Big Picture issues: Do we want/will the OFR permit reciprocity, and with which other states? Do we want/ will the OFR permit a de mininims registration? Also, how do we address issues regarding valuation/custody, which are vague or unanswered industry wide?

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| |  |  |  | | --- | --- | --- | | [**Title XXXIII**](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Index&Title_Request=XXXIII#TitleXXXIII) REGULATION OF TRADE, COMMERCE, INVESTMENTS, AND SOLICITATIONS | [**Chapter 560**](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0500-0599/0560/0560ContentsIndex.html) MONEY SERVICES BUSINESSES | [**View Entire Chapter**](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0500-0599/0560/0560.html) | |
| **CHAPTER 560**  **MONEY SERVICES BUSINESSES**  **PART I**  **GENERAL PROVISIONS**  **(ss. 560.103-560.144)**  **PART II**  **PAYMENT INSTRUMENTS AND FUNDS TRANSMISSION**  **(ss. 560.203-560.213)**  **PART III**  **CHECK CASHING AND FOREIGN CURRENCY EXCHANGE**  **(ss. 560.303-560.312)**  **PART IV**  **DEFERRED PRESENTMENT**  **(ss. 560.402-560.408)**  **PART I**  **GENERAL PROVISIONS**  560.103 Definitions.  560.104 Exemptions.  560.1041 Limitations of Virtual Currency Regulation.  560.1042 Reciprocal Licensing of Virtual Currency Businesses.560.105 Supervisory powers; rulemaking.  560.107 Liability.  560.109 Examinations and investigations.  560.1091 Contracted examinations.  560.1092 Examination expenses.  560.1105 Records retention.  560.111 Prohibited acts.  560.113 Injunctions; receiverships; restitution.  560.114 Disciplinary actions; penalties.  560.1141 Disciplinary guidelines.  560.115 Surrender of license.  560.116 Civil immunity.  560.1161 Duty of Licensee to Maintain Virtual Currency; Property Interests.  506.1162 Mandatory Compliance Programs and Policies and Monitoring.  560.118 Reports.  560.121 Access to records; record retention; penalties.  560.123 Florida Control of Money Laundering in Money Services Business Act.  560.1235 Anti-money laundering requirements.  560.124 Sharing of information.  560.125 Unlicensed activity; penalties.  560.126 Required notice by licensee.  560.127 Control of a money services business.  560.128 Customer contacts; license display.  560.129 Confidentiality.  560.1401 Licensing standards.  560.141 License application.  560.142 License renewal.  560.143 Fees.  560.144 Deposit of fees and assessments.  560.145 De minimis registration application.  **560.103 Definitions.**—As used in this chapter, the term:  (1) “Affiliated party” means a director, officer, responsible person, employee, or foreign affiliate of a money services business, or a person who has a controlling interest in a money services business as provided in s. 560.127.  (2) “Appropriate regulator” means a state, federal, or foreign agency that has been granted authority to enforce state, federal, or foreign laws related to a money services business or deferred presentment provider.  (3) “Authorized vendor” means a person designated by a money services business licensed under part II of this chapter to act on behalf of the licensee at locations in this state pursuant to a written contract with the licensee.  (4) “Branch office” means the physical location, other than the principal place of business, of a money services business operated by a licensee under this chapter.  (5) “Cashing” means providing currency for payment instruments except for travelers checks.  (6) “Check casher” means a person who sells currency in exchange for payment instruments received, except travelers checks.  (7) “Commission” means the Financial Services Commission.  (8) “Compliance officer” means the individual in charge of overseeing, managing, and ensuring that a money services business is in compliance with all state and federal laws and rules relating to money services businesses, as applicable, including all money laundering laws and rules.  (9) “Conductor” means a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.  (10) “Control” when used in reference to a transaction or relationship involving virtual currency, means the power to execute unilaterally or prevent indefinitely a virtual currency transaction.  (10) “Corporate payment instrument” means a payment instrument on which the payee named on the instrument’s face is other than a natural person.  (11) “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.  (12) “Deferred presentment provider” means a person who is licensed under part II or part III of this chapter and has filed a declaration of intent with the office to engage in deferred presentment transactions as provided under part IV of this chapter.  (13) “Department” means the Department of Financial Services.  (14) “Electronic instrument” means a card, tangible object, or other form of electronic payment for the transmission or payment of money or the exchange of monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon each use.  (15) “Exchange” when referring to virtual currency means to assume control of virtual currency from or on behalf of another, at least momentarily, to sell, trade, or convert: (A) virtual currency for Currency, bank credit, one or more forms of virtual currency, or monetary value; or (B) legal tender, bank credit, or monetary value for one or more forms of virtual currency.  (16) “Financial audit report” means a report prepared in connection with a financial audit that is conducted in accordance with generally accepted auditing standards prescribed by the American Institute of Certified Public Accountants by a certified public accountant licensed to do business in the United States, and which must include:  (a) Financial statements, including notes related to the financial statements and required supplementary information, prepared in conformity with accounting principles generally accepted in the United States. The notes must, at a minimum, include detailed disclosures regarding receivables that are greater than 90 days, if the total amount of such receivables represents more than 2 percent of the licensee’s total assets.  (b) An expression of opinion regarding whether the financial statements are presented in conformity with accounting principles generally accepted in the United States, or an assertion to the effect that such an opinion cannot be expressed and the reasons.  (17) “Foreign affiliate” means a person located outside this state who has been designated by a licensee to make payments on behalf of the licensee to persons who reside outside this state. The term also includes a person located outside of this state for whom the licensee has been designated to make payments in this state.  (18) “Foreign currency exchanger” means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government.  (19) “Fraudulent identification paraphernalia” means all equipment, products, or materials of any kind that are used, intended for use, or designed for use in the misrepresentation of a customer’s identity. The term includes, but is not limited to:  (a) A signature stamp, thumbprint stamp, or other tool or device used to forge a customer’s personal identification information.  (b) An original of any type of personal identification listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully issued.  (c) A blank, forged, fictitious, or counterfeit instrument in the similitude of any type of personal identification listed in s. 560.310(2)(b) which would in context lead a reasonably prudent person to believe that such instrument is an authentic original of such personal identification.  (d) Counterfeit, fictitious, or fabricated information in the similitude of a customer’s personal identification information that, although not authentic, would in context lead a reasonably prudent person to credit its authenticity.  (20) “Licensee” means a person licensed under this chapter.  (21) “Location” means a branch office, mobile location, or location of an authorized vendor whose business activity is regulated under this chapter.  (22) “Monetary value” means a medium of exchange, whether or not redeemable in currency, but does not include securities as defined by s517.021(22), Fla. Stat or applicable federal law.  (23) “Money services business” means any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.  (24) “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, virtual currency, 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.  (25) “Net worth” means assets minus liabilities, determined in accordance with United States generally accepted accounting principles. Net worth shall include virtual currency assets which shall be valued at the average value of the virtual currency expressed in U.S. Dollars over the prior six months on the publicly accessible market which has the highest volume of trade in the relevant virtual currency asset during that six-month period. The information relied upon for the calculation of net worth of virtual currency assets shall be disclosed with the calculation.  (26) “Office” means the Office of Financial Regulation of the commission.  (27) “Officer” means an individual, other than a director, who participates in, or has authority to participate in, the major policymaking functions of a money services business, regardless of whether the individual has an official title or receives a salary or other compensation.  (28) “Outstanding money transmission” means a money transmission to a designated recipient or a refund to a sender that has not been completed.  (29) “Outstanding payment instrument” means an unpaid payment instrument whose sale has been reported to a licensee.  (30) “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.  (31) “Payment instrument seller” means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which sells a payment instrument.  (32) “Person” means an individual, partnership, association, trust, corporation, limited liability company, or other group, however organized, but does not include a public agency or instrumentality thereof.  (33) “Personal identification information” means a customer’s name that, alone or together with any of the following information, may be used to identify that specific customer:  (a) Customer’s signature.  (b) Photograph, digital image, or other likeness of the customer.  (c) Unique biometric data, such as the customer’s thumbprint or fingerprint, voice print, retina or iris image, or other unique physical representation of the customer.  (34) “Reciprocity agreement” means an arrangement between the office and the appropriate licensing agency of another state that permits a licensee operating under a license granted by the other state to engage in virtual currency business activity in this state. (Lets consider NY, other harder jurisdictions for max overage)  (35) “Responsible person” means an individual who is employed by or affiliated with a money services business and who has principal active management authority over the business decisions, actions, and activities of the money services business in this state.  (36) “Sells” means to sell, issue, provide, or deliver.  (37) “Store” or “storage” when referring to virtual currency means maintaining control of virtual currency on behalf of another.  (38) “Stored value” means funds or monetary value represented in digital electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically.  (39) “Transfer” when referring to virtual currency means to assume control of virtual currency from or on behalf of another and to: (A) credit the virtual currency to the account of another; (B) move the virtual currency from one account to a different account of the same person; or (C) relinquish control of virtual currency to another.  (40) “U.S. Dollar equivalent of virtual currency” means the equivalent value of a particular virtual currency in United States dollars calculated in the same manner as used to determine net worth of virtual currency.  (44) “Virtual currency” means  (a) a digital representation of value that:  (1) is used as a medium of exchange, unit of account, or store of value; and  (2) is not legal tender, whether or not denominated in legal tender; and  (b) does not include:  (1) a transaction in which a merchant grants value as part of an affinity or rewards program, which value cannot be taken from or exchanged with the merchant or any other person for legal tender, bank credit, or virtual currency; or  (2) a digital representation of value issued by or on behalf of the publisher and used within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform; or  (3) a digital representation of a security as defined by 517.021(22), Fla. Stat. and relevant federal law.  (45) “Virtual currency administration” means issuing virtual currency with the authority to redeem the currency for legal tender, bank credit, or other virtual currency.  (46) “Virtual currency business activity” means:  (a) exchanging, transferring, or storing virtual currency with or on behalf of another or engaging in virtual currency administration, whether directly or through an agreement with a virtual currency control services vendor;  (b) holding electronic precious metals or electronic certificates of precious metals on behalf of another or issuing shares or electronic certificates representing interests in precious metals, except if the electronic precious metal or certificate of precious metals is a security, as defined by 517.021(22), Fla. Stat. and relevant federal law, or  (c) exchanging one or more digital representations of value used within one or more online games, game platforms, or family of games for virtual currency or for legal tender or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representations of value were received.  (47) “Virtual currency control services vendor” means a person that has control of virtual currency solely under an agreement with a person that, on behalf of another person, assumes control of virtual currency.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 1, ch. 97-59; s. 2, ch. 2000-360; s. 1, ch. 2001-119; s. 687, ch. 2003-261; s. 1, ch. 2004-85; s. 1, ch. 2008-177; s. 1, ch. 2012-85.  **560.104 Exemptions.**—The following entities are exempt from the provisions of this chapter:  (1) Banks, credit card banks, credit unions, trust companies, associations, offices of an international banking corporation, Edge Act or agreement corporations, or other financial depository institutions organized under the laws of any state or the United States.  (2) The United States or any agency or instrumentality thereof.  (3) This state or any political subdivision of this state.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 2, ch. 2008-177.  **560.1041 Limitation of Scope related to Virtual Currency. -**  (1) Except as otherwise provided in subsection (2), this chapter governs a Person who engages or holds itself out as engaging in virtual currency business activity another.  (2) This chapter does not apply to the exchange, transfer, or storage of virtual currency or to virtual currency administration to the extent that provisions of the Electronic Fund Transfer Act of 1978, 15 U.S.C. Sections 1693 through 1693r [as amended], the Securities Exchange Act of 1934, 15 U.S.C. Section 78a through 78oo [as amended], the Commodities Exchange Act of 1936, 7 U.S.C. Sections 1 through 27f [as amended], or chapter 517, Fla. Stat. [as amended], govern the activity, or to activity by:  (a) the United States, a state, political subdivision of a state, agency or instrumentality of federal, state, or local government, or a foreign government or its subdivisions, departments, agencies and instrumentalities;  (b) a bank;  (c) a person whose participation in a payment system is limited to providing processing, clearing, or performing settlement services solely for transactions between or among persons who are exempt from the licensing or registration requirements of this chapter;  (d) a person engaged in the business of dealing in foreign exchange to the extent the person’s activity meets the definition in 31 C.F.R. Section 1010.605(f)(1)(iv);  (e) a person that only:  (1) contributes connectivity software or computing power to a decentralized virtual currency, or to a protocol governing transfer of the digital representation of value;  (2) provides data storage or security services for a virtual currency business and is not otherwise engaged in virtual currency business activity on behalf of other persons; or  (3) provides to persons otherwise exempt from this chapter virtual currencies as one or more enterprise solutions used solely among each other and has no agreement or relationship with any other person who is an end-user of virtual currency;  (f) a user of virtual currency solely  (1) on their own behalf,  (2) for personal, family, or household purposes, or  (3) for academic purposes.  (g) a person whose virtual currency business activity with or on behalf of another is reasonably expected to be valued, in the aggregate, on an annual basis at $5,000 or less measured by the U.S. Dollar equivalent of virtual currency;  (h) an attorney or title insurance company providing escrow services to residents;  (i) a securities intermediary, as defined in s. 678.102, Fla. Stat,, or a commodities intermediary as defined in s. 679.xxx, Fla. Stat.,, that:  (1) does not engage in the ordinary course of business in virtual currency business activity in addition to maintaining securities accounts or commodities accounts and is regulated under federal law or under law of this state or another state as a securities intermediary or commodities intermediary; and  (2) affords protections that are comparable to those set forth in ch. 678.5011, Fla. Stat. *et seq*.  (j) a secured creditor under Article 9 of the Uniform Commercial Code or creditor with a judicial lien or lien arising by operation of law on collateral that is virtual currency if the virtual currency business activity of the creditor is limited to enforcement of the security interest in compliance with Article 9 of the Uniform Commercial Code or of the lien in compliance with the law applicable to the lien;  (k) a virtual currency control services vendor; or  (l) a person that receives no compensation for providing virtual currency products or services, or from conducting virtual currency business activity, or that is engaged in testing products or services with the person’s own funds.  (3) The office may determine that a person or class of persons, given facts particular to the person or class, should be exempt from this chapter, whether the person or class is covered by requirements imposed under federal law on a money service business.  **560.1042 Reciprocal Licensing. -**  (1) A Person licensed by another state to engage in virtual currency business activity in that state may engage in virtual currency business activity with or on behalf of residents to the same extent as if the person held a license under this act if:  (a) the office determines that the state in which the Person is licensed has in force laws regulating virtual currency business activity that are substantially similar to, or more protective of rights of residents than the laws of this state;  (b) at least 30 days before the Person commences virtual currency business activity with or on behalf of residents, the Person submits to the department an application including:  (1) notice that the Person will rely on reciprocal licensing, a copy of the virtual currency business activity license issued by the other state, and a certification by the other state as to the history of the license;  (2) a nonrefundable reciprocal license fee in the amount found in ch. 560.143, Fla. Stat**.**;  (3) documentation demonstrating that the applicant complies with the security reserve requirements and the net worth and reserve requirements of this chapter; and  (4) a certification signed by an executive officer of the applicant affirming that the applicant will conduct its virtual currency business activity with or on behalf of residents in compliance with this chapter;  (c) the office does not reject the application not later than [15] days after receipt of the items submitted under paragraph (b); and  (d) the applicant does not commence virtual currency business activity with or on behalf of residents until 31 days after complying with paragraph (b).  (2) For good cause, the office may modify the time periods in this section.  **560.105 Supervisory powers; rulemaking.**—  (1) The office shall:  (a) Supervise all money services businesses and their authorized vendors.  (b) Have access to the books and records of persons the office supervises as necessary to carry out the duties and functions of the office under this chapter.  (c) Issue orders and declaratory statements, disseminate information, and otherwise administer and enforce this chapter and all related rules in order to effectuate the purposes, policies, and provisions of this chapter.  (2) The commission may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this chapter.  (a) The commission may adopt rules requiring electronic submission of any forms, documents, or fees required by this chapter, which must reasonably accommodate technological or financial hardship and provide procedures for obtaining an exemption due to a technological or financial hardship.  (b) Rules adopted to regulate money services businesses, including deferred presentment providers, must be responsive to changes in economic conditions, technology, and industry practices.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 185, ch. 98-200; s. 688, ch. 2003-261; s. 53, ch. 2006-213; s. 3, ch. 2008-177.  **560.107 Liability.**—No person acting, or who has acted, in good faith reliance upon a rule, order, or declaratory statement issued by the commission or the office shall be subject to any criminal, civil, or administrative liability for such action, notwithstanding a subsequent decision by a court of competent jurisdiction invalidating the rule, order, or declaratory statement. In the case of an order or a declaratory statement that is not of general application, no person other than the person to whom the order or declaratory statement was issued is entitled to rely upon it, except upon material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 690, ch. 2003-261.  **560.109 Examinations and investigations.**—The office may conduct examinations and investigations, within or outside this state to determine whether a person has violated any provision of this chapter and related rules, or of any practice or conduct that creates the likelihood of material loss, insolvency, or dissipation of the assets of a money services business or otherwise materially prejudices the interests of their customers.  (1) The office may, without advance notice, examine or investigate each licensee as often as is warranted for the protection of customers and in the public interest. However, the office must examine each licensee at least once every 5 years. The office may, without advance notice, examine or investigate a money services business, authorized vendor, affiliated party, or license applicant at any time if the office suspects that the money services business, authorized vendor, affiliated party, or license applicant has violated or is about to violate any provision of this chapter or any criminal law of this state or of the United States.  (2) The office may conduct a joint or concurrent examination with any state or federal regulatory agency and may furnish a copy of all examinations to an appropriate regulator if the regulator agrees to abide by the confidentiality provisions in chapter 119 and this chapter. The office may also accept an examination from any appropriate regulator or, pursuant to s. 560.1091, from an independent third party that has been approved by the office.  (3) Persons subject to this chapter who are examined or investigated shall make available to the office all books, accounts, documents, files, information, assets, and matters that are in their immediate possession or control and that relate to the subject of the examination or investigation.  (a) Records not in their immediate possession must be made available to the office within 3 days after actual notice is served.  (b) Upon notice, the office may require that records written in a language other than English be accompanied by a certified translation at the expense of the licensee. For purposes of this section, the term “certified translation” means a document translated by a person who is currently certified as a translator by the American Translators Association or other organization designated by rule.  (4) In the course of or in connection with any examination or investigation conducted by the office:  (a) An employee of the office holding the title and position of a financial examiner or analyst, financial investigator, attorney at law, or higher may:  1. Administer oaths and affirmations.  2. Take or cause to be taken testimony and depositions.  (b) The office, or any of its employees holding a title of attorney, area financial manager, or higher may issue, revoke, quash, or modify subpoenas and subpoenas duces tecum under the seal of the office or cause any such subpoena or subpoena duces tecum to be issued by any county court judge or clerk of the circuit court or county court to require persons to appear before the office at a reasonable time and place to be named and to bring such books, records, and documents for inspection as may be designated. Such subpoenas may be served by a representative of the office or as otherwise provided by law for the service of subpoenas.  (c) The office may allow a person to file a statement in writing, under oath, or otherwise as to facts and circumstances specified by the office.  (5) If a person does not comply with a subpoena issued or caused to be issued by the office pursuant to this section, the office may petition a court of competent jurisdiction for an order requiring the subpoenaed person to appear and testify and to produce such records as specified in the subpoena duces tecum. The office is entitled to the summary procedure provided in s. 51.011, and the court shall advance the cause on its calendar.  (a) A copy of the petition shall be served upon the person subpoenaed by any person authorized by this section to serve subpoenas, who shall make and file with the court an affidavit showing the time, place, and date of service.  (b) At a hearing on the petition, the person subpoenaed, or any person whose interests are substantially affected by the investigation, examination, or subpoena, may appear and object to the subpoena and to the granting of the petition. The court may make any order that justice requires to protect a party or other person and her or his personal and property rights, including, but not limited to, protection from oppression, undue burden, or expense.  (c) Failure to comply with an order granting, in whole or in part, a petition for enforcement of a subpoena is a contempt of the court.  (6) Witnesses are entitled to the same fees and mileage as witnesses in the circuit court, except that fees or mileage is not allowed for the testimony of a person taken at the person’s principal office or residence.  (7) Reasonable and necessary costs incurred by the office or third parties authorized by the office in connection with examinations or investigations may be assessed against any person subject to this chapter on the basis of actual costs incurred. Assessable expenses include, but are not limited to, expenses for: interpreters; certified translations of documents into the English language required by this chapter or related rules; communications; legal representation; economic, legal, or other research, analyses, and testimony; and fees and expenses for witnesses. The failure to reimburse the office is a ground for denial of a license application, denial of a license renewal, or for revocation of any approval thereof. Except for examinations authorized under this section, costs may not be assessed against a person unless the office determines that the person has operated or is operating in violation of this chapter.  (8) The office shall provide a written report of any violation of law that may be a felony to the appropriate criminal investigatory agency having jurisdiction with respect to such violation.  (9) The office shall prepare and submit an annual report to the President of the Senate and the Speaker of the House of Representatives beginning January 1, 2009, through January 1, 2014, which includes:  (a) The total number of examinations and investigations that resulted in a referral to a state or federal agency and the disposition of each of those referrals by agency.  (b) The total number of initial referrals received from another state or federal agency, the total number of examinations and investigations opened as a result of referrals, and the disposition of each of those cases.  (c) The number of examinations or investigations undertaken by the office which were not the result of a referral from another state agency or a federal agency.  (d) The total amount of fines assessed and collected by the office as a result of an examination or investigation of activities regulated under parts II and III of this chapter.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 837, ch. 97-103; s. 693, ch. 2003-261; s. 2, ch. 2004-85; s. 4, ch. 2008-177; s. 2, ch. 2012-85.  **560.1091 Contracted examinations.**—The office may contract with third parties to conduct examinations under this chapter.  (1) The person or firm selected by the office may not have a conflict of interest that might affect its ability to independently perform its responsibilities with respect to an examination.  (2) An examination under this section may be conducted by an independent certified public accountant, information technology specialist, or other specialist specified by rule who meets criteria specified by rule. The rules shall also provide that:  (a) The rates charged to the licensee examined are consistent with rates charged by other firms in similar professions and are comparable with the rates charged for comparable examinations.  (b) The licensee make payment for the examination pursuant to s. 560.1092 and in accordance with the rates and terms established by the office and the person or firm performing the examination.  **History.**—s. 5, ch. 2008-177.  **560.1092 Examination expenses.**—  (1) Each licensee examined shall pay to the office the expenses of the examination at the rates adopted by the commission by rule. Such expenses shall include actual travel expenses, reasonable living expense allowance, compensation of the examiner or other person making the examination, and necessary attendant administrative costs of the office directly related to the examination. Travel expense and living expense allowance are limited to those expenses incurred on account of the examination and shall be paid by the examined licensee together with compensation upon presentation by the office to the licensee of a detailed account of the charges and expenses after a detailed statement has been filed by the examiner and approved by the office.  (2) All moneys collected from licensees for examinations shall be deposited into the Regulatory Trust Fund, and the office may make deposits into such fund from moneys appropriated for the operation of the office.  (3) Notwithstanding s. 112.061, the office may pay to the examiner or person making the examination out of the trust fund the actual travel expenses, reasonable living expense allowance, and compensation in accordance with the statement filed with the office by the examiner or other person, as provided in subsection (1) upon approval by the office.  (4) When not examining a licensee, the travel expenses, per diem, and compensation for the examiners and other persons employed to make examinations, if approved, shall be paid out of moneys budgeted for such purpose as regular employees, and reimbursement for travel expenses and per diem shall be at rates as provided in s. 112.061.  **History.**—s. 6, ch. 2008-177.  **560.1105 Records retention.**—Each licensee and its authorized vendors must maintain all books, accounts, documents, files, and information necessary for determining compliance with this chapter and related rules for 5 years unless a longer period is required by other state or federal law.  (1) The records required under this chapter may be maintained by the licensee at any location identified in its license application or by amendment to the application. The licensee must make such records available to the office for examination and investigation in this state within 3 business days after receipt of a written request.  (2) The original of any record of a licensee or authorized vendor includes a record stored or transmitted by electronic, computerized, mechanized, or other information storage or retrieval or transmission system or device that can generate, regenerate, or transmit the precise data or other information comprising the record. An original also includes the visible data or other information so generated, regenerated, or transmitted if it is legible or can be made legible by enlargement or other process.  (3) Each licensee and its authorized vendors shall maintain, for all virtual currency business activity with another for a period of five years after the date of the activity, a record of:  (A) each transaction of the licensee with or on behalf of another or for the licensee’s account in this state, including:  (1) the identity of the other party;  (2) the form of the transaction;  (3) the amount, date, and payment instructions given by the other party; and  (4) the account number, name, and physical address of the other party, and, to the extent feasible, other parties to the transaction;  (B) the aggregate number of transactions and aggregate value of transactions by the licensee with or on behalf of the other party and for the licensee’s account expressed in U.S. Dollar equivalent of virtual currency for the previous 12 calendar months;  (C) each transaction in which the licensee t exchanges one form of virtual currency for legal tender or another form of virtual currency with or on behalf of the resident;  (D) a general ledger posted at least monthly listing all assets, liabilities, capital, income, and expenses of the licensee;  (E) each business-call report that the licensee t is required to create or provide to the office;  (F) bank statements and bank reconciliation records for the licensee and the name, account number, and physical address of each bank that the licensee uses in the conduct of its virtual currency business activity with or on behalf of others;  (G) a report of any dispute with others; and  (H) a report of any virtual currency business activity transaction that the licensee was unable to complete.  (4) A licensee shall maintain records required by subsection (3) in a form that enables the department to determine whether the licensee is in compliance with this chapter, any court order, and law of this state other than this chapter. (5) The commission may adopt rules to administer this section and ss. 560.211 and 560.310. In adopting rules, the commission shall take into consideration federal regulations, rulings, and guidance issued by an appropriate regulator.  (6) Any person who willfully fails to comply with this section or ss. 560.211 and 560.310 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  **History.**—s. 7, ch. 2008-177.  **560.111 Prohibited acts.**—  (1) A money services business, authorized vendor, or affiliated party may not:  (a) Receive or possess any property except in payment of a just demand, and, with intent to deceive or defraud, to omit to make or to cause to be made a full and true entry thereof in its books and accounts, or to concur in omitting to make any material entry thereof.  (b) Embezzle, abstract, or misapply any money, property, or thing of value belonging to the money services business, an authorized vendor, or customer with intent to deceive or defraud.  (c) Make any false entry in its books, accounts, reports, files, or documents with intent to deceive or defraud another person, or with intent to deceive the office, any appropriate regulator, or any authorized third party appointed by the office to examine or investigate the affairs of the money services business or authorized vendor.  (d) Engage in an act that violates 18 U.S.C. s. 1956, 18 U.S.C. s. 1957, 18 U.S.C. s. 1960, 31 U.S.C. s. 5324, or any other law, rule, or regulation of another state or the United States relating to a money services business, deferred presentment provider, or usury which may cause the denial or revocation of a money services business or deferred presentment provider license or the equivalent in that jurisdiction.  (e) File with the office, sign as a duly authorized representative, or deliver or disclose, by any means, to the office or any of its employees any examination report, report of condition, report of income and dividends, audit, account, statement, file, or document known by it to be fraudulent or false as to any material matter.  (f) Place among the assets of a money services business or authorized vendor any note, obligation, or security that the money services business or authorized vendor does not own or is known to be fraudulent or otherwise worthless, or to represent to the office that any note, obligation, or security is the property of the money services business or authorized vendor and is genuine if it is known to be fraudulent or otherwise worthless.  (g) Knowingly possess any fraudulent identification paraphernalia. This paragraph does not prohibit the maintenance and retention of any records required by this chapter.  (2) A person may not knowingly execute, or attempt to execute, a scheme or artifice to defraud a money services business or authorized vendor, or obtain the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a money services business or authorized vendor, by means of false or fraudulent pretenses, representations, or promises.  (3) A person other than the conductor of a payment instrument may not provide a licensee engaged in cashing the payment instrument with the customer’s personal identification information.  (4) Any person who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  [1](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0500-0599/0560/0560.html" \l "1)(5) Any person who willfully violates any provision of s. 560.403, s. 560.404, or s. 560.405 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  (6) A person who knowingly and willfully violates s. 560.310(2)(d) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s.775.084.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 2, ch. 97-59; s. 4, ch. 2000-360; s. 2, ch. 2001-119; s. 694, ch. 2003-261; s. 8, ch. 2008-177; s. 67, ch. 2009-21; s. 3, ch. 2012-85; s. 1, ch. 2014-81; s. 4, ch. 2018-26.  1**Note.**—Section 4, ch. 2018-26, reenacted subsection (5), effective July 1, 2019.  **560.113 Injunctions; receiverships; restitution.**—  (1) If the office determines that any person has engaged in or is about to engage in any action that is a violation of this chapter or related rules, the office may, in addition to or in lieu of other remedies, bring an action on behalf of the state in the circuit court against the person and any other person acting in concert with such person to enjoin such person from engaging in such act. The office may apply for, and on due showing be entitled to have issued, the court’s subpoena requiring the appearance of the person and her or his employees, associated persons, or agents and the production of any documents, books, or records that may appear necessary for the hearing of the petition, and to testify or give evidence concerning the acts complained of.  (2) In addition to, or in lieu of, the enforcement of a temporary restraining order, temporary injunction, or permanent injunction against the person, the court may, upon application of the office, impound and appoint a receiver or administrator for the property, assets, and business of the defendant, including, but not limited to, any related books, records, documents, or papers. The receiver or administrator shall have all powers and duties conferred by the court as to the custody, collection, administration, winding up, and liquidation of the property and business. The court may issue orders and decrees staying all pending suits and enjoining any further suits affecting the receiver’s or administrator’s custody or possession of the property, assets, and business or may, with the consent of the presiding judge of the circuit, require that all such suits be assigned to the judge appointing the receiver or administrator.  (3) In addition to, or in lieu of, any other remedies provided under this chapter, the office may apply to the court hearing the matter for an order directing the defendant to make restitution of those sums shown by the office to have been obtained in violation of this chapter. Such restitution shall, at the option of the court, be payable to the administrator or receiver appointed under this section or directly to the persons whose assets were obtained in violation of this chapter.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 696, ch. 2003-261; s. 9, ch. 2008-177.  **560.114 Disciplinary actions; penalties.**—  (1) The following actions by a money services business, authorized vendor, or affiliated party constitute grounds for the issuance of a cease and desist order; the issuance of a removal order; the denial, suspension, or revocation of a license; or taking any other action within the authority of the office pursuant to this chapter:  (a) Failure to comply with any provision of this chapter or related rule or order, or any written agreement entered into with the office.  (b) Fraud, misrepresentation, deceit, or gross negligence in any transaction by a money services business, regardless of reliance thereon by, or damage to, a customer.  (c) Fraudulent misrepresentation, circumvention, or concealment of any matter that must be stated or furnished to a customer pursuant to this chapter, regardless of reliance thereon by, or damage to, such customer.  (d) False, deceptive, or misleading advertising.  (e) Failure to maintain, preserve, keep available for examination, and produce all books, accounts, files, or other documents required by this chapter or related rules or orders, by 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.340, 1010.410, 1010.415, 1022.210, 1022.320, 1022.380, and 1022.410, or by an agreement entered into with the office.  (f) Refusing to allow the examination or inspection of books, accounts, files, or other documents by the office pursuant to this chapter, or to comply with a subpoena issued by the office.  (g) Failure to pay a judgment recovered in any court by a claimant in an action arising out of a money transmission transaction within 30 days after the judgment becomes final.  (h) Engaging in an act prohibited under s. 560.111.  (i) Insolvency.  (j) Failure by a money services business to remove an affiliated party after the office has issued and served upon the money services business a final order setting forth a finding that the affiliated party has violated a provision of this chapter.  (k) Making a material misstatement, misrepresentation, or omission in an application for licensure, any amendment to such application, or application for the appointment of an authorized vendor.  (l) Committing any act that results in a license or its equivalent, to practice any profession or occupation being denied, suspended, revoked, or otherwise acted against by a licensing authority in any jurisdiction.  (m) Being the subject of final agency action or its equivalent, issued by an appropriate regulator, for engaging in unlicensed activity as a money services business or deferred presentment provider in any jurisdiction.  (n) Committing any act resulting in a license or its equivalent to practice any profession or occupation being denied, suspended, revoked, or otherwise acted against by a licensing authority in any jurisdiction for a violation of 18 U.S.C. s. 1956, 18 U.S.C. s. 1957, 18 U.S.C. s. 1960, 31 U.S.C. s. 5324, or any other law or rule of another state or of the United States relating to a money services business, deferred presentment provider, or usury that may cause the denial, suspension, or revocation of a money services business or deferred presentment provider license or its equivalent in such jurisdiction.  (o) Having been convicted of, or entered a plea of guilty or nolo contendere to, any felony or crime punishable by imprisonment of 1 year or more under the law of any state or the United States which involves fraud, moral turpitude, or dishonest dealing, regardless of adjudication.  (p) Having been convicted of, or entered a plea of guilty or nolo contendere to, a crime under 18 U.S.C. s. 1956 or 31 U.S.C. s. 5324, regardless of adjudication.  (q) Having been convicted of, or entered a plea of guilty or nolo contendere to, misappropriation, conversion, or unlawful withholding of moneys belonging to others, regardless of adjudication.  (r) Failure to inform the office in writing within 30 days after having pled guilty or nolo contendere to, or being convicted of, any felony or crime punishable by imprisonment of 1 year or more under the law of any state or the United States, or any crime involving fraud, moral turpitude, or dishonest dealing.  (s) Aiding, assisting, procuring, advising, or abetting any person in violating a provision of this chapter or any order or rule of the office or commission.  (t) Failure to pay any fee, charge, or cost imposed or assessed under this chapter.  (u) Failing to pay a fine assessed by the office within 30 days after the due date as stated in a final order.  (v) Failure to pay any judgment entered by any court within 30 days after the judgment becomes final.  (w) Engaging or advertising engagement in the business of a money services business or deferred presentment provider without a license, unless exempted from licensure.  (x) Payment to the office for a license or other fee, charge, cost, or fine with a check or electronic transmission of funds that is dishonored by the applicant’s or licensee’s financial institution  (y) Violations of 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.340, 1010.410, 1010.415, 1022.210, 1022.320, 1022.380, and 1022.410, and United States Treasury Interpretive Release 2004-1.  (z) Any practice or conduct that creates the likelihood of a material loss, insolvency, or dissipation of assets of a money services business or otherwise materially prejudices the interests of its customers.  (aa) Failure of a check casher to maintain a federally insured depository account as required by s. 560.309.  (bb) Failure of a check casher to deposit into its own federally insured depository account any payment instrument cashed as required by s. 560.309.  (cc) Violating any provision of the Military Lending Act, 10 U.S.C. s. 987, or the regulations adopted under that act in 32 C.F.R. part 232, in connection with a deferred presentment transaction conducted under part IV of this chapter.  (2) Pursuant to s. 120.60(6), the office may summarily suspend the license of a money services business if the office finds that a licensee poses an immediate, serious danger to the public health, safety, and welfare. A proceeding in which the office seeks the issuance of a final order for the summary suspension of a licensee shall be conducted by the commissioner of the office, or his or her designee, who shall issue such order. The following acts are deemed to constitute an immediate and serious danger to the public health, safety, and welfare, and the office may immediately suspend the license of a money services business if:  (a) The money services business fails to provide to the office, upon written request, any of the records required by s. 560.123, s. 560.1235, s. 560.211, or s. 560.310 or any rule adopted under those sections. The suspension may be rescinded if the licensee submits the requested records to the office.  (b) The money services business fails to maintain a federally insured depository account as required by s. 560.309, unless that business deals exclusively in virtual currency.  (c) A natural person required to be listed on the license application for a money services business pursuant to s. 560.141(1)(a)3. is criminally charged with, or arrested for, a crime described in paragraph (1)(o), paragraph (1)(p), or paragraph(1)(q).  (3) The office may deny licensure if the applicant or an affiliated party is the subject of a pending criminal prosecution or governmental enforcement action in any jurisdiction until the conclusion of the prosecution or action.  (4) The office may issue a cease and desist order or removal order, suspend or revoke a license, or take any other action within the authority of the office against a licensee based on any fact or condition that exists and that, if it had existed or been known to exist at the time of license application, would have been grounds for license denial.  (5) A money services business licensed under part II of this chapter is responsible for any act of its authorized vendors if the money services business should have known of the act or had actual knowledge that such act is a violation of this chapter, and the money services business allowed the act to continue. Such responsibility is limited to conduct engaged in by the authorized vendor pursuant to the authority granted to it by the money services business.  (6) If a license granted under this chapter expires or is surrendered by the licensee during the pendency of an administrative action, the proceeding may continue as if the license is still in effect.  (7) The office may, in addition to or in lieu of the denial, suspension, or revocation of a license, impose a fine of at least $1,000 but not more than $10,000 for each violation of this chapter.  (8) In addition to any other provision of this chapter, the office may impose a fine of up to $1,000 per day for each day that a person engages in the business of a money services business or deferred presentment provider without being licensed.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 3, ch. 97-59; s. 5, ch. 2000-360; s. 3, ch. 2001-119; s. 697, ch. 2003-261; s. 3, ch. 2004-85; s. 54, ch. 2006-213; s. 10, ch. 2008-177; s. 4, ch. 2012-85; s. 2, ch. 2014-81; s. 3, ch. 2016-160.  **560.1141 Disciplinary guidelines.**—  (1) The commission shall adopt by rule disciplinary guidelines applicable to each ground for disciplinary action that may be imposed by the office.  (2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses and that distinguish minor violations from those that endanger the public health, safety, or welfare; that provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct; and that ensure that such penalties are imposed in a consistent manner by the office.  (3) The commission shall adopt by rule mitigating and aggravating circumstances that allow the office to impose a penalty other than that provided for in the guidelines, and for variations and a range of penalties permitted under such circumstances.  **History.**—s. 11, ch. 2008-177.  **560.115 Surrender of license.**—A licensee may voluntarily surrender its license at any time by giving written notice to the office.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 698, ch. 2003-261; s. 12, ch. 2008-177.  **560.116 Civil immunity.**—Any person having reason to believe that a provision of this chapter is being violated, has been violated, or is about to be violated, may file a complaint with the office setting forth the details of the alleged violation. Such person is immune from civil liability unless the information provided is false and has been provided with reckless disregard for the truth.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 699, ch. 2003-261; s. 13, ch. 2008-177.  560.1161. Duty of Licensee to Maintain Virtual Currency; Property Interests. -  (a) A licensee that has control of virtual currency for one or more persons must maintain in its control an amount of each type of virtual currency sufficient to satisfy the aggregate entitlements of the persons to the type of virtual currency.  (b) If a licensee fails to comply with subsection (a), the property interests of the persons to the virtual currency are pro rata property interests in the type of virtual currency to which the persons are entitled, without regard to the time the persons became entitled to the virtual currency or the licensee or obtained control of the virtual currency.  (c) The virtual currency referred to in this section is:  (1) held for the persons entitled to the virtual currency;  (2) not property of the licensee or; and  (3) not subject to the claims of creditors of the licensee.  506.1162. Mandatory Compliance Programs and Policies and Monitoring.-  (a) A licensee doing business including virtual currency business activity, before submitting an application for license, shall create and, during licensure, maintain and implement policies and procedures for:  (1) an information security and operational security program;  (2) a business-continuity program;  (3) a disaster-recovery program;  (4) an anti-fraud program;  (5) an anti-money-laundering program that complies with the obligations of s. 560.1235, Fla. Stat.;  (6) a program to prevent funding of terrorist activity; and  (7) a program designed to:  (A) assure compliance with this chapter and other state and federal law relevant to the virtual currency business activity contemplated by the licensee in this state; and  (B) assist the licensee to achieve the purposes of the other law if violation of that law has a remedy under this chapter.  (b) Each policy required by subsection (a) must be in a record and be designed to be adequate for the licensee’s contemplated virtual currency business activity, considering the circumstances of licensee, the licensee’s customers, and the safe operation of the virtual currency business activity. Each policy and implementing procedure must be compatible with other policies and the procedures implementing them and not conflict with policies or procedures applicable to the licensee under the law of this state other than this chapter.  (c) A licensee’s policy for detecting fraud must include:  (1) identification and assessment of the material risks of its virtual currency business operations related to fraud;  (2) protection against any material risks related to fraud identified by the office or the licensee; and  (3) periodic evaluation and revision of the anti-fraud procedure.  (d) A licensee’s policy for countermanding money laundering and terrorist financing must include:  (1) identification and assessment of the material risks of its virtual currency business operations related to money laundering and terrorist funding;  (2) procedures, in accord with federal law or guidance published by federal agencies responsible for enforcing federal laws, pertaining to money laundering and terrorist financing; and  (3) filing of the reports under the Bank Secrecy Act, 31 U.S.C. Section 5311 et seq. [as amended], or 31 C.F.R. Part X [as amended], and any other federal or state laws pertaining to the deterrence or detection of money laundering or terrorist funding.  (e) A licensee’s information security and operational security policy must include reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity and availability of any non-public personal information or virtual currency it receives, maintains or transmits.  (f) A licensee is not required to file a copy of a report it makes to a federal authority unless the office specifically requires the filing.  (g) A licensee’s protection policy must include:  (1) any action or system of records required to comply with the provisions of this chapter and law of this state other than this chapter applicable to the licensee with respect to virtual currency business activity;  (2) a procedure for resolving disputes between the licensee and another;  (3) a procedure for a resident to report an unauthorized, mistaken, or accidental virtual currency business activity transaction; and  (4) a procedure for a resident to file a complaint with the licensee and for the resolution of the complaint in a fair and timely manner with notice to the resident as soon as reasonably practical of the resolution and the reasons for the resolution.  (h) After the policies and procedures required by this section are created and approved by the office and the licensee, the licensee shall engage a responsible individual with adequate authority and experience to monitor each policy and procedure, publicize it as appropriate, recommend changes as desirable, and enforce it.  (i) A licensee may:  (1) request advice from the department as to compliance with this section; and  (2) with the department’s approval, outsource functions, other than compliance, required under this section.  (j) Failure of a particular policy or procedure adopted under this section in a particular instance to meet its goals is not a ground for liability of a licensee if the policy or procedure was created, implemented, and observed properly. Repeated failures are evidence that the policy or procedure was not created or implemented properly.  (k) A policy and procedure required by this section must be made available to others in a clear and conspicuous manner separately from other disclosures made to and transmitted to others in the medium through which the other contacted the licensee.  **560.118 Reports.**—  (1) Annual financial audit reports must be filed with the office pursuant to this chapter or related rules. The licensee shall directly bear the cost of the audit.  (2) Each licensee must submit quarterly reports to the office in a format and include information as specified by rule. The rule may require the report to contain a declaration by an officer, or any other responsible person authorized to make such declaration, that the report is true and correct to the best of her or his knowledge and belief.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 4, ch. 97-59; s. 838, ch. 97-103; s. 61, ch. 99-5; s. 7, ch. 2000-360; s. 4, ch. 2001-119; s. 701, ch. 2003-261; s. 14, ch. 2008-177.  **560.121 Access to records; record retention; penalties.**—  (1) Orders of courts or of administrative law judges for the production of confidential records or information must provide for inspection in camera by the court or the administrative law judge; and, if the court or administrative law judge determines that the documents requested are relevant or would likely lead to the discovery of admissible evidence, the court or the administrative law judge must issue further orders to protect the confidentiality of the documents. Any order directing the release of information is immediately reviewable, and a petition by the office for review of the order shall automatically stay further proceedings in the trial court or the administrative hearing until the disposition of the petition by the reviewing court. A petition for review of the order filed by any other party shall operate as a stay of the proceedings only upon order of the reviewing court.  (2) Confidential records and information furnished pursuant to a legislative subpoena must be kept confidential except in cases involving the investigation of charges against a public official subject to impeachment or removal, and then disclosure of such information shall be only to the extent determined to be necessary by the legislative body or committee.  (3) Examination reports, investigatory records, applications, and related information compiled by the office, or photographic copies thereof, must be retained by the office for at least 5 years after the date the examination or investigation ceases to be active. Application records, and related information compiled by the office, or photographic copies thereof, must be retained by the office for a period of at least 5 years after the date the license ceases to be active.  (4) Any person who willfully discloses information made confidential by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 253, ch. 96-410; s. 703, ch. 2003-261; s. 19, ch. 2004-335; s. 55, ch. 2006-213; s. 16, ch. 2008-177.  **560.123 Florida Control of Money Laundering in Money Services Business Act.**—  (1) This section may be cited as the “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 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.  (3) A money services business shall keep a record of each financial transaction occurring in this state which it knows to involve currency or other payment instrument, 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 cash in or cash out totaling 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, and of chapter 896 concerning offenses relating to financial transactions.  (5) In enforcing this section, the office shall acknowledge and take into consideration the requirements of Title 31, United States Code, in order to reduce the burden of duplicate requirements and to acknowledge the economic advantage of having similar reporting and recordkeeping requirements between state and federal regulatory authorities.  (6) The office must retain a copy of all reports received under subsection (3) for a minimum of 5 years after receipt of the report. However, if a report or information contained in a report is known by the office to be the subject of an existing criminal proceeding, the report must be retained for a minimum of 10 years after the date of receipt.  (7) In addition to any other powers conferred upon the office to enforce and administer this chapter, the office may:  (a) Bring an action in any court of competent jurisdiction to enforce or administer this section. In such action, the office may seek award of any civil penalty authorized by law and any other appropriate relief at law or equity.  (b) Issue and serve upon a person an order requiring the person to cease and desist and take corrective action if the office finds that the person is violating, has violated, or is about to violate any provision of this section or chapter 896; any rule or order adopted under this section or chapter 896; or any written agreement related to this section or chapter 896 which is entered into with the office.  (c) Issue and serve upon a person an order suspending or revoking the person’s money services business license if the office finds that the person is violating, has violated, or is about to violate any provision of this section or chapter 896; any rule or order adopted under this section or chapter 896; or any written agreement related to this section or chapter 896 which is entered into with the office.  (d) Issue and serve upon any person an order of removal whenever the office finds that the person is violating, has violated, or is about to violate any provision of this section or chapter 896; any rule or order adopted under this section or chapter 896; or any written agreement related to this section or chapter 896 which is entered into with the office.  (e) Impose and collect an administrative fine against any person found to have violated any provision of this section or chapter 896; any rule or order adopted under this section or chapter 896; or any written agreement related to this section or chapter 896 which is entered into with the office, of up to $10,000 per day for each willful violation or $500 per day for each negligent violation.  (8)(a) Except as provided in paragraph (b), a person who willfully violates any provision of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.  (b) A person who willfully violates any provision of this section, if the violation involves:  1. Currency or payment instruments 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 or payment instruments 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 or payment instruments 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 $250,000 or twice the value of the currency or payment instruments, 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 $500,000 or quintuple the value of the currency or payment instruments, whichever is greater.  (d) A person who violates this section is also liable for a civil penalty of not more than the greater of the value of the currency or payment instruments involved or $25,000.  (9) In any prosecution brought pursuant to this section, the common law corpus delicti rule does not apply. The defendant’s confession or admission is admissible during trial without the state having to prove the corpus delicti if the court finds in a hearing conducted outside the presence of the jury that the defendant’s confession or admission is trustworthy. Before the court admits the defendant’s confession or admission, the state must prove by a preponderance of the evidence that there is sufficient corroborating evidence that tends to establish the trustworthiness of the statement by the defendant. Hearsay evidence is admissible during the presentation of evidence at the hearing. In making its determination, the court may consider all relevant corroborating evidence, including the defendant’s statements.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 8, ch. 2000-360; s. 704, ch. 2003-261; s. 20, ch. 2004-335; s. 17, ch. 2008-177; s. 1, ch. 2009-185.  **560.1235 Anti-money laundering requirements.**—  (1) A licensee and authorized vendor must comply with all state and federal laws and rules relating to the detection and prevention of money laundering, including, as applicable, s. 560.123, and 31 C.F.R. ss. 1010.306, 1010.311, 1010.312, 1010.313, 1010.340, 1010.410, 1010.415, 1022.320, 1022.380, and 1022.410.  (2) A licensee and authorized vendor must maintain an anti-money laundering program in accordance with 31 C.F.R. s. 1022.210. The program must be reviewed and updated as necessary to ensure that the program continues to be effective in detecting and deterring money laundering activities.  (3) A licensee must comply with United States Treasury Interpretive Release 2004-1, and a licensee that conducts virtual currency business activity must comply with United States Treasury Interpretive Release 2013-g001.  **History.**—s. 18, ch. 2008-177; s. 3, ch. 2014-81.  **560.124 Sharing of information.**—Any person may provide to a money services business, authorized vendor, law enforcement agency, prosecutorial agency, or appropriate regulator, or any money services business, authorized vendor, law enforcement agency, prosecutorial agency, or appropriate regulator may provide to any person, information about any person’s known or suspected involvement in a violation of any state, federal, or foreign law, rule, or regulation relating to the business of a money services business or deferred presentment provider which has been reported to state, federal, or foreign authorities, and is not liable in any civil action for providing such information.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 19, ch. 2008-177; s. 68, ch. 2009-21.  **560.125 Unlicensed activity; penalties.**—  (1) A person may not engage in the business of a money services business or deferred presentment provider in this state unless the person is licensed or exempted from licensure under this chapter. A deferred presentment transaction conducted by a person not authorized to conduct such transaction under this chapter is void, and the unauthorized person has no right to collect, receive, or retain any principal, interest, or charges relating to such transaction.  (2) Only a money services business licensed under part II of this chapter may appoint an authorized vendor. Any person acting as a vendor for an unlicensed money transmitter or payment instrument issuer becomes the principal thereof, and no longer merely acts as a vendor, and is liable to the holder or remitter as a principal money transmitter or payment instrument seller.  (3) Any person whose substantial interests are affected by a proceeding brought by the office pursuant to this chapter may, pursuant to s. 560.113, petition any court of competent jurisdiction to enjoin the person or activity that is the subject of the proceeding from violating any of the provisions of this section. For the purpose of this subsection, any money services business licensed under this chapter, any person residing in this state, and any person whose principal place of business is in this state are presumed to be substantially affected. In addition, the interests of a trade organization or association are deemed substantially affected if the interests of any of its members are affected.  (4) The office may issue and serve upon any person who violates any of the provisions of this section a complaint seeking a cease and desist order or impose an administrative fine as provided in s. 560.114.  (5) A person who violates this section, if the violation involves:  (a) Currency or payment instruments 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 or payment instruments 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 or payment instruments 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 $250,000 or twice the value of the currency or payment instruments, whichever is greater, except that on a second or subsequent violation of this section, the fine may be up to $500,000 or quintuple the value of the currency or payment instruments, whichever is greater.  (7) A person who violates this section is also liable for a civil penalty of not more than the value of the currency or payment instruments involved or $25,000, whichever is greater.  (8) In any prosecution brought pursuant to this section, the common law corpus delicti rule does not apply. The defendant’s confession or admission is admissible during trial without the state having to prove the corpus delicti if the court finds in a hearing conducted outside the presence of the jury that the defendant’s confession or admission is trustworthy. Before the court admits the defendant’s confession or admission, the state must prove by a preponderance of the evidence that there is sufficient corroborating evidence that tends to establish the trustworthiness of the statement by the defendant. Hearsay evidence is admissible during the presentation of evidence at the hearing. In making its determination, the court may consider all relevant corroborating evidence, including the defendant’s statements.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 9, ch. 2000-360; s. 705, ch. 2003-261; s. 20, ch. 2008-177; s. 4, ch. 2014-81.  **560.126 Required notice by licensee.**—  (1) A licensee must provide the office with a written notice sent by registered mail within 30 days after the occurrence or knowledge of, whichever period of time is greater, any of the following:  (a) The filing of a petition under the United States Bankruptcy Code for bankruptcy or reorganization by the licensee.  (b) The commencement of an administrative or judicial license suspension or revocation proceeding, or the denial of a license request or renewal, by any state, the District of Columbia, any United States territory, or any foreign country in which the licensee operates, plans to operate, or is licensed to operate.  (c) A felony indictment relating to a money services business or deferred presentment provider involving the licensee, its authorized vendor, or an affiliated party.  (d) The felony conviction, guilty plea, or plea of nolo contendere, regardless of adjudication, of the licensee, its authorized vendor, or an affiliated party.  (e) The interruption of any corporate surety bond required under this chapter.  (f) Any suspected criminal act perpetrated in this state relating to activities regulated under this chapter by an affiliated party against a money services business or authorized vendor.  (g) Notification by a law enforcement or prosecutorial agency that the licensee or its authorized vendor is under criminal investigation including, but not limited to, subpoenas to produce records or testimony and warrants issued by a court of competent jurisdiction which authorize the search and seizure of any records relating to a business activity regulated under this chapter.  (h) Any suspected data breach or cyber intrusion event that affects the ability of the licensee to maintain its net worth as required by s. 560.209, Fla. Stat., or that resulted in the loss of funds under control by the licensee for another shall be made as expeditiously as practicable and without unreasonable delay, taking into account the time necessary to determine the scope of the breach of security, to identify individuals affected by the breach, but no later than 30 days after the determination of a breach or reason to believe a breach occurred.  (2) A licensee must report, on a form adopted by rule, any change in the information contained in an initial license application form, any amendment to such application, or the appointment of an authorized vendor within 30 days after the change is effective.  (3) Each licensee must report any change in the partners, officers, members, joint venturers, directors, controlling shareholders, or responsible persons of the licensee or changes in the form of business organization by written amendment in such form and at such time as specified by rule.  (a) If any person, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a licensee, such person or group must submit an application for licensure as a money services business or deferred presentment provider before such purchase or acquisition at such time and in such form as prescribed by rule. As used in this subsection, the term “controlling interest” means the same as described in s. 560.127.  (b) The addition of a partner, officer, member, joint venturer, director, controlling shareholder, or responsible person of the applicant who does not have a controlling interest and who has not previously complied with the applicable provisions of ss. 560.1401 and 560.141 is subject to such provisions. If the office determines that the licensee does not continue to meet the licensure requirements, the office may bring an administrative action in accordance with s. 560.114 to enforce the provisions of this chapter.  (c) The commission shall adopt rules providing for the waiver of the license application required by this subsection if the person or group of persons proposing to purchase or acquire a controlling interest in a licensee has previously complied with the applicable provisions of ss. 560.1401 and 560.141 under the same legal entity or is currently licensed under this chapter.  (4) A licensee that engages in check cashing must notify the office within 5 business days after the licensee ceases to maintain a federally insured depository account as required by s. 560.309(3) and, before resuming check cashing, must reestablish such an account and notify the office of the account.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 706, ch. 2003-261; s. 56, ch. 2006-213; s. 21, ch. 2008-177; s. 5, ch. 2012-85.  **560.127 Control of a money services business.**—A person has a controlling interest in a money services business if the person:  (1) Possesses the power, directly or indirectly, to direct the management or policies of the money services business, whether through ownership, by contract, or otherwise;  (2) Directly or indirectly may vote 25 percent or more of a class of a voting security or sell or direct the sale of 25 percent or more of a class of voting securities; or  (3) In the case of a partnership, may receive upon dissolution or has contributed 25 percent or more of the capital.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 707, ch. 2003-261; s. 57, ch. 2006-213; s. 22, ch. 2008-177.  **560.128 Customer contacts; license display.**—  (1) A money services business and authorized vendor must provide each customer with a toll-free telephone number for the purpose of contacting the money services business or authorized vendor or, in lieu of a toll-free telephone number, the address and telephone number of the office may be provided. Additionally, a money service business that conducts virtual currency business activity must provide an email address for the office.  (2) The commission may by rule require a licensee to display its license at each location where the licensee engages in the activities authorized by the license. If the licensee only conducts business over the internet or without maintaining a physical office whereby it interacts with others, the license information must be conspicuously identified on the internet web site for that licensee.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 5, ch. 97-59; s. 708, ch. 2003-261; s. 23, ch. 2008-177.  **560.129 Confidentiality.**—  (1) Except as otherwise provided in this section, all information concerning an investigation or examination conducted by the office pursuant to this chapter, including any customer complaint received by the office or the Department of Financial Services, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation or examination ceases to be active. For purposes of this section, an investigation or examination is considered “active” so long as the office or any other administrative, regulatory, or law enforcement agency of any jurisdiction is proceeding with reasonable dispatch and has a reasonable good faith belief that action may be initiated by the office or other administrative, regulatory, or law enforcement agency.  (2) All information obtained by the office in the course of its investigation or examination which is a trade secret, as defined in s. 688.002, or which is personal financial information shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. If any administrative, civil, or criminal proceeding against a money services business, its authorized vendor, or an affiliated party is initiated and the office seeks to use matter that a licensee believes to be a trade secret or personal financial information, such records shall be subject to an in camera review by the administrative law judge, if the matter is before the Division of Administrative Hearings, or a judge of any court of this state, any other state, or the United States, as appropriate, for the purpose of determining if the matter is a trade secret or is personal financial information. If it is determined that the matter is a trade secret, the matter shall remain confidential. If it is determined that the matter is personal financial information, the matter shall remain confidential unless the administrative law judge or judge determines that, in the interests of justice, the matter should become public.  (3) If an administrative, civil, or criminal proceeding against a money services business, its authorized vendor, or an affiliated party results in an acquittal or the dismissal of all of the allegations, upon the request of any party, the administrative law judge or the judge may order all or a portion of the record of the proceeding to be sealed, and it shall thereafter be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.  (4) Except as necessary for the office or any other administrative, regulatory, or law enforcement agency of any jurisdiction to enforce the provisions of this chapter or the law of any other state or the United States, a consumer complaint and other information concerning an investigation or examination shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution after the investigation or examination ceases to be active to the extent that disclosure would:  (a) Jeopardize the integrity of another active investigation;  (b) Reveal personal financial information;  (c) Reveal the identity of a confidential source; or  (d) Reveal investigative techniques or procedures.  (5) This section does not prevent or restrict:  (a) Furnishing records or information to any appropriate regulatory, prosecutorial, or law enforcement agency if such agency adheres to the confidentiality provisions of this chapter;  (b) Furnishing records or information to an appropriate regulator or independent third party who has been approved by the office to conduct an examination under s. 560.1091, if the independent third party adheres to the confidentiality provisions of this chapter; or  (c) Reporting any suspicious activity, with supporting documents and information, to appropriate regulatory, law enforcement, or prosecutorial agencies.  (6) All quarterly reports submitted to the office under s. 560.118(2) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.  (7) Any person who willfully discloses information made confidential by this section commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.  **History.**—ss. 1, 2, ch. 94-281; s. 345, ch. 96-406; s. 254, ch. 96-410; s. 66, ch. 2000-154; s. 1, ch. 2000-293; s. 709, ch. 2003-261; s. 4, ch. 2004-85; s. 21, ch. 2004-335; s. 24, ch. 2008-177.  **560.1401 Licensing standards.**—To qualify for licensure as a money services business under this chapter, an applicant must:  (1) Demonstrate to the office the character and general fitness necessary to command the confidence of the public and warrant the belief that the money services business or deferred presentment provider shall be operated lawfully and fairly.  (2) Be legally authorized to do business in this state.  (3) Be registered as a money services business with the Financial Crimes Enforcement Network as required by 31 C.F.R. s. 1022.380, if applicable.  (4) Have an anti-money laundering program in place which meets the requirements of 31 C.F.R. s. 1022.210.  (5) Provide the office with all the information, policies, and procedures required under this chapter and related rules.  **History.**—s. 25, ch. 2008-177; s. 5, ch. 2014-81.  **560.141 License application.**—  (1) To apply for a license as a money services business under this chapter, the applicant must submit:  (a) An application to the office on forms prescribed by rule which includes the following information:  1. The legal name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business.  2. The date of the applicant’s formation and the state in which the applicant was formed, if applicable.  3. The name, social security number, alien identification or taxpayer identification number, business and residence addresses, and employment history for the past 5 years for each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127.  4. A description of the organizational structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded.  5. The applicant’s history of operations in other states if applicable and a description of the money services business or deferred presentment provider activities proposed to be conducted by the applicant in this state.  6. If the applicant or its parent is a publicly traded company, copies of all filings made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the preceding year.  7. The location at which the applicant proposes to establish its principal place of business and any other location, including branch offices and authorized vendors operating in this state. For each branch office and each location of an authorized vendor, the applicant shall include the nonrefundable fee required by s. 560.143.  8. The name and address of the clearing financial institution or financial institutions through which the applicant’s payment instruments are drawn or through which the payment instruments are payable, if any.  9. The history of the applicant’s material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld.  10. The history of material litigation, arrests, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each executive officer, director, controlling shareholder, and responsible person.  11. The name of the registered agent in this state for service of process unless the applicant is a sole proprietor.  12. The name, address, telephone number and email address of each person that manages each server the applicant expects to use in conducting its virtual currency business activity with or on behalf of others and a copy of any agreement with that person;  13. The name and address of each bank in which the applicant plans to deposit funds obtained by its virtual currency business activity;  14. The source of funds and credit to be used by the applicant to conduct virtual currency business activity with or on behalf of residents and documentation demonstrating that the applicant has the minimum net worth and reserves required by 560.209, Fla. Stat.;  15. A copy of the certificate, or detailed summary of coverage acceptable to the office, for each liability, casualty, business-interruption or cyber-security insurance policy maintained by the applicant for itself, an executive officer, a responsible individual, or the applicant’s users to the extent that coverage is available;  16. If the applicant is required to register with the Financial Crimes Enforcement Network of the United States Department of the Treasury as a money service business, evidence of the registration;  17. The policies and procedures required by s. 560.1161, Fla. Stat.  18. Any other information specified in this chapter or by rule.  (b) A nonrefundable application fee as provided in s. 560.143.  (c) Fingerprints for each person listed in subparagraph (a)3. for live-scan processing in accordance with rules adopted by the commission.  1. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting.  2. The Department of Law Enforcement must conduct the state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation.  3. All fingerprints submitted to the Department of Law Enforcement must be submitted electronically and entered into the statewide automated fingerprint identification system established in s. 943.05(2)(b) and available for use in accordance with s. 943.05(2)(g) and (h). The office shall pay an annual fee to the Department of Law Enforcement to participate in the system and shall inform the Department of Law Enforcement of any person whose fingerprints no longer must be retained.  4. The costs of fingerprint processing, including the cost of retaining the fingerprints, shall be borne by the person subject to the background check.  5. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.  6. For purposes of this paragraph, fingerprints are not required to be submitted if the applicant is a publicly traded corporation or is exempted from this chapter under s. 560.104(1). The term “publicly traded” means a stock is currently traded on a national securities exchange registered with the federal Securities and Exchange Commission or traded on an exchange in a country other than the United States regulated by a regulator equivalent to the Securities and Exchange Commission and the disclosure and reporting requirements of such regulator are substantially similar to those of the commission.  7. Licensees initially approved before October 1, 2013, who are seeking renewal must submit fingerprints for each person listed in subparagraph (a)3. for live-scan processing pursuant to this paragraph. Such fingerprints must be submitted before renewing a license that is scheduled to expire between April 30, 2014, and December 31, 2015.  (d) A copy of the applicant’s written anti-money laundering program required under 31 C.F.R. s. 1022.210.  (e) Within the time allotted by rule, any information needed to resolve any deficiencies found in the application.  (2) If the office determines that the applicant meets the qualifications and requirements of this chapter, the office shall issue a license to the applicant. A license may not be issued for more than 2 years.  (a) A license issued under part II of this chapter shall expire on April 30 of the second year following the date of issuance of the license unless during such period the license is surrendered, suspended, or revoked.  (b) A license issued under part III of this chapter shall expire on December 31 of the second year following the date of issuance of the license unless during such period the license is surrendered, suspended, or revoked.  **History.**—s. 26, ch. 2008-177; s. 69, ch. 2009-21; s. 2, ch. 2009-185; s. 55, ch. 2013-116; s. 4, ch. 2013-201; s. 6, ch. 2014-81.  **560.142 License renewal.**—  (1) A license may be renewed for a subsequent 2-year period by furnishing such application as required by rule, together with the payment of a nonrefundable renewal fee as provided under s. 560.143, on or before the license expiration date, or for the remainder of any such period without proration following the date of license expiration.  (2) In addition to the renewal fee, each part II licensee must pay a 2-year nonrefundable renewal fee as provided in s. 560.143 for each authorized vendor or location operating within this state.  (3) A licensee who has on file with the office a declaration of intent to engage in deferred presentment transactions may renew a declaration upon license renewal by submitting a nonrefundable deferred presentment provider renewal fee as provided in s. 560.143.  (4) If a license or declaration of intent to engage in deferred presentment transactions expires, the license or declaration of intent may be reinstated only if a renewal application or declaration of intent, all required renewal fees, and any applicable late fees are received by the office within 60 days after expiration. If not submitted within 60 days, the license or declaration of intent expires and a new license application or declaration of intent must be filed with the office pursuant to this chapter.  (5) The commission may adopt rules to administer this section.  **History.**—s. 27, ch. 2008-177; s. 70, ch. 2009-21.  **560.143 Fees.**—  (1) LICENSE APPLICATION FEES.—The applicable non-refundable fees must accompany an application for licensure:  (a) Part II..........$375.  (b) Part III..........$188.  (c) Per branch office..........$38.  (d) For each location of an authorized vendor..........$38.  (e) Declaration as a deferred presentment provider..........$1,000.  (f) Fingerprint retention fees as prescribed by rule.  (g) License application fees for branch offices and authorized vendors are limited to $20,000 when such fees are assessed as a result of a change in controlling interest as defined in s. 560.127.  (h) Reciprocal license fee . . . . $1,000.  (2) LICENSE RENEWAL FEES.—The applicable non-refundable license renewal fees must accompany a renewal of licensure:  (a) Part II..........$750.  (b) Part III..........$375.  (c) Per branch office..........$38.  (d) For each location of an authorized vendor..........$38.  (e) Declaration as a deferred presentment provider..........$1,000.  (f) Renewal fees for branch offices and authorized vendors are limited to $20,000 biennially.  (g) Fingerprint retention fees as prescribed by rule.  (3) LATE LICENSE RENEWAL FEES.—  (a) Part II..........$500.  (b) Part III..........$250.  (c) Declaration as a deferred presentment provider..........$500.  **History.**—s. 28, ch. 2008-177; s. 71, ch. 2009-21; s. 3, ch. 2009-185; s. 5, ch. 2013-201.  **560.144 Deposit of fees and assessments.**—License application fees, license renewal fees, reciprocal license fees, late payment penalties, civil penalties, administrative fines, and other fees, costs, or penalties provided for in this chapter shall be paid directly to the office, which shall deposit such proceeds into the Regulatory Trust Fund and use the proceeds to pay the costs of the office as necessary to carry out its responsibilities under this chapter.  **History.**—s. 1, ch. 94-238; s. 1, ch. 94-354; s. 5, ch. 2001-119; s. 702, ch. 2003-261; s. 15, ch. 2008-177.  **Note.**—Former s. 560.119.  560.145 De minimis Registration Exception.-  (1) A person whose volume of virtual currency business activity in U.S. Dollar equivalent of virtual currency will not exceed $35,000 annually may engage in virtual currency business activity under a registration without first obtaining a license under this chapter if the person:  (A) files with the office a notice in the form and medium prescribed by the office of its intention to engage in virtual currency business activity with or on behalf of residents;  (B) provides the information for an investigation as required by this chapter;  (C) states the anticipated virtual currency business activity for its next fiscal quarter;  (D) pays the office a registration fee in the amount required by law or specified by the office by regulation;  (E) if required to register with the Financial Crimes Enforcement Network of the United States Department of the Treasury as a money service business, provides the department evidence of the registration;  (F) provides evidence that the person has policies and procedures to comply with the Bank Secrecy Act, 31 U.S.C. Section 5311 et seq. [as amended], and other applicable policies required by this chapter;  (G) describes the source of funds and credit to be used by the person to conduct virtual currency business activity with or on behalf of residents and provides evidence of and agrees to maintain the minimum net worth and reserves required by this chapter and sufficient unencumbered reserves for winding down operations.  (H) provides the office with evidence that the person has in place policies and procedures to comply with the obligations of this chapter; and  (I) provides the office with a copy of its most recent financial statement, whether reviewed or audited.  (2) Before the virtual currency business activity of a registrant with or on behalf of residents exceeds $35,000 annually measured in U.S. Dollar equivalent of virtual currency, the registrant shall file an application for a license and may continue to operate past the threshold while its application for licensure is pending.  (3) For good cause, the office may suspend or revoke a registration without a prior hearing or opportunity to be heard.  (4) A registrant shall cease all virtual currency business activity with or on behalf of residents:  (a) if the office has denied the registrant’s application for a license, 48 hours after the registrant receives notice in a record that the office has denied the application;  (b) if the office has suspended or revoked the registration, one day after the department sends notice of the revocation to the licensee in a record by a means reasonably selected for the notice to be received by the recipient in one day, to the address provided for receiving communications from the department;  (c) if the virtual currency business activity of the registrant with or on behalf of residents exceeds $35,000 annually in U.S. Dollar equivalent of virtual currency and the registrant has not filed an application for a license; or  (d) on the second anniversary date of the registration. |

**PART II**

**PAYMENT INSTRUMENTS AND  
FUNDS TRANSMISSION**

560.203 Exemptions from licensure.

560.204 License required.

560.205 Additional license application requirements.

560.208 Conduct of business.

560.2085 Authorized vendors.

560.209 Net worth; corporate surety bond; collateral deposit in lieu of bond.

560.210 Permissible investments.

560.211 Required records.

560.212 Financial liability.

560.213 Payment instrument information.

**560.203 Exemptions from licensure.**—Authorized vendors of a licensee acting within the scope of authority conferred by the licensee are exempt from licensure but are otherwise subject to the provisions of this chapter.

**History.**—s. 2, ch. 94-238; s. 2, ch. 94-354; s. 29, ch. 2008-177.

**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 money transmitter, for compensation, without first obtaining a license under this part. For purposes of this section, “compensation” includes profit or loss on the exchange of currency or profit or loss on the exchange of virtual currency.

(2) A licensee under this part may also engage in the activities authorized under part III of this chapter without the imposition of any additional licensing fees.

**History.**—s. 2, ch. 94-238; s. 2, ch. 94-354; s. 6, ch. 2001-119; s. 30, ch. 2008-177.

**560.205 Additional license application requirements.**—In addition to the license application requirements under part I of this chapter, an applicant seeking a license under this part must also submit to the office:

(1) A sample authorized vendor contract, if applicable.

(2) A sample form of payment instrument, if applicable.

(3) Documents demonstrating that the net worth and bonding requirements specified in s. 560.209 have been fulfilled.

(4) A copy of the applicant’s financial audit report for the most recent fiscal year. If the applicant is a wholly owned subsidiary of another corporation, the financial audit report on the parent corporation’s financial statements shall satisfy this requirement.

**History.**—s. 2, ch. 94-238; s. 2, ch. 94-354; s. 6, ch. 97-59; s. 10, ch. 2000-360; s. 7, ch. 2001-119; s. 711, ch. 2003-261; s. 58, ch. 2006-213; s. 31, ch. 2008-177.

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

(1) May conduct its business at one or more locations within this state through branches or by means of authorized vendors, as designated by the licensee, including the conduct of business through electronic transfer, such as by the telephone or the Internet.

(2) Notwithstanding and without violating s. 501.0117, may charge a different price for a money transmitter service based on the mode of transmission used in the transaction as long as the price charged for a service paid for with a credit card is not more than the price charged when the service is paid for with currency or other similar means accepted within the same mode of transmission.

(3) Is responsible for the acts of its authorized vendors in accordance with the terms of its written contract with the vendor.

(4) Shall place assets that are the property of a customer in a segregated account in a federally insured financial institution and shall maintain separate accounts for operating capital and the clearing of customer funds

(5) Shall, in the normal course of business, ensure that money transmitted is available to the designated recipient within 10 business days after receipt.

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

**History.**—s. 2, ch. 94-238; s. 2, ch. 94-354; s. 10, ch. 2001-119; s. 714, ch. 2003-261; s. 5, ch. 2004-85; s. 32, ch. 2008-177.

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

(1) Within 60 days after an authorized vendor commences business, file with the office such information as prescribed by rule together with the nonrefundable location fee as provided by s. 560.143. This requirement applies to vendors who are also terminated within the 60-day period.

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

(a) Sets forth the nature and scope of the relationship between the licensee and the authorized vendor, including the respective rights and responsibilities of the parties; and

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

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

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 or payment instruments 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 money received for transmissions accepted or payment instruments sold on behalf of the licensee with the money or property of the authorized vendor, except for making change in the ordinary course of the vendor’s business, and ensure that the money is accounted for at the end of the business day;

6. Consent to examination or investigation by the office;

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

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

(3) Develop and implement written policies and procedures to monitor compliance with applicable state and federal law by its authorized vendors.

**History.**—s. 33, ch. 2008-177; s. 4, ch. 2009-185.

**560.209 Net worth; corporate surety bond; collateral deposit in lieu of bond.**—

(1) A licensee must have a net worth of at least $100,000. A licensee operating in more than one location must have an additional net worth of $10,000 per location in this state, up to a maximum of $2 million. The required net worth must be maintained at all times.

(2) A licensee must obtain an annual financial audit report, which must be submitted to the office within 120 days after the end of the licensee’s fiscal year, as disclosed to the office. If the applicant is a wholly owned subsidiary of another corporation, the financial audit report on the parent corporation’s financial statements shall satisfy this requirement.

(3) Before the office may issue a license under this part, the applicant must provide to the office a corporate surety bond, issued by a bonding company or insurance company authorized to do business in this state

(a) The corporate surety bond shall be in an amount as specified by rule, but may not be less than $50,000 or exceed $2 million. The rule shall provide allowances for the financial condition, number of locations, and anticipated volume of the licensee.

(b) The corporate surety bond must be in a form satisfactory to the office and shall run to the state for the benefit of any claimants in this state against the applicant or its authorized vendors to secure the faithful performance of the obligations of the applicant and its vendors with respect to the receipt, handling, transmission, and payment of funds. The aggregate liability of the corporate surety bond may not exceed the principal sum of the bond. Claimants against the applicant or its authorized vendors may bring suit directly on the corporate surety bond, or the Department of Legal Affairs may bring suit on behalf of the claimants.

(c) The corporate surety bond may not be canceled by the licensee or the corporate surety except upon written notice to the office by registered mail. A cancellation may not take effect until 30 days after receipt by the office of the written notice.

(d) The corporate surety must, within 10 days after it pays any claim, give written notice to the office by registered mail of such payment with details sufficient to identify the claimant and the claim or judgment paid.

(e) If the principal sum of the bond is reduced by one or more recoveries or payments, the licensee must furnish a new or additional bond so that the total or aggregate principal sum of the bond equals the sum required pursuant to paragraph (a). Alternatively, a licensee may furnish an endorsement executed by the corporate surety reinstating the bond to the required principal sum.

(4) In lieu of a corporate surety bond, or of any portion of the principal sum required by this section, the applicant may deposit collateral cash, securities, or alternative security devices as provided by rule with a federally insured financial institution.

(a) Acceptable collateral deposit items include cash, and interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state.

(b) The collateral deposit must be in an aggregate amount, based upon principal amount or market value, whichever is lower, of at least the amount of the required corporate surety bond or portion thereof.

(c) Collateral deposits must be pledged to the office and held by the insured financial institution to secure the same obligations as the corporate surety bond, but the depositor is entitled to receive any interest and dividends thereon and may, with the approval of the office, substitute other securities or deposits for those deposited. The principal amount of the deposit shall be released only on written authorization of the office or on the order of a court of competent jurisdiction.

(5) A licensee must at all times maintain the bond or collateral deposit in the required amount. If the office reasonably determines that the bond or elements of the collateral deposit are insecure, deficient in amount, or exhausted in whole or in part, the office may, by written order, require the filing of a new or supplemental bond or the deposit of new or additional collateral deposit items.

(6) The bond and collateral deposit shall remain in place for 5 years after the licensee ceases licensed operations in this state. The office may allow the bond or collateral deposit to be reduced or eliminated prior to that time to the extent that the amount of the licensee’s outstanding payment instruments or money transmitted in this state are reduced. The office may also allow a licensee to substitute a letter of credit or other form of acceptable security for the bond or collateral deposit at the time the licensee ceases licensed operations in this state.

**History.**—s. 2, ch. 94-238; s. 2, ch. 94-354; s. 715, ch. 2003-261; s. 34, ch. 2008-177; s. 72, ch. 2009-21.

**560.210 Permissible investments.**—

(1) A licensee must at all times possess permissible investments with an aggregate market value, calculated in accordance with generally accepted accounting principles, of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States. As used in this section, permissible investments include:

(a) Cash.

(b) Certificates of deposit or other deposit liabilities of a domestic or foreign financial institution.

(c) Bankers’ acceptances eligible for purchase by member banks of the Federal Reserve System.

(d) An investment bearing a rating of one of the three highest grades as defined by a nationally recognized rating service of such securities.

(e) Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state or municipality, or any political subdivision thereof.

(f) Shares in a money market mutual fund.

(g) A demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange.

(h) Receivables that are due to a licensee from the licensee’s authorized vendors except those that are more than 90 days past due or are doubtful of collection.

(i) Any other investment approved by rule.

(2) Notwithstanding any other provision of this part, the office, with respect to any particular licensee or all licensees, may limit the extent to which any class of permissible investments may be considered a permissible investment, except for cash and certificates of deposit.

(3) The office may waive the permissible investments requirement if the dollar value of a licensee’s outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit posted by the licensee under s. 560.209.

**History.**—s. 2, ch. 94-238; s. 2, ch. 94-354; s. 716, ch. 2003-261; s. 60, ch. 2006-213; s. 35, ch. 2008-177.

**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 money transmitted.

(b) A general ledger containing all asset, liability, capital, income, and expense accounts, which shall be posted at least monthly.

(c) Daily settlement records received from authorized vendors.

(d) Monthly financial institution statements and reconciliation records.

(e) Records of outstanding payment instruments and money transmitted.

(f) Records of each payment instrument paid and money transmission delivered.

(g) A list of the names and addresses of all of the licensee’s authorized vendors.

(h) Records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates.

(i) Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

(2) Any person who willfully fails to comply with this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 2, ch. 94-238; s. 2, ch. 94-354; s. 11, ch. 2000-360; s. 717, ch. 2003-261; s. 61, ch. 2006-213; s. 36, ch. 2008-177.

**560.212 Financial liability.**—A licensee under this part is liable for the payment of all 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 item is negotiable or nonnegotiable.

**History.**—s. 2, ch. 94-238; s. 2, ch. 94-354; s. 37, ch. 2008-177.

**560.213 Payment instrument information.**—Each payment instrument sold or issued by a licensee, directly or through an authorized vendor, must bear the name of the licensee, and any other information as may be required by rule, clearly imprinted thereon.

**History.**—s. 2, ch. 94-238; s. 2, ch. 94-354; s. 38, ch. 2008-177.

**PART III**

**CHECK CASHING AND  
FOREIGN CURRENCY EXCHANGE**

560.303 License required.

560.304 Exemption from licensure.

560.309 Conduct of business.

560.310 Records of check cashers and foreign currency exchangers.

**560.303 License required.**—

(1) A person may not engage in, or in any manner advertise engagement in, the business of cashing payment instruments or exchanging foreign currency without being licensed under this part.

(2) A person licensed under this part may not engage directly in the activities that require a license under part II of this chapter but may be an authorized vendor for a person licensed under part II.

(3) A person exempt from licensure under this part engaging in the business of cashing payment instruments or the exchanging of foreign currency may not charge fees in excess of those provided in s. 560.309.

**History.**—s. 3, ch. 94-238; s. 3, ch. 94-354; s. 39, ch. 2008-177.

**560.304 Exemption from licensure.**—The requirement for licensure under this part does not apply to a person cashing payment instruments that have an aggregate face value of less than $2,000 per person per day and that are incidental to the retail sale of goods or services whose compensation for cashing payment instruments at each site does not exceed 5 percent of the total gross income from the retail sale of goods or services by such person during the last 60 days.

**History.**—s. 3, ch. 94-238; s. 3, ch. 94-354; s. 40, ch. 2008-177.

**560.309 Conduct of business.**—

(1) A licensee may transact business under this part only under the legal name under which the person is licensed. The use of a fictitious name is allowed if the fictitious name has been registered with the Department of State and disclosed to the office as part of an initial license application, or subsequent amendment to the application, prior to its use.

(2) At the time a licensee accepts a payment instrument that is cashed by the licensee, the payment instrument must be endorsed using the legal name under which the licensee is licensed.

(3) A licensee under this part must deposit payment instruments into a commercial account at a federally insured financial institution or sell payment instruments within 5 business days after the acceptance of the payment instrument.

(4) A licensee may not accept or cash multiple payment instruments from a person who is not the original payee, unless the person is licensed to cash payment instruments pursuant to this part and all payment instruments accepted are endorsed with the legal name of the person.

(5) A licensee must report all suspicious activity to the office in accordance with the criteria set forth in 31 C.F.R. s. 103.20. In lieu of filing such reports, the commission may prescribe by rule that the licensee may file such reports with an appropriate regulator.

(6) Each location of a licensee where checks are cashed must be equipped with a security camera system that is capable of recording and retrieving an image in order to assist in identifying and apprehending an offender. The licensee does not have to install a security camera system if the licensee has installed a bulletproof or bullet-resistant partition or enclosure in the area where checks are cashed.

(7) The commission may by rule require a check casher to display its license and post a notice listing its charges for cashing payment instruments.

(8) Exclusive of the direct costs of verification which shall be established by rule, a check casher may not:

(a) Charge fees, except as otherwise provided by this part, in excess of 5 percent of the face amount of the payment instrument, or $5, whichever is greater;

(b) Charge fees in excess of 3 percent of the face amount of the payment instrument, or $5, whichever is greater, if such payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument; or

(c) Charge fees for personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or $5, whichever is greater.

(9) A licensee cashing payment instruments may not assess the cost of collections, other than fees for insufficient funds as provided by law, without a judgment from a court of competent jurisdiction.

(10) If a check is returned to a licensee from a payor financial institution due to lack of funds, a closed account, or a stop-payment order, the licensee may seek collection pursuant to s. 68.065. In seeking collection, the licensee must comply with the prohibitions against harassment or abuse, false or misleading representations, and unfair practices in the Fair Debt Collections Practices Act, 15 U.S.C. ss. 1692d, 1692e, and 1692f. A violation of this subsection is a deceptive and unfair trade practice and constitutes a violation of the Deceptive and Unfair Trade Practices Act under part II of chapter 501. In addition, a licensee must comply with the applicable provisions of the Consumer Collection Practices Act under part VI of chapter 559, including s. 559.77.

**History.**—s. 3, ch. 94-238; s. 3, ch. 94-354; s. 723, ch. 2003-261; s. 41, ch. 2008-177.

**560.310 Records of check cashers and foreign currency exchangers.**—

(1) In addition to the record retention requirements specified in s. 560.1105, a licensee engaged in check cashing must maintain the following:

(a) Customer files, as prescribed by rule, on all customers who cash corporate or third-party payment instruments exceeding $1,000.

(b) For any payment instrument accepted having a face value of $1,000 or more:

1. A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer. Acceptable personal identification is limited to a valid driver’s license; a state identification card issued by any state of the United States or its territories or the District of Columbia, and showing a photograph and signature; a United States Government Resident Alien Identification Card; a passport; or a United States Military identification card.

2. A thumbprint of the customer taken by the licensee.

(c) A payment instrument log that must be maintained electronically as prescribed by rule. For purposes of this paragraph, multiple payment instruments accepted from any one person on any given day which total $1,000 or more must be aggregated and reported on the log.

(2) A licensee under this part may engage the services of a third party that is not a depository institution for the maintenance and storage of records required by this section if all the requirements of this section are met.

**History.**—s. 3, ch. 94-238; s. 3, ch. 94-354; s. 13, ch. 2000-360; s. 724, ch. 2003-261; s. 65, ch. 2006-213; s. 42, ch. 2008-177.

**PART IV**

**DEFERRED PRESENTMENT**

560.402 Definitions.

560.403 Declaration of intent.

560.404 Requirements for deferred presentment transactions.

560.4041 Database for deferred presentment providers; public records exemption.

560.405 Deposit; redemption.

560.406 Worthless checks.

560.408 Legislative intent; report.

**560.402 Definitions.**—For the purposes of this part, the term:

(1) “Affiliate” means a person who, directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with, a deferred presentment provider.

(2) “Deferment period” means the number of days a deferred presentment provider agrees to defer depositing, presenting, or redeeming a payment instrument.

(3) “Deferred presentment transaction” means providing currency or a payment instrument in exchange for a drawer’s check and agreeing to hold the check for a deferment period.

(4) “Drawer” means a customer who writes a personal check and upon whose account the check is drawn.

(5) “Extension of a deferred presentment agreement” means continuing a deferred presentment transaction past the deferment period by having the drawer pay additional fees and the deferred presentment provider continuing to hold the check for another deferment period.

(6) “Rollover” means the termination or extension of a deferred presentment agreement by the payment of an additional fee and the continued holding of the check, or the substitution of a new check by the drawer pursuant to a new deferred presentment agreement.

(7) “Termination of a deferred presentment agreement” means that the check that is the basis for the agreement is redeemed by the drawer by payment in full in cash, or is deposited and the deferred presentment provider has evidence that such check has cleared. Verification of sufficient funds in the drawer’s account by the deferred presentment provider is not sufficient evidence to deem that the deferred deposit transaction is terminated.

**History.**—s. 13, ch. 2001-119; s. 725, ch. 2003-261; s. 43, ch. 2008-177.

**560.403 Declaration of intent.**—Except for financial institutions as defined in s. 655.005, a person may not engage in a deferred presentment transaction unless the person is licensed as a money services business under part II or part III of this chapter and has on file with the office a declaration of intent to engage in deferred presentment transactions, regardless of whether such person is exempted from licensure under any other provision of this chapter. The declaration of intent must be under oath and on such form as prescribed by rule. The declaration of intent must be filed with a nonrefundable filing fee as provided in s. 560.143. A declaration of intent expires after 24 months and must be renewed.

**History.**—s. 13, ch. 2001-119; s. 726, ch. 2003-261; s. 66, ch. 2006-213; s. 44, ch. 2008-177.

**560.404 Requirements for deferred presentment transactions.**—

(1) Each deferred presentment transaction must be documented in a written agreement signed by the deferred presentment provider and the drawer.

(2) The deferred presentment transaction agreement must be executed on the day the deferred presentment provider furnishes currency or a payment instrument to the drawer.

(3) Each written agreement must, in addition to any information required by rule, contain the following information:

(a) The name or trade name, address, and telephone number of the deferred presentment provider and the name and title of the person who signs the agreement on behalf of the provider.

(b) The date the deferred presentment transaction is made.

(c) The amount of the drawer’s check.

(d) The length of the deferment period.

(e) The last day of the deferment period.

(f) The address and telephone number of the office

(g) A clear description of the drawer’s payment obligations under the deferred presentment transaction.

(h) The transaction number assigned by the office’s database.

(4) The deferred presentment provider must furnish a copy of the deferred presentment transaction agreement to the drawer.

(5) The face amount of a check taken for deferred presentment may not exceed $500 exclusive of the fees allowed under this part.

(6) A deferred presentment provider or its affiliate may not charge fees that exceed 10 percent of the currency or payment instrument provided. However, a verification fee may be charged as provided in s. 560.309(8). The 10-percent fee may not be applied to the verification fee. A deferred presentment provider may charge only those fees specifically authorized in this section.

(7) The fees authorized by this section may not be collected before the drawer’s check is presented or redeemed.

(8) A deferred presentment agreement may not be for a term longer than 31 days or less than 7 days.

(9) A deferred presentment provider may not require a drawer to provide any additional security for the deferred presentment transaction or any extension or require the drawer to provide any additional guaranty from another person.

(10) A deferred presentment provider may not include any of the following provisions in a deferred provider agreement:

(a) A hold harmless clause.

(b) A confession of judgment clause.

(c) Any assignment of or order for payment of wages or other compensation for services.

(d) A provision in which the drawer agrees not to assert any claim or defense arising out of the agreement.

(e) A waiver of any provision of this part.

(11) A deferred presentment provider shall immediately provide the drawer with the full amount of any check to be held, less only the fees allowed under this section.

(12) The deferred presentment agreement and the drawer’s check must bear the same date, and the number of days of the deferment period shall be calculated from that date. The deferred presentment provider and the drawer may not alter or delete the date on any written agreement or check held by the deferred presentment provider.

(13) For each deferred presentment transaction, the deferred presentment provider must comply with the disclosure requirements of 12 C.F.R., part 226, relating to the federal Truth-in-Lending Act, and Regulation Z of the Board of Governors of the Federal Reserve Board. A copy of the disclosure must be provided to the drawer at the time the deferred presentment transaction is initiated.

(14) A deferred presentment provider or its affiliate may not accept or hold an undated check or a check dated on a date other than the date on which the deferred presentment provider agreed to hold the check and signed the deferred presentment transaction agreement.

(15) A deferred presentment provider must hold the drawer’s check for the agreed number of days, unless the drawer chooses to redeem the check before the presentment date.

(16) Proceeds in a deferred presentment transaction may be made to the drawer in the form of the deferred presentment provider’s payment instrument if the deferred presentment provider is registered under part II; however, an additional fee may not be charged by a deferred presentment provider or its affiliate for issuing or cashing the deferred presentment provider’s payment instrument.

(17) A deferred presentment provider may not require the drawer to accept its payment instrument in lieu of currency.

(18) A deferred presentment provider or its affiliate may not engage in the rollover of a deferred presentment agreement. A deferred presentment provider may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by the same or an affiliate.

(19) A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with that provider or with any other deferred presentment provider, or with a person whose previous deferred presentment transaction with that provider or with any other provider has been terminated for less than 24 hours. The deferred presentment provider must verify such information as follows:

(a) The deferred presentment provider shall maintain a common database and shall verify whether the provider or an affiliate has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours.

(b) The deferred presentment provider shall access the office’s database established pursuant to subsection (23) and shall verify whether any other deferred presentment provider has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours. If a provider has not established a database, the deferred presentment provider may rely upon the written verification of the drawer as provided in subsection (20).

(20) A deferred presentment provider shall provide the following notice in a prominent place on each deferred presentment agreement in at least 14-point type in substantially the following form and must obtain the signature of the drawer where indicated:

NOTICE

1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.

YOU MUST SIGN THE FOLLOWING STATEMENT:

I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT THIS TIME. I HAVE NOT TERMINATED A DEFERRED PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.

(Signature of Drawer)

2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE PURSUED AGAINST YOU.

3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO “ROLL OVER” YOUR DEFERRED PRESENTMENT TRANSACTION. THIS MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT OF YOUR CHECK FOR PAYMENT. IF YOU INFORM THE PROVIDER IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT, YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER THE ORIGINAL TERMINATION DATE, WITHOUT ANY ADDITIONAL CHARGE. THE DEFERRED PRESENTMENT PROVIDER SHALL REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD.

(21) The deferred presentment provider may not deposit or present the drawer’s check if the drawer informs the provider in person that the drawer cannot redeem or pay in full in cash the amount due and owing the deferred presentment provider. No additional fees or penalties may be imposed on the drawer by virtue of any misrepresentation made by the drawer as to the sufficiency of funds in the drawer’s account. Additional fees may not be added to the amounts due and owing to the deferred presentment provider.

(22) If, by the end of the deferment period, the drawer informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due and owing the deferred presentment provider, the deferred presentment provider shall provide a grace period extending the term of the agreement for an additional 60 days after the original termination date, without any additional charge.

(a) The provider shall require that as a condition of providing a grace period, that the drawer make an appointment with a consumer credit counseling agency within 7 days after the end of the deferment period and complete the counseling by the end of the grace period. The drawer may agree to, comply with, and adhere to a repayment plan approved by the counseling agency. If the drawer agrees to comply with and adhere to a repayment plan approved by the counseling agency, the provider must also comply with and adhere to that repayment plan. The deferred presentment provider may not deposit or present the drawer’s check for payment before the end of the 60-day grace period unless the drawer fails to comply with such conditions or the drawer fails to notify the provider of such compliance. Before each deferred presentment transaction, the provider may verbally advise the drawer of the availability of the grace period consistent with the written notice in subsection (20), and may not discourage the drawer from using the grace period.

(b) At the commencement of the grace period, the deferred presentment provider shall provide the drawer:

1. Verbal notice of the availability of the grace period consistent with the written notice in subsection (20).

2. A list of approved consumer credit counseling agencies prepared by the office. The office list shall include nonprofit consumer credit counseling agencies affiliated with the National Foundation for Credit Counseling which provide credit counseling services to state residents in person, by telephone, or through the Internet. The office list must include phone numbers for the agencies, the counties served by the agencies, and indicate the agencies that provide telephone counseling and those that provide Internet counseling. The office shall update the list at least once each year.

3. The following notice in at least 14-point type in substantially the following form:

AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT.

(c) If a drawer completes an approved payment plan, the deferred presentment provider shall pay one-half of the drawer’s fee for the deferred presentment agreement to the consumer credit counseling agency.

(23) The office shall implement a common database with real-time access through an Internet connection for deferred presentment providers, as provided in this subsection. The database must be accessible to the office and the deferred presentment providers in order to verify whether any deferred presentment transactions are outstanding for a particular person. Deferred presentment providers shall submit such data before entering into each deferred presentment transaction in such format as required by rule, including the drawer’s name, social security number or employment authorization alien number, address, driver’s license number, amount of the transaction, date of transaction, the date that the transaction is closed, and such additional information as is required by rule. The commission may by rule impose a fee of up to $1 per transaction for data that must be submitted by a deferred presentment provider. A deferred presentment provider may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability due to relying on inaccurate information contained in the database. A deferred presentment provider must notify the office, in a manner as prescribed by rule, within 15 business days after ceasing operations or no longer holding a license under part II or part III of this chapter. Such notification must include a reconciliation of all open transactions. If the provider fails to provide notice, the office shall take action to administratively release all open and pending transactions in the database after the office becomes aware of the closure. This section does not affect the rights of the provider to enforce the contractual provisions of the deferred presentment agreements through any civil action allowed by law. The commission may adopt rules to administer this subsection and to ensure that the database is used by deferred presentment providers in accordance with this section.

(24) A deferred presentment provider may not accept more than one check or authorization to initiate more than one automated clearinghouse transaction to collect on a deferred presentment transaction for a single deferred presentment transaction.

**History.**—s. 13, ch. 2001-119; s. 727, ch. 2003-261; s. 45, ch. 2008-177; s. 73, ch. 2009-21.

**560.4041 Database for deferred presentment providers; public records exemption.**—Information that identifies a drawer or a deferred presentment provider contained in the database authorized under s. 560.404 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. A deferred presentment provider may access information that it has entered into the database and may obtain an eligibility determination for a particular drawer based on information in the database.

**History.**—s. 1, ch. 2001-268; s. 728, ch. 2003-261; s. 1, ch. 2006-189.

**560.405 Deposit; redemption.**—

(1) The deferred presentment provider or its affiliate may not present the drawer’s check before the end of the deferment period, as reflected in the deferred presentment transaction agreement.

(2) Before a deferred presentment provider presents the drawer’s check, the check must be endorsed with the name under which the deferred presentment provider is doing business.

(3) Notwithstanding subsection (1), in lieu of presentment, a deferred presentment provider may allow the check to be redeemed at any time upon payment of forthe face amount of the drawer’s check. However, payment may not be made in the form of a personal check. Upon redemption, the deferred presentment provider shall return the drawer’s check and provide a signed, dated receipt showing that the drawer’s check has been redeemed.

(4) A drawer may not be required to redeem his or her check before the agreed-upon date; however, the drawer may choose to redeem the check before the agreed-upon presentment date.

**History.**—s. 13, ch. 2001-119; s. 46, ch. 2008-177.

**560.406 Worthless checks.**—

(1) If a check is returned to a deferred presentment provider from a payor financial institution due to lack of funds, a closed account, or a stop-payment order, the deferred presentment provider may seek collection pursuant to s. 68.065, except a deferred presentment provider may not collect treble damages. The notice sent by the deferred deposit provider may not include any references to treble damages and must clearly state that the deferred presentment provider is not entitled to recover such damages. Except as otherwise provided in this part, an individual who issues a personal check to a deferred presentment provider under a deferred presentment agreement is not subject to criminal penalty.

(2) If a check is returned to a deferred presentment provider from a payor financial institution due to insufficient funds, a closed account, or a stop-payment order, the deferred presentment provider may pursue all legally available civil remedies to collect the check, including, but not limited to, the imposition of all charges imposed on the deferred presentment provider by the financial institution. In its collection practices, a deferred presentment provider must comply with the prohibitions against harassment or abuse, false or misleading representations, and unfair practices that are contained in the Fair Debt Collections Practices Act, 15 U.S.C. ss. 1692d, 1692e, and 1692f. A violation of this act is a deceptive and unfair trade practice and constitutes a violation of the Deceptive and Unfair Trade Practices Act under part II of chapter 501. In addition, a deferred presentment provider must comply with the applicable provisions of the Consumer Collection Practices Act under part VI of chapter 559, including s. 559.77.

(3) A deferred presentment provider may not assess the cost of collection, other than charges for insufficient funds as allowed by law, without a judgment from a court of competent jurisdiction.

**History.**—s. 13, ch. 2001-119; s. 47, ch. 2008-177; s. 74, ch. 2009-21.

**560.408 Legislative intent; report.**—It is the intent of the Legislature to provide for the regulation of deferred presentment transactions. It is further the intent of the Legislature to prevent fraud, abuse, and other unlawful activity associated with deferred presentment transactions in part by:

(1) Providing for sufficient regulatory authority and resources to monitor deferred presentment transactions.

(2) Preventing rollovers.

(3) Regulating the allowable fees charged in connection with a deferred presentment transaction.

**History.**—s. 13, ch. 2001-119; s. 730, ch. 2003-261; s. 111, ch. 2005-2.