

**SB 1274** by **Hays**; (Compare to CS/H 1089) Citizens Property Insurance Corporation

462194	D	S	RCS	BI, Hays	Delete everything after	03/25 05:06 PM
707654	AA	S	RCS	BI, Hays	Delete L.247 - 251:	03/25 05:06 PM
959002	A	S	WD	BI, Hays	Delete L.154 - 157:	03/25 05:06 PM

**SM 1538** by **Bean**; (Similar to H 1101) Terrorism Risk Insurance Act

755590	D	S	RCS	BI, Hays	Delete everything after	03/25 05:06 PM
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**CS/CS/SB 440** by **JU, RI, Altman**; (Similar to CS/CS/H 0425) Condominiums

**CS/SB 826** by **JU, Joyner**; (Identical to CS/CS/H 0405) Trusts

**SB 854** by **Abruzzo**; (Similar to CS/H 1395) Bail Bonds

**CS/SB 998** by **JU, Hukill**; (Similar to CS/CS/H 0757) Estates

**SB 482** by **Hays**; (Compare to CS/H 0391) Florida Hurricane Catastrophe Fund

532648	D	S	RCS	BI, Hays	Delete everything after	03/25 05:06 PM
566220	AA	S	L RCS	BI, Hays	Delete L.15 - 19:	03/25 05:06 PM

**CS/SB 744** by **CF, Detert**; (Similar to H 0977) Motor Vehicle Insurance and Driver Education for Children in Care

**CS/SB 948** by **GO, Ring**; (Similar to CS/H 0811) Foreign Investments

954678	A	S	RCS	BI, Ring	Delete L.347 - 366:	03/25 05:06 PM
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**SB 1238** by **Richter**; (Similar to CS/H 1267) Family Trust Companies

754404	D	S	RCS	BI, Richter	Delete everything after	03/25 05:06 PM
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**SB 1320** by **Richter**; (Similar to CS/H 1269) Public Records/Office of Financial Regulation

564280	D	S	RCS	BI, Richter	Delete everything after	03/25 05:06 PM
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**CS/SB 1014** by **HP, Garcia**; (Similar to H 0765) Pharmacy Benefit Managers

185750	A	S	L RCS	BI, Diaz de la Portilla	Delete L.50 - 55:	03/25 05:06 PM
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**SPB 7110** by **BI**; Ratification of Rules of the Office of Insurance Regulation

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**BANKING AND INSURANCE**  
**Senator Simmons, Chair**  
**Senator Clemens, Vice Chair**

**MEETING DATE:** Tuesday, March 25, 2014  
**TIME:** 2:00 —5:00 p.m.  
**PLACE:** *Toni Jennings Committee Room, 110 Senate Office Building*

**MEMBERS:** Senator Simmons, Chair; Senator Clemens, Vice Chair; Senators Benacquisto, Detert, Diaz de la Portilla, Hays, Lee, Margolis, Montford, Negrón, Richter, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 1274</b> Hays (Similar H 1089, Compare S 1672)	Citizens Property Insurance Corporation; Providing exemptions from the restriction on obtaining coverage from Citizens Property Insurance Corporation for major structures under certain conditions; authorizing the corporation to create an addendum to the uniform mitigation verification form for use by counties under certain circumstances, etc.  BI 03/19/2014 Not Considered BI 03/25/2014 Fav/CS CA RC	Fav/CS Yeas 12 Nays 0
2	<b>SM 1538</b> Bean (Similar HM 1101)	Terrorism Risk Insurance Act; Urging Congress to reauthorize the Terrorism Risk Insurance Act of 2002, etc.  BI 03/19/2014 Not Considered BI 03/25/2014 Fav/CS CJ RC	Fav/CS Yeas 11 Nays 0
3	<b>CS/CS/SB 440</b> Judiciary / Regulated Industries / Altman (Similar CS/CS/H 425)	Condominiums; Limiting the application of certain requirements relating to bylaws to residential condominiums and their associations and boards; exempting nonresidential condominiums from mandatory arbitration unless specifically provided for in their declarations; authorizing the developer to modify the plot plan as to unit or building types; extending by 1 year the time limitation for classification as a bulk assignee or bulk buyer, etc.  RI 02/13/2014 Fav/CS JU 03/11/2014 Fav/CS BI 03/25/2014 Favorable	Favorable Yeas 12 Nays 0
4	<b>CS/SB 826</b> Judiciary / Joyner (Identical CS/CS/H 405)	Trusts; Limiting the liability of excluded trustees; providing that certain powers to direct the actions of a trustee are not applicable under certain circumstances, etc.  JU 03/11/2014 Fav/CS BI 03/25/2014 Favorable RC	Favorable Yeas 12 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Tuesday, March 25, 2014, 2:00 —5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 854</b> Abruzzo (Similar H 1395)	Bail Bonds; Prohibiting a person from transmitting or posting an electronic bond with attached power of attorney unless he or she is duly qualified, licensed, appointed, and registered as a bail bond agent; authorizing a duly qualified, licensed, appointed, and registered bail bond agent to transmit electronic bonds within the judicial circuit in which the bail bond agency is located under certain circumstances; prohibiting an insurer or managing general agent from furnishing an unlicensed individual or entity a form necessary for transmitting or posting electronic bonds, etc.  BI 03/25/2014 Temporarily Postponed CJ JU	Temporarily Postponed
6	<b>CS/SB 998</b> Judiciary / Hukill (Similar CS/CS/H 757)	Estates; Providing that certain restrictions on gifts to lawyers and other disqualified persons apply to written instruments executed on or after a specified date; clarifying circumstances under which a burden of proof shifts in cases involving undue influence; requiring that a directive to apply certain death benefits for the payment of claims and administration expenses be specified in certain instruments; establishing which party bears the burden of proof in an action to contest the validity or revocation of a trust, etc.  JU 03/11/2014 Fav/CS BI 03/25/2014 Favorable RC	Favorable Yeas 12 Nays 0
7	<b>SB 482</b> Hays (Compare CS/H 391, H 1127, S 610)	Florida Hurricane Catastrophe Fund; Providing and phasing in a reduction in the fund's coverage limits for reimbursement contracts; authorizing an insurer to recoup certain reinsurance payments paid to cover a potential gap in the fund's claims-paying capacity; deleting a provision prohibiting the recoupment of certain other reinsurance costs, etc.  CA 02/04/2014 Favorable BI 03/25/2014 Fav/CS AP	Fav/CS Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Tuesday, March 25, 2014, 2:00 —5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>CS/SB 744</b> Children, Families, and Elder Affairs / Detert (Similar H 977, Compare S 1668)	Motor Vehicle Insurance and Driver Education for Children in Care; Authorizing the court to consider the best interest of a child in removing specified disabilities of nonage for certain minors; directing the Department of Children and Families to establish a statewide pilot program to pay specified costs of driver education, licensure and costs incidental to licensure, and motor vehicle insurance for a child in licensed out-of-home care who meets certain qualifications; requiring the department to contract with a qualified not-for-profit entity to operate and develop procedures for the pilot program; providing for preferential enrollment in driver education for specified children in care, etc.  CF 02/18/2014 Fav/CS TR 03/13/2014 Favorable BI 03/25/2014 Favorable AP	Favorable Yeas 12 Nays 0
9	<b>CS/SB 948</b> Governmental Oversight and Accountability / Ring (Similar CS/H 811)	Foreign Investments; Revising the percentage of investments that the State Board of Administration may invest in foreign securities; revising and providing definitions with respect to requirements that the board divest securities in which public moneys are invested in certain companies doing specified types of business in or with Sudan or Iran; requiring insurers to identify, report, and divest such investments within a specified period, etc.  GO 03/06/2014 Fav/CS BI 03/25/2014 Fav/CS AP RC	Fav/CS Yeas 12 Nays 0
10	<b>SB 1238</b> Richter (Similar CS/H 1267, Compare CS/H 1269, Link S 1320)	Family Trust Companies; Citing this act as the "Florida Family Trust Company Act"; providing for the calculation of kinship; exempting a family trust company or foreign licensed family trust company from licensure; specifying the maximum number of designated relatives allowed for a family trust company and a licensed family trust company; requiring that licensed family trust companies procure and maintain fidelity bonds or specified minimum owners' equity and errors and omissions insurance; prohibiting certain activities on the part of family trust companies, etc.  BI 03/25/2014 Fav/CS JU	Fav/CS Yeas 12 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Tuesday, March 25, 2014, 2:00 —5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	<b>SB 1320</b> Richter (Similar CS/H 1269, Compare CS/H 1267, Link S 1238)	Public Records/Office of Financial Regulation; Providing an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to a family trust company, licensed family trust company, or foreign licensed family trust company; providing for future legislative review and repeal of the exemption; providing for additional authorized release of certain information by the office; providing for production of confidential records pursuant to court orders, orders by administrative law judges, and legislative subpoenas, etc.  BI 03/25/2014 Fav/CS GO RC	Fav/CS Yeas 12 Nays 0
12	<b>CS/SB 1014</b> Health Policy / Garcia (Similar H 765)	Pharmacy Benefit Managers; Specifying contract terms that must be included in a contract between a pharmacy benefit manager and a pharmacy; providing restrictions on the inclusion of prescription drugs on a list that specifies the maximum allowable cost for such drugs; requiring a contract between a pharmacy benefit manager and a pharmacy to include an appeal process, etc.  HP 03/19/2014 Fav/CS BI 03/25/2014 Fav/CS AGG AP	Fav/CS Yeas 12 Nays 0
Consideration of proposed committee bill:			
13	<b>SPB 7110</b>	Ratification of Rules of the Office of Insurance Regulation; Ratifying a specified rule requiring title insurance agencies and the retail offices of certain title insurance underwriters to electronically submit certain statistical data, etc.	Submitted as Committee Bill Yeas 12 Nays 0

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 1274

INTRODUCER: Banking and Insurance Committee and Senator Hays

SUBJECT: Citizens Property Insurance Corporation

DATE: March 27, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.			CA	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1274 allows certain properties with new construction to be exempt from the prohibition on coverage from Citizens within the Coastal Barrier Resources System. The exemption applies to properties located within counties the Office of Insurance Regulation (OIR) determines Citizens is providing more than 75 percent of the policies for each line of business written by Citizens.

The bill allows Citizens to submit an alternative study to the OIR for the purposes of allowing additional windstorm mitigation discounts. Upon approval by the OIR Citizens must, in their next rate filing, include the mitigation discounts provided by the study. The bill allows the Financial Services Commission to make an addendum to the uniform mitigation verification form. The addendum to the form is to be used in counties whose building code has been verified to be more stringent than the highest code recognized by the form.

The bill prohibits a certified wind mitigation inspector from paying any referral fees or other forms of compensation to an insurance agent, broker or insurance agency employee that recommends an inspector's services to an insured. The bill also prohibits an insurance agent, broker or insurance agency employee from accepting any referral fees or other forms of compensation from a certified wind mitigation inspector.

## II. Present Situation:

### **Citizens Property Insurance Corporation (Citizens)**

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.<sup>1</sup> Citizens is not a private insurance company.<sup>2</sup> Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA). Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors<sup>3</sup> (board) that administers its Plan of Operations, which is reviewed and approved by the Financial Services Commission. The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoints two members to the board. Citizens is subject to regulation by the Florida Office of Insurance Regulation.

Citizens offers property insurance in three separate accounts. Each account is a separate statutory account with separate calculations of surplus and deficits.<sup>4</sup> Assets may not be commingled or used to fund losses in another account.<sup>5</sup>

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multiperil coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided by homeowner's, mobile home owner's, dwelling, tenant's, and condominium unit owner's policies.

The Commercial Lines Account (CLA) offers commercial lines residential and nonresidential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial nonresidential policies covering business properties.

The Coastal Account offers personal residential, commercial residential and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multiperil policies.<sup>6</sup>

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<sup>1</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>2</sup> s. 627.351(6)(a)1., F.S. Citizens is also subject to regulation by the Office of Insurance Regulation.

<sup>3</sup> The Governor, the Chief Financial Officer, the President of the Senate and the Speaker of the House of Representatives.

<sup>4</sup> The Personal Lines Account and the Commercial Lines account are combined for credit and Florida Hurricane Catastrophe Fund coverage.

<sup>5</sup> s. 627.351(6)(b)2b., F.S.

<sup>6</sup> In August of 2007, Citizens began offering personal and commercial residential multiperil policies in this limited eligibility area. Additionally, near the end of 2008, Citizens began offering commercial non-residential multiperil policies in this account.

Eligibility for Citizens coverage is at times restricted, or alternatively, the amount of coverage provided by Citizens is limited. Personal lines residential structures are ineligible for Citizens if they have an insured value of \$1 million or greater.<sup>7</sup> The eligibility threshold for such policies will be reduced annually in \$100,000 increments until it reaches \$700,000, effective January 1, 2017. Citizens will insure commercial residential properties at unlimited values. Citizens writes only the first \$1 million of commercial non-residential wind-only coverage and the first \$2.5 million of commercial non-residential multi-peril policies.

### **Citizens Rates**

Rates for Citizens coverage are required to be actuarially sound,<sup>8</sup> except that Citizens may not implement a rate increase that exceeds 10 percent for any single policy other than sinkhole coverage,<sup>9</sup> excluding coverage changes and surcharges.<sup>10</sup> The 10 percent limitation on rate increases is referred to as the Citizens rate “glide path” to achieving actuarially sound rates.<sup>11</sup> The implementation of this increase ceases when Citizens has achieved actuarially sound rates. In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the FHCF coverage, pursuant to s. 215.555(5)(b), F.S.

### **Eligibility for Insurance in Citizens**

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules, which are approved by the OIR, give flexibility for Citizens to denote some risks as uninsurable based on factors not enumerated in statute, such as age of home, condition and age of roof, vacant property, certain seasonal occupancy, and type of electrical wiring.

### ***Eligibility Based on Premium Amount***

Under current law, an applicant for residential insurance cannot buy insurance in Citizens if an admitted insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 15 percent or more.<sup>12</sup> In addition, the coverage offered by the private insurer must be comparable to Citizens’ coverage.

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<sup>7</sup> s. 627.351(6)(a)3.a., F.S.

<sup>8</sup> s. 627.351(6)(n)1., F.S.

<sup>9</sup> s. 627.351(6)(n)6., F.S.

<sup>10</sup> s. 627.351(6)(n), F.S.

<sup>11</sup> With the enactment of Chapter 2007-001, L.O.F., from January 25, 2007, to January 1, 2010, Citizens rates were fixed by statute at the rates that were in effect on December 31, 2006. The Legislature also rescinded a Citizens rate increase that had taken effect January 1, 2007, and resulted in a statewide average rate increase of 12 percent for policies in the personal lines account and 21.4 percent for policies in the high risk account (since renamed the coastal account).

<sup>12</sup> s. 627.351(6)(c)5., F.S.

Under current law, a residential policyholder cannot renew insurance in Citizens if an insurer in the private market offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the renewal premium eligibility requirement to apply.<sup>13</sup>

### ***Eligibility Based on Value of Property Insured***

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.<sup>14</sup> Structures with a dwelling replacement cost or a condominium unit that has a dwelling and contents replacement cost of:

- \$1 million or more cannot obtain insurance in Citizens starting January 1, 2014, but property insured by Citizens for \$1 million or more on December 31, 2013, can remain insured in Citizens until the policy expires in 2014, but cannot be renewed.
- \$900,000 or more cannot obtain insurance in Citizens starting January 1, 2015, but property insured for \$900,000 or more on December 31, 2014, can remain insured in Citizens until the policy expires in 2015, but cannot be renewed.
- \$800,000 or more cannot obtain insurance in Citizens starting January 1, 2016, but property insured for \$800,000 or more on December 31, 2015, can remain insured in Citizens until the policy expires in 2016, but cannot be renewed.
- \$700,000 or more cannot obtain insurance in Citizens starting January 1, 2017, but property insured for \$700,000 or more on December 31, 2016, can remain insured in Citizens until the policy expires in 2017, but cannot be renewed.

However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents replacement cost of \$1 million or less in counties the OIR determines is non-competitive.

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium association, homeowner association, or apartment building policies. Citizens has multiple eligibility and coverage restrictions for commercial businesses, depending on where the business is located and the type of policy the business purchases from Citizens. These restrictions are contained in the underwriting rules of Citizens, not in the statute.

### ***Eligibility Based on Location of Property***

Current law also provides an eligibility restriction for insurance in Citizens based on the location of the property. Major structures for which a building permit for new construction or a substantial improvement of the structure is applied for on or after July 1, 2014, , and which are located seaward of the coastal construction control line or within the Coastal Barrier Resources System (CBRS) are ineligible for insurance in Citizens. The definition of "major structure" in s. 161.54, F.S., is the one that applies to Citizens' eligibility and is very broad, encompassing all residential and commercial buildings. The definition specifies it covers houses, mobile homes, apartment buildings, condominiums, hotels, motels, and restaurants. The definition of "substantial improvement" in s. 161.54, F.S., is the one that applies to Citizens' eligibility.

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<sup>13</sup> s. 627.351(6)(c)5., F.S.

<sup>14</sup> s. 627.351(6)(a)3., F.S.

Generally, this definition makes any repair, reconstruction, rehabilitation, or improvement to a structure that costs 50 percent or more of the market value of the structure to be a “substantial improvement.” The statutory definition contains additional parameters and guidance and exclusions.

### ***Statewide Impact of Citizens’ Eligibility Based on Location of Property***

Citizens has identified approximately 100,000 parcels of land statewide completely within the CBRS or seaward of the coastal construction control line. Under current law, these parcels are ineligible for insurance in Citizens if:

- The parcel is currently improved (i.e., developed) and the structure located on the parcel is substantially improved with a building permit applied for on or after July 1, 2014, or
- If the parcel is currently unimproved (i.e., vacant), but is later developed with a building permit applied for on or after July 1, 2014.

Of the 100,000 total parcels of land completely within the CBRS or seaward of the coastal construction control line, Citizens currently writes 25,000 policies statewide insuring structures on these parcels. Thus, any substantial improvement to these 25,000 properties where a building permit is applied for on or after July 1, 2014, would keep them from continuing to be insured by Citizens.

Citizens identified another 80,000-100,000 properties it currently insures that could be moved within the CBRS or the control line if the boundaries of these areas change. This would prevent these properties from keeping insurance in Citizens if they are substantially improved with a building permit applied for on or after July 1, 2014.

### ***Monroe County Impact of the Application of the CBRS Eligibility Restriction***

There is no coastal construction control line in Monroe County. Thus, the provision in current law relating to eligibility for Citizens insurance for property located in the CBRS is the only applicable provision for Monroe County.

Monroe County has the following types of property located in whole or in part in the CBRS:

- 83 parcels are privately owned and improved (i.e., developed) and are completely contained within the CBRS.
- 1,239 parcels are privately owned and unimproved (i.e., vacant) and are completely contained within the CBRS.
- 573 parcels are privately owned and improved and intersect the CBRS in some manner (but are not wholly in the CBRS).
- 1,311 parcels are privately owned and unimproved and intersect the CBRS in some manner (but are not wholly in the CBRS).

### ***Alternate Mitigation Study***

Section 627.0629(1), F.S., requires rate filings for residential property insurance to include actuarially reasonable mitigation discounts. The OIR determines the amount of the discount. The

current OIR administrative rule<sup>15</sup> relating to mitigation discount amounts allows insurance companies to modify the amounts if the insurer provides a detailed alternate study supporting the modification and allows the OIR to review all assumptions used in the study. To date, the OIR has approved alternate discount studies for three insurers. The OIR is currently reviewing alternate studies for two more insurers.<sup>16</sup>

### **Uniform Mitigation Verification Inspection Form**

Section 627.0629, F.S., requires rate filings for residential property insurance to include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties. The windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength; roof covering performance; roof-to-wall strength; wall-to-floor foundation strength; opening protections; and window, door, and skylight strength.

Section 627.711, F.S., requires insurers to clearly notify an applicant or policyholder of a personal lines residential property insurance policy of the availability and range of each premium discount, credit, other rate differential, or reduction in deductibles, for wind mitigation. The notice must be provided when the policy is issued and upon each renewal. The notification must be done on a form developed by the Office of Insurance Regulation, known as the Notice of Premium Discounts for Hurricane Loss Mitigation.

To qualify for a hurricane premium discount, consumers must submit a completed Uniform Mitigation Verification Inspection Form developed by rule by the Financial Services Commission.<sup>17</sup> The current uniform mitigation form recognizes the Florida Building Code adopted in 2001 or later and the South Florida Building Code adopted in 1994. All insurers are required to use this form when factoring discounts for wind insurance.

### **Certified Wind Mitigation Inspector**

Under current law an insurer must accept a uniform mitigation verification form signed by an authorized mitigation inspector. Those who qualify as an authorized mitigation inspector include:

- A home inspector licensed under s. 468.8314, F.S., who has completed at least 3 hours of hurricane mitigation training approved by the Construction Industry Licensing Board which includes hurricane mitigation techniques and compliance with the uniform mitigation verification form and completion of a proficiency exam;
- A building code inspector certified under s. 468.607, F.S.;
- A general, building, or residential contractor licensed under s. 489.111, F.S.;
- A professional engineer licensed under s. 471.015, F.S.;
- A professional architect licensed under s. 481.213, F.S.; or
- Any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete a uniform mitigation verification form.

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<sup>15</sup> Rule 69O-170.017, F.A.C.

<sup>16</sup> Information received from the OIR on file with the Banking & Insurance Committee Staff.

<sup>17</sup> Rule 69O-170.0155, F.A.C.

A person who is authorized to sign a mitigation verification form must inspect the structures referenced by the form personally, not through employees or other persons, and must certify or attest to personal inspection of the structures referenced by the form. However, licensed engineers under s. 471.015, F.S., and licensed contractors s. 489.111, F.S., may authorize a direct employee, who is not an independent contractor, and who possesses the requisite skill, knowledge and experience, to conduct a mitigation verification inspection. Insurers shall have the right to request and obtain information regarding any authorized employee's qualifications prior to accepting a mitigation verification form.

An authorized mitigation inspector that signs a uniform mitigation form and a direct employee authorized to conduct mitigation verification inspections may not commit misconduct when performing an inspection. Misconduct occurs when an authorized mitigation inspector signs a uniform mitigation verification form that:

- Falsely indicates that he or she personally inspected the structures referenced by the form;
- Falsely indicates the existence of a feature which entitles an insured to a mitigation discount which the inspector knows does not exist or did not personally inspect;
- Contains erroneous information due to the gross negligence of the inspector; or
- Contains a pattern of demonstrably false information regarding the existence of mitigation features that could give an insured a false evaluation of the ability of the structure to withstand major damage from a hurricane endangering the safety of the insured's life and property.

The licensing board of an authorized mitigation inspector may commence disciplinary proceedings and impose administrative fines and other sanctions for such misconduct violations.

In 2013, the Department of Business and Professional Regulation (DBPR) issued declaratory statement 2013-04045. The statement concluded licensed home inspectors authorized to complete mitigation inspections are not prohibited under current law from paying referral fees to insurance agents and brokers who recommend their services. The DBPR declaratory statement clarifies that s. 468.8319(1)(h), F.S., only prohibits licensed home inspectors from paying referral fees to licensed real estate agents and licensed real estate brokers.

### **III. Effect of Proposed Changes:**

#### **Exemption to the prohibition on coverage by Citizens within a CBRS (Section 1)**

In 2013, the Florida Legislature required properties located within the Coastal Barrier Resources System to be ineligible for coverage from Citizens if a building permit for new construction was applied for after July 1, 2014. The bill would exempt from this prohibition all properties located in a CBRS within a county the OIR determines Citizens provides more than 75 percent of the policies for each line of business Citizens writes.

#### **Alternate study relating to mitigation discounts**

Citizens currently does not have an alternate study relating to mitigation discounts. However, Citizens has provided funding for a study of Monroe County to the non-profit group Fair

Insurance Rates in Monroe (FIRM).<sup>18</sup> To date FIRM has not completed their study. When such a study is complete the bill allows Citizens to submit the alternative study to OIR and if approved must, in their next rate filing, include the mitigation discounts provided by the study.

#### **Addendum to the uniform mitigation verification form (Section 2)**

The bill allows the Financial Services Commission to create an addendum to the uniform mitigation verification form. The addendum is to help policyholders located in counties with a verified stronger building code than currently utilized for the form to receive greater mitigation credits than allowed by the current form.

#### **Prohibition on referral fees paid by wind mitigation inspectors**

The bill prohibits a certified wind mitigation inspector from paying any referral fees or other forms of compensation to an insurance agent, broker or insurance agency employee that recommends an inspector's services to an insured. Additionally, the bill prohibits an insurance agent, broker or insurance agency employee from accepting any referral fees or other forms of compensation from a certified wind mitigation inspector.

#### **Effective Date (Section 3)**

The effective date of the bill is July 1, 2014.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

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<sup>18</sup> Rate Study Funding Agreement entered into by Fair Insurance Rates in Monroe (FIRM) and Citizens on file with the Banking & Insurance Committee Staff.

**B. Private Sector Impact:**

Property owners with new construction located in a CBRS in a county where the OIR determines Citizens is writing more than 75 percent of the policies for a particular line of business, will be able to be insured by Citizens. This exemption included current policyholders with Citizens who make substantial improvements to their insured structure after July 1, 2014.

Citizen's policyholders could receive greater mitigation discounts if a study is submitted and approved by the OIR concluding such discounts are warranted.

If the PSC amends the uniform mitigation form to recognize counties with stronger building codes, it will allow Citizens policyholders in such counties to receive greater mitigation credits than allowed by the current form.

Certified wind mitigation inspectors will be prohibited from paying referral fees to an insurance agent, broker or company employee that recommends an inspector's services to an insured. Additionally, an insurance agent, broker or company employee is prohibited from accepting any referral fees or other forms of compensation from a certified wind mitigation inspector.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

It is unclear how OIR will determine a county is non-competitive with regards to commercial policies as OIR currently does not collect market share data on commercial-lines policies issued in the state. Additionally, it is unclear if policies written by surplus lines insurers will be included in the calculation of Citizens market share with regards to determining competitiveness within a county.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 627.351, 627.711.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 25, 2014:**

The CS:

- Requires the Office of Insurance Regulation (OIR) to determine non-competitive counties with regards to exempting properties within Coastal Barrier Resources System from the prohibition of coverage with Citizens.
- Changes the market share formula for Citizens that the OIR is to use when determining that a county is non-competitive.
- Allows Citizens to submit an alternative study to OIR regarding windstorm mitigation. Upon approval by the OIR, Citizens must include mitigation discounts provided by the study in their next rate filing.
- Allows the Financial Services Commission to make an addendum to the uniform mitigation verification form. The addendum to the form is to be used in counties whose building code has been verified to be more stringent than the highest code recognized by the form.
- Prohibits a certified wind mitigation inspector from paying any referral fees or other forms of compensation to an insurance agent, broker or company employee that recommends an inspectors services to an insured.
- Prohibits an insurance agent, broker or company employee from accepting any referral fees or other forms of compensation from a certified wind mitigation inspector.

- B. **Amendments:**

None.



462194

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraphs (a) and (n) of subsection (6) of  
section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that  
there is an orderly market for property insurance for residents



462194

11 and businesses of this state.

12 1. The Legislature finds that private insurers are  
13 unwilling or unable to provide affordable property insurance  
14 coverage in this state to the extent sought and needed. The  
15 absence of affordable property insurance threatens the public  
16 health, safety, and welfare and ~~likewise threatens~~ the economic  
17 health of the state. The state therefore has a compelling public  
18 interest and a public purpose to assist in assuring that  
19 property in the state is insured and that it is insured at  
20 affordable rates so as to facilitate the remediation,  
21 reconstruction, and replacement of damaged or destroyed property  
22 in order to reduce or avoid the negative effects on otherwise  
23 ~~resulting to~~ the public health, safety, and welfare, to the  
24 economy of the state, and to the revenues of the state and local  
25 governments which are needed to provide for the public welfare.  
26 It is necessary, therefore, to provide affordable property  
27 insurance to applicants who are in good faith entitled to  
28 procure insurance through the voluntary market but are unable to  
29 do so. The Legislature intends, therefore, that affordable  
30 property insurance be provided and that it continue to be  
31 provided, as long as necessary, through Citizens Property  
32 Insurance Corporation, a government entity that is an integral  
33 part of the state, ~~and that is~~ not a private insurance company.  
34 To that end, the corporation shall strive to increase the  
35 availability of affordable property insurance in this state,  
36 while achieving efficiencies and economies, and while providing  
37 service to policyholders, applicants, and agents which is no  
38 less than the quality generally provided in the voluntary  
39 market, for the achievement of the foregoing public purposes.



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40 Because it is essential for this government entity to have the  
41 maximum financial resources to pay claims following a  
42 catastrophic hurricane, it is further the intent of the  
43 Legislature that the corporation continue to be an integral part  
44 of the state, ~~and~~ that the income of the corporation be exempt  
45 from federal income taxation, and that interest on the debt  
46 obligations issued by the corporation be exempt from federal  
47 income taxation.

48       2. The Residential Property and Casualty Joint Underwriting  
49 Association originally created by this statute shall be known as  
50 the Citizens Property Insurance Corporation. The corporation  
51 shall provide insurance for residential and commercial property,  
52 for applicants who are entitled, but, in good faith, are unable  
53 to procure insurance through the voluntary market. The  
54 corporation shall operate pursuant to a plan of operation  
55 approved by order of the Financial Services Commission. The plan  
56 is subject to continuous review by the commission. The  
57 commission may, by order, withdraw approval of all or part of a  
58 plan if the commission determines that conditions have changed  
59 since approval was granted and that the purposes of the plan  
60 require changes in the plan. For the purposes of this  
61 subsection, residential coverage includes both personal lines  
62 residential coverage, which consists of the type of coverage  
63 provided by homeowner's, mobile home owner's, dwelling,  
64 tenant's, condominium unit owner's, and similar policies; and  
65 commercial lines residential coverage, which consists of the  
66 type of coverage provided by condominium association, apartment  
67 building, and similar policies.

68       3. With respect to coverage for personal lines residential



462194

69 structures:

70 a. Effective January 1, 2014, a structure that has a  
71 dwelling replacement cost of \$1 million or more, or a single  
72 condominium unit that has a combined dwelling and contents  
73 replacement cost of \$1 million or more is not eligible for  
74 coverage by the corporation. Such dwellings insured by the  
75 corporation on December 31, 2013, may continue to be covered by  
76 the corporation until the end of the policy term. The office  
77 shall approve the method used by the corporation for valuing the  
78 dwelling replacement costs under ~~cost for the purposes of~~ this  
79 subparagraph. If a policyholder is insured by the corporation  
80 before being determined to be ineligible pursuant to this  
81 subparagraph and such policyholder files a lawsuit challenging  
82 the determination, the policyholder may remain insured by the  
83 corporation until the conclusion of the litigation.

84 b. Effective January 1, 2015, a structure that has a  
85 dwelling replacement cost of \$900,000 or more, or a single  
86 condominium unit that has a combined dwelling and contents  
87 replacement cost of \$900,000 or more, is not eligible for  
88 coverage by the corporation. Such dwellings insured by the  
89 corporation on December 31, 2014, may continue to be covered by  
90 the corporation only until the end of the policy term.

91 c. Effective January 1, 2016, a structure that has a  
92 dwelling replacement cost of \$800,000 or more, or a single  
93 condominium unit that has a combined dwelling and contents  
94 replacement cost of \$800,000 or more, is not eligible for  
95 coverage by the corporation. Such dwellings insured by the  
96 corporation on December 31, 2015, may continue to be covered by  
97 the corporation until the end of the policy term.



462194

98           d. Effective January 1, 2017, a structure that has a  
99 dwelling replacement cost of \$700,000 or more, or a single  
100 condominium unit that has a combined dwelling and contents  
101 replacement cost of \$700,000 or more, is not eligible for  
102 coverage by the corporation. Such dwellings insured by the  
103 corporation on December 31, 2016, may continue to be covered by  
104 the corporation until the end of the policy term.

105  
106 The requirements of sub-subparagraphs b.-d. do not apply in  
107 counties where the office determines there is not a reasonable  
108 degree of competition. In such counties a personal lines  
109 residential structure that has a dwelling replacement cost of  
110 less than \$1 million, or a single condominium unit that has a  
111 combined dwelling and contents replacement cost of less than \$1  
112 million, is eligible for coverage by the corporation.

113           4. It is the intent of the Legislature that policyholders,  
114 applicants, and agents of the corporation receive service and  
115 treatment of the highest possible level but never less than that  
116 generally provided in the voluntary market. It is also intended  
117 that the corporation be held to service standards no less than  
118 those applied to insurers in the voluntary market by the office  
119 with respect to responsiveness, timeliness, customer courtesy,  
120 and overall dealings with policyholders, applicants, or agents  
121 of the corporation.

122           5.a. Effective January 1, 2009, a personal lines  
123 residential structure that is located in the "wind-borne debris  
124 region," as defined in s. 1609.2, International Building Code  
125 (2006), and that has an insured value on the structure of  
126 \$750,000 or more is not eligible for coverage by the corporation



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127 unless the structure has opening protections as required under  
128 the Florida Building Code for a newly constructed residential  
129 structure in that area. A residential structure is deemed to  
130 comply with this sub-subparagraph ~~subparagraph~~ if it has  
131 shutters or opening protections on all openings and if such  
132 opening protections complied with the Florida Building Code at  
133 the time they were installed.

134 b. Any major structure as defined in s. 161.54(6) (a) for  
135 which a permit is applied on or after July 1, 2014, for new  
136 construction or substantial improvement as defined in s.  
137 161.54~~(12)~~ is not eligible for coverage by the corporation if  
138 the structure is seaward of the coastal construction control  
139 line established pursuant to s. 161.053 or is within the Coastal  
140 Barrier Resources System as designated by 16 U.S.C. ss. 3501-  
141 3510. This sub-subparagraph does not apply to substantial  
142 improvement of major structures located in a county where the  
143 office determines that the corporation issues 75 percent or more  
144 of the total of the number of policies for each line of personal  
145 residential, commercial residential, and commercial  
146 nonresidential insurance.

147 (n)~~1~~. Rates for coverage provided by the corporation must  
148 be actuarially sound and subject to s. 627.062, except as  
149 otherwise provided in this paragraph.

150 1. The corporation shall file its recommended rates with  
151 the office at least annually. The corporation shall provide any  
152 additional information regarding the rates which the office  
153 requires. The office shall consider the recommendations of the  
154 board and issue a final order establishing the rates for the  
155 corporation within 45 days after the recommended rates are



462194

156 filed. The corporation may not pursue an administrative  
157 challenge or judicial review of the final order of the office.

158 2. In addition to the rates otherwise determined pursuant  
159 to this paragraph, the corporation shall impose and collect an  
160 amount equal to the premium tax provided in s. 624.509 to  
161 augment the financial resources of the corporation.

162 3. After the public hurricane loss-projection model under  
163 s. 627.06281 has been found to be accurate and reliable by the  
164 Florida Commission on Hurricane Loss Projection Methodology, the  
165 model shall serve as the minimum benchmark for determining the  
166 windstorm portion of the corporation's rates. This subparagraph  
167 does not require or allow the corporation to adopt rates lower  
168 than the rates otherwise required or allowed by this paragraph.

169 4. The rate filings for the corporation which were approved  
170 by the office and took effect January 1, 2007, are rescinded,  
171 except for those rates that were lowered. As soon as possible,  
172 the corporation shall begin using the lower rates that were in  
173 effect on December 31, 2006, and provide refunds to  
174 policyholders who paid higher rates as a result of that rate  
175 filing. The rates in effect on December 31, 2006, remain in  
176 effect for the 2007 and 2008 calendar years except for any rate  
177 change that results in a lower rate. The next rate change that  
178 may increase rates shall take effect pursuant to a new rate  
179 filing recommended by the corporation and established by the  
180 office, subject to this paragraph.

181 5. Beginning on July 15, 2009, and annually thereafter, the  
182 corporation must make a recommended actuarially sound rate  
183 filing for each personal and commercial line of business it  
184 writes, to be effective no earlier than January 1, 2010.



462194

185           6. Beginning on or after January 1, 2010, and  
186 notwithstanding the board's recommended rates and the office's  
187 final order regarding the corporation's filed rates under  
188 subparagraph 1., the corporation shall annually implement a rate  
189 increase which, except for sinkhole coverage, does not exceed 10  
190 percent for any single policy issued by the corporation,  
191 excluding coverage changes and surcharges.

192           7. The corporation may also implement an increase to  
193 reflect the effect on the corporation of the cash buildup factor  
194 pursuant to s. 215.555(5)(b).

195           8. The corporation's implementation of rates as prescribed  
196 in subparagraph 6. shall cease for any line of business written  
197 by the corporation upon the corporation's implementation of  
198 actuarially sound rates. Thereafter, the corporation shall  
199 annually make a recommended actuarially sound rate filing for  
200 each commercial and personal line of business the corporation  
201 writes.

202           9. The corporation must submit any alternate study relating  
203 to windstorm mitigation discounts to the office. Upon the  
204 office's approval of the alternate study, the corporation must  
205 include the discounts provided by the study in the next filing  
206 of its recommended rates.

207           Section 2. Subsection (2) of section 627.711, Florida  
208 Statutes, is amended, present subsections (6), (7), and (8) of  
209 that section are renumbered as subsections (7), (8), and (9),  
210 respectively, and a new subsection (6) is added to that section,  
211 to read:

212           627.711 Notice of premium discounts for hurricane loss  
213 mitigation; uniform mitigation verification inspection form.—



462194

214           (2) (a) The Financial Services Commission shall, by rule,  
215 develop ~~by rule~~ a uniform mitigation verification inspection  
216 form that shall be used by all insurers when submitted by  
217 policyholders for the purpose of factoring discounts for wind  
218 insurance. The commission may develop an addendum to the form  
219 for use in a county that has adopted a building code that is  
220 stricter than the building code recognized by the uniform  
221 mitigation form. In developing the form, the commission shall  
222 seek input from insurance, construction, and building code  
223 representatives. ~~Further,~~ The commission shall also provide  
224 guidance as to the length of time the inspection results are  
225 valid. An insurer shall accept as valid a uniform mitigation  
226 verification form signed by the following authorized mitigation  
227 inspectors:

228           1. A home inspector licensed under s. 468.8314 who has  
229 completed at least 3 hours of hurricane mitigation training  
230 approved by the Construction Industry Licensing Board, which  
231 includes hurricane mitigation techniques and compliance with the  
232 uniform mitigation verification form and completion of a  
233 proficiency exam;

234           2. A building code inspector certified under s. 468.607;

235           3. A general, building, or residential contractor licensed  
236 under s. 489.111;

237           4. A professional engineer licensed under s. 471.015;

238           5. A professional architect licensed under s. 481.213; or

239           6. Any other individual or entity recognized by the insurer  
240 as possessing the necessary qualifications to properly complete  
241 a uniform mitigation verification form.

242           (b) An insurer may, but is not required to, accept a form



462194

243 from any other person possessing qualifications and experience  
244 acceptable to the insurer.

245 (6) (a) An authorized mitigation inspector may not directly  
246 or indirectly offer or deliver any compensation, inducement, or  
247 reward to an insurance broker or insurance agent for the  
248 referral of the owner of the inspected property to the inspector  
249 or the inspection company. Section 455.227(1) (k) applies to  
250 applicable licensees in violation of this paragraph.

251 (b) An insurance broker or insurance agent may not directly  
252 or indirectly receive or accept any compensation, inducement, or  
253 reward from an authorized mitigation inspector for the referral  
254 of the owner of the inspected property to the inspector or the  
255 inspection company. Section 626.6215(5) (d) applies to a  
256 violation of this paragraph

257 Section 3. This act shall take effect July 1, 2014.

258  
259 ===== T I T L E A M E N D M E N T =====

260 And the title is amended as follows:

261 Delete everything before the enacting clause  
262 and insert:

263 A bill to be entitled

264 An act relating to Citizens Property Insurance  
265 Corporation; amending s. 627.351, F.S.; providing  
266 exemptions from the restriction on obtaining coverage  
267 from the corporation for substantial improvement to  
268 major structures under certain conditions; requiring  
269 the corporation to submit any alternate study relating  
270 to windstorm mitigation discounts to the office and,  
271 if approved, including the discounts in its next rate



462194

272 filing; amending s. 627.711, F.S.; authorizing the  
273 corporation to create an addendum to the uniform  
274 mitigation verification form for use by counties under  
275 certain circumstances; prohibiting a mitigation  
276 inspector from paying an insurance broker or agent for  
277 referrals and an insurance broker from receiving such  
278 compensation; providing an effective date.



707654

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment to Amendment (462194) (with title amendment)**

Delete lines 247 - 251

and insert:

reward to an insurance broker, an insurance agent, or an employee of an insurance agency for referral of the owner of the inspected property to the inspector or the inspection company.  
Section 455.227(1)(k) applies to licensees in violation of this paragraph.



707654

11           (b) An insurance broker, insurance agent, or employee of an  
12 insurance agency may not directly

13  
14 ===== T I T L E   A M E N D M E N T =====

15 And the title is amended as follows:

16           Delete lines 276 - 277

17 and insert:

18           inspector from paying for referrals from an insurance  
19           broker, insurance agent, or employee of an insurance  
20           agency and a broker, agent, or employee from receiving  
21           such



959002

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/25/2014	.	
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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 154 - 157

and insert:

Section 2. Paragraph (c) is added to subsection (2) of section 627.711, Florida Statutes, and subsection (9) is added to that section, to read:

627.711 Notice of premium discounts for hurricane loss mitigation; uniform mitigation verification inspection form.—

(2)



959002

11           (c) An authorized mitigation inspector may not offer or  
12 deliver any compensation, inducement, or reward to an insurance  
13 broker or insurance agent for the referral of the owner of the  
14 inspected property to the inspector or the inspection company.

15  
16 ===== T I T L E   A M E N D M E N T =====

17 And the title is amended as follows:

18           Delete line 7

19 and insert:

20           amending s. 627.711, F.S.; prohibiting a mitigation  
21           inspector from paying any compensation to an insurance  
22           broker or agent for referrals; authorizing the  
23           corporation to create

By Senator Hays

11-01315-14

20141274\_\_

1 A bill to be entitled  
 2 An act relating to Citizens Property Insurance  
 3 Corporation; amending s. 627.351, F.S.; providing  
 4 exemptions from the restriction on obtaining coverage  
 5 from Citizens Property Insurance Corporation for major  
 6 structures under certain conditions; amending s.  
 7 627.711, F.S.; authorizing the corporation to create  
 8 an addendum to the uniform mitigation verification  
 9 form for use by counties under certain circumstances;  
 10 providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14 Section 1. Paragraph (a) of subsection (6) of section  
 15 627.351, Florida Statutes, is amended to read:

16 627.351 Insurance risk apportionment plans.—

17 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

18 (a) The public purpose of this subsection is to ensure that  
 19 there is an orderly market for property insurance for residents  
 20 and businesses of this state.

21 1. The Legislature finds that private insurers are  
 22 unwilling or unable to provide affordable property insurance  
 23 coverage in this state to the extent sought and needed. The  
 24 absence of affordable property insurance threatens the public  
 25 health, safety, and welfare and likewise threatens the economic  
 26 health of the state. The state therefore has a compelling public  
 27 interest and a public purpose to assist in assuring that  
 28 property in the state is insured and that it is insured at  
 29 affordable rates so as to facilitate the remediation,

Page 1 of 6

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

11-01315-14

20141274\_\_

30 reconstruction, and replacement of damaged or destroyed property  
 31 in order to reduce or avoid the negative effects otherwise  
 32 resulting to the public health, safety, and welfare, to the  
 33 economy of the state, and to the revenues of the state and local  
 34 governments which are needed to provide for the public welfare.  
 35 It is necessary, therefore, to provide affordable property  
 36 insurance to applicants who are in good faith entitled to  
 37 procure insurance through the voluntary market but are unable to  
 38 do so. The Legislature intends, therefore, that affordable  
 39 property insurance be provided and that it continue to be  
 40 provided, as long as necessary, through Citizens Property  
 41 Insurance Corporation, a government entity that is an integral  
 42 part of the state, and that is not a private insurance company.  
 43 To that end, the corporation shall strive to increase the  
 44 availability of affordable property insurance in this state,  
 45 while achieving efficiencies and economies, and while providing  
 46 service to policyholders, applicants, and agents which is no  
 47 less than the quality generally provided in the voluntary  
 48 market, for the achievement of the foregoing public purposes.  
 49 Because it is essential for this government entity to have the  
 50 maximum financial resources to pay claims following a  
 51 catastrophic hurricane, it is the intent of the Legislature that  
 52 the corporation continue to be an integral part of the state and  
 53 that the income of the corporation be exempt from federal income  
 54 taxation and that interest on the debt obligations issued by the  
 55 corporation be exempt from federal income taxation.

56 2. The Residential Property and Casualty Joint Underwriting  
 57 Association originally created by this statute shall be known as  
 58 the Citizens Property Insurance Corporation. The corporation

Page 2 of 6

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

11-01315-14 20141274\_\_

59 shall provide insurance for residential and commercial property,  
 60 for applicants who are entitled, but, in good faith, are unable  
 61 to procure insurance through the voluntary market. The  
 62 corporation shall operate pursuant to a plan of operation  
 63 approved by order of the Financial Services Commission. The plan  
 64 is subject to continuous review by the commission. The  
 65 commission may, by order, withdraw approval of all or part of a  
 66 plan if the commission determines that conditions have changed  
 67 since approval was granted and that the purposes of the plan  
 68 require changes in the plan. For the purposes of this  
 69 subsection, residential coverage includes both personal lines  
 70 residential coverage, which consists of the type of coverage  
 71 provided by homeowner's, mobile home owner's, dwelling,  
 72 tenant's, condominium unit owner's, and similar policies; and  
 73 commercial lines residential coverage, which consists of the  
 74 type of coverage provided by condominium association, apartment  
 75 building, and similar policies.

76 3. With respect to coverage for personal lines residential  
 77 structures:

78 a. Effective January 1, 2014, a structure that has a  
 79 dwelling replacement cost of \$1 million or more, or a single  
 80 condominium unit that has a combined dwelling and contents  
 81 replacement cost of \$1 million or more is not eligible for  
 82 coverage by the corporation. Such dwellings insured by the  
 83 corporation on December 31, 2013, may continue to be covered by  
 84 the corporation until the end of the policy term. The office  
 85 shall approve the method used by the corporation for valuing the  
 86 dwelling replacement cost for the purposes of this subparagraph.  
 87 If a policyholder is insured by the corporation before being

11-01315-14 20141274\_\_

88 determined to be ineligible pursuant to this subparagraph and  
 89 such policyholder files a lawsuit challenging the determination,  
 90 the policyholder may remain insured by the corporation until the  
 91 conclusion of the litigation.

92 b. Effective January 1, 2015, a structure that has a  
 93 dwelling replacement cost of \$900,000 or more, or a single  
 94 condominium unit that has a combined dwelling and contents  
 95 replacement cost of \$900,000 or more, is not eligible for  
 96 coverage by the corporation. Such dwellings insured by the  
 97 corporation on December 31, 2014, may continue to be covered by  
 98 the corporation only until the end of the policy term.

99 c. Effective January 1, 2016, a structure that has a  
 100 dwelling replacement cost of \$800,000 or more, or a single  
 101 condominium unit that has a combined dwelling and contents  
 102 replacement cost of \$800,000 or more, is not eligible for  
 103 coverage by the corporation. Such dwellings insured by the  
 104 corporation on December 31, 2015, may continue to be covered by  
 105 the corporation until the end of the policy term.

106 d. Effective January 1, 2017, a structure that has a  
 107 dwelling replacement cost of \$700,000 or more, or a single  
 108 condominium unit that has a combined dwelling and contents  
 109 replacement cost of \$700,000 or more, is not eligible for  
 110 coverage by the corporation. Such dwellings insured by the  
 111 corporation on December 31, 2016, may continue to be covered by  
 112 the corporation until the end of the policy term.

113  
 114 The requirements of sub-subparagraphs b.-d. do not apply in  
 115 counties where the office determines there is not a reasonable  
 116 degree of competition. In such counties a personal lines

11-01315-14 20141274\_\_  
 117 residential structure that has a dwelling replacement cost of  
 118 less than \$1 million, or a single condominium unit that has a  
 119 combined dwelling and contents replacement cost of less than \$1  
 120 million, is eligible for coverage by the corporation.

121 4. It is the intent of the Legislature that policyholders,  
 122 applicants, and agents of the corporation receive service and  
 123 treatment of the highest possible level but never less than that  
 124 generally provided in the voluntary market. It is also intended  
 125 that the corporation be held to service standards no less than  
 126 those applied to insurers in the voluntary market by the office  
 127 with respect to responsiveness, timeliness, customer courtesy,  
 128 and overall dealings with policyholders, applicants, or agents  
 129 of the corporation.

130 5.a. Effective January 1, 2009, a personal lines  
 131 residential structure that is located in the "wind-borne debris  
 132 region," as defined in s. 1609.2, International Building Code  
 133 (2006), and that has an insured value on the structure of  
 134 \$750,000 or more is not eligible for coverage by the corporation  
 135 unless the structure has opening protections as required under  
 136 the Florida Building Code for a newly constructed residential  
 137 structure in that area. A residential structure is deemed to  
 138 comply with this subparagraph if it has shutters or opening  
 139 protections on all openings and if such opening protections  
 140 complied with the Florida Building Code at the time they were  
 141 installed.

142 b. Any major structure as defined in s. 161.54(6) (a) for  
 143 which a permit is applied on or after July 1, 2014, for new  
 144 construction or substantial improvement as defined in s.  
 145 161.54(12) is not eligible for coverage by the corporation if

11-01315-14 20141274\_\_  
 146 the structure is seaward of the coastal construction control  
 147 line established pursuant to s. 161.053 or is within the Coastal  
 148 Barrier Resources System as designated by 16 U.S.C. ss. 3501-  
 149 3510. The restrictions of this subparagraph imposed on major  
 150 structures located within the Coastal Barrier Resources System  
 151 do not apply in a county where the corporation provides  
 152 windstorm coverage on more than 75 percent of personal lines  
 153 residential policies.

154 Section 2. Subsection (9) is added to section 627.711,  
 155 Florida Statutes, to read:

156 627.711 Notice of premium discounts for hurricane loss  
 157 mitigation; uniform mitigation verification inspection form.—

158 (9) Citizens Property Insurance Corporation may create an  
 159 addendum to the uniform mitigation verification form for use by  
 160 a county when applying mitigation credits if that county has:

161 (a) Implemented a building code that is stronger than the  
 162 highest code recognized on the uniform mitigation verification  
 163 form; and

164 (b) Completed a study verifying the use of the stronger  
 165 code.

166 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03/25/14

Meeting Date

Topic CPIC - Windstorm

Bill Number SB 1274  
*(if applicable)*

Name Charles Wagner

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Executive Director - Fair Insurance Rates in Monroe (FIRM)

Address 803 Whitehead St  
*Street*

Phone 305.842.1988

Key West FL 33040  
*City State Zip*

E-mail chic.wagner@gmail.com

Speaking:  For  Against  Information

Representing FIRM - Monroe County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SM 1538

INTRODUCER: Committee on Banking and Insurance and Senator Bean

SUBJECT: Terrorism Risk Insurance Act

DATE: March 27, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	Fav/CS
2.			CJ	
3.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SM 1538 urges Congress to reauthorize the Terrorism Risk Insurance Act of 2002 before December 31, 2014. The memorial urges Congress to keep the reforms adopted in 2007 when Congress last reauthorized the Act.

**II. Present Situation:**

On November 26, 2002, President George W. Bush signed into law the Terrorism Risk Insurance Act of 2002 (TRIA).<sup>1</sup> The law created a temporary, federally backed Terrorism Risk Insurance Program (TRIP) administered by the Treasury Department. TRIP provides reinsurance to insurers that are required to offer terrorism insurance for Property and Casualty lines. Subject to a deductible and program trigger, the government will reimburse insurers for up to 85 percent of losses from any terrorism events that have been verified by the Department of the Treasury, the State Department and the Attorney General. The original law was set to expire on December 31, 2005.

On December 22, 2005, President George W. Bush signed into law The Terrorism Risk Insurance Extension Act of 2005 (TRIEA).<sup>2</sup> The law extended the implementation of TRIP.

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<sup>1</sup> Pub. L. 107-297, 116 Stat. 2322.

<sup>2</sup> Pub. L. 109-144, 119 Stat. 2660.

On December 26, 2007, President George W. Bush signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2007 (TRIPRA).<sup>3</sup> The law extended the implementation of TRIP through December 31, 2014, however, several provisions of the initial 2002 Act were changed in the 2007 extension. Most notably the definition for an “act of terrorism” was changed to include domestic non-foreign sponsored acts of terrorism.

### **III. Effect of Proposed Changes:**

CS/SM 1538 urges Congress to reauthorize the Terrorism Risk Insurance Act of 2002 before December 31, 2014. The memorial urges Congress to keep the reforms adopted in 2007 when Congress last reauthorized the Act.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

None.

### **VI. Technical Deficiencies:**

None.

### **VII. Related Issues:**

None.

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<sup>3</sup> Pub. L. 110-160, 121 Stat. 1839.

**VIII. Statutes Affected:**

None.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 25, 2014:**

The CS clarifies that the memorial urges Congress to keep the reforms adopted in 2007 when Congress last reauthorized the Act.

- B. **Amendments:**

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the resolving clause  
and insert:

That the Congress of the United States is urged to  
reauthorize the Terrorism Risk Insurance Act of 2002 and its  
subsequent amendments before the current authorization of the  
law expires on December 31, 2014.

BE IT FURTHER RESOLVED that copies of this memorial be  
dispatched to the President of the United States, to the



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11 President of the United States Senate, to the Speaker of the  
12 United States House of Representatives, and to each member of  
13 the Florida delegation to the United States Congress.

14  
15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 Delete everything before the resolving clause  
18 and insert:

19 A bill to be entitled  
20 A memorial to the Congress of the United States,  
21 urging Congress to reauthorize the Terrorism Risk  
22 Insurance Act of 2002 as subsequently amended.

23  
24 WHEREAS, the United States of America continues to be  
25 engaged in a continuing war against terrorism, and the threat of  
26 future domestic terrorist attacks remains, and

27 WHEREAS, in future acts of terrorism, terrorists may employ  
28 the use of unconventional weapons, including nuclear,  
29 biological, chemical, or radiological weapons, which could  
30 result in a significant number of casualties, or a cybersecurity  
31 attack, which could significantly impair the nation's critical  
32 cyber and communications networks and infrastructure, and

33 WHEREAS, Congress enacted the Terrorism Risk Insurance Act  
34 of 2002 in order to provide a transparent system of shared  
35 public and private compensation for certain insured losses  
36 resulting from a certified act of terrorism through the  
37 Terrorism Risk Insurance Program, and

38 WHEREAS, Congress reauthorized the Terrorism Risk Insurance  
39 Act of 2002 in 2005 and 2007 to maintain the ability of insurers



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40 to offer widespread coverage for future catastrophes resulting  
41 from an act of terrorism, and

42 WHEREAS, the 2007 reauthorization contained several  
43 additional reforms, including revising the definition for the  
44 term "an act of terrorism" to include domestic, non-foreign  
45 sponsored acts of terrorism, and

46 WHEREAS, if the Terrorism Risk Insurance Act of 2002 and  
47 its subsequent amendments are not reauthorized before its  
48 scheduled expiration on December 31, 2014, the commercial real  
49 estate industry will be negatively impacted as building owners  
50 will encounter difficulty financing property sales or  
51 refinancing existing debt without access to adequate insurance  
52 policies, and

53 WHEREAS, the lack of private terrorism insurance coverage  
54 would inordinately shift the financial burden to taxpayers as  
55 the Federal Government may need to cover such losses in the  
56 event of an attack, and

57 WHEREAS, the Terrorism Risk Insurance Program is an  
58 essential component of adequately preparing for an effective  
59 economic recovery following a catastrophic terrorist attack in  
60 the United States of America, NOW, THEREFORE,

By Senator Bean

4-01154-14

20141538\_\_

Senate Memorial

A memorial to the Congress of the United States, urging Congress to reauthorize the Terrorism Risk Insurance Act of 2002.

WHEREAS, the United States of America continues to be engaged in a continuing war against terrorism, and the threat of future domestic terrorist attacks remains, and

WHEREAS, in future acts of terrorism, terrorists may employ the use of unconventional weapons, including nuclear, biological, chemical, or radiological weapons, which could result in a significant number of casualties, or a cybersecurity attack, which could significantly impair the nation's critical cyber and communications networks and infrastructure, and

WHEREAS, Congress enacted the Terrorism Risk Insurance Act of 2002 in order to provide a transparent system of shared public and private compensation for certain insured losses resulting from a certified act of terrorism through the Terrorism Risk Insurance Program, and

WHEREAS, Congress reauthorized the Terrorism Risk Insurance Act of 2002 in 2005 and 2007 to maintain the ability of insurers to offer widespread coverage for future catastrophes resulting from an act of terrorism, and

WHEREAS, if the Terrorism Risk Insurance Act of 2002 is not reauthorized before its scheduled expiration on December 31, 2014, the commercial real estate industry will be negatively impacted as building owners will encounter difficulty financing property sales or refinancing existing debt without access to adequate insurance policies, and

Page 1 of 2

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

4-01154-14

20141538\_\_

WHEREAS, the lack of private terrorism insurance coverage would inordinately shift the financial burden to taxpayers as the Federal Government may need to cover such losses in the event of an attack, and

WHEREAS, the Terrorism Risk Insurance Program is an essential component of adequately preparing for an effective economic recovery following a catastrophic terrorist attack in the United States, NOW, THEREFORE,

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

That the Congress of the United States is urged to reauthorize the Terrorism Risk Insurance Act of 2002 before the current authorization of the law expires on December 31, 2014.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic TRIA Memorial

Bill Number 1538  
~~1344~~ (if applicable)

Name Katie Webb

Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing PCIAA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/CS/SB 440

INTRODUCER: Judiciary Committee; Regulated Industries Committee; and Senator Altman

SUBJECT: Condominiums

DATE: March 24, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>

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**I. Summary:**

CS/CS/SB 440 amends several provisions in s. 718.112, F.S., which specifies the provisions that must be included in the bylaws of condominiums, to distinguish the bylaws requirements for residential condominiums from those for commercial condominiums. The bill limits the following bylaw requirements to residential condominiums:

- The time periods for associations to respond to a unit owner's written inquiries;
- The requirements for the election of board members, the use of staggered terms for members of the board, and the use of limited and general proxies;
- Prohibitions on persons who are not eligible to serve on the board of a condominium association, including co-owners of a unit in certain association, persons who have been suspended, persons who are delinquent in the payment of a monetary obligation due to the association, and persons convicted of a felony;
- The pre-election certification requirements for newly elected or appointed board members; and;
- The requirement that the bylaws of the association provide for mandatory nonbinding arbitration of disputes by the Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation.

The bill also limits the requirement that associations initiate an application for a building permit for the required installation of a sprinkler system by the specified date to residential condominiums. The bill also extends the specified date by which residential condominium associations must make the application for a building permit from the end of 2019 to January 1, 2020.

The bill also limits the following condominium laws to residential condominiums:

- Requirements that condominium boards adopt shutter specifications for each building within each condominium operated by the association;

- Requirements that condominium boards approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.
- Requirements that the alternative dispute resolution provisions in s. 718.1255, F.S., which provide for the mediation and voluntary non-binding arbitration of certain disputes, do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium;
- Limitations on the ability of the developer to modify the plot plan for phase condominiums; and
- Requirements that certain information related to the development of a phase condominium be described in the original declaration of condominium or approved amendment to residential condominiums.

The bill also extends the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

## II. Present Situation:

### Condominium

A condominium is a “form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”<sup>1</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>2</sup> A declaration is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.<sup>3</sup>

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”<sup>4</sup> A declaration of condominium may be amended as provided in the declaration.<sup>5</sup> If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.<sup>6</sup> Condominiums are administered by a board of directors referred to as a “board of administration.”<sup>7</sup>

Section 718.103(8), F.S., defines the term “common elements” to mean the portions of the condominium property not included in the units.

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.104(2), F.S.

<sup>3</sup> *Neuman v. Grandview at Emerald Hills*, 861 So.2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

<sup>4</sup> Section 718.104(5), F.S.

<sup>5</sup> See s. 718.110(1)(a), F.S.

<sup>6</sup> Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

<sup>7</sup> Section 718.103(4), F.S.

Section 718.103(12), F.S., defines the term “condominium parcel” to mean a unit, together with the undivided share in the common elements appurtenant to the unit.

Section 718.103(19), F.S., defines the term “limited common elements” to mean those common elements that are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

Section 718.103(23), F.S., defines the term “residential condominium” to mean:

[a] condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35), [F.S.], shall govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404[F.S].

### **Division of Florida Condominiums, Timeshares, and Mobile Homes**

Condominiums are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) in accordance with ch. 718, F.S.

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., with respect to associations that are still under developer control.<sup>8</sup> The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division’s jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.<sup>9</sup>

As part of the division’s authority to investigate complaints, s. 718.501(1), F.S., authorizes the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

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<sup>8</sup> Section 718.501(1), F.S.

<sup>9</sup> Section 718.501(1), F.S. See Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

## Condominium Bylaws

Section 718.112(2), F.S., specifies the provisions that must be included in the bylaws of condominium associations. In relevant part, the association's bylaws must provide that:

- The board of an association must respond to a unit owner's written inquiry within 30 days after receipt of the inquiry;<sup>10</sup> and
- If the board has sought advice from the division in order to respond to an inquiry from a unit owner, the board must provide a written response to the unit owner within 10 days after receipt of the advice.<sup>11</sup>
- Unit owners may vote by limited or general proxy;<sup>12</sup>
- Unless the bylaws provide otherwise, or the staggered term of a board member does not expire at the annual meeting, the terms of board members shall expire at the annual meeting, and such board members may stand for re-election, unless prohibited by the bylaws;<sup>13</sup>
- Co-owners of a unit in associations of more than 10 units or in associations that do not include timeshare units or interests may not serve on the board at the same time;<sup>14</sup>
- A candidate for election to the board must complete the information sheet required under s. 718.112(2)(d)4.a., F.S.;
- Persons who have been suspended by the division or who are delinquent in the payment of a monetary obligation due to the association are not eligible for board membership;<sup>15</sup>
- Persons convicted of a felony are not eligible for board membership until their civil rights have been restored;<sup>16</sup>
- Members of the board must be elected by written ballot or voting machine;<sup>17</sup> and
- Within 90 days after being elected or appointed, a newly elected or appointed board member must certify that he or she has read the declaration of condominium for all condominiums operated by the association and the association's articles of incorporation, bylaws, and current written policies. Alternatively, a newly elected or appointed board member may submit a certificate of satisfactory completion of the educational curriculum within 1 year before the election or 90 days after the election or appointment.<sup>18</sup>

Section 718.112(2)(d)10., F.S., provides that ch. 718, F.S., does not limit the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association.

Section 718.112(2)(d), F.S., also permits associations of 10 or fewer units to, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in their bylaws, which may be by proxy specifically delineating the different voting and election procedures.

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<sup>10</sup> Section 718.112(2)(a)2., F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 718.112(2)(b)2., F.S.

<sup>13</sup> Section 718.112(2)(d)2., F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Section 718.112(2)(d)4., F.S.

<sup>18</sup> Section 718.112(2)(d)4.b., F.S.

Section 718.112(2)(k), F.S., requires that the bylaws of the association must provide for mandatory nonbinding arbitration of disputes, as provided in s. 718.1255, F.S. The following types of disputes are excluded from arbitration under s. 718.1255, F.S.:

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.<sup>19</sup>

Section 718.112(2)(l), F.S., provides that the local authority having jurisdiction over the property may not require completion of retrofitting with a fire sprinkler system before the end of 2019. By December 31, 2016, an association that is not in compliance with the requirements for a fire sprinkler system and that has not voted to forego retrofitting of such a system is required to initiate an application for a building permit for the required installation with the local government having jurisdiction. In the application, the association must demonstrate that it will become compliant by December 31, 2019.

Section 718.112(2)(l)1., F.S., permits condominium associations to vote to forego retrofitting at a duly called membership meeting. Members may vote to forego retrofitting by limited proxy or by a vote personally cast. Section 718.112(2)(l)3., F.S., requires that associations report to the division the membership vote and the recording of a certificate from a licensed electrical contractor that the association is in compliance with the applicable life and safety code, as provided in s. 718.112(2)(l), F.S.

### **Vertical Accessibility**

Section 553.509(1), F.S., provides that part II of ch. 553, F.S., the Florida Americans with Disabilities Accessibility Implementation Act, and the Americans with Disabilities Act Standards for Accessible Design do not relieve the owner of any building, structure, or facility governed by this part from the duty to provide vertical accessibility to all levels above and below the occupiable grade level. Section 553.509(2), F.S., provides that buildings, structures, and facilities must, at a minimum, comply with the Americans with Disabilities Act Standards for Accessible Design.

Section 718.112(2)(l)4., F.S., permits condominium associations to forego the retrofitting of improvements required by s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.

### **Maintenance-Hurricane Protections**

Section 718.113(5), F.S., requires that condominium boards adopt shutter specifications for each building within each condominium operated by the association. The shutter specifications must include color, style, and other factors deemed relevant by the board. All of the specifications

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<sup>19</sup> Section 718.1255(1), F.S.

adopted by the board must comply with the applicable building code. Section 718.113(5)(a), F.S., authorizes condominium boards to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. Such installations by the board must be by a contract for products or services in accordance with s. 718.3026, F.S., and be approved by a majority of voting interests of the condominium.

### **Phase Condominiums**

Section 718.403, F.S., permits developers to develop condominiums in phases if the anticipated phases are described in detail in the original declaration of condominium or an amendment to the declaration that has been approved by all the unit owners and unit mortgagees.

The description must include the land that may become part of the condominium and the land on which each phase is to be built, including the metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys. The plot plans, attached as an exhibit, must show the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the condominium.

The developer may modify the plot plan as to unit or building types to the extent that such changes are described in the declaration. The developer may also make nonmaterial changes in the legal description of a phase if authorized by the declaration.<sup>20</sup>

Section 718.403(2)(b)-(f), F.S., provides the additional information that must be described in the original declaration of condominium, or an amendment to the declaration, which amendment has been approved by all unit owners and unit mortgagees and the developer. Section 718.403(2)(b)-(f), F.S., provides:

- (b) The minimum and maximum numbers and general size of units to be included in each phase. The general size may be expressed in terms of minimum and maximum square feet. In stating the minimum and maximum numbers of units, the difference between the minimum and maximum numbers shall not be greater than 20 percent of the maximum.
- (c) Each unit's percentage of ownership in the common elements as each phase is added. In lieu of describing specific percentages, the declaration or amendment may describe a formula for reallocating each unit's proportion or percentage of ownership in the common elements and manner of sharing common expenses and owning common surplus as additional units are added to the condominium by the addition of any land. The basis for allocating percentage of ownership among units in added phases shall be consistent with the basis for allocation made among the units originally in the condominium.
- (d) The recreational areas and facilities which will be owned as common elements by all unit owners and all personal property to be provided as each phase is added to the condominium and those facilities or areas which may not be built or provided if any phase or phases are not developed and added as a part of the

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<sup>20</sup> Section 718.403(2)(a), F.S.

condominium. The developer may reserve the right to add additional common-element recreational facilities if the original declaration contains a description of each type of facility and its proposed location. The declaration shall set forth the circumstances under which such facilities will be added.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the condominium.

(f) Whether or not timeshare estates will or may be created with respect to units in any phase and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be established with respect to any unit.

The time for completion of all the phases may not exceed 7 years from the date of the recording of the declaration of condominium.<sup>21</sup>

### **Distressed Condominium Relief Act**

The “Distressed Condominium Relief Act” in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

Section 718.703(1), F.S., defines the term “bulk assignee” to mean a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

Section 718.703(2), F.S., defines the term “bulk buyer” as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in this section.

Section 718.704, F.S., provides for the assignment and assumption of developer rights.

Section 718.704, F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2015. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

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<sup>21</sup> Section 718.403(1), F.S.

### III. Effect of Proposed Changes:

#### Condominium Bylaws

The bill amends several provisions in s. 718.112, F.S., to distinguish the bylaws requirements for residential condominiums from those for commercial condominiums.

The bill limits the following bylaw requirements to residential condominiums:

- The requirement that the board give a substantive response to a unit owner's written inquiry within 30 days of receipt after the inquiry or within 10 days after receipt of the advice from the division in s. 718.112(2)(a)2., F.S.;
- The requirements for the election of board members and the use of limited and general proxies in s. 718.112(2)(b)2., F.S.;
- The requirements for the election of board members the use of staggered terms in s. 718.112(2)(d)2., F.S.;
- The prohibition in s. 718.112(2)(d)2., F.S., against co-owners serving on the board at the same time;
- The prohibitions on persons who are not eligible to serve on the board in s. 718.112(2)(d)2., F.S., including persons who have been suspended by the division, persons who are delinquent in the payment of monetary obligation due to the association, and persons convicted of a felony;
- The requirement that members of the board be elected by written ballot or voting machine in s. 718.112(2)(d)4., F.S.;
- The requirement that a newly elected or appointed director certify in writing that he or she has read the association's documents within 90 days after being elected or appointed in s. 718.(2)(d)4.b., F.S.;
- The provision in s. 718.112(2)(d)10., F.S., that ch. 718, F.S., does not limit the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association; and
- The requirement in s. 718.112(2)(k), F.S., that the bylaws of the association provide for mandatory nonbinding arbitration of disputes, as provided in s. 718.1255, F.S.

The bill amends s. 718.112(2)(l), F.S., to limit the provision that requires associations to initiate an application for a building permit for the required installation of a sprinkler system by the specified date to residential condominiums. The bill also clarifies the specified date by which residential condominium associations must make the application for a building permit from "before the end of 2019" to before January 1, 2020.

The bill amends s. 718.112(2)(l)4., F.S., to limit, to residential condominiums, the provision that permits condominium associations to forego the retrofitting of improvements required by s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.<sup>22</sup>

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<sup>22</sup> Section 552.509, F.S., relates to applicability of the requirements and exceptions of the Florida Americans with Disabilities Accessibility Implementation Act (ss. 553.501-553.513, F.S.) and the Americans with Disabilities Act Standards for Accessible Design to provide for vertical accessibility.

### **Maintenance-Hurricane Protections**

The bill amends s. 718.113(5), F.S., to limit the requirement that condominium boards adopt shutter specifications for each building within each condominium operated by the association to residential condominiums. The bill amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the board's authority to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code (hurricane protections). The bill also amends s. 718.113(5)(d), F.S., to limit, to residential condominiums, the provision that prohibits condominium boards, notwithstanding any other provision in the condominium documents, from refusing to approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.

### **Alternative Dispute Resolution**

The bill creates s. 718.1255(6), F.S., to provide that the alternative dispute resolution provisions in this section do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium.

### **Phase Condominiums**

The bill amends s. 718.403(2)(a), F.S., to limit the ability of the developer to modify the plot plan as to unit or building types only to the extent that such changes are described in the declaration to residential condominiums.

The bill creates s. 718.403(9), F.S., to limit the information that must be described, as specified in ss. 718.403(2)(b)-(f), F.S. or 718.403(8), F.S., in the original declaration of condominium or approved amendment to residential condominiums.

The bill reenacts s. 718.403(1), F.S., to clarify the procedure for a developer to develop a condominium in phases. During the 2013 Legislative Session, two bills providing slightly different procedures for developing a condominium were enacted by the Legislature. By reenacting the provision, the bill clarifies that the provision codified in the Florida Statutes is the appropriate version.

### **Distressed Condominium Relief Act**

The bill amends s. 718.707, F.S., to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

#### **Effective Date:**

The bill takes effect July 1, 2014.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to representatives for condominium associations and the Real Property, Probate, and Trust Law Section of The Florida Bar, commercial condominiums may incur fewer expenses by not having to comply with bylaws requirements in ch. 718, F.S. Those requirements are more relevant to residential condominiums.<sup>23</sup>

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 718.112, 718.113, 718.1255, 718.403, and 718.707. This bill reenacts s. 718.403(1), F.S.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

**CS/CS by Judiciary on March 11, 2014:**

The committee substitute, by removing s. 718.1256, F.S., from the bill will continue to allow commercial condominiums to be classified as residential property for property and casualty insurance risk classification. The committee substitute also reenacts

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<sup>23</sup> Communication between committee staff of the Senate Regulated Industries Committee and the Real Property, Probate, and Trust Law Section of The Florida Bar.

s. 718.403(1), F.S. to clarify the procedure for a developer to develop a condominium in phases.

**CS by Regulated Industries on February 13, 2014:**

The committee substitute (CS) revised s. 718.112(2)(a)2., F.S., to limit, to residential condominiums, the requirement that the board must respond to a unit owner's written inquiry within 30 days of receipt of the inquiry. The CS does not reference the limitation to residential condominiums in the provision that requires the board to give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division.

The CS amends s. 718.112(2)(d), F.S., to limit, to residential condominiums, the provision that permits associations of 10 or fewer units to amend their bylaws to provide different voting and election procedures than is provided in ch. 718, F.S.

The CS amends s. s. 718.112(2)(1)4., F.S., to limit, to residential condominiums, the provision that permits condominium associations to forego the retrofitting of improvements required by s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.

The CS amends s. 718.113(5), F.S., to limit the requirement that condominium boards adopt shutter specifications for each building within each condominium operated by the association to residential condominiums. The CS also amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the board's authority to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. The bill also amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the provision that prohibits condominium boards from refusing to approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.

The CS creates s. 718.1255(6), F.S., to provide that the alternative dispute resolution provisions in this section do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium.

The CS amends s. 718.1256, F.S., to provide that residential condominiums are classified as residential property for property and casualty insurance risk classification.

The CS amends s. 718.403(2)(a), F.S., to limit the ability of the developer to modify the plot plan as to unit or building types only to the extent that such changes are described in the declaration to residential condominiums. The bill creates s. 718.403(9), F.S., to limit the information that must be described, as specified in ss. 718.403(2)(b)-(f), F.S., in the original declaration of condominium or approved amendment to residential condominiums.

The CS amends s. 718.707, F.S., to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

B. Amendments:

None.

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

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By the Committees on Judiciary; and Regulated Industries; and  
Senator Altman

590-02440-14

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1 A bill to be entitled  
2 An act relating to condominiums; amending s. 718.112,  
3 F.S.; limiting the application of certain requirements  
4 relating to bylaws to residential condominiums and  
5 their associations and boards; amending s. 718.113,  
6 F.S.; limiting the application of certain requirements  
7 relating to the maintenance of residential  
8 condominiums and their associations and boards;  
9 amending s. 718.1255, F.S.; exempting nonresidential  
10 condominiums from mandatory arbitration unless  
11 specifically provided for in their declarations;  
12 amending s. 718.403, F.S., and reenacting subsection  
13 (1), relating to the authority to develop a  
14 condominium in phases; authorizing the developer to  
15 modify the plot plan as to unit or building types;  
16 limiting the circumstances under which a plot plan may  
17 be modified as to a residential condominium;  
18 specifying the provisions relating to phase  
19 condominiums that are inapplicable to nonresidential  
20 condominiums; amending s. 718.707, F.S.; extending by  
21 1 year the time limitation for classification as a  
22 bulk assignee or bulk buyer; providing an effective  
23 date.  
24  
25 Be It Enacted by the Legislature of the State of Florida:  
26  
27 Section 1. Paragraphs (a), (b), (d), (k), and (l) of  
28 subsection (2) of section 718.112, Florida Statutes, are amended  
29 to read:

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30 718.112 Bylaws.—  
31 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the  
32 following and, if they do not do so, shall be deemed to include  
33 the following:  
34 (a) *Administration*.—  
35 1. The form of administration of the association shall be  
36 described indicating the title of the officers and board of  
37 administration and specifying the powers, duties, manner of  
38 selection and removal, and compensation, if any, of officers and  
39 boards. In the absence of such a provision, the board of  
40 administration shall be composed of five members, except in the  
41 case of a condominium which has five or fewer units, in which  
42 case in a not-for-profit corporation the board shall consist of  
43 not fewer than three members. In the absence of provisions to  
44 the contrary in the bylaws, the board of administration shall  
45 have a president, a secretary, and a treasurer, who shall  
46 perform the duties of such officers customarily performed by  
47 officers of corporations. Unless prohibited in the bylaws, the  
48 board of administration may appoint other officers and grant  
49 them the duties it deems appropriate. Unless otherwise provided  
50 in the bylaws, the officers shall serve without compensation and  
51 at the pleasure of the board of administration. Unless otherwise  
52 provided in the bylaws, the members of the board shall serve  
53 without compensation.  
54 2. When a unit owner of a residential condominium files a  
55 written inquiry by certified mail with the board of  
56 administration, the board shall respond in writing to the unit  
57 owner within 30 days after ~~of~~ receipt of the inquiry. The  
58 board's response shall either give a substantive response to the

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59 inquirer, notify the inquirer that a legal opinion has been  
 60 requested, or notify the inquirer that advice has been requested  
 61 from the division. If the board requests advice from the  
 62 division, the board shall, within 10 days after ~~of~~ its receipt  
 63 of the advice, provide in writing a substantive response to the  
 64 inquirer. If a legal opinion is requested, the board shall,  
 65 within 60 days after the receipt of the inquiry, provide in  
 66 writing a substantive response to the inquiry. The failure to  
 67 provide a substantive response to the inquiry as provided herein  
 68 precludes the board from recovering attorney ~~attorney's~~ fees and  
 69 costs in any subsequent litigation, administrative proceeding,  
 70 or arbitration arising out of the inquiry. The association may  
 71 through its board of administration adopt reasonable rules and  
 72 regulations regarding the frequency and manner of responding to  
 73 unit owner inquiries, one of which may be that the association  
 74 is only obligated to respond to one written inquiry per unit in  
 75 any given 30-day period. In such a case, any additional inquiry  
 76 or inquiries must be responded to in the subsequent 30-day  
 77 period, or periods, as applicable.

78 (b) *Quorum; voting requirements; proxies.*—

79 1. Unless a lower number is provided in the bylaws, the  
 80 percentage of voting interests required to constitute a quorum  
 81 at a meeting of the members is a majority of the voting  
 82 interests. Unless otherwise provided in this chapter or in the  
 83 declaration, articles of incorporation, or bylaws, and except as  
 84 provided in subparagraph (d)4., decisions shall be made by a  
 85 majority of the voting interests represented at a meeting at  
 86 which a quorum is present.

87 2. Except as specifically otherwise provided herein, unit

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88 owners in a residential condominium may not vote by general  
 89 proxy, but may vote by limited proxies substantially conforming  
 90 to a limited proxy form adopted by the division. A voting  
 91 interest or consent right allocated to a unit owned by the  
 92 association may not be exercised or considered for any purpose,  
 93 whether for a quorum, an election, or otherwise. Limited proxies  
 94 and general proxies may be used to establish a quorum. Limited  
 95 proxies shall be used for votes taken to waive or reduce  
 96 reserves in accordance with subparagraph (f)2.; for votes taken  
 97 to waive the financial reporting requirements of s. 718.111(13);  
 98 for votes taken to amend the declaration pursuant to s. 718.110;  
 99 for votes taken to amend the articles of incorporation or bylaws  
 100 pursuant to this section; and for any other matter for which  
 101 this chapter requires or permits a vote of the unit owners.  
 102 Except as provided in paragraph (d), a proxy, limited or  
 103 general, may not be used in the election of board members in a  
 104 residential condominium. General proxies may be used for other  
 105 matters for which limited proxies are not required, and may be  
 106 used in voting for nonsubstantive changes to items for which a  
 107 limited proxy is required and given. Notwithstanding this  
 108 subparagraph, unit owners may vote in person at unit owner  
 109 meetings. This subparagraph does not limit the use of general  
 110 proxies or require the use of limited proxies for any agenda  
 111 item or election at any meeting of a timeshare condominium  
 112 association or a nonresidential condominium association.  
 113 3. A ~~Any~~ proxy given is effective only for the specific  
 114 meeting for which originally given and any lawfully adjourned  
 115 meetings thereof. A proxy is not valid longer than 90 days after  
 116 the date of the first meeting for which it was given. Each ~~Every~~

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117 proxy is revocable at any time at the pleasure of the unit owner  
118 executing it.

119 4. A member of the board of administration or a committee  
120 may submit in writing his or her agreement or disagreement with  
121 any action taken at a meeting that the member did not attend.  
122 This agreement or disagreement may not be used as a vote for or  
123 against the action taken or to create a quorum.

124 5. If any of the board or committee members meet by  
125 telephone conference, those board or committee members may be  
126 counted toward obtaining a quorum and may vote by telephone. A  
127 telephone speaker must be used so that the conversation of those  
128 members may be heard by the board or committee members attending  
129 in person as well as by any unit owners present at a meeting.

130 (d) *Unit owner meetings.*-

131 1. An annual meeting of the unit owners shall be held at  
132 the location provided in the association bylaws and, if the  
133 bylaws are silent as to the location, the meeting shall be held  
134 within 45 miles of the condominium property. However, such  
135 distance requirement does not apply to an association governing  
136 a timeshare condominium.

137 2. Unless the bylaws provide otherwise, a vacancy on the  
138 board caused by the expiration of a director's term shall be  
139 filled by electing a new board member, and the election must be  
140 by secret ballot. An election is not required if the number of  
141 vacancies equals or exceeds the number of candidates. For  
142 purposes of this paragraph, the term "candidate" means an  
143 eligible person who has timely submitted the written notice, as  
144 described in sub-subparagraph 4.a., of his or her intention to  
145 become a candidate. Except in a timeshare or nonresidential

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146 condominium, or if the staggered term of a board member does not  
147 expire until a later annual meeting, or if all members' terms  
148 would otherwise expire but there are no candidates, the terms of  
149 all board members expire at the annual meeting, and such members  
150 may stand for reelection unless prohibited by the bylaws. If the  
151 bylaws or articles of incorporation permit terms of no more than  
152 2 years, the association board members may serve 2-year terms.  
153 If the number of board members whose terms expire at the annual  
154 meeting equals or exceeds the number of candidates, the  
155 candidates become members of the board effective upon the  
156 adjournment of the annual meeting. Unless the bylaws provide  
157 otherwise, any remaining vacancies shall be filled by the  
158 affirmative vote of the majority of the directors making up the  
159 newly constituted board even if the directors constitute less  
160 than a quorum or there is only one director. In a residential  
161 condominium association of more than 10 units or in a  
162 residential condominium association that does not include  
163 timeshare units or timeshare interests, coowners of a unit may  
164 not serve as members of the board of directors at the same time  
165 unless they own more than one unit or unless there are not  
166 enough eligible candidates to fill the vacancies on the board at  
167 the time of the vacancy. ~~A~~ ~~Any~~ unit owner in a residential  
168 condominium desiring to be a candidate for board membership must  
169 comply with sub-subparagraph 4.a. and must be eligible to be a  
170 candidate to serve on the board of directors at the time of the  
171 deadline for submitting a notice of intent to run in order to  
172 have his or her name listed as a proper candidate on the ballot  
173 or to serve on the board. A person who has been suspended or  
174 removed by the division under this chapter, or who is delinquent

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175 in the payment of any monetary obligation due to the  
 176 association, is not eligible to be a candidate for board  
 177 membership and may not be listed on the ballot. A person who has  
 178 been convicted of any felony in this state or in a United States  
 179 District or Territorial Court, or who has been convicted of any  
 180 offense in another jurisdiction which would be considered a  
 181 felony if committed in this state, is not eligible for board  
 182 membership unless such felon's civil rights have been restored  
 183 for at least 5 years as of the date such person seeks election  
 184 to the board. The validity of an action by the board is not  
 185 affected if it is later determined that a board member is  
 186 ineligible for board membership due to having been convicted of  
 187 a felony. This subparagraph does not limit the term of a member  
 188 of the board of a nonresidential condominium.

189 3. The bylaws must provide the method of calling meetings  
 190 of unit owners, including annual meetings. Written notice must  
 191 include an agenda, must be mailed, hand delivered, or  
 192 electronically transmitted to each unit owner at least 14 days  
 193 before the annual meeting, and must be posted in a conspicuous  
 194 place on the condominium property at least 14 continuous days  
 195 before the annual meeting. Upon notice to the unit owners, the  
 196 board shall, by duly adopted rule, designate a specific location  
 197 on the condominium property or association property where all  
 198 notices of unit owner meetings shall be posted. This requirement  
 199 does not apply if there is no condominium property or  
 200 association property for posting notices. In lieu of, or in  
 201 addition to, the physical posting of meeting notices, the  
 202 association may, by reasonable rule, adopt a procedure for  
 203 conspicuously posting and repeatedly broadcasting the notice and

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204 the agenda on a closed-circuit cable television system serving  
 205 the condominium association. However, if broadcast notice is  
 206 used in lieu of a notice posted physically on the condominium  
 207 property, the notice and agenda must be broadcast at least four  
 208 times every broadcast hour of each day that a posted notice is  
 209 otherwise required under this section. If broadcast notice is  
 210 provided, the notice and agenda must be broadcast in a manner  
 211 and for a sufficient continuous length of time so as to allow an  
 212 average reader to observe the notice and read and comprehend the  
 213 entire content of the notice and the agenda. Unless a unit owner  
 214 waives in writing the right to receive notice of the annual  
 215 meeting, such notice must be hand delivered, mailed, or  
 216 electronically transmitted to each unit owner. Notice for  
 217 meetings and notice for all other purposes must be mailed to  
 218 each unit owner at the address last furnished to the association  
 219 by the unit owner, or hand delivered to each unit owner.  
 220 However, if a unit is owned by more than one person, the  
 221 association must provide notice to the address that the  
 222 developer identifies for that purpose and thereafter as one or  
 223 more of the owners of the unit advise the association in  
 224 writing, or if no address is given or the owners of the unit do  
 225 not agree, to the address provided on the deed of record. An  
 226 officer of the association, or the manager or other person  
 227 providing notice of the association meeting, must provide an  
 228 affidavit or United States Postal Service certificate of  
 229 mailing, to be included in the official records of the  
 230 association affirming that the notice was mailed or hand  
 231 delivered in accordance with this provision.

232 4. The members of the board of a residential condominium

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233 shall be elected by written ballot or voting machine. Proxies  
 234 may not be used in electing the board in general elections or  
 235 elections to fill vacancies caused by recall, resignation, or  
 236 otherwise, unless otherwise provided in this chapter. This  
 237 subparagraph does not apply to an association governing a  
 238 timeshare condominium.

239 a. At least 60 days before a scheduled election, the  
 240 association shall mail, deliver, or electronically transmit, by  
 241 separate association mailing or included in another association  
 242 mailing, delivery, or transmission, including regularly  
 243 published newsletters, to each unit owner entitled to a vote, a  
 244 first notice of the date of the election. ~~A~~ Any unit owner or  
 245 other eligible person desiring to be a candidate for the board  
 246 must give written notice of his or her intent to be a candidate  
 247 to the association at least 40 days before a scheduled election.  
 248 Together with the written notice and agenda as set forth in  
 249 subparagraph 3., the association shall mail, deliver, or  
 250 electronically transmit a second notice of the election to all  
 251 unit owners entitled to vote, together with a ballot that lists  
 252 all candidates. Upon request of a candidate, an information  
 253 sheet, no larger than 8 1/2 inches by 11 inches, which must be  
 254 furnished by the candidate at least 35 days before the election,  
 255 must be included with the mailing, delivery, or transmission of  
 256 the ballot, with the costs of mailing, delivery, or electronic  
 257 transmission and copying to be borne by the association. The  
 258 association is not liable for the contents of the information  
 259 sheets prepared by the candidates. In order to reduce costs, the  
 260 association may print or duplicate the information sheets on  
 261 both sides of the paper. The division shall by rule establish

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262 voting procedures consistent with this sub-subparagraph,  
 263 including rules establishing procedures for giving notice by  
 264 electronic transmission and rules providing for the secrecy of  
 265 ballots. Elections shall be decided by a plurality of ballots  
 266 cast. There is no quorum requirement; however, at least 20  
 267 percent of the eligible voters must cast a ballot in order to  
 268 have a valid election. A unit owner may not permit any other  
 269 person to vote his or her ballot, and any ballots improperly  
 270 cast are invalid. A unit owner who violates this provision may  
 271 be fined by the association in accordance with s. 718.303. A  
 272 unit owner who needs assistance in casting the ballot for the  
 273 reasons stated in s. 101.051 may obtain such assistance. The  
 274 regular election must occur on the date of the annual meeting.  
 275 Notwithstanding this sub-subparagraph, an election is not  
 276 required unless more candidates file notices of intent to run or  
 277 are nominated than board vacancies exist.

278 b. Within 90 days after being elected or appointed to the  
 279 board of an association of a residential condominium, each newly  
 280 elected or appointed director shall certify in writing to the  
 281 secretary of the association that he or she has read the  
 282 association's declaration of condominium, articles of  
 283 incorporation, bylaws, and current written policies; that he or  
 284 she will work to uphold such documents and policies to the best  
 285 of his or her ability; and that he or she will faithfully  
 286 discharge his or her fiduciary responsibility to the  
 287 association's members. In lieu of this written certification,  
 288 within 90 days after being elected or appointed to the board,  
 289 the newly elected or appointed director may submit a certificate  
 290 of having satisfactorily completed the educational curriculum

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291 administered by a division-approved condominium education  
 292 provider within 1 year before or 90 days after the date of  
 293 election or appointment. The written certification or  
 294 educational certificate is valid and does not have to be  
 295 resubmitted as long as the director serves on the board without  
 296 interruption. A director of an association of a residential  
 297 condominium who fails to timely file the written certification  
 298 or educational certificate is suspended from service on the  
 299 board until he or she complies with this sub-subparagraph. The  
 300 board may temporarily fill the vacancy during the period of  
 301 suspension. The secretary shall cause the association to retain  
 302 a director's written certification or educational certificate  
 303 for inspection by the members for 5 years after a director's  
 304 election or the duration of the director's uninterrupted tenure,  
 305 whichever is longer. Failure to have such written certification  
 306 or educational certificate on file does not affect the validity  
 307 of any board action.

308 c. Any challenge to the election process must be commenced  
 309 within 60 days after the election results are announced.

310 5. Any approval by unit owners called for by this chapter  
 311 or the applicable declaration or bylaws, including, but not  
 312 limited to, the approval requirement in s. 718.111(8), must be  
 313 made at a duly noticed meeting of unit owners and is subject to  
 314 all requirements of this chapter or the applicable condominium  
 315 documents relating to unit owner decisionmaking, except that  
 316 unit owners may take action by written agreement, without  
 317 meetings, on matters for which action by written agreement  
 318 without meetings is expressly allowed by the applicable bylaws  
 319 or declaration or any law that provides for such action.

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320 6. Unit owners may waive notice of specific meetings if  
 321 allowed by the applicable bylaws or declaration or any law. If  
 322 authorized by the bylaws, notice of meetings of the board of  
 323 administration, unit owner meetings, except unit owner meetings  
 324 called to recall board members under paragraph (j), and  
 325 committee meetings may be given by electronic transmission to  
 326 unit owners who consent to receive notice by electronic  
 327 transmission.

328 7. Unit owners have the right to participate in meetings of  
 329 unit owners with reference to all designated agenda items.  
 330 However, the association may adopt reasonable rules governing  
 331 the frequency, duration, and manner of unit owner participation.

332 8. A unit owner may tape record or videotape a meeting of  
 333 the unit owners subject to reasonable rules adopted by the  
 334 division.

335 9. Unless otherwise provided in the bylaws, any vacancy  
 336 occurring on the board before the expiration of a term may be  
 337 filled by the affirmative vote of the majority of the remaining  
 338 directors, even if the remaining directors constitute less than  
 339 a quorum, or by the sole remaining director. In the alternative,  
 340 a board may hold an election to fill the vacancy, in which case  
 341 the election procedures must conform to sub-subparagraph 4.a.  
 342 unless the association governs 10 units or fewer and has opted  
 343 out of the statutory election process, in which case the bylaws  
 344 of the association control. Unless otherwise provided in the  
 345 bylaws, a board member appointed or elected under this section  
 346 shall fill the vacancy for the unexpired term of the seat being  
 347 filled. Filling vacancies created by recall is governed by  
 348 paragraph (j) and rules adopted by the division.

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349 10. This chapter does not limit the use of general or  
 350 limited proxies, require the use of general or limited proxies,  
 351 or require the use of a written ballot or voting machine for any  
 352 agenda item or election at any meeting of a timeshare  
 353 condominium association or nonresidential condominium  
 354 association.

356 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an  
 357 association of 10 or fewer units may, by affirmative vote of a  
 358 majority of the total voting interests, provide for different  
 359 voting and election procedures in its bylaws, which may be by a  
 360 proxy specifically delineating the different voting and election  
 361 procedures. The different voting and election procedures may  
 362 provide for elections to be conducted by limited or general  
 363 proxy.

364 (k) *Arbitration*.—There shall be a provision for mandatory  
 365 nonbinding arbitration as provided for in s. 718.1255 for any  
 366 residential condominium.

367 (l) *Certificate of compliance*.—A provision that a  
 368 certificate of compliance from a licensed electrical contractor  
 369 or electrician may be accepted by the association's board as  
 370 evidence of compliance of the condominium units with the  
 371 applicable fire and life safety code must be included.  
 372 Notwithstanding chapter 633 or of any other code, statute,  
 373 ordinance, administrative rule, or regulation, or any  
 374 interpretation of the foregoing, an association, residential  
 375 condominium, or unit owner is not obligated to retrofit the  
 376 common elements, association property, or units of a residential  
 377 condominium with a fire sprinkler system in a building that has

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378 been certified for occupancy by the applicable governmental  
 379 entity if the unit owners have voted to forego such retrofitting  
 380 by the affirmative vote of a majority of all voting interests in  
 381 the affected condominium. The local authority having  
 382 jurisdiction may not require completion of retrofitting with a  
 383 fire sprinkler system before January 1, 2020 ~~the end of 2019~~. By  
 384 December 31, 2016, a residential condominium ~~an~~ association that  
 385 is not in compliance with the requirements for a fire sprinkler  
 386 system and has not voted to forego retrofitting of such a system  
 387 must initiate an application for a building permit for the  
 388 required installation with the local government having  
 389 jurisdiction demonstrating that the association will become  
 390 compliant by December 31, 2019.

391 1. A vote to forego retrofitting may be obtained by limited  
 392 proxy or by a ballot personally cast at a duly called membership  
 393 meeting, or by execution of a written consent by the member, and  
 394 is effective upon recording a certificate attesting to such vote  
 395 in the public records of the county where the condominium is  
 396 located. The association shall mail or hand deliver to each unit  
 397 owner written notice at least 14 days before the membership  
 398 meeting in which the vote to forego retrofitting of the required  
 399 fire sprinkler system is to take place. Within 30 days after the  
 400 association's opt-out vote, notice of the results of the opt-out  
 401 vote must be mailed or hand delivered to all unit owners.  
 402 Evidence of compliance with this notice requirement must be made  
 403 by affidavit executed by the person providing the notice and  
 404 filed among the official records of the association. After  
 405 notice is provided to each owner, a copy must be provided by the  
 406 current owner to a new owner before closing and by a unit owner

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407 to a renter before signing a lease.

408 2. If there has been a previous vote to forego  
409 retrofitting, a vote to require retrofitting may be obtained at  
410 a special meeting of the unit owners called by a petition of at  
411 least 10 percent of the voting interests. Such a vote may only  
412 be called once every 3 years. Notice shall be provided as  
413 required for any regularly called meeting of the unit owners,  
414 and must state the purpose of the meeting. Electronic  
415 transmission may not be used to provide notice of a meeting  
416 called in whole or in part for this purpose.

417 3. As part of the information collected annually from  
418 condominiums, the division shall require condominium  
419 associations to report the membership vote and recording of a  
420 certificate under this subsection and, if retrofitting has been  
421 undertaken, the per-unit cost of such work. The division shall  
422 annually report to the Division of State Fire Marshal of the  
423 Department of Financial Services the number of condominiums that  
424 have elected to forego retrofitting.

425 4. Notwithstanding s. 553.509, a residential ~~an~~ association  
426 may not be obligated to, and may forego the retrofitting of, any  
427 improvements required by s. 553.509(2) upon an affirmative vote  
428 of a majority of the voting interests in the affected  
429 condominium.

430 Section 2. Subsection (5) of section 718.113, Florida  
431 Statutes, is amended to read:

432 718.113 Maintenance; limitation upon improvement; display  
433 of flag; hurricane shutters and protection; display of religious  
434 decorations.—

435 (5) Each board of administration of a residential

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436 condominium shall adopt hurricane shutter specifications for  
437 each building within each condominium operated by the  
438 association which shall include color, style, and other factors  
439 deemed relevant by the board. All specifications adopted by the  
440 board must comply with the applicable building code.

441 (a) The board may, subject to s. 718.3026 and the approval  
442 of a majority of voting interests of the residential  
443 condominium, install hurricane shutters, impact glass, code-  
444 compliant windows or doors, or other types of code-compliant  
445 hurricane protection that comply with or exceed the applicable  
446 building code. However, a vote of the owners is not required if  
447 the maintenance, repair, and replacement of hurricane shutters,  
448 impact glass, code-compliant windows or doors, or other types of  
449 code-compliant hurricane protection are the responsibility of  
450 the association pursuant to the declaration of condominium. If  
451 hurricane protection or laminated glass or window film  
452 architecturally designed to function as hurricane protection  
453 that complies with or exceeds the current applicable building  
454 code has been previously installed, the board may not install  
455 hurricane shutters, impact glass, code-compliant windows or  
456 doors, or other types of code-compliant hurricane protection  
457 except upon approval by a majority vote of the voting interests.

458 (b) The association is responsible for the maintenance,  
459 repair, and replacement of the hurricane shutters, impact glass,  
460 code-compliant windows or doors, or other types of code-  
461 compliant hurricane protection authorized by this subsection if  
462 such property is the responsibility of the association pursuant  
463 to the declaration of condominium. If the hurricane shutters,  
464 impact glass, code-compliant windows or doors, or other types of

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465 code-compliant hurricane protection are the responsibility of  
 466 the unit owners pursuant to the declaration of condominium, the  
 467 maintenance, repair, and replacement of such items are the  
 468 responsibility of the unit owner.

469 (c) The board may operate shutters, impact glass, code-  
 470 compliant windows or doors, or other types of code-compliant  
 471 hurricane protection installed pursuant to this subsection  
 472 without permission of the unit owners only if such operation is  
 473 necessary to preserve and protect the condominium property and  
 474 association property. The installation, replacement, operation,  
 475 repair, and maintenance of such shutters, impact glass, code-  
 476 compliant windows or doors, or other types of code-compliant  
 477 hurricane protection in accordance with the procedures set forth  
 478 in this paragraph are not a material alteration to the common  
 479 elements or association property within the meaning of this  
 480 section.

481 (d) Notwithstanding any other provision in the residential  
 482 condominium documents, if approval is required by the documents,  
 483 a board may not refuse to approve the installation or  
 484 replacement of hurricane shutters, impact glass, code-compliant  
 485 windows or doors, or other types of code-compliant hurricane  
 486 protection by a unit owner conforming to the specifications  
 487 adopted by the board.

488 Section 3. Subsection (6) is added to section 718.1255,  
 489 Florida Statutes, to read:

490 718.1255 Alternative dispute resolution; voluntary  
 491 mediation; mandatory nonbinding arbitration; legislative  
 492 findings.—

493 (6) APPLICABILITY.—This section does not apply to a

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494 nonresidential condominium unless otherwise specifically  
 495 provided for in the declaration of the nonresidential  
 496 condominium.

497 Section 4. Subsection (1) of section 718.403, Florida  
 498 Statutes, is reenacted, paragraph (a) of subsection (2) of that  
 499 section is amended, and subsection (9) is added to that section,  
 500 to read:

501 718.403 Phase condominiums.—

502 (1) Notwithstanding the provisions of s. 718.110, a  
 503 developer may develop a condominium in phases, if the original  
 504 declaration of condominium submitting the initial phase to  
 505 condominium ownership or an amendment to the declaration which  
 506 has been approved by all of the unit owners and unit mortgagees  
 507 provides for and describes in detail all anticipated phases; the  
 508 impact, if any, which the completion of subsequent phases would  
 509 have upon the initial phase; and the time period within which  
 510 all phases must be added to the condominium and comply with the  
 511 requirements of this section and at the end of which the right  
 512 to add additional phases expires.

513 (a) All phases must be added to the condominium within 7  
 514 years after the date of the recording of the certificate of a  
 515 surveyor and mapper pursuant to s. 718.104(4)(e) or the  
 516 recording of an instrument that transfers title to a unit in the  
 517 condominium which is not accompanied by a recorded assignment of  
 518 developer rights in favor of the grantee of such unit, whichever  
 519 occurs first, unless the unit owners vote to approve an  
 520 amendment extending the 7-year period pursuant to paragraph (b).

521 (b) An amendment to extend the 7-year period shall require  
 522 the approval of the owners necessary to amend the declaration of

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523 condominium pursuant to s. 718.110(1)(a). An extension of the 7-  
 524 year period may be submitted for approval only during the last 3  
 525 years of the 7-year period.

526 (c) An amendment must describe the time period within which  
 527 all phases must be added to the condominium, and such time  
 528 period may not exceed 10 years from the date of the recording of  
 529 the certificate of a surveyor and mapper pursuant to s.  
 530 718.104(4)(e) or the recording of an instrument that transfers  
 531 title to a unit in the condominium which is not accompanied by a  
 532 recorded assignment of developer rights in favor of the grantee  
 533 of such unit, whichever occurs first.

534 (d) An amendment that extends the 7-year period pursuant to  
 535 this section is not subject to the requirements of s.  
 536 718.110(4).

537 (2) The original declaration of condominium, or an  
 538 amendment to the declaration, which amendment has been approved  
 539 by all unit owners and unit mortgagees and the developer, shall  
 540 describe:

541 (a) The land which may become part of the condominium and  
 542 the land on which each phase is to be built. The descriptions  
 543 shall include metes and bounds or other legal descriptions of  
 544 the land for each phase, plot plans, and surveys. Plot plans,  
 545 attached as an exhibit, must show the approximate location of  
 546 all existing and proposed buildings and improvements that may  
 547 ultimately be contained within the condominium. The plot plan  
 548 may be modified by the developer as to unit or building types  
 549 but, in a residential condominium, only to the extent that such  
 550 changes are described in the declaration. If provided in the  
 551 declaration, the developer may make nonmaterial changes in the

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552 legal description of a phase.

553 (9) Paragraphs (2)(b)-(f) and subsection (8) do not apply  
 554 to nonresidential condominiums.

555 Section 5. Section 718.707, Florida Statutes, is amended to  
 556 read:

557 718.707 Time limitation for classification as bulk assignee  
 558 or bulk buyer.—A person acquiring condominium parcels may not be  
 559 classified as a bulk assignee or bulk buyer unless the  
 560 condominium parcels were acquired on or after July 1, 2010, but  
 561 before July 1, 2016 ~~2015~~. The date of such acquisition shall be  
 562 determined by the date of recording a deed or other instrument  
 563 of conveyance for such parcels in the public records of the  
 564 county in which the condominium is located, or by the date of  
 565 issuing a certificate of title in a foreclosure proceeding with  
 566 respect to such condominium parcels.

567 Section 6. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14

Meeting Date

Topic non-residential condominiums

Bill Number CS/CS/SB 440  
(if applicable)

Name Pete Dunbar

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address 215 S. Monroe St. #815

Phone 999-4100

Street

Tallahassee

32312

E-mail pdunbar@deanmead.com

City

State

Zip

Speaking:  For  Against  Information

Representing Real Property, Probate & Trust Law Section - Florida Bar

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 826

INTRODUCER: Judiciary Committee and Senator Joyner

SUBJECT: Trusts

DATE: March 24, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 826 limits the liability of excluded trustees for consequences from acting in compliance with a directive from a directing cotrustee. Under existing law, the excluded trustee may be liable for complying with a directive by the directing cotrustee, if an excluded trustee has actual knowledge of the willful misconduct of the directing cotrustee. Under the bill, an excluded trustee is not liable for complying with a directive by a directing cotrustee unless the excluded trustee's conduct constitutes willful misconduct.

Similarly, under existing s. 736.0808(2), F.S., if a revocable trust authorizes a person other than the settlor to direct the actions of a trustee, the trustee must act in accordance with the directions unless the directions are manifestly contrary to the trust or the trustee knows that the directions are a serious breach of a fiduciary duty. Under the bill, the statute does not apply if the person directing a trustee is another trustee.

**II. Present Situation:**

“A trust is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.”<sup>1</sup> A trust involves

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<sup>1</sup> 55A FLA. JUR.2D *Trusts* § 1. See also, s. 731.201(38), F.S., “trust” means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust.

three interest holders<sup>2</sup>: the settlor or grantor who establishes the trust;<sup>3</sup> the trustee who holds legal title to the property held in the benefit of the beneficiary;<sup>4</sup> and lastly, the beneficiary who has an equitable interest in property held subject to the trust.<sup>5</sup>

A trustee has a fiduciary duty to the beneficiary for proper administration of trust assets and is liable for any breach of that duty.<sup>6</sup> Cotrustees are generally jointly and severably liable to the beneficiary for any breach of trust, without special trust terms changing their duties or liabilities.<sup>7</sup> Clauses in a trust exonerating a trustee from liability are called exculpatory terms.<sup>8</sup> Exculpatory terms in a trust document providing for the release of a trustee who breaches his or her fiduciary duties may be unenforceable.<sup>9</sup>

Frequently, a trust will contain assets for which one of multiple trustees wishes to have no responsibility. In such case, the settlor may designate the trustee as the “excluded trustee” required to follow the direction of the directing trustee who is given sole authority to give direction over the subject trust property at issue.<sup>10</sup> Cotrustees are governed by the trust document and s. 736.0703(9), F.S. Section 736.0703(9), F.S., provides that:

If the terms of a trust instrument provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion of the others, the power to direct or prevent specified actions of the trustees, the excluded trustees shall act in accordance with the exercise of the power. *Except in cases of willful misconduct on the part of the trustee with the authority to direct or prevent actions of the trustees of which the excluded trustee has actual knowledge, an excluded trustee is not liable, individually or as a fiduciary, for any consequence that results from compliance with the exercise of the power, regardless of the information available to the excluded trustees.* The excluded trustees are relieved of any obligation to review, inquire, investigate, or make recommendations or evaluations with respect to the exercise of the power. The trustee or trustees having the power to direct or prevent actions of the trustees shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power (emphasis added).

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<sup>2</sup> 55A FLA. JUR.2D *Trusts* § 1.

<sup>3</sup> A “settlor” is one “who makes a settlement of the property; esp.[ecially], one who sets up a trust.” BLACK’S LAW DICTIONARY (9th ed. 2009).

<sup>4</sup> A “trustee” is “one who stands in a fiduciary or confidential relation to another; esp.[ecially], one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.” BLACK’S LAW DICTIONARY (9th ed. 2009).

<sup>5</sup> A “beneficiary” is a person for whose benefit property is held in trust. BLACK’S LAW DICTIONARY (9th ed. 2009).

<sup>6</sup> See s. 736.1011, F.S.

<sup>7</sup> 55A FLA. JUR.2D *Trusts* § 155.

<sup>8</sup> See ss. 736.1011, and 736.0105(2)(u), F.S.

<sup>9</sup> Section 736.1011, F.S.

<sup>10</sup> 12 FLA. PRAC., ESTATE Planning § 17:50.

There have been complaints that the directed trust statute, s 736.0703(9), F.S., does not provide sufficient level of protection to excluded trustees.<sup>11</sup> The excluded trustee has to oversee, monitor, and intervene in the actions of a directed cotrustee to avoid liability. As a result, trustees have been reluctant to accept appointments where the trustees are subject to the directions of another trustee (the directing trustee).<sup>12</sup>

Section 736.0703(9), F.S., provides that the excluded trustee is protected from liability when following the instructions of the directing trustee unless the excluded trustee has “actual knowledge of willful misconduct” on the part of the directing trustee.

### **III. Effect of Proposed Changes:**

The bill amends s. 736.0703(9), F.S., to limit the liability of an excluded trustee for misconduct under certain circumstances. Under the bill, the excluded trustee is not liable, individually or as a fiduciary, except in cases of willful misconduct for any consequence that results from compliance with exercise of power by the directing cotrustee. Under existing law, the excluded trustee may be liable for complying with a directive by the directing cotrustee, if an excluded trustee has actual knowledge of the willful misconduct of the directing cotrustee.

Similarly, under existing s. 736.0808(2), F.S., if a revocable trust authorizes a person other than the settlor of to direct the actions of a trustee, the trustee must act in accordance with the directions unless the directions are manifestly contrary to the trust or the trustee knows that the directions are a serious breach of a fiduciary duty. Under the bill, the statute does not apply if the person directing a trustee is another trustee.

The bill takes effect on July 1 2014.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>11</sup> Communication between committee staff of the Senate Judiciary Committee and the Trust Law Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar.

<sup>12</sup> *Id.*

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

By limiting the liability of excluded trustees, institutions and individuals may be more willing to serve as excluded trustees.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 736.0703 of the Florida Statutes.

**IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on March 11, 2014:**

The committee substitute revises the way an excluded trustee's liability is limited for consequences resulting from compliance with the directions of a directing trustee.

## B. Amendments:

None.

By the Committee on Judiciary; and Senator Joyner

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1 A bill to be entitled  
 2 An act relating to trusts; amending s. 736.0703, F.S.;  
 3 limiting the liability of excluded trustees; providing  
 4 that certain powers to direct the actions of a trustee  
 5 are not applicable under certain circumstances;  
 6 providing an effective date.  
 7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9  
 10 Section 1. Subsection (9) of section 736.0703, Florida  
 11 Statutes, is amended to read:  
 12 736.0703 Cotrustees.—  
 13 (9) If the terms of a trust ~~instrument~~ provide for the  
 14 appointment of more than one trustee but confer upon one or more  
 15 of the trustees, to the exclusion of the others, the power to  
 16 direct or prevent specified actions of the trustees, the  
 17 excluded trustees shall act in accordance with the exercise of  
 18 the power. Except in cases of willful misconduct on the part of  
 19 the excluded trustee ~~with the authority to direct or prevent~~  
 20 ~~actions of the trustees of which the excluded trustee has actual~~  
 21 ~~knowledge~~, an excluded trustee is not liable, individually or as  
 22 a fiduciary, for any consequence that results from compliance  
 23 with the exercise of the power, ~~regardless of the information~~  
 24 ~~available to the excluded trustees.~~ An The excluded trustee does  
 25 not have a duty or an ~~trustees are relieved of any~~ obligation to  
 26 review, inquire, investigate, or make recommendations or  
 27 evaluations with respect to the exercise of the power. The  
 28 trustee or trustees having the power to direct or prevent  
 29 actions of the excluded trustees shall be liable to the

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30 beneficiaries with respect to the exercise of the power as if  
 31 the excluded trustees were not in office and shall have the  
 32 exclusive obligation to account to and to defend any action  
 33 brought by the beneficiaries with respect to the exercise of the  
 34 power. The provisions of s. 736.0808(2) do not apply if the  
 35 person entrusted with the power to direct the actions of the  
 36 excluded trustee is also a cotrustee.  
 37 Section 2. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14

Meeting Date

Topic Trusts

Bill Number 826  
*(if applicable)*

Name Kenneth Pratt

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Senior VP of Govt. Affairs

Address 1001 Thomasville Road, Ste 201

Phone 850-224-2265

Street

Tallahassee FL 32301

City

State

Zip

E-mail kpratt@floridabankers.com

Speaking:  For  Against  Information

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SB 854

INTRODUCER: Senator Abruzzo

SUBJECT: Bail Bonds

DATE: March 24, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	<b>Pre-meeting</b>
2.			CJ	
3.			JU	

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**I. Summary:**

SB 854 states that only a licensed, appointed, and registered bail bond agent may transmit or post an electronic bail bond with attached power of attorney. The bail bond agent may only transmit or post electronic bonds in a judicial circuit if the agent is both registered in and has an office and agency physically located in a county within the judicial circuit. Electronic bail bonds will be available if the sheriff for the judicial circuit agrees to accept electronic bonds.

**II. Present Situation:**

**Bail**

Under ch. 903, F.S., “bail” and “bond” includes all forms of pretrial release.<sup>1</sup> The monetary component of pretrial release may be met by a surety amount. A criminal surety bail bond is construed as a commitment by and obligation upon a bail bond agent to ensure the defendant appears at all subsequent criminal proceedings and fulfills all conditions of the bond.<sup>2</sup> In criminal actions, bonds given by defendants before trial until appeal must be approved by a committing trial court judge or the sheriff.<sup>3</sup> According to the Department of Financial Services (DFS), bail bonds are generally delivered in paper format.<sup>4</sup>

The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any condition of the bond constitutes a breach by the bail bond agent of this commitment.<sup>5</sup> A surety may arrest the defendant before forfeiture of a bail bond for the purpose

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<sup>1</sup> s. 903.011, F.S.

<sup>2</sup> s. 903.045, F.S.

<sup>3</sup> s. 903.33, F.S.

<sup>4</sup> Department of Financial Services, Fiscal Analysis of Senate Bill 854, (Feb. 10, 2014). (On file with the Senate Banking and Insurance Committee).

<sup>5</sup> See id.

of surrendering the defendant to the official who had custody of the defendant when bail was taken or the official into whose custody the defendant would have been placed if committed.<sup>6</sup>

### **Bail Bond Agents**

To act as a bail bond agent or temporary bail bond agent, a person must be qualified, licensed, and appointed under ch. 648, F.S.<sup>7</sup> A bail bond agent is a limited surety agent or professional bail bond agent.<sup>8</sup> A limited surety agent is an individual appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings who receives or is promised money or other things of value.<sup>9</sup> The appointing insurer is bound by the acts of the bail bond agent acting within the scope of his or her appointment. A bail bond agent may also be a “professional bail bond agent,” which is any person who pledges security for a bail bond in exchange for consideration.<sup>10</sup> The Department of Financial Services (DFS) is responsible for the licensure of bail bond agents.<sup>11</sup>

A bail bond agent must register in the office of the sheriff and with the clerk of the circuit court in the county in which the bail bond agent resides to become a surety of an undertaking.<sup>12</sup> However, the agent is not required to have a physical location in the county. The agent must file a certified copy of his or her appointment by power of attorney from each insurer that he or she represents with such officers. A bail bond agent may also register in any other county. Every insurer that writes bail bonds through bail bond agents must submit and have appointed by the DFS a sample power of attorney, which is the only form of power of attorney the insurer will issue to bail bond agents in the state.<sup>13</sup> A professional bail bond agent who authorizes a licensed, professional bail bond agent directly employed and appointed by him to sign his or her name to bonds must file a copy of the power of attorney with the sheriff and clerk of the circuit court in the county in which he or she resides and with the department.

Only licensed, appointed bail bond agents may own, control, or have a pecuniary interest in a bail bond agency.<sup>14</sup> A bail bond agency is defined as the offices where a bail bond agent maintains offices and keeps required records or alternatively as an entity that charges a fee or premium to release an accused defendant or detainee from jail, or engages in or employs others to engage in an activity that may be performed only by a licensed, appointed bail bond agent.

Bail bond agents are prohibited from engaging in various actions, some of which are punishable as a third-degree felony.<sup>15</sup> Actions punishable as a third degree felony include paying money to a person who has the power to arrest or hold in custody in order to secure a settlement, compromise remission, or reduction of the bail bond;<sup>16</sup> pay a fee or rebate to an attorney in a bail

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<sup>6</sup> See s. 903.21, F.S., and s. 903.22, F.S.

<sup>7</sup> s. 648.30, F.S.

<sup>8</sup> s. 648.25(2), F.S.

<sup>9</sup> s. 648.25(5), F.S.

<sup>10</sup> s. 648.25(7), F.S.

<sup>11</sup> s. 648.26, F.S.

<sup>12</sup> s. 648.42, F.S.

<sup>13</sup> s. 648.43, F.S.

<sup>14</sup> s. 648.285, F.S.

<sup>15</sup> s. 648.44(1), (2), and (9)(a), F.S.

<sup>16</sup> s. 648.44(1)(e), F.S.

bond matter;<sup>17</sup> make a statement under oath that is false, misleading, or deceptive;<sup>18</sup> and acting as a bail bond agent while being an attorney or law enforcement officer.<sup>19</sup> Other actions are punishable as a first degree misdemeanor,<sup>20</sup> such as suggesting to a principal the employment of a particular attorney,<sup>21</sup> initiating telephone solicitation outside certain hours,<sup>22</sup> and attempting to collect payment of a bail bond through threat or coercion in a manner prohibited under s. 559.72, F.S., regarding prohibited consumer debt collection practices.<sup>23</sup>

### III. Effect of Proposed Changes:

SB 854 states that only a licensed, appointed, and registered bail bond agent may transmit or post an electronic bail bond with attached power of attorney. The bail bond agent may only transmit or post electronic bonds in a judicial circuit if the agent is registered in a county within the circuit and has a bail bond agency within the circuit. Electronic bail bonds will be available if the sheriff for the judicial circuit agrees to accept electronic bonds.

**Section 1** amends s. 648.25, F.S., to revise and create definitions of terms used in the statutes authorizes the transmission and posting of electronic bail bonds. The bill defines:

- “Bail bond agency” to include an entity physically located in a judicial circuit that transmits electronic bonds. The bonds may only be transmitted to a jail located in the same judicial circuit as the agency.
- “Delivery” to mean hand delivering or electronically transmitting a bond with an attached power of attorney.
- “Electronic bond” to mean a bond that is transmitted or posted electronically with an attached power of attorney to a jail; that originates through a Florida admitted, authorized surety; and is filed using a computer program.
- “Surety” to mean a property and casualty insurer holding authorized to transact surety business in Florida.
- “Temporary licensee” to mean the same thing as a temporary bail bond agent, which is a person employed by a bail bond agent, agency, insurer, or managing general agent who has the same authority as a licensed bail bond agent, but may not execute or sign bonds, handle collateral receipts, or deliver bonds to appropriate authorities. A temporary license must be obtained before a person may obtain licensure as a bail bond agent.

**Section 2** amends s. 648.30, F.S., to specify that only a Florida-licensed, appointed, and registered bail bond agent may transmit or post an electronic bond with attached power of attorney.

**Section 3** amends s. 648.42, F.S., stating that a qualified, licensed, appointed and registered bail bond agent may transmit or post electronic bonds in the judicial circuit in which the bail bond agency is located if the sheriff agrees to accept electronic bail bonds.

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<sup>17</sup> s. 648.44(1)(f), F.S.

<sup>18</sup> s. 648.44(1)(n), F.S.

<sup>19</sup> s. 648.44(2), F.S.

<sup>20</sup> s. 648.44(9)(b), F.S.

<sup>21</sup> s. 648.44(1)(a), F.S.

<sup>22</sup> s. 648.44(1)(c), F.S.

<sup>23</sup> s. 648.44(1)(o), F.S.

**Section 4** amends s. 648.43, F.S., to require bail bond insurers that write bail bonds through bail bond agents to have a sample electronic power of attorney to be attached to an electronic bond. The sample form must be approved by the DFS. The approved forms are the only forms the insurer may issue to bail bond agents in this state.

**Section 5** amends s. 648.44, F.S., to prohibit a bail bond agent or temporary bail bond agent from transmitting or posting an electronic bond with attached power of attorney unless he or she is duly qualified, licensed, appointed, and registered as a bail bond agent; registered in the county within the judicial circuit; and has a bail bond agency physically located in the judicial circuit in which the electronic bond is being transmitted. A violation of this prohibition is punishable as a third degree felony.

The bill eliminates the ability of a bail bond agency to give a power of attorney to countersign his or her name to a licensed bail bond agent employed by the agent giving the power of attorney. The bill also prohibits a bail bond agent from facilitating or allowing an unlicensed or a person without proper appointment to transmit or post an electronic bail bond.

**Section 6** amends s. 648.441, F.S., to prohibit an insurer or managing general agent from furnishing an unlicensed individual or entity any form necessary to transmit or post electronic bonds. A violation is punishable as a first degree misdemeanor.

**Section 7** amends s. 903.09, F.S., which provides the means by which a bail bond agent may use to justify his or her suretyship. The bill allows the agent to justify suretyship by transmitting or posting electronic bonds from the surety company of the executed power of attorney, if allowed by the sheriff.

**Section 8** amends s. 903.101, F.S., which provides that sureties and licensed bail bond agents have equal access to jails for the purpose of making bonds. The bill allows qualified, licensed, appointed, and registered bail bonds agents to transmit or post electronic bonds in the judicial circuit in which the bail bond agency is located if the sheriff agrees to accept electronic bonds.

**Section 9** amends s. 903.33, F.S., which specifies that the liability of a surety is not affected by his or her lack of qualifications required by law, any agreement not expressed in the undertakings, or the failure of the defendant to join in the bond. The bill states that an electronic bond is considered an original document and may not be discharged as expressed above.

**Section 10** amends s. 903.34, F.S., which currently requires, in criminal actions in any state court, that bonds given by defendants be approved by a committing trial court judge or the sheriff. The bill adds that the bond must:

- Be posted by a qualified, licensed, appointed, and registered bail bond agent pursuant to s. 648.42, F.S., by attaching to the bond a power of attorney issued by a qualified surety insurance company; or
- Be transmitted and posted as an electronic bond as defined in s. 648.25, F.S., by a qualified, licensed, appointed, and registered bail bond agent. The transmittal or posting of the electronic bond must originate through the surety company guaranteeing its undertaking. The surety must electronically transmit the bond and power of attorney on DFS approved forms. The sheriff must agree to accept the transmittal and posting of an electronic bond and

attached power of attorney. The transmittal and posting must originate from a duly qualified, licensed, appointed, and registered bail bond agent whose office and agency is physically located in the county where the bond is to be posted.

**Section 11** provides an effective date of July 1, 2014.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 648.25, 648.30, 648.42, 648.43, 648.44, 648.441, 903.09, 903.101, 903.33, 903.34.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

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By Senator Abruzzo

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1 A bill to be entitled  
 2 An act relating to bail bonds; amending s. 648.25,  
 3 F.S.; defining and redefining terms; amending s.  
 4 648.30, F.S.; prohibiting a person from transmitting  
 5 or posting an electronic bond with attached power of  
 6 attorney unless he or she is duly qualified, licensed,  
 7 appointed, and registered as a bail bond agent;  
 8 amending s. 648.42, F.S.; authorizing a duly  
 9 qualified, licensed, appointed, and registered bail  
 10 bond agent to transmit electronic bonds within the  
 11 judicial circuit in which the bail bond agency is  
 12 located under certain circumstances; amending s.  
 13 648.43, F.S.; requiring the Department of Financial  
 14 Services to approve a sample electronic power of  
 15 attorney form; amending s. 648.44, F.S.; prohibiting a  
 16 bail bond agent or temporary bail bond agent from  
 17 transmitting or posting an electronic bond with  
 18 attached power of attorney under certain  
 19 circumstances; prohibiting a bail bond agent from  
 20 authorizing another person to countersign his or her  
 21 name to a bond or power of attorney; prohibiting a  
 22 bail bond agent from facilitating or allowing an  
 23 unlicensed person or a person without proper  
 24 appointment to transmit or post electronic bonds;  
 25 providing a criminal penalty; amending s. 648.441,  
 26 F.S.; prohibiting an insurer or managing general agent  
 27 from furnishing an unlicensed individual or entity a  
 28 form necessary for transmitting or posting electronic  
 29 bonds; amending s. 903.09, F.S.; revising requirements

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30 for a bail bond agent to justify his or her suretyship  
 31 to include electronic bonds; amending s. 903.101,  
 32 F.S.; authorizing a qualified, licensed, appointed,  
 33 and registered bail bond agent to transmit or post  
 34 electronic bonds within the judicial circuit in which  
 35 the bail bond agency is located under certain  
 36 circumstances; amending s. 903.33, F.S.; providing  
 37 that electronic bonds are considered original  
 38 documents; amending s. 903.34, F.S.; providing  
 39 requirements for bond, posted in person or initiated  
 40 electronically, to be approved by a committing trial  
 41 court judge or the sheriff; providing an effective  
 42 date.  
 43  
 44 Be It Enacted by the Legislature of the State of Florida:  
 45  
 46 Section 1. Section 648.25, Florida Statutes, is reordered  
 47 and amended to read:  
 48 648.25 Definitions.—As used in this chapter, the term:  
 49 (1) "Bail bond agency" means:  
 50 (a) The building where a licensee maintains an office and  
 51 where all records required by ss. 648.34 and 648.36 are  
 52 maintained; ~~or~~  
 53 (b) An entity that:  
 54 1. Charges a fee or premium to release an accused defendant  
 55 or detainee from jail; or  
 56 2. Engages in or employs others to engage in any activity  
 57 that may be performed only by a licensed and appointed bail bond  
 58 agent; or-

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59 (c) An entity that is physically located in a judicial  
 60 circuit and that transmits electronic bonds. Such bonds may only  
 61 be transmitted to a jail that is located in the same judicial  
 62 circuit as the agency.

63 (2) "Bail bond agent" means a limited surety agent or a  
 64 professional bail bond agent ~~as hereafter defined~~.

65 (3) "Delivery" means:

66 (a) Hand delivering a bond with attached power of attorney;  
 67 or

68 (b) Electronic transmission of a bond with attached power  
 69 of attorney.

70 (4) "Electronic bond" means a bond that is:

71 (a) Transmitted or posted electronically with attached  
 72 power of attorney by delivery to a jail or place where a  
 73 defendant is being held using a delivery method other than hand  
 74 delivering the executed power of attorney and completed bond  
 75 form to the facility;

76 (b) Originated through the surety company guaranteeing its  
 77 undertaking which is admitted to and authorized by this state  
 78 and which possesses a certificate of authority to underwrite  
 79 bail bonds in this state; and

80 (c) Filed using a computer program to transmit information  
 81 electronically to another party.

82 ~~(7)(3)~~ "Managing general agent" means an any individual,  
 83 partnership, association, or corporation appointed or employed  
 84 by an insurer to supervise or manage the bail bond business  
 85 written in this state by limited surety agents appointed by the  
 86 insurer.

87 ~~(5)(4)~~ "Insurer" means a any domestic, foreign, or alien

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88 surety company which has been authorized to transact surety  
 89 business in this state.

90 ~~(6)(5)~~ "Limited surety agent" means an any individual  
 91 appointed by an insurer by power of attorney to execute or  
 92 countersign bail bonds in connection with judicial proceedings  
 93 and who receives or is promised money or other things of value  
 94 therefor.

95 ~~(8)(6)~~ "Primary bail bond agent" means a licensed bail bond  
 96 agent who is responsible for the overall operation and  
 97 management of a bail bond agency location and whose  
 98 responsibilities include hiring and supervising all individuals  
 99 within that location. A bail bond agent may be designated as  
 100 primary bail bond agent for no more than only one bail bond  
 101 agency location.

102 ~~(9)(7)~~ "Professional bail bond agent" means a any person  
 103 who pledges United States currency, United States postal money  
 104 orders, or cashier's checks as security for a bail bond in  
 105 connection with a judicial proceeding and receives or is  
 106 promised ~~therefor~~ money or other things of value therefor.

107 ~~(10)~~ "Surety" means a property and casualty insurance  
 108 company holding a certificate of authority to transact surety  
 109 business in this state.

110 ~~(11)(8)~~ "Temporary bail bond agent" or "temporary licensee"  
 111 means a person employed by a bail bond agent or agency, insurer,  
 112 or managing general agent, and such licensee has the same  
 113 authority as a licensed bail bond agent, including presenting  
 114 defendants in court; apprehending, arresting, and surrendering  
 115 defendants to the proper authorities, while accompanied by a  
 116 supervising bail bond agent or an agent from the same bail bond

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117 agency; and keeping defendants under necessary surveillance.  
 118 However, a temporary bail bond agent or temporary licensee may  
 119 not execute or sign bonds, handle collateral receipts, or  
 120 deliver bonds to appropriate authorities. A temporary bail bond  
 121 agent or temporary licensee may not operate an agency or branch  
 122 agency separate from the location of the supervising bail bond  
 123 agent, managing general agent, or insurer by whom the temporary  
 124 bail bond agent or temporary licensee is employed. This does not  
 125 affect the right of a bail bond agent or insurer to hire counsel  
 126 or to obtain the assistance of law enforcement officers.

127 Section 2. Section 648.30, Florida Statutes, is amended to  
 128 read:

129 648.30 Licensure and appointment required.—

130 (1) A person may not act in the capacity of a bail bond  
 131 agent or temporary bail bond agent or perform any of the  
 132 functions, duties, or powers prescribed for bail bond agents or  
 133 temporary bail bond agents under this chapter unless that person  
 134 is qualified, licensed, and appointed as provided in this  
 135 chapter.

136 (2) A person may not represent himself or herself to be a  
 137 bail enforcement agent, bounty hunter, or other similar title in  
 138 this state.

139 (3) A person, other than a certified law enforcement  
 140 officer, may not apprehend, detain, or arrest a principal on a  
 141 bond, wherever issued, unless that person is qualified,  
 142 licensed, and appointed as provided in this chapter or licensed  
 143 as a bail bond agent or bail bond enforcement agent, or holds an  
 144 equivalent license by the state where the bond was written.

145 (4) A person may not transmit or post an electronic bond

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146 with attached power of attorney unless that person is qualified,  
 147 licensed, appointed, and registered as a bail bond agent as  
 148 provided in this chapter.

149 ~~(5)-(4)~~ A ~~Any~~ person who violates this section commits a  
 150 felony of the third degree, punishable as provided in s.  
 151 775.082, s. 775.083, or s. 775.084.

152 Section 3. Section 648.42, Florida Statutes, is amended to  
 153 read:

154 648.42 Registration of bail bond agents.—

155 (1) A bail bond agent may not become a surety on an  
 156 undertaking unless he or she has registered in the office of the  
 157 sheriff and with the clerk of the circuit court in the county in  
 158 which the bail bond agent resides. The bail bond agent may  
 159 register in a like manner in any other county. ~~A, and any~~ bail  
 160 bond agent shall file a certified copy of his or her appointment  
 161 by power of attorney from each insurer that ~~which~~ he or she  
 162 represents as a bail bond agent with each of such officers.  
 163 Registration and filing of a certified copy of renewed power of  
 164 attorney shall be performed by April 1 of each odd-numbered  
 165 year. The clerk of the circuit court and the sheriff ~~may shall~~  
 166 not permit the registration of a bail bond agent unless such  
 167 bail bond agent is currently licensed and appointed by the  
 168 department. ~~Nothing in~~ This section does not shall prevent the  
 169 registration of a temporary licensee at the jail for the  
 170 purposes of enabling the licensee to perform the duties under  
 171 such license as described ~~set forth~~ in this chapter.

172 (2) A duly qualified, licensed, appointed, and registered  
 173 bail bond agent may transmit or post electronic bonds in the  
 174 judicial circuit in which the bail bond agency is located if the

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175 sheriff agrees to accept such electronic bonds.

176 Section 4. Subsection (1) of section 648.43, Florida  
177 Statutes, is amended to read:

178 648.43 Power of attorney; to be approved by department;  
179 filing of copies; notification of transfer bond.-

180 (1) Every insurer engaged in the writing of bail bonds  
181 through bail bond agents in this state shall submit to and have  
182 approved by the department ~~a sample powers~~ power of attorney,  
183 including an electronic power of attorney to be attached to an  
184 electronic bond, which will be the only ~~forms~~ form of ~~powers~~  
185 ~~power~~ of attorney the insurer will issue to bail bond agents in  
186 this state.

187 Section 5. Paragraph (q) is added to subsection (1) of  
188 section 648.44, Florida Statutes, and subsection (3) and  
189 paragraph (a) of subsection (9) of that section are amended, to  
190 read:

191 648.44 Prohibitions; penalty.-

192 (1) A bail bond agent or temporary bail bond agent may not:

193 (q) Transmit or post an electronic bond with attached power  
194 of attorney unless he or she:

195 1. Is duly qualified, licensed, appointed, and registered  
196 as a bail bond agent as provided in this chapter;

197 2. Is registered in the county within the judicial circuit;  
198 and

199 3. Has a bail bond agency physically located in the  
200 judicial circuit in which the electronic bond is being  
201 transmitted.

202 (3) A bail bond agent may not:

203 (a) Sign or countersign in blank any bond or otherwise

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204 authorize another person to countersign his or her name to a  
205 bond or, give a power of attorney to, or otherwise authorize,  
206 anyone to countersign his or her name to bonds unless the person  
207 so authorized is a licensed and appointed bail bond agent  
208 directly employed by the bail bond agent giving such power of  
209 attorney.

210 (b) Facilitate or allow an unlicensed person or a person  
211 without a proper appointment to transmit or post an electronic  
212 bond.

213 (9) (a) A Any person who violates ~~any provisions of~~  
214 paragraph (1) (e), paragraph (1) (f), paragraph (1) (g), paragraph  
215 (1) (j), ~~or~~ paragraph (1) (n), paragraph (1) (q), or subsection (2)  
216 commits a felony of the third degree, punishable as provided in  
217 s. 775.082, s. 775.083, or s. 775.084.

218 Section 6. Section 648.441, Florida Statutes, is amended to  
219 read:

220 648.441 Furnishing supplies to unlicensed bail bond agent  
221 prohibited; civil liability and penalty.-

222 (1) An insurer, managing general agent, bail bond agent, or  
223 temporary bail bond agent appointed under this chapter may not  
224 furnish to any person any blank forms, applications, stationery,  
225 business card, or other supplies to be used in soliciting,  
226 negotiating, or effecting bail bonds until such person has  
227 received from the department a license to act as a bail bond  
228 agent and is appointed by the insurer. This section does not  
229 prohibit an unlicensed employee, under the direct supervision  
230 and control of a licensed and appointed bail bond agent, from  
231 possessing or executing in the bail bond agency ~~any forms,~~  
232 except for powers of attorney, bond forms, and collateral

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233 receipts, while acting within the scope of his or her  
234 employment.

235 (2) An insurer or managing general agent may not furnish to  
236 an unlicensed individual or entity any form necessary for the  
237 transmittal or posting of electronic bonds.

238 ~~(3)(2)~~ An Any insurer, licensee, or appointee who furnishes  
239 to any bail bond agent or other person not named or appointed by  
240 the insurer represented any of the supplies specified mentioned  
241 in subsection (1) and accepts any bail bond business from or  
242 writes any bail bond business for such bail bond agent, person,  
243 or agency is subject to civil liability to any insured of such  
244 insurer or indemnitor to the same extent and in the same manner  
245 as if such bail bond agent or other person had been appointed or  
246 authorized by the insurer, managing general agent, or bail bond  
247 agent to act in its or his or her behalf by the department.

248 ~~(4)(3)~~ A Any person who violates this section commits a  
249 misdemeanor of the first degree, punishable as provided in s.  
250 775.082 or s. 775.083, except that the violator is subject to a  
251 fine of up to not to exceed \$5,000 in addition to, or in lieu  
252 of, any term of imprisonment.

253 Section 7. Section 903.09, Florida Statutes, is amended to  
254 read:

255 903.09 Justification of sureties.—

256 (1) A surety shall execute an affidavit stating that she or  
257 he possesses the qualifications and net worth required to become  
258 a surety. The affidavit shall describe the surety's property and  
259 any encumbrances and shall state the number and amount of any  
260 bonds entered into by the surety at any court that remain  
261 undischarged.

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262 (2) A bail bond agent, as defined in s. 648.25(2), shall  
263 justify her or his suretyship by any of the following:

264 (a) Attaching the original ~~a copy of~~ the power of attorney  
265 issued by the company bearing an original signature of a duly  
266 qualified, licensed, appointed, and registered bail bond agent  
267 to the bond ~~or by attaching to the bond United States currency,~~  
268 ~~a United States postal money order, or a cashier's check in the~~  
269 ~~amount of the bond; but the United States currency, United~~  
270 ~~States postal money order, or cashier's check cannot be used to~~  
271 ~~secure more than one bond. Nothing herein shall prohibit two or~~  
272 ~~more qualified sureties from each posting any portion of a bond~~  
273 ~~amount, and being liable for only that amount, so long as the~~  
274 ~~total posted by all cosureties is equal to the amount of bond~~  
275 ~~required.~~

276 (b) Transmitting or posting electronic bonds from the  
277 surety company of the executed power of attorney, if allowed by  
278 the sheriff.

279 (c) Attaching to the bond United States currency, a United  
280 States postal money order, or a cashier's check in the amount of  
281 the bond; however, the United States currency, United States  
282 postal money order, or cashier's check may not be used to secure  
283 more than one bond.

284 (3) This section does not prohibit two or more qualified  
285 sureties from each posting any portion of a bond amount and  
286 being liable for only that amount, so long as the total posted  
287 by all cosureties is equal to the amount of bond required.

288 Section 8. Section 903.101, Florida Statutes, is amended to  
289 read:

290 903.101 Sureties; licensed persons; to have equal access.—

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 291 Subject to rules adopted by the Department of Financial Services  
 292 and by the Financial Services Commission, ~~each every~~ surety who  
 293 meets the requirements of ss. 903.05, 903.06, 903.08, and  
 294 903.09, and ~~each every~~ person who is currently licensed by the  
 295 Department of Financial Services and registered as required by  
 296 s. 648.42 shall have equal access to the jails of this state for  
 297 the purpose of making bonds. A duly qualified, licensed,  
 298 appointed, and registered bail bond agent may transmit or post  
 299 electronic bonds in the judicial circuit in which the bail bond  
 300 agency is located if the sheriff agrees to accept such  
 301 electronic bonds.

302 Section 9. Section 903.33, Florida Statutes, is amended to  
 303 read:

304 903.33 Bail not discharged for certain defects.—The  
 305 liability of a surety ~~is shall~~ not be affected by his or her  
 306 lack of any qualifications required by law, any agreement not  
 307 expressed in the undertakings, or the failure of the defendant  
 308 to join in the bond. An electronic bond is considered an  
 309 original document and may not be discharged as expressed above.

310 Section 10. Section 903.34, Florida Statutes, is amended to  
 311 read:

312 903.34 Who may admit to bail.—

313 (1) In criminal actions instituted or pending in ~~a any~~  
 314 state court, bonds given by defendants before trial until appeal  
 315 shall be approved by a committing trial court judge or the  
 316 sheriff. The bond must:

317 (a) Be posted in person by a duly qualified, licensed,  
 318 appointed, and registered bail bond agent pursuant to s. 648.42  
 319 by attaching to the bond a power of attorney in a form approved

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 320 by the Department of Financial Services and issued by a  
 321 qualified surety insurance company for whom a certificate of  
 322 authority has been issued by the Department of Financial  
 323 Services; or

324 (b) Be transmitted and posted as an electronic bond as  
 325 defined in s. 648.25 by a duly qualified, licensed, appointed,  
 326 and registered bail bond agent pursuant to s. 648.42. The  
 327 transmittal or posting of an electronic bond must originate  
 328 through the surety company guaranteeing its undertaking. The  
 329 surety company must electronically transmit the bond and power  
 330 of attorney on forms approved by the Department of Financial  
 331 Services for the qualified surety insurance company for whom a  
 332 certificate of authority has been issued by the Department of  
 333 Financial Services, and:

334 1. The sheriff must agree to accept the transmittal and  
 335 posting of an electronic bond and attached power of attorney;  
 336 and

337 2. The transmittal and posting of an electronic bond and  
 338 attached power of attorney must be originated by a duly  
 339 qualified, licensed, appointed, and registered bail bond agent  
 340 whose office and agency is physically located in the county  
 341 where the bond is to be posted.

342 (2) Appeal bonds shall be approved as provided in s.  
 343 924.15.

344 Section 11. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14

Meeting Date

Topic Bail Bonds

Bill Number 854  
*(if applicable)*

Name Shawn Foster

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 9842 Balsaridge Ct  
*Street*

Phone 727-808-4131

Trinity, FL 34655  
*City State Zip*

E-mail foster@sosstrategy.com

Speaking:  For  Against  Information

Representing Roche Casualty Insurance / Bail World

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14

Meeting Date

Topic Electronic Powers

Bill Number SB854  
*(if applicable)*

Name Jamel Gavin

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Bill Bondsman

Address 2592 E. Park Ave

Phone 850-556-4804

Street

Tallahassee FL 32301

E-mail N/A

City

State

Zip

Speaking:  For  Against  Information

Representing Bill Bonds elec/powers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14  
Meeting Date

Topic Electronic Powers

Bill Number SB854  
*(if applicable)*

Name John Johnson III

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Bail Bondsman

Address 3049 Crawfordville Hwy  
*Street*  
Crawfordville FL 32327  
*City State Zip*

Phone 920-600-60

E-mail n/a

Speaking:  For  Against  Information

Representing Bail Bonds etc Powers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic Electronic Powers

Bill Number SB 854  
(if applicable)

Name Ellis Gavin

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Bail Bonds

Address 2892 E. Park Ave

Phone 850-508-3299

Street

Tallahassee FL 32301

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Bail bonds / electronic Powers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/15/14

Meeting Date

Topic Electronic Powers

Bill Number SB 854  
*(if applicable)*

Name John Johnson Jr

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Bail Bondsman

Address 5 Eccles Ave  
Street

Phone 670-6707

Crownsville FL 37377  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Bail Bonds / ect / Powers

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14  
Meeting Date

Topic Electronic Powers

Bill Number SB 854  
*(if applicable)*

Name Derrick Danny

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Pres. Bail Commerce

Address 102 DIXIE  
*Street*  
TALL FL  
*City State Zip*

Phone (850) 576-7676

E-mail derrickdanny@aol.com

Speaking:  For  Against  Information

Representing Bail / INSTANT POWERS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3-25-14

Meeting Date

Topic electronic Transfer of Bail

Bill Number 854  
(if applicable)

Name Sean Pittman

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title ATTORNEY

Address 1028 East Park Avenue  
Street

Phone 850 216 1002

TLH FL 32301  
City State Zip

E-mail Sean@pittman-law.com

Speaking:  For  Against  Information

Representing Danzy Bail Bonds / Bail Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14  
Meeting Date

Topic E BONDS

Bill Number SB 854  
(if applicable)

Name JERRY STEELE

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title BAIL AGENT

Address 126 H. L. SADDOUTH DR

Phone 850 258-3292

PANAMA City FL 32401  
City State Zip

E-mail Steeleboys@live.com

Speaking:  For  Against  Information

Representing Steele Boys Bail Bonds

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14

Meeting Date

Topic Banking and Insurance / Bail Bonds

Bill Number SB 854  
*(if applicable)*

Name Lucy Wilcox

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Mrs.

Address 368 North Twin Maple Rd  
*Street*

Phone 904-347-6801

St. Augustine FL 32084  
*City State Zip*

E-mail aailable@yahoo.com

Speaking:  For  Against  Information

Representing A Bail Able Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14

Meeting Date

Topic E-Bonds

Bill Number SB 854  
*(if applicable)*

Name Ursula Hannah

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Owner Bail Agent

Address 2070 Red Thomas Alley  
*Street*

Phone \_\_\_\_\_

Quincy FL 32351  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14

Meeting Date

Topic BAIL BONDS

Bill Number SB 854 (if applicable)

Name ARMANDO ROCHE

Amendment Barcode (if applicable)

Job Title CEO

Address 1910 ORIENT RD

Phone

Street

TAMPA

FL

33619

City

State

Zip

E-mail

Speaking: [ ] For [x] Against [ ] Information

Representing ROCHE SURETY + CASUALTY CO. INC

Appearing at request of Chair: [ ] Yes [x] No

Lobbyist registered with Legislature: [ ] Yes [x] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/25/14  
Meeting Date

Topic Bail Bonds

Bill Number SB 854  
(if applicable)

Name Shannon Roche

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title President

Address 1910 Orient Rd

Phone 833-623-5047

Tampa FL 33619  
City State Zip

E-mail ShannonRocheSurety.com

Speaking:  For  Against  Information

Representing Roche Surety & Casualty

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14  
Meeting Date

Topic BAIL Bonds

Bill Number SB 854  
*(if applicable)*

Name Bryan Tennell

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Agency owner

Address 9907 Land o' Lakes Blvd

Phone 813-997-0808

Street  
Land o' Lakes City FL State 34688 Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing My Company

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14  
Meeting Date

Topic Banking + Insurance / Bail Bonds Bill Number SB 854  
(if applicable)

Name Chris Lucero Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Bail Agent / MGA

Address 368 North Twin Maple Phone 904 226 5007  
Street

St Augustine FL 32087  
City State Zip

E-mail available@gmail.com

Speaking:  For  Against  Information

Representing A BAIL ABLE Inc + Palmetto Surety

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14

Meeting Date

Topic E-Bonus

Bill Number SB 854  
(if applicable)

Name Nolah Shotwell

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title VP / Bail Commerce

Address 102 Dixie Dr.  
Street

Phone 850-575-1500

Tallahassee FL 32304  
City State Zip

E-mail NSHOTWELL@  
BailCommerce.com

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14

Meeting Date

Topic E-Bonds

Bill Number SB 804  
*(if applicable)*

Name Walter Kyles

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Owner Kuik Bail Bond Agency

Address 600 34<sup>th</sup> St S.

Phone 813 843 2003

Street

St. Pete FL 33711

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9-25-2014

Meeting Date

Topic E-BAIL BONDS

Bill Number 854  
*(if applicable)*

Name LUIS H ROSEN

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title AGENT

Address 925 HWY 6<sup>th</sup> Ter

Phone 352-732-2222

Street

OCALA

E-mail \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

Representing Courtney Wilson BAIL BONDS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14  
Meeting Date

Topic BAIL BONDS

Bill Number ~~SB~~ SB 854  
(if applicable)

Name RANDY K. PARTON

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title SENIOR VA

Address 3907 WINDING LAKE CIRCLE  
Street

Phone (407) 491-0389

OPERA ROAD FLA 32835  
City State Zip

E-mail rparton@lexingtonnational.com

Speaking:  For  Against  Information

Representing LEXINGTON NATION'L INS. CORP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 25/2014  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB 854  
(if applicable)

Name Tim Meenan

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address 310 W. College Ave.  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850 425-4000

E-mail Tim@MeenanLawFirm.com

Speaking:  For  Against  Information

Representing Bankers Financial Corporation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14

Meeting Date

Topic SB Bail Bonds

Bill Number SB 854  
*(if applicable)*

Name FREDRICK BELTON

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Pres. Florida Bail Agents Assn.

Address 525 W. MAIN ST  
*Street*

Phone 352-343-7775

TAVARES FL 32778  
*City State Zip*

E-mail beltonbailbonds@aol.com

Speaking:  For  Against  Information

Representing Florida Bail Agents Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3-25-14

Meeting Date

Topic E-BONDS (ELECTRONIC SUBMISSIONS) Bill Number SB 854  
(if applicable)

Name Will CANNON Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Bail Agent / Association Director

Address 102 DIXIE DR. Phone (850) 251-1698  
Street

Tallahassee FLORIDA 32304 E-mail \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

Representing CANNON Bail Bonds / BIG BEND BAIL BOND ASSOCIATION

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 998

INTRODUCER: Judiciary Committee and Senator Hukill

SUBJECT: Estates

DATE: March 24, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 998 amends provisions in the Probate Code and Trust Code. The amendments are recommended by the Real Property, Probate, and Trust Law Section of the Florida Bar. Those changes:

- Clarify the effective date of legislation passed last session which renders void any part of a written instrument making gifts to a lawyer or lawyer's relatives.
- Clarify that the party who is contesting the validity of a trust or seeking to revoke a trust bears the burden of establishing the grounds of the invalidity on all issues.
- Specify that death benefits, often in the form of life insurance, which are payable to a trust are not available to pay the expenses of administration of a settlor's estate or creditor's claims unless specific language and references are made.
- Align the anti-lapse provisions of the Trust Code to mirror the same provisions of the Probate Code involving outright devises of gifts to certain relatives.

Several of these provisions are designed to clarify existing law and are remedial in nature and apply retroactively while others have prospective application.

**II. Present Situation:**

The Florida Probate Code is found in chs. 731–735, F.S., and the Florida Trust Code is contained in ch. 736, F.S.

## **Gifts to Lawyers and Other Disqualified Persons**

Chapter 2013-172, Laws of Florida makes void, with certain exceptions, any gift to a lawyer or his or her relatives from a written instrument<sup>1</sup> prepared by the lawyer. The legislation contained a general effective date in the final section of the bill but did not contain any specific language stating whether the statute applied to gifts made in preexisting written instruments. This has apparently led to some confusion among attorneys who practice in this area of the law.

## **Will and Trust Contests**

The Florida Probate Code and the Florida Trust Code provide that a will, trust, or revocation of a will or trust, is void if it is procured by fraud, duress, mistake, or undue influence.<sup>2</sup> Both codes specify grounds for a will or trust contest that challenges the validity of the document, but the Probate Code alone specifies which party bears the burden of proof in a contest.<sup>3</sup> There is no statute specifying who carries the burden of proof in an inter vivos trust contest.<sup>4</sup>

Pursuant to the statute governing will contests, the proponent of a will bears the initial burden of establishing the formal execution and attestation of the will.<sup>5</sup> If formal execution and attestation is established, the burden of proof shifts to the person contesting the will to prove the grounds of the contest. Generally, under Florida law, a plaintiff or petitioner bears the burden of proof in a proceeding. It would then seem that a person contesting a trust initially bears the burden of proof since there is no specific statute addressing the issue. However, because trusts are similar to wills in their purpose and are often referred to as substitutes for wills, courts and attorneys practicing in that area are often confused as to who bears the initial burden of proof and when that burden shifts.<sup>6</sup>

## **Death Benefits**

### ***Statutory Law***

Life insurance proceeds usually pass outside of an estate and are generally exempt from administration expenses and claims of creditors as provided in s. 222.13(1), F.S. The exemption is lost, however, if the insurance proceeds are paid to the insured's estate. Section 222.13(1), F.S., states that:

---

<sup>1</sup> "Written instrument" "includes, but is not limited to, a will, a trust, a deed, a document exercising a power of appointment, or a beneficiary designation under a life insurance contract or any other contractual arrangement that creates an ownership interest or permits the naming of a beneficiary."

<sup>2</sup> Sections 732.5165 and 736.0406, F.S.

<sup>3</sup> Section 733.107, F.S.

<sup>4</sup> Real Property, Probate, & Trust Law Section of The Florida Bar, *White Paper: Proposed Legislative Clarification Regarding the Burden of Proof in Trust Contests* (2014) (on file with the Senate Committee on Judiciary).

<sup>5</sup> Section 733.107, F.S.

<sup>6</sup> Unlike a will, an inter vivos trust takes effect when it is created by a settlor while the settlor is living. No court process needs to be initiated for the trust to take effect, unlike a probate proceeding for a will. Therefore, the burden is on the contestant of the trust to initiate proceedings to contest the trust's validity. Email from William Hennessey, Trust Law Committee of the Real Property Probate & Trust Law Section, The Florida Bar (March 8, 2014) (on file with the Senate Committee on Judiciary).

[w]henever the insurance, by designation or otherwise, is payable to the insured or to the insured's estate or to his or her executors, administrators, or assigns, the insurance proceeds shall become a part of the insured's estate for all purposes and shall be administered by the personal representative of the estate of the insured in accordance with the probate laws of the state in like manner as other assets of the insured's estate.

Section 733.808, F.S., relates to death benefits and the disposition of proceeds of life insurance policies, certain benefit plans, an annuity or endowment contract, and a health or accident policy. Subsection (1) provides that death benefits of any kind, including a life insurance policy, may be payable to the trustee of a trust. If those insurance proceeds are paid to a trustee of a trust, then the proceeds are to be held and disposed of in accordance with the terms of the trust. Section 733.808(2), F.S., provides very similar rules for insurance proceeds made payable to the trustee named in a will that is admitted to probate.

Section 733.808(3), F.S., provides that if no trustee makes a proper claim to the insurance proceeds within a 6-month period after the date of death of the insured or if satisfactory evidence is furnished that there will be no trustee to receive the proceeds, the insurance company must pay the insurance proceeds to the personal representative of the person making the designation, unless otherwise provided by agreement between the insurance company and the insured.

Section 733.808(4), F.S., states that:

Death benefits payable as provided in subsection (1), subsection (2), or subsection (3), unless paid to a personal representative under the provisions of subsection (3), shall not be deemed to be part of the decedent's estate, and shall not be subject to any obligation to pay the expenses of the administration and obligations of the decedent's estate or for contribution required from a trust under s. 733.607(2) to any greater extent than if the proceeds were payable directly to the beneficiaries named in the trust.

### ***Case Law and Conflicting Interpretation***

In 2012, the First District Court of Appeal issued the decision *Morey v. Everbank*<sup>7</sup> interpreting ss. 222.131(1), F.S., and 733.808(1), F.S. In that case, Mr. Morey, the decedent, designated his revocable trust as the beneficiary of his life insurance policy. After Mr. Morey's death, the trustee filed a petition requesting a determination as to whether the life insurance proceeds, which were payable to the trust, were exempt from all death obligations and therefore unavailable to the deceased settlor's estate or its creditors. The trust instrument instructed the trustee to pay the personal representative amounts that were certified by the personal representative to be required to pay Mr. Morey's "death obligations." The "death obligations" included expenses for the administration of the estate, enforceable debts, and estate taxes. The court held that the language of the trust and the structure of the trust indicated an intent and result that were the same as if the proceeds from the life insurance policy had been paid directly to the estate.

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<sup>7</sup> *Morey v. Everbank*, 93 So.3d 482 (Fla 1st DCA 2012).

Many practitioners in this area of the law have concluded that this decision “is contrary to the generally accepted interpretations” of ss. 222.13(1) and 733.808(4), F.S.<sup>8</sup> Their position is that the generally accepted interpretation of those statutes, when read together, “is that insurance proceeds payable to a trustee of a revocable trust are entitled to the statutory exemption from the claims of creditors of the insured’s estate” regardless of any trust provisions directing the trustee to apply trust assets to cover estate administration expenses or the claims of creditors.<sup>9</sup>

### **Antilapse Provisions**

Section 736.1106, F.S., is the antilapse statute for trusts. The purpose of an antilapse statute is to save certain gifts from lapsing or failing if a named recipient of a gift does not survive the decedent. Currently, the antilapse provisions of the Probate Code and the Trust Code are not consistent in the treatment of outright devises to certain people who do not survive the settlor of a trust or the testator of a testamentary trust.<sup>10</sup> The Trust Law Committee of the Real Property, Probate, & Trust Law Section of The Florida Bar recommends that the Trust Code provisions be amended to mirror the Probate Code provision.<sup>11</sup>

The Probate Code provides that if the will is silent, the share of a beneficiary who dies before the testator dies passes to his or her heirs as long as the heirs are related no more distantly than descendants of grandparents. If the descendants are not alive, the gift fails, which is a desirable result. Under the Trust Code, that is not the case.

Presently, the antilapse statute of the Trust Code saves all devises without regard to the familial relationship between the recipient and the creator of the gift.<sup>12</sup> This was apparently done for administrative convenience. This approach differs from the Probate Code and what was an earlier version of the Trust Code. It often results in unintended consequences and litigation under the Trust Code.

## **III. Effect of Proposed Changes:**

### **Gifts to Lawyers and Other Disqualified Persons – Sections 1 and 2**

Section 732.806, F.S., generally prohibits an attorney or any of the attorney’s relatives from being the beneficiary of a gift in a written instrument drafted by the attorney. The bill provides that the prohibition applies to written instruments executed on or after October 1, 2013. This effectively grandfathered such gifts in written instruments preexisting the effective date of the 2013 legislation. The bill further provides that this change is intended to clarify existing law and is remedial in nature.

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<sup>8</sup> Probate and Trust Litigation Committee of the Real Property Probate & Trust Law Section of The Florida Bar, *White Paper: Proposed Revisions to Section 733.808(4) and Section 736.05053(1), Florida Statutes* (2014) (on file with the Senate Committee on Judiciary).

<sup>9</sup> *Id.*, at 2.

<sup>10</sup> Trust Law Committee of the Real Property Probate & Trust Law Section of the Florida Bar, *White Paper: Proposed Legislation Regarding Trust Antilapse and Amendment to s. 736.1106, Florida Statutes* (2013) (on file with the Senate Committee on Judiciary).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

**Will or Trust Contests – Sections 3, 4, 7, and 8**

Sections 3 and 7 amends ss. 733.107, F.S., and 736.0207, F.S., to clarify that the party contesting the validity of a trust or seeking to revoke a trust, in whole or in part, bears the burden of establishing the grounds for invalidity on all issues. Because the current trust code is silent on this matter, these changes may provide clarity to the courts and attorneys involved in trust disputes as to which party bears the burden of proof. Unlike a will contest, these changes place the complete burden on the contestant.

Section 4 of the bill provides that the changes to the burden shifting provisions in s. 733.107, F.S., are intended to clarify existing law, are remedial in nature, and apply retroactively to proceedings pending on or before the bill becomes law and all cases that are begun on or after the effective date of this bill.

Section 8 provides that the changes made to s. 736.0207, F.S., trusts contests, apply to all cases commenced on or after the effective date of the act. The effective date of the act is “upon becoming a law.”

**Death Benefits – Sections 5, 6, 9, and 10**

These proposed changes are a response to the 2012 *Morey v. Everbank* decision, discussed in the Present Situation, and are intended to clarify the circumstances under which death benefits, such as life insurance, payable to a trust are exempt from any obligation to pay the expenses of the administration and obligations of the decedent’s estate.

Section 5 amends s. 733.808, F.S., to provide that a waiver of the statutory exemption, protecting death benefits from claims of creditors or the decedent’s estate, must be explicit. It clarifies that a general provision directing the trustee to pay all debts does not waive the statutory exemption from creditor claims for death benefits paid to the trustee. Section 6 provides that the changes to s. 733.808, F.S., are intended to clarify existing law, are remedial in nature, and apply retroactively without regard to the date of the decedent’s death.

Section 9 amends s. 736.05053, F.S., and is designed to insure that a trustee, paying the expenses of administration and obligations of the settlor’s estate, cannot use the death benefits described in s. 733.808(1), (2), or (3), F.S., unless the settlor specifically waived the prohibition of the use of those benefits in accordance with s. 733.808(4), F.S. If the settlor desires to waive the exemption, there must be a specific waiver. This language establishes that a general direction to pay all of the settlor’s debts is not sufficient. Section 10 provides that the changes made to s. 736.05053, F.S., are intended to clarify existing law, are remedial in nature, and apply retroactively without regard to the date of the settlor’s death.

**Antilapse Provision – Section 11**

The purpose of this section is to make the antilapse statute of the Trust Code consistent with the antilapse statute of the Probate Code in the area of outright devises to persons who do not survive the settlor of a revocable trust or the testator of a testamentary trust. The bill amends the antilapse provisions of the Trust Code to cause an outright devise to a deceased beneficiary to

lapse unless the beneficiary was a grandparent, or lineal descendant of a grandparent of the settlor of a revocable trust, or the testator of a testamentary trust. It is the opinion of some practitioners of probate and trust law that people enter into trust arrangements thinking that a trust devise operates the same as a will. When the results under the terms of a trust are not what the individuals had hoped for litigation ensues. This provision amending s. 736.1106, F.S., applies to trusts that become irrevocable after June 30, 2014.

### **Effective Date & Application**

This bill takes effect upon becoming a law and applies retroactively as discussed in other sections of this analysis.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. Other Constitutional Issues:**

The Florida Supreme Court issued a decision<sup>13</sup> last year addressing the retroactive nature of statutes. The Court held that the retroactive application of a statute is constitutionally permissible if the Legislature expresses a clear intent that the law apply retroactively and the law is procedural or remedial in nature. Remedial statutes, by their nature, further a remedy or confirm rights that already exist. A procedural law “provides the means and methods for the application and enforcement of existing duties and rights.” If the retroactive provisions contained in this bill could operate to remove a vested right such as the distribution of assets in a closed estate, then the retroactive application might not be constitutional.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

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<sup>13</sup> *Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Association, Inc.*, 127 So.3d 1258, 1272 (Fla. 2013).

**B. Private Sector Impact:**

The provisions of this bill may facilitate the distribution of a decedent's assets in the way intended by the decedent. The clarifying changes made by this bill may reduce litigation relating to wills or trusts.

**C. Government Sector Impact:**

If this bill reduces litigation, fewer resources from the state court system will be used for litigation relating to wills and trusts.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 732.806, 733.107, 733.808, 736.0207, 736.05053, and 736.1106.

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

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

**CS by Judiciary on March 11, 2014:**

The committee substitute adds two sections to the underlying bill to clarify the application of a provision passed during the 2013 Legislative Session, which generally prohibits an attorney or any of the attorney's relatives from being the beneficiary of a gift in a written instrument drafted by the attorney.

**B. Amendments:**

None.

By the Committee on Judiciary; and Senator Hukill

590-02447-14

2014998c1

1 A bill to be entitled  
 2 An act relating to estates; amending s. 732.806, F.S.;  
 3 providing that certain restrictions on gifts to  
 4 lawyers and other disqualified persons apply to  
 5 written instruments executed on or after a specified  
 6 date; providing for applicability; amending s.  
 7 733.107, F.S.; clarifying circumstances under which a  
 8 burden of proof shifts in cases involving undue  
 9 influence; providing for retroactive application;  
 10 amending s. 733.808, F.S.; requiring that a directive  
 11 to apply certain death benefits for the payment of  
 12 claims and administration expenses be specified in  
 13 certain instruments; providing for retroactive  
 14 application; amending s. 736.0207, F.S.; establishing  
 15 which party bears the burden of proof in an action to  
 16 contest the validity or revocation of a trust;  
 17 providing for applicability; amending s. 736.05053,  
 18 F.S.; requiring a specific directive for certain  
 19 assets and death benefits to be used to pay estate  
 20 expenses; providing for retroactive application;  
 21 amending s. 736.1106, F.S.; providing for the vesting  
 22 of outright devises in certain trust documents;  
 23 providing for applicability; providing an effective  
 24 date.

25  
 26 Be It Enacted by the Legislature of the State of Florida:

27  
 28 Section 1. Subsection (9) is added to section 732.806,  
 29 Florida Statutes, to read:

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

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30 732.806 Gifts to lawyers and other disqualified persons.-  
 31 (9) This section applies only to written instruments  
 32 executed on or after October 1, 2013.  
 33 Section 2. The changes made by this act to s. 732.806,  
 34 Florida Statutes, are intended to clarify existing law and are  
 35 remedial in nature.  
 36 Section 3. Section 733.107, Florida Statutes, is amended to  
 37 read:  
 38 733.107 Burden of proof in contests; presumption of undue  
 39 influence.-  
 40 (1) In all proceedings contesting the validity of a will,  
 41 the burden shall be upon the proponent of the will to establish  
 42 prima facie its formal execution and attestation. A self-proving  
 43 affidavit executed in accordance with s. 732.503 or an oath of  
 44 an attesting witness executed as required in s. 733.201(2) is  
 45 admissible and establishes prima facie the formal execution and  
 46 attestation of the will. Thereafter, the contestant shall have  
 47 the burden of establishing the grounds on which the probate of  
 48 the will is opposed or revocation is sought.  
 49 (2) In any transaction or event to which the presumption of  
 50 undue influence applies, the presumption ~~of undue influence~~  
 51 implements public policy against abuse of fiduciary or  
 52 confidential relationships and is therefore a presumption  
 53 shifting the burden of proof under ss. 90.301-90.304.  
 54 Section 4. The changes made by this act to s. 733.107,  
 55 Florida Statutes, are intended to clarify existing law, are  
 56 remedial in nature, and shall apply retroactively to all  
 57 proceedings pending on or before this act becomes a law and all  
 58 cases commenced on or after the effective date.

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

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59 Section 5. Subsection (4) of section 733.808, Florida  
60 Statutes, is amended to read:

61 733.808 Death benefits; disposition of proceeds.—

62 (4) Unless the trust agreement, declaration of trust, or  
63 will expressly refers to this subsection and directs that it  
64 does not apply, death benefits payable as provided in subsection  
65 (1), subsection (2), or subsection (3), unless paid to a  
66 personal representative under the provisions of subsection (3),  
67 shall not be deemed to be part of the decedent's estate, and  
68 shall not be subject to any obligation to pay the expenses of  
69 the administration and obligations of the decedent's estate or  
70 for contribution required from a trust under s. 733.607(2) to  
71 any greater extent than if the proceeds were payable directly to  
72 the beneficiaries named in the trust.

73 Section 6. The changes made by this act to s. 733.808,  
74 Florida Statutes, are intended to clarify existing law, are  
75 remedial in nature, and apply retroactively without regard to  
76 the date of the decedent's death.

77 Section 7. Section 736.0207, Florida Statutes, is amended  
78 to read:

79 736.0207 Trust contests.—

80 (1) In an action to contest the validity or revocation of  
81 all or part of a trust, the contestant has the burden of  
82 establishing the grounds for invalidity.

83 (2) An action to contest the validity of all or part of a  
84 revocable trust, or the revocation of part of a revocable trust,  
85 may not be commenced until the trust becomes irrevocable by its  
86 terms or by the settlor's death. If all of a revocable trust has  
87 been revoked, an action to contest the revocation may not be

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88 commenced until after the settlor's death. This section does not  
89 prohibit such action by the guardian of the property of an  
90 incapacitated settlor.

91 Section 8. The changes made by this act to s. 736.0207,  
92 Florida Statutes, apply to all cases commenced on or after the  
93 effective date.

94 Section 9. Subsection (1) of section 736.05053, Florida  
95 Statutes, is amended to read:

96 736.05053 Trustee's duty to pay expenses and obligations of  
97 settlor's estate.—

98 (1) A trustee of a trust described in s. 733.707(3) shall  
99 pay to the personal representative of a settlor's estate any  
100 amounts that the personal representative certifies in writing to  
101 the trustee are required to pay the expenses of the  
102 administration and obligations of the settlor's estate. Payments  
103 made by a trustee, unless otherwise provided in the trust  
104 instrument, must be charged as expenses of the trust without a  
105 contribution from anyone. The interests of all beneficiaries of  
106 such a trust are subject to the provisions of this subsection;  
107 however, the payments must be made from assets, property, or the  
108 proceeds of the assets or property that are included in the  
109 settlor's gross estate for federal estate tax purposes and may  
110 not be made from, other than assets proscribed in s. 733.707(3),  
111 or death benefits described in s. 733.808(4) unless the trust  
112 instrument expressly refers to s. 733.808(4) and directs that it  
113 does not apply that are included in the settlor's gross estate  
114 for federal estate tax purposes.

115 Section 10. The changes made by this act to s. 736.05053,  
116 Florida Statutes, are intended to clarify existing law, are

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2014998c1

117 remedial in nature, and apply retroactively without regard to  
118 the date of the settlor's death.

119 Section 11. Present subsection (5) of section 736.1106,  
120 Florida Statutes, is renumbered as subsection (6) and amended,  
121 and a new subsection (5) is added to that section, to read:

122 736.1106 Antilapse; survivorship with respect to future  
123 interests under terms of inter vivos and testamentary trusts;  
124 substitute takers.-

125 (5) Unless a contrary intent appears in the trust  
126 instrument, subsections (2)-(4) do not apply to an outright  
127 devise that vests upon the death of the settlor unless the  
128 beneficiary is a grandparent, or a lineal descendant of a  
129 grandparent, of the settlor or testator and the beneficiary:

130 (a) Is dead at the time of the execution of the revocable  
131 trust or will;

132 (b) Fails to survive the settlor or testator; or

133 (c) Is required by the inter vivos trust or by operation of  
134 law to be treated as having predeceased the settlor or testator.

135

136 A devise in a revocable trust or a testamentary trust that is to  
137 take effect at the death of the settlor or testator does not  
138 vest until the death of the settlor or testator.

139 (6)-(5) Subsections (1)-(4) apply to all trusts other than  
140 trusts that were irrevocable before the effective date of this  
141 code. Sections 732.603, 732.604, and 737.6035, as they exist on  
142 June 30, 2007, continue to apply to other trusts executed on or  
143 after June 12, 2003. Subsection (5) applies to those trusts that  
144 become irrevocable after June 30, 2014.

145 Section 12. This act shall take effect upon becoming a law.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 482

INTRODUCER: Banking and Insurance Committee and Senator Hays

SUBJECT: Florida Catastrophic Storm Risk Management Center

DATE: March 26, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

The bill requires the State Board of Administration to transfer a portion of the investment income from the Florida Hurricane Catastrophe Fund to the Florida Catastrophic Storm Risk Management Center. The transfer is to begin during the 2014-2015 fiscal year. The amount transferred is to be the lesser of \$1 million or 35 percent of the fund's investment income minus \$10 million, based on the fund's most recent year-end audit.

**II. Present Situation:**

**Florida Catastrophic Storm Risk Management Center**

The Florida Catastrophic Storm Risk Management Center was created by the Florida Legislature in 2007.<sup>1</sup> The Center is located at the Department of Risk Management/Insurance, Real Estate & Legal Studies at the Florida State University College of Business. The focus of the Center is to support the state's ability to prepare for, respond to, and recover from catastrophic storms. Specifically, the Center:

- Coordinates and disseminates research efforts that are expected to have an immediate impact on policy and practices related to catastrophic storm preparedness.

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<sup>1</sup> Ch. 2007-90, s. 24, L.O.F. (creating s. 1004.647, F.S., effective June 11, 2007).

- Coordinates and disseminates information related to catastrophic storm risk management, including but not limited to research and information that benefits businesses, consumers and public policy makers.
- Facilitates Florida's preparedness and responsiveness to catastrophic storms and collaborates with other public and private institutions.
- Creates and promotes studies that enhance the educational options available to risk management and insurance students.
- Publishes and disseminates findings primarily related to risk management.
- Organizes and sponsors conferences, symposia and workshops to educate consumers and policymakers.

In previous years the Center has received its funding by way of transfer from the Insurance Regulatory Trust Fund. The transfer of such funds were authorized in the state's yearly budget approved by both House and Senate and signed by the Governor. In fiscal year 2012-2013<sup>2</sup> the amount transferred to fund the operations of the Center was \$350,000. In fiscal year 2013-2014<sup>3</sup> the amount transferred was \$750,000, but included an additional requirement that the Center study and report to the Legislature alternative methods for managing the size of the Florida Hurricane Catastrophe Fund.<sup>4</sup>

### **The Florida Hurricane Catastrophe Fund (Cat Fund)**

The Cat Fund is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The Cat Fund is administered by the State Board of Administration (SBA) and is a tax-exempt source of reimbursement to property insurers for a selected percentage (45, 75, or 90 percent) of hurricane losses above the insurer's retention (deductible). The Cat Fund provides insurers an additional source of reinsurance that is significantly less expensive than what is available in the private market, enabling insurers to generally write more residential property insurance in the state than would otherwise be written. Because of the low cost of coverage from the Cat Fund, the fund acts to lower residential property insurance premiums for consumers. The Cat Fund must charge insurers the actuarially indicated premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

### **Cat Fund Mandatory Coverage**

All insurers that write residential property insurance in Florida are required to buy reimbursement coverage (reinsurance) on their residential property exposure through the Cat Fund. The Cat Fund is authorized by statute to sell \$17 billion of mandatory layer coverage. Each insurer that purchases coverage may receive up to its proportional share of the \$17 billion mandatory layer of coverage based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. For example, if an insurer

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<sup>2</sup> Ch. 2012-118, s. 6, Line 2488A, L.O.F.

<sup>3</sup> Ch. 2013-40, s. 6, Line 2410A, L.O.F.

<sup>4</sup> The center is also directed to produce a report on alternative methods for managing the size of the Florida Hurricane Catastrophe Fund. The center shall coordinate its research efforts with the State Board of Administration. The report shall be submitted to the President of the Senate, Speaker of the House of Representatives, the Governor and Cabinet Officers by December 1, 2013.

paid 10 percent of the total premium paid in a contract-year, then that insurer would be eligible to receive up to 10 percent of the mandatory layer of coverage (\$1.7 billion of the \$17 billion mandatory layer).

To access the Cat Fund an insurer must have incurred losses above the retention levels calculated and set by statute. Insurers that experience multiple hurricanes causing losses during the contract year may receive reimbursement from the Cat Fund for losses that exceed the applicable retention. The insurer's full retention is applied to each hurricane causing the two largest losses for that insurer. For each other covered event resulting in losses, the insurer's retention is only one-third of the full retention. Citizens Property Insurance Corporation is the largest purchaser of Cat Fund coverage.

### **Cat Fund Premiums**

The Cat Fund must charge insurers the "actuarially indicated" premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology. The "actuarially indicated" premium is an amount that is adequate to pay current and future obligations and expenses of the fund. In practice, each insurer pays the Cat Fund annual reimbursement premiums that are proportionate to each insurer's share of the Cat Fund's risk exposure. The cost of Cat Fund coverage is significantly lower than the cost of private reinsurance due to the fact that the fund is a tax-exempt non-profit corporation and does not charge a "risk load."

### **Cat Fund Claims-Paying Resources**

The Cat Fund cash balance at year-end 2014 is estimated to be \$11.010 billion.<sup>5</sup> The proceeds from the 2013 \$2 billion pre-event bond issue provide additional liquidity.<sup>6</sup> Obligations exceeding the cash balance of the Cat Fund would require bonding of up to \$5.236 billion.<sup>7</sup> The assessment base for the Cat Fund is approximately \$36.185 billion for premiums written at year end 2012,<sup>8</sup> enabling the Cat Fund to levy annual assessments of as much as \$2.171 billion for one contract year and \$3.619 billion for multiple contract years.<sup>9</sup>

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<sup>5</sup> Florida Hurricane Catastrophe Fund, Annual Report of Aggregate Net Probable Maximum Losses, Financing Options, and Potential assessments, (February 2014).

<sup>6</sup> State Board of Administration, Florida Hurricane Catastrophe Fund, *FHCF Claims-Paying Capacity Estimates*, 2 (October 15, 2013), available at <http://www.sbafla.com/fhcf/LinkClick.aspx?fileticket=gFTzX41QxpApercent3d&tabid=1412&mid=4266> (last visited March 27, 2014).*Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.*

### **Cat Fund Bonding and Assessment Authority**

Reimbursements to insurers for losses above the current cash balance of the fund are financed through bonding. When the cash balance of the Cat Fund is insufficient to cover losses, the law authorizes the Cat Fund to issue revenue bonds, which are funded by emergency assessments on property and casualty policyholders. If a large storm triggered the full capacity of the Cat Fund, this season bond issues totaling over \$5 billion could be necessary for the fund to meet its maximum obligations.

Bonds would be funded by an emergency assessment of up to 6 percent of premium on most lines of property and casualty insurance for funding losses from a single year, and up to 10 percent of premium for funding losses from multiple years. All lines of property and casualty insurance, including surplus lines insurance, are subject to emergency assessment except for workers' compensation and medical malpractice liability insurance. The Cat Fund's broad-based assessment authority is one of the reasons the Cat Fund was able to obtain an exemption from federal taxation from the Internal Revenue Service as an integral part of state government.

### **Cat Fund Claims-Paying Capacity Estimates**

In May and October of each contract year, the SBA is required to publish in the Florida Administrative Weekly a statement of the fund's estimated borrowing capacity, the fund's estimated claims-paying capacity, and the projected balance of the fund as of December 31, 2013.<sup>10</sup> After the end of each calendar year, the board is required to notify insurers of the estimated borrowing capacity, estimated claims-paying capacity, and the balance of the fund as of December 31, to provide insurers with data necessary to assist them in determining their retention and projected payout from the fund for loss reimbursement purposes.

The October 15, 2013, Claims-Paying Capacity Estimate (Estimate) is the most recent such report to be issued.<sup>11</sup> The report, prepared by Raymond James, evaluated the Cat Fund's bonding capacity by analyzing the current financial markets and obtaining written feedback from a senior managing underwriter from four large financial services firms (Barclay's, Citi, Goldman Sachs, and J.P. Morgan).

Bonding capacity (the estimated dollar amount of bonds that could be successfully issued) for a 12-month period is estimated to be \$6.1 billion, with an additional \$5.7 billion of capacity estimated for months 13-24.<sup>12</sup> These amounts are in excess of the maximum amount of bonding that could have been needed for the 2013-2014 contract year. Claims-paying resources for the 2014-2015 contract year will include these amounts plus additional reimbursement premium revenues of approximately \$1.3 billion.<sup>13</sup>

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<sup>10</sup> Section 215.555(4)(c)(2), F.S.

<sup>11</sup> The first Claims Paying Capacity Estimate for the 2014-2015 hurricane season is due to be published in May 2014.

<sup>12</sup> *Claims-Paying Capacity Estimates* at 11.

<sup>13</sup> The precise amount of reimbursement premium will not be determined until after the FHCF premium formula is adopted by the SBA Trustees under s. 215.555(5), F.S., and 2014 exposure reports are received from insurers.

**Cat Fund Investments**

As of December 31, 2013, the market value of the Cat Fund’s investment assets was \$9,981,130,073.<sup>14</sup> The SBA investment policy covering the Cat Fund’s assets is designed to provide adequate liquidity by using highly liquid short-term investment strategies. Liquidity is a primary concern for the Cat Fund since insurers may file claims weekly, and investment strategies are planned accordingly. The primary investment objective of the Cat Fund’s investment policy is defined by the following prioritized goals: liquidity, so that reimbursement to insurers can be paid in a timely manner; safety of principal investment; and competitive returns.

The Cat Fund’s investment policy provides for a high level of liquidity such that assets can be converted to cash on a timely basis in order to match insurer loss reimbursement needs. The Cat Fund’s portfolios include only short-term, high quality and highly liquid fixed income securities. Permitted fixed income securities and their diversification limits include:

- Corporate debt securities (not more than 50 percent of total portfolio amortized cost);
- U.S. Treasury securities and U.S. Government Agency securities (at least 50 percent of total portfolio amortized costs);
- Repurchase Agreements collateralized at least 102 percent with U.S. Government, Agency, or Agency Mortgage Backed Securities (not more than 25 percent of total portfolio amortized cost).

The Cat Fund’s investment income for the last 10 years totaled \$611,150,000.

<b>Cat Fund Investment Income</b>	
Audited Financial Statements (Excludes Finance Corporation)	
<b>Fiscal Year</b>	<b>Investment Income</b>
June 30, 2013	\$34,638,000
June 30, 2012	\$26,634,000
June 30, 2011	\$29,983,000
June 30, 2010	\$54,298,000
June 30, 2009	\$7,803,000
June 30, 2008	\$46,816,000
June 30, 2007	\$36,065,000
June 30, 2006	\$103,175,000
June 30, 2005	\$108,672,000
June 30, 2004	\$58,127,000
June 30, 2003	\$104,939,000
	Total \$611,150,000
*Source: FHCF Audited Financial Statements	

**III. Effect of Proposed Changes:**

The bill requires the State Board of Administration to transfer a portion of the investment income from the Florida Hurricane Catastrophe Fund to the Florida Catastrophic Storm Risk

<sup>14</sup> Email from the Cat Fund received March 27, 2014 on file with Banking and Insurance staff.

Management Center. The transfer is to begin during the 2014-2015 fiscal year. The amount transferred is to be the lesser of \$1 million or 35 percent minus \$10 million of the fund’s investment income based on the fund’s most recent year-end audit.

Based on the Florida Hurricane Catastrophe Fund’s Investment Income for the last 5 fiscal years, had the changes in the bill been in place, the funding to the Florida Catastrophic Storm Risk Management Center would have averaged \$498,800.00 per year.

<b>Florida Hurricane Catastrophe Fund Investment Income</b>		
Audited Financial Statements (Excludes Finance Corporation)		
<b>Fiscal Year</b>	<b>Investment Income</b>	<b>35 percent of Investment Income – (\$10,000,000)</b>
June 30, 2013	\$34,638,000	\$12,123,300 – (\$10,000,000) = \$2,123,300 > <b>\$1,000,000</b>
June 30, 2012	\$26,634,000	\$9,321,900 – (\$10,000,000) = <b>\$0</b> < \$1,000,000
June 30, 2011	\$29,983,000	\$10,494,050 – (\$10,000,000) = <b>\$494,050</b> < \$1,000,000
June 30, 2010	\$54,298,000	\$19,004,300 – (\$10,000,000) = \$9,004,300 > <b>\$1,000,000</b>
June 30, 2009	\$7,803,000	\$2,731,050 – (\$10,000,000) = <b>\$0</b> < \$1,000,000

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

No more than \$1 million per year will be transferred from the Florida Hurricane Catastrophe Fund’s investment income to fund the operations of the Florida Catastrophic Storm Risk Management Center.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 215.555 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 25, 2014:**

The CS struck the entire originally filed bill relating to the Florida Hurricane Catastrophe Fund. The bill now relates to the funding of the Florida Catastrophic Storm Risk Management Center.

- B. **Amendments:**

None.



532648

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraphs (d), (e), and (f) of subsection (7)  
of section 215.555, Florida Statutes, are redesignated as  
paragraphs (e), (f), and (g), respectively, and a new paragraph  
(d) is added to that subsection, to read:

215.555 Florida Hurricane Catastrophe Fund.—

(7) ADDITIONAL POWERS AND DUTIES.—



532648

11           (d) Beginning with the 2014-2015 fiscal year, the State  
12 Board of Administration shall annually transfer a portion of the  
13 investment income of the Florida Hurricane Catastrophe Fund to  
14 the Florida Catastrophic Storm Risk Management Center created by  
15 s. 1004.647 to fund the center's ongoing operations. The amount  
16 of the transfer for a particular fiscal year shall be the lesser  
17 of \$1 million or 35 percent of the fund's investment income that  
18 exceeds \$10 million as determined by using the most recent  
19 fiscal-year-end audited financial statements. The amount  
20 transferred must be used solely for and consistent with the  
21 center's statutory purpose of supporting the state's ability to  
22 prepare for, respond to, and recover from catastrophic storms.  
23 This paragraph is not intended to limit or supplant any funding  
24 otherwise available to the center.

25  
26 ===== T I T L E   A M E N D M E N T =====

27 And the title is amended as follows:  
28           Delete everything before the enacting clause  
29 and insert:  
30                                A bill to be entitled  
31           An act relating to the Florida Catastrophic Storm Risk  
32           Management Center; amending s. 215.555, F.S.;  
33           transferring a portion of the investment income of the  
34           Florida Hurricane Catastrophe Fund to the Florida  
35           Catastrophic Storm Risk Management Center to support  
36           the center's ongoing operations; providing an  
37           effective date.



566220

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Hays) recommended the following:

**Senate Amendment to Amendment (532648)**

Delete lines 15 - 19

and insert:

s. 1004.647 to fund the center's ongoing operations. The amount of the transfer for a particular fiscal year shall be the lesser of \$1 million, or 35 percent of the fund's investment income minus \$10 million, as determined by using the most recent fiscal year-end audited financial statements. The amount

By Senator Hays

11-00682-14

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1 A bill to be entitled  
 2 An act relating to the Florida Hurricane Catastrophe  
 3 Fund; amending s. 215.555, F.S.; providing and phasing  
 4 in a reduction in the fund's coverage limits for  
 5 reimbursement contracts; amending s. 627.062, F.S.;  
 6 authorizing an insurer to recoup certain reinsurance  
 7 payments paid to cover a potential gap in the fund's  
 8 claims-paying capacity; deleting a provision  
 9 prohibiting the recoupment of certain other  
 10 reinsurance costs; providing an effective date.

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

13  
 14 Section 1. Paragraph (c) of subsection (4) of section  
 15 215.555, Florida Statutes, is amended to read:

16 215.555 Florida Hurricane Catastrophe Fund.—

17 (4) REIMBURSEMENT CONTRACTS.—

18 (c)1. The contract must ~~shall~~ also provide that the  
 19 obligation of the board with respect to all contracts covering a  
 20 particular contract year ~~shall~~ not exceed the actual claims-  
 21 paying capacity of the fund up to the following fund limit:

22 a. For the 2014-2015 contract year, \$17 billion.

23 b. For the 2015-2016 contract year, \$16 billion.

24 c. For the 2016-2017 contract year, \$15 billion.

25 d. For the 2017-2018 contract year, \$14 billion.

26 e. For contract years after the 2017-2018 contract year,  
 27 \$14 billion. However, if a limit of \$17 billion for that  
 28 contract year, unless the board determines that there is  
 29 sufficient estimated claims-paying capacity to provide \$14 ~~\$17~~

Page 1 of 3

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

11-00682-14

2014482\_\_

30 billion of capacity for the current contract year and an  
 31 additional ~~\$14~~ \$17 billion of capacity for subsequent contract  
 32 years. ~~If the board makes such a determination,~~ the estimated  
 33 claims-paying capacity for the particular contract year shall be  
 34 determined by adding to the ~~\$14~~ \$17 billion limit one-half of  
 35 the fund's estimated claims-paying capacity in excess of ~~\$28~~ \$34  
 36 billion. However, the dollar growth in the limit may not  
 37 increase in any year by an amount greater than the dollar growth  
 38 of the balance of the fund as of December 31, ~~less any premiums~~  
 39 ~~or interest attributable to optional coverage,~~ as defined by  
 40 rule, which occurred over the prior calendar year.

41 2. In May and October of the contract year, the board shall  
 42 publish in the Florida Administrative Register a statement of  
 43 the fund's estimated borrowing capacity, the fund's estimated  
 44 claims-paying capacity, and the projected balance of the fund as  
 45 of December 31. After the end of each calendar year, the board  
 46 shall notify insurers of the estimated borrowing capacity,  
 47 estimated claims-paying capacity, and the balance of the fund as  
 48 of December 31 to provide insurers with data necessary to assist  
 49 them in determining their retention and projected payout from  
 50 the fund for loss reimbursement purposes. In conjunction with  
 51 the development of the premium formula, as provided ~~for~~ in  
 52 subsection (5), the board shall publish factors or multiples  
 53 that assist insurers in determining their retention and  
 54 projected payout for the next contract year. For all regulatory  
 55 and reinsurance purposes, an insurer may calculate its projected  
 56 payout from the fund as its share of the total fund premium for  
 57 the current contract year multiplied by the sum of the projected  
 58 balance of the fund as of December 31 and the estimated

Page 2 of 3

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

11-00682-14

2014482\_\_

59 borrowing capacity for that contract year as reported under this  
60 subparagraph.

61 Section 2. Subsection (5) of section 627.062, Florida  
62 Statutes, is amended to read:

63 627.062 Rate standards.—

64 (5) With respect to a rate filing involving coverage of the  
65 type for which the insurer is required to pay a reimbursement  
66 premium to the Florida Hurricane Catastrophe Fund, the insurer  
67 may fully recoup in its property insurance premiums any  
68 reimbursement premiums paid to the fund, together with  
69 reasonable costs of other reinsurance, including reinsurance  
70 purchased solely to cover a potential gap between the maximum  
71 statutory obligation of the fund as specified in s.  
72 215.555(4)(c) and the fund's claims-paying capacity estimate as  
73 published in the Florida Administrative Register in May and  
74 October of the prior contract year; however, except as otherwise  
75 provided in this section, the insurer may not recoup reinsurance  
76 costs that duplicate coverage provided by the fund. An insurer  
77 may not recoup more than 1 year of reimbursement premium at a  
78 time. Any under-recoupment from the prior year may be added to  
79 the following year's reimbursement premium, and any over-  
80 recoupment must be subtracted from the following year's  
81 reimbursement premium.

82 Section 3. This act shall take effect July 1, 2014.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 744

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Detert

SUBJECT: Motor Vehicle Insurance and Driver Education for Children in Care

DATE: March 24, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<b>Fav/CS</b>
2.	<u>Everette</u>	<u>Eichin</u>	<u>TR</u>	<b>Favorable</b>
3.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
4.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 744 directs the Department of Children and Families (DCF) to establish a statewide pilot program to pay specified costs of driver education, licensure and costs incidental to licensure, and motor vehicle insurance for a foster child who meets certain qualifications. The bill sets limits of the amount to be paid and requires payment to be made in the order of eligibility until funds are exhausted.

The bill further requires the DCF to contract with a qualified not-for-profit entity to operate and develop procedures for the program and requires an annual report to the Governor and the Legislature.

The bill removes the disability of nonage of minors for foster children obtaining motor vehicle insurance upon issuance of a court order. It also adds consideration of this action to the activities that occur at the special judicial review held when a child becomes 17 years of age.

The bill provides for preferential enrollment in driver education for specified children in the care of the DCF.

## II. Present Situation:

### Foster Children

Young people in the foster care system often face barriers to participating in everyday life experiences common to others their age. These life experiences are important because they are a part of how all children are prepared for the responsibilities they will assume as adults. The Florida State Youth Advisory Board has long identified the barriers to driving an automobile that are experienced by the children in Florida's foster care system as a concern. The DCF staff concur that foster care children who are not able to learn or gain experience driving miss an important part of learning how to be independent, including being able to work.

Both statute and administrative code support the efforts of teens in foster care to engage in age-appropriate activities.<sup>1</sup> The DCF rules specifically require community-based lead agency service providers to support foster care teens that have demonstrated the appropriate level of maturity in their efforts to learn to drive, to obtain a learner's permit or driver's license, and to assist in obtaining automobile insurance for those children that are allowed to drive.<sup>2</sup>

At the end of January 2014, DCF reported that there were 385 15-year-olds, 458 16-year-olds, and 517 17-year-olds in foster care.<sup>3</sup> The DCF has contracted with Cby25, a private not-for-profit corporation, to survey youth in foster care every 6 months and to publish reports.<sup>4</sup> According to the most recent of these reports, published in the spring of 2013:

- 5 percent of 15-year-old respondents (11 children of 243 surveyed) had learner's permits;
- 8 percent of 16-year-olds (25 children of 300 surveyed) had learner's permits;
- 13 percent of 17-year-olds (52 children of 387 surveyed) had learner's permits; and
- 9 percent of the total number of children surveyed (88 of 930 surveyed) had learner's permits.

Children surveyed reported as following regarding drivers' licenses:

- 1 percent of 16-year-olds (4 children of 300 surveyed) had driver's licenses;
- 4 percent of 17-year-olds (16 children of 387 surveyed) had driver's licenses; and
- 3 percent of the total number of children surveyed (20 of 687 surveyed) had driver's licenses.<sup>5</sup>

Usually, children in foster care are placed with a foster parent; however, they may also be placed in a group home or other residential facility<sup>6</sup> or, upon turning 16, in an independent living setting, which is subsidized by the department.<sup>7</sup>

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<sup>1</sup> See s. 409.145(3), F.S.

<sup>2</sup> Rule 65C-30.007, F.A.C.

<sup>3</sup> Email from Jane McElroy, Department of Children and Families (Feb. 12, 2014) (on file with the Senate Committee on Children, Families and Elder Affairs).

<sup>4</sup> *My Services, Answers from Youth in Foster Care*, available on the DCF website at <http://www.dcf.state.fl.us/programs/indliving/docs/MyServicesSpring2013SurveyReport.pdf> (last visited Feb. 13, 2014).

<sup>5</sup> *Id.*, at 63.

<sup>6</sup> Section 39.01(20), F.S.

<sup>7</sup> Section 409.1451(3)(c), F.S.

Currently, foster parents (who are also referred to as licensed foster homes) receive payment from the state of a monthly board rate for caring for a foster child. The basic board rate for a child aged 13-21 is \$515.<sup>8</sup>

### **Driver's Licenses for Teens**

A child who is 15 years of age is authorized to obtain a learner's driver's license (learner's permit), provided he or she meets the school attendance requirements of s. 322.091, F.S., and the application and testing requirements of s. 322.1615, F.S. Section 322.09, F.S., requires that, when a child applies for a learner's permit, the application must be signed by a parent, guardian, or when there is no parent or guardian, some other responsible adult. The learner's permit is considered a restricted form of the regular driver's license, or Class E driver license.

### **Special Driver's License and Insurance Provisions for Foster Children and Foster Parents**

Among the primary obstacles to these children being able to drive are the potential liability of the foster parents when the children drive vehicles owned by the foster parent and the attendant cost of insurance to protect foster parents from this liability.

Section 322.09(2), F.S., provides that any negligence or willful misconduct of the child operating a motor vehicle will be imputed to the adult who signed the application. That adult is jointly and severally liable with the child for any damages caused by the negligent or willful misconduct. In 2001, s. 322.09, F.S., was amended to provide that foster parents or authorized representatives of a residential group home who sign for a foster child's license do not become liable for any damages or misconduct of the child.<sup>9</sup> While this provision relieves the foster parent of liability resulting directly from the signature on the driver license application, it does not address any vicarious liability that the foster parent may have because of the foster parent's ownership of the vehicle that the child drives.<sup>10</sup> This liability arises whenever an insured individual allows another to operate his or her motor vehicle and is independent of the provisions of s. 322.09, F.S. Thus, the foster parent who owns the motor vehicle continues to be subject to vicarious liability for the actions of the child while operating the foster parent's vehicle, in the same way the foster parent would be vicariously liable for the actions of any other person operating that vehicle. This vicarious liability is one of the risks for which insurance coverage is purchased.

Also in 2001, s. 627.746, F.S., was created and prohibited a motor vehicle insurance company from charging an additional premium on a motor vehicle owned by a foster parent for coverage of a child operating the vehicle while the child is holding a learner's permit.<sup>11</sup> This prohibition is only applicable until the child obtains a regular driver's license.

### **Costs Associated with Obtaining a Driver's License**

Driver's education courses are offered free of charge through the public school system but enrollment may be limited. Some school districts offer a summer driver's education course,

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<sup>8</sup> Section 409.145(4), F.S.

<sup>9</sup> Chapter 2001-83, Laws of Fla.

<sup>10</sup> See *Hertz Corp. vs. Jackson*, 617 So.2d 105 (Fla. 1993).

<sup>11</sup> Chapter 2001-83, Laws of Fla.

charging fees from \$50 to \$250.<sup>12</sup> Commercial courses are offered in some jurisdictions at prices ranging from \$300-\$5,000.<sup>13</sup>

The cost of obtaining a class E (regular) driver's license is \$48.<sup>14</sup> The learner's permit is considered a restricted form of a class E license, requiring the payment of the \$48 fee, but no additional fee is required to upgrade from a learner's permit to a class E license. In order to obtain a learner's permit, the person applying must, among other requirements, have completed a traffic law and substance education course<sup>15</sup> and have successfully completed a written examination.<sup>16,17</sup>

The cost of obtaining motor vehicle insurance coverage for a teen driver varies widely contingent on many factors used by insurance companies.<sup>18</sup> These factors include:

- Type of Vehicle – Model, year and value.
- Driving History – Past accidents and violations.
- Vehicle Usage.
- Geographic Location or Territory – Insurers consider vehicle and population density, road conditions, repair rates, medical and hospital costs, and the number of accidents in a particular area.
- Gender – Statistics show that males suffer more than twice as many fatal accidents as females. Insurance companies typically charge higher premiums for males, especially those younger than 25 years of age.
- Company specific discounts – Some companies will offer discounts to younger insured drivers who attend a Driver's Education class or maintain a certain grade point average. Many companies also offer discounts to policyholders with driving records free of accidents and violations for an extended period.
- Age – Statistically, Florida drivers younger than 25 or older than 65 make up a larger share of people involved in accidents, and this is factored into the decision to charge higher premiums.<sup>19</sup>
- Amount of Coverage.

As a generic estimate, the Office of the Guardian ad Litem has used the figure of \$2,000 annually per child for motor vehicle insurance.<sup>20</sup>

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<sup>12</sup> Florida Guardian ad Litem, *A Voice Heard: Keys to Independence*, available at [http://guardianadlitem.org/news\\_main.asp](http://guardianadlitem.org/news_main.asp) (last visited Feb. 13, 2014).

<sup>13</sup> *Id.*

<sup>14</sup> Section 322.21, F.S.

<sup>15</sup> A representative cost for meeting this requirement is \$29.95, according to the Guardian ad Litem Program, *Voices*, *ibid.*

<sup>16</sup> The cost for taking the examination is \$14.95, *Id.*

<sup>17</sup> Section 322.1615, F.S.

<sup>18</sup> Section 627.062, F.S., provides that such rates may not be excessive, inadequate, or unfairly discriminatory.

<sup>19</sup> Department of Financial Services, *Automobile Insurance--A Toolkit for Consumers*, available at: <http://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/AutoToolkit.pdf> (last visited March 19, 2014).

<sup>20</sup> E-mail from Alan Abramowitz, Statewide Director, Guardian ad Litem Program, February 13, 2014 (on file with the Senate Committee on Children, Families, and Elder Affairs).

## Emancipation of Minors, Generally

All states have laws dealing with the “emancipation” of minors, which specify when and under what conditions children become independent of their parents for legal purposes. Approximately half of the states regulate emancipation by statutes specifically designed for that purpose. These statutes may specify the conditions required or the procedures for seeking emancipation. Statutes vary considerably from state to state, but under common law, most states allow for the possibility of court-reviewed emancipation. No fixed age of emancipation exists, yet a minor is presumed to become emancipated upon reaching the age of majority. In most states, the age of majority is 18.<sup>21</sup>

Emancipation is the removal of “disability of nonage.” Legally, in most instances, children lack the capacity that adults are assumed to have to perform certain activities, such as entering into binding contracts, making certain purchases, and being held responsible in the same way as adults for criminal offenses. This lack of capacity is termed the “disability of nonage.” Emancipation is the act by which a person gains all the rights and responsibilities of an adult. An emancipated minor has the legal capacity to act as an adult, be in control of his or her affairs, and be free of the legal control and custody of his or her parents. Emancipated minors lose the right to have their parents provide for them and the protection of the Department of Children and Family Services.<sup>22</sup>

A circuit court has jurisdiction to remove the disabilities of nonage of a minor who is age 16 or older residing in Florida upon a petition filed by the minor’s natural or legal guardian or, if there is none, by a guardian ad litem. Subsequent to July 1, 2012, the petition may also be filed by the minor if the minor is a certified homeless and unaccompanied minor over the age of 16. The petition must contain the following information:<sup>23</sup>

- The name, address, residence, and date of birth of the minor;
- The name, address, and current location of each of the minor’s parents, if known;
- The name, date of birth, custody, and location of any children born to the minor;
- A statement of the minor’s character, habits, education, income, and mental capacity for business, and an explanation of how the needs of the minor with respect to food, shelter, clothing, medical care, and other necessities will be met;
- Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding; and
- A statement of the reason why the court should remove the disabilities of nonage.

In addition, the law provides that:

- If the petition is filed by the natural or legal guardian, the court must appoint an attorney ad litem for the minor child, and the minor child shall be brought before the court to determine if the interest of the minor will be fully protected by the removal of disabilities of nonage;

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<sup>21</sup> A substantial portion of this paragraph was taken from: Cornell University of Law, Legal Information Institute, *Emancipation of Minors*, available at [http://www.law.cornell.edu/wex/emancipation\\_of\\_minors](http://www.law.cornell.edu/wex/emancipation_of_minors) (last visited Jan. 21, 2014).

<sup>22</sup> A substantial portion of this paragraph was taken from: Volusia County Law Library, *Emancipation in Florida Research Guide*, available at [http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA\[1\].pdf](http://www.vclawlib.org/new/research-feb-09/EMANCIPATION20IN20FLORIDA[1].pdf) (last visited Jan. 21, 2014).

<sup>23</sup> Section 743.015, F.S.

- If the petition is filed by the guardian ad litem or next friend<sup>24</sup>, service of process must be perfected on the natural parents;
- If both parents are not jointly petitioning the court for the removal of the disabilities of nonage of the minor, service of process must be made upon the nonpetitioning parent<sup>25</sup>
- The court shall consider the petition and receive such evidence as it deems necessary to rule on the petition;
- If the court determines that removal of the disabilities of nonage is in the minor's best interest, it must enter an order to that effect. An order removing the disabilities of nonage has the effect of giving the minor the status of an adult for purposes of all criminal and civil laws of the state, and authorizes the minor thereafter to exercise all of the rights and responsibilities of persons who are 18 years of age or older; and
- The judgment must be recorded in the county in which the minor resides, and a certified copy must be received as evidence of the removal of disabilities of nonage for all matters in all courts.<sup>26</sup>

### **Special Provisions Relating to Emancipation for Foster Children**

Section 39.701(3), F.S., requires that the dependency court hold a judicial review within 90 days following the child's 17th birthday. At this hearing, the court is required to enter an order, separate from the judicial review order, that the disability of nonage for the child has been removed pursuant to s. 743.045, F.S.<sup>27</sup>

Section 743.045, F.S. provides for the removal of the disability of nonage for foster children over the age of 17 for executing contracts for a residential lease.

Additionally, s. 743.046, F.S., which is not referenced in s. 39.701(3), F.S., removes the disability of nonage for foster children over the age of 17 for securing utility services at residential property.

Similarly, s. 743.044, F.S., which is also not referenced in s. 39.701(3), removes the disability of nonage for foster children over the age of 16 for executing agreements for depository financial services. All three of these special provisions (ss. 743.044, 743.045, and 743.046, F.S.) require the entry of a court order to be effective.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 39.701(3), F.S., to add the removal of the disability of non-age for the purposes of obtaining motor vehicle insurance to the matters to be considered at the special judicial review scheduled at the time a child becomes 17 years of age.

<sup>24</sup> A "next friend" is a person acting for the benefit of (an) infant, or other person not *sui juris* (person unable to look after his or her own interests or manage his or her own lawsuit) without being regularly appointed (as a) guardian, *Black's Law Dictionary, 6th Edition, 1979.*

<sup>25</sup> Constructive service of process may be used, provided the petitioning parent makes an actual, diligent search to discover the location of, and provide notice to, the nonpetitioning parent.

<sup>26</sup> Section 743.015, F.S.

<sup>27</sup> Section 39.701(1), F.S.

**Section 2** creates s. 409.1454, F.S., directing the Department of Children and Families (DCF) to establish a 3-year pilot program to pay the costs of driver education, licensure, and other costs incidental to licensure and motor vehicle insurance for children in licensed out of home care who have successfully completed a driver education program, to the extent that funding is available.

It limits the amount of the payments to the increase in cost attributable to the addition of the child to the policy. The bill directs that payments be made to eligible recipients in the order of eligibility until available funds are exhausted. It directs the DCF to contract with a not-for-profit entity whose mission is to support youth aging out of foster care to develop procedures for operating and administering the pilot program and requires the department to submit an annual report to the Governor and the Legislature in each year for the duration of the pilot project.

**Section 3** creates s. 743.047, F.S., authorizing the court to remove the disability of nonage for minors obtaining motor vehicle insurance if the child has reached 16 years of age, has been adjudicated dependent, is residing in an out-of-home placement, and has completed a driver education program. In order to execute the documents necessary for the insurance, the child must present a court order removing the disability of nonage for this purpose.

**Section 4** amends s. 1003.48, F.S., to require secondary schools offering driver's education courses to grant preferential enrollment to students in the custody of the department if the student maintains appropriate progress as required by the school.

**Section 5** appropriates \$800,000 from the General Revenue Fund to the DCF for implementing this act during FY 2014-2015.

**Section 6** provides for an effective date of July 1, 2014.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

The pilot program would pay the costs of driver education, licensure and other costs incidental to licensure, and motor vehicle insurance for children in licensed out-of-home care who have successfully completed a driver education program. According to the Department of Children and Families, it is unable at this time to determine the number of caregivers accepting insurance liability for youth in out-of-home care upon receipt of a driver's license. Insurance premium reimbursements to caregivers will vary by caregiver and child.

The bill may require some additional casework from community based care agency providers who assist children in obtaining motor vehicle insurance.

**C. Government Sector Impact:**

The cost of the bill is limited to the appropriation of \$800,000 from the General Revenue Fund for FY 2014-2015.

The bill requires the Department of Children and Families to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives evaluating the success of and outcomes achieved by the pilot program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1003.48 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 409.1451 and 743.047.

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

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

**CS by Children, Families, and Elder Affairs on February 18, 2014:**

- Amends s. 39.701(3), F.S., to add the emancipation of minors for securing motor vehicle insurance to the matters to be considered at the special judicial review held for foster children reaching 17 years of age.
- Amends s. 409.1454, F.S., to clarify that the bill addresses only children in licensed out of home care.

B. Amendments:

None.

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

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By the Committee on Children, Families, and Elder Affairs; and  
Senator Detert

586-01857-14

2014744c1

1 A bill to be entitled  
2 An act relating to motor vehicle insurance and driver  
3 education for children in care; amending s. 39.701,  
4 F.S.; authorizing the court to consider the best  
5 interest of a child in removing specified disabilities  
6 of nonage for certain minors; creating s. 409.1454,  
7 F.S.; providing legislative findings; directing the  
8 Department of Children and Families to establish a  
9 statewide pilot program to pay specified costs of  
10 driver education, licensure and costs incidental to  
11 licensure, and motor vehicle insurance for a child in  
12 licensed out-of-home care who meets certain  
13 qualifications; providing limits of the amount to be  
14 paid; requiring payments to be made in the order of  
15 eligibility until funds are exhausted; requiring the  
16 department to contract with a qualified not-for-profit  
17 entity to operate and develop procedures for the pilot  
18 program; requiring the department to submit an annual  
19 report with recommendations to the Governor and the  
20 Legislature; creating s. 743.047, F.S.; removing the  
21 disability of nonage of minors for purposes of  
22 obtaining motor vehicle insurance; requiring an order  
23 by the court for the disability of nonage to be  
24 removed; amending s. 1003.48, F.S.; providing for  
25 preferential enrollment in driver education for  
26 specified children in care; providing an  
27 appropriation; providing an effective date.  
28  
29 Be It Enacted by the Legislature of the State of Florida:

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30  
31 Section 1. Paragraph (a) of subsection (3) of section  
32 39.701, Florida Statutes, is amended to read:  
33 39.701 Judicial review.—  
34 (3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—  
35 (a) In addition to the review and report required under  
36 paragraphs (1)(a) and (2)(a), respectively, the court shall hold  
37 a judicial review hearing within 90 days after a child's 17th  
38 birthday. The court shall also issue an order, separate from the  
39 order on judicial review, that the disability of nonage of the  
40 child has been removed pursuant to ss. 743.045 and 743.047 for  
41 any of these disabilities that the court finds is in the child's  
42 best interest to remove. The court ~~s. 743.045~~ and shall continue  
43 to hold timely judicial review hearings. If necessary, the court  
44 may review the status of the child more frequently during the  
45 year before the child's 18th birthday. At each review hearing  
46 held under this subsection, in addition to any information or  
47 report provided to the court by the foster parent, legal  
48 custodian, or guardian ad litem, the child shall be given the  
49 opportunity to address the court with any information relevant  
50 to the child's best interest, particularly in relation to  
51 independent living transition services. The department shall  
52 include in the social study report for judicial review written  
53 verification that the child has:  
54 1. A current Medicaid card and all necessary information  
55 concerning the Medicaid program sufficient to prepare the child  
56 to apply for coverage upon reaching the age of 18, if such  
57 application is appropriate.  
58 2. A certified copy of the child's birth certificate and,

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59 if the child does not have a valid driver license, a Florida  
60 identification card issued under s. 322.051.

61 3. A social security card and information relating to  
62 social security insurance benefits if the child is eligible for  
63 those benefits. If the child has received such benefits and they  
64 are being held in trust for the child, a full accounting of  
65 these funds must be provided and the child must be informed as  
66 to how to access those funds.

67 4. All relevant information related to the Road-to-  
68 Independence Program, including, but not limited to, eligibility  
69 requirements, information on participation, and assistance in  
70 gaining admission to the program. If the child is eligible for  
71 the Road-to-Independence Program, he or she must be advised that  
72 he or she may continue to reside with the licensed family home  
73 or group care provider with whom the child was residing at the  
74 time the child attained his or her 18th birthday, in another  
75 licensed family home, or with a group care provider arranged by  
76 the department.

77 5. An open bank account or the identification necessary to  
78 open a bank account and to acquire essential banking and  
79 budgeting skills.

80 6. Information on public assistance and how to apply for  
81 public assistance.

82 7. A clear understanding of where he or she will be living  
83 on his or her 18th birthday, how living expenses will be paid,  
84 and the educational program or school in which he or she will be  
85 enrolled.

86 8. Information related to the ability of the child to  
87 remain in care until he or she reaches 21 years of age under s.

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88 39.013.

89 9. A letter providing the dates that the child is under the  
90 jurisdiction of the court.

91 10. A letter stating that the child is in compliance with  
92 financial aid documentation requirements.

93 11. The child's educational records.

94 12. The child's entire health and mental health records.

95 13. The process for accessing his or her case file.

96 14. A statement encouraging the child to attend all  
97 judicial review hearings occurring after the child's 17th  
98 birthday.

99 Section 2. Section 409.1454, Florida Statutes, is created  
100 to read:

101 409.1454 Motor vehicle insurance for children in care.-

102 (1) The Legislature finds that the costs of driver  
103 education, licensure and costs incidental to licensure, and  
104 motor vehicle insurance for a child in licensed out-of-home care  
105 after such child obtains a driver license creates an additional  
106 barrier to engaging in normal age-appropriate activities and  
107 gaining independence and may limit opportunities for obtaining  
108 employment and completing educational goals. The Legislature  
109 also finds that the completion of an approved driver education  
110 course is necessary to develop safe driving skills.

111 (2) To the extent that funding is available, the department  
112 shall establish a 3-year pilot program to pay the cost of driver  
113 education, licensure and other costs incidental to licensure,  
114 and motor vehicle insurance for children in licensed out-of-home  
115 care who have successfully completed a driver education program.

116 (3) If a caregiver, or an individual or not-for-profit

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117 entity approved by the caregiver, adds a child to his or her  
 118 existing insurance policy, the amount paid to the caregiver or  
 119 approved purchaser may not exceed the increase in cost  
 120 attributable to the addition of the child to the policy.

121 (4) Payment shall be made to eligible recipients in the  
 122 order of eligibility until available funds are exhausted.

123 (5) The department shall contract with a not-for-profit  
 124 entity whose mission is to support youth aging out of foster  
 125 care to develop procedures for operating and administering the  
 126 pilot program, including, but not limited to:

127 (a) Determining eligibility, including responsibilities for  
 128 the child and caregivers.

129 (b) Developing application and payment forms.

130 (c) Notifying eligible children, caregivers, group homes,  
 131 and residential programs of the pilot program.

132 (d) Providing technical assistance to lead agencies,  
 133 providers, group homes, and residential programs to support  
 134 removing obstacles that prevent children in foster care from  
 135 driving.

136 (6) By July 1, 2015, and annually thereafter for the  
 137 duration of the pilot program, the department shall submit a  
 138 report to the Governor, the President of the Senate, and the  
 139 Speaker of the House of Representatives evaluating the success  
 140 of and outcomes achieved by the pilot program. The report shall  
 141 include a recommendation as to whether the pilot program should  
 142 be continued, terminated, or expanded.

143 Section 3. Section 743.047, Florida Statutes, is created to  
 144 read:

145 743.047 Removal of disabilities of minors; executing

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146 agreements for motor vehicle insurance.-For the purpose of  
 147 ensuring that a child in foster care will be able to secure  
 148 motor vehicle insurance, the disability of nonage of minors  
 149 shall be removed provided that the child has reached 16 years of  
 150 age, has been adjudicated dependent, is residing in an out-of-  
 151 home placement as defined in s. 39.01, and has completed a  
 152 driver education program. Upon issuance of an order by a court  
 153 of competent jurisdiction, such child is authorized to make and  
 154 execute all documents, contracts, or agreements necessary for  
 155 obtaining motor vehicle insurance as if the child is otherwise  
 156 competent to make and execute contracts. Execution of any such  
 157 contract or agreement for motor vehicle insurance has the same  
 158 effect as if it were the act of a person who is not a minor. A  
 159 child seeking to enter into such contract or agreement or  
 160 execute other necessary instrument incidental to obtaining motor  
 161 vehicle insurance must present an order from a court of  
 162 competent jurisdiction removing the disabilities of nonage of  
 163 the minor pursuant to this section.

164 Section 4. Section 1003.48, Florida Statutes, is amended to  
 165 read:

166 1003.48 Instruction in operation of motor vehicles.-

167 (1) A course of study and instruction in the safe and  
 168 lawful operation of a motor vehicle shall be made available by  
 169 each district school board to students in the secondary schools  
 170 in the state. The secondary school shall provide preferential  
 171 enrollment to a student who is in the custody of the Department  
 172 of Children and Families if the student maintains appropriate  
 173 progress as required by the school. As used in this section, the  
 174 term "motor vehicle" ~~has~~ ~~shall have~~ the same meaning as in s.

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175 320.01(1) (a) and includes ~~shall include~~ motorcycles and mopeds.  
 176 Instruction in motorcycle or moped operation may be limited to  
 177 classroom instruction. The course ~~may shall~~ not be made a part  
 178 of, or a substitute for, any of the minimum requirements for  
 179 graduation.

180 (2) In order to make such a course available to any  
 181 secondary school student, the district school board may use any  
 182 one of the following procedures or any combination thereof:

183 (a) Use ~~Utilize~~ instructional personnel employed by the  
 184 district school board.

185 (b) Contract with a commercial driving school licensed  
 186 under ~~the provisions of~~ chapter 488.

187 (c) Contract with an instructor certified under ~~the~~  
 188 ~~provisions of~~ chapter 488.

189 (3) ~~(a)~~ District school boards shall earn funds on full-time  
 190 equivalent students at the appropriate basic program cost  
 191 factor, regardless of the method by which such courses are  
 192 offered.

193 ~~(4) (b)~~ For the purpose of financing the Driver Education  
 194 Program in the secondary schools, there shall be levied an  
 195 additional 50 cents per year to the driver ~~driver's~~ license fee  
 196 required by s. 322.21. The additional fee shall be promptly  
 197 remitted to the Department of Highway Safety and Motor Vehicles,  
 198 which shall transmit the fee to the Chief Financial Officer to  
 199 be deposited in the General Revenue Fund.

200 ~~(5) (4)~~ The district school board shall prescribe standards  
 201 for the course required by this section and for instructional  
 202 personnel directly employed by the district school board. A ~~Any~~  
 203 certified instructor or licensed commercial driving school is

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204 ~~shall be deemed~~ sufficiently qualified and is ~~shall not be~~  
 205 required to meet any standards in lieu of or in addition to  
 206 those prescribed under chapter 488.

207 Section 5. The sum of \$800,000 is appropriated from the  
 208 General Revenue Fund to the Department of Children and Families  
 209 for the purpose of implementing this act during the 2014-2015  
 210 fiscal year.

211 Section 6. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14

Meeting Date

Topic Motor Vehicle Insurance - Driving Safety

Bill Number 744  
*(if applicable)*

Name ALAN AGERWALD

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Executive Director

Address 600 Callow  
*Street*

Phone 856 271-3232

Tallahassee  
*City* *State* *Zip*

E-mail JUSTIN@MSM.COM

Speaking:  For  Against  Information

Representing GAL Program

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14

*Meeting Date*

Topic MV Insurance and Driver Education for Children in Care

Bill Number 744  
*(if applicable)*

Name Christina Spudeas

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Executive Director

Address 1801 N. University Drive, Suite 3B  
*Street*  
Coral Springs, FL 33071  
*City State Zip*

Phone 954-796-0860

E-mail christina.spudeas@floridaschildrens.org

Speaking:  For  Against  Information

Representing Florida's Children First and Florida Youth SHINE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14

Meeting Date

write in support

Topic MV Insurance and Driver Education for Children in Care

Bill Number 744  
*(if applicable)*

Name Joshua Burrell

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Member, Tallahassee Chapter, Florida Youth SHINE

Address \_\_\_\_\_  
*Street*

Phone \_\_\_\_\_

\_\_\_\_\_ *City* \_\_\_\_\_ *State* \_\_\_\_\_ *Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Youth SHINE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14

*Meeting Date*

Topic MV Insurance and Driver Education for Children in Care

Bill Number 744  
*(if applicable)*

Name Thomas Fair

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Member, Tallahassee Chapter, Florida Youth SHINE

Address \_\_\_\_\_  
*Street*

\_\_\_\_\_ *City* \_\_\_\_\_ *State* \_\_\_\_\_ *Zip*

Phone \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Youth SHINE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14

Meeting Date

Topic Keys to Independence

Bill Number ~~743~~ 744  
(if applicable)

Name Deborah Moore

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Director

Address 1920 Thomasville Rd

Phone 850-606-1218

Street  
City Tall State FL Zip 32303

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing GAZ Program

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14  
Meeting Date

Topic Key to Independence Act

Bill Number ~~819~~ 744  
(if applicable)

Name Jessamy Caution

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address 2756 McFarlane CT  
Street

Phone 770-969-3104

Tallahassee FL 32303  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Guardian ad Litem

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14

Meeting Date

Topic MOTOR VEHICLE INSURANCE

Bill Number SB 744  
*(if applicable)*

Name KATHY FOLK

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title FL PTA LEGISLATIVE COMMITTEE

Address 1697 DORADO BLVD.  
Street

Phone 407-416-6755

GENEVA FL. 32732  
City State Zip

E-mail Kathyfolk@bellsouth.net

Speaking:  For  Against  Information

Representing FL. PTA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/2014  
Meeting Date

Topic Vehicle Insurance/Driver Education

Bill Number SB 744  
(if applicable)

Name Dana Farmer

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Director of Legislative Affairs

Address 2728 Centerview Dr., Ste. 102  
Street  
Tallahassee FL 32301  
City State Zip

Phone 850.617.9709  
dana@  
E-mail disabilityrights@florida.org

Speaking:  For  Against  Information

Representing Disability Rights Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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**BILL:** CS/CS/SB 948

**INTRODUCER:** Banking and Insurance Committee, Governmental Oversight and Accountability Committee and Senator Ring

**SUBJECT:** Foreign Investments

**DATE:** March 25, 2014

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 948 modifies the Protecting Florida's Investments Act (PFIA), which requires the State Board of Administration (SBA) to identify and divest assets in foreign companies doing business in Iran and Sudan, by providing that SBA investment in exchange-traded funds will not be subject to the divestiture requirements. The bill also makes terminology changes to reflect that South Sudan is now an independent nation.

The bill allows the SBA to invest up to 50 percent of any of its funds in foreign corporate securities and obligations, an increase from the current maximum of 35 percent.

The bill also provides that a domestic insurer with investments in a company included on the Iran and Sudan scrutinized company lists must report such investments quarterly to the Office of Insurance Regulation.

## II. Present Situation:

### State Board of Administration Investing Duties

The State Board of Administration (SBA) is created in Art. IV, s. 4 (e) of the State Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Art. XII, s. 9 of the State Constitution.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan and the FRS Investment Plan, which represent approximately \$151 billion, or 88 percent, of the \$173 billion in assets managed by the SBA, as of November 30, 2013. The Pension Plan is a defined benefit plan and the Investment Plan is a defined contribution plan that employees may choose in lieu of the Pension Plan. The SBA also manages over 30 other investment portfolios, with combined assets of \$22 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.<sup>1</sup>

In investing assets, the SBA follows the Florida Statutes' fiduciary standards of care, subject to certain limitations.<sup>2</sup> Pursuant to s. 215.444, F.S., a nine-member Investment Advisory Council provides recommendations on investment policy, strategy, and procedures. The SBA's ability to invest the FRS assets is governed by s. 215.47, F.S., which provides for a "legal list" of the types of investments and for how much of the total fund may be invested in each investment type. Some of the key guidelines in the "legal list" specific to the investment of FRS Pension Plan assets include:

- No more than 80 percent of assets may be invested in domestic common stocks.
- No more than 75 percent of assets may be invested in internally managed common stocks.
- No more than 3 percent of equity assets may be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the Board; and in such case, no more than 10 percent of equity assets may be invested in the equity securities of any one corporation.
- No more than 80 percent of assets may be placed in corporate fixed income securities.
- No more than 25 percent of assets may be invested in notes secured by FHA-insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default-free history.
- No more than 35 percent of assets may be invested in foreign corporate or commercial securities or obligations<sup>3</sup>.

---

<sup>1</sup> State Board of Administration "Monthly Performance Report to the Trustees" as of November 30, 2013, issued January 13, 2014.

<sup>2</sup> Section 215.44, F.S.

<sup>3</sup> This provision in s. 215.47(20), F.S., permitting the SBA to invest up to 35 percent of any fund in foreign securities or bonds is an SBA-specific exception to the general requirement in s. 215.47(5), F.S., that no more than 25 percent of any fund may be invested in foreign securities or bonds. The SBA exception is located in s. 215.47(20), F.S., because s. 112.661(5)(a), F.S., subjects local retirement systems and plans to the limitations in s. 215.47(5), F.S.

- No more than 10 percent<sup>4</sup> of assets may be invested in alternative investments,<sup>5</sup> alternative investment vehicles,<sup>6</sup> and other non publicly-traded investments.

### **Exchange-Traded Funds**

Exchange-traded funds (ETFs) are a type of exchange-traded investment product. Investors use ETFs as a way to pool their money in a fund that makes investments in stocks, bonds, or other assets and, in return, to receive an interest in that investment pool. Unlike mutual funds, however, ETF shares are traded on a national stock exchange and at market prices that may or may not be the same as the net asset value of the shares. ETFs were initially designed to track the performance of specific U.S. equity indexes; those types of index-based ETFs continue to be the predominant type of ETF offered and sold in the United States. Newer ETFs, however, also seek to track indexes of fixed-income instruments and foreign securities.<sup>7</sup>

The SBA does not currently invest in ETFs, and Ch. 215, F.S., does not address the use of ETFs by the SBA.

### **Protecting Florida Investments Act**

In 2007, the Legislature enacted<sup>8</sup> the Protecting Florida's Investments Act (PFIA). The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities<sup>9</sup> and are required to divest those securities if the companies<sup>10</sup> do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA does not affect any FRSTF investments in U.S. companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

The definition of "company" for purposes of the PFIA includes all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of entities or business associations.

According to staff of the SBA, the PFIA imposes the following reporting, engagement, and investment requirements on the SBA:

---

<sup>4</sup> The cap on alternative investments was last changed in 2008, when it was raised from 5% to 10% by Ch. 2008-31, L.O.F.

<sup>5</sup> An "alternative investment" is defined in s. 215.4401(3)(a)1., F.S., as "an investment by the State Board of Administration in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company through an investment manager."

<sup>6</sup> An "alternative investment vehicle" is defined in s. 215.4401(3)(a)2., F.S., as the "limited partnership, limited liability company, or similar legal structure or investment manager through which the State Board of Administration invests in a portfolio company."

<sup>7</sup> All of the information in this paragraph is from a Securities and Exchange Commission Investor Bulletin available at: <https://www.sec.gov/investor/alerts/etfs.pdf>, last visited on March 26, 2014.

<sup>8</sup> Chapter 2007-88, L.O.F.; Senate Bill 2142.

<sup>9</sup> Section 215.473(3)(c), F.S.

<sup>10</sup> Section 215.473(3)(b), F.S.

- Quarterly reporting to the Board of Trustees of every equity security in which the SBA has invested for the quarter, along with its industry category. This report is posted on the SBA website.
- Quarterly presentation to the Trustees of a “Scrutinized Companies” list for both Sudan and Iran for their approval. Scrutinized Company lists are available on the SBA’s website<sup>11</sup>, along with information on the FRSTF direct and indirect holdings of Scrutinized Companies.
- Written notice to external investment managers of all PFIA requirements. Letters request that the managers of actively managed commingled vehicles (i.e., those with FRSTF and other clients’ assets) consider removing Scrutinized Companies from the product or create a similar actively managed product that excludes such companies. Similar written requests must be provided to relevant investment managers within the Investment Plan.
- Written notice to any company with inactive business operations in Sudan or Iran, informing the company of the PFIA and encouraging it to continue to refrain from reinitiating active business operations. Such correspondence continues semiannually.
- Written notice to any Scrutinized Company with active business operations, informing the company of its Scrutinized Company status and that it may become subject to divestment. The written notice must inform the company of the opportunity to clarify its Sudan-related or Iran-related activities and encourage the company, within 90 days, to cease its scrutinized business operations or convert such operations to inactive status.
- A prohibition on further investment on behalf of the FRSTF in any Scrutinized Company once the Sudan and Iran scrutinized lists have been approved by the Trustees. All publicly traded securities of Scrutinized Companies must be divested within 12 months after the company’s initial (and continued) appearance on the Scrutinized Companies list. Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.
- Reporting to each member of the Board of Trustees, President of the Senate, and the Speaker of the House of Representatives of Scrutinized Company lists within 30 days of creation, and public disclosure of each list.
- Quarterly reporting to each member of the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, the United States Presidential Special Envoy to Sudan, and the United States Presidential Special Envoy to Iran.<sup>12</sup> The report must include the following:
  - A summary of correspondence with engaged companies;
  - A listing of all investments sold, redeemed, divested, or withdrawn;
  - A listing of all prohibited investments;
  - A description of any progress related to external managers offering PFIA compliant funds; and
  - A list of all publicly traded securities held directly by the state.
- Adoption and incorporation into the FRSTF Investment Policy Statement (IPS) of SBA actions taken in accordance with the PFIA. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.

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<sup>11</sup> The quarterly reports are available at

<http://www.sbafla.com/fsb/FundsWeManage/FRSPensionPlan/PFIA/2013QuarterlyReports/tabid/1483/Default.aspx>

<sup>12</sup> Section 215.473(4)(b), F.S.

- Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:
  - Darfur genocide has been halted for at least 12 months;
  - Sanctions imposed against the Government of Sudan are revoked;
  - Government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;
  - Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;
  - Sanctions imposed against the government of Iran are revoked; or
  - Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy.
- Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment. If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment. Such condition is required to be updated semiannually.

### **Sudan and South Sudan**

Previous to the enactment of the PFIA in 2007, Sudan had been embroiled in a north-south civil war, until a Comprehensive Peace Agreement was signed in 2005. Southern Sudan was granted a 6-year period of autonomy to be followed by a referendum on independence. That referendum was held in January 2011, and resulted in an overwhelming vote in favor of succession from Sudan. The southern Sudan region attained independence on July 9, 2011, as South Sudan.<sup>13</sup>

The PFIA in s. 215.473, F.S., contains references to Sudan that are now outdated and inaccurate, including details about the government structures of Sudan and the southern Sudan region as they existed in 2007.

### **III. Effect of Proposed Changes:**

#### **SBA Investments in Foreign Securities**

**Section 1** amends s. 215.47, F.S., to allow the SBA to invest up to 50 percent of any of its funds in foreign corporate securities and obligations, up from the current maximum of 35 percent.

**Section 2** amends s. 215.473, F.S., by amending the definition of “indirect holdings” to clarify that the securities included are held in a commingled fund or other collective instrument, whether managed by an SBA employee or not. The bill provides that SBA investment in exchange-traded funds will not be subject to the divestiture requirements.

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<sup>13</sup> Information from the CIA World Factbook, located at <https://www.cia.gov/library/publications/the-world-factbook/geos/od.html>, last visited on March 26, 2014.

The bill also changes references in s. 215.473, F.S., to Sudan and South Sudan, to reflect current geopolitical reality, makes corresponding corrections to cross-references, and makes technical and grammatical changes.

### **Assets of Insurers**

**Section 3** creates s. 624.449, F.S., related to assets of insurers invested in companies doing business in Iran and Sudan. The bill provides that a domestic insurer must provide to the Office of Insurance Regulation, quarterly, a list of all investments that the insurer has in the companies included on the “Scrutinized Companies with Activities in Sudan List” and “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.” The list must include the name of the issuer of the stock, bond, security, and other evidence of indebtedness.

### **Severability Clause and Effective Date**

The bill provides that the invalidation of any one provision of the act does not affect other provisions that could still be given legal effect.

The bill takes effect July 1, 2014.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. Other Constitutional Issues:**

Article III, Section 6 of the Florida Constitution provides that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” The single subject clause contains three requirements: that each law embrace only one subject, that the law may include any matter that is properly connected with the subject, and that the subject be briefly expressed in the title.<sup>14</sup> The single subject of an act is to be derived from the short title.<sup>15</sup> “A connection between a provision [in an act] and the subject is proper (1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the

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<sup>14</sup> *Franklin v. State*, 887 So.2d 1063, 1072, (Fla. 2004)

<sup>15</sup> *Id.* at 1075.

subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.”<sup>16</sup>

The short title of this bill is “[a]n act relating to foreign investments,” and the bill contains provisions relating to the proportion of funds the SBA may invest in foreign securities, restrictions on SBA’s ability to invest in scrutinized foreign companies doing business in Iran and Sudan, and regulatory and divestiture requirements for insurers with investments in scrutinized foreign companies. If this bill were challenged under the single subject provision of the constitution, a court would apply a highly deferential standard of review.<sup>17</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires insurers with investments in companies on the “Scrutinized Companies with Activities in Sudan List” and “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List” to report such investments, quarterly, to the Office of Insurance Regulation.

C. Government Sector Impact:

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>16</sup> *Id.* at 1078.

<sup>17</sup> *Id.* at 1073.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 215.47 and 215.473.

This bill creates section 624.449 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Banking and Insurance on March 25, 2014:**

The CS removes the requirement that domestic insurers must, within 36 months, divest any investments in a company that is included on the Iran and Sudan scrutinized company lists.

**CS by Governmental Oversight and Accountability on March 6, 2014:**

The CS removes a definitional change that allows an affiliate or wholly owned subsidiary doing business in Sudan or Iran to not impact the scrutinized company status of the parent company. Current law will therefore be retained, which requires the actions of affiliates and subsidiaries to impact the parent company's scrutinized company status.

The CS also removes language unnecessary to the implementation of the insurer divestment provisions.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Ring) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 347 - 366

and insert:

624.449 Insurer investment in foreign companies.-A domestic insurer must provide to the office on a quarterly basis a list of investments that the insurer has in companies included on the "Scrutinized Companies with Activities in Sudan List" and "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List," compiled by the State Board of



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11 Administration pursuant to s. 215.473(2). The insurer's list  
12 must include the name of the issuer and the stock, bond,  
13 security, and other evidence of indebtedness.

14

15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 Delete lines 12 - 15

18 and insert:

19 F.S.; requiring a domestic insurer to provide a list  
20 of investments that it has in companies on the State  
21 Board of Administration's lists of scrutinized  
22 companies with activities in Sudan or in Iran's  
23 petroleum energy sector;

By the Committee on Governmental Oversight and Accountability;  
and Senator Ring

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1 A bill to be entitled  
2 An act relating to foreign investments; amending s.  
3 215.47, F.S.; revising the percentage of investments  
4 that the State Board of Administration may invest in  
5 foreign securities; amending s. 215.473, F.S.;  
6 revising and providing definitions with respect to  
7 requirements that the board divest securities in which  
8 public moneys are invested in certain companies doing  
9 specified types of business in or with Sudan or Iran;  
10 revising exclusions from the divestment requirements;  
11 conforming cross-references; creating s. 624.449,  
12 F.S.; providing that insurer investment in certain  
13 foreign companies shall be treated as nonadmitted  
14 assets; requiring insurers to identify, report, and  
15 divest such investments within a specified period;  
16 providing for severability; providing an effective  
17 date.  
18  
19 Be It Enacted by the Legislature of the State of Florida:  
20  
21 Section 1. Subsection (20) of section 215.47, Florida  
22 Statutes, is amended to read:  
23 215.47 Investments; authorized securities; loan of  
24 securities.—Subject to the limitations and conditions of the  
25 State Constitution or of the trust agreement relating to a trust  
26 fund, moneys available for investments under ss. 215.44-215.53  
27 may be invested as follows:  
28 (20) Notwithstanding the provisions in subsection (5)  
29 limiting such investments to 25 percent of any fund, the board

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30 may invest up to 50 ~~no more than 35~~ percent of any fund in  
31 corporate obligations and securities of any kind of a foreign  
32 corporation or a foreign commercial entity having its principal  
33 office located in any country other than the United States or  
34 its possessions or territories, not including United States  
35 dollar-denominated securities listed and traded on a United  
36 States exchange that are a part of the ordinary investment  
37 strategy of the board.  
38 Section 2. Subsections (1) and (2), paragraph (e) of  
39 subsection (3), and subsection (5) of section 215.473, Florida  
40 Statutes, are amended to read:  
41 215.473 Divestiture by the State Board of Administration;  
42 Sudan; Iran.—  
43 (1) DEFINITIONS.—As used in this act, the term:  
44 (a) "Active business operations" means all business  
45 operations that are not inactive business operations.  
46 (b) "Business operations" means engaging in commerce in any  
47 form in Sudan or Iran, including, but not limited to, acquiring,  
48 developing, maintaining, owning, selling, possessing, leasing,  
49 or operating equipment, facilities, personnel, products,  
50 services, personal property, real property, or any other  
51 apparatus of business or commerce.  
52 (c) "Company" means a ~~any~~ sole proprietorship,  
53 organization, association, corporation, partnership, joint  
54 venture, limited partnership, limited liability partnership,  
55 limited liability company, or other entity or business  
56 association, including all wholly owned subsidiaries, majority-  
57 owned subsidiaries, parent companies, or affiliates of such  
58 entities or business associations, that exists for the purpose

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59 of making profit.

60 (d) "Complicit" means taking actions during any preceding  
61 20-month period which have directly supported or promoted the  
62 genocidal campaign in Darfur, including, ~~but not limited to,~~  
63 preventing Darfur's victimized population from communicating  
64 with each other; encouraging Sudanese citizens to speak out  
65 against an internationally approved security force for Darfur;  
66 actively working to deny, cover up, or alter the record on human  
67 rights abuses in Darfur; or other similar actions.

68 (e) "Direct holdings" in a company means all securities of  
69 that company that are held directly by the public fund or in an  
70 account or fund in which the public fund owns all shares or  
71 interests.

72 (f) "Government of Iran" means the government of Iran, its  
73 instrumentalities, and companies owned or controlled by the  
74 government of Iran.

75 (g) "Government of South Sudan" means the Republic of South  
76 Sudan, that has its capital in Juba, South Sudan.

77 (h) ~~(g)~~ "Government of Sudan" means the Republic of the  
78 Sudan that has its capital ~~government~~ in Khartoum, Sudan, ~~that~~  
79 ~~is led by the National Congress Party, formerly known as the~~  
80 ~~National Islamic Front, or any successor government formed on or~~  
81 ~~after October 13, 2006, including the coalition National Unity~~  
82 ~~Government agreed upon in the Comprehensive Peace Agreement for~~  
83 ~~Sudan, and does not include the regional government of southern~~  
84 ~~Sudan.~~

85 (i) ~~(h)~~ "Inactive business operations" means the mere  
86 continued holding or renewal of rights to property previously  
87 operated for the purpose of generating revenues but not

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88 presently deployed for such purpose.

89 (j) ~~(i)~~ "Indirect holdings" in a company means all  
90 securities of that company that are held in a commingled an  
91 ~~account or fund or other collective investment~~, such as a mutual  
92 fund, ~~managed by one or more persons not employed by the public~~  
93 ~~fund~~, in which the public fund owns shares or interests together  
94 with other investors not subject to ~~the provisions of this~~  
95 section act.

96 (k) ~~(j)~~ "Iran" means the Islamic Republic of Iran.

97 (l) ~~(k)~~ "Marginalized populations of Sudan" include, but are  
98 not limited to, the portion of the population in the Darfur  
99 region that has been genocidally victimized; the portion of the  
100 population of South ~~southern~~ Sudan victimized by Sudan's north-  
101 south civil war; the Beja, Rashidiya, and other similarly  
102 underserved groups of eastern Sudan; the Nubian and other  
103 similarly underserved groups in Sudan's Abyei, Southern Blue  
104 Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir,  
105 and other similarly underserved groups of northern Sudan.

106 (m) ~~(l)~~ "Military equipment" means weapons, arms, military  
107 supplies, and equipment that may readily be used for military  
108 purposes, including, but not limited to, radar systems,  
109 military-grade transport vehicles, or supplies or services sold  
110 or provided directly or indirectly to any force actively  
111 participating in armed conflict in Sudan.

112 (n) ~~(m)~~ "Mineral-extraction activities" include the  
113 exploring, extracting, processing, transporting, or wholesale  
114 selling or trading of elemental minerals or associated metal  
115 alloys or oxides (ore), including gold, copper, chromium,  
116 chromite, diamonds, iron, iron ore, silver, tungsten, uranium,

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117 and zinc, as well as facilitating such activities, including  
 118 providing supplies or services in support of such activities.  
 119 ~~(o)-(n)~~ "Oil-related activities" include, but are not  
 120 limited to, owning rights to oil blocks; exporting, extracting,  
 121 producing, refining, processing, exploring for, transporting,  
 122 selling, or trading of oil; constructing, maintaining, or  
 123 operating a pipeline, refinery, or other oil-field  
 124 infrastructure; and facilitating such activities, including  
 125 providing supplies or services in support of such activities,  
 126 except that the mere retail sale of gasoline and related  
 127 consumer products is not considered an oil-related activity.  
 128 ~~(p)-(o)~~ "Petroleum resources" means petroleum, petroleum  
 129 byproducts, or natural gas.  
 130 ~~(q)-(p)~~ "Power-production activities" means a any business  
 131 operation that involves a project commissioned by the National  
 132 Electricity Corporation (NEC) of Sudan or other similar entity  
 133 of the government of Sudan whose purpose is to facilitate power  
 134 generation and delivery, including, but not limited to,  
 135 establishing power-generating plants or hydroelectric dams,  
 136 selling or installing components for the project, providing  
 137 service contracts related to the installation or maintenance of  
 138 the project, as well as facilitating such activities, including  
 139 providing supplies or services in support of such activities.  
 140 ~~(r)-(q)~~ "Public fund" means all funds, assets, trustee, and  
 141 other designates under the State Board of Administration  
 142 pursuant to chapter 121.  
 143 ~~(s)-(r)~~ "Scrutinized active business operations" means  
 144 active business operations that result ~~have resulted~~ in a  
 145 company becoming a scrutinized company.

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146 ~~(t)-(s)~~ "Scrutinized business operations" means business  
 147 operations that result ~~have resulted~~ in a company becoming a  
 148 scrutinized company.  
 149 ~~(u)-(t)~~ "Scrutinized company" means a any company that meets  
 150 any of the following criteria:  
 151 1. The company has business operations that involve  
 152 contracts with or provision of supplies or services to the  
 153 government of Sudan, companies in which the government of Sudan  
 154 has a any direct or indirect equity share, consortiums or  
 155 projects commissioned by the government of Sudan, or companies  
 156 involved in consortiums or projects commissioned by the  
 157 government of Sudan, and:  
 158 a. More than 10 percent of the company's revenues or assets  
 159 linked to Sudan involve oil-related activities or mineral-  
 160 extraction activities; less than 75 percent of the company's  
 161 revenues or assets linked to Sudan involve contracts with or  
 162 provision of oil-related or mineral-extracting products or  
 163 services to the ~~regional~~ South ~~southern~~ Sudan ~~or a~~  
 164 ~~project or consortium created exclusively by that regional~~  
 165 ~~government~~; and the company has failed to take substantial  
 166 action; or  
 167 b. More than 10 percent of the company's revenues or assets  
 168 linked to Sudan involve power-production activities; less than  
 169 75 percent of the company's power-production activities include  
 170 projects whose intent is to provide power or electricity to the  
 171 marginalized populations of Sudan; and the company has failed to  
 172 take substantial action.  
 173 2. The company is complicit in the Darfur genocide.  
 174 3. The company supplies military equipment within Sudan,

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175 unless it clearly shows that the military equipment cannot be  
 176 used to facilitate offensive military actions in Sudan or the  
 177 company implements rigorous and verifiable safeguards to prevent  
 178 use of that equipment by forces actively participating in armed  
 179 conflict. Examples of safeguards include post-sale tracking of  
 180 such equipment by the company, certification from a reputable  
 181 and objective third party that such equipment is not being used  
 182 by a party participating in armed conflict in Sudan, or sale of  
 183 such equipment solely to the ~~regional~~ government of South  
 184 ~~southern~~ Sudan or any internationally recognized peacekeeping  
 185 force or humanitarian organization.

186 4. The company has business operations that involve  
 187 contracts with or provision of supplies or services to the  
 188 government of Iran, companies in which the government of Iran  
 189 has any direct or indirect equity share, consortiums, or  
 190 projects commissioned by the government of Iran, or companies  
 191 involved in consortiums or projects commissioned by the  
 192 government of Iran and:

193 a. More than 10 percent of the company's total revenues or  
 194 assets are linked to Iran and involve oil-related activities or  
 195 mineral-extraction activities, ~~and~~ and the company has failed to  
 196 take substantial action; or

197 b. The company has, with actual knowledge, on or after  
 198 August 5, 1996, made an investment of \$20 million or more, or  
 199 any combination of investments of at least \$10 million each,  
 200 which in the aggregate equals or exceeds \$20 million in any 12-  
 201 month period, and which directly or significantly contributes to  
 202 the enhancement of Iran's ability to develop the petroleum  
 203 resources of Iran.

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204 ~~(v) (u)~~ "Social-development company" means a company whose  
 205 primary purpose in Sudan is to provide humanitarian goods or  
 206 services, including medicine or medical equipment; agricultural  
 207 supplies or infrastructure; educational opportunities;  
 208 journalism-related activities; information or information  
 209 materials; spiritual-related activities; services of a purely  
 210 clerical or reporting nature; food, clothing, or general  
 211 consumer goods that are unrelated to oil-related activities;  
 212 mineral-extraction activities; or power-production activities.

213 ~~(w) (v)~~ "Substantial action specific to Iran" means  
 214 adopting, publicizing, and implementing a formal plan to cease  
 215 scrutinized business operations within 1 year and to refrain  
 216 from ~~any~~ such new business operations.

217 ~~(x) (w)~~ "Substantial action specific to Sudan" means  
 218 adopting, publicizing, and implementing a formal plan to cease  
 219 scrutinized business operations within 1 year and to refrain  
 220 from ~~any~~ such new business operations; undertaking humanitarian  
 221 efforts in conjunction with an international organization, the  
 222 government of Sudan, the ~~regional~~ government of South ~~southern~~  
 223 Sudan, or a nonprofit entity evaluated and certified by an  
 224 independent third party to be substantially in a relationship to  
 225 the company's Sudan business operations and of benefit to one or  
 226 more marginalized populations of Sudan; or, through engagement  
 227 with the government of Sudan, materially improving conditions  
 228 for the genocidally victimized population in Darfur.

229 (2) IDENTIFICATION OF COMPANIES.—

230 (a) Within 90 days after June 8, 2007 ~~the effective date of~~  
 231 ~~this act~~, the public fund shall make its best efforts to  
 232 identify all scrutinized companies in which the public fund has

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233 direct or indirect holdings or could possibly have such holdings  
234 in the future. Such efforts include:

235 1. Reviewing and relying, as appropriate in the public  
236 fund's judgment, on publicly available information regarding  
237 companies having business operations in Sudan, including  
238 information provided by nonprofit organizations, research firms,  
239 international organizations, and government entities;

240 2. Contacting asset managers contracted by the public fund  
241 ~~which that~~ invest in companies having business operations in  
242 Sudan; or

243 3. Contacting other institutional investors that have  
244 divested from or engaged with companies that have business  
245 operations in Sudan.

246 4. Reviewing the laws of the United States regarding the  
247 levels of business activity that would cause application of  
248 sanctions for companies conducting business or investing in  
249 countries that are designated state sponsors of terror.

250 (b) By the first meeting of the public fund following the  
251 90-day period described in paragraph (a), the public fund shall  
252 assemble all scrutinized companies that fit criteria specified  
253 in subparagraphs (1)(u)1., 2., and 3. ~~(1)(t)1., 2., and 3.~~ into  
254 a "Scrutinized Companies with Activities in Sudan List" and  
255 ~~shall assemble~~ all scrutinized companies that fit criteria  
256 specified in subparagraph (1)(u)4. ~~(1)(t)4.~~ into a "Scrutinized  
257 Companies with Activities in the Iran Petroleum Energy Sector  
258 List."

259 (c) The public fund shall update and make publicly  
260 available quarterly the Scrutinized Companies with Activities in  
261 Sudan List and the Scrutinized Companies with Activities in the

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262 Iran Petroleum Energy Sector List based on evolving information  
263 from, among other sources, those listed in paragraph (a).

264 (d) Notwithstanding the provisions of this ~~section act~~, a  
265 social-development company that is not complicit in the Darfur  
266 genocide is not considered a scrutinized company under  
267 subparagraph (1)(u)1. ~~(1)(t)1.~~, subparagraph (1)(u)2. ~~(1)(t)2.~~,  
268 or subparagraph (1)(u)3 ~~(1)(t)3.~~

269 (3) REQUIRED ACTIONS.—The public fund shall adhere to the  
270 following procedure for assembling companies on the Scrutinized  
271 Companies with Activities in Sudan List and the Scrutinized  
272 Companies with Activities in the Iran Petroleum Energy Sector  
273 List:

274 (e) *Excluded securities.*—

275 1. Notwithstanding the provisions of this act, paragraphs  
276 (b) and (c) do not apply to indirect holdings in actively  
277 managed investment funds. However, the public fund shall submit  
278 letters to the managers of such investment funds containing  
279 companies that have scrutinized active business operations  
280 requesting that they consider removing such companies from the  
281 fund or create a similar actively managed fund having indirect  
282 holdings devoid of such companies. If the manager creates a  
283 similar fund, the public fund shall replace all applicable  
284 investments with investments in the similar fund in an expedited  
285 timeframe consistent with prudent investing standards. For the  
286 purposes of this section, a private equity fund is deemed to be  
287 an actively managed investment fund.

288 2. Notwithstanding the provisions of this section,  
289 paragraphs (b) and (c) do not apply to exchange-traded funds.

290 (5) EXPIRATION.—This act expires upon the occurrence of all

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291 of the following:

292 (a) If any of the following occur, the public fund shall no  
 293 longer scrutinize companies according to subparagraphs (1)(u)1.,  
 294 2., and 3. ~~(1)(t)1., 2., and 3.~~ and shall no longer assemble the  
 295 Scrutinized Companies with Activities in Sudan List, shall cease  
 296 engagement and divestment of such companies, and may reinvest in  
 297 such companies if as long as such companies do not satisfy the  
 298 criteria for inclusion in the Scrutinized Companies with  
 299 Activities in the Iran Petroleum Energy Sector List:

300 1. The Congress or President of the United States,  
 301 affirmatively and unambiguously states, by means including, but  
 302 not limited to, legislation, executive order, or written  
 303 certification from the President to Congress, that the Darfur  
 304 genocide has been halted for at least 12 months;

305 2. The United States revokes all sanctions imposed against  
 306 the government of Sudan;

307 3. The Congress or President of the United States  
 308 affirmatively and unambiguously states, by means including, but  
 309 not limited to, legislation, executive order, or written  
 310 certification from the President to Congress, that the  
 311 government of Sudan has honored its commitments to cease attacks  
 312 on civilians, demobilize and demilitarize the Janjaweed and  
 313 associated militias, grant free and unfettered access for  
 314 deliveries of humanitarian assistance, and allow for the safe  
 315 and voluntary return of refugees and internally displaced  
 316 persons; or

317 4. The Congress or President of the United States  
 318 affirmatively and unambiguously states, by means including, but  
 319 not limited to, legislation, executive order, or written

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320 certification from the President to Congress, that mandatory  
 321 divestment of the type provided for in this section ~~and~~  
 322 interferes with the conduct of United States foreign policy.

323 (b) If any of the following occur, the public fund shall no  
 324 longer scrutinize companies according to subparagraph (1)(u)4.  
 325 ~~(1)(t)4.~~ and shall no longer assemble the Scrutinized Companies  
 326 with Activities in the Iran Petroleum Energy Sector List and  
 327 shall cease engagement, investment prohibitions, and divestment.  
 328 The public fund may reinvest in such companies if as long as  
 329 such companies do not satisfy the criteria for inclusion in the  
 330 Scrutinized Companies with Activities in Sudan List:

331 1. The Congress or President of the United States  
 332 affirmatively and unambiguously states, by means including, but  
 333 not limited to, legislation, executive order, or written  
 334 certification from the President to Congress, that the  
 335 government of Iran has ceased to acquire weapons of mass  
 336 destruction and support international terrorism;

337 2. The United States revokes all sanctions imposed against  
 338 the government of Iran; or

339 3. The Congress or President of the United States  
 340 affirmatively and unambiguously declares, by means including,  
 341 but not limited to, legislation, executive order, or written  
 342 certification from the President to Congress, that mandatory  
 343 divestment of the type provided for in this section ~~and~~  
 344 interferes with the conduct of United States foreign policy.

345 Section 3. Section 624.449, Florida Statutes, is created to  
 346 read:

347 624.449 Insurer investment in foreign companies.—

348 (1) Investments by a domestic insurer in companies included

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

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349 on the "Scrutinized Companies with Activities in Sudan List" and  
350 "Scrutinized Companies with Activities in the Iran Petroleum  
351 Energy Sector List," compiled by the State Board of  
352 Administration pursuant to s. 215.473(2), shall be treated as  
353 nonadmitted assets. On or before June 30, 2014, and quarterly  
354 thereafter, the insurer shall determine its investments in  
355 companies included on these lists.

356 (2) The insurer shall provide to the office, on a quarterly  
357 basis, a list of investments that the insurer has in companies  
358 included on the "Scrutinized Companies with Activities in Sudan  
359 List" and "Scrutinized Companies with Activities in the Iran  
360 Petroleum Energy Sector List," including, but not limited to,  
361 the name of the issuer and the stock, bond, security, and other  
362 evidence of indebtedness.

363 (3) Within 36 months after a company's appearance on a list  
364 compiled pursuant to subsection (2), the insurer shall sell,  
365 redeem, divest, or withdraw all of its investments in the  
366 company.

367 Section 4. If any provision of this act or the application  
368 thereof to any person or circumstance is held invalid, the  
369 invalidity does not affect other provisions or applications of  
370 the act which can be given effect without the invalid provision  
371 or application, and to this end the provisions of this act are  
372 declared severable.

373 Section 5. This act shall take effect July 1, 2014.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 1238

INTRODUCER: Banking and Insurance Committee and Senator Richtel

SUBJECT: Family Trust Companies

DATE: March 26, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1238 creates “Family Trust Companies” in Florida. Trust companies are for-profit business organizations that are authorized to engage in trust business and to act as a fiduciary for the general public. Some states allow families to form and operate private or family trust companies which provide trust services similar to those that can be provided by an individual trustee or a financial institution, but are owned exclusively by family members and may not provide fiduciary services to the public. These private, family trust companies are generally formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements, for a variety of personal, investment, regulatory, and tax reasons. Currently, there are no Florida statutes authorizing the formation of family trust companies, licensed family trust companies, and foreign licensed family trust companies.

CS/SB 1238 authorizes families to form and operate any of these three family trust companies in Florida, subject to varying regulatory requirements, including a license or registration with the Office of Financial Regulation (OFR), maintenance of minimum capital accounts with a principal place of business in Florida, and certain reporting requirements. This bill provides the powers of family trust companies such as serving as a trustee of trusts held for the benefit of family members and providing fiduciary, investment advisory, and wealth management services to a family. A family trust company cannot perform these services for the general public.

This bill authorizes the OFR to investigate applications for licensure or registration, requires annual renewals and other regulatory filings from licensees and registrants, and authorizes the

OFR to conduct periodic examinations of family trust companies, licensed family trust companies, and foreign licensed family trust companies.

This bill is effective October 1, 2015, if the linked public records bill or similar legislation is adopted in the same legislative session.

## II. Present Situation:

### Trusts

A trust is generally defined as, "a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. . ."<sup>1</sup> A trust must have three interest holders - a settlor (also called a "grantor"), a trustee, and a beneficiary. The settlor is the party creating the trust. The trustee holds legal title to the property held in trust for the benefit of the beneficiary.<sup>2</sup> The beneficiary has an equitable interest in property subject to trust, enjoying the benefit of the administration of the trust by a trustee.<sup>3</sup> A trust company may offer its services to the general public to serve as trustee of private trusts.

### Trust Companies

The OFR supervises banks and trust companies.<sup>4</sup> The OFR issues charters to state trust companies to conduct "general . . . trust business."<sup>5</sup> A "trust company" is a business organization, other than a bank or state or federal association, engaged in "trust business."<sup>6</sup> "Trust business" is the business of acting as a fiduciary when such business is conducted by a bank, state or federal association, or a trust company, and when conducted by any other business organization as its sole or principal business.<sup>7</sup>

### The Family Trust Company

A family trust company provides trust services to a related group of people and cannot provide services to the general public.<sup>8</sup> This includes serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family.<sup>9</sup> At least 14 states currently have statutes governing the organization and operation of family trust companies.<sup>10</sup>

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<sup>1</sup> 55A Fla. Jur.2d Trusts s. 1; s. 731.201(38), F.S.

<sup>2</sup> 55A Fla. Jur.2d Trusts s. 1.

<sup>3</sup> *Id.*

<sup>4</sup> *See* s. 20.121(3)(a)2., F.S.

<sup>5</sup> *See* s. 658.16(1) and 658.12(19), F.S.

<sup>6</sup> *See* s. 658.12(21), F.S.

<sup>7</sup> *See* s. 658.12(20), F.S.

<sup>8</sup> *See* White Paper for SB 1238 by Senator Richter Relating to Family Trust Companies provided by the Real Property, Probate, and Trust Law Section of the Florida Bar (on file with the Senate Committee on Banking and Insurance).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

No Florida statutes authorizes the formation of a family trust company. Other vehicles are currently used which were primarily designed for trust companies serving the general public. Traditional trust companies require regulatory oversight, licensing of investment personnel, public disclosure and capitalization requirements considered by practitioners to be overbroad and intrusive for the family trust.<sup>11</sup>

According to the Real Property, Probate, and Trust Law Section of the Florida Bar, some families enter into agreements with the OFR to form a “family trust company” by agreeing to limit the trust services to the family and not operate for profit or offer services to the general public.<sup>12</sup> Creation of a statutory regulatory structure would eliminate the need for these specialized agreements.<sup>13</sup>

### **III. Effect of Proposed Changes:**

This bill creates ch. 662, F.S., entitled “Family Trust Companies” and provides that the chapter may be cited as the “Florida Family Trust Company Act.” This bill provides that its purpose is to establish requirements for licensing private trust companies, to provide regulation of those persons who provide fiduciary services to family members of no more than two families and their related interests as a private family trust company, and establish the degree of regulatory oversight required of the OFR over such companies.

#### **Types of Family Trust Companies**

This bill creates three types of family trust companies: family trust companies, licensed family trust companies, and foreign licensed family trust companies.

This bill defines “family trust company” as a corporation or limited liability company (LLC) that is exclusively owned by one or more family members, is organized or qualified to do business in Florida, acts or proposes to act as a fiduciary to serve one or more family members, and does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the family trust company or one or more trusts, companies, or other entities that are family members.

A “licensed family trust company” means a family trust company that operates in accordance with this chapter and has been issued a license that has not been revoked or suspended by the OFR.

A “foreign licensed family trust company” means a family trust company that is licensed by a state other than Florida, has its principal place of business in a jurisdiction in the United States other than Florida, is operated in accordance with family or private trust company laws of a jurisdiction other than Florida, and is subject to statutory or regulatory mandated supervision by the jurisdiction in which the principal place of business is located.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

A family trust company must be exclusively owned by family members. This bill defines “family members” as:

- A designated relative.<sup>14</sup>
- A person within the fourth degree of lineal kinship to a designated relative of a family trust company, or a person within the sixth degree of lineal kinship to a designated relative of a licensed family trust company.
- A person within the seventh degree of collateral kinship to a designated relative of a family trust company, or a person within the ninth degree of collateral kinship to a designated relative of a licensed family trust company.
- The spouse or former spouse of an individual qualifying as a family member and an individual who is within the fifth degree of lineal kinship to that spouse or former spouse.
- A family affiliate.<sup>15</sup>
- A trust established by a family member if the trust is funded exclusively by one or more family members.
- A trust established by an individual who is not a family member if all of the noncharitable qualified beneficiaries of the trust are family members.
- The probate estate of a family member or the probate estate of an individual who is not a family member if all of the noncharitable beneficiaries of the estate are family members.
- A charitable entity in which a majority of the governing body is composed of family members.

Section 6 provides that the financial institutions codes<sup>16</sup> do not apply to a family trust company, licensed family trust company, or foreign licensed family trust company except as provided in the bill.

Section 7 provides that a family trust company or a foreign licensed family trust company is not required to be a licensed family trust company.

### **Powers of a Family Trust Company (Sections 21, 22)**

Section 21 of this bill provides that a family trust company and a licensed family trust company may:

- Act as a sole or copersonal representative, executor, or curator for probate estates being administered in a state or jurisdiction other than Florida.
- Act as an attorney-in-fact or agent under a power of attorney, other than a power of attorney governed by chapter 709, F.S.
- Act as an attorney in fact or agent under a power of attorney instrument, other than a power of attorney under chapter 709, F.S.
- Act within or outside of Florida as sole fiduciary or cofiduciary and possess, purchase, sell, invest, reinvest, safekeep, or otherwise manage or administer the real or personal property of eligible individuals and members.

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<sup>14</sup>“Designated relative” means a common ancestor of a family, who may be a living or deceased person, and who is so designated in the application for a license or annual license.

<sup>15</sup>“Family affiliate” is a company or other entity in which one or more family members own, control, or have the power to directly or indirectly vote more than 50 percent of a class of voting securities in the company or entity.

<sup>16</sup> The “financial institutions codes” are chapters 655, 657, 658, 660, 663, 665, and 667, F.S.

- Exercise the powers of a corporation or LLC incorporated or organized under Florida law, or qualified to transact business as a foreign corporation or LLC under Florida law, which are reasonably necessary to enable it to fully exercise, in accordance with commonly accepted customs and usages, a power conferred by the Florida Family Trust Company Act.
- Delegate duties and powers, including investment functions under s. 518.112, F.S., in accordance with the powers granted to a trustee under chapter 736, F.S., or other applicable law, and retain agents, attorneys, accountants, investment advisers, or other individuals or entities to advise or assist the family trust company, licensed family trust company, or foreign licensed family trust company in the exercise of its powers and duties.
- Perform all acts necessary for exercising these powers.

A foreign licensed family trust company that is in good standing in its principal jurisdiction may exercise all the trust powers in Florida that a Florida family trust company may exercise.

A family trust company, a licensed family trust company, and a foreign licensed family trust company:

- May not engage in commercial banking; however, it may establish accounts at financial institutions for its own purposes or on behalf of family members to whom it provides services.
- May not engage in fiduciary services with the public unless licensed pursuant to ch. 658, F.S.
- May not serve as a personal representative or a copersonal representative of a probate estate administered in Florida.
- May not serve as an attorney in fact or agent, including as a co-attorney in fact or co-agent, under a power of attorney pursuant to chapter 709, F.S.

### **Number of Designated Relatives (Section 9)**

A family trust company can only have one designated relative so it can only operate for one family. A licensed family trust company can have two designated relatives so it can operate for two families.

### **Licensing Process (Section 10)**

Section 10 provides that an applicant seeking to operate as a licensed family trust company must file an application with the OFR on forms prescribed by the OFR. There is a nonrefundable \$10,000 application fee. The application must contain or be accompanied by:

- The name of the proposed licensed family trust company.
- A copy of the articles of incorporation or articles of organization and the bylaws or operating agreement.
- The physical address and mailing address of the proposed licensed family trust company.
- A statement describing in detail the services that will be provided to family members.
- The name and biographical information of each individual who will initially serve as a director, officer, manager, or member acting in a managerial capacity of the proposed licensed family trust company.

- The name and biographical information of each individual who owns or has the ability or power to directly or indirectly vote at least 10 percent or more of the outstanding shares, membership interest, or membership units of the proposed licensed family trust company.
- The names of the designated relatives.
- The amount of the initial capital account and the form in which the capital was paid and will be maintained.
- The type and amount of bonds or insurance that will be procured and maintained on directors, officers, managers, or members acting in a managerial capacity or employees.

In addition, the application must include a statement signed by the applicant or the applicant's representative affirming that the proposed licensed family trust company is not currently transacting business with the general public. The applicant must affirm that no director, officer, manager, or member has served as a director, officer, or manager, or acted in a managerial capacity, for a trust company or any other financial institution that had a license issued that was suspended or revoked within the 10 years preceding the date of the application. It must affirm that no director, officer, manager, or member acting in a managerial capacity has been convicted of, or pled nolo contendere to, violations of specified crimes or rules. Finally, it must affirm that no director, officer, manager, or member acting in a managerial capacity has had a professional license suspended or revoked within the 10 years preceding the date of the application.

#### **Investigation of Applicants by the OFR (Sections 11, 37)**

Once an application is filed, Section 11 of this bill requires the OFR to conduct an investigation to confirm that persons who will serve as directors or officers of the corporation or, if the applicant is a LLC, managers or members acting in a managerial capacity, have not:

- Been convicted of, or entered a plea of nolo contendere to, a crime involving fraud, misrepresentation, or moral turpitude.
- Been convicted of, or pled nolo contendere to, a violation of the financial institutions codes or similar state or federal laws.
- Been directors or executive officers of a financial institution licensed or chartered under the financial institutions codes or by the Federal Government or any other state, the District of Columbia, a territory of the United States, or a foreign country, whose license or charter was suspended or revoked within the 10 years preceding the date of the application.
- Had a professional license suspended or revoked within 10 years preceding the application.
- Made a false statement of material fact on the application.

The OFR must also confirm that the name of the proposed company complies with naming requirements, that capital accounts of the proposed company conform to relevant law, that the fidelity bonds and errors and omissions insurance coverage required are issued and effective, and that the articles of incorporation or articles of organization conform to applicable law. If the OFR determines that an applicant does not meet the requirements, it must issue a notice of intent to deny the application and provides the applicant with an opportunity to request an administrative hearing pursuant to the Administrative Procedures Act.

Section 37 requires the OFR to approve or deny an application for a new licensed family trust company within 180 days after receipt of the application and required additional information.

**Registration of Unlicensed or Foreign Family Trust Companies (Section 12)**

A family trust company that does not seek to be licensed must register with the OFR. The registration application must provide the name of the designated relative, state that the company is a family trust company and that it will comply with the laws relating to family trust companies, and provide location and contact information.

A foreign licensed family trust company must register with the OFR before beginning operations in Florida. The registration application must state that the company's operations will comply with relevant family trust company laws and that it is currently in compliance with the family trust company laws and regulations of its principal jurisdiction. The registration application must provide addresses and contact information in Florida and in the company's principal jurisdiction. The registration must include documentation that the company is in good standing in the jurisdiction where it is licensed and proof that the company is organized in a manner similar to a family trust company as defined in Florida.

The registration application required for a family trust company and a foreign licensed family trust company must be accompanied by a registration fee of \$5,000.

**Requirements for a Family Trust Company, a Licensed Family Trust Company, and a Foreign Licensed Family Trust Company (Section 13)**

A family trust company or a licensed family trust must maintain a principal office in Florida. It must maintain original or true copies of all records and accounts of the family trust company or licensed family trust company at that office and make them available for examination by the OFR. A family trust company and a licensed family trust must also have a registered agent in Florida, maintain all applicable state and local business licenses, charters, and permits, and have a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida.

A foreign licensed family trust company must maintain an office in Florida and must maintain original or true copies of all records and accounts of the family trust company or licensed family trust company at that office and make them available for examination by the OFR. It must have a registered agent in Florida, maintain all applicable state and local business licenses, charters, permits, and a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida. Finally, it must be in good standing in its principal jurisdiction.

**Requirements in Corporate Documents (Section 14)**

This bill requires that the articles of incorporation, certificate of incorporation, or articles of organization (articles) of a family trust company or licensed family trust company must contain the name adopted by the company. The name must be distinguishable from other family trust companies or trust companies. The articles must provide the purpose for which the company is formed, and must clearly identify the restricted activities permissible to a family trust company or licensed family trust company. The articles must state that the company will not offer its services to the general public and state that the articles will not be amended without the prior

written consent of the OFR. Any proposed amendment to the articles, bylaws, or operating agreement to a family trust company must be submitted to the OFR for review and approval at least 30 days before the amendment is filed or effective.

### **Minimum Capital Requirements (Section 15)**

A licensed family trust company that has one designated relative may not be organized or operated with an owners' capital account of less than \$250,000. The minimum owners' equity shall be increased to \$350,000 if two designated relatives of the licensed family trust company are named in the application for a license or in the annual license renewal. A family trust company may not be organized or operated with owners' equity of less than \$250,000. The initial minimum owners' equity of a family trust company or licensed family trust company must be composed of cash, government obligations or secured deposits, or marketable securities.

### **Directors in Licensed and Unlicensed Family Trust Companies (Section 16)**

This bill vests exclusive authority to manage a family trust company or licensed family trust company in a board of directors or, if the company is a LLC, a board of directors or managers. A family trust company or licensed family trust company shall have at least three directors or managers. At least one director or manager of the company must be a resident of Florida.

A licensed family trust company must notify the OFR of the proposed appointment of an individual to the board of directors or addition as a member (if an LLC) or the appointment or employment of an individual as an officer or manager or member acting in a managerial capacity at least 60 days before such appointment or employment becomes effective if (1) the company has been licensed for less than 2 years, (2) the company has undergone a change in control within the preceding 2 years, or (3) the company is operating under a cease and desist order. The OFR shall issue a notice of disapproval if it finds that the proposed appointment or employment would cause the licensed family trust company to violate provisions of the Family Trust Act.

### **Bond and Insurance Requirements (Section 17)**

This bill requires the directors or managers of a licensed family trust company to procure and maintain fidelity bonds of at least \$1 million on all active officers, directors, managers, members acting in a managerial capacity, and employees of the company in order to indemnify the company against loss because of a dishonest, fraudulent, or criminal act or omission. In lieu of the fidelity bonds, a licensed family trust company may increase its minimum owners' equity required by \$1 million so that if it has one designated relative, it is organized or operated with an owners' equity of at least \$1.25 million or if it has two designated relatives it is organized or operated with an owners' equity of at least \$1.35 million. A licensed family trust company must also procure and maintain an errors and omissions insurance policy of at least \$1 million in which it is listed as the insured to cover the acts of officers, directors, managers, and members acting in a managerial capacity.

A family trust company or licensed family trust company may also procure and maintain other insurance policies necessary or desirable in connection with the business of the company, including, but not limited to, one or more casualty insurance policies.

A family trust company that is not a licensed family trust company may procure and maintain fidelity bonds and may procure and maintain errors and omissions insurance coverage but is not required to do so.

### **Record Keeping (Section 18)**

Each family trust company and licensed family trust company must maintain its fiduciary books and records separate and distinct from other company records. It must segregate all assets held in any fiduciary capacity from other company assets. Assets received or held in a fiduciary capacity by a family trust company or licensed family trust company are not subject to the debts or obligations of the company.

### **Renewal of Licenses or Registrations (Section 19)**

This bill requires family trust companies, licensed family trust companies, and foreign licensed family trust companies to file annual renewal applications with the OFR. This bill provides information which must be provided on each type of application. It provides for renewal fees of \$750 for a family trust company, \$1,500 for a licensed family trust company, and \$1,000 for a foreign licensed family trust company.

### **Licensed Family Trust Company Discontinuing Business (Section 20)**

If a licensed family trust company desires to discontinue business as a licensed family trust company, it must file with the OFR a certified copy of the resolution of the board of directors authorizing that action. Upon discharge from all fiduciary duties which it has undertaken, the company must provide certification of such discharge and voluntarily relinquish its license to operate as a licensed family trust company to the OFR. Once it has done so, the licensed family trust company is released from any fidelity bonds.

### **Investments (Section 23)**

This bill describes the type of assets which may be held to form the minimum capital of a licensed or unlicensed family trust company for all periods subsequent to its initial owners' equity contribution. In general, the minimum capital must be retained in liquid investments and the aggregate market value of these assets must be at least 100 percent of the company's required owners' equity. If the assets value falls below the minimum, the company has 5 days to cure the problem.

This bill authorizes a family trust company or licensed family trust company to purchase or rent real or personal property for use in the conduct of the business or other activities. A family trust company or licensed family trust company may invest its funds, other than the minimum capital account, in any type or character of equity securities, debt securities, or other assets.

This bill places restrictions and requirements on a family trust company or licensed family trust company to the extent it desires to purchase or invest as a fiduciary for a fiduciary estate in securities of which the family trust company, licensed family trust company or a family affiliate has an interest. First, the investment cannot be expressly prohibited by the instrument

establishing the fiduciary relationship. The family trust company or licensed family trust company must obtain the written consent of other fiduciaries. Finally, the family trust company or licensed family trust company must notify persons to whom it sends account statements of the investment, the fees it will receive, and the nature of the relationship between the family trust company and the investment company.

### **Examinations, Investigations and Discipline by the OFR (Sections 28, 29, 30, 31)**

This bill provides that the OFR must conduct an examination of a licensed family trust company, family trust company, and foreign licensed family trust company at least once every 18 months. The licensed family trust company, family trust company, and foreign licensed family trust company must pay the OFR a fee for the costs of the examination. The OFR must determine whether the family trust company or licensed family trust company is operating in compliance with relevant statutes and rules. In lieu of an examination, the OFR may accept an audit of a family trust company, licensed family trust company, or foreign licensed family trust company by a certified public accountant who is independent of the company, or other person or entity acceptable to the OFR. In addition, the OFR may conduct an examination or investigation of a family trust company, licensed family trust company, or foreign licensed family trust company at any time to determine if a company has violated or is about to violate any provision of the financial institutions codes or the rules adopted by the Financial Services Commission. The following acts or conduct constitute grounds for the revocation by the OFR of the license of a licensed family trust company:

- The company is not a family trust company.
- A violation of specified provisions of the Florida Family Trust Company Act.
- A violation of chapter 896, relating to financial transactions offenses, or any similar state or federal law or a violation of any rule of the Financial Service Commission or order of the OFR.
- A breach of any written agreement with the OFR.
- A failure to provide information or documents to the OFR upon written request.
- An act of commission or omission or a practice that is a breach of trust or of fiduciary duty.

Upon a finding that a licensed family trust company has committed any of the above acts, the OFR may enter an order suspending the company's license and provide notice of its intention to revoke the license and of the opportunity for a hearing pursuant to the Administrative Procedures Act. The licensed family trust company shall have 90 days to wind up its affairs after license revocation. If after 90 days the company is still in operation, the OFR may seek an order from the circuit court for the annulment or dissolution of the company.

The OFR may issue and serve a complaint stating charges upon a family trust company, licensed family trust company, or foreign licensed family trust company, or upon a family trust company-affiliated party,<sup>17</sup> if the OFR has reason to believe that such company, family trust company-affiliated party, or individual named therein is engaging in or has engaged in conduct that:

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<sup>17</sup> A "family trust company-affiliated party" is a director, officer, manager, employee, or controlling stockholder or member of a family trust company, licensed family trust company, or foreign licensed family trust company. The term also includes a stockholder, member, or any other person as determined by the OFR who participates in the affairs of a family trust company, licensed family trust company, or foreign licensed family trust company.

- Indicates that the company is not a family trust company or foreign licensed family trust company.
- Is a violation of relevant provisions of the Florida Family Trust Company Act.
- Is a violation of any rule of the Financial Services Commission or any order of the OFR.
- Is a breach of any written agreement with the OFR.
- Is a prohibited act or practice pursuant to the Florida Family Trust Company Act.
- Is a willful failure to provide information or documents to the OFR upon written request.
- Is an act of commission or omission or a practice that is a breach of trust or of fiduciary duty.

The complaint must contain a statement of facts and a notice of opportunity for a hearing pursuant to the Administrative Procedures Act. If no hearing is requested or if a hearing is held and the OFR finds that any of the charges are true, the OFR may enter an order directing the family trust company, licensed family trust company, or foreign licensed family trust company, or family trust company-affiliated party, or the individual named therein to cease and desist from engaging in the conduct complained of and to take corrective action. A failure to respond to the complaint justifies the entry of a cease and desist order by the OFR. This bill also contains provisions allowing the OFR to enter an emergency cease and desist order.

If a family trust company, licensed family trust company, or foreign licensed family trust company fails to timely submit its annual certification or any other required report, the OFR may impose a fine of up to \$100 for each day that the report is overdue. The failure to provide the annual certification within 60 days after the end of the calendar year will automatically result in termination of registration of a family trust company or revocation of the license of a licensed family trust company.

### **Grounds for Removal of a Family Trust Company Affiliated Party (Section 32)**

The OFR may issue and serve upon a licensed family trust company or a family trust company and a family trust company-affiliated party a complaint stating charges if the OFR has reason to believe that the family trust company-affiliated party is engaging or has engaged in conduct that:

- Demonstrates that the company is not a family trust company.
- Is a violation of various provisions of the Florida Family Trust Company Act.
- Is a violation of any other law involving fraud or felony moral turpitude.
- Is a violation of chapter 896, relating to financial transactions or similar state or federal law.
- Is a willful violation of a rule of the Financial Services Commission, a willful violation of an order of the OFR, or a willful breach of a written agreement with the OFR.
- Is an act of commission or omission or a practice that is a breach of trust or fiduciary duty.

The complaint must contain a statement of facts and give notice of an opportunity for an administrative hearing. If no hearing is requested or if a hearing is held and the OFR finds that any of the charges in the complaint is true, the OFR may enter an order removing the family trust company-affiliated party or restricting or prohibiting participation by the family trust company-affiliated party in the affairs of the family trust company, licensed family trust company, or other state financial institution, subsidiary, or service corporation.

This bill provides that the OFR may enter an emergency order suspending the family trust company-affiliated party if a family trust company-affiliated party is charged with a felony in a state, a federal court, or certain foreign courts which involves a violation of law relating to fraud,

currency transaction reporting, money laundering, theft, or moral turpitude. The emergency order must contain notice of an opportunity for a hearing.

### **Confidentiality of Books and Records (Section 33)**

Section 33 provides that the books and records<sup>18</sup> of a family trust company, licensed family trust company, and foreign licensed family trust company are confidential.<sup>19</sup> This bill provides that the books and records shall be made available for inspection only:

- To the OFR or its authorized representative.
- To any person authorized to act for the company.
- As compelled by a court, pursuant to a subpoena issued pursuant to the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, or the Federal Rules of Civil Procedure.
- Pursuant to a subpoena issued in accordance with state or federal law.
- As authorized by the board of directors or the managers of the corporation or LLC.

This bill further provides that each customer, stockholder, or member (if the company is a LLC) has the right to inspect the books and records of a family trust company or licensed family trust company as they pertain to his or her accounts or the determination of his or her voting rights.

This bill provides that the books and records pertaining to customers, members, and stockholders of a family trust company or licensed family trust company must be kept confidential by the company and its directors, managers, officers, and employees. The books and records of customers, members, and stockholders, with limited exceptions, may not be released except upon the express authorization of the customer as to his or her own accounts or a stockholder or member regarding his or her voting rights. Violation of provisions relating to unlawful disclosure of confidential information is a third degree felony.

The confidentiality provisions do not apply to a foreign licensed family trust company. The laws of the jurisdiction of its principal place of business govern the rights of customers, members, and stockholders to inspect its books and records.

### **Records Relating to the OFR Examination (Section 34)**

A family trust company, licensed family trust company, and foreign licensed family trust company must keep full and complete records of the names and residences of all the shareholders or members of the trust company and the number of shares or membership units held by each. It must also keep records of the ownership percentage of each shareholder or member. The records are subject to the inspection of all the shareholders or members of the trust company, and the officers authorized to assess taxes under state authority. A current list of shareholders or members shall be made available to the OFR and shall be submitted to the OFR upon request.

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<sup>18</sup> This bill defines “books and records” as including an application for a license and any documents connected with the application, the OFR’s corresponding investigation granting or denying the issuance of the license, the initial registration documents of a family trust company or foreign licensed family trust company, the annual certification made by a family trust company, licensed family trust company, or foreign licensed family trust company, and the documentation submitted to the OFR in connection with a licensed family trust company discontinuing its business.

<sup>19</sup> The books and records here are not held by a state agency so Art. I, s. 23, Fla. Const., is not implicated here.

This bill requires the OFR to retain examination reports, investigatory reports, documents relating to family trust company licensure or registration, annual certifications by all types of family trust companies, and documents relating to licensed family trust companies discontinuing business for 10 years.

This bill provides that a copy of any document on file with the OFR which is certified by the OFR as being a true copy may be introduced in evidence as if it were the original.

This bill provides that orders issued by courts or 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. 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 documents shall be subject to further orders by the court or the administrative law judge to protect the confidentiality of the documents. An order directing the release of information is immediately reviewable. A petition by the OFR for review of the order stays any further proceedings in the trial court or the administrative hearing until the disposition of the petition by the reviewing court. If any other party files a petition for review, it will operate as a stay of the proceedings only upon order of the reviewing court.

#### **Domestication of a Foreign Family Trust Company (Section 35)**

A foreign family trust company in good standing with the state regulatory agency in the jurisdiction where it is organized may become domesticated in Florida by filing a certificate of domestication and articles of incorporation with the Department of State. It must also file an application for a license as a licensed family trust company or file registration forms with the OFR.

#### **Registration of Foreign FTC (Section 36)**

A foreign licensed family trust company in good standing with the state regulatory agency in the jurisdiction under the law of which it is organized may qualify to begin operations in Florida by filing an application with the Department of State or to apply for a statement of foreign qualification to transact business in Florida. It must also file an initial registration to begin operations as a foreign licensed family trust company. If a company in operation on the effective date of this bill meets the definition of a family trust company, it must apply for licensure as a licensed family trust company, register as a family trust company or foreign licensed family trust company, or cease doing business in Florida within 90 days.

#### **Miscellaneous Provisions (Sections 24, 25, 26, 27, 38, 39, and 40)**

Section 24 of this bill provides who can make an oath, affirmation, affidavit, or acknowledgment on behalf of a family trust company or licensed family trust company.

Section 25 of this bill provides that a family trust company, a licensed family trust company, or a foreign licensed family trust company may not advertise its services to the public.

Section 26 provides that a licensed family trust company is not required to provide or otherwise post a bond to serve as a court-appointed fiduciary.

Section 27 provides that the Financial Services Commission may adopt rules necessary to carry out the purposes of this bill.

Section 38 allows a family trust company, a licensed family trust company, or a foreign licensed family trust company to engage in certain transactions authorized by the Florida Family Trust Company Act without violating the duty of loyalty in s. 736.0802, F.S.

Section 39 provides that a licensed family trust company or a foreign licensed family trust company is not required to file a bond when acting as a guardian pursuant to the Florida Guardianship Law.

Section 40 provides an effective date of October 1, 2015, contingent upon the passage of a public records bill. The public records bill linked to this bill is SB 1320.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

This bill provides that an applicant for licensure as a licensed family trust company must pay a \$10,000 application fee and a licensed family trust company must pay a \$1,500 annual renewal fee.

Applicants for registration as a family trust company or foreign licensed family trust company must pay a \$5,000 registration fee. A family trust company must pay a \$750 annual renewal fee and a foreign licensed family trust company must pay a \$1,000 annual renewal fee.

This bill requires a licensed family trust company, family trust company, and foreign licensed family trust company to pay the OFR a fee for the costs of examinations required under this bill.

All fees collected pursuant to this bill are deposited in the Financial Institutions Regulatory Trust Fund.

**B. Private Sector Impact:**

This bill could make Florida a more attractive jurisdiction for the establishment of family trust companies.

**C. Government Sector Impact:**

The OFR will have an increased workload but the OFR anticipates existing legal resources are sufficient to handle the increased workload.<sup>20</sup>

**VI. Technical Deficiencies:**

**VII. None. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 662.10, 662.102, 662.111, 662.112, 662.113, 662.114, 662.115, 662.120, 662.121, 662.1215, 662.122, 662.1225, 662.123, 662.124, 662.125, 662.126, 662.127, 662.128, 662.129, 662.130, 662.131, 662.132, 662.133, 662.134, 662.135, 662.140, 662.141, 662.142, 662.143, 662.144, 662.145, 662.146, 662.147, 662.150, and 662.151.

This bill amends the following sections of the Florida Statutes: 120.80, 655.005, 736.0802, and 744.351.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 25, 2014:**

The committee adopted an amendment making numerous technical changes to this bill.

The amendment:

- Clarified that the Florida Family Trust Act is to be included within the Financial Institutions Codes.
- Provided for the treatment of confidential records or information in judicial or administrative proceedings from the linked public records bill.
- Clarified the definitions of “capital account,” “foreign licensed family trust company,” and “officer.”
- Clarified the permissible use of “trust” in a family trust company’s name.

<sup>20</sup> Office of Financial Regulation, SB 1238 Legislative Bill Analysis (March 7, 2014)(on file with the Senate Committee on Banking and Insurance).

- Clarified that licensees and registrants certify compliance with other applicable state and federal laws and regulations.
- Clarified that the powers of any family trust company type apply as to its eligible members and individuals.
- Removed language providing for limited confidentiality of emergency orders by the OFR.
- Provided rulemaking authority for the Financial Services Commission instead of the OFR.
- Changed the effective date to October 1, 2015.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (k) of subsection (1) of section  
655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the  
context otherwise requires, the term:

(k) "Financial institutions codes" means:



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11           1. Chapter 655, relating to financial institutions  
12 generally;  
13           2. Chapter 657, relating to credit unions;  
14           3. Chapter 658, relating to banks and trust companies;  
15           4. Chapter 660, relating to trust business;  
16           5. Chapter 662, relating to family trust companies;  
17           6.5. Chapter 663, relating to international banking;  
18           7.6. Chapter 665, relating to associations; and  
19           8.7. Chapter 667, relating to savings banks.  
20           Section 2. Chapter 662, Florida Statutes, consisting of ss.  
21 662.10-662.151, Florida Statutes, to be entitled "Family Trust  
22 Companies," is created.  
23           Section 3. Section 662.10, Florida Statutes, is created to  
24 read:  
25           662.10 Short title.—This chapter may be cited as the  
26 "Florida Family Trust Company Act."  
27           Section 4. Section 662.102, Florida Statutes, is created to  
28 read:  
29           662.102 Purpose.—The purpose of the Family Trust Company  
30 Act is to establish requirements for licensing family trust  
31 companies, to provide regulation of those persons who provide  
32 fiduciary services to family members of no more than two  
33 families and their related interests as a family trust company,  
34 and to establish the degree of regulatory oversight required of  
35 the Office of Financial Regulation over such companies. Unlike  
36 trust companies formed under chapter 658, there is no public  
37 interest to be served outside of ensuring that fiduciary  
38 activities performed by a family trust company are restricted to  
39 family members and their related interests and as otherwise



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40 provided for in this chapter. Therefore, family trust companies  
41 are not financial institutions within the meaning of the  
42 financial institutions codes, and licensure of these companies  
43 pursuant to chapters 658 and 660 should not be required as it  
44 would not promote the purposes of the codes as set forth in s.  
45 655.001. Consequently, the Office of Financial Regulation is not  
46 responsible for regulating family trust companies to ensure  
47 their safety and soundness, and the responsibility of the office  
48 is limited to ensuring that fiduciary services provided by such  
49 companies are restricted to family members and related interests  
50 and not to the general public.

51 Section 5. Section 662.111, Florida Statutes, is created to  
52 read:

53 662.111 Definitions.—As used in this chapter, the term:

54 (1) "Applicant" means the corporation or limited liability  
55 company on whose behalf an application for a license to operate  
56 as a licensed family trust company is submitted under s.  
57 662.121.

58 (2) "Authorized representative" means an officer or  
59 director of a family trust company, licensed family trust  
60 company, or foreign licensed family trust company, if organized  
61 as a corporation; or a manager, officer, or member of a family  
62 trust company, licensed family trust company, or foreign  
63 licensed family trust company, if organized as a limited  
64 liability company.

65 (3) "Capital account" means the aggregate value of  
66 unimpaired capital stock based on the par value of the shares,  
67 plus any unimpaired surplus and undivided profits or retained  
68 earnings of a family trust company organized as a corporation;



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69 or the initial cash investment remitted for membership interests  
70 in a family trust company organized as a limited liability  
71 company, plus any undivided profits or retained earnings of the  
72 limited liability company.

73 (4) "Capital stock" means the shares of stock issued to  
74 create nonwithdrawable capital for a corporation, or membership  
75 interests issued to create nonwithdrawable capital for a limited  
76 liability company.

77 (5) "Collateral kinship" means a relationship that is not  
78 lineal but derives from a common ancestor.

79 (6) "Commercial banking" means the business of receiving  
80 demand and time deposits, paying checks, or lending money to the  
81 public.

82 (7) "Commission" means the Financial Services Commission.

83 (8) "Controlling stockholder or member" means an individual  
84 who owns or has the ability or power to directly or indirectly  
85 vote at least 10 percent or more of the outstanding shares,  
86 membership interest, or membership units of the family trust  
87 company or licensed family trust company.

88 (9) "Designated relative" means a common ancestor of a  
89 family, who may be a living or deceased person, and who is so  
90 designated in the application for a license or annual license.

91 (10) "Family affiliate" means a company or other entity in  
92 which one or more family members own, control, or have the power  
93 to directly or indirectly vote more than 50 percent of a class  
94 of voting securities of that company or other entity.

95 (11) "Family member" means:

96 (a) A designated relative.

97 (b) A person within the fourth degree of lineal kinship to



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98 a designated relative of a family trust company, or a person  
99 within the sixth degree of lineal kinship to a designated  
100 relative of a licensed family trust company.

101 (c) A person within the seventh degree of collateral  
102 kinship to a designated relative of a family trust company, or a  
103 person within the ninth degree of collateral kinship to a  
104 designated relative of a licensed family trust company.

105 (d) The spouse or former spouse of an individual qualifying  
106 as a family member and an individual who is within the fifth  
107 degree of lineal kinship to that spouse or former spouse.

108 (e) A family affiliate.

109 (f) A trust established by a family member if the trust is  
110 funded exclusively by one or more family members. A trust to  
111 which property has been transferred as a result of a family  
112 member's exercise of a power of appointment shall be deemed  
113 established by that family member if all qualified beneficiaries  
114 of the appointee trust are family members.

115 (g) A trust established by an individual who is not a  
116 family member if all of the noncharitable qualified  
117 beneficiaries of the trust are family members, except that a  
118 trust composed exclusively of nonindividual qualified  
119 beneficiaries is considered to be a family member if all of the  
120 nonindividual qualified beneficiaries are charitable foundations  
121 or other charitable entities as described in paragraph (j).

122 (h) The probate estate of a family member.

123 (i) The probate estate of an individual who is not a family  
124 member if all of the noncharitable beneficiaries of the estate  
125 are family members, except that an estate composed exclusively  
126 of nonindividual beneficiaries is considered to be a family



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127 member if all of the nonindividual beneficiaries are charitable  
128 foundations or other charitable entities as described in  
129 paragraph (j).

130 (j) A charitable foundation or other charitable entity in  
131 which a majority of the governing body is composed of family  
132 members.

133 (12) "Family trust company" means a corporation or limited  
134 liability company that:

135 (a) Is exclusively owned by one or more family members.

136 (b) Is organized or qualified to do business in this state.

137 (c) Acts or proposes to act as a fiduciary to serve one or  
138 more family members.

139 (d) Does not serve as a fiduciary for a person, entity,  
140 trust, or estate that is not a family member, except that it may  
141 serve as a fiduciary for up to 35 individuals who are not family  
142 members if the individuals are current or former employees of  
143 the family trust company or one or more trusts, companies, or  
144 other entities that are family members.

145 (13) "Family trust company-affiliated party" means:

146 (a) A director, officer, manager, employee, or controlling  
147 stockholder or member of a family trust company, licensed family  
148 trust company, or foreign licensed family trust company; or

149 (b) A stockholder, a member, or any other person as  
150 determined by the office who participates in the affairs of a  
151 family trust company, licensed family trust company, or foreign  
152 licensed family trust company.

153 (14) "Financial institutions codes" has the same meaning as  
154 provided in s. 655.005(1).

155 (14) "Foreign licensed family trust company" means a family



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156 trust company that:

157 (a) Is licensed by a state in the United States other than  
158 this state or the District of Columbia.

159 (b) Has its principal place of business in a state in the  
160 United States other than this state or the District of Columbia.

161 (c) Is operated in accordance with family or private trust  
162 company laws of the state in which it is licensed or of the  
163 District of Columbia.

164 (d) Is subject to statutory or regulatory mandated  
165 supervision by the state in which the principal place of  
166 business is located or by the District of Columbia.

167 (e) Is not owned by, or a subsidiary of, a corporation,  
168 limited liability company, or other business entity that is  
169 organized in or licensed by any foreign country as defined in s.  
170 663.01(3).

171 (16) "Licensed family trust company" means a family trust  
172 company that operates in accordance with this chapter and has  
173 been issued a license that has not been revoked or suspended by  
174 the office.

175 (17) "Lineal kinship" means a family member who is in the  
176 direct line of ascent or descent from a designated relative.

177 (18) "Office" means the Office of Financial Regulation.

178 (19) "Officer" of a family trust company means an  
179 individual, regardless of whether the individual has an official  
180 title or receives a salary or other compensation, who may  
181 participate in the major policymaking functions of a family  
182 trust company, other than as a director. The term does not  
183 include an individual who may have an official title and  
184 exercise discretion in the performance of duties and functions,



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185 but who does not participate in determining the major policies  
186 of the family trust company and whose decisions are limited by  
187 policy standards established by other officers, regardless of  
188 whether the policy standards have been adopted by the board of  
189 directors. The chair of the board of directors, the president,  
190 the chief officer, the chief financial officer, the senior trust  
191 officer, and all executive vice presidents of a family trust  
192 company, and all managers if organized as a limited liability  
193 company, are presumed to be executive officers unless such  
194 officer is excluded, by resolution of the board of directors or  
195 members or by the bylaws or operating agreement of the family  
196 trust company, other than in the capacity of a director, from  
197 participating in major policymaking functions of the family  
198 trust company, and such excluded officer does not actually  
199 participate therein.

200 (20) "Qualified beneficiary" has the same meaning as  
201 provided in s. 736.0103.

202 Section 6. Section 662.112, Florida Statutes, is created to  
203 read:

204 662.112 Degrees of kinship.—Degrees of kinship shall be  
205 calculated by adding the number of steps from a designated  
206 relative through each person to the family member, directly in  
207 the case of lineal kinship, or through the common ancestor in  
208 the case of collateral kinship.

209 Section 7. Section 662.114, Florida Statutes, is created to  
210 read:

211 662.114 Family trust company and foreign licensed family  
212 trust company licensing not required.—A family trust company or  
213 foreign licensed family trust company is not required to be a



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214 licensed family trust company.

215 Section 8. Section 662.115, Florida Statutes, is created to  
216 read:

217 662.115 Applicability of chapter to a family trust company  
218 or foreign licensed family trust company.-

219 (1) A family trust company that is not a licensed family  
220 trust company or a foreign licensed family trust company is  
221 subject to the provisions of this chapter unless the provisions  
222 are expressly limited in applicability to a licensed family  
223 trust company or foreign licensed family trust company.

224 (2) A licensed family trust company is subject to the  
225 provisions of this chapter that expressly refer to a licensed  
226 family trust company or that are not expressly limited to a  
227 family trust company that is not a licensed family trust company  
228 or to a foreign licensed family trust company.

229 (3) A foreign licensed family trust company is subject to  
230 the provisions of this chapter that expressly state that such  
231 provisions apply to a foreign licensed family trust company.

232 Section 9. Section 662.120, Florida Statutes, is created to  
233 read:

234 662.120 Maximum number of designated relatives.-

235 (1) A family trust company may not have more than one  
236 designated relative.

237 (2) A licensed family trust company may not have more than  
238 two designated relatives, and the designated relatives may not  
239 have a common ancestor within five generations.

240 Section 10. Section 662.121, Florida Statutes, is created  
241 to read:

242 662.121 Application for licensed family trust company;



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243 fees.—An applicant seeking to operate as a licensed family trust  
244 company must file an application with the office on forms  
245 prescribed by the office, accompanied by a nonrefundable \$10,000  
246 application fee to be deposited into the Financial Institutions'  
247 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of  
248 administering this chapter. The application must contain or be  
249 accompanied by:

250 (1) The name of the proposed licensed family trust company.

251 (2) A copy of the articles of incorporation or articles of  
252 organization and the bylaws or operating agreement of the  
253 proposed licensed family trust company.

254 (3) The physical address and mailing address of the  
255 proposed licensed family trust company, which must be located in  
256 this state.

257 (4) A statement describing in detail the services that will  
258 be provided to family members by the proposed licensed family  
259 trust company.

260 (5) The name and biographical information of each  
261 individual who will initially serve as a director, officer,  
262 manager, or member acting in a managerial capacity of the  
263 proposed licensed family trust company.

264 (6) The name and biographical information of each  
265 individual who owns or has the ability or power to directly or  
266 indirectly vote at least 10 percent or more of the outstanding  
267 shares, membership interest, or membership units of the proposed  
268 licensed family trust company.

269 (7) The names of the designated relatives.

270 (8) The amount of the initial capital account of the  
271 proposed licensed family trust company and the form in which the



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272 capital was paid and will be maintained.

273 (9) The type and amount of bonds or insurance that will be  
274 procured and maintained on directors, officers, managers, or  
275 members acting in a managerial capacity or employees pursuant to  
276 s. 662.126.

277 (10) A statement signed by the applicant, or by the  
278 individual signing on behalf of the proposed licensed family  
279 trust company, under penalty of perjury, affirming that the  
280 following statements are true:

281 (a) The proposed licensed family trust company is not  
282 currently transacting business with the general public.

283 (b) No director, officer, manager, or member served as a  
284 director, officer, or manager, or acted in a managerial  
285 capacity, for a trust company or any other financial institution  
286 that had a license issued under the financial institutions codes  
287 or by the Federal Government or any other state, the District of  
288 Columbia, a territory of the United States, or a foreign country  
289 that was suspended or revoked within the 10 years preceding the  
290 date of the application.

291 (c) No director, officer, manager, or member acting in a  
292 managerial capacity has been convicted of, pled guilty or nolo  
293 contendere, regardless of whether adjudication of guilt is  
294 entered by the court, to a violation of the financial  
295 institutions codes, including s. 655.50, chapter 896, or similar  
296 state or federal law or related rule, or to a crime involving  
297 fraud, misrepresentation, or moral turpitude.

298 (d) No director, officer, manager, or member acting in a  
299 managerial capacity has had a professional license suspended or  
300 revoked within the 10 years preceding the date of the



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301 application.

302 (e) All information contained in the application is true  
303 and correct to the best knowledge of the individual signing the  
304 application on behalf of the proposed licensed family trust  
305 company.

306 (11) Any other additional information reasonably required  
307 by the office.

308 Section 11. Section 662.1215, Florida Statutes, is created  
309 to read:

310 662.1215 Investigation of license applicants.—

311 (1) For the purpose of this section, the application is not  
312 deemed to be filed until the applicant has provided the office  
313 with all information required to be included pursuant to s.  
314 662.121.

315 (2) Upon filing an application for a license to operate as  
316 a licensed family trust company, the office shall conduct an  
317 investigation to confirm:

318 (a) That the persons who will serve as directors or  
319 officers of the corporation or, if the applicant is a limited  
320 liability company, managers or members acting in a managerial  
321 capacity, have not:

322 1. Been convicted of, or entered a plea of nolo contendere  
323 to, a crime involving fraud, misrepresentation, or moral  
324 turpitude;

325 2. Been convicted of, or pled nolo contendere to, a  
326 violation of the financial institutions codes, including s.  
327 655.50, chapter 896, or similar state or federal law;

328 3. Been directors, officers, managers, or members of a  
329 financial institution licensed or chartered under the financial



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330 institutions codes or by the Federal Government or any other  
331 state, the District of Columbia, a territory of the United  
332 States, or a foreign country, whose license or charter was  
333 suspended or revoked within the 10 years preceding the date of  
334 the application;

335 4. Had a professional license suspended or revoked within  
336 the 10 years preceding the date of the application; or

337 5. Made a false statement of material fact on the  
338 application.

339 (b) That the name of the proposed company complies with s.  
340 662.123.

341 (c) That capital accounts of the proposed company conform  
342 to s. 662.124 and that fidelity bonds and errors and omissions  
343 insurance coverage required under s. 662.126 are issued and  
344 effective.

345 (d) That the articles of incorporation or articles of  
346 organization conform to s. 662.123(1).

347 (3) If the investigation required under this section  
348 confirms that the applicant has met the requirements of ss.  
349 662.1225, 662.123(1), 662.124, 662.125, and 662.126, and that  
350 the persons who will serve as directors or officers of the  
351 corporation or the managers or members acting in a managerial  
352 capacity of the limited liability company, as applicable,  
353 satisfy the criteria set forth in subsection (2), the office  
354 shall issue a license authorizing the applicant to operate as a  
355 licensed family trust company.

356 (4) If the office determines the criteria in subsection (2)  
357 have not been met, the office shall serve notice of its intent  
358 to deny the application and of the applicant's opportunity to



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359 request a hearing pursuant to ss. 120.569 and 120.57.

360 Section 12. Section 662.122, Florida Statutes, is created  
361 to read:

362 662.122 Registration of a family trust company or a foreign  
363 licensed family trust company.-

364 (1) A family trust company that is not applying under s.  
365 662.121 to become a licensed family trust company must register  
366 with the office before beginning operations in this state. The  
367 registration application must:

368 (a) Provide the name of the designated relative.

369 (b) State that the family trust company is a family trust  
370 company as defined under this chapter and that its operations  
371 will comply with ss. 662.1225, 662.125, 662.131, and 662.134.

372 (c) Provide the current telephone number and street address  
373 of the physical location in this state of its principal place of  
374 operations where its books and records will be maintained.

375 (d) List the name and current street address in this state  
376 of its registered agent.

377 (2) A foreign licensed family trust company must register  
378 with the office before beginning operations in this state.

379 (a) The registration application must state that its  
380 operations will comply with ss. 662.1225, 662.125, 662.131, and  
381 662.134 and that it is currently in compliance with the family  
382 trust company laws and regulations of its principal  
383 jurisdiction.

384 (b) The registration application must provide:

385 1. The current telephone number and street address of the  
386 physical location of its principal place of business in its  
387 principal jurisdiction.



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388        2. The current telephone number and street address of the  
389 physical location in this state of its principal place of  
390 operations where its books and records pertaining to its  
391 operations in this state will be maintained.

392        3. The current telephone number and street address of the  
393 physical location of any other offices located within this  
394 state.

395        4. The name and current street address in this state of its  
396 registered agent.

397        (c) The registration must include a certified copy of a  
398 certificate of good standing, or an equivalent document,  
399 authenticated by the official having custody of records in the  
400 jurisdiction where the foreign licensed family trust company is  
401 organized, along with satisfactory proof that the company is  
402 organized in a manner similar to a family trust company as  
403 defined under this chapter.

404        (3) The registration application required under this  
405 section for a family trust company and a foreign licensed family  
406 trust company must be accompanied by a nonrefundable  
407 registration fee of \$5,000.

408        (4) Registration applications required by this section  
409 shall be submitted on a form prescribed by the office and be  
410 signed, under penalty of perjury, by an officer or director if  
411 the family trust company is organized as a corporation, or by a  
412 manager, officer, or member if the family trust company is  
413 organized as a limited liability company.

414        (5) All fees received by the office pursuant to this  
415 section shall be deposited into the Financial Institutions'  
416 Regulatory Trust Fund pursuant to s. 655.049 for purposes of



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417 administering this chapter.

418       Section 13. Section 662.1225, Florida Statutes, is created  
419 to read:

420       662.1225 Requirements for a family trust company, licensed  
421 family trust company, and foreign licensed family trust  
422 company.—

423       (1) A family trust company and a licensed family trust  
424 company shall maintain:

425       (a) A principal office physically located in this state  
426 where original or true copies of all records and accounts of the  
427 family trust company or licensed family trust company may be  
428 accessed and made readily available for examination by the  
429 office in accordance with this chapter. A family trust company  
430 or licensed family trust company may also maintain one or more  
431 branch offices within or outside of this state.

432       (b) A registered agent who has an office in this state at  
433 the street address of the registered agent.

434       (c) All applicable state and local business licenses,  
435 charters, and permits.

436       (d) A deposit account with a state-chartered or national  
437 financial institution that has a principal or branch office in  
438 this state.

439       (2) In order to operate in this state, a foreign licensed  
440 family trust company must be in good standing in its principal  
441 jurisdiction and maintain:

442       (a) An office physically located in this state where  
443 original or true copies of all records and accounts of the  
444 foreign licensed family trust company pertaining to its  
445 operations in this state may be accessed and made readily



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446 available for examination by the office in accordance with this  
447 chapter.

448 (b) A registered agent who has an office in this state at  
449 the street address of the registered agent.

450 (c) All applicable state and local business licenses,  
451 charters, and permits.

452 (d) A deposit account with a state-chartered or national  
453 financial institution that has a principal or branch office in  
454 this state.

455 Section 14. Section 662.123, Florida Statutes, is created  
456 to read:

457 662.123 Organizational documents; use of term "family  
458 trust" in name.-

459 (1) The articles of incorporation, certificate of  
460 incorporation, or articles of organization of a family trust  
461 company or licensed family trust company must contain:

462 (a) The name adopted by the company, which must distinguish  
463 the company from any other trust company formed in this state or  
464 engaged in the business of a trust company, family trust  
465 company, or licensed family trust company in this state. If the  
466 term "trust" is included in the name adopted by a family trust  
467 company, it must be immediately preceded by the term "family" so  
468 as to distinguish the entity from a trust company operating  
469 under chapter 658. This paragraph does not apply to a foreign  
470 licensed family trust company using a fictitious name that is  
471 registered and maintained pursuant to s. 865.09 and that  
472 distinguishes it.

473 (b) The purpose for which the company is formed, which must  
474 clearly identify the restricted activities permissible to a



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475 family trust company or licensed family trust company under this  
476 chapter.

477 (c) A statement that the company will not offer its  
478 services to the general public.

479 (d) A statement affirming that the articles of  
480 incorporation, certificate of incorporation, or articles of  
481 organization will not be amended without prior written notice to  
482 the office.

483 (2) A proposed amendment to the articles of incorporation,  
484 articles of organization, bylaws, or articles of organization of  
485 a limited liability company, family trust company, or licensed  
486 family trust company must be submitted to the office for review  
487 at least 30 days before it is filed or effective. An amendment  
488 is not considered filed or effective if the office issues a  
489 notice of disapproval with respect to the proposed amendment.

490 (3) The term "family trust" in the name adopted by a family  
491 trust company or licensed family trust company does not  
492 disqualify the name from being allowed under s. 605.0112 or s.  
493 607.0401.

494 Section 15. Section 662.124, Florida Statutes, is created  
495 to read:

496 662.124 Minimum capital account required.—

497 (1) A licensed family trust company that has one designated  
498 relative may not be organized or operated with an owners'  
499 capital account of less than \$250,000. The minimum capital  
500 account shall be increased to \$350,000 if two designated  
501 relatives of the licensed family trust company are named in the  
502 application for a license or in the annual license renewal. A  
503 family trust company may not be organized or operated with a



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504 capital account of less than \$250,000.

505 (2) The full amount of the initial capital account of a  
506 family trust company or licensed family trust company must be  
507 composed of one or more of the asset groups described in s.  
508 662.132(1)(a), exclusive of all organization expenses.

509 Section 16. Section 662.125, Florida Statutes, is created  
510 to read:

511 662.125 Directors or managers.—

512 (1) Exclusive authority to manage a family trust company or  
513 licensed family trust company is vested in a board of directors,  
514 if a corporation, or a board of directors or managers, if a  
515 limited liability company.

516 (2) A family trust company or licensed family trust company  
517 shall have at least three directors, if a corporation, or three  
518 directors or managers, if a limited liability company. At least  
519 one director or manager of the company must be a resident of  
520 this state.

521 (3) The licensed family trust company shall notify the  
522 office of the proposed appointment of an individual to the board  
523 of directors or addition as a member, or the appointment or  
524 employment of an individual as an officer or manager or member  
525 acting in a managerial capacity or equivalent position, at least  
526 60 days before such appointment or employment becomes effective,  
527 if the company:

528 (a) Has been licensed for less than 2 years.

529 (b) Has undergone a change in control within the preceding  
530 2 years.

531 (c) Is operating under a cease and desist order.

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533 The notification must include the name and such biographical  
534 information as the office may reasonably require.

535 (4) A licensed family trust company may not appoint an  
536 individual to the board of directors, add a member, or appoint  
537 or employ an officer or manager or member acting in a managerial  
538 capacity or equivalent, if the office issues a notice of  
539 disapproval with respect to that person.

540 (5) The office shall issue a notice of disapproval if the  
541 office finds that the proposed appointment or employment of a  
542 person would otherwise cause the licensed family trust company  
543 to violate any of the requirements set forth in s.

544 662.121(10)(b)-(d) or s. 662.1215(2)(a).

545 Section 17. Section 662.126, Florida Statutes, is created  
546 to read:

547 662.126 Fidelity bonds; insurance.—

548 (1) The directors or managers of a licensed family trust  
549 company shall procure and maintain fidelity bonds on all active  
550 officers, directors, managers, members acting in a managerial  
551 capacity, and employees of the company, regardless of whether  
552 they receive a salary or other compensation from the company, in  
553 order to indemnify the company against loss because of a  
554 dishonest, fraudulent, or criminal act or omission on their  
555 part, whether acting alone or in combination with other persons.

556 (2) Each fidelity bond shall be issued in an amount of at  
557 least \$1 million.

558 (3) In lieu of the fidelity bonds required under subsection  
559 (1), a licensed family trust company may increase its capital  
560 account required under s. 662.124 by \$1 million so that if it  
561 has one designated relative, it is organized or operated with a



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562 capital account of at least \$1.25 million, or if it has two  
563 designated relatives, it is organized or operated with a capital  
564 account of at least \$1.35 million.

565 (4) The licensed family trust company shall also procure  
566 and maintain an errors and omissions insurance policy of at  
567 least \$1 million in which it is listed as the insured to cover  
568 the acts and omissions of officers, directors, managers, and  
569 members acting in a managerial capacity, regardless of whether  
570 the person receives a salary or other compensation from the  
571 company.

572 (5) A family trust company or licensed family trust company  
573 may also procure and maintain other insurance policies necessary  
574 or desirable in connection with the business of the company,  
575 including, but not limited to, one or more casualty insurance  
576 policies.

577 (6) A family trust company that is not a licensed family  
578 trust company may procure and maintain fidelity bonds as  
579 described in this section.

580 (7) A family trust company that is not a licensed family  
581 trust company may procure and maintain errors and omissions  
582 insurance coverage as described in this section.

583 Section 18. Section 662.127, Florida Statutes, is created  
584 to read:

585 662.127 Segregation of books, records, and assets;  
586 fiduciary assets not liable.-

587 (1) Each family trust company and licensed family trust  
588 company shall maintain its fiduciary books and records separate  
589 and distinct from other records of the company and shall  
590 segregate all assets held in any fiduciary capacity from other



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591 assets of the company.

592 (2) Assets received or held in a fiduciary capacity by a  
593 family trust company or licensed family trust company are not  
594 subject to the debts or obligations of the company.

595 Section 19. Section 662.128, Florida Statutes, is created  
596 to read:

597 662.128 Annual renewal.-

598 (1) Within 30 days after the end of each calendar year,  
599 family trust companies, licensed family trust companies, and  
600 foreign licensed family trust companies shall file their annual  
601 renewal application with the office.

602 (2) The license renewal application filed by a licensed  
603 family trust company must include a verified statement that:

604 (a) The licensed family trust company operated in full  
605 compliance with this chapter, chapter 896, or similar state or  
606 federal law, or any related rule or regulation. The application  
607 must include proof acceptable to the office that the company is  
608 a family trust company as defined under this chapter.

609 (b) Describes any material changes to its operations,  
610 principal place of business, directors, officers, managers,  
611 members acting in a managerial capacity, and designated  
612 relatives since the end of the preceding calendar year.

613 (3) The registration renewal application filed by a family  
614 trust company must include a verified statement by an officer of  
615 the company that it is a family trust company as defined under  
616 this chapter and that its operations are in compliance with ss.  
617 662.1225, 662.125, 662.131, and 662.134; chapter 896; or similar  
618 state or federal law, or any related rule or regulation, and  
619 include the name of its designated relative or relatives, if



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620 applicable, and the street address for its principal place of  
621 business.

622 (4) The registration renewal application filed by a foreign  
623 licensed family trust company must include a verified statement  
624 that its operations are in compliance with ss. 662.1225,  
625 662.125, 662.131, and 662.134 and in compliance with the family  
626 trust company laws and regulations of its principal  
627 jurisdiction. It must also provide:

628 (a) The current telephone number and street address of the  
629 physical location of its principal place of business in its  
630 principal jurisdiction.

631 (b) The current telephone number and street address of the  
632 physical location in this state of its principal place of  
633 operations where its books and records pertaining to its  
634 operations in this state are maintained.

635 (c) The current telephone number and address of the  
636 physical location of any other offices located in this state.

637 (d) The name and current street address in this state of  
638 its registered agent.

639 (e) Documentation satisfactory to the office that the  
640 foreign licensed family trust company is in compliance with the  
641 family trust company laws and regulations of its principal  
642 jurisdiction.

643 (5) The annual renewal application shall be submitted on a  
644 form prescribed by the office and signed under penalty of  
645 perjury by an authorized representative.

646 (6) A fee of \$750 for a family trust company, \$1,500 for a  
647 licensed family trust company, and \$1,000 for a foreign licensed  
648 family trust company shall be submitted with the annual renewal



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649 application. All fees received by the office pursuant to this  
650 section shall be deposited into the Financial Institutions'  
651 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of  
652 administering this chapter.

653 Section 20. Section 662.129, Florida Statutes, is created  
654 to read:

655 662.129 Discontinuing business.—If a licensed family trust  
656 company desires to discontinue business as a licensed family  
657 trust company, it must file with the office a certified copy of  
658 the resolution of the board of directors, or members if a  
659 limited liability company, authorizing that action. Upon  
660 discharge from all fiduciary duties which it has undertaken, the  
661 licensed family trust company shall provide certification of  
662 such discharge and voluntarily relinquish its license to operate  
663 as a licensed family trust company to the office, whereupon it  
664 shall be released from any fidelity bonds that it maintained  
665 pursuant to s. 662.126(1).

666 Section 21. Section 662.130, Florida Statutes, is created  
667 to read:

668 662.130 Powers of family trust companies, licensed family  
669 trust companies, and foreign licensed family trust companies.—

670 (1) A family trust company and a licensed family trust  
671 company may, for its eligible members and individuals:

672 (a) Act as a sole or copersonal representative, executor,  
673 or curator for probate estates being administered in a state or  
674 jurisdiction other than this state.

675 (b) Act as an attorney in fact or agent under a power of  
676 attorney, other than a power of attorney governed by chapter  
677 709.



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678       (c) Except as provided in s. 662.131, act within or outside  
679 this state as a sole fiduciary or cofiduciary, including acting  
680 as a trustee, advisory agent, assignee, assignee for the benefit  
681 of creditors, authenticating agent, bailee, bond or indenture  
682 trustee, conservator, conversion agent, custodian, escrow agent,  
683 fiscal or paying agent, financial advisor, guardian, investment  
684 advisor or manager, managing agent, purchase agent, receiver,  
685 registrar, safekeeping or subscription agent, transfer agent,  
686 except for public companies, warrant agent, or similar  
687 capacities generally performed by corporate trustees, and in so  
688 acting possess, purchase, sell, invest, reinvest, safekeep, or  
689 otherwise manage or administer the real or personal property of  
690 eligible members and individuals.

691       (d) Exercise the powers of a corporation or limited  
692 liability company incorporated or organized under the laws of  
693 this state, or qualified to transact business as a foreign  
694 corporation or limited liability company under the laws of this  
695 state, which are reasonably necessary to enable it to fully  
696 exercise, in accordance with commonly accepted customs and  
697 usages, a power conferred under this chapter.

698       (e) Delegate duties and powers, including investment  
699 functions under s. 518.112, in accordance with the powers  
700 granted to a trustee under chapter 736 or other applicable law,  
701 and retain agents, attorneys, accountants, investment advisers,  
702 or other individuals or entities to advise or assist the family  
703 trust company, licensed family trust company, or foreign  
704 licensed family trust company in the exercise of its powers and  
705 duties under this chapter and chapter 736. Such exercise of  
706 power may include, but is not limited to, retaining a bank trust



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707 department, or a public trust company, other than another family  
708 trust company, licensed family trust company, or foreign  
709 licensed family trust company.

710 (f) Perform all acts necessary for exercising the powers  
711 enumerated in this section or authorized by this chapter and  
712 other applicable laws of this state.

713 (2) Except as otherwise provided in s. 662.131, a foreign  
714 licensed family trust company that is in good standing in its  
715 principal jurisdiction may exercise all the trust powers in this  
716 state that a Florida family trust company may exercise.

717 Section 22. Section 662.131, Florida Statutes, is created  
718 to read:

719 662.131 Prohibitions.—Notwithstanding any provision of this  
720 chapter, a family trust company, licensed family trust company,  
721 or foreign licensed family trust company may not:

722 (1) Engage in commercial banking; however, it may establish  
723 accounts at financial institutions for its own purposes or on  
724 behalf of family members to whom it provides services pursuant  
725 to this chapter.

726 (2) Engage in fiduciary services with the public unless  
727 licensed pursuant to chapter 658.

728 (3) Serve as a personal representative or a copersonal  
729 representative of a probate estate administered in this state.

730 (4) Serve as an attorney in fact or agent, including as a  
731 co-attorney in fact or co-agent, under a power of attorney  
732 pursuant to chapter 709.

733 Section 23. Section 662.132, Florida Statutes, is created  
734 to read:

735 662.132 Investments.—



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736 (1) The assets forming the minimum capital account of a  
737 family trust company or licensed family trust company must:

738 (a) Consist of cash, United States Treasury obligations, or  
739 any combination thereof.

740 (b) Have an aggregate market value of at least 100 percent  
741 of the company's required capital account, as specified in s.  
742 662.124. If the aggregate market value of 100 percent of the  
743 company's capital account is, at any time, less than the amount  
744 required under s. 662.124, the company has 5 business days to  
745 bring such capital account into compliance with s. 662.124.

746 (2) A family trust company or licensed family trust company  
747 may purchase or rent real or personal property for use in the  
748 conduct of the business and other activities of the company.

749 (3) Notwithstanding any other provision of law, a family  
750 trust company or licensed family trust company may invest funds  
751 for its own account, other than those required or allowed under  
752 subsection (1) or subsection (2), in any type or character of  
753 equity securities, debt securities, or other assets.

754 (4) Notwithstanding any other law, a family trust company  
755 or licensed family trust company may, while acting as a  
756 fiduciary, purchase directly from underwriters or distributors  
757 or in the secondary market:

758 (a) Bonds or other securities underwritten or distributed  
759 by:

760 1. The family trust company or licensed family trust  
761 company;

762 2. A family affiliate; or

763 3. A syndicate, including the family trust company,  
764 licensed family trust company, or family affiliate.



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765 (b) Securities of an investment company, including a mutual  
766 fund, closed-end fund, or unit investment trust, as defined  
767 under the federal Investment Company Act of 1940, for which the  
768 family trust company or licensed family trust company acts as an  
769 advisor, custodian, distributor, manager, registrar, shareholder  
770 servicing agent, sponsor, or transfer agent.

771 (5) The authority granted in subsection (4) may be  
772 exercised only if:

773 (a) The investment is not expressly prohibited by the  
774 instrument, judgment, decree, or order establishing the  
775 fiduciary relationship.

776 (b) The family trust company or licensed family trust  
777 company procures in writing the consent of any cofiduciaries  
778 with discretionary investment powers to the investment.

779 (c) The family trust company or licensed family trust  
780 company discloses in writing to the person or persons to whom it  
781 sends account statements its intent to exercise the authority  
782 granted in subsection (4) before the first exercise of that  
783 authority, and each such disclosure reflects:

784 1. The nature of any interest the family trust company or  
785 licensed family trust company has, or is reasonably expected to  
786 have, in the underwriting or distribution of bonds or securities  
787 purchased.

788 2. The nature and amount of any fee or other compensation  
789 received, or reasonably expected to be received, by the family  
790 trust company or licensed family trust company in connection  
791 with the transaction.

792 3. The nature of the relationship between the family trust  
793 company or licensed family trust company and an investment



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794 company described in paragraph (4) (b) .  
795 4. The nature and amount of any fee or other compensation  
796 received, or reasonably expected to be received, by the family  
797 trust company or licensed family trust company for providing  
798 services to an investment company described in paragraph (4) (b) .  
799 (6) Subsections (4) and (5) do not affect the degree of  
800 prudence required of fiduciaries under the laws of this state.  
801 However, a purchase of bonds or securities pursuant to  
802 subsections (4) and (5) is not presumed to be affected by a  
803 conflict between the fiduciary's personal and fiduciary  
804 interests if such purchase:  
805 (a) Is negotiated at a fair price.  
806 (b) Is in accordance with:  
807 1. The interest of the qualified beneficiaries.  
808 2. The purposes of the trusts.  
809 (c) Otherwise complies with:  
810 1. The prudent investor rule in s. 518.11, or other prudent  
811 investor or similar rule under other applicable law, unless such  
812 compliance is waived in accordance with s. 518.11 or other  
813 applicable law.  
814 2. The terms of the instrument, judgment, decree, or order  
815 establishing the fiduciary relationship.  
816 (7) Notwithstanding subsections (1)-(6), a family trust  
817 company or licensed family trust company may not, while acting  
818 as a fiduciary, purchase a bond or security issued by the  
819 company or an affiliate thereof unless:  
820 (a) The family trust company or licensed family trust  
821 company is expressly authorized to do so by:  
822 1. The terms of the instrument creating the trust;



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823           2. A court order;  
824           3. The written consent of the settlor of the trust for  
825 which the family trust company or licensed family trust company  
826 is serving as trustee; or  
827           4. The written consent of every adult qualified beneficiary  
828 of the trust who, at the time of such purchase, is entitled to  
829 receive income under the trust or who would be entitled to  
830 receive a distribution of principal if the trust were  
831 terminated; and  
832           (b) The purchase of the security is at a fair price and  
833 complies with:  
834           1. The prudent investor rule in s. 518.11, or other prudent  
835 investor or similar rule under other applicable law, unless such  
836 compliance is waived in accordance with s. 518.11 or other  
837 applicable law.  
838           2. The terms of the instrument, judgment, decree, or order  
839 establishing the fiduciary relationship.  
840           (8) Except as otherwise expressly limited by this section,  
841 a family trust company or licensed family trust company, while  
842 acting as a fiduciary, is also authorized, without limiting any  
843 powers otherwise conferred on fiduciaries by law, to do any of  
844 the following, which are not presumed to be affected by a  
845 conflict between the fiduciary's personal and fiduciary  
846 interests:  
847           (a) Make an equity investment in a closely held entity that  
848 may or may not be marketable and that is directly or indirectly  
849 owned or controlled by one or more family members.  
850           (b) Place a security transaction using a broker who is a  
851 family member.



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852       (c) Enter into an agreement with a family member who is the  
853 settlor or a qualified beneficiary of a trust with respect to  
854 the appointment of the family trust company or licensed family  
855 trust company as a fiduciary of the trust, or with respect to  
856 the compensation of the family trust company and licensed family  
857 trust company for service as a fiduciary.

858       (d) Transact business with a family member.

859       (e) Transact business with or invest in any asset of  
860 another trust, estate, guardianship, or conservatorship for  
861 which the family trust company or licensed family trust company  
862 is a fiduciary or in which a family member has an interest.

863       (f) Deposit trust assets in a financial institution that is  
864 owned, controlled, or operated by one or more family members.

865       (g) Purchase, sell, hold, own, or invest in a security,  
866 bond, real or personal property, stock, or other asset of a  
867 family member.

868       (h) With or without adequate security, lend money to or  
869 borrow money from a family member or a trust, estate, or  
870 guardianship for which the family trust company or licensed  
871 family trust company serves as a fiduciary.

872       (9) If not inconsistent with and subject to the terms of  
873 subsections (4)-(8), the duty of loyalty under s. 736.0802  
874 applies to family trust companies, licensed family trust  
875 companies, and foreign licensed family trust companies when  
876 serving as trustee of a trust whose administration is subject to  
877 chapter 736.

878       Section 24. Section 662.133, Florida Statutes, is created  
879 to read:

880       662.133 Oaths, affidavits, and acknowledgments.-If a family



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881 trust company or licensed family trust company is required to  
882 make an oath, affirmation, affidavit, or acknowledgment  
883 regarding a fiduciary capacity in which it is acting or is  
884 preparing to act, a director or officer or, if the company is a  
885 limited liability company, a manager or officer expressly  
886 authorized by the family trust company or licensed family trust  
887 company, shall make and, if required, subscribe to such oath,  
888 affirmation, affidavit, or acknowledgment on behalf of the  
889 company.

890 Section 25. Section 662.134, Florida Statutes, is created  
891 to read:

892 662.134 Unlawful to advertise services.—A family trust  
893 company, licensed family trust company, or foreign licensed  
894 family trust company may not advertise its services to the  
895 public.

896 Section 26. Section 662.135, Florida Statutes, is created  
897 to read:

898 662.135 Service as court-appointed fiduciary; bond  
899 requirement.—A licensed family trust company is not required to  
900 provide or otherwise post a bond or other surety to serve as a  
901 court-appointed fiduciary in a proceeding brought or conducted  
902 in this state.

903 Section 27. Section 662.140, Florida Statutes, is created  
904 to read:

905 662.140 Rules.—The commission may adopt rules necessary to  
906 carry out the purposes of this chapter.

907 Section 28. Section 662.141, Florida Statutes, is created  
908 to read:

909 662.141 Examination, investigations, and fees.—The office



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910 may conduct an examination or investigation of a family trust  
911 company, licensed family trust company, or foreign licensed  
912 family trust company at any time it deems necessary to determine  
913 whether a family trust company, licensed family trust company,  
914 foreign licensed family trust company, or family trust company-  
915 affiliated person has violated or is about to violate any  
916 provision of the financial institution's codes or the rules  
917 adopted by the commission pursuant to such codes.

918 (1) The office shall conduct an examination of a licensed  
919 family trust company, family trust company, and foreign licensed  
920 family trust company at least once every 18 months.

921 (2) In lieu of an examination by the office, the office may  
922 accept an audit of a family trust company, licensed family trust  
923 company, or foreign licensed family trust company by a certified  
924 public accountant licensed to practice in this state who is  
925 independent of the company, or other person or entity acceptable  
926 to the office. If the office accepts an audit pursuant to this  
927 subsection, the office shall conduct the next required  
928 examination.

929 (3) The office shall examine the books and records of a  
930 family trust company or licensed family trust company as  
931 necessary to determine whether it is a family trust company or  
932 licensed family trust company as defined in this chapter, and is  
933 operating in compliance with ss. 662.1225, 662.125, 662.126,  
934 662.131, and 662.134, as applicable. The office may rely upon a  
935 certificate of trust, trust summary, or written statement from  
936 the trust company identifying the qualified beneficiaries of any  
937 trust or estate for which the family trust company serves as a  
938 fiduciary and the qualification of the qualified beneficiaries



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939 as permissible recipients of company services. The commission  
940 may establish by rule the records to be maintained or  
941 requirements necessary to demonstrate conformity with this  
942 chapter as a family trust company or licensed family trust  
943 company.

944 (4) The office shall examine the books and records of a  
945 foreign licensed family trust company as necessary to determine  
946 if it is a foreign licensed trust company as defined in this  
947 chapter and is in compliance with ss. 662.1225, 662.125,  
948 662.130(2), 662.131, and 662.134. In connection with an  
949 examination of the books and records of the company, the office  
950 may rely upon the most recent examination report or review or  
951 certification letters or similar documentation issued by the  
952 regulatory agency to which the foreign licensed family trust  
953 company is subject to supervision. The commission may establish  
954 by rule the records to be maintained or requirements necessary  
955 to demonstrate conformity with this chapter as a foreign  
956 licensed family trust company. The office's examination of the  
957 books and records of a foreign licensed family trust company is,  
958 to the extent practicable, limited to books and records of the  
959 operations in this state.

960 (5) For each examination of the books and records of a  
961 family trust company, licensed family trust company, or foreign  
962 licensed family trust company as authorized under this chapter,  
963 the trust company shall pay a fee for the costs of the  
964 examination by the office. As used in this section, the term  
965 "costs" means the salary and travel expenses of field staff  
966 which are directly attributable to the examination of the trust  
967 company and the travel expenses of any supervisory or support



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968 staff required as a result of examination findings. The mailing  
969 of payment for costs incurred must be postmarked within 30 days  
970 after the receipt of a notice stating that such costs are due.  
971 The office may levy a late payment of up to \$100 per day or part  
972 thereof that a payment is overdue, unless waived for good cause.  
973 However, if the late payment of costs is intentional, the office  
974 may levy an administrative fine of up to \$1,000 per day for each  
975 day the payment is overdue.

976 (6) All fees collected under this section must be deposited  
977 into the Financial Institutions' Regulatory Trust Fund pursuant  
978 to s. 655.049 for the purpose of administering this chapter.

979 Section 29. Section 662.142, Florida Statutes, is created  
980 to read:

981 662.142 Revocation of license.—

982 (1) The following acts or conduct constitutes grounds for  
983 the revocation by the office of the license of a licensed family  
984 trust company:

985 (a) The company is not a family trust company as defined in  
986 this chapter;

987 (b) A violation of s. 662.1225, s. 662.123(1)(a), s.  
988 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, s.  
989 662.131, s. 662.134, or s. 662.144;

990 (c) A violation of chapter 896, relating to financial  
991 transactions offenses, or any similar state or federal law or  
992 any related rule or regulation;

993 (d) A violation of any rule of the commission;

994 (e) A violation of any order of the office;

995 (f) A breach of any written agreement with the office;

996 (g) A prohibited act or practice under s. 662.131;



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997 (h) A failure to provide information or documents to the  
998 office upon written request; or

999 (i) An act of commission or omission that is judicially  
1000 determined to be a breach of trust or of fiduciary duty pursuant  
1001 to a court of competent jurisdiction.

1002 (2) Upon a finding that a licensed family trust company has  
1003 committed any of the acts set forth in paragraphs (1) (a)-(h),  
1004 the office may enter an order suspending the company's license  
1005 and provide notice of its intention to revoke the license and of  
1006 the opportunity for a hearing pursuant to ss. 120.569 and  
1007 120.57. If there has been a commission or omission under  
1008 paragraph (1) (i), the office may immediately enter an order  
1009 revoking the license. The licensed family trust company shall  
1010 have 90 days to wind up its affairs after license revocation. If  
1011 after 90 days the company is still in operation, the office may  
1012 seek an order from the circuit court for the annulment or  
1013 dissolution of the company.

1014 Section 30. Section 662.143, Florida Statutes, is created  
1015 to read:

1016 662.143 Cease and desist authority.—

1017 (1) The office may issue and serve upon a family trust  
1018 company, licensed family trust company, or foreign licensed  
1019 family trust company, or upon a family trust company-affiliated  
1020 party, a complaint stating charges if the office has reason to  
1021 believe that such company, family trust company-affiliated  
1022 party, or individual named therein is engaging in or has engaged  
1023 in conduct that:

1024 (a) Indicates that the company is not a family trust  
1025 company or foreign licensed family trust company as defined in



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1026 this chapter;  
1027 (b) Is a violation of s. 662.1225, s. 662.123(1) (a), s.  
1028 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, or  
1029 s. 662.134;  
1030 (c) Is a violation of any rule of the commission;  
1031 (d) Is a violation of any order of the office;  
1032 (e) Is a breach of any written agreement with the office;  
1033 (f) Is a prohibited act or practice pursuant to s. 662.131;  
1034 (g) Is a willful failure to provide information or  
1035 documents to the office upon written request;  
1036 (h) Is an act of commission or omission or a practice that  
1037 the office has reason to believe is a breach of trust or of  
1038 fiduciary duty; or  
1039 (i) Is a violation of chapter 896 or similar state or  
1040 federal law or any related rule or regulation.  
1041 (2) The complaint must contain the statement of facts and a  
1042 notice of opportunity for a hearing pursuant to ss. 120.569 and  
1043 120.57.  
1044 (3) If no hearing is requested within the time allowed by  
1045 ss. 120.569 and 120.57, or if a hearing is held and the office  
1046 finds that any of the charges are true, the office may enter an  
1047 order directing the family trust company, licensed family trust  
1048 company, or foreign licensed family trust company, or family  
1049 trust company-affiliated party, or the individual named therein  
1050 to cease and desist from engaging in the conduct complained of  
1051 and to take corrective action.  
1052 (4) If the family trust company, licensed family trust  
1053 company, foreign licensed family trust company, or family trust  
1054 company-affiliated party, or the individual named in such order,



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1055 fails to respond to the complaint within the time allotted in  
1056 ss. 120.569 and 120.57, such failure constitutes a default and  
1057 justifies the entry of a cease and desist order.

1058 (5) A contested or default cease and desist order is  
1059 effective when reduced to writing and served upon the family  
1060 trust company, licensed family trust company, or foreign  
1061 licensed family trust company, or family trust company-  
1062 affiliated party, or the individual named therein. An  
1063 uncontested cease and desist order is effective as agreed.

1064 (6) If the office finds that conduct described in  
1065 subsection (1) is likely to cause substantial prejudice to  
1066 members, shareholders, or beneficiaries of fiduciary accounts of  
1067 the family trust company, licensed family trust company, or  
1068 foreign licensed family trust company, or to beneficiaries of  
1069 services rendered by such company, it may issue an emergency  
1070 cease and desist order requiring the family trust company,  
1071 licensed family trust company, or foreign licensed family trust  
1072 company, family trust company-affiliated party, or individual  
1073 named therein to immediately cease and desist from engaging in  
1074 the conduct complained of and to take corrective action. The  
1075 emergency order is effective immediately upon service of a copy  
1076 of the order upon the family trust company, licensed family  
1077 trust company, or foreign licensed family trust company, or  
1078 family trust company-affiliated party and remains effective for  
1079 90 days. If the office begins nonemergency cease and desist  
1080 proceedings under subsection (1), the emergency order remains  
1081 effective until the conclusion of the proceedings under ss.  
1082 120.569 and 120.57.

1083 (7) A family trust company or foreign licensed family trust



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1084 company shall have 90 days to wind up its affairs after entry of  
1085 any order to cease and desist from operating as a family trust  
1086 company or foreign licensed family trust company. If, after 90  
1087 days, a family trust company is still operating, the office may  
1088 seek an order from the circuit court for the annulment or  
1089 dissolution of the company. If, after 90 days, a foreign  
1090 licensed family trust company is still operating, the office may  
1091 seek an injunction from the circuit court restraining the  
1092 company from continuing to operate in this state.

1093 Section 31. Section 662.144, Florida Statutes, is created  
1094 to read:

1095 662.144 Failure to submit required report; fines.—If a  
1096 family trust company, licensed family trust company, or foreign  
1097 licensed family trust company fails to submit within the  
1098 prescribed period its annual renewal or any other report  
1099 required by this chapter or any rule, the office may impose a  
1100 fine of up to \$100 for each day that the annual renewal or  
1101 report is overdue. Failure to provide the annual renewal within  
1102 60 days after the end of the calendar year shall automatically  
1103 result in termination of registration of a family trust company  
1104 or revocation of the license of a licensed family trust company.  
1105 The trust company shall thereafter have 90 days to wind up its  
1106 affairs.

1107 Section 32. Section 662.145, Florida Statutes, is created  
1108 to read:

1109 662.145 Grounds for removal.—

1110 (1) The office may issue and serve upon a licensed family  
1111 trust company or a family trust company and a family trust  
1112 company-affiliated party a complaint stating charges if the



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1113 office has reason to believe that the family trust company-  
1114 affiliated party is engaging or has engaged in conduct that:  
1115 (a) Demonstrates that the company is not a family trust  
1116 company as defined in this chapter;  
1117 (b) Is a prohibited act or practice under s. 662.131;  
1118 (c) Is a violation of s. 662.1225, s. 662.123(1) (a), s.  
1119 662.126, s. 662.127, s. 662.128, s. 662.130, or s. 662.134;  
1120 (d) Is a violation of any other law involving fraud or  
1121 moral turpitude which constitutes a felony;  
1122 (e) Is a violation of chapter 896, relating to offenses  
1123 related to financial transactions, or similar state or federal  
1124 law;  
1125 (f) Is a willful violation of a rule of the commission;  
1126 (g) Is a willful violation of an order of the office;  
1127 (h) Is a willful breach of a written agreement with the  
1128 office; or  
1129 (i) Is an act of commission or omission or a practice that  
1130 the office has reason to believe is a breach of trust or  
1131 fiduciary duty.  
1132 (2) The complaint must contain a statement of facts and a  
1133 notice of opportunity for a hearing pursuant to ss. 120.569 and  
1134 120.57.  
1135 (3) If no hearing is requested within the time allowed by  
1136 ss. 120.569 and 120.57, or if a hearing is held and the office  
1137 finds that any of the charges in the complaint is true, the  
1138 office may enter an order removing the family trust company-  
1139 affiliated party or restricting or prohibiting participation by  
1140 the family trust company-affiliated party in the affairs of the  
1141 family trust company, licensed family trust company, or state



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1142 financial institution, subsidiary, or service corporation.

1143 (4) If the family trust company-affiliated party fails to  
1144 respond to the complaint within the time allowed in ss. 120.569  
1145 and 120.57, such failure constitutes a default and justifies the  
1146 entry of an order of removal.

1147 (5) A contested or default order of removal is effective  
1148 when reduced to writing and served on the family trust company  
1149 or licensed family trust company and the family trust company-  
1150 affiliated party. An uncontested order of removal is effective  
1151 as agreed.

1152 (6) The chief executive officer, or the person holding the  
1153 equivalent office, of a family trust company or licensed family  
1154 trust company shall promptly notify the office if he or she has  
1155 actual knowledge that a family trust company-affiliated party is  
1156 charged with a felony in a state or federal court.

1157 (a) If a family trust company-affiliated party is charged  
1158 with a felony in a state or federal court, or in the courts of a  
1159 foreign country with which the United States maintains  
1160 diplomatic relations which involves a violation of law relating  
1161 to fraud, currency transaction reporting, money laundering,  
1162 theft, or moral turpitude and the charge is equivalent to a  
1163 felony charge under state or federal law, the office may enter  
1164 an emergency order suspending the family trust company-  
1165 affiliated party or restricting or prohibiting participation by  
1166 such company-affiliated party in the affairs of that particular  
1167 family trust company or licensed family trust company or any  
1168 financial institution, subsidiary, or service corporation, upon  
1169 service of the order upon the company and the family trust  
1170 company-affiliated party so charged.



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1171       (b) The order must contain notice of opportunity for a  
1172 hearing pursuant to ss. 120.569 and 120.57, at which the family  
1173 trust company-affiliated party may request a postsuspension  
1174 hearing to show that continued service to or participation in  
1175 the affairs of the family trust company or licensed family trust  
1176 company does not pose a threat to the interests of the company.  
1177 In accordance with applicable commission rules, the office shall  
1178 notify the family trust company-affiliated party whether the  
1179 order suspending or prohibiting the company-affiliated party  
1180 from participating in the affairs of a licensed family trust  
1181 company or family trust company, or state financial institution,  
1182 subsidiary, or service corporation will be rescinded or  
1183 otherwise modified. The emergency order remains in effect,  
1184 unless otherwise modified by the office, until the criminal  
1185 charge is disposed of. The acquittal of the family trust  
1186 company-affiliated party charged, or the final, unappealed  
1187 dismissal of all charges against such person, dissolves the  
1188 emergency order, but does not prohibit the office from  
1189 instituting proceedings under subsection (1). If the family  
1190 trust company-affiliated party charged is convicted or pleads  
1191 guilty or nolo contendere, regardless of adjudication, the  
1192 emergency order becomes final.

1193       (7) A family trust company-affiliated party removed from  
1194 office pursuant to this section is not eligible for reelection  
1195 to such position or to any official position in a family trust  
1196 company, licensed family trust company, or financial institution  
1197 in this state except with the written consent of the office. A  
1198 family trust company-affiliated party who is removed,  
1199 restricted, or prohibited from participation in the affairs of a



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1200 family trust company, licensed family trust company, or state  
1201 financial institution pursuant to this section may petition the  
1202 office for modification or termination of such removal,  
1203 restriction, or prohibition.

1204 (8) The resignation, termination of employment or  
1205 participation, or separation from a family trust company or a  
1206 licensed family trust company of the family trust company-  
1207 affiliated party does not affect the jurisdiction and authority  
1208 of the office to issue a notice and proceed under this section  
1209 against the company-affiliated party if such notice is served  
1210 before the end of the 6-year period beginning on the date such  
1211 person ceases to be a family trust company-affiliated party with  
1212 respect to such company.

1213 Section 33. Section 662.146, Florida Statutes, is created  
1214 to read:

1215 662.146 Confidentiality of books and records.-

1216 (1) The books and records of a family trust company,  
1217 licensed family trust company, and foreign licensed family trust  
1218 company are confidential and shall be made available for  
1219 inspection and examination only:

1220 (a) To the office or its authorized representative;

1221 (b) To any person authorized to act for the company;

1222 (c) As compelled by a court, pursuant to a subpoena issued  
1223 pursuant to the Florida Rules of Civil Procedure, the Florida  
1224 Rules of Criminal Procedure, or the Federal Rules of Civil  
1225 Procedure or pursuant to a subpoena issued in accordance with  
1226 state or federal law. Before the production of the books and  
1227 records of a family trust company, licensed family trust  
1228 company, or foreign licensed family trust company, the party



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1229 seeking production must reimburse the company for the reasonable  
1230 costs and fees incurred in compliance with the production. If  
1231 the parties disagree regarding the amount of reimbursement, the  
1232 party seeking the records may request the court having  
1233 jurisdiction to set the amount of reimbursement;

1234 (d) Pursuant to a subpoena, to any federal or state law  
1235 enforcement or prosecutorial instrumentality authorized to  
1236 investigate suspected criminal activity;

1237 (e) As authorized by the board of directors, if in  
1238 corporate form, or the managers, if in limited liability company  
1239 form; or

1240 (f) As provided in subsection (2).

1241 (2) (a) Each customer and stockholder, if a corporation, or  
1242 member, if a limited liability company, has the right to inspect  
1243 the books and records of a family trust company or licensed  
1244 family trust company as they pertain to his or her accounts or  
1245 the determination of his or her voting rights.

1246 (b) The books and records pertaining to customers, members,  
1247 and stockholders of a family trust company or licensed family  
1248 trust company shall be kept confidential by the company and its  
1249 directors, managers, officers, and employees. The books and  
1250 records of customers, members, and stockholders may not be  
1251 released except upon the express authorization of the customer  
1252 as to his or her own accounts or a stockholder or member  
1253 regarding his or her voting rights. However, information may be  
1254 released, without the authorization of a customer, member, or  
1255 shareholder in a manner prescribed by the board of directors, if  
1256 a corporation, or managers, if a limited liability company, to  
1257 verify or corroborate the existence or amount of a customer's



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1258 account if that information is reasonably provided to meet the  
1259 needs of commerce and to ensure accurate credit information.  
1260 Notwithstanding this paragraph, this subsection does not  
1261 prohibit a family trust company or licensed family trust company  
1262 from disclosing financial information referenced in this  
1263 subsection as permitted under 15 U.S.C. s. 6802, as amended.

1264 (c) A person who willfully violates a provision of this  
1265 section which relates to unlawful disclosure of confidential  
1266 information commits a felony of the third degree, punishable as  
1267 provided in s. 775.082, s. 775.083, or s. 775.084.

1268 (d) This subsection does not apply to a foreign licensed  
1269 family trust company. The laws of the jurisdiction of its  
1270 principal place of business govern the rights of customers,  
1271 members, and stockholders to inspect its books and records.

1272 (3) For purposes of this section, the term "books and  
1273 records" includes, but is not limited to, an application for a  
1274 license and any documents connected with the application under  
1275 s. 662.121; the office's corresponding investigation under s.  
1276 662.1215 in granting or denying the issuance of the license; the  
1277 initial registration documents of a family trust company or  
1278 foreign licensed family trust company under s. 662.122; the  
1279 annual renewal made by a family trust company, licensed family  
1280 trust company, or foreign licensed family trust company under s.  
1281 662.128; and the documentation submitted to the office in  
1282 connection with a licensed family trust company discontinuing  
1283 its business under s. 662.129.

1284 Section 34. Section 662.147, Florida Statutes, is created  
1285 to read:

1286 662.147 Records relating to the office examination; limited



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1287 restrictions on public access.-

1288 (1) A family trust company, licensed family trust company,  
1289 and foreign licensed family trust company shall keep at the  
1290 office it is required to maintain pursuant to s. 662.1225 full  
1291 and complete records of the names and residences of all the  
1292 shareholders or members of the trust company and the number of  
1293 shares or membership units held by each, as applicable, as well  
1294 as the ownership percentage of each shareholder or member, as  
1295 the case may be. The records are subject to the inspection of  
1296 all the shareholders or members of the trust company, and the  
1297 officers authorized to assess taxes under state authority,  
1298 during the normal business hours of the trust company. A current  
1299 list of shareholders or members shall be made available to the  
1300 office's examiners for their inspection and, upon the request of  
1301 the office, shall be submitted to the office.

1302 (2) The office shall retain for at least 10 years:

1303 (a) Examination reports.

1304 (b) Investigatory records.

1305 (c) The application for a license, any documents connected  
1306 with the application, and the office's corresponding  
1307 investigation in granting or denying the issuance of the  
1308 license.

1309 (d) The initial registration documents of a family trust  
1310 company or foreign licensed family trust company.

1311 (e) The annual renewal made by a family trust company,  
1312 licensed family trust company, or foreign licensed family trust  
1313 company.

1314 (f) The documentation submitted to the office in connection  
1315 with a licensed family trust company discontinuing its business



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1316 and any related information compiled by the office, or  
1317 photographic copies thereof.

1318 (3) A copy of any document on file with the office which is  
1319 certified by the office as being a true copy may be introduced  
1320 in evidence as if it were the original. The office shall  
1321 establish a schedule of fees for preparing true copies of  
1322 documents.

1323 (4) Orders issued by courts or administrative law judges  
1324 for the production of confidential records or information must  
1325 provide for inspection in camera by the court or the  
1326 administrative law judge. If the court or administrative law  
1327 judge determines that the documents requested are relevant or  
1328 would likely lead to the discovery of admissible evidence, the  
1329 documents shall be subject to further orders by the court or the  
1330 administrative law judge to protect the confidentiality thereof.  
1331 An order directing the release of information shall be  
1332 immediately reviewable, and a petition by the office for review  
1333 of the order shall automatically stay any further proceedings in  
1334 the trial court or the administrative hearing until the  
1335 disposition of the petition by the reviewing court. If any other  
1336 party files a petition for review, it will operate as a stay of  
1337 the proceedings only upon order of the reviewing court.

1338 Section 35. Section 662.150, Florida Statutes, is created  
1339 to read:

1340 662.150 Domestication of a foreign family trust company.-

1341 (1) A foreign family trust company lawfully organized and  
1342 currently in good standing with the state regulatory agency in  
1343 the jurisdiction where it is organized may become domesticated  
1344 in this state by:



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1345 (a) Filing with the Department of State a certificate of  
1346 domestication and articles of incorporation in accordance with  
1347 and subject to s. 607.1801 or by filing articles of conversion  
1348 in accordance with s. 605.1045; and

1349 (b) Filing an application for a license to begin operations  
1350 as a licensed family trust company in accordance with s.  
1351 662.121, which must first be approved by the office or by filing  
1352 the prescribed form with the office to register as a family  
1353 trust company to begin operations in accordance with s. 662.122.

1354 (2) A foreign family trust company may apply pursuant to  
1355 paragraph (1)(b) before satisfying the requirements of paragraph  
1356 (1)(a); however, upon receipt of a certificate of authority, the  
1357 company must satisfy the requirements of paragraph (1)(a) before  
1358 beginning operations.

1359 Section 36. Section 662.151, Florida Statutes, is created  
1360 to read:

1361 662.151 Registration of a foreign licensed family trust  
1362 company to operate in this state.—A foreign licensed family  
1363 trust company lawfully organized and currently in good standing  
1364 with the state regulatory agency in the jurisdiction under the  
1365 law of which it is organized may qualify to begin operations in  
1366 this state by:

1367 (1) Filing an application with the Department of State to  
1368 apply for a certificate of authority in accordance with and  
1369 subject to s. 605.0902 or s. 607.1503.

1370 (2) Filing an initial registration to begin operations as a  
1371 foreign licensed family trust company in accordance with and  
1372 subject to s. 662.122 and subject to the sections of this  
1373 chapter which specifically state that they apply to a foreign



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1374 licensed family trust company.

1375 (3) A company in operation as of the effective date of this  
1376 act that meets the definition of a family trust company shall  
1377 have 90 days from the effective date of this act to apply for  
1378 licensure as a licensed family trust company, register as a  
1379 family trust company or foreign licensed family trust company,  
1380 or cease doing business in this state.

1381 Section 37. Paragraph (a) of subsection (3) of section  
1382 120.80, Florida Statutes, is amended to read:

1383 120.80 Exceptions and special requirements; agencies.—

1384 (3) OFFICE OF FINANCIAL REGULATION.—

1385 (a) Notwithstanding s. 120.60(1), in proceedings for the  
1386 issuance, denial, renewal, or amendment of a license or approval  
1387 of a merger pursuant to title XXXVIII:

1388 1.a. The Office of Financial Regulation of the Financial  
1389 Services Commission shall have published in the Florida  
1390 Administrative Register notice of the application within 21 days  
1391 after receipt.

1392 b. Within 21 days after publication of notice, any person  
1393 may request a hearing. Failure to request a hearing within 21  
1394 days after notice constitutes a waiver of any right to a  
1395 hearing. The Office of Financial Regulation or an applicant may  
1396 request a hearing at any time prior to the issuance of a final  
1397 order. Hearings shall be conducted pursuant to ss. 120.569 and  
1398 120.57, except that the Financial Services Commission shall by  
1399 rule provide for participation by the general public.

1400 2. Should a hearing be requested as provided by sub-  
1401 subparagraph 1.b., the applicant or licensee shall publish at  
1402 its own cost a notice of the hearing in a newspaper of general



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1403 circulation in the area affected by the application. The  
1404 Financial Services Commission may by rule specify the format and  
1405 size of the notice.

1406 3. Notwithstanding s. 120.60(1), and except as provided in  
1407 subparagraph 4., an every application for license for a new  
1408 bank, new trust company, new credit union, ~~or~~ new savings and  
1409 loan association, or new licensed family trust company must  
1410 ~~shall~~ be approved or denied within 180 days after receipt of the  
1411 original application or receipt of the timely requested  
1412 additional information or correction of errors or omissions. An  
1413 ~~Any~~ application for such a license or for acquisition of such  
1414 control which is not approved or denied within the 180-day  
1415 period or within 30 days after conclusion of a public hearing on  
1416 the application, whichever is later, shall be deemed approved  
1417 subject to the satisfactory completion of conditions required by  
1418 statute as a prerequisite to license and approval of insurance  
1419 of accounts for a new bank, a new savings and loan association,  
1420 ~~or~~ a new credit union, or a new licensed family trust company by  
1421 the appropriate insurer.

1422 4. In the case of an every application for license to  
1423 establish a new bank, trust company, or capital stock savings  
1424 association in which a foreign national proposes to own or  
1425 control 10 percent or more of any class of voting securities,  
1426 and in the case of an every application by a foreign national  
1427 for approval to acquire control of a bank, trust company, or  
1428 capital stock savings association, the Office of Financial  
1429 Regulation shall request that a public hearing be conducted  
1430 pursuant to ss. 120.569 and 120.57. Notice of such hearing shall  
1431 be published by the applicant as provided in subparagraph 2. The



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1432 failure of ~~any~~ such foreign national to appear personally at the  
1433 hearing shall be grounds for denial of the application.

1434 Notwithstanding ~~the provisions of~~ s. 120.60(1) and subparagraph  
1435 3., every application involving a foreign national shall be  
1436 approved or denied within 1 year after receipt of the original  
1437 application or any timely requested additional information or  
1438 the correction of any errors or omissions, or within 30 days  
1439 after the conclusion of the public hearing on the application,  
1440 whichever is later.

1441 Section 38. Subsections (2) and (3) of section 736.0802,  
1442 Florida Statutes, are amended, and paragraph (i) is added to  
1443 subsection (5) of that section, to read:

1444 736.0802 Duty of loyalty.—

1445 (2) Subject to the rights of persons dealing with or  
1446 assisting the trustee as provided in s. 736.1016, a sale,  
1447 encumbrance, or other transaction involving the investment or  
1448 management of trust property entered into by the trustee for the  
1449 trustee's own personal account or which is otherwise affected by  
1450 a conflict between the trustee's fiduciary and personal  
1451 interests is voidable by a beneficiary affected by the  
1452 transaction unless:

1453 (a) The transaction was authorized by the terms of the  
1454 trust;

1455 (b) The transaction was approved by the court;

1456 (c) The beneficiary did not commence a judicial proceeding  
1457 within the time allowed by s. 736.1008;

1458 (d) The beneficiary consented to the trustee's conduct,  
1459 ratified the transaction, or released the trustee in compliance  
1460 with s. 736.1012;



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1461 (e) The transaction involves a contract entered into or  
1462 claim acquired by the trustee when that person had not become or  
1463 contemplated becoming trustee;

1464 (f) The transaction was consented to in writing by a  
1465 settlor of the trust while the trust was revocable; ~~or~~

1466 (g) The transaction is one by a corporate trustee that  
1467 involves a money market mutual fund, mutual fund, or a common  
1468 trust fund described in s. 736.0816(3); or

1469 (h) With regard to a trust that is administered by a family  
1470 trust company, licensed family trust company, or foreign  
1471 licensed family trust company operating under chapter 662, the  
1472 transaction is authorized by s. 662.132(4)-(8).

1473 (3) (a) A sale, encumbrance, or other transaction involving  
1474 the investment or management of trust property is presumed to be  
1475 affected by a conflict between personal and fiduciary interests  
1476 if the sale, encumbrance, or other transaction is entered into  
1477 by the trustee with:

1478 1. ~~(a)~~ The trustee's spouse;

1479 2. ~~(b)~~ The trustee's descendants, siblings, parents, or  
1480 their spouses;

1481 3. ~~(c)~~ An officer, director, employee, agent, or attorney of  
1482 the trustee; or

1483 4. ~~(d)~~ A corporation or other person or enterprise in which  
1484 the trustee, or a person that owns a significant interest in the  
1485 trustee, has an interest that might affect the trustee's best  
1486 judgment.

1487 (b) This subsection does not apply to a trust being  
1488 administered by a family trust company, licensed family trust  
1489 company, or foreign licensed family trust company operating



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1490 under chapter 662 if the sale, encumbrance, or other transaction  
1491 is authorized by s. 662.132(4)-(8).

1492 (5)

1493 (i) This subsection does not apply to a trust administered  
1494 by a family trust company, licensed family trust company, or  
1495 foreign licensed family trust company operating under chapter  
1496 662.

1497 Section 39. Subsection (5) of section 744.351, Florida  
1498 Statutes, is amended to read:

1499 744.351 Bond of guardian.—

1500 (5) Financial institutions as defined in s. 744.309(4),  
1501 other than a trust company operating under chapter 662 which is  
1502 not a licensed family trust company or foreign licensed family  
1503 trust company, and public guardians authorized by law to be  
1504 guardians ~~are shall~~ not ~~be~~ required to file bonds.

1505 Section 40. This act shall take effect October 1, 2015, if  
1506 HB 1269 or similar legislation is adopted in the same  
1507 legislative session or an extension thereof and becomes law.

1508  
1509 ===== T I T L E A M E N D M E N T =====

1510 And the title is amended as follows:

1511 Delete everything before the enacting clause  
1512 and insert:

1513 A bill to be entitled  
1514 An act relating to family trust companies; amending s.  
1515 655.005, F.S.; revising the definition of the term  
1516 "financial institutions codes"; creating chapter 662,  
1517 F.S.; creating s. 662.10, F.S.; providing a short  
1518 title; creating s. 662.102, F.S.; providing the



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1519 purpose of the act; creating s. 662.111, F.S.;

1520 defining terms; creating s. 662.112, F.S.; providing

1521 for the calculation of kinship; creating s. 662.114,

1522 F.S.; exempting a family trust company or foreign

1523 licensed family trust company from licensure; creating

1524 s. 662.115, F.S.; providing for the applicability of

1525 the chapter to a family trust company or foreign

1526 licensed family trust company; creating s. 662.120,

1527 F.S.; specifying the maximum number of designated

1528 relatives allowed for a family trust company and a

1529 licensed family trust company; creating s. 662.121,

1530 F.S.; providing procedures for applying for a family

1531 trust company license; requiring a fee; creating s.

1532 662.1215, F.S.; providing for investigations of

1533 applicants by the Office of Financial Regulation;

1534 creating s. 662.122, F.S.; providing procedures for

1535 the registration of a family trust company or a

1536 foreign licensed family trust company; requiring a

1537 fee; creating s. 662.1225, F.S.; providing

1538 requirements for a family trust company, licensed

1539 family trust company, and foreign licensed family

1540 trust company; creating s. 662.123, F.S.; requiring

1541 organizational documents to include certain

1542 provisions; authorizing the use of the term "trust";

1543 creating s. 662.124, F.S.; requiring a minimum capital

1544 account; creating s. 662.125, F.S.; vesting exclusive

1545 authority to manage a family trust company or licensed

1546 family trust company in a board of directors or

1547 managers; providing for appointment of directors and



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1548 managers; requiring certain notice to the office in  
1549 specified circumstances; requiring the office to issue  
1550 a notice of disapproval of a proposed appointment in  
1551 specified circumstances; creating s. 662.126, F.S.;  
1552 requiring that licensed family trust companies procure  
1553 and maintain fidelity bonds or specified minimum  
1554 capital account and errors and omissions insurance;  
1555 authorizing a family trust company that is not  
1556 licensed to procure and maintain such coverage;  
1557 authorizing licensed and unlicensed family trust  
1558 companies to procure and maintain other insurance  
1559 policies; creating s. 662.127, F.S.; requiring certain  
1560 books and records to be segregated; creating s.  
1561 662.128, F.S.; requiring annual license and  
1562 registration renewal; requiring a fee; creating s.  
1563 662.129, F.S.; providing for the discontinuance of a  
1564 licensed family trust company; creating s. 662.130,  
1565 F.S.; authorizing family trust companies to conduct  
1566 certain activities; creating s. 662.131, F.S.;  
1567 prohibiting certain activities on the part of family  
1568 trust companies; creating s. 662.132, F.S.; imposing  
1569 certain requirements on the assets that form the  
1570 minimum capital of licensed family trust companies and  
1571 family trust companies; authorizing such trust  
1572 companies to purchase or rent real or personal  
1573 property, invest funds, and, while acting as a  
1574 fiduciary, make certain purchases; imposing a  
1575 restriction on that authorization; clarifying the  
1576 degree of prudence required of fiduciaries;



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1577 restricting the authority of a fiduciary to purchase  
1578 certain bonds or securities; specifying additional  
1579 authority of fiduciaries; applying the duty of loyalty  
1580 to family trust companies in certain cases; creating  
1581 s. 662.133, F.S.; requiring certain officers,  
1582 directors, or managers of a licensed family trust  
1583 company or a family trust company to make an oath,  
1584 affirmation, affidavit, or acknowledgment on behalf of  
1585 the company in certain circumstances; creating s.  
1586 662.134, F.S.; prohibiting a family trust company from  
1587 advertising to the public; creating s. 662.135, F.S.;  
1588 providing that a licensed family trust company is not  
1589 required to post a bond to serve as a court-appointed  
1590 fiduciary; creating s. 662.140, F.S.; authorizing the  
1591 commission to adopt rules; creating s. 662.141, F.S.;  
1592 authorizing the office to conduct examinations and  
1593 investigations; requiring that family trust companies  
1594 be examined at least once every 18 months; authorizing  
1595 the office to accept an independent audit in lieu of  
1596 conducting an examination; requiring the office to  
1597 examine the books and records of a family trust  
1598 company or licensed family trust company; authorizing  
1599 the office to rely on a certificate of trust, trust  
1600 summary, or written statement in certain  
1601 circumstances; authorizing the commission to adopt  
1602 rules relating to records and requirements;  
1603 authorizing the office to examine the books and  
1604 records of a foreign licensed family trust company;  
1605 requiring family trust companies to pay examination



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1606 fees tied to actual costs incurred by the office;  
1607 providing a penalty for late payment and authorizing  
1608 an administrative fine if late payment is intentional;  
1609 creating s. 662.142, F.S.; providing for license  
1610 revocation; specifying acts and conduct that  
1611 constitute grounds for revocation; authorizing the  
1612 office to suspend a license pending revocation;  
1613 creating s. 662.143, F.S.; authorizing the office to  
1614 issue a cease and desist order and an emergency cease  
1615 and desist order; creating s. 662.144, F.S.;  
1616 authorizing the office to collect fines for the  
1617 failure to submit required reports; creating s.  
1618 662.145, F.S.; providing grounds for the removal of an  
1619 officer, director, manager, employee, or agent of a  
1620 licensed family trust company or a family trust  
1621 company; creating s. 662.146, F.S.; providing for the  
1622 confidentiality of certain company books and records;  
1623 creating s. 662.147, F.S.; providing requirements for  
1624 books and records of family trust companies; requiring  
1625 the office to retain certain records for a specified  
1626 time; allowing the introduction of certain copies into  
1627 evidence; requiring the office to establish a schedule  
1628 of fees for such copies; providing requirements for  
1629 orders issued by courts or administrative law judges  
1630 for the production of confidential records or  
1631 information; creating s. 662.150, F.S.; providing for  
1632 the domestication of a foreign family trust company;  
1633 creating s. 662.151, F.S.; providing for the  
1634 registration of a foreign licensed family trust



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1635 company; amending s. 120.80, F.S.; adding licensed  
1636 family trust companies to the entities regulated by  
1637 the office that are exempted from licensing timeframes  
1638 under ch. 120, F.S.; amending s. 736.0802, F.S.;  
1639 providing circumstances under which certain trust  
1640 transactions are not voidable by a beneficiary  
1641 affected by a transaction; providing circumstances  
1642 under which certain transactions involving the  
1643 investment or management of trust property are not  
1644 presumed to be affected by conflicts of interest;  
1645 providing an exception; amending s. 744.351, F.S.;  
1646 exempting a family trust company from certain bond  
1647 requirements and applying those requirements to  
1648 licensed family trust companies and foreign licensed  
1649 family trust companies; providing a contingent  
1650 effective date.

By Senator Richter

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1 A bill to be entitled  
 2 An act relating to family trust companies; creating  
 3 chapter 662, F.S.; creating s. 662.10, F.S.; providing  
 4 a short title; creating s. 662.102, F.S.; providing  
 5 the purpose of the act; creating s. 662.111, F.S.;  
 6 defining terms; creating s. 662.112, F.S.; providing  
 7 for the calculation of kinship; creating s. 662.113,  
 8 F.S.; providing for the applicability of financial  
 9 institutions codes; creating s. 662.114, F.S.;  
 10 exempting a family trust company or foreign licensed  
 11 family trust company from licensure; creating s.  
 12 662.115, F.S.; providing for the applicability of the  
 13 chapter to a family trust company or foreign licensed  
 14 family trust company; creating s. 662.120, F.S.;  
 15 specifying the maximum number of designated relatives  
 16 allowed for a family trust company and a licensed  
 17 family trust company; creating s. 662.121, F.S.;  
 18 providing procedures for applying for a family trust  
 19 company license; requiring a fee; creating s.  
 20 662.1215, F.S.; providing for investigations of  
 21 applicants by the Office of Financial Regulation;  
 22 creating s. 662.122, F.S.; providing procedures for  
 23 the registration of a family trust company or a  
 24 foreign licensed family trust company; requiring a  
 25 fee; creating s. 662.1225, F.S.; providing  
 26 requirements for a family trust company, licensed  
 27 family trust company, and foreign licensed family  
 28 trust company; creating s. 662.123, F.S.; requiring  
 29 organizational documents to include certain

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30 provisions; authorizing the use of the term "trust";  
 31 creating s. 662.124, F.S.; requiring a minimum amount  
 32 of owners' equity; creating s. 662.125, F.S.; vesting  
 33 exclusive authority to manage a family trust company  
 34 or licensed family trust company in a board of  
 35 directors or managers; providing for appointment of  
 36 directors and managers; requiring certain notice to  
 37 the office in specified circumstances; requiring the  
 38 office to issue a notice of disapproval of a proposed  
 39 appointment in specified circumstances; authorizing  
 40 the office to obtain criminal history information;  
 41 creating s. 662.126, F.S.; requiring that licensed  
 42 family trust companies procure and maintain fidelity  
 43 bonds or specified minimum owners' equity and errors  
 44 and omissions insurance; authorizing a family trust  
 45 company that is not licensed to procure and maintain  
 46 such coverage; authorizing licensed and unlicensed  
 47 family trust companies to procure and maintain other  
 48 insurance policies; creating s. 662.127, F.S.;  
 49 requiring certain books and records to be segregated;  
 50 creating s. 662.128, F.S.; requiring annual license  
 51 and registration renewal; requiring a fee; creating s.  
 52 662.129, F.S.; providing for the discontinuance of a  
 53 licensed family trust company; creating s. 662.130,  
 54 F.S.; authorizing family trust companies to conduct  
 55 certain activities; creating s. 662.131, F.S.;  
 56 prohibiting certain activities on the part of family  
 57 trust companies; creating s. 662.132, F.S.; imposing  
 58 certain requirements on the assets that form the

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59 minimum capital of licensed family trust companies and  
 60 family trust companies; authorizing such trust  
 61 companies to purchase or rent real or personal  
 62 property, invest funds, and, while acting as a  
 63 fiduciary, make certain purchases; imposing a  
 64 restriction on that authorization; clarifying the  
 65 degree of prudence required of fiduciaries;  
 66 restricting the authority of a fiduciary to purchase  
 67 certain bonds or securities; specifying additional  
 68 authority of fiduciaries; applying the duty of loyalty  
 69 to family trust companies in certain cases; creating  
 70 s. 662.133, F.S.; requiring certain officers,  
 71 directors, or managers of a licensed family trust  
 72 company or a family trust company to make an oath,  
 73 affirmation, affidavit, or acknowledgment on behalf of  
 74 the company in certain circumstances; creating s.  
 75 662.134, F.S.; prohibiting a family trust company from  
 76 advertising to the public; creating s. 662.135, F.S.;  
 77 providing that a licensed family trust company is not  
 78 required to post a bond to serve as a court-appointed  
 79 fiduciary; creating s. 662.140, F.S.; authorizing the  
 80 office to adopt rules; creating s. 662.141, F.S.;  
 81 authorizing the office to conduct examinations and  
 82 investigations; requiring that family trust companies  
 83 be examined at least once every 18 months; authorizing  
 84 the office to accept an independent audit in lieu of  
 85 conducting an examination; requiring the office to  
 86 examine the books and records of a family trust  
 87 company or licensed family trust company; authorizing

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88 the office to rely on a certificate of trust, trust  
 89 summary, or written statement in certain circumstances  
 90 and to adopt rules relating to records and  
 91 requirements; authorizing the office to examine the  
 92 books and records of a foreign licensed family trust  
 93 company; requiring family trust companies to pay  
 94 examination fees tied to actual costs incurred by the  
 95 office; providing a penalty for late payment and  
 96 authorizing an administrative fine if late payment is  
 97 intentional; creating s. 662.142, F.S.; providing for  
 98 license revocation; specifying acts and conduct that  
 99 constitute grounds for revocation; authorizing the  
 100 office to suspend a license pending revocation;  
 101 creating s. 662.143, F.S.; authorizing the office to  
 102 issue a cease and desist order and an emergency cease  
 103 and desist order; creating s. 662.144, F.S.;  
 104 authorizing the office to collect fines for the  
 105 failure to submit required reports; creating s.  
 106 662.145, F.S.; providing grounds for the removal of an  
 107 officer, director, manager, employee, or agent of a  
 108 licensed family trust company or a family trust  
 109 company; creating s. 662.146, F.S.; providing for the  
 110 confidentiality of certain company books and records;  
 111 creating s. 662.147, F.S.; providing requirements for  
 112 books and records of family trust companies; requiring  
 113 the office to retain certain records for a specified  
 114 time; allowing the introduction of certain copies into  
 115 evidence; requiring the office to establish a schedule  
 116 of fees for such copies; creating s. 662.150, F.S.;

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117 providing for the domestication of a foreign family  
 118 trust company; creating s. 662.151, F.S.; providing  
 119 for the registration of a foreign licensed family  
 120 trust company; amending s. 120.80, F.S.; adding  
 121 licensed family trust companies to the entities  
 122 regulated by the office that are exempted from  
 123 licensing timeframes under ch. 120, F.S.; amending s.  
 124 736.0802, F.S.; providing circumstances under which  
 125 certain trust transactions are not voidable by a  
 126 beneficiary affected by a transaction; providing  
 127 circumstances under which certain transactions  
 128 involving the investment or management of trust  
 129 property are not presumed to be affected by conflicts  
 130 of interest; providing an exception; amending s.  
 131 744.351, F.S.; exempting a family trust company from  
 132 certain bond requirements and applying those  
 133 requirements to licensed family trust companies and  
 134 foreign licensed family trust companies; providing a  
 135 contingent effective date.

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

138  
 139 Section 1. Chapter 662, Florida Statutes, consisting of ss.  
 140 662.10-662.151, Florida Statutes, to be entitled Family Trust  
 141 Companies, is created.

142 Section 2. Section 662.10, Florida Statutes, is created to  
 143 read:

144 662.10 Short Title.—This chapter may be cited as the  
 145 "Florida Family Trust Company Act."

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146 Section 3. Section 662.102, Florida Statutes, is created to  
 147 read:

148 662.102 Purpose.—The purpose of the Family Trust Company  
 149 Act is to establish requirements for licensing private trust  
 150 companies, to provide regulation of those persons who provide  
 151 fiduciary services to family members of no more than two  
 152 families and their related interests as a private family trust  
 153 company, and establish the degree of regulatory oversight  
 154 required of the Office of Financial Regulation over such  
 155 companies. Unlike trust companies formed under chapter 658,  
 156 there is no public interest to be served outside of ensuring  
 157 that fiduciary activities performed by a family trust company  
 158 are restricted to family members and their related interests and  
 159 as otherwise provided for in this chapter. Therefore, family  
 160 trust companies are not financial institutions within the  
 161 meaning of the financial institutions codes and licensure of  
 162 these companies pursuant to chapters 658 and 660 should not be  
 163 required as it would not promote the purposes of the codes as  
 164 set forth in s. 655.001. Consequently, the Office of Financial  
 165 Regulation is not responsible for regulating family trust  
 166 companies to ensure their safety and soundness, and the  
 167 responsibility of the office is limited to ensuring that  
 168 fiduciary services provided by such companies are restricted to  
 169 family members and related interests and not to the general  
 170 public.

171 Section 4. Section 662.111, Florida Statutes, is created to  
 172 read:

173 662.111 Definitions.—As used in this chapter, the term:  
 174 (1) "Applicant" means the corporation or limited liability

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175 company on whose behalf an application for a license to operate  
 176 as a licensed family trust company is submitted under s.  
 177 662.121.

178 (2) "Authorized representative" means an officer or  
 179 director of a family trust company, licensed family trust  
 180 company, or foreign licensed family trust company, if organized  
 181 as a corporation; or a manager, officer, or member of a family  
 182 trust company, licensed family trust company, or foreign  
 183 licensed family trust company, if organized as a limited  
 184 liability company.

185 (3) "Capital account" means the aggregate value of  
 186 unimpaired capital stock based on the par value of the shares,  
 187 plus any unimpaired surplus and undivided profits or retained  
 188 earnings of a family trust company organized as a corporation;  
 189 or the initial cash investment remitted for membership interests  
 190 in a family trust company organized as a limited liability  
 191 company, plus any undivided profits or retained earnings of the  
 192 limited liability company. For the purposes of determining  
 193 insolvency or imminent insolvency, the term does not include  
 194 allowances for loan or lease loss reserves, intangible assets,  
 195 subordinated debt, deferred tax assets, or similar assets.

196 (4) "Capital stock" means the shares of stock issued to  
 197 create nonwithdrawable capital for a corporation, or membership  
 198 interests issued to create nonwithdrawable capital for a limited  
 199 liability company.

200 (5) "Collateral kinship" means a relationship that is not  
 201 lineal but derives from a common ancestor.

202 (6) "Commercial banking" means the business of receiving  
 203 demand and time deposits, paying checks, or lending money to the

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204 public.

205 (7) "Controlling stockholder or member" means an individual  
 206 who owns or has the ability or power to directly or indirectly  
 207 vote at least 10 percent or more of the outstanding shares,  
 208 membership interest, or membership units of the family trust  
 209 company or licensed family trust company.

210 (8) "Designated relative" means a common ancestor of a  
 211 family, who may be a living or deceased person, and who is so  
 212 designated in the application for a license or annual license.

213 (9) "Family affiliate" means a company or other entity in  
 214 which one or more family members own, control, or have the power  
 215 to directly or indirectly vote more than 50 percent of a class  
 216 of voting securities of that company or other entity.

217 (10) "Family member" means:

218 (a) A designated relative.

219 (b) A person within the fourth degree of lineal kinship to  
 220 a designated relative of a family trust company, or a person  
 221 within the sixth degree of lineal kinship to a designated  
 222 relative of a licensed family trust company.

223 (c) A person within the seventh degree of collateral  
 224 kinship to a designated relative of a family trust company, or a  
 225 person within the ninth degree of collateral kinship to a  
 226 designated relative of a licensed family trust company.

227 (d) The spouse or former spouse of an individual qualifying  
 228 as a family member and an individual who is within the fifth  
 229 degree of lineal kinship to that spouse or former spouse.

230 (e) A family affiliate.

231 (f) A trust established by a family member if the trust is  
 232 funded exclusively by one or more family members. A trust to

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233 which property has been transferred as a result of a family  
 234 member's exercise of a power of appointment shall be deemed  
 235 established by that family member if all qualified beneficiaries  
 236 of the appointee trust are family members.

237 (g) A trust established by an individual who is not a  
 238 family member if all of the noncharitable qualified  
 239 beneficiaries of the trust are family members, except that a  
 240 trust composed exclusively of nonindividual qualified  
 241 beneficiaries is considered to be a family member if all of the  
 242 nonindividual qualified beneficiaries are charitable foundations  
 243 or other charitable entities as described in paragraph (j).

244 (h) The probate estate of a family member.

245 (i) The probate estate of an individual who is not a family  
 246 member if all of the noncharitable beneficiaries of the estate  
 247 are family members, except that an estate composed exclusively  
 248 of nonindividual beneficiaries is considered to be a family  
 249 member if all of the nonindividual beneficiaries are charitable  
 250 foundations or other charitable entities as described in  
 251 paragraph (j).

252 (j) A charitable foundation or other charitable entity in  
 253 which a majority of the governing body is composed of family  
 254 members.

255 (11) "Family trust company" means a corporation or limited  
 256 liability company that:

257 (a) Is exclusively owned by one or more family members.

258 (b) Is organized or qualified to do business in this state.

259 (c) Acts or proposes to act as a fiduciary to serve one or  
 260 more family members.

261 (d) Does not serve as a fiduciary for a person, entity,

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262 trust, or estate that is not a family member, except that it may  
 263 serve as a fiduciary for up to 35 individuals who are not family  
 264 members if the individuals are current or former employees of  
 265 the family trust company or one or more trusts, companies, or  
 266 other entities that are family members.

267 (12) "Family trust company-affiliated party" means:

268 (a) A director, officer, manager, employee, or controlling  
 269 stockholder or member of a family trust company, licensed family  
 270 trust company, or foreign licensed family trust company; or

271 (b) A stockholder, member, or any other person as  
 272 determined by the office who participates in the affairs of a  
 273 family trust company, licensed family trust company, or foreign  
 274 licensed family trust company.

275 (13) "Financial institutions codes" has the same meaning as  
 276 provided in s. 655.005(1).

277 (14) "Foreign licensed family trust company" means a family  
 278 trust company that:

279 (a) Is licensed by a state in the United States other than  
 280 this state.

281 (b) Has its principal place of business in a jurisdiction  
 282 in the United States other than this state.

283 (c) Is operated in accordance with family or private trust  
 284 company laws of a jurisdiction other than this state.

285 (d) Is subject to statutory or regulatory mandated  
 286 supervision by the jurisdiction in which the principal place of  
 287 business is located.

288 (15) "Licensed family trust company" means a family trust  
 289 company that operates in accordance with this chapter and has  
 290 been issued a license that has not been revoked or suspended by

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291 the office.292 (16) "Lineal kinship" means a family member who is in the  
293 direct line of ascent or descent from a designated relative.294 (17) "Office" means the Office of Financial Regulation.295 (18) "Officer" of a family trust company means an  
296 individual, regardless of whether the individual has an official  
297 title or receives a salary or other compensation, who may  
298 participate in the major policymaking functions of a family  
299 trust company, other than as a director. The term does not  
300 include an individual who may have an official title and  
301 exercise discretion in the performance of duties and functions,  
302 but who does not participate in determining the major policies  
303 of the family trust company and whose decisions are limited by  
304 policy standards established by other officers, regardless of  
305 whether the policy standards have been adopted by the board of  
306 directors. The chair of the board of directors, the president,  
307 the chief executive officer, the chief financial officer, and  
308 all executive vice presidents of a family trust company, and the  
309 senior trust officer of a family trust company, are presumed to  
310 be executive officers unless such officer is excluded, by  
311 resolution of the board of directors or members or by the bylaws  
312 or operating agreement of the family trust company, other than  
313 in the capacity of a director, from participating in major  
314 policymaking functions of the family trust company, and the  
315 individual holding such office so excluded does not actually  
316 participate therein.317 (19) "Qualified beneficiary" has the same meaning as  
318 provided in s. 736.0103.

319 Section 5. Section 662.112, Florida Statutes, is created to

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320 read:

321 662.112 Degrees of kinship.—Degrees of kinship shall be  
322 calculated by adding the number of steps from a designated  
323 relative through each person to the family member, directly in  
324 the case of lineal kinship, or through the common ancestor in  
325 the case of collateral kinship.326 Section 6. Section 662.113, Florida Statutes, is created to  
327 read:328 662.113 Applicability of the financial institutions codes.—  
329 Except as expressly provided in this chapter, other chapters of  
330 the financial institutions codes do not apply to a family trust  
331 company, licensed family trust company, or foreign licensed  
332 family trust company.333 Section 7. Section 662.114, Florida Statutes, is created to  
334 read:335 662.114 Family trust company and foreign licensed family  
336 trust company licensing not required.—A family trust company or  
337 foreign licensed family trust company is not required to be a  
338 licensed family trust company.339 Section 8. Section 662.115, Florida Statutes, is created to  
340 read:341 662.115 Applicability of chapter to a family trust company  
342 or foreign licensed family trust company.—343 (1) A family trust company that is not a licensed family  
344 trust company or a foreign licensed family trust company is  
345 subject to the provisions of this chapter unless the provisions  
346 are expressly limited in applicability to a licensed family  
347 trust company or foreign licensed family trust company.348 (2) A licensed family trust company is subject to the

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349 provisions of this chapter that expressly refer to a licensed  
 350 family trust company or that are not expressly limited to a  
 351 family trust company that is not a licensed family trust company  
 352 or to a foreign licensed family trust company.

353 (3) A foreign licensed family trust company is subject to  
 354 the provisions of this chapter that expressly state that such  
 355 provisions apply to a foreign licensed family trust company.

356 Section 9. Section 662.120, Florida Statutes, is created to  
 357 read:

358 662.120 Maximum number of designated relatives.-

359 (1) A family trust company may not have more than one  
 360 designated relative.

361 (2) A licensed family trust company may not have more than  
 362 two designated relatives, and the designated relatives may not  
 363 have a common ancestor within five generations.

364 Section 10. Section 662.121, Florida Statutes, is created  
 365 to read:

366 662.121 Application for licensed family trust company;  
 367 fees.-An applicant seeking to operate as a licensed family trust  
 368 company must file an application with the office on forms  
 369 prescribed by the office, accompanied by a nonrefundable \$10,000  
 370 application fee to be deposited into the Financial Institutions'  
 371 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of  
 372 administering this chapter. The application must contain or be  
 373 accompanied by:

374 (1) The name of the proposed licensed family trust company.

375 (2) A copy of the articles of incorporation or articles of  
 376 organization and the bylaws or operating agreement of the  
 377 proposed licensed family trust company.

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378 (3) The physical address and mailing address of the  
 379 proposed licensed family trust company, which must be located in  
 380 this state.

381 (4) A statement describing in detail the services that will  
 382 be provided to family members by the proposed licensed family  
 383 trust company.

384 (5) The name and biographical information of each  
 385 individual who will initially serve as a director, officer,  
 386 manager, or member acting in a managerial capacity of the  
 387 proposed licensed family trust company.

388 (6) The name and biographical information of each  
 389 individual who owns or has the ability or power to directly or  
 390 indirectly vote at least 10 percent or more of the outstanding  
 391 shares, membership interest, or membership units of the proposed  
 392 licensed family trust company.

393 (7) The names of the designated relatives.

394 (8) The amount of the initial owners' equity of the  
 395 proposed licensed family trust company and the form in which the  
 396 capital was paid and will be maintained.

397 (9) The type and amount of bonds or insurance that will be  
 398 procured and maintained on directors, officers, managers, or  
 399 members acting in a managerial capacity or employees pursuant to  
 400 s. 662.126.

401 (10) A statement signed by the applicant, or by the  
 402 individual signing on behalf of the proposed licensed family  
 403 trust company, under penalty of perjury, affirming that the  
 404 following statements are true:

405 (a) The proposed licensed family trust company is not  
 406 currently transacting business with the general public.

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407 (b) No director, officer, manager, or member served as a  
 408 director, officer, or manager, or acted in a managerial  
 409 capacity, for a trust company or any other financial institution  
 410 that had a license issued under the financial institutions codes  
 411 or by the Federal Government or any other state, the District of  
 412 Columbia, a territory of the United States, or a foreign country  
 413 that was suspended or revoked within the 10 years preceding the  
 414 date of the application.

415 (c) No director, officer, manager, or member acting in a  
 416 managerial capacity has been convicted of, or pled nolo  
 417 contendere to a violation of the financial institutions codes,  
 418 including s. 655.50, chapter 896, or similar state or federal  
 419 law or related rule.

420 (d) No director, officer, manager, or member acting in a  
 421 managerial capacity has had a professional license suspended or  
 422 revoked within the 10 years preceding the date of the  
 423 application.

424 (e) All information contained in the application is true  
 425 and correct to the best knowledge of the individual signing the  
 426 application on behalf of the proposed licensed family trust  
 427 company.

428 (11) Any other additional information reasonably required  
 429 by the office.

430 Section 11. Section 662.1215, Florida Statutes, is created  
 431 to read:

432 662.1215 Investigation of license applicants.—

433 (1) For the purpose of this section, the application is not  
 434 deemed to be filed until the applicant has provided the office  
 435 with all information required to be included pursuant to s.

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436 662.121.

437 (2) Upon filing an application for a license to operate as  
 438 a licensed family trust company, the office shall conduct an  
 439 investigation to confirm:

440 (a) That the persons who will serve as directors or  
 441 officers of the corporation or, if the applicant is a limited  
 442 liability company, managers or members acting in a managerial  
 443 capacity, have not:

444 1. Been convicted of, or entered a plea of nolo contendere  
 445 to, a crime involving fraud, misrepresentation, or moral  
 446 turpitude;

447 2. Been convicted of, or pled nolo contendere to, a  
 448 violation of the financial institutions codes, including s.  
 449 655.50, chapter 896, or similar state or federal law;

450 3. Been directors or executive officers of a financial  
 451 institution licensed or chartered under the financial  
 452 institution's codes or by the Federal Government or any other  
 453 state, the District of Columbia, a territory of the United  
 454 States, or a foreign country, whose license or charter was  
 455 suspended or revoked within the 10 years preceding the date of  
 456 the application;

457 4. Had a professional license suspended or revoked within  
 458 the 10 years preceding the date of the application; or

459 5. Made a false statement of material fact on the  
 460 application.

461 (b) That the name of the proposed company complies with s.  
 462 662.123.

463 (c) That capital accounts of the proposed company conform  
 464 to s. 662.124 and that fidelity bonds and errors and omissions

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465 insurance coverage required under s. 662.126 are issued and  
 466 effective.

467 (d) That the articles of incorporation or articles of  
 468 organization conform to s. 662.123(1).

469 (3) If the investigation required under this section  
 470 confirms that the applicant has met the requirements of ss.  
 471 662.123(1), 662.124, 662.126, and 662.1225, and that the persons  
 472 who will serve as directors or officers of the corporation or  
 473 the managers or members acting in a managerial capacity of the  
 474 limited liability company, as applicable, satisfy the criteria  
 475 set forth in subsection (2), the office shall issue a license  
 476 authorizing the applicant to operate as a licensed family trust  
 477 company.

478 (4) The office may obtain criminal history information from  
 479 the National Crime Information Center or from the Department of  
 480 Law Enforcement, as necessary, for conducting the investigation  
 481 required under this section.

482 (5) If the office determines the criteria in subsection (2)  
 483 have not been met, the office shall serve notice of its intent  
 484 to deny the application and of the applicant's opportunity to  
 485 request a hearing pursuant to ss. 120.569 and 120.57.

486 Section 12. Section 662.122, Florida Statutes, is created  
 487 to read:

488 662.122 Registration of a family trust company or a foreign  
 489 licensed family trust company.—

490 (1) A family trust company that is not applying under s.  
 491 662.121 to become a licensed family trust company must register  
 492 with the office before beginning operations in this state. The  
 493 registration application must:

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494 (a) Provide the name of the designated relative.

495 (b) State that the family trust company is a family trust  
 496 company as defined under this chapter and that its operations  
 497 will comply with ss. 662.1225, 662.131, and 662.134.

498 (c) Provide the current telephone number and street address  
 499 of the physical location in this state of its principal place of  
 500 operations where its books and records will be maintained.

501 (d) List the name and current street address in this state  
 502 of its registered agent.

503 (2) A foreign licensed family trust company must register  
 504 with the office before beginning operations in this state.

505 (a) The registration application must state that its  
 506 operations will comply with ss. 662.1225, 662.131, and 662.134  
 507 and that it is currently in compliance with the family trust  
 508 company laws and regulations of its principal jurisdiction.

509 (b) The registration application must provide:

510 1. The current telephone number and street address of the  
 511 physical location of its principal place of business in its  
 512 principal jurisdiction.

513 2. The current telephone number and street address of the  
 514 physical location in this state of its principal place of  
 515 operations where its books and records pertaining to its  
 516 operations in this state will be maintained.

517 3. The current telephone number and street address of the  
 518 physical location of any other offices located within this  
 519 state.

520 4. The name and current street address in this state of its  
 521 registered agent.

522 (c) The registration must include a certified copy of a

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523 certificate of good standing, or an equivalent document,  
 524 authenticated by the official having custody of records in the  
 525 jurisdiction where the foreign licensed family trust company is  
 526 organized, along with satisfactory proof that the company is  
 527 organized in a manner similar to a family trust company as  
 528 defined under this chapter.

529 (3) The registration application required under this  
 530 section for a family trust company and a foreign licensed family  
 531 trust company must be accompanied by a registration fee of  
 532 \$5,000.

533 (4) Registration applications required by this section  
 534 shall be submitted on a form prescribed by the office and be  
 535 signed, under penalty of perjury, by an officer or director if  
 536 the family trust company is organized as a corporation, or by a  
 537 manager, officer, or member if the family trust company is  
 538 organized as a limited liability company.

539 (5) All fees received by the office pursuant to this  
 540 section shall be deposited into the Financial Institutions'  
 541 Regulatory Trust Fund pursuant to s. 655.049 for purposes of  
 542 administering this chapter.

543 Section 13. Section 662.1225, Florida Statutes, is created  
 544 to read:

545 662.1225 Requirements for a family trust company, licensed  
 546 family trust company, and foreign licensed family trust  
 547 company.—

548 (1) A family trust company and a licensed family trust  
 549 company shall maintain:

550 (a) A principal office physically located in this state  
 551 where original or true copies of all records and accounts of the

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552 family trust company or licensed family trust company may be  
 553 accessed and made readily available for examination by the  
 554 office in accordance with this chapter. A family trust company  
 555 or licensed family trust company may also maintain one or more  
 556 branch offices within or outside of this state.

557 (b) A registered agent who has an office in this state at  
 558 the street address of the registered agent.

559 (c) All applicable state and local business licenses,  
 560 charters, and permits.

561 (d) A deposit account with a state-chartered or national  
 562 financial institution that has a principal or branch office in  
 563 this state.

564 (2) In order to operate in this state, a foreign licensed  
 565 family trust company must be in good standing in its principal  
 566 jurisdiction and maintain:

567 (a) An office physically located in this state where  
 568 original or true copies of all records and accounts of the  
 569 foreign licensed family trust company pertaining to its  
 570 operations in this state may be accessed and made readily  
 571 available for examination by the office in accordance with this  
 572 chapter.

573 (b) A registered agent who has an office in this state at  
 574 the street address of the registered agent.

575 (c) All applicable state and local business licenses,  
 576 charters, and permits.

577 (d) A deposit account with a state-chartered or national  
 578 financial institution that has a principal or branch office in  
 579 this state.

580 Section 14. Section 662.123, Florida Statutes, is created

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581 to read:

582 662.123 Organizational documents; use of term "family  
583 trust" in name.-

584 (1) The articles of incorporation, certificate of  
585 incorporation, or articles of organization of a family trust  
586 company or licensed family trust company must contain:

587 (a) The name adopted by the company, which must include the  
588 term "family trust" and which distinguishes it from any other  
589 trust company formed in this state or engaged in the business of  
590 a trust company, family trust company, or licensed family trust  
591 company in this state. This paragraph does not apply to a  
592 foreign licensed family trust company using a fictitious name,  
593 that is registered and maintained pursuant to s. 865.09 and that  
594 distinguishes it.

595 (b) The purpose for which the company is formed, which must  
596 clearly identify the restricted activities permissible to a  
597 family trust company or licensed family trust company under this  
598 chapter.

599 (c) A statement that the company will not offer its  
600 services to the general public.

601 (d) A statement affirming that the articles of  
602 incorporation, certificate of incorporation, or articles of  
603 organization will not be amended without the prior written  
604 consent of the office.

605 (2) A proposed amendment to the articles of incorporation,  
606 articles of organization, bylaws, or operating agreement of a  
607 family trust company or licensed family trust company must be  
608 submitted to the office for review at least 30 days before it is  
609 filed or effective. An amendment is not considered filed or

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610 effective if the office issues a notice of disapproval with  
611 respect to the proposed amendment.

612 (3) The term "family trust" in the name adopted by a family  
613 trust company or licensed family trust company does not  
614 disqualify the name from being allowed under s. 605.0112, s.  
615 607.0401, or s. 608.406.

616 Section 15. Section 662.124, Florida Statutes, is created  
617 to read:

618 662.124 Minimum amount of owners' equity required.-

619 (1) A licensed family trust company that has one designated  
620 relative may not be organized or operated with an owners'  
621 capital account of less than \$250,000. The minimum owners'  
622 equity shall be increased to \$350,000 if two designated  
623 relatives of the licensed family trust company are named in the  
624 application for a license or in the annual license renewal. A  
625 family trust company may not be organized or operated with  
626 owners' equity of less than \$250,000.

627 (2) The full amount of the initial minimum owners' equity  
628 of a family trust company or licensed family trust company must  
629 be composed of one or more of the asset groups described in s.  
630 662.132(1)(a), exclusive of all organization expenses.

631 Section 16. Section 662.125, Florida Statutes, is created  
632 to read:

633 662.125 Directors or managers.-

634 (1) Exclusive authority to manage a family trust company or  
635 licensed family trust company is vested in a board of directors,  
636 if a corporation, or a board of directors or managers, if a  
637 limited liability company.

638 (2) A family trust company or licensed family trust company

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639 shall have at least three directors, if a corporation, or three  
 640 directors or managers, if a limited liability company. At least  
 641 one director or manager of the company must be a resident of  
 642 this state.

643 (3) The licensed family trust company shall notify the  
 644 office of the proposed appointment of an individual to the board  
 645 of directors or addition as a member, or the appointment or  
 646 employment of an individual as an officer or manager or member  
 647 acting in a managerial capacity or equivalent position, at least  
 648 60 days before such appointment or employment becomes effective,  
 649 if the company:

650 (a) Has been licensed for less than 2 years.

651 (b) Has undergone a change in control within the preceding  
 652 2 years.

653 (c) Is operating under a cease and desist order.

654 The notification must include the name and such biographical  
 655 information as the office may reasonably require.

657 (4) A licensed family trust company may not appoint an  
 658 individual to the board of directors, add a member, or appoint  
 659 or employ an officer or manager or member acting in a managerial  
 660 capacity or equivalent, if the office issues a notice of  
 661 disapproval with respect to that person.

662 (5) The office shall issue a notice of disapproval if the  
 663 office finds that the proposed appointment or employment of a  
 664 person is not in the best interests of the members or  
 665 shareholders, or beneficiaries of fiduciary accounts of the  
 666 licensed family trust company, or beneficiaries of services  
 667 rendered by a licensed family trust company.

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668 (6) The office may obtain criminal history information from  
 669 the National Crime Information Center or from the Department of  
 670 Law Enforcement as necessary to fulfill its responsibilities  
 671 under this section.

672 Section 17. Section 662.126, Florida Statutes, is created  
 673 to read:

674 662.126 Fidelity bonds; insurance.—

675 (1) The directors or managers of a licensed family trust  
 676 company shall procure and maintain fidelity bonds on all active  
 677 officers, directors, managers, members acting in a managerial  
 678 capacity, and employees of the company, regardless of whether  
 679 they receive a salary or other compensation from the company, in  
 680 order to indemnify the company against loss because of a  
 681 dishonest, fraudulent, or criminal act or omission on their  
 682 part, whether acting alone or in combination with other persons.

683 (2) Each fidelity bond shall be issued in an amount of at  
 684 least \$1 million.

685 (3) In lieu of the fidelity bonds required under subsection  
 686 (1), a licensed family trust company may increase its minimum  
 687 owners' equity required under s. 662.124 by \$1 million so that  
 688 if it has one designated relative it is organized or operated  
 689 with an owners' equity of at least \$1.25 million, or if it has  
 690 two designated relatives it is organized or operated with an  
 691 owners' equity of at least \$1.35 million.

692 (4) The licensed family trust company shall also procure  
 693 and maintain an errors and omissions insurance policy of at  
 694 least \$1 million in which it is listed as the insured to cover  
 695 the acts of officers, directors, managers, and members acting in  
 696 a managerial capacity, regardless of whether the person receives

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697 a salary or other compensation from the company.

698 (5) A family trust company or licensed family trust company  
 699 may also procure and maintain other insurance policies necessary  
 700 or desirable in connection with the business of the company,  
 701 including, but not limited to, one or more casualty insurance  
 702 policies.

703 (6) A family trust company that is not a licensed family  
 704 trust company may procure and maintain fidelity bonds as  
 705 described in this section.

706 (7) A family trust company that is not a licensed family  
 707 trust company may procure and maintain errors and omissions  
 708 insurance coverage as described in this section.

709 Section 18. Section 662.127, Florida Statutes, is created  
 710 to read:

711 662.127 Segregation of books, records, and assets;  
 712 fiduciary assets not liable.—

713 (1) Each family trust company and licensed family trust  
 714 company shall maintain its fiduciary books and records separate  
 715 and distinct from other records of the company and shall  
 716 segregate all assets held in any fiduciary capacity from other  
 717 assets of the company.

718 (2) Assets received or held in a fiduciary capacity by a  
 719 family trust company or licensed family trust company are not  
 720 subject to the debts or obligations of the company.

721 Section 19. Section 662.128, Florida Statutes, is created  
 722 to read:

723 662.128 Annual renewal.—

724 (1) Within 30 days after the end of each calendar year,  
 725 family trust companies, licensed family trust companies, and

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726 foreign licensed family trust companies shall file their annual  
 727 renewal application with the office.

728 (2) The license renewal application filed by a licensed  
 729 family trust company must include a verified statement by an  
 730 officer of the company that:

731 (a) The licensed family trust company operated in full  
 732 compliance with this chapter, chapter 896, and related rules.  
 733 The application must include proof acceptable to the office that  
 734 the company is a family trust company as defined under this  
 735 chapter.

736 (b) Describes any material changes to its operations,  
 737 principal place of business, directors, officers, managers,  
 738 members acting in a managerial capacity, and designated  
 739 relatives since the end of the preceding calendar year.

740 (3) The registration renewal application filed by a family  
 741 trust company must include a verified statement by an officer of  
 742 the company that it is a family trust company as defined under  
 743 this chapter and that its operations are in compliance with ss.  
 744 662.1225, 662.131, 662.134, and related rules, and include the  
 745 name of its designated relative or relatives, if applicable, and  
 746 the street address for its principal place of business.

747 (4) The registration renewal application filed by a foreign  
 748 licensed family trust company must include a verified statement  
 749 by an officer of the company that its operations are in  
 750 compliance with ss. 662.1225, 662.131, and 662.134 and in  
 751 compliance with the family trust company laws and regulations of  
 752 its principal jurisdiction. It must also provide:

753 (a) The current telephone number and street address of the  
 754 physical location of its principal place of business in its

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755 principal jurisdiction.

756 (b) The current telephone number and street address of the  
 757 physical location in this state of its principal place of  
 758 operations where its books and records pertaining to its  
 759 operations in this state are maintained.

760 (c) The current telephone number and address of the  
 761 physical location of any other offices located in this state.

762 (d) The name and current street address in this state of  
 763 its registered agent.

764 (e) Documentation satisfactory to the office that the  
 765 foreign licensed family trust company is in compliance with the  
 766 family trust company laws and regulations of its principal  
 767 jurisdiction.

768 (5) The annual renewal application shall be submitted on a  
 769 form prescribed by the office and signed under penalty of  
 770 perjury by an authorized representative.

771 (6) A fee of \$750 for a family trust company, \$1,500 for a  
 772 licensed family trust company, and \$1,000 for a foreign licensed  
 773 family trust company shall be submitted with the annual renewal  
 774 application. All fees received by the office pursuant to this  
 775 section shall be deposited into the Financial Institutions'  
 776 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of  
 777 administering this chapter.

778 Section 20. Section 662.129, Florida Statutes, is created  
 779 to read:

780 662.129 Discontinuing business.—If a licensed family trust  
 781 company desires to discontinue business as a licensed family  
 782 trust company, it must file with the office a certified copy of  
 783 the resolution of the board of directors authorizing that

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784 action. Upon discharge from all fiduciary duties which it has  
 785 undertaken, the company shall provide certification of such  
 786 discharge and voluntarily relinquish its license to operate as a  
 787 licensed family trust company to the office, whereupon it shall  
 788 be released from any fidelity bonds that it maintained pursuant  
 789 to s. 662.126(1).

790 Section 21. Section 662.130, Florida Statutes, is created  
 791 to read:

792 662.130 Powers of family trust companies, licensed family  
 793 trust companies, and foreign licensed family trust companies.—

794 (1) A family trust company and a licensed family trust  
 795 company may:

796 (a) Act as a sole or copersonal representative, executor,  
 797 or curator for probate estates being administered in a state or  
 798 jurisdiction other than this state.

799 (b) Act as an attorney-in-fact or agent under a power of  
 800 attorney, other than a power of attorney governed by chapter  
 801 709.

802 (c) Act as an attorney in fact or agent under a power of  
 803 attorney instrument, other than a power of attorney under  
 804 chapter 709.

805 (d) In conformity with s. 660.41, act within or outside  
 806 this state as a trustee; a committee, guardian, custodian,  
 807 conservator, or other personal representative of a person,  
 808 property, or estate; a registrar or transfer agent of or in  
 809 connection with evidences of indebtedness and stocks, bonds, and  
 810 other securities; fiscal or financial agent; an investment  
 811 advisor; a receiver; a trustee in bankruptcy; an assignee for  
 812 creditors; or a holder of any similar representative position in

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813 any other position of trust.

814 (e) Exercise the powers of a corporation or limited  
 815 liability company incorporated or organized under the laws of  
 816 this state, or qualified to transact business as a foreign  
 817 corporation or limited liability company under the laws of this  
 818 state, which are reasonably necessary to enable it to fully  
 819 exercise, in accordance with commonly accepted customs and  
 820 usages, a power conferred under this chapter.

821 (f) Delegate duties and powers, including investment  
 822 functions under s. 518.112, in accordance with the powers  
 823 granted to a trustee under chapter 736 or other applicable law,  
 824 and retain agents, attorneys, accountants, investment advisers,  
 825 or other individuals or entities to advise or assist the family  
 826 trust company, licensed family trust company, or foreign  
 827 licensed family trust company in the exercise of its powers and  
 828 duties under this chapter and chapter 736. Such exercise of  
 829 power may include, but is not limited to, retaining a bank trust  
 830 department, or a public trust company, other than another family  
 831 trust company, licensed family trust company, or foreign  
 832 licensed family trust company.

833 (g) Perform all acts necessary for exercising the powers  
 834 enumerated in this section or authorized by this chapter and  
 835 other applicable laws of this state.

836 (2) Except as otherwise provided in s. 662.131, a foreign  
 837 licensed family trust company that is in good standing in its  
 838 principal jurisdiction may exercise all the trust powers in this  
 839 state that a Florida family trust company may exercise.

840 Section 22. Section 662.131, Florida Statutes, is created  
 841 to read:

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842 662.131 Prohibitions.—Notwithstanding any provision of this  
 843 chapter, a family trust company, licensed family trust company,  
 844 or foreign licensed family trust company may not:

845 (1) Engage in commercial banking; however, it may establish  
 846 accounts at financial institutions for its own purposes or on  
 847 behalf of family members to whom it provides services pursuant  
 848 to this chapter.

849 (2) Engage in fiduciary services with the public unless  
 850 licensed pursuant to chapter 658.

851 (3) Serve as a personal representative or a copersonal  
 852 representative of a probate estate administered in this state.

853 (4) Serve as an attorney in fact or agent, including as a  
 854 co-attorney in fact or co-agent, under a power of attorney  
 855 pursuant to chapter 709.

856 Section 23. Section 662.132, Florida Statutes, is created  
 857 to read:

858 662.132 Investments.—

859 (1) The assets forming the minimum capital of a family  
 860 trust company or licensed family trust company must:

861 (a) Consist of cash, United States Treasury obligations, or  
 862 any combination thereof.

863 (b) Have an aggregate market value of at least 100 percent  
 864 of the company's required owners' equity, as specified in s.  
 865 662.124. If the aggregate market value of 100 percent of the  
 866 company's required owners' equity is, at any time, less than the  
 867 amount required under s. 662.124, the company has 5 business  
 868 days to bring the owners' equity into compliance with s.  
 869 662.124.

870 (2) A family trust company or licensed family trust company

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871 may purchase or rent real or personal property for use in the  
872 conduct of the business and other activities of the company.

873 (3) Notwithstanding any other provision of law, a family  
874 trust company or licensed family trust company may invest funds  
875 for its own account, other than those required or allowed under  
876 subsection (1) or subsection (2), in any type or character of  
877 equity securities, debt securities, or other assets.

878 (4) Notwithstanding any other law, a family trust company  
879 or licensed family trust company may, while acting as a  
880 fiduciary, purchase directly from underwriters or distributors  
881 or in the secondary market:

882 (a) Bonds or other securities underwritten or distributed  
883 by:

884 1. The family trust company or licensed family trust  
885 company;

886 2. A family affiliate; or

887 3. A syndicate, including the family trust company,  
888 licensed family trust company, or family affiliate.

889 (b) Securities of an investment company, including a mutual  
890 fund, closed-end fund, or unit investment trust, as defined  
891 under the federal Investment Company Act of 1940, for which the  
892 family trust company or licensed family trust company acts as an  
893 advisor, custodian, distributor, manager, registrar, shareholder  
894 servicing agent, sponsor, or transfer agent.

895 (5) The authority granted in subsection (4) may be  
896 exercised only if:

897 (a) The investment is not expressly prohibited by the  
898 instrument, judgment, decree, or order establishing the  
899 fiduciary relationship.

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900 (b) The family trust company or licensed family trust  
901 company procures in writing the consent of any cofiduciaries  
902 with discretionary investment powers to the investment.

903 (c) The family trust company or licensed family trust  
904 company discloses in writing to the person or persons to whom it  
905 sends account statements its intent to exercise the authority  
906 granted in subsection (4) before the first exercise of that  
907 authority, and each such disclosure reflects:

908 1. The nature of any interest the family trust company or  
909 licensed family trust company has, or is reasonably expected to  
910 have, in the underwriting or distribution of bonds or securities  
911 purchased.

912 2. The nature and amount of any fee or other compensation  
913 received, or reasonably expected to be received, by the family  
914 trust company or licensed family trust company in connection  
915 with the transaction.

916 3. The nature of the relationship between the family trust  
917 company or licensed family trust company and an investment  
918 company described in paragraph (4) (b).

919 4. The nature and amount of any fee or other compensation  
920 received, or reasonably expected to be received, by the family  
921 trust company or licensed family trust company for providing  
922 services to an investment company described in paragraph (4) (b).

923 (6) Subsections (4) and (5) do not affect the degree of  
924 prudence required of fiduciaries under the laws of this state.  
925 However, a purchase of bonds or securities pursuant to  
926 subsections (4) and (5) is not presumed to be affected by a  
927 conflict between the fiduciary's personal and fiduciary  
928 interests if such purchase:

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929 (a) Is negotiated at a fair price.  
 930 (b) Is in accordance with:  
 931 1. The interest of the qualified beneficiaries.  
 932 2. The purposes of the trusts.  
 933 (c) Otherwise complies with:  
 934 1. The prudent investor rule in s. 518.11, or other prudent  
 935 investor or similar rule under other applicable law, unless such  
 936 compliance is waived in accordance with s. 518.11 or other  
 937 applicable law.  
 938 2. The terms of the instrument, judgment, decree, or order  
 939 establishing the fiduciary relationship.  
 940 (7) Notwithstanding subsections (1)-(6), a family trust  
 941 company or licensed family trust company may not, while acting  
 942 as a fiduciary, purchase a bond or security issued by the  
 943 company or an affiliate thereof unless:  
 944 (a) The family trust company or licensed family trust  
 945 company is expressly authorized to do so by:  
 946 1. The terms of the instrument creating the trust;  
 947 2. A court order;  
 948 3. The written consent of the settlor of the trust for  
 949 which the family trust company or licensed family trust company  
 950 is serving as trustee; or  
 951 4. The written consent of every adult qualified beneficiary  
 952 of the trust who, at the time of such purchase, is entitled to  
 953 receive income under the trust or who would be entitled to  
 954 receive a distribution of principal if the trust were  
 955 terminated; and  
 956 (b) The purchase of the security is at a fair price and  
 957 complies with:

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958 1. The prudent investor rule in s. 518.11, or other prudent  
 959 investor or similar rule under other applicable law, unless such  
 960 compliance is waived in accordance with s. 518.11 or other  
 961 applicable law.  
 962 2. The terms of the instrument, judgment, decree, or order  
 963 establishing the fiduciary relationship.  
 964 (8) Except as otherwise expressly limited by this section,  
 965 a family trust company or licensed family trust company, while  
 966 acting as a fiduciary, is also authorized, without limiting any  
 967 powers otherwise conferred on fiduciaries by law, to do any of  
 968 the following, which are not presumed to be affected by a  
 969 conflict between the fiduciary's personal and fiduciary  
 970 interests:  
 971 (a) Make an equity investment in a closely held entity that  
 972 may or may not be marketable and that is directly or indirectly  
 973 owned or controlled by one or more family members.  
 974 (b) Place a security transaction using a broker who is a  
 975 family member.  
 976 (c) Enter into an agreement with a family member who is the  
 977 settlor or a qualified beneficiary of a trust with respect to  
 978 the appointment of the family trust company or licensed family  
 979 trust company as a fiduciary of the trust, or with respect to  
 980 the compensation of the family trust company and licensed family  
 981 trust company for service as a fiduciary.  
 982 (d) Transact business with a family member.  
 983 (e) Transact business with or invest in any asset of  
 984 another trust, estate, guardianship, or conservatorship for  
 985 which the family trust company or licensed family trust company  
 986 is a fiduciary or in which a family member has an interest.

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987 (f) Deposit trust assets in a financial institution that is  
 988 owned, controlled, or operated by one or more family members.

989 (g) Purchase, sell, hold, own, or invest in a security,  
 990 bond, real or personal property, stock, or other asset of a  
 991 family member.

992 (h) With or without adequate security, lend money to or  
 993 borrow money from a family member or a trust, estate, or  
 994 guardianship for which the family trust company or licensed  
 995 family trust company serves as a fiduciary.

996 (9) If not inconsistent with and subject to the terms of  
 997 subsections (4)-(8), the duty of loyalty under s. 736.0802  
 998 applies to family trust companies, licensed family trust  
 999 companies, and foreign licensed family trust companies when  
 1000 serving as trustee of a trust whose administration is subject to  
 1001 chapter 736.

1002 Section 24. Section 662.133, Florida Statutes, is created  
 1003 to read:

1004 662.133 Oaths, affidavits, and acknowledgments.—If a family  
 1005 trust company or licensed family trust company is required to  
 1006 make an oath, affirmation, affidavit, or acknowledgment  
 1007 regarding a fiduciary capacity in which it is acting or is  
 1008 preparing to act, a director or officer or, if the company is a  
 1009 limited liability company, a manager or officer expressly  
 1010 authorized by the family trust company or licensed family trust  
 1011 company, shall make and, if required, subscribe to such oath,  
 1012 affirmation, affidavit, or acknowledgment on behalf of the  
 1013 company.

1014 Section 25. Section 662.134, Florida Statutes, is created  
 1015 to read:

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1016 662.134 Unlawful to advertise services.—A family trust  
 1017 company, licensed family trust company, or foreign licensed  
 1018 family trust company may not advertise its services to the  
 1019 public.

1020 Section 26. Section 662.135, Florida Statutes, is created  
 1021 to read:

1022 662.135 Service as court-appointed fiduciary; bond  
 1023 requirement.—A licensed family trust company is not required to  
 1024 provide or otherwise post a bond or other surety to serve as a  
 1025 court-appointed fiduciary in a proceeding brought or conducted  
 1026 in this state.

1027 Section 27. Section 662.140, Florida Statutes, is created  
 1028 to read:

1029 662.140 Rules.—The office may adopt rules necessary to  
 1030 carry out the purposes of this chapter.

1031 Section 28. Section 662.141, Florida Statutes, is created  
 1032 to read:

1033 662.141 Examination, investigations, and fees.—The office  
 1034 may conduct an examination or investigation of a family trust  
 1035 company, licensed family trust company, or foreign licensed  
 1036 family trust company at any time it deems necessary to determine  
 1037 whether a family trust company, licensed family trust company,  
 1038 foreign licensed family trust company, or family trust company-  
 1039 affiliated person has violated or is about to violate any  
 1040 provision of the financial institution's codes or the rules  
 1041 adopted by the commission pursuant to such codes.

1042 (1) The office shall conduct an examination of a licensed  
 1043 family trust company, family trust company, and foreign licensed  
 1044 family trust company at least once every 18 months.

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1045 (2) In lieu of an examination by the office, the office may  
 1046 accept an audit of a family trust company, licensed family trust  
 1047 company, or foreign licensed family trust company by a certified  
 1048 public accountant licensed to practice in this state who is  
 1049 independent of the company, or other person or entity acceptable  
 1050 to the office. If the office accepts an audit pursuant to this  
 1051 subsection, the office shall conduct the next required  
 1052 examination.

1053 (3) The office shall examine the books and records of a  
 1054 family trust company or licensed family trust company as  
 1055 necessary to determine whether it is a family trust company or  
 1056 licensed family trust company as defined in this chapter, and is  
 1057 operating in compliance with ss. 662.1225, 662.126, 662.131 and  
 1058 662.134, as applicable. The office may rely upon a certificate  
 1059 of trust, trust summary, or written statement from the trust  
 1060 company identifying the qualified beneficiaries of any trust or  
 1061 estate for which the family trust company serves as a fiduciary  
 1062 and the qualification of the qualified beneficiaries as  
 1063 permissible recipients of company services. The office may  
 1064 establish by rule the records to be maintained or requirements  
 1065 necessary to demonstrate conformity with this chapter as a  
 1066 family trust company or licensed family trust company.

1067 (4) The office shall examine the books and records of a  
 1068 foreign licensed family trust company as necessary to determine  
 1069 if it is a foreign licensed trust company as defined in this  
 1070 chapter and is in compliance with ss. 662.130(2), 662.131, and  
 1071 662.134. In connection with an examination of the books and  
 1072 records of the company, the office may rely upon the most recent  
 1073 examination report or review or certification letters or similar

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1074 documentation issued by the regulatory agency to which the  
 1075 foreign licensed family trust company is subject to supervision.  
 1076 The office may establish by rule the records to be maintained or  
 1077 requirements necessary to demonstrate conformity with this  
 1078 chapter as a foreign licensed family trust company. The office's  
 1079 examination of the books and records of a foreign licensed  
 1080 family trust company is, to the extent practicable, limited to  
 1081 books and records of the operations in this state.

1082 (5) For each examination of the books and records of a  
 1083 family trust company, licensed family trust company, or foreign  
 1084 licensed family trust company as authorized under this chapter,  
 1085 the trust company shall, within 30 days after an examination,  
 1086 pay a fee for the costs of the examination by the office. As  
 1087 used in this section, the term "costs" means the salary and  
 1088 travel expenses of field staff which are directly attributable  
 1089 to the examination of the trust company and the travel expenses  
 1090 of any supervisory or support staff required as a result of  
 1091 examination findings. The mailing of payment for costs incurred  
 1092 must be postmarked within 30 days after the receipt of a notice  
 1093 stating that such costs are due. The office may levy a late  
 1094 payment of up to \$100 per day or part thereof that a payment is  
 1095 overdue, unless waived for good cause. However, if the late  
 1096 payment of costs is intentional, the office may levy an  
 1097 administrative fine of up to \$1,000 per day for each day the  
 1098 payment is overdue.

1099 (6) All fees collected under this section must be deposited  
 1100 into the Financial Institutions' Regulatory Trust Fund pursuant  
 1101 to s. 655.049 for the purpose of administering this chapter.

1102 Section 29. Section 662.142, Florida Statutes, is created

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1103 to read:

1104 662.142 Revocation of license.-1105 (1) The following acts or conduct constitute grounds for  
1106 the revocation by the office of the license of a licensed family  
1107 trust company:1108 (a) The company is not a family trust company as defined in  
1109 this chapter;1110 (b) A violation of s. 662.1225, s. 662.123(1)(a), s.  
1111 662.126, s. 662.128, s. 662.130, s. 662.131, s. 662.134, or s.  
1112 662.144;1113 (c) A violation of chapter 896, relating to financial  
1114 transactions offenses, or any similar state or federal law;1115 (d) A violation of any rule of the commission;1116 (e) A violation of any order of the office;1117 (f) A breach of any written agreement with the office;1118 (g) A prohibited act or practice under s. 662.131;1119 (h) A failure to provide information or documents to the  
1120 office upon written request; or1121 (i) An act of commission or omission or a practice that is  
1122 a breach of trust or of fiduciary duty.1123 (2) Upon a finding that a licensed family trust company has  
1124 committed any of the acts set forth in section (1), the office  
1125 may enter an order suspending the company's license and provide  
1126 notice of its intention to revoke the license and of the  
1127 opportunity for a hearing pursuant to ss. 120.569 and 120.57.  
1128 The licensed family trust company shall have 90 days to wind up  
1129 its affairs after license revocation. If after 90 days the  
1130 company is still in operation, the office may seek an order from  
1131 the circuit court for the annulment or dissolution of the

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1132 company.1133 Section 30. Section 662.143, Florida Statutes, is created  
1134 to read:1135 662.143 Cease and desist authority.-1136 (1) The office may issue and serve upon a family trust  
1137 company, licensed family trust company, or foreign licensed  
1138 family trust company, or upon a family trust company-affiliated  
1139 party, a complaint stating charges if the office has reason to  
1140 believe that such company, family trust company-affiliated  
1141 party, or individual named therein is engaging in or has engaged  
1142 in conduct that:1143 (a) Indicates that the company is not a family trust  
1144 company or foreign licensed family trust company as defined in  
1145 this chapter;1146 (b) Is a violation of s. 662.1225, s. 662.123(1)(a), s.  
1147 662.126, s. 662.127, s. 662.128, s. 662.130, or s. 662.134;1148 (c) Is a violation of any rule of the commission;1149 (d) Is a violation of any order of the office;1150 (e) Is a breach of any written agreement with the office;1151 (f) Is a prohibited act or practice pursuant to s. 662.131;1152 (g) Is a willful failure to provide information or  
1153 documents to the office upon written request; or1154 (h) Is an act of commission or omission or a practice that  
1155 is a breach of trust or of fiduciary duty.1156 (2) The complaint must contain the statement of facts and a  
1157 notice of opportunity for a hearing pursuant to ss. 120.569 and  
1158 120.57.1159 (3) If no hearing is requested within the time allowed by  
1160 ss. 120.569 and 120.57, or if a hearing is held and the office

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1161 finds that any of the charges are true, the office may enter an  
 1162 order directing the family trust company, licensed family trust  
 1163 company, or foreign licensed family trust company, or family  
 1164 trust company-affiliated party, or the individual named therein  
 1165 to cease and desist from engaging in the conduct complained of  
 1166 and to take corrective action.

1167 (4) If the family trust company, licensed family trust  
 1168 company, foreign licensed family trust company, or family trust  
 1169 company-affiliated party, or the individual named in such order,  
 1170 fails to respond to the complaint within the time allotted in  
 1171 ss. 120.569 and 120.57, such failure constitutes a default and  
 1172 justifies the entry of a cease and desist order.

1173 (5) A contested or default cease and desist order is  
 1174 effective when reduced to writing and served upon the family  
 1175 trust company, licensed family trust company, or foreign  
 1176 licensed family trust company, or family trust company-  
 1177 affiliated party, or the individual named therein. An  
 1178 uncontested cease and desist order is effective as agreed.

1179 (6) If the office finds that conduct described in  
 1180 subsection (1) is likely to cause substantial prejudice to  
 1181 members, shareholders, or beneficiaries of fiduciary accounts of  
 1182 the family trust company, licensed family trust company, or  
 1183 foreign licensed family trust company, or to beneficiaries of  
 1184 services rendered by such company, it may issue an emergency  
 1185 cease and desist order requiring the family trust company,  
 1186 licensed family trust company, or foreign licensed family trust  
 1187 company, family trust company-affiliated party, or individual  
 1188 named therein to immediately cease and desist from engaging in  
 1189 the conduct complained of and to take corrective action. The

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1190 emergency order is effective immediately upon service of a copy  
 1191 of the order upon the family trust company, licensed family  
 1192 trust company, or foreign licensed family trust company, or  
 1193 family trust company-affiliated party and remains effective for  
 1194 90 days. If the office begins nonemergency cease and desist  
 1195 proceedings under subsection (1), the emergency order remains  
 1196 effective until the conclusion of the proceedings under ss.  
 1197 120.569 and 120.57. An emergency order entered under this  
 1198 subsection is confidential and exempt from s. 119.07(1) until  
 1199 the emergency order is made permanent, unless the office finds  
 1200 that such confidentiality will result in substantial risk of  
 1201 financial loss to the public.

1202 (7) A family trust company or foreign licensed family trust  
 1203 company shall have 90 days to wind up its affairs after entry of  
 1204 any order to cease and desist from operating as a family trust  
 1205 company or foreign licensed family trust company. If, after 90  
 1206 days, a family trust company is still operating, the office may  
 1207 seek an order from the circuit court for the annulment or  
 1208 dissolution of the company. If after 90 days a foreign licensed  
 1209 family trust company is still operating, the office may seek an  
 1210 injunction from the circuit court restraining the company from  
 1211 continuing to operate in this state.

1212 Section 31. Section 662.144, Florida Statutes, is created  
 1213 to read:

1214 662.144 Failure to submit required report; fines.—If a  
 1215 family trust company, licensed family trust company, or foreign  
 1216 licensed family trust company fails to submit within the  
 1217 prescribed period its annual certification or any other report  
 1218 required by this chapter or any rule, the office may impose a

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1219 fine of up to \$100 for each day that the annual certification or  
 1220 report is overdue. Failure to provide the annual certification  
 1221 within 60 days after the end of the calendar year shall  
 1222 automatically result in termination of registration of a family  
 1223 trust company or revocation of the license of a licensed family  
 1224 trust company. The trust company shall thereafter have 90 days  
 1225 to wind up its affairs.

1226 Section 32. Section 662.145, Florida Statutes, is created  
 1227 to read:

1228 662.145 Grounds for removal.-

1229 (1) The office may issue and serve upon a licensed family  
 1230 trust company or a family trust company and a family trust  
 1231 company-affiliated party a complaint stating charges if the  
 1232 office has reason to believe that the family trust company-  
 1233 affiliated party is engaging or has engaged in conduct that:

1234 (a) Demonstrates that the company is not a family trust  
 1235 company as defined in this chapter;

1236 (b) Is a prohibited act or practice under s. 662.131;  
 1237 (c) Is a violation of s. 662.1225, s. 662.123(1)(a), s.  
 1238 662.126, s. 662.127, s. 662.128, s. 662.130, or s. 662.134;

1239 (d) Is a violation of any other law involving fraud or  
 1240 moral turpitude which constitutes a felony;

1241 (e) Is a violation of chapter 896, relating to offenses  
 1242 related to financial transactions, or similar state or federal  
 1243 law;

1244 (f) Is a willful violation of a rule of the commission;  
 1245 (g) Is a willful violation of an order of the office;  
 1246 (h) Is a willful breach of a written agreement with the  
 1247 office; or

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1248 (i) Is an act of commission or omission or a practice that  
 1249 is a breach of trust or fiduciary duty.

1250 (2) The complaint must contain a statement of facts and a  
 1251 notice of opportunity for a hearing pursuant to ss. 120.569 and  
 1252 120.57.

1253 (3) If no hearing is requested within the time allowed by  
 1254 ss. 120.569 and 120.57, or if a hearing is held and the office  
 1255 finds that any of the charges in the complaint is true, the  
 1256 office may enter an order removing the family trust company-  
 1257 affiliated party or restricting or prohibiting participation by  
 1258 the family trust company-affiliated party in the affairs of the  
 1259 family trust company, licensed family trust company, or other  
 1260 state financial institution, subsidiary, or service corporation.

1261 (4) If the family trust company-affiliated party fails to  
 1262 respond to the complaint within the time allowed in ss. 120.569  
 1263 and 120.57, such failure constitutes a default and justifies the  
 1264 entry of an order of removal.

1265 (5) A contested or default order of removal is effective  
 1266 when reduced to writing and served on the family trust company  
 1267 or licensed family trust company and the family trust company-  
 1268 affiliated party. An uncontested order of removal is effective  
 1269 as agreed.

1270 (6) The chief executive officer, or the person holding the  
 1271 equivalent office, of a family trust company or licensed family  
 1272 trust company shall promptly notify the office if he or she has  
 1273 actual knowledge that a family trust company-affiliated party is  
 1274 charged with a felony in a state or federal court.

1275 (a) If a family trust company-affiliated party is charged  
 1276 with a felony in a state or federal court, or in the courts of a

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1277 foreign country with which the United States maintains  
 1278 diplomatic relations which involves a violation of law relating  
 1279 to fraud, currency transaction reporting, money laundering,  
 1280 theft, or moral turpitude and the charge is equivalent to a  
 1281 felony charge under state or federal law, the office may enter  
 1282 an emergency order suspending the family trust company-  
 1283 affiliated party or restricting or prohibiting participation by  
 1284 such company-affiliated party in the affairs of that particular  
 1285 family trust company or licensed family trust company or any  
 1286 other financial institution, subsidiary, or service corporation,  
 1287 upon service of the order upon the company and the family trust  
 1288 company-affiliated party so charged.

1289 (b) The order must contain notice of opportunity for a  
 1290 hearing pursuant to ss. 120.569 and 120.57, at which the family  
 1291 trust company-affiliated party may request a postsuspension  
 1292 hearing to show that continued service to or participation in  
 1293 the affairs of the family trust company or licensed family trust  
 1294 company does not pose a threat to the interests of the company.  
 1295 In accordance with applicable commission rules, the office shall  
 1296 notify the family trust company-affiliated party whether the  
 1297 order suspending or prohibiting the company-affiliated party  
 1298 from participating in the affairs of a licensed family trust  
 1299 company or family trust company, or state financial institution,  
 1300 subsidiary, or service corporation will be rescinded or  
 1301 otherwise modified. The emergency order remains in effect,  
 1302 unless otherwise modified by the office, until the criminal  
 1303 charge is disposed of. The acquittal of the family trust  
 1304 company-affiliated party charged, or the final, unappealed  
 1305 dismissal of all charges against such person, dissolves the

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1306 emergency order, but does not prohibit the office from  
 1307 instituting proceedings under subsection (1). If the family  
 1308 trust company-affiliated party charged is convicted or pleads  
 1309 nolo contendere regardless of adjudication, the emergency order  
 1310 becomes final.

1311 (7) A family trust company-affiliated party removed from  
 1312 office pursuant to this section is not eligible for reelection  
 1313 to such position or to any official position in a family trust  
 1314 company, licensed family trust company, or financial institution  
 1315 in this state except with the written consent of the office. A  
 1316 family trust company-affiliated party who is removed,  
 1317 restricted, or prohibited from participation in the affairs of a  
 1318 family trust company, licensed family trust company, or state  
 1319 financial institution pursuant to this section may petition the  
 1320 office for modification or termination of such removal,  
 1321 restriction, or prohibition.

1322 (8) The resignation, termination of employment or  
 1323 participation, or separation from a family trust company or a  
 1324 licensed family trust company of the family trust company-  
 1325 affiliated party does not affect the jurisdiction and authority  
 1326 of the office to issue a notice and proceed under this section  
 1327 against the company-affiliated party if such notice is served  
 1328 before the end of the 6-year period beginning on the date such  
 1329 person ceases to be a family trust company-affiliated party with  
 1330 respect to such company.

1331 Section 33. Section 662.146, Florida Statutes, is created  
 1332 to read:  
 1333 662.146 Confidentiality of books and records.-  
 1334 (1) The books and records of a family trust company,

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1335 licensed family trust company, and foreign licensed family trust  
 1336 company are confidential and shall be made available for  
 1337 inspection and examination only:

1338 (a) To the office or its authorized representative;  
 1339 (b) To any person authorized to act for the company;  
 1340 (c) As compelled by a court, pursuant to a subpoena issued  
 1341 pursuant to the Florida Rules of Civil Procedure, the Florida  
 1342 Rules of Criminal Procedure, or the Federal Rules of Civil  
 1343 Procedure or pursuant to a subpoena issued in accordance with  
 1344 state or federal law. Before the production of the books and  
 1345 records of a family trust company, licensed family trust  
 1346 company, or foreign licensed family trust company, the party  
 1347 seeking production must reimburse the company for the reasonable  
 1348 costs and fees incurred in compliance with the production. If  
 1349 the parties disagree regarding the amount of reimbursement, the  
 1350 party seeking the records may request the court having  
 1351 jurisdiction to set the amount of reimbursement;

1352 (d) Pursuant to a subpoena, to any federal or state law  
 1353 enforcement or prosecutorial instrumentality authorized to  
 1354 investigate suspected criminal activity;

1355 (e) As authorized by the board of directors, if in  
 1356 corporate form, or the managers, if in limited liability company  
 1357 form; or

1358 (f) As provided in subsection (2).

1359 (2)(a) Each customer and stockholder, if a corporation, or  
 1360 member, if a limited liability company, has the right to inspect  
 1361 the books and records of a family trust company or licensed  
 1362 family trust company as they pertain to his or her accounts or  
 1363 the determination of his or her voting rights.

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1364 (b) The books and records pertaining to customers, members,  
 1365 and stockholders of a family trust company or licensed family  
 1366 trust company shall be kept confidential by the company and its  
 1367 directors, managers, officers, and employees. The books and  
 1368 records of customers, members, and stockholders may not be  
 1369 released except upon the express authorization of the customer  
 1370 as to his or her own accounts or a stockholder or member  
 1371 regarding his or her voting rights. However, information may be  
 1372 released, without the authorization of a customer, member, or  
 1373 shareholder in a manner prescribed by the board of directors, if  
 1374 a corporation, or managers, if a limited liability company, to  
 1375 verify or corroborate the existence or amount of a customer's  
 1376 account if that information is reasonably provided to meet the  
 1377 needs of commerce and to ensure accurate credit information.  
 1378 Notwithstanding this paragraph, this subsection does not  
 1379 prohibit a family trust company or licensed family trust company  
 1380 from disclosing financial information referenced in this  
 1381 subsection as permitted under 15 U.S.C. s. 6802, as amended.

1382 (c) A person who willfully violates a provision of this  
 1383 section which relates to unlawful disclosure of confidential  
 1384 information commits a felony of the third degree, punishable as  
 1385 provided in s. 775.082, s. 775.083, or s. 775.084.

1386 (d) This subsection does not apply to a foreign licensed  
 1387 family trust company. The laws of the jurisdiction of its  
 1388 principal place of business govern the rights of customers,  
 1389 members, and stockholders to inspect its books and records.

1390 (3) For purposes of this section, the term "books and  
 1391 records" includes, but is not limited to, an application for a  
 1392 license and any documents connected with the application under

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 1393 s. 662.121; the office's corresponding investigation under s.  
 1394 662.1215 in granting or denying the issuance of the license; the  
 1395 initial registration documents of a family trust company or  
 1396 foreign licensed family trust company under s. 662.122; the  
 1397 annual certification made by a family trust company, licensed  
 1398 family trust company, or foreign licensed family trust company  
 1399 under s. 662.128; and the documentation submitted to the office  
 1400 in connection with a licensed family trust company discontinuing  
 1401 its business under s. 662.129.

1402 Section 34. Section 662.147, Florida Statutes, is created  
 1403 to read:

1404 662.147 Records relating to the office examination; limited  
 1405 restrictions on public access.—

1406 (1) A family trust company, licensed family trust company,  
 1407 and foreign licensed family trust company shall keep at the  
 1408 office it is required to maintain pursuant to s. 662.1225 full  
 1409 and complete records of the names and residences of all the  
 1410 shareholders or members of the trust company and the number of  
 1411 shares or membership units held by each, as applicable, as well  
 1412 as the ownership percentage of each shareholder or member, as  
 1413 the case may be. The records are subject to the inspection of  
 1414 all the shareholders or members of the trust company, and the  
 1415 officers authorized to assess taxes under state authority,  
 1416 during the normal business hours of the trust company. A current  
 1417 list of shareholders or members shall be made available to the  
 1418 office's examiners for their inspection and, upon the request of  
 1419 the office, shall be submitted to the office.

1420 (2) The office shall retain for at least 10 years:

1421 (a) Examination reports.

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 1422 (b) Investigatory records.  
 1423 (c) The application for a license, any documents connected  
 1424 with the application, and the office's corresponding  
 1425 investigation in granting or denying the issuance of the  
 1426 license.  
 1427 (d) The initial registration documents of a family trust  
 1428 company or foreign licensed family trust company.  
 1429 (e) The annual certification made by a family trust  
 1430 company, licensed family trust company, or foreign licensed  
 1431 family trust company.  
 1432 (f) The documentation submitted to the office in connection  
 1433 with a licensed family trust company discontinuing its business  
 1434 and any related information compiled by the office, or  
 1435 photographic copies thereof.  
 1436 (3) A copy of any document on file with the office which is  
 1437 certified by the office as being a true copy may be introduced  
 1438 in evidence as if it were the original. The office shall  
 1439 establish a schedule of fees for preparing true copies of  
 1440 documents.

1441 Section 35. Section 662.150, Florida Statutes, is created  
 1442 to read:

1443 662.150 Domestication of a foreign family trust company.—

1444 (1) A foreign family trust company lawfully organized and  
 1445 currently in good standing with the state regulatory agency in  
 1446 the jurisdiction where it is organized may become domesticated  
 1447 in this state by:

1448 (a) Filing with the Department of State a certificate of  
 1449 domestication and articles of incorporation in accordance with  
 1450 and subject to s. 607.1801 or by filing articles of conversion

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1451 in accordance with s. 605.1045; and

1452 (b) Filing an application for a license to begin operations  
 1453 as a licensed family trust company in accordance with s.  
 1454 662.121, which must first be approved by the office or by filing  
 1455 the prescribed form with the office to register as a family  
 1456 trust company to begin operations in accordance with s. 662.122.

1457 (2) A foreign family trust company may apply pursuant to  
 1458 paragraph (1) (b) before satisfying the requirements of paragraph  
 1459 (1) (a); however, upon receipt of a certificate of authority, the  
 1460 company must satisfy the requirements of paragraph (1) (a) before  
 1461 beginning operations.

1462 Section 36. Section 662.151, Florida Statutes, is created  
 1463 to read:

1464 662.151 Registration of a foreign licensed family trust  
 1465 company to operate in this state.—A foreign licensed family  
 1466 trust company lawfully organized and currently in good standing  
 1467 with the state regulatory agency in the jurisdiction under the  
 1468 law of which it is organized may qualify to begin operations in  
 1469 this state by:

1470 (1) Filing an application with the Department of State to  
 1471 apply for a certificate of authority in accordance with and  
 1472 subject to s. 605.0902, s. 607.1503, or s. 620.1902 or to apply  
 1473 for a statement of foreign qualification in accordance with and  
 1474 subject to s. 620.9102 to transact business in this state.

1475 (2) Filing an initial registration to begin operations as a  
 1476 foreign licensed family trust company in accordance with and  
 1477 subject to s. 662.122 and subject to the sections of this  
 1478 chapter which specifically state that they apply to a foreign  
 1479 licensed family trust company.

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1480 (3) A company in operation as of the effective date of this  
 1481 law that meets the definition of a family trust company shall  
 1482 have 60 days from the effective date of this act to apply for  
 1483 licensure as a licensed family trust company, register as a  
 1484 family trust company or foreign licensed family trust company,  
 1485 or cease doing business in this state.

1486 Section 37. Paragraph (a) of subsection (3) of section  
 1487 120.80, Florida Statutes, is amended to read:

1488 120.80 Exceptions and special requirements; agencies.—

1489 (3) OFFICE OF FINANCIAL REGULATION.—

1490 (a) Notwithstanding s. 120.60(1), in proceedings for the  
 1491 issuance, denial, renewal, or amendment of a license or approval  
 1492 of a merger pursuant to title XXXVIII:

1493 1.a. The Office of Financial Regulation of the Financial  
 1494 Services Commission shall have published in the Florida  
 1495 Administrative Register notice of the application within 21 days  
 1496 after receipt.

1497 b. Within 21 days after publication of notice, any person  
 1498 may request a hearing. Failure to request a hearing within 21  
 1499 days after notice constitutes a waiver of any right to a  
 1500 hearing. The Office of Financial Regulation or an applicant may  
 1501 request a hearing at any time prior to the issuance of a final  
 1502 order. Hearings shall be conducted pursuant to ss. 120.569 and  
 1503 120.57, except that the Financial Services Commission shall by  
 1504 rule provide for participation by the general public.

1505 2. Should a hearing be requested as provided by sub-  
 1506 subparagraph 1.b., the applicant or licensee shall publish at  
 1507 its own cost a notice of the hearing in a newspaper of general  
 1508 circulation in the area affected by the application. The

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1509 Financial Services Commission may by rule specify the format and  
1510 size of the notice.

1511 3. Notwithstanding s. 120.60(1), and except as provided in  
1512 subparagraph 4., an every application for license for a new  
1513 bank, new trust company, new credit union, ~~or~~ new savings and  
1514 loan association, or new licensed family trust company must  
1515 ~~shall~~ be approved or denied within 180 days after receipt of the  
1516 original application or receipt of the timely requested  
1517 additional information or correction of errors or omissions. An  
1518 ~~Any~~ application for such a license or for acquisition of such  
1519 control which is not approved or denied within the 180-day  
1520 period or within 30 days after conclusion of a public hearing on  
1521 the application, whichever is later, shall be deemed approved  
1522 subject to the satisfactory completion of conditions required by  
1523 statute as a prerequisite to license and approval of insurance  
1524 of accounts for a new bank, a new savings and loan association,  
1525 ~~or~~ a new credit union, or a new licensed family trust company by  
1526 the appropriate insurer.

1527 4. In the case of an every application for license to  
1528 establish a new bank, trust company, or capital stock savings  
1529 association in which a foreign national proposes to own or  
1530 control 10 percent or more of any class of voting securities,  
1531 and in the case of an every application by a foreign national  
1532 for approval to acquire control of a bank, trust company, or  
1533 capital stock savings association, the Office of Financial  
1534 Regulation shall request that a public hearing be conducted  
1535 pursuant to ss. 120.569 and 120.57. Notice of such hearing shall  
1536 be published by the applicant as provided in subparagraph 2. The  
1537 failure of ~~any~~ such foreign national to appear personally at the

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

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1538 hearing shall be grounds for denial of the application.  
1539 Notwithstanding ~~the provisions of~~ s. 120.60(1) and subparagraph  
1540 3., every application involving a foreign national shall be  
1541 approved or denied within 1 year after receipt of the original  
1542 application or any timely requested additional information or  
1543 the correction of any errors or omissions, or within 30 days  
1544 after the conclusion of the public hearing on the application,  
1545 whichever is later.

1546 Section 38. Subsections (2) and (3) of section 736.0802,  
1547 Florida Statutes, are amended, and paragraph (i) is added to  
1548 subsection (5) of that section, to read:

1549 736.0802 Duty of loyalty.—

1550 (2) Subject to the rights of persons dealing with or  
1551 assisting the trustee as provided in s. 736.1016, a sale,  
1552 encumbrance, or other transaction involving the investment or  
1553 management of trust property entered into by the trustee for the  
1554 trustee's own personal account or which is otherwise affected by  
1555 a conflict between the trustee's fiduciary and personal  
1556 interests is voidable by a beneficiary affected by the  
1557 transaction unless:

1558 (a) The transaction was authorized by the terms of the  
1559 trust;

1560 (b) The transaction was approved by the court;

1561 (c) The beneficiary did not commence a judicial proceeding  
1562 within the time allowed by s. 736.1008;

1563 (d) The beneficiary consented to the trustee's conduct,  
1564 ratified the transaction, or released the trustee in compliance  
1565 with s. 736.1012;

1566 (e) The transaction involves a contract entered into or

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1567 claim acquired by the trustee when that person had not become or  
1568 contemplated becoming trustee;

1569 (f) The transaction was consented to in writing by a  
1570 settlor of the trust while the trust was revocable; ~~or~~

1571 (g) The transaction is one by a corporate trustee that  
1572 involves a money market mutual fund, mutual fund, or a common  
1573 trust fund described in s. 736.0816(3); or

1574 (h) With regard to a trust that is administered by a family  
1575 trust company, licensed family trust company, or foreign  
1576 licensed family trust company operating under chapter 662, the  
1577 transaction is authorized by s. 662.132(4)-(8).

1578 (3) (a) A sale, encumbrance, or other transaction involving  
1579 the investment or management of trust property is presumed to be  
1580 affected by a conflict between personal and fiduciary interests  
1581 if the sale, encumbrance, or other transaction is entered into  
1582 by the trustee with:

1583 1. ~~(a)~~ The trustee's spouse;

1584 2. ~~(b)~~ The trustee's descendants, siblings, parents, or  
1585 their spouses;

1586 3. ~~(c)~~ An officer, director, employee, agent, or attorney of  
1587 the trustee; or

1588 4. ~~(d)~~ A corporation or other person or enterprise in which  
1589 the trustee, or a person that owns a significant interest in the  
1590 trustee, has an interest that might affect the trustee's best  
1591 judgment.

1592 (b) This subsection does not apply to a trust being  
1593 administered by a family trust company, licensed family trust  
1594 company, or foreign licensed family trust company operating  
1595 under chapter 662 if the sale, encumbrance, or other transaction

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1596 is authorized by s. 662.132(4)-(8).

1597 (5)

1598 (i) This subsection does not apply to a trust administered  
1599 by a family trust company, licensed family trust company, or  
1600 foreign licensed family trust company operating under chapter  
1601 662.

1602 Section 39. Subsection (5) of section 744.351, Florida  
1603 Statutes, is amended to read:

1604 744.351 Bond of guardian.—

1605 (5) Financial institutions as defined in s. 744.309(4),  
1606 other than a trust company operating under chapter 662 which is  
1607 not a licensed family trust company or foreign licensed family  
1608 trust company, and public guardians authorized by law to be  
1609 guardians are ~~shall not be~~ required to file bonds.

1610 Section 40. This act shall take effect on October 1, 2014,  
1611 if SB \_\_\_\_ or similar legislation is adopted in the same  
1612 legislative session or an extension thereof and becomes law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14

Meeting Date

Topic Family Trust Companies

Bill Number SB 1238  
*(if applicable)*

Name Pete Dunbar

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 215 S. Monroe St. #815

Phone 999-4100

Street

Tallahassee 32312

City

State

Zip

E-mail pdunbar@deanmeach.com

Speaking:  For  Against  Information

Representing Real Property, Probate & Trust Law Section - Fla Bar

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 1320

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Public Records/Office of Financial Regulation

DATE: March 26, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			GO	
3.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1320 creates a public records exemption for certain information held by the Office of Financial Regulation (OFR) relating to family trust companies, licensed family trust companies, and foreign licensed family trust companies. CS/SB 1238 authorizes families to form and operate any of these three family trust companies, subject to regulatory requirements. A family trust company is an entity which provides trust services similar to those that can be provided by an individual or financial institution. This includes serving as a trustee of trusts held for the benefit of the family members as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A family trust company must be owned exclusively by family members and may not provide fiduciary services to the public.

This bill provides that the following records relating to family trust companies, licensed family trust companies, and foreign licensed family trust companies held by the OFR are confidential and exempt from public disclosure:

- All records relating to a registration, an application, or an annual certification of a family trust company, licensed family trust company, or foreign licensed family trust company.
- All records relating to an examination of a family trust company, licensed family trust company, or foreign licensed family trust company.
- Reports of examinations, operations, or conditions of a family trust company, licensed family trust company, or foreign licensed family trust company, including working papers.
- Any portion of a list of names of the shareholders or members of a family trust company, licensed family trust company, or foreign licensed family trust company.

- Information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

This bill creates a third degree felony for willfully disclosing information made confidential and exempt by this bill.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. As this bill creates a new public records exemption, the bill also provides a statement of public necessity as required by the State Constitution.

The bill provides that the act shall take effect on the same date that SB 1238 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

## II. Present Situation:

Article I, s. 24(a) of the Florida Constitution provides:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Chapter 119, Florida Statutes, specifies conditions under which public access must be provided to records of an agency. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined to mean:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>1</sup>

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<sup>1</sup> Section 119.011(12), F.S.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>2</sup> All such materials are open for public inspection unless made exempt.<sup>3</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>4</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>5</sup>

Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.<sup>6</sup> The exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>7</sup> A bill enacting an exemption may not contain other substantive provisions.<sup>8</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>9</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. An exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>10</sup>

### **Family Trust Companies**

CS/SB 1238 authorizes families to form and operate family trust companies, licensed family trust companies, and foreign licensed family trust companies. At least 14 other states currently have statutes governing the organization and operation of family trust companies. Florida law does not expressly authorize families to establish their own family trust companies. In general, a family trust company is an entity which provides trust services similar to those that can be provided by an individual or financial institution such as a bank or public trust company. This includes serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family.<sup>11</sup>

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<sup>2</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>3</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>4</sup> Florida Attorney General Opinion 85-62.

<sup>5</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5<sup>th</sup>DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

<sup>6</sup> See Fla. Const., art. I, s. 24(c).

<sup>7</sup> See Fla. Const., art. I, s. 24(c).

<sup>8</sup> See Fla. Const., art. I, s. 24(c).

<sup>9</sup> See s. 119.15, F.S.

<sup>10</sup> See s. 119.15(6)(b), F.S.

<sup>11</sup> See White Paper for SB 1238 by Senator Richter Relating to Family Trust Companies provided by the Real Property, Probate, and Trust Law Section of the Florida Bar (on file with the Senate Committee on Banking and Insurance).

### III. Effect of Proposed Changes:

**Section 1** of this bill, which is linked to the passage of SB 1238 or similar legislation, provides that the following records relating to family trust companies, licensed family trust companies, and foreign licensed family trust companies held by the OFR are confidential and exempt from public disclosure:

- All records relating to a registration, an application, or an annual certification of a family trust company, licensed family trust company, or foreign licensed family trust company.
- All records relating to an examination of a family trust company, licensed family trust company, or foreign licensed family trust company.
- Reports of examinations, operations, or conditions of a family trust company, licensed family trust company, or foreign licensed family trust company, including working papers.
- Any portion of a list of names of the shareholders or members of a family trust company, licensed family trust company, or foreign licensed family trust company.
- Information received from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

This bill provides that the OFR may disclose information made confidential and exempt to:

- The authorized representative or representatives of the family trust company, licensed family trust company, or foreign licensed family trust company under examination. The authorized representative or representatives shall be identified in a resolution or by written consent of the board of directors, if the trust company is a corporation, or of the managers, if the trust company is a limited liability company (LLC).
- A fidelity insurance company, upon written consent of the trust company's board of directors, if a corporation, or its managers, if a LLC.
- An independent auditor, upon written consent of the trust company's board of directors, if a corporation, or its managers, if a LLC.
- A liquidator, receiver, or conservator for a family trust company, licensed family trust company, or foreign licensed family trust company in the event of the appointment of the liquidator, receiver, or conservator. However, any portion of the information which discloses the identity of a bondholder, customer, family member, member, or stockholder must be redacted by the OFR before the release of such portion to the liquidator, receiver, or conservator.
- Any other state, federal, or foreign agency responsible for the regulation or supervision of family trust companies, licensed family trust companies, or foreign licensed family trust companies.
- A law enforcement agency in the furtherance of the agency's official duties and responsibilities.

This bill does not prevent or restrict the publication of a report required by federal law or the name of a family trust company, licensed family trust company, or foreign licensed family trust company and the name and address of the registered agent of such a company.

This bill provides that a person who willfully discloses information made confidential and exempt by this bill commits third degree felony. A third degree felony is punishable by up to 5 years in prison.

This bill provides that the public records exemption created by it is subject to the Open Government Sunset Review Act and is repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** of the bill amends s. 662.147, F.S., (which is created by CS/SB 1238) to allow the OFR to release information otherwise made confidential by this bill to other state, federal, or foreign regulators of family trust companies or to report any suspected criminal activity to appropriate law enforcement and prosecutorial agencies. This bill provides that confidential records furnished pursuant to a legislative subpoena must be kept confidential by the legislative body or committee which received the information except in cases involving impeachment investigations. In such cases, the information shall be disclosed only to the extent necessary as determined by the legislative body or committee.

**Section 3** of this bill amends s. 662.146, F.S. (which is created by CS/SB 1238) to provide that the books and records of any family trust company, licensed family trust company, or foreign licensed family trust company shall be available for inspection and examination as compelled by legislative subpoena.

**Section 4** of this bill provides a public necessity statement.

**Section 5** of this bill provides that this bill is effective on the same date SB 1238, the substantive bill dealing with family trust companies, or similar legislation becomes effective.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill requires a two-thirds vote.

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill contains a public necessity statement.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill would protect some information relating to practices of family-owned businesses of high net worth families.

**C. Government Sector Impact:**

The Office of Financial Regulation noted:

Registration and application information submitted to state agencies is generally a public record unless a specific exemption applies (e.g. social security numbers, personal financial information such as account numbers). Language used in this portion of the bill appears to be vague and overbroad.

Receivers and Liquidators are appointed to oversee the operations of an entity while it is in the process of winding up its affairs. Redaction of the information indicated would impede the ability of a receiver or liquidator to perform their duties and place an undue burden on OFR's resources to the extent redactions are required.<sup>12</sup>

The Department of Corrections estimates the impact of the new felony crime to be indeterminate but expects it to be insignificant.<sup>13</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 662.148 of the Florida Statutes.

This bill amends the following sections of the Florida Statutes: 662.146 and 662.147.

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<sup>12</sup> Office of Financial Regulation, SB 1320 Legislative Bill Analysis (March 14, 2014) at p. 5 (on file with the Senate Committee on Banking and Insurance).

<sup>13</sup> Department of Corrections, SB 1320 Legislative Bill Analysis, (March 5, 2014) at p. 2 (on file with the Senate Committee on Banking and Insurance).

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 25, 2014**

The committee substitute removes provisions relating to the confidentiality of information in administrative and court proceedings.

- B. **Amendments:**

None.



564280

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
	.	
	.	
	.	

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The Committee on Banking and Insurance (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 662.148, Florida Statutes, is created  
and assigned to part IV of chapter 662, Florida Statutes, as  
created by HB 1267, 2014 Regular Session, to read:

662.148 Public records exemption; records relating to  
family trust companies, licensed family trust companies, and  
foreign licensed family trust companies.-



564280

11           (1) PUBLIC RECORDS EXEMPTION.—The following information  
12 held by the office is confidential and exempt from s. 119.07(1)  
13 and s. 24(a), Art. I of the State Constitution:

14           (a) Records relating to a registration, an application, or  
15 an annual certification of a family trust company, licensed  
16 family trust company, or foreign licensed family trust company.

17           (b) Records relating to an examination of a family trust  
18 company, licensed family trust company, or foreign licensed  
19 family trust company.

20           (c) Reports of examinations, operations, or conditions of a  
21 family trust company, licensed family trust company, or foreign  
22 licensed family trust company, including working papers.

23           (d) Any portion of a list of names of the shareholders or  
24 members of a family trust company, licensed family trust  
25 company, or foreign licensed family trust company.

26           (e) Information received by the office from a person from  
27 another state or nation or the Federal Government which is  
28 otherwise confidential or exempt pursuant to the laws of that  
29 state or nation or pursuant to federal law.

30           (f) An emergency cease and desist order under s. 662.143  
31 until the emergency order is made permanent unless the office  
32 finds that such confidentiality will result in substantial risk  
33 of financial loss to the public.

34           (2) DEFINITIONS.—As used in this section, the term:

35           (a) "Reports of examinations, operations, or conditions"  
36 means records submitted to or prepared by the office as part of  
37 the office's duties performed pursuant to s. 655.012 or s.  
38 655.045(1).

39           (b) "Working papers" means the records of the procedure



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40 followed, the tests performed, the information obtained, and the  
41 conclusions reached in an examination under s. 655.032 or s.  
42 655.045. The term also includes books and records.

43 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT  
44 INFORMATION.-Information made confidential and exempt under  
45 subsection (1) may be disclosed by the office to:

46 (a) The authorized representative or representatives of the  
47 family trust company, licensed family trust company, or foreign  
48 licensed family trust company under examination. The authorized  
49 representative or representatives shall be identified in a  
50 resolution or by written consent of the board of directors, if  
51 the trust company is a corporation, or of the managers, if the  
52 trust company is a limited liability company.

53 (b) A fidelity insurance company, upon written consent of  
54 the trust company's board of directors, if a corporation, or its  
55 managers, if a limited liability company.

56 (c) An independent auditor, upon written consent of the  
57 trust company's board of directors, if a corporation, or its  
58 managers, if a limited liability company.

59 (d) A liquidator, receiver, or conservator for a family  
60 trust company, licensed family trust company, or foreign  
61 licensed family trust company in the event of the appointment of  
62 the liquidator, receiver, or conservator. However, any portion  
63 of the information which discloses the identity of a bondholder,  
64 customer, family member, member, or stockholder must be redacted  
65 by the office before the release of such portion to the  
66 liquidator, receiver, or conservator.

67 (e) Any other state, federal, or foreign agency responsible  
68 for the regulation or supervision of family trust companies,



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69 licensed family trust companies, or foreign licensed family  
70 trust companies.

71 (f) A law enforcement agency in the furtherance of the  
72 agency's official duties and responsibilities.

73 (4) PUBLICATION OF INFORMATION.—This section does not  
74 prevent or restrict the publication of:

75 (a) A report required by federal law.

76 (b) The name of the family trust company, licensed family  
77 trust company, or foreign licensed family trust company and the  
78 name and address of the registered agent of that company.

79 (5) PENALTY.—A person who willfully discloses information  
80 made confidential and exempt by this section commits a felony of  
81 the third degree, punishable as provided in s. 775.082, s.  
82 775.083, or s. 775.084.

83 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject  
84 to the Open Government Sunset Review Act in accordance with s.  
85 119.15 and shall stand repealed on October 2, 2019, unless  
86 reviewed and saved from repeal through reenactment by the  
87 Legislature.

88 Section 2. Subsections (1) through (4) of section 662.147,  
89 Florida Statutes, as created by HB 1267, 2014 Regular Session,  
90 are renumbered as subsections (3) through (6), respectively, and  
91 new subsections (1) and (2) are added to that section, to read:

92 662.147 Records relating to the office examination; limited  
93 restrictions on public access.—

94 (1) The public records exemptions contained in s. 662.148  
95 do not prevent or restrict the office from:

96 (a) Furnishing records or information to any other state,  
97 federal, or foreign agency responsible for the regulation or



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98 supervision of family trust companies, licensed family trust  
99 companies, or foreign licensed family trust companies.

100 (b) Reporting any suspected criminal activity, with  
101 supporting documents and information, to appropriate law  
102 enforcement and prosecutorial agencies.

103 (2) Confidential records and information furnished pursuant  
104 to a legislative subpoena shall be kept confidential by the  
105 legislative body or committee that received the records or  
106 information, except in a case involving the investigation of  
107 charges against a public official subject to impeachment or  
108 removal, in which case disclosure of the information shall be  
109 only to the extent necessary as determined by the legislative  
110 body or committee.

111 Section 3. Paragraphs (d), (e), and (f) of subsection (1)  
112 of section 662.146, Florida Statutes, as created by HB 1267,  
113 2014 Regular Session, are redesignated as paragraphs (e), (f),  
114 and (g), respectively, and a new paragraph (d) is added to that  
115 subsection, to read:

116 662.146 Confidentiality of books and records.—

117 (1) The books and records of a family trust company,  
118 licensed family trust company, and foreign licensed family trust  
119 company are confidential and shall be made available for  
120 inspection and examination only:

121 (d) As compelled by legislative subpoena as provided by  
122 law, in which case s. 662.147 applies;

123 Section 4. The Legislature finds that it is a public  
124 necessity that records held by the Office of Financial  
125 Regulation which pertain to a family trust company, licensed  
126 family trust company, or foreign licensed family trust company



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127 relating to registration or certification; an examination;  
128 reports of examinations, operations, or conditions, including  
129 working papers; any portion of a list of the names of  
130 shareholders or members; information received by the Office of  
131 Financial Regulation from a person from another state or nation  
132 or the Federal Government which is otherwise confidential or  
133 exempt pursuant to the laws of that jurisdiction; or an  
134 emergency cease and desist order be made confidential and exempt  
135 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of  
136 the State Constitution. This exemption is necessary because:

137 (1) No public interest is served by granting public access  
138 to family trust company records, and no protection is afforded  
139 to the public or the state by allowing public access to private  
140 financial records. Additionally, a family trust company is  
141 prohibited from serving or marketing its services to the general  
142 public in any way; therefore, no public interests are involved.

143 (2) Families with a high net worth are frequently the  
144 targets of criminal predators seeking access to their assets. It  
145 is important that the exposure of such families to threats of  
146 extortion, kidnapping, and other crimes not be increased.

147 Placing family business records and methodologies in the public  
148 domain would increase the security risk that a family could  
149 become the target of criminal activity.

150 (3) Family trust companies often provide a consolidated  
151 structure for the ownership of an operating business owned by  
152 multiple family members. Placing those private business  
153 operations and methods in the public domain could jeopardize  
154 their business assets, methodologies, and practices.

155 Section 5. This act shall take effect on the same date that



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156 HB 1267 or similar legislation takes effect, if such legislation  
157 is adopted in the same legislative session or an extension  
158 thereof and becomes law.

159  
160 ===== T I T L E A M E N D M E N T =====

161 And the title is amended as follows:

162 Delete everything before the enacting clause  
163 and insert:

164 A bill to be entitled  
165 An act relating to public records; creating s.  
166 662.148, F.S.; providing an exemption from public  
167 records requirements for certain information held by  
168 the Office of Financial Regulation relating to a  
169 family trust company, licensed family trust company,  
170 or foreign licensed family trust company; providing  
171 definitions; providing for the authorized release of  
172 certain information by the office; authorizing the  
173 publication of certain information; providing a  
174 penalty; providing for future legislative review and  
175 repeal of the exemption; amending s. 662.147, F.S.;  
176 providing for additional authorized release of certain  
177 information by the office; providing for production of  
178 certain confidential records pursuant to legislative  
179 subpoenas; amending s. 662.146, F.S.; providing for  
180 production of certain confidential records pursuant to  
181 legislative subpoenas; providing a statement of public  
182 necessity; providing a contingent effective date.

By Senator Richter

23-01916-14

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1 A bill to be entitled  
 2 An act relating to public records; creating s.  
 3 662.148, F.S.; providing an exemption from public  
 4 records requirements for certain information held by  
 5 the Office of Financial Regulation relating to a  
 6 family trust company, licensed family trust company,  
 7 or foreign licensed family trust company; providing  
 8 for the authorized release of certain information by  
 9 the office; permitting the publication of certain  
 10 information; providing a penalty; providing for future  
 11 legislative review and repeal of the exemption;  
 12 amending ss. 662.146 and 662.147, F.S.; providing for  
 13 additional authorized release of certain information  
 14 by the office; providing for production of  
 15 confidential records pursuant to court orders, orders  
 16 by administrative law judges, and legislative  
 17 subpoenas; conforming provisions to changes made by  
 18 the act; providing a statement of public necessity;  
 19 providing a contingent effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. Section 662.148, Florida Statutes, is created  
 24 and assigned to part IV of chapter 662, Florida Statutes, as  
 25 created by SB \_\_\_\_, 2014 Regular Session, to read:

26 662.148 Public records exemption; records relating to  
 27 family trust companies, licensed family trust companies, and  
 28 foreign licensed family trust companies.-

29 (1) PUBLIC RECORDS EXEMPTION.-The following information

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30 held by the Office of Financial Regulation is confidential and  
 31 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 32 Constitution:

33 (a) All records relating to a registration, an application,  
 34 or an annual certification of a family trust company, licensed  
 35 family trust company, or foreign licensed family trust company.

36 (b) All records relating to an examination of a family  
 37 trust company, licensed family trust company, or foreign  
 38 licensed family trust company.

39 (c) Reports of examinations, operations, or conditions of a  
 40 family trust company, licensed family trust company, or foreign  
 41 licensed family trust company, including working papers.

42 (d) Any portion of a list of names of the shareholders or  
 43 members of a family trust company, licensed family trust  
 44 company, or foreign licensed family trust company.

45 (e) Information received by the office from a person from  
 46 another state or nation or the Federal Government which is  
 47 otherwise confidential or exempt pursuant to the laws of that  
 48 state or nation or pursuant to federal law.

49 (2) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT  
 50 INFORMATION.-Information made confidential and exempt under  
 51 subsection (1) may be disclosed by the Office of Financial  
 52 Regulation to:

53 (a) The authorized representative or representatives of the  
 54 family trust company, licensed family trust company, or foreign  
 55 licensed family trust company under examination. The authorized  
 56 representative or representatives shall be identified in a  
 57 resolution or by written consent of the board of directors, if  
 58 the trust company is a corporation, or of the managers, if the

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59 trust company is a limited liability company.

60 (b) A fidelity insurance company, upon written consent of  
61 the trust company's board of directors, if a corporation, or its  
62 managers, if a limited liability company.

63 (c) An independent auditor, upon written consent of the  
64 trust company's board of directors, if a corporation, or its  
65 managers, if a limited liability company.

66 (d) A liquidator, receiver, or conservator for a family  
67 trust company, licensed family trust company, or foreign  
68 licensed family trust company in the event of the appointment of  
69 the liquidator, receiver, or conservator. However, any portion  
70 of the information which discloses the identity of a bondholder,  
71 customer, family member, member, or stockholder must be redacted  
72 by the Office of Financial Regulation before the release of such  
73 portion to the liquidator, receiver, or conservator.

74 (e) Any other state, federal, or foreign agency responsible  
75 for the regulation or supervision of family trust companies,  
76 licensed family trust companies, or foreign licensed family  
77 trust companies.

78 (f) A law enforcement agency in the furtherance of the  
79 agency's official duties and responsibilities.

80 (3) PUBLICATION OF INFORMATION.—This section does not  
81 prevent or restrict the publication of:

82 (a) A report required by federal law.

83 (b) The name of the family trust company, licensed family  
84 trust company, or foreign licensed family trust company and the  
85 name and address of the registered agent of that company.

86 (4) PENALTY.—A person who willfully discloses information  
87 made confidential and exempt by this section commits a felony of

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88 the third degree, punishable as provided in s. 775.082, s.  
89 775.083, or s. 775.084.

90 (5) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject  
91 to the Open Government Sunset Review Act in accordance with s.  
92 119.15 and shall stand repealed on October 2, 2019, unless  
93 reviewed and saved from repeal through reenactment by the  
94 Legislature.

95 Section 2. Paragraphs (d), (e), and (f) of subsection (1)  
96 of section 662.146, Florida Statutes, as created by SB \_\_\_\_,  
97 2014 Regular Session, are redesignated as paragraphs (e), (f),  
98 and (g), respectively, and a new paragraph (d) is added to that  
99 subsection, to read:

100 662.146 Confidentiality of books and records.—

101 (1) The books and records of a family trust company,  
102 licensed family trust company, and foreign licensed family trust  
103 company are confidential and shall be made available for  
104 inspection and examination only:

105 (d) As compelled by legislative subpoena as provided by  
106 law, in which case s. 662.47 applies;

107 Section 3. Subsections (1), (2), and (3) of section  
108 662.147, Florida Statutes, as created by SB \_\_\_\_, 2014 Regular  
109 Session, are renumbered as subsections (3), (4), and (5),  
110 respectively, and new subsections (1) and (2) are added to that  
111 section, to read:

112 662.147 Records relating to the office examination; limited  
113 restrictions on public access.—

114 (1) The public records exemptions contained in s. 662.148  
115 do not prevent or restrict the Office of Financial Regulation  
116 from:

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117 (a) Furnishing records or information to any other state,  
 118 federal, or foreign agency responsible for the regulation or  
 119 supervision of family trust companies, licensed family trust  
 120 companies, or foreign licensed family trust companies.

121 (b) Reporting any suspected criminal activity, with  
 122 supporting documents and information, to appropriate law  
 123 enforcement and prosecutorial agencies.

124 (2) (a) Orders issued by courts or administrative law judges  
 125 for the production of confidential records or information must  
 126 provide for inspection in camera by the court or the  
 127 administrative law judge. If the court or administrative law  
 128 judge determines that the documents requested are relevant or  
 129 would likely lead to the discovery of admissible evidence, the  
 130 documents shall be subject to further orders by the court or the  
 131 administrative law judge to protect the confidentiality thereof.  
 132 An order directing the release of information shall be  
 133 immediately reviewable, and a petition by the office for review  
 134 of the order shall automatically stay any further proceedings in  
 135 the trial court or the administrative hearing until the  
 136 disposition of the petition by the reviewing court. If any other  
 137 party files a petition for review, it will operate as a stay of  
 138 the proceedings only upon order of the reviewing court.

139 (b) Confidential records and information furnished pursuant  
 140 to a legislative subpoena shall be kept confidential by the  
 141 legislative body or committee that received the records or  
 142 information, except in a case involving the investigation of  
 143 charges against a public official subject to impeachment or  
 144 removal, in which case disclosure of the information shall be  
 145 only to the extent necessary as determined by the legislative

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146 body or committee.

147 Section 4. The Legislature finds that it is a public  
 148 necessity that records held by the Office of Financial  
 149 Regulation which pertain to a family trust company, licensed  
 150 family trust company, or foreign licensed family trust company  
 151 relating to registration or certification; an examination;  
 152 reports of examinations, operations, or conditions, including  
 153 working papers; any portion of a list of the names of  
 154 shareholders or members; or information received by the Office  
 155 of Financial Regulation from a person from another state or  
 156 nation or the Federal Government which is otherwise confidential  
 157 or exempt pursuant to the laws of that jurisdiction be made  
 158 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 159 s. 24(a), Article I of the State Constitution. This exemption is  
 160 necessary because:

161 (1) No public interest is served by granting public access  
 162 to family trust company records, and no protection is afforded  
 163 to the public or the state by allowing public access to private  
 164 financial records. Additionally, a family trust company is  
 165 prohibited from serving or marketing its services to the general  
 166 public in any way; therefore, no public interests are involved.

167 (2) Families with a high net worth are frequently the  
 168 targets of criminal predators seeking access to their assets. It  
 169 is important that the exposure of such families to threats of  
 170 extortion, kidnapping, and other crimes not be increased.  
 171 Placing family business records and methodologies in the public  
 172 domain would increase the security risk that a family could  
 173 become the target of criminal activity.

174 (3) Family trust companies often provide a consolidated

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175 structure for the ownership of an operating business owned by  
176 multiple family members. Placing those private business  
177 operations and methods in the public domain could jeopardize  
178 their business assets, methodologies, and practices.

179 Section 5. This act shall take effect on the same date that  
180 SB \_\_\_\_ or similar legislation takes effect, if such legislation  
181 is adopted in the same legislative session or an extension  
182 thereof and becomes a law.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/CS/SB 1014

INTRODUCER: Senate Banking and Insurance Committee, Health Policy Committee and Senator Garcia

SUBJECT: Pharmacy Benefit Managers

DATE: March 27, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1014 creates provisions governing pharmacy benefit managers (PBMs). A PBM contracts with plan sponsors, such as employers and insurers, to manage the cost and quality of the plans' drug benefits and may provide a variety of related services. Maximum-allowable cost (MAC) is the payment for the unit ingredient costs for off-patent prescription drugs (generics). The PBM or an insurer may develop a MAC list based on a proprietary survey of wholesale prices and other factors. The purpose of the MAC list is to ensure that the pharmacy or their buying groups are motivated to seek and purchase generic drugs at the lowest price in the marketplace. The bill creates definitions of "maximum allowable cost," "plan sponsor," and "pharmacy benefit manager." The bill establishes criteria for a PBM to place a particular generic drug on a MAC list and may result in some drugs being removed from the MAC list and being subject to higher reimbursement rates. The bill sets out required provisions, disclosures, and conditions for contracts entered into between a pharmacy benefit manager and a pharmacy, and between a PBM and a plan sponsor related to drug pricing and claims adjudication.

According to the Division of State Group Insurance (DSGI) of the Department of Management Services, the implementation of this bill would negatively affect the State Employees' Health Insurance Trust Fund by approximately \$12 million annually. The impact on local governments, insurers, and private sector employers that use PBMs for providing drug benefits for workers' compensation or health insurance is indeterminate at this time.

## II. Present Situation:

### Pharmacy Regulation

Pharmacies and pharmacists are regulated under the Florida Pharmacy Act (the Act) found in ch. 465, F.S.<sup>1</sup> The Board of Pharmacy (the board) is created within the Department of Health (DOH) to adopt rules to implement provisions of the Act and take other actions according to duties conferred on it in the Act.<sup>2</sup>

Several pharmacy types are specified in law and are required to be permitted or registered under the Act:

- Community pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.
- Institutional pharmacy – a location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medical drugs are compounded, dispensed, stored, or sold. The Act further classifies institutional pharmacies according to the type of facility or activities with respect to the handling of drugs within the facility.
- Nuclear pharmacy – a location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, excluding hospitals or the nuclear medicine facilities of such hospitals.
- Internet pharmacy – a location not otherwise permitted under the Act, whether within or outside the state, which uses the internet to communicate with or obtain information from consumers in this state in order to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state.
- Non-resident pharmacy – a location outside this state, which ships, mails, or delivers, in any manner, a dispensed drug into this state.
- Special pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold if such location is not otherwise defined which provides miscellaneous specialized pharmacy service functions.

Each pharmacy is subject to inspection by the DOH and disciplined for violations of applicable state or federal laws relating to a pharmacy. Any pharmacy located outside this state which ships, mails, or delivers, in any manner, a dispensed drug into this state is considered a nonresident pharmacy, and must register with the board as a nonresident pharmacy.<sup>3,4</sup>

### Pharmacy Benefit Managers and Pharmacies

Advances in pharmaceuticals have transformed health care over the last several decades. Many health care problems are prevented, cured, or managed effectively using prescription drugs. As a result, national expenditures for retail prescription drugs have grown from \$120.9 billion in 2000

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<sup>1</sup> Other pharmacy paraprofessionals, including pharmacy interns and pharmacy technicians, are also regulated under the Act.

<sup>2</sup> Section 465.005, F.S.

<sup>3</sup> Section 465.0156, F.S.

<sup>4</sup> However, the board may grant an exemption from the registration requirements to any nonresident pharmacy, which confines its dispensing activity to isolated transactions. *See s. 465.0156(2), F.S.*

to \$263.3 billion in 2012.<sup>5</sup> Health plan sponsors, which include commercial insurers, private employers, and government plans, such as Medicaid and Medicare, spent \$216.5 billion on prescription drugs in 2012 and consumers paid \$46.8 billion out of pocket for prescription drugs that year.<sup>6</sup>

As expenditures for drugs have increased, plan sponsors have looked for ways to manage the cost and quality of the plans' drug benefits, and have turned to pharmacy benefit managers (PBMs) who act as clearinghouses for plans, covered individuals, and retail pharmacies, and may provide a variety of related services. The range of services include developing and managing pharmacy networks, developing drug formularies, providing mail order and specialty pharmacy services, rebate negotiation, therapeutic substitution, disease management, utilization review, support services for physicians and beneficiaries, and processing and auditing claims. In 2007, there were approximately 70 PBMs operating in the United States and managing prescription drug benefits for an estimated 95 percent of health beneficiaries nationwide.<sup>7</sup> Recent industry mergers have reduced the number of large PBMs to two which together control 60 percent of the market and provide benefits for approximately 240 million people.<sup>8</sup>

Health plan sponsors contract with PBMs to provide specified services, which may include some or all of the services described. Payments for the services are established in contracts between health plan sponsors and PBMs. For example, contracts will specify how much health plan sponsors will pay PBMs for brand name and generic drugs. These prices are typically set as a discount off the Average Wholesale Price (AWP)<sup>9</sup> for brand-name drugs and at a Maximum Allowable Cost (MAC)<sup>10</sup> for generic drugs (and sometimes brand drugs that have generic versions), plus a dispensing fee.

The maximum-allowable cost (MAC) represents the upper limit price that a plan will pay or reimburse for generic drugs and sometimes brand drugs that have generic versions available (multisource brands). A MAC pricing list creates a standard reimbursement amount for identical products. A MAC pricing list is a common cost management tool that is developed from a proprietary survey of wholesale prices existing in the marketplace, taking into account market share, inventory, reasonable profits margins, and other factors. The federal government and state Medicaid programs use a similar tool. The purpose of the MAC pricing list is to ensure that the pharmacy or their buying groups are always motivated to seek and purchase generic drugs at the lowest price in the marketplace. If a pharmacy procures a higher-priced product, the pharmacy may not make as much profit or in some instances may lose money on that specific purchase. If a

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<sup>5</sup> Centers for Medicare and Medicaid Services, *National Health Expenditures Web Tables, Table 16, Retail Prescription Drugs Aggregate, Percent Change, and Percent Distribution, by Source of Funds: Selected Calendar Years 1970-2012*, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/downloads/tables.pdf> (last visited March 17, 2014).

<sup>6</sup> *Id.*

<sup>7</sup> Office of Program Policy Analysis & Government Accountability, *Legislature Could Consider Options to Address Pharmacy Benefit Manager Business Practices*, Report No. 07-08 (Feb. 2007), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0708rpt.pdf> (last visited March 17, 2014).

<sup>8</sup> *Id.*

<sup>9</sup> AWP is the retail list price (sticker price) or the average price that manufacturers recommend wholesalers sell to physicians, pharmacies and others, such as hospitals.

<sup>10</sup> MAC is a price set for generic drugs and is the maximum amount that the plan sponsor will pay for a specific drug.

pharmacy purchases generic drugs at more favorable price, they will be more likely to make a profit.

The shift to generic drugs has saved consumers more than a \$1 trillion over a decade, but it has adversely affected independent pharmacists according to recent news articles.<sup>11</sup> In 2000, about 50 percent of U.S. prescription drugs were generic. Now, generics represent about 84 percent of the market, according to IMS Health Incorporated. The increasing use of generics is pushing prescription-drug sales down. In response, drugstores want lawmakers to require the PBMs to share pricing information that would help drugstores negotiate bigger reimbursements and avoid dispensing drugs that are money losers. Some pharmacists contend that reimbursements are not covering the cost of the generic drug for about 10 percent of prescriptions--a rate that is growing because of reduced payments to pharmacies. The PBMs state that such legislation would allow pharmacies to know the amount of reimbursement for dispensed medications and could lead to pharmacies colluding against PBMs on pricing.<sup>12</sup>

Contracts also generally include fees for processing claims submitted by pharmacies (usually based on a rate per claim) and fees for providing services such as disease management or utilization review.<sup>13</sup> In addition, contracts generally specify whether and how the PBM will pass manufacturer rebates on to the health plan sponsors.<sup>14</sup> The contracts can also include performance guarantees, such as claims processing accuracy or amount of rebates received.<sup>15</sup>

### **Federal Pharmacy Benefits Managers Transparency Requirements**

On March 23, 2010, President Obama signed into law Public Law No. 111-148, the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, President Obama signed into law Public Law No. 111-152, the Health Care and Education Affordability Reconciliation Act of 2010, amending PPACA. The law<sup>16</sup> requires Medicare Part D plans and qualified health plan issuers who have their own PBM or contract with a PBM to report to the federal Department of Health and Human Services (HHS) aggregate information about rebates, discounts, or price concessions that are passed through to the plan sponsor or retained by the PBM. In addition, the plans must report the difference between the amount the plan pays the PBM and the amount that the PBM pays its suppliers (spread pricing). The reported information is confidential, subject to certain limited exceptions.

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<sup>11</sup> Timothy W. Martin, *Drugstores Press for Pricing Data*, Wall Street Journal, March 27, 2013.

<sup>12</sup> *Id.*

<sup>13</sup> If the PBM owns the mail order or specialty pharmacy, claims processing fees may not be applied.

<sup>14</sup> Contracts may specify a fixed amount per prescription or a percentage of the total rebates received by a PBM.

<sup>15</sup> Information contained in this analysis has been excerpted in detail from a February 2007 report prepared by the Office of Program Policy Analysis & Government Accountability. (Office of Program Policy Analysis & Government Accountability, *Legislature Could Consider Options to Address Pharmacy Benefit Manager Business Practices*, Report No. 07-08 (Feb. 2007), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0708rpt.pdf> (last visited March 17, 2014).

<sup>16</sup> 42 U.S.C. s. 1320b-23.

## State and Federal Studies on Pharmacy Benefit Managers

### *Federal Studies*

Concerns have been raised that a PBM that owns a pharmacy (whether retail or mail) may have a greater ability to influence which drugs are dispensed under the plans it administers than a PBM that does not own a pharmacy. If plan sponsor contracts with PBMs do not properly align the incentives of PBMs with those of the plans, this lack of alignment could create a conflict of interest. Potential conflicts of interest should be rare, however, if competition among PBMs provides plan sponsors with alternatives. At the request of Congress, the FTC collected aggregate data on prices, generic substitution and dispensing rates, savings due to therapeutic drug switches (“therapeutic interchange”), and repackaging practices. In response, the FTC analyzed data on PBM pricing, generic substitution, therapeutic interchange, and repackaging practices. The study examined whether PBM ownership of mail-order pharmacies served to maximize competition and lower prescription drug prices for plan sponsors. In its 2005 report based on the study, the FTC found, among other things, that the prices for a common basket of prescription drugs dispensed by PBM-owned mail order pharmacies were typically lower than the prices charged by retail pharmacies. The study also found competition affords health plans substantial tools with which to safeguard their interests.<sup>17</sup>

This 2005 FTC study continued the FTC’s ongoing review of PBMs. The PBM practices were a particular focus of hearings on health care markets jointly conducted by the FTC and the Department of Justice Antitrust Division (“DOJ”) in 2003 (“Health Care Hearings”).<sup>18</sup> In 2004, the FTC and DOJ issued a report based on the hearings, a Commission-sponsored workshop, and independent research.<sup>19</sup> In addition, FTC staff have analyzed and commented on proposed PBM legislation in several states in 2006, 2007, and 2009.<sup>20</sup>

### *State Study*

Pursuant to a legislative request, the Office of Program Policy Analysis & Government Accountability (OPPAGA) reviewed pharmacy benefit managers in a report released in 2007. The report addressed concerns relating to PBM business practices, actions by states, PBMs, and plan sponsors, and possible legislative options. Relevant portions of the report are summarized below.<sup>21</sup>

***What concerns exist related to PBM business practices?*** In recent years, federal and state litigants and various stakeholders in the prescription drug industry have alleged that PBMs sometimes engage in unfair business practices that have resulted in excessive profits at the

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<sup>17</sup> Federal Trade Commission, *Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies* (August 2005). Available at: <http://www.ftc.gov/reports/pharmbenefit05/050906pharmbenefitpt.pdf> (last visited March 24, 2014).

<sup>18</sup> See Hearings on Health Care and Competition Law and Policy, June 26, 2003, available at <http://www.ftc.gov/ogc/healthcarehearings/030626ftctrans.pdf> (last visited March 24, 2014).

<sup>19</sup> See Federal Trade Commission, and Department of Justice, *Improving Health Care: A Dose of Competition* (2004), available at <http://www.ftc.gov/reports/healthcare/040723healthcarerpt.pdf> (last visited March 24, 2014).

<sup>20</sup> See, e.g., Letter from FTC staff to New York Senator James L. Seward (March 31, 2009), available at <http://www.ftc.gov/os/2009/04/V090006newyorkpbm.pdf>; Letter from FTC staff to New Jersey Assemblywoman Nellie Pou (Apr. 17, 2007), available at <http://www.ftc.gov/be/V060019.pdf>; Letter from FTC staff to Virginia Delegate Terry G. Kilgore (Oct. 2, 2006), available at <http://www.ftc.gov/be/V060018.pdf> (last visited March 24, 2014)

<sup>21</sup> Office of Program Policy Analysis & Government Accountability, *supra* note 7.

expense of health plan members, sponsors, or pharmacies. Although PBMs save health plan sponsors money by managing prescription drug costs, litigation, as well as stakeholders representing health plan sponsors, allege that PBMs have excessively profited by illegally accepting secret monetary incentives from drug manufacturers, such as incentives for increasing a manufacturer's drug sales that are not shared with health plan sponsors. To manage prescription drug costs, PBMs negotiate rebates with manufacturers for drugs placed on health plan formularies as well as on the volume of drugs used by beneficiaries of the health plan sponsor. PBMs also manage costs by substituting, when clinically appropriate, a beneficiary's prescription for a more cost-effective drug, i.e., a less expensive but therapeutically equivalent brand name or generic drug.

In addition, some stakeholders allege that PBMs have illegally increased rebates by changing patient prescriptions to drugs that receive higher rebates. These business practices are illegal and may increase costs of plan sponsor if PBMs switch beneficiaries to higher cost drugs.<sup>22</sup> Drug switching, for non-clinical reasons, also may not be in the best interest of patients as changed prescriptions can potentially cause harm or result in higher out-of-pocket payments.

Litigants and stakeholders also allege that PBMs have excessively profited from the price spread created by the difference between pharmacy reimbursements and plan sponsor drug prices. Ideally, health plan sponsors should pay drug prices to the PBMs that are comparable to the prices that PBMs reimburse pharmacies. However, some stakeholders allege that PBMs have realized high profits by charging health plan sponsors significantly higher drug prices than prices at which they reimburse pharmacies.

Historically, PBM contracts with health plan sponsors have not provided sponsors access to information on PBM transactions or negotiations with manufacturers and pharmacies. Some stakeholders assert that this lack of transparency increases the potential that PBMs may engage in unfair business practices that can prevent health plan sponsors and pharmacies from receiving a fair share of the profits realized by PBMs in their negotiations with drug manufacturers. However, subsequent to the issuance of this report, PPACA was enacted, which requires specified plans and PBMs to report information to HHS, as described earlier in the analysis.

***How have states, PBMs, and health plan sponsors addressed these concerns?*** As of December 2006, three states and the District of Columbia had passed legislation that addresses certain contractual issues.<sup>23</sup> In addition, two states had passed legislation to regulate PBMs by requiring licensure or oversight by state insurance departments or pharmacy boards. The PBMs, health plan sponsors, and other stakeholders have taken steps to change business practices and increase transparency.

To create more transparency in their business practices, PBMs have begun to offer health plan sponsors contracts that provide more transparency than traditional contracts. These contracts give

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<sup>22</sup> Federal and state anti-kickback laws classify payments in exchange for favorable treatment as illegal kickbacks.

<sup>23</sup> At least 21 states and the District of Columbia have now enacted laws imposing some form of regulation on pharmacy benefit managers, including Arkansas, Connecticut, Florida (Medicaid audits), Georgia, Indiana, Iowa, Kansas, Kentucky, Maryland, Mississippi, Missouri, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, and the District of Columbia. (National Community Pharmacy Association, *Laws that Provide Regulation of the Business Practices of Pharmacy Benefit Managers*, available at [http://www.ncpanet.org/pdf/leg/leg\\_pbm\\_business\\_practice\\_regulation.pdf](http://www.ncpanet.org/pdf/leg/leg_pbm_business_practice_regulation.pdf) (last visited March 17, 2014).

health plan sponsors access to information about contractual and financial arrangements with drug manufacturers and pharmacies. Some PBMs also will negotiate contracts that establish drug prices for health plan sponsors equal to the price at which PBMs reimburse pharmacies. In addition to these voluntary steps, the provisions of settled lawsuits require defendant PBMs to adhere to specific transparency practices.<sup>24</sup>

Some stakeholders claim that over time voluntary efforts<sup>25</sup> combined with the effect of litigation will reduce the need for regulation. However, because the more transparent contracts generally require PBMs to pass on more rebates to health plan sponsors, potentially reducing profits, PBMs have increased their administrative fees. In addition, the more transparent contracts require health plan sponsors to accept greater risk because these contracts do not guarantee specific amounts of drug rebates. Health plan sponsors could also experience greater administrative costs because of the increased monitoring needed to ensure transparency. As such, some health plan sponsors are reluctant to negotiate contracts that are more transparent, in part, because they prefer contracts with lower fixed costs and guaranteed rebates.

*What options could the Legislature consider to address PBM business practices?* In 2007, the OPPAGA suggested that prior to considering statutory actions, the Legislature may wish to give market forces time to further influence efforts by PBMs, health plan sponsors, and other stakeholders to change PBM business practices and establish contracts that are more transparent. If the Legislature wishes to enact statutory provisions to regulate PBMs, the OPPAGA suggested it could consider options adopted in other states, which include establishing transparency guidelines or licensing or certifying PBMs.

### III. Effect of Proposed Changes:

CS/CS/SB 1014 creates a new section of law titled “Pharmacy benefit managers.” The bill defines terms used in the law as follows:

- “Maximum allowable cost” (MAC) means the upper limit or maximum amount that an insurance or managed care plan will pay for generic, or brand-name drugs that have generic versions available, which are included on a PBM-generated list of products.
- “Plan sponsor” means an employer, insurer, managed care organization, prepaid limited health service organization, third-party administrator, or other entity contracting for pharmacy-benefit manager services.
- “Pharmacy benefit manager” means a person, business, or other entity that provides administrative services related to processing and paying prescription claims for pharmacy benefit and coverage programs. Such services may include contracting with a pharmacy or network of pharmacies; establishing payment levels for provider pharmacies; negotiating

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<sup>24</sup> For example, the settlement agreement between 20 state attorneys general against Medco arising from litigation in 2003 prohibits Medco from soliciting drug switches when the net drug cost of the proposed drug exceeds the cost of the prescribed drug. It also requires Medco to disclose financial incentives for switching drugs.

<sup>25</sup> For example, URAC, an independent accrediting organization that promotes health care quality now accredits PBMs. According to its website, URAC’s PBM Accreditation standards cover the organization’s contract terms and pricing structures; ensure access to drugs and pharmacies; provide for drug utilization management, formulary management, patient safety and customer service; and create a process for PBM outcomes measurement and quality improvement. (URAC, *Pharmacy Benefit Management*, <https://www.urac.org/accreditation-and-measurement/accreditation-programs/all-programs/pharmacy-benefit-management/> (last visited March 17, 2014).

discounts and rebate arrangements with drug manufacturers; developing and managing prescription formularies, preferred drug lists, and prior authorization programs; assuring audit compliance; and providing management reports.

The bill provides that a contract between a PBM and a pharmacy, which includes MAC pricing, the PBM, must:

- Update MAC pricing information every 7-calendar days and establish a reasonable process for notice of updates; and
- Maintain a procedure to eliminate products from the MAC list or to modify the MAC pricing in a timely fashion so pricing remains consistent with pricing changes in the marketplace.

In order to place a prescription drug on the MAC list, the PBM must ensure a drug has at least two or more nationally available, therapeutically equivalent, multiple-source generic drugs that:

- Have a significant cost difference;
- Are listed as therapeutically and pharmaceutically equivalent or “A” or “B” rated in the United States Food and Drug Administration’s most recent version of the Orange Book;
- Are available for purchase without limitations by all pharmacies in the state from national or regional wholesalers; and
- Are not obsolete or temporarily unavailable.

The new requirements for drugs to be eligible to for MAC list pricing may result in certain drugs being taken off the list and being subject to payment at a higher rate. Fewer drugs may qualify for the MAC list.

The bill requires a PBM to disclose to the plan sponsor:

- The methodology and sources used to determine MAC pricing between the PBM and the plan sponsor. The PBM must notify the plan sponsor as updates occur.
- Whether the PBM uses a MAC list for drugs dispensed at retail but not for drugs dispensed by mail order.
- Whether the PBM is using the identical MAC lists to bill the plan sponsor that it uses to reimburse network pharmacies and, if not, to disclose the pricing differences.

The bill requires that contracts between PBMs and pharmacies contain:

- A process for appealing, investigating, and resolving disputes regarding MAC pricing, which limits the right to appeal to 90-calendar days following the initial claim; requires the dispute to be resolved within 7 days; and requires the PBM to provide contact information of the person who is responsible for processing the appeal.
- A requirement that if the appeal is denied, the PBM must provide the reason and identify the national drug code of an alternative that may be purchased at a price at or below the MAC.
- A requirement that if the appeal is upheld, the PBM must make an adjustment retroactive to the date the claim was adjudicated and make the adjustment effective for all similarly situated network pharmacies.

The bill has an effective date of July 1, 2014.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The bill may require cities or counties to spend funds or to take action requiring such expenditures. If the bill meets one of these requirements, cities and counties will have to comply with such provisions if the Legislature determines that it fulfills an important state interest.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The new contracting requirements could be an impairment of contracts if any contracts between a PBM and plan sponsor or a PBM and a pharmacy are multi-year contracts.

The United States Constitution and the Florida Constitution prohibit the state from passing any law impairing the obligation of contracts.<sup>26</sup> The courts will subject state actions that impact state-held contracts to an elevated form of scrutiny when the Legislature passes laws that impact such contracts. *Cf. Chiles v. United Faculty of Fla.*, 615 So.2d 671 (Fla. 1993). “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”<sup>27</sup>

If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.<sup>28</sup> The court will also consider three factors when balancing the impairment of contracts with the important public purpose:

- Whether the law was enacted to deal with a broad economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and,
- Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.<sup>29</sup>

A law that is deemed to be an impairment of contract will be deemed to be invalid as it applies to any contracts entered into prior to the effective date of the Act.

<sup>26</sup> U.S. Const. art. I, § 10; art. I, s. 10, Fla. Const.

<sup>27</sup> *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980). *See also General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

<sup>28</sup> *Park Benzinger & Co. v. Southern Wine & Spirits, Inc.*, 391 So.2d 681 (Fla. 1980); *Yellow Cab C., v. Dade County*, 412 So. 2d 395 (Fla. 3rd DCA 1982). *See also Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983).

<sup>29</sup> *Pomponio v. Cladridge of Pompano Condo., Inc.*, 378 So.2d 774 (Fla. 1980).

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill may result in a reduction in the number of drugs subject to the MAC list pricing. As a result, a pharmacist may receive a higher reimbursement for dispensed drugs that are removed from the MAC list and are subject to a reimbursement at a higher brand-like rate.

Due to changes in the criteria for drugs to be eligible for the MAC list, the bill may increase prices for some generic drugs removed from the MAC list and now subject to higher brand-like pricing. Employers and insurers may incur indeterminate additional costs for drugs that are removed from the MAC list. These costs could be shifted to policyholders as an increase in copayments for drugs removed the MAC list and now subject to brand pricing.

**C. Government Sector Impact:**

According to the Division of State Group Insurance (DSGI) of the Department of Management Services, this bill would negatively affect the State Employees' Health Insurance Trust Fund by approximately \$12 million annually. There would be no impact to rebate collection.

The bill requires two or more therapeutically equivalent generics be available to include the generic drug on the MAC pricing list. The pharmacy benefit manager (PBM) for DSGI projected the negative fiscal impact to the trust fund based on the following:

- The DSGI's discount for generic drugs on the MAC pricing list at retail is approximately 75 percent. The discount for brand drugs is approximately 20 percent; moving generics off the MAC pricing list means the Department will lose the higher discount;
- The DSGI would be required to reimburse the PBM and its network retail pharmacies at a brand drug rate for all generic drugs dispensed that do not have two therapeutically equivalent generics in the market;
- The DSGI would lose significant savings while waiting for two generics to be available in the market;
- Any generics with an FDA rating other than "A" or "B" could not be added to the MAC pricing list;
- Over 2,058 "orphan" generic drugs – no other generic available – are currently on the market and would be removed from the MAC pricing list.

Additionally, the DSGI notes the bill:

- Requires that these two generics on the MAC list must have a "significant cost difference." A fiscal impact cannot be determined without a definition of this phrase.

- Removes all incentives for network retail pharmacies to dispense the least expensive therapeutic generic drug for the customer.
- May result in the member (state employee or retiree) paying the brand copayment to correspond to the higher brand pricing that the DSGI would pay.

According to the Division of Risk Management<sup>30</sup> of the Department of Financial Services (DFS), the fiscal impact on prescription drug costs for injured state workers is indeterminate at this time. The DFS spends approximately \$11,000,000 per year for pharmacy benefits. The Division of Risk Management is contracted through January 1, 2017, with a PBM to manage prescription costs for injured state workers. Due to prohibitions in the state and federal constitution on impairment of contracts, it is unlikely any effects of this legislation would occur until expiration of the current contract. The fiscal impact on prescription costs for injured state workers is probably less of an impact than on state group health insurance since the provisions of s. 440.13(12)(c), F.S., prescribes a reimbursement amount at the average wholesale price plus \$4.18 for a dispensing fee unless a lower rate has been negotiated for workers' compensation prescriptions. Since this section is not addressed by the bill, it is likely that workers' compensation medication would continue to be reimbursed at the statutory amount. The bill may limit a PBM's ability to negotiate rates below the statutory rate for workers' compensation drugs. According to DFS, many of the disclosure requirements provided in the bill are already required pursuant to the current state contract. It is most likely that additional regulatory requirements, such as updating the MAC list every 7 days and providing an appeal procedure, will increase the administrative costs for the PBM and result in higher state contracting costs after the current contract expires.

## **VI. Technical Deficiencies:**

Some of the terms and conditions provided in the bill may be difficult to interpret, implement, or enforce by the stakeholders. For example, the bill provides that in order to place a drug on the MAC list, the drug must have at least two therapeutically equivalent, multiple-source generic drugs, which have a "significant cost difference" and are available for purchase "without limitations" by all pharmacies in the state from national or regional wholesalers. It is unclear how "significant" and "without limitation" would be determined. The bill requires PBMs to modify MAC pricing in a "timely fashion." It is unclear how this requirement would be determined.

The bill creates a new section in Chapter 465, F.S., relating to pharmacies. It is unclear whether the Board of Pharmacy or the Department of Health would have the authority to enforce the provisions of the bill.

## **VII. Related Issues:**

The bill takes effect July 1, 2014, and may result in additional administrative costs for plans that operate on a calendar year basis. Plans may incur additional costs to notify employees and retirees of changes in the plan.

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<sup>30</sup> Department of Financial Services, CS/CS/SB 1014 Fiscal Note (Mar. 27, 2014) (on file with the Senate Committee on Banking and Insurance).

**VIII. Statutes Affected:**

This bill creates section 465.1862 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Banking and Insurance on March 25, 2014:**

The bill revises the criteria for a PBM to place a particular generic prescription drug on a maximum allowable cost list. The bill requires the drug to have at least two, instead of three, or more nationally available, therapeutically equivalent, multiple-source generic drugs that are listed as therapeutically and pharmaceutically equivalent or “A” or “B,” instead of only “A,” rated in the United States Food and Drug Administration’s most recent version of the Orange Book.

**CS by Health Policy on March 19, 2014:**

Deletes the requirement for contracts between PBMs and pharmacies to be executed by January 1 annually.

- Deletes the contract requirement for PBMs to provide pharmacies with the basis and sources used to determine MAC pricing.
- Deletes the requirement for a PBM to contractually commit to providing a specified reimbursement rate for generic drugs.
- Deletes the definitions of “average wholesale price” and “AWP Discount.”
- Makes a technical change to the definition of “plan sponsor,” by replacing the word “administration” with “administrator.”
- Reorganizes, without changing content, language related to conditions under which a PBM can place a drug on a MAC list.
- Clarifies the date for retroactive adjustment of payment when a pharmacy wins an appeal of a claim, as retroactive to the date the claim was adjudicated.

- B. **Amendments:**

None.



185750

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2014	.	
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The Committee on Banking and Insurance (Diaz de la Portilla) recommended the following:

**Senate Amendment**

Delete lines 50 - 55  
and insert:  
ensure that the drug has at least two or more nationally available, therapeutically equivalent, multiple-source generic drugs which:  
(a) Have a significant cost difference;  
(b) Are listed as therapeutically and pharmaceutically equivalent or "A" or "B" rated in the United States Food and



185750

11

Drug

By the Committee on Health Policy; and Senator Garcia

588-02829-14

20141014c1

A bill to be entitled

An act relating to pharmacy benefit managers; creating s. 465.1862, F.S.; defining terms; specifying contract terms that must be included in a contract between a pharmacy benefit manager and a pharmacy; providing restrictions on the inclusion of prescription drugs on a list that specifies the maximum allowable cost for such drugs; requiring the pharmacy benefit manager to disclose certain information to a plan sponsor; requiring a contract between a pharmacy benefit manager and a pharmacy to include an appeal process; providing an effective date.

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

Section 1. Section 465.1862, Florida Statutes, is created to read:

465.1862 Pharmacy benefit managers.-

(1) As used in this section, the term:

(a) "Maximum allowable cost" (MAC) means the upper limit or maximum amount that an insurance or managed care plan will pay for generic, or brand-name drugs that have generic versions available, which are included on a PBM-generated list of products.

(b) "Plan sponsor" means an employer, insurer, managed care organization, prepaid limited health service organization, third-party administrator, or other entity contracting for pharmacy benefit manager services.

(c) "Pharmacy benefit manager" (PBM) means a person,

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

588-02829-14

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business, or other entity that provides administrative services related to processing and paying prescription claims for pharmacy benefit and coverage programs. Such services may include contracting with a pharmacy or network of pharmacies; establishing payment levels for provider pharmacies; negotiating discounts and rebate arrangements with drug manufacturers; developing and managing prescription formularies, preferred drug lists, and prior authorization programs; assuring audit compliance; and providing management reports.

(2) A contract between a pharmacy benefit manager and a pharmacy which includes MAC pricing must require the pharmacy benefit manager to:

(a) Update the MAC pricing information at least every 7 calendar days and establish a reasonable process for the prompt notification of such pricing updates to network pharmacies; and

(b) Maintain a procedure to eliminate products from the list or modify the MAC pricing in a timely fashion in order to remain consistent with pricing changes in the marketplace.

(3) In order to place a particular prescription drug on a MAC list, the pharmacy benefit manager must, at a minimum, ensure that the drug has at least three or more nationally available, therapeutically equivalent, multiple-source generic drugs which:

(a) Have a significant cost difference;

(b) Are listed as therapeutically and pharmaceutically equivalent or "A" rated in the United States Food and Drug Administration's most recent version of the Orange Book;

(c) Are available for purchase without limitations by all pharmacies in the state from national or regional wholesalers;

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59 and60 (d) Are not obsolete or temporarily unavailable.61 (4) The pharmacy benefit manager must disclose the  
62 following to the plan sponsor:63 (a) The basis of the methodology and sources used to  
64 establish applicable MAC pricing in the contract between the  
65 pharmacy benefit manager and the plan sponsor. Applicable MAC  
66 lists must be updated and provided to the plan sponsor whenever  
67 there is a change.68 (b) Whether the pharmacy benefit manager uses a MAC list  
69 for drugs dispensed at retail but does not use a MAC list for  
70 drugs dispensed by mail order in the contract between the  
71 pharmacy benefit manager and the plan sponsor or within 21  
72 business days after implementation of the practice.73 (c) Whether the pharmacy benefit manager is using the  
74 identical MAC list with respect to billing the plan sponsor as  
75 it does when reimbursing all network pharmacies. If multiple MAC  
76 lists are used, the pharmacy benefit manager must disclose any  
77 difference between the amount paid to a pharmacy and the amount  
78 charged to the plan sponsor.79 (5) All contracts between a pharmacy benefit manager and a  
80 contracted pharmacy must include:81 (a) A process for appealing, investigating, and resolving  
82 disputes regarding MAC pricing. The process must:83 1. Limit the right to appeal to 90 calendar days following  
84 the initial claim;85 2. Investigate and resolve the dispute within 7 days; and86 3. Provide the telephone number at which a network pharmacy  
87 may contact the pharmacy benefit manager and speak with an

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88 individual who is responsible for processing appeals.89 (b) If the appeal is denied, the pharmacy benefit manager  
90 shall provide the reason for the denial and identify the  
91 national drug code of a drug product that may be purchased by a  
92 contracted pharmacy at a price at or below the MAC.93 (c) If an appeal is upheld, the pharmacy benefit manager  
94 shall make an adjustment retroactive to the date the claim was  
95 adjudicated. The pharmacy benefit manager shall make the  
96 adjustment effective for all similarly situated pharmacies in  
97 this state which are within the network.

98 Section 2. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/2014

Meeting Date

Topic PHARMACY BENEFIT MANAGER

Bill Number 1014  
*(if applicable)*

Name MICHAEL JACKSON

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title EXECUTIVE VICE PRESIDENT

Address 610 N. ADAMS ST

Phone (850) 222-2400

Street

TALLAHASSEE

FL

32301

City

State

Zip

E-mail MJACKSON@PHARMVIEW.COM

Speaking:  For  Against  Information

Representing FLORIDA PHARMACY ASSOC.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/25/14  
Meeting Date

Topic Pharmacy Benefit Managers

Bill Number SB 1014  
(if applicable)

Name Larry Gonzalez

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title General Counsel, FSHP\*

Address 223 S. Gadsden St.  
Street

Phone 850-222-0465

Tallahassee FL 32301  
City State Zip

E-mail lawgpar@earthlink.net

Speaking:  For  Against  Information

Representing \* Florida Society of Health System Pharmacists

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

3/25/2014  
*Meeting Date*

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic MAC Pricing

Bill Number 1014  
*(if applicable)*

Name Jorge Chamizo

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

*Street* Tallahassee, FL 32301  
*City State Zip*

E-mail jorge@flapartners.com

Speaking:  For  Against  Information

Representing Independent Pharmacy Cooperative

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14

Meeting Date

Topic Pharmacy Benefit Managers

Bill Number 1014 (if applicable)

Name Sally West

Amendment Barcode (if applicable)

Job Title Director of Government Affairs

Address

Phone 224-723-2650

Tallahassee FL 32309

E-mail sally.west@walgreens.com

Speaking: [X] For [ ] Against [ ] Information

Representing Walgreens

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/25

Meeting Date

Topic 1014 - MAC pricing

Bill Number 1014 (if applicable)

Name Dave Dederichs

Amendment Barcode (if applicable)

Job Title Sr. Director, Gov't Affairs

Address 6625 W, 78th Street

Phone 952-837-5177

Street City State Zip Bloomington MN 55439

E-mail dmderichs@express-scripts.com

Speaking: [ ] For [X] Against [ ] Information

Representing Express Scripts

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

3-25-2014

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Pharmacy Benefit Managers

Bill Number CS SB 1014  
(if applicable)

Name Bill Mincy

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title VP, PPSC

Address 3375-I Capital Circle NE

Phone 850-322-7740

Street

Tallahassee FL 32308

City

State

Zip

E-mail bill.mincy@ppsconline.com

Speaking:  For  Against  Information

Representing Independent Pharmacy Owners

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-14  
Meeting Date

Waive in Opposition

Topic MAC Pricing

Bill Number SB 1014  
*(if applicable)*

Name Joy Ryan

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address 310 W. College  
*Street*  
Tallahassee, FL 32301  
*City State Zip*

Phone 425-4000

E-mail joy@meenalanlawfirm.com

Speaking:  For  Against  Information

Representing America's Health Insurance Plans

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/25/2014  
Meeting Date

Waive in Opposition

Topic MAC Pricing

Bill Number SB 1014  
(if applicable)

Name David Root

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address 212 Spring Branch Rd  
Street  
Waverly VA 23850  
City State Zip

Phone 804-834-2626

E-mail droot@prime-therapeutics.com

Speaking:  For  Against  Information

Representing Prime Therapeutics

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/14

Meeting Date

Topic PHARMACY BENEFIT MANAGERS

Bill Number CS/593 1014 (if applicable)

Name JIM POWERS

Amendment Barcode (if applicable)

Job Title PHARMACIST

Address 13619 OLD VILLAGE RD.

Phone 832-422-0079

Street

TALLAHASSEE, FL 32312

City

State

Zip

E-mail THEPOWERS@NETSTAR.FL

Speaking: [X] For [ ] Against [ ] Information

Representing FLORIDA INDEPENDENT PHARMACY NETWORK (FIPN)

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] No

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: SPB 7110

INTRODUCER: For consideration by the Banking and Insurance Committee

SUBJECT: Ratification of Rules of the Office of Insurance Regulation

DATE: March 25, 2014

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Knudson	Knudson		<b>Submitted as Committee Bill</b>

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**I. Summary:**

The proposed bill will ratify Rule 69O-186.013, F.A.C., titled Title Insurance Statistical Gathering, as filed for adoption with the Department of State pursuant to the certification package dated December 30, 2013. The rule, which implements s. 627.782(8), F.S., requires Florida licensed title insurance agencies and the retail sales offices of licensed title insurers selling directly to customers to annually submit specified statistical data that the OIR determines are necessary to analyze title insurance premiums, title search costs, and the condition of the title insurance industry in Florida. The data will be used by the Financial Services Commission in its promulgation of title insurance rates. The ratification is for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S.

The Statement of Estimated Regulatory Costs prepared by the OIR estimates that the rule will increase the costs of these agencies and retail sales offices by approximately \$3,000 in the first year and \$2,000 annually thereafter. The estimated cumulative 5-year impact of the rule is \$22 million.

**II. Present Situation:**

**Title Insurance**

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.<sup>1</sup> Title insurance is a policy issued by a title insurer<sup>2</sup> that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. Title insurance is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage. Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance

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<sup>1</sup> Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.

<sup>2</sup>S. 627.7711(3), F.S.

when they underwrite loans for real property. Title insurance places on title insurers a duty to defend actions related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.

The Office of Insurance Regulation (OIR) regulates title insurers, including licensing and promulgation of rates, while the Department of Financial Services (DFS) regulates title agents. Title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.<sup>3</sup>

### **Title Insurance Ratemaking**

Section 627.782, F.S., requires title insurance rates to be promulgated pursuant to a rule adopted by the Financial Services Commission (Commission) that specifies the premium charged by title insurers in this state. If a title insurance policy is issued through an agent or agency, the title insurer must retain at least 30 percent of the premium. No portion of the premium attributable to providing a primary title service may be paid to a person who does not perform that service.

The Commission must give due consideration to the following factors in adopting premium rates by rule:<sup>4</sup>

- Title Insurers' loss experience and prospective loss experience under closing protection letters and policy liabilities.
- A reasonable margin for underwriting profit and contingencies, including contingent liabilities.<sup>5</sup> The profit must be sufficient to allow title insurers, agents, and agencies to earn a rate of return on their capital that will attract and retain adequate capital investment in the title insurance business and maintain an efficient title insurance delivery system.
- Past and prospective expenses for administration and handling of risks.
- Liability for defalcation.<sup>6</sup>
- Other relevant factors.

Rates for title insurance may not be excessive, inadequate, or unfairly discriminatory. The rates adopted by the Commission apply throughout the state,<sup>7</sup> though a title insurer may petition the OIR for an order authorizing a specific deviation from the adopted premium.<sup>8</sup>

The 2012 Legislature required each Florida-licensed title insurance agency, insurer, and insurer's direct or retail business in this state to maintain and submit to the OIR revenue, loss, and expense data that the OIR determines is necessary to analyze title insurance premium rates, title search costs, and the condition of the title insurance industry in the state.

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<sup>3</sup> s. 627.786, F.S.

<sup>4</sup> s. 627.782(2), F.S.

<sup>5</sup> Under s. 627.7865, F.S., each title insurer is liable for an assessment to pay all the unpaid title claims on real property in Florida of a title insurer that is liquidated with unpaid outstanding claims.

<sup>6</sup> Defalcation occurs when a title insurance agent or agency misappropriates or embezzles funds held in trust in connection with a real estate closing transaction.

<sup>7</sup> s. 627.782(6), F.S.

<sup>8</sup> s. 627.783, F.S.

## **Rulemaking Authority and Legislative Ratification**

Pursuant to s. 120.541, F.S., a rule that meets any of three thresholds must be ratified by the Legislature. The thresholds are:

- If the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after implementation of the rule;
- If the rule is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after implementation of the rule; or
- If the rule is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after implementation of the rule.<sup>9</sup>

### **Rule 69O-186.013, F.A.C.**

Section 627.782(8), F.S., requires the Commission to adopt rules regarding the collection and analysis of data from the title insurance industry. The OIR prepared two rules for this purpose. Rule 69O-186.013, F.A.C., provides for a data call of title insurance agencies, while Rule 69O-186.014, F.A.C., provides for a data call of title insurance underwriters. The OIR submitted Rule 69O-186.013, F.A.C., to the legislature for ratification as required under s. 120.541(2), F.S., because the office determined it is likely to increase regulatory costs in excess of \$1 million within 5 years of implementation.

The OIR Statement of Estimated Regulatory Costs (SERC) found that the rule is expected to increase the operating costs of title insurance agencies by \$3,000 in the first year and \$2,000 annually thereafter.<sup>10</sup> The office estimates that there are approximately 2,000 title insurance agencies and a small number of retail offices owned by title insurance underwriters. On a statewide basis, these offices will incur a cost of \$6,000,000 in the first year and \$4,000,000 in succeeding years. The estimated \$22 million impact over 5 years implicates s. 120.541(1)(b), F.S. which prohibits an agency rule from going into effect if its regulatory costs exceed \$1 million in the aggregate over 5 years.

### **III. Effect of Proposed Changes:**

The proposed bill will ratify Rule 69O-186.013, F.A.C., titled Title Insurance Statistical Gathering, as filed for adoption with the Department of State pursuant to the certification package dated December 30, 2013. The rule, which implements s. 627.782(8), F.S., requires Florida licensed title insurance agencies and the retail sales offices of licensed title insurers selling directly to customers to annually submit specified statistical data that the OIR determines are necessary to analyze title insurance premiums, title search costs, and the condition of the title insurance industry in Florida. The data will be used by the Financial Services Commission in its promulgation of title insurance rates. The ratification is for the sole and exclusive purpose of satisfying any condition on effectiveness imposed under s. 120.541(3), F.S.

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<sup>9</sup> Section 120.541(2)(a)1.-3., F.S.

<sup>10</sup> Office of Insurance Regulation, *Statement of Estimated Regulatory Costs: Rule Number 69O-186.013*. (On file with the Senate Banking and Insurance Committee).

The proposed bill will take effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The OIR Statement of Estimated Regulatory Costs (SERC) found that the rule is expected to increase the operating costs of title insurance agencies by \$3,000 in the first year and \$2,000 annually thereafter.<sup>11</sup> The office estimates that there are approximately 2,000 title insurance agencies and a small number of retail offices owned by title insurance underwriters. On a statewide basis, these offices will incur a cost of \$6,000,000 in the first year and \$4,000,000 in succeeding years.

C. Government Sector Impact:

Section 627.782, F.S., requires the OIR to annually collect title insurance data from insurers and agents, and to analyze such data once every 3 years to assist the Commission in its promulgation of title insurance rates. The OIR SERC report estimates the cost to the OIR of collecting the data is \$50,000 per year and estimates that the cost of analyzing the data once every 3 years is \$150,000. The report also opined that in years when the data is analyzed and new rates are proposed, additional costs could be incurred.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>11</sup> Office of Insurance Regulation, *Statement of Estimated Regulatory Costs: Rule Number 690-186.013*. (On file with the Senate Banking and Insurance Committee).

**VIII. Statutes Affected:**

None.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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FOR CONSIDERATION By the Committee on Banking and Insurance

597-02300-14

20147110\_\_

1 A bill to be entitled  
 2 An act relating to the ratification of rules of the  
 3 Office of Insurance Regulation; ratifying a specified  
 4 rule requiring title insurance agencies and the retail  
 5 offices of certain title insurance underwriters to  
 6 electronically submit certain statistical data;  
 7 providing applicability; providing an effective date.  
 8

9 Be It Enacted by the Legislature of the State of Florida:  
 10

11 Section 1. (1) Rule 690-186.013, Florida Administrative  
 12 Code, titled "Title Insurance Statistical Gathering," as filed  
 13 for adoption with the Department of State pursuant to the  
 14 certification package dated December 30, 2013, is ratified for  
 15 the sole and exclusive purpose of satisfying any condition on  
 16 effectiveness imposed under s. 120.541(3), Florida Statutes

17 (2) This act serves no other purpose and is not to be  
 18 codified in the Florida Statutes. After this act becomes law,  
 19 its enactment and effective dates shall be noted in the Florida  
 20 Administrative Code, the Florida Administrative Register, or  
 21 both, as appropriate. This act does not alter rulemaking  
 22 authority delegated by prior law, does not constitute  
 23 legislative preemption of or exception to any provision of law  
 24 governing adoption or enforcement of the rules cited, and is  
 25 intended to preserve the status of any cited rule as a rule  
 26 under chapter 120, Florida Statutes. This act does not cure any  
 27 rulemaking defect or preempt any challenge based on a lack of  
 28 authority or a violation of the legal requirements governing the  
 29 adoption of any rule cited.

Page 1 of 2

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

597-02300-14

20147110\_\_

30 Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

Topic Title Insurance

Bill Number 7110  
*(if applicable)*

Name GARY SUMNER

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lobbyist

Address 1424 N. PINEWOOD ST. 200

Phone 222-7710

TAM FL 08  
City State Zip

E-mail GSumner@mayhew.com

Speaking:  For  Against  Information

Representing First American Title Ins. Co.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/25/14

Meeting Date

Topic Data Call Rule Ratification

Bill Number SPB 7110  
*(if applicable)*

Name Alexandra Overhoff

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
*Street*

Phone 850-270-8648

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Land Title Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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# CourtSmart Tag Report

**Room:** EL 110  
**Caption:** Senate Banking and Insurance Committee

**Type:**  
**Judge:**

**Started:** 3/25/2014 2:06:05 PM  
**Ends:** 3/25/2014 4:23:47 PM  
**Length:** 02:17:43

2:06:12 PM Senator Simmons calls meeting to order  
2:06:23 PM Quorum present  
2:07:43 PM TA B 6 - CS/SB 998 - explanation of bill by Sen. Hukill  
2:08:24 PM Roll call on CS/SB 998 -- Favorable  
2:09:23 PM Tab 1 - S B 1274 - Citizens Property Insurance Corporation  
2:10:05 PM Sen. Hays recognized to explain delete all amendment (462194)  
2:13:16 PM Amd. to Amd. (707654) Hays - without objection -- passed  
2:13:53 PM 462194 - Hays - delete all amendment - adopted w/o objection  
2:14:47 PM Motion for CS - Hays - w/o objection  
2:14:58 PM Roll call on CS/SB 1274 -- passed  
2:17:16 PM CS/SB 1014 by Sen. Garcia - Pharmacy Benefit Managers  
2:17:41 PM Senator Garcia recognized to explain the bill  
2:19:02 PM Late filed amd. 185750 - Sen. Diaz de la Portia - take up late filed amd. -- w/o objection  
2:19:38 PM Senator Garcia recognized to explain late filed amendment  
2:20:16 PM Amd. 185750 - adopted without objection  
2:20:50 PM Bill Mincy, Independent Pharmacy Owners  
2:23:42 PM Dave Dederichs, Sr. Director, Express Scripts  
2:41:47 PM Motion for CS - Sen. Hays -- w/o objection -- passed  
2:42:08 PM Roll call on CS/CS/SB 1014 - passed  
2:43:04 PM TAB 2 - SM 1538 - Terrorism Risk Insurance Act  
2:43:35 PM Delete all amd. 755590 - Meghan Tarsitano recognized to explain amd.  
2:44:20 PM Amd. 755590 - adopted w/o adopted  
2:45:00 PM Motion for CS - Sen. Lee - w/o adopted  
2:45:14 PM Roll call on CS/SM1538 - Favorable  
2:47:05 PM Tab 3 - CS/CS/SB 440 - Condominiums  
2:47:41 PM Rick Kendust recognized to explain the bill  
2:48:06 PM Pete Dunbar, Real Property, Probate & Trust Law Section  
2:49:18 PM  
2:49:20 PM Roll call on CS/CS/SB 440 -- favorable  
2:50:14 PM CS/SB 826 - Trusts  
2:50:39 PM Sen. Richter recognized to explain the bill  
2:51:16 PM Roll call on CS/SB 826 -- Favorable  
2:52:18 PM TAB 7 - SB 482 by Sen. Hays - FL Hurricane Cat Fund  
2:52:55 PM Delete all Amd. (532648) - explanation of amd. by Sen. Hays  
2:55:05 PM Amd. to Amd. (566220) - Explanation of amd. by Sen. Hays -- w/o objection -- adopted  
2:55:45 PM Delete all amd. (as amended) w/o objection -- adopted  
2:56:37 PM Technical Amd. to Late filed 566220 -- w/o - adopted  
2:57:16 PM Delete all (as amended) w/o objection - adopted  
2:57:44 PM Charles Wagner, Fair Insurance Rates in Monroe  
3:01:26 PM Motion for CS - Sen. Hays - w/o objection - adopted  
3:01:37 PM Sen. Hays recognized to close on bill  
3:02:14 PM Roll call on CS/SB 482 -- Favorable  
3:03:26 PM Tab 8 - CS/SB 744 - Sen. Detert - MV Insurance and Driver Education for Children in Care  
3:04:26 PM Sen. Detert recognized to explain the bill  
3:08:30 PM Deborah Moore, Director, GAL Program  
3:11:49 PM Thomas Fair, Member, Tallahassee Chapter, Florida Youth SHINE  
3:13:37 PM Roll call on CS/SB 744 -- Favorable  
3:14:30 PM TAB 9 - CS/SB 948 - Foreign Investments  
3:14:56 PM Senator Ring recognized to explain amd.  
3:15:09 PM Amd. 954678 - Sen. Ring explain the amendment -- w/o objection - adopted  
3:15:49 PM Motion for CS -- Ring - w/o objection -- adopted  
3:16:24 PM Roll call on CS/CS/S 948 -- Favorable

**3:17:02 PM** TAB 10 - SB 1238 by Sen. Richter - Family Trust Companies  
**3:17:24 PM** Sen. Richter recognized to explain delete all amd. (754404)  
**3:18:02 PM** Amd. 754404 - w/o objection -- adopted  
**3:19:08 PM** Motion for CS - Sen. Richter - w/o adopted  
**3:19:25 PM** Roll call on CS/SB 1238 -- Favorable  
**3:20:06 PM** TAB 11 - SB 1320 - PR/Office of Financial Regulation  
**3:20:33 PM** Delete all Amd. (564280) w/o -- adopted  
**3:20:59 PM** Motion for CS - Sen. Richter - w/o - adopted  
**3:21:26 PM** Roll call on CS/SB 1320 - Favorable  
**3:22:14 PM** TAB 13 - SPB 7110 by B I - Ratification of Rules of the Ofc. of Insurance Regulation  
**3:22:45 PM** Sen. Simmons turns chair over to V. Chair Sen. Clemens  
**3:23:11 PM** Sen. Simmons recognized to explain the bill  
**3:25:01 PM** Roll call on SPB 7110 -- Favorable to submit as Committee Bill  
**3:27:29 PM** TAB 5 - SB 854 - Bail Bonds  
**3:28:26 PM** Sen. Abruzzo's aide recognized to explain the bill  
**3:32:25 PM** Freddie Belton, FL Bail Agents Associates  
**3:35:39 PM** Tim Meenen - Bankers Financial Corporation  
**3:38:09 PM** Randy Parton, Lexington Nat'l Ins. Corp.  
**3:45:30 PM** Nolah Shotwell, VP, Bail Commerce  
**3:51:05 PM** Chris Lucero, Bail Agent/MGA  
**3:52:12 PM** Bryan Tennell  
**4:01:40 PM** Armando Roche, Roche Surety and Casualty, Inc.  
**4:04:16 PM** Jerry Steele, Steele Boy's Bail Bonds  
**4:05:14 PM** Sean Pittman, Danzy Bail Bonds/Bail Commerce  
**4:14:46 PM** Derrick Danzy, Bail/Instant Powers  
**4:22:02 PM** Motion to TP Sen. Clemens--adopted  
**4:23:12 PM** Motion to rise - Sen. Diaz de la Portia