

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby
DECLARED:


1. The Office has jurisdiction over the subject matter and parties to this matter pursuant to section 560.105, Florida Statutes;

2. Petitioner is a substantially affected person; and,

3. Hourly, Inc.'s Petition is **GRANTED**.

4. Petitioner is not required to obtain a money transmitter license pursuant to chapter 560, Florida Statutes.

DONE and ORDERED this 26th day of June, 2020, in Tallahassee, Leon
County, Florida.



Russell C. Weigel, III
Commissioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to Sasha Hodder, Esquire, at sasha@dltlawgroup.com this 26th day of June 2020.



Agency Clerk
Florida Office of Financial Regulation
Post Office Box 8050
Tallahassee, FL 32314-8050
Office: (850) 410-9643
Fax: (850) 410-9663
Email: agency.clerk@flofr.com
Website: www.flofr.com

Index: OFR 2020-237



**STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION**

IN RE: Petition for Declaratory Statement

Administrative Proceeding

Docket No.: 100752

HOURLY INC.,

Petitioner.

DECLARATORY STATEMENT AND FINAL ORDER

THIS CAUSE came on for consideration upon a Petition for Declaratory Statement (“Petition”) filed by HOURLY INC. (“Petitioner”), and received by the Office of Financial Regulation (the “Office”) on June 8, 2020.

The Petition, attached hereto as Exhibit A, requests the Office to issue a Declaratory Statement addressing whether Petitioner is required to obtain licensure pursuant to chapter 560, Florida Statutes, in order to conduct its proposed business activities.

Pursuant to and in compliance with section 120.55(1)(b), Florida Statutes, the Office published notice of the Petition in the Florida Administrative Register at Volume 46, Number 113, on June 9, 2020. The office received no comments regarding this matter.

The Office’s conclusions are based on the assertions of fact contained in the Petition. Any modification of the assertions of fact could alter the Office’s conclusions. If any facts asserted by Petitioner are untrue or materially incomplete, the Office’s conclusions provided herein would not apply.

FINDINGS OF FACT

1. The Petition requests the Office to issue a Declaratory Statement addressing whether Petitioner’s business model falls within any money transmitter licensing exemptions pursuant to chapter 560, Florida Statutes.

2. The Office considered all information Petitioner provided and, pursuant to Rule 28-105.003, Florida Administrative Code, has taken such information as fact for the purpose of this Order. The facts set forth in the Petition are hereby adopted and incorporated herein by reference as the Findings of Fact of the Office.

CONCLUSIONS OF LAW

1. Pursuant to section 120.565(1), Florida Statutes, any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statute as it applies to the petitioner's particular set of circumstances.

2. It is well established that the purpose of a declaratory statement is to afford a petitioner the opportunity to seek an agency's position regarding the applicability of the agency's statutory provisions, orders, or rules to the petitioner's particular circumstances. *Adventist Health System/Sunbelt, Inc. v. Agency for Health Care Admin.*, 955 So. 2d 1173, 1176 (Fla. 1st DCA 2007) (citing *Chiles v. Div. of Elections*, 711 So.2d 151, 154 (Fla. 1st DCA 1998)).

3. A declaratory statement can be used to avoid costly administrative litigation by informing a petitioner in advance as to the agency's views regarding petitioner's contemplated conduct. *Agency for Health Care Admin.*, 955 So. 2d at 1176; *Chiles*, 711 So.2d at 154; and *Nat'l Ass'n of Optometrists & Opticians v. Fla. Dep't of Health*, 922 So.2d 1060, 1062 (Fla. 1st DCA 2006).

4. A declaratory statement must therefore be sought from an agency in advance of taking a particular course of action. *Agency for Health Care Admin.*, 955 So. 2d at 1176 (citing *Novick v. Dep't of Health, Bd. of Med.*, 816 So.2d 1237, 1240 (Fla. 5th DCA 2002)).

5. The Office has jurisdiction over this matter pursuant to chapter 560, and section 120.565, Florida Statutes. Petitioner possesses the requisite interest and is the proper party to

request a declaratory statement under section 120.565, Florida Statutes, and Rule 28-105 et seq., Florida Administrative Code.

6. Pursuant to section 560.103(22), Florida Statutes, a “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 payment instrument seller, foreign currency exchanger, check casher, or money transmitter.

7. Pursuant to section 560.103(27), Florida Statutes, a “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, 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.

8. Pursuant to section 560.204, Florida Statutes, no person shall engage in the activity of a money transmitter without being licensed under Part II, chapter 560, Florida Statutes.

9. Petitioner has requested a determination from the Office as to whether Petitioner’s business model requires it to obtain a money transmitter license pursuant to chapter 560, Florida Statutes.

10. Under the specific set of facts set forth in the Petition outlining the proposed business model, Petitioner will not receive currency, monetary value, or payment instruments for the purpose of transmitting the same by any means. Therefore, Petitioner will not be acting as a money transmitter, and Petitioner’s proposed business activities do not fall within chapter 560, Florida Statutes.