminal justice information and identifies the specific agency requesting the information. CJILU reviewed s. 559.952, F.S., which derives its fingerprinting authority from s. 560.141, F.S.

CJILU responded to this request stating that s. 560.141, F.S., does not qualify for access to CHRI data because the terms "responsible person" and "control of a money services business" as used in s. 560.141, F.S., are overly broad and, thus, do not sufficiently define the categories of people subject to the background check.⁴⁶ In 2022, the Legislature passed a bill to address this issue by creating the term "control person" to replace the use of "officer" and "responsible person" throughout ch. 560 F.S.⁴⁷ This solution sought to address the concerns of CJILU by narrowing the scope of applicable parties. However, CJILU found that the revised statute was still too broad.

The CJILU acknowledged that MSB fingerprinting was previously approved by the CJILU and that the FBI will continue to honor fingerprints submitted for MSB licensure.⁴⁸ However, the CJILU has placed MSB fingerprinting on a grace period of unspecified length in order to allow Florida to amend MSB fingerprinting statutes such that the statutes specifically identify the categories of licensees or employees falling within the purview of the statutes. CJILU will not allow fingerprinting of additional categories of applicants (i.e., those applying under the Financial Technology Sandbox) during this grace period.⁴⁹

Effect of the Bill

The bill amends the term "control person" to identify the specific categories of licensees or employees falling within the purview of the statute.

The bill requires the following MSB-related "control persons" to be fingerprinted for the background check:

- A person who holds the title of president, treasurer, chief executive officer, chief financial officer, chief operations officer, chief legal officer, or compliance officer for a money services business.
- A person who holds any of the officer, general partner, manager, or managing member positions named in the money services business's governing documents.⁵⁰
- A director of the money service's business's board of directors.
- A shareholder who owns 25% or more of a class of a company's equity securities.
- A general partner or limited partner who has 25% or more transferable interest in a money services business that is either a limited partnership, limited liability limited partnership, foreign limited partnership, or foreign limited liability limited partnership.⁵¹
- A person with a 25% or more membership interest in a money services business that is either a limited liability company or a foreign limited liability company.⁵²
- A natural person who indirectly owns 25% or more of the stock interest, transferable interest, or membership interest described above.

⁴⁵ Ch. 2020-161, Laws of Fla.

⁴⁶ Email from Heather R. Postlethwait, *supra* note 44.

⁴⁷ Ch. 2022-135, Laws of Fla.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Governing documents is defined as including bylaws, articles of incorporation or organization, partnership agreements, shareholder agreements, and management or operating agreements.

⁵¹ As defined in s. 620.1102, F.S.

⁵² As defined in s. 605.0102, F.S.

The bill provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has minimal fiscal impact related to rulemaking and any cost would be absorbed within the Office of Financial Regulation's current budget.⁵³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a minimal impact on vendors from a slight increase or decrease in the number of individuals subject to fingerprinting.⁵⁴

D. FISCAL COMMENTS:

The bill has minimal fiscal impact on state government expenditures.

⁵³ Email from Ash Mason, Legislative & Cabinet Affairs Director, Florida Office of Financial Regulation, RE: OFR Questions (HB607 – Chapter 560 Fingerprint Bill) (Mar. 13,2023).

⁵⁴ *Id.*