

Tab 1	SB 114 by Brandes; (Similar to CS/H 00211) Cosmetic Product Registration					
Tab 2	CS/SB 196 by CJ, Flores (CO-INTRODUCERS) Bracy, Garcia, Baxley, Gibson, Steube, Rodriguez, Perry, Rouson, Powell, Rader, Clemens, Braynon, Farmer, Passidomo, Montford, Benacquisto; (Similar to H 00213) Juvenile Civil Citation and Similar Diversion Programs					
918062	PCS	S	RCS	AP, ACJ		04/13 01:16 PM
610616	PCS:D	S	RCS	AP, Flores	Delete everything after	04/13 01:16 PM
Tab 3	SB 256 by Steube (CO-INTRODUCERS) Galvano; (Identical to H 06017) Florida Center for the Partnerships for Arts Integrated Teaching					
Tab 4	CS/CS/SB 450 by GO, CJ, Brandes; (Similar to CS/H 00369) Public Records					
303428	D	S	L RCS	AP, Brandes	Delete everything after	04/13 01:16 PM
719990	AA	S	RCS	AP, Brandes	Delete L.20:	04/13 01:16 PM
Tab 5	CS/SB 716 by RI, Passidomo; (Similar to CS/CS/H 00927) Real Estate Appraisers					
342196	A	S	RCS	AP, Passidomo	Delete L.93:	04/13 01:16 PM
396950	A	S	RCS	AP, Passidomo	btw L.506 - 507:	04/13 01:16 PM
Tab 6	CS/SB 730 by BI, Passidomo; (Similar to CS/CS/H 00837) Insurer Insolvency					
Tab 7	CS/SB 736 by BI, Mayfield (CO-INTRODUCERS) Steube; (Similar to CS/H 00435) International Financial Institutions					
567188	PCS	S	RCS	AP, AGG		04/13 01:16 PM
398992	PCS:D	S	RCS	AP, Mayfield	Delete everything after	04/13 01:16 PM
Tab 8	CS/CS/SB 738 by GO, BI, Mayfield (CO-INTRODUCERS) Steube; (Similar to CS/H 00437) Public Records/International Financial Institutions					
900196	D	S	RCS	AP, Mayfield	Delete everything after	04/13 01:16 PM
Tab 9	CS/SB 1078 by BI, Garcia; International Financial Institutions					
Tab 10	CS/SB 1124 by HP, Book; (Similar to CS/CS/H 00963) Newborn Screenings					
642038	A	S	RCS	AP, Book	Delete L.28:	04/13 01:16 PM
Tab 11	CS/SB 1146 by CU, Broxson (CO-INTRODUCERS) Mayfield; (Similar to H 00977) Representation by the Public Counsel					
547244	A	S	L RCS	AP, Broxson	btw L.59 - 60:	04/13 01:16 PM
Tab 12	SB 1156 by Stargel; (Identical to H 07099) Corporate Income Tax					
941158	A	S	RCS	AP, Stargel	Delete L.30 - 31:	04/13 01:16 PM
Tab 13	CS/SB 1272 by RI, Brandes (CO-INTRODUCERS) Stargel; (Similar to CS/CS/H 00615) Professional Regulation					
827850	A	S	RCS	AP, Brandes	Delete L.49 - 121:	04/13 01:16 PM
Tab 14	SCR 1360 by Thurston; National Statuary Hall					

Tab 15 CS/SB 1402 by CA, Latvala; (Identical to CS/H 01289) Local Governmental Financial Emergencies

Tab 16 SB 1582 by Bradley; (Compare to CS/H 07085) Workers' Compensation Insurance

272582	A	S	WD	AP, Latvala, Flores	btw L.354 - 355:	04/13 01:16 PM
251016	D	S L	RCS	AP, Bradley	Delete everything after	04/13 01:16 PM
259668	AA	S	RCS	AP, Latvala, Flores	btw L.233 - 234:	04/13 01:16 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Latvala, Chair
Senator Flores, Vice Chair

MEETING DATE: Thursday, April 13, 2017
TIME: 9:30 a.m.—12:30 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Latvala, Chair; Senator Flores, Vice Chair; Senators Bean, Benacquisto, Book, Bracy, Bradley, Brandes, Braynon, Gainer, Galvano, Gibson, Grimsley, Montford, Powell, Simmons, Simpson, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 114 Brandes (Similar CS/H 211)	Cosmetic Product Registration; Deleting the requirement that a person who manufactures, packages, repackages, labels, or relabels a cosmetic in this state register such cosmetic biennially with the Department of Business and Professional Regulation, etc. RI 01/26/2017 Favorable AGG 03/15/2017 Favorable AP 04/13/2017 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation – General Government			
A proposed committee substitute for the following bill (CS/SB 196) is available:			
2	CS/SB 196 Criminal Justice / Flores (Similar H 213, Compare CS/H 205)	Juvenile Civil Citation and Similar Diversion Programs; Requiring the establishment of civil citation or similar diversion programs for juveniles, etc. CJ 01/23/2017 Fav/CS ACJ 03/08/2017 Fav/CS AP 04/13/2017 Fav/CS	Fav/CS Yeas 16 Nays 1
With subcommittee recommendation – Criminal and Civil Justice			
3	SB 256 Steube (Identical H 6017)	Florida Center for the Partnerships for Arts Integrated Teaching; Abrogating the scheduled expiration of the center, etc. ED 02/06/2017 Favorable AHE 03/08/2017 Favorable AP 04/13/2017 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation – Higher Education			

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 13, 2017, 9:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/CS/SB 450 Governmental Oversight and Accountability / Criminal Justice / Brandes (Similar CS/H 369, Compare CS/H 367, Linked CS/S 448)	Public Records; Providing that the personal identifying information of an adult participating in a civil citation or prearrest diversion program is exempt from public records requirements; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. CJ 03/06/2017 Temporarily Postponed CJ 03/13/2017 Fav/CS GO 03/27/2017 Fav/CS AP 04/13/2017 Fav/CS RC	Fav/CS Yeas 18 Nays 0
5	CS/SB 716 Regulated Industries / Passidomo (Similar CS/CS/H 927)	Real Estate Appraisers; Revising authorized methods of instruction and certain requirements for specified real estate practice courses; requiring the Department of Business and Professional Regulation to transmit a specified roster to a certain appraisal subcommittee; deleting an exception by which the board may grant a registration to a person otherwise deemed not qualified; authorizing the board to deny an application for renewal of an appraisal management company's registration on specified grounds, etc. RI 03/15/2017 Fav/CS AGG 03/29/2017 Favorable AP 04/13/2017 Fav/CS	Fav/CS Yeas 18 Nays 0
With subcommittee recommendation – General Government			
6	CS/SB 730 Banking and Insurance / Passidomo (Similar CS/CS/H 837)	Insurer Insolvency; Adding the Insurer Receivership Model Act to a list of acts that extend reciprocity in the treatment of policyholders in receivership if such act is enacted in other states; revising the exclusive jurisdiction of the Circuit Court of Leon County, upon issuance of specified orders, of an insurer's assets or property in a delinquency proceeding; requiring that specified large deductible claims under certain workers' compensation policies must be turned over to the applicable responsible guaranty association for handling, etc. BI 03/06/2017 Fav/CS AGG 03/29/2017 Favorable AP 04/13/2017 Favorable RC	Favorable Yeas 18 Nays 0
With subcommittee recommendation – General Government			

A proposed committee substitute for the following bill (CS/SB 736) is available:

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 13, 2017, 9:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 736 Banking and Insurance / Mayfield (Similar CS/H 435, Compare CS/H 437, H 769, H 771, S 1080, Linked CS/CS/S 738)	International Financial Institutions; Redefining the term “financial institution” to include international trust entities and limited service affiliates; specifying conditions under which confidential books and records of international trust entities may be disclosed to their home-country supervisors; deleting international trust companies from requirements for carrying on financial institution business; providing an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international banking corporations, etc. BI 03/06/2017 Fav/CS AGG 03/29/2017 Fav/CS AP 04/13/2017 Fav/CS RC	Fav/CS Yeas 16 Nays 0
With subcommittee recommendation – General Government			
8	CS/CS/SB 738 Governmental Oversight and Accountability / Banking and Insurance / Mayfield (Similar CS/H 437, Compare CS/H 435, H 769, H 771, S 1080, Linked CS/S 736)	Public Records/International Financial Institutions; Providing exemptions from public records requirements for certain information held by the Office of Financial Regulation relating to international trust company representative offices or limited service affiliates, respectively, and relating to affiliated international trust entities; providing future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. BI 03/06/2017 Fav/CS GO 03/27/2017 Fav/CS AP 04/13/2017 Fav/CS RC	Fav/CS Yeas 18 Nays 0
9	CS/SB 1078 Banking and Insurance / Garcia (Linked S 1080)	International Financial Institutions; Extending the expiration date of the term “international trust entity”; extending the expiration date of a moratorium on the Office of Financial Regulation’s enforcement of licensing requirements for certain organizations or entities under certain circumstances; repealing provisions relating to the repeal of the definition of the term “international trust entity” and to the moratorium on the office’s enforcement of certain licensing requirements, etc. BI 03/27/2017 Fav/CS AP 04/13/2017 Temporarily Postponed RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 13, 2017, 9:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	CS/SB 1124 Health Policy / Book (Similar CS/CS/H 963)	Newborn Screenings; Requiring the Department of Health, upon the advice of the Genetics and Newborn Screening Advisory Council, to expand within a specified period the statewide screening of newborns to include any condition on the federal Recommended Uniform Screening Panel; requiring the council to determine whether a condition should be included in the state's screening program within a specified period after its addition to the federal panel, etc. HP 03/27/2017 Fav/CS AP 04/13/2017 Fav/CS	Fav/CS Yeas 18 Nays 0
11	CS/SB 1146 Communications, Energy, and Public Utilities / Broxson (Similar H 977)	Representation by the Public Counsel; Authorizing the Public Counsel to provide representation in proceedings of municipal and other government water and wastewater utilities; authorizing the Public Counsel to represent customers living outside the jurisdictional boundaries of a local government water and wastewater utility in ratesetting proceedings, etc. CU 03/28/2017 Fav/CS AP 04/13/2017 Fav/CS RC	Fav/CS Yeas 18 Nays 0
A proposed committee substitute for the following bill (SB 1156) is available:			
12	SB 1156 Stargel (Identical H 7099)	Corporate Income Tax; Adopting the 2017 version of the Internal Revenue Code, etc. AFT 03/15/2017 Favorable AP 04/13/2017 Fav/CS	Fav/CS Yeas 18 Nays 0
With subcommittee recommendation – Finance and Tax			
13	CS/SB 1272 Regulated Industries / Brandes (Similar CS/CS/H 615)	Professional Regulation; Citing this act as the "Occupational Opportunity Act"; revising the length of time that an active duty member of the Armed Forces of the United States may remain in good standing with an administrative board or program under certain circumstances; requiring, rather than authorizing, the Department of Business and Professional Regulation to issue a professional license, rather than a temporary license, to specified applicants, etc. RI 03/28/2017 Fav/CS MS 04/03/2017 Favorable AP 04/13/2017 Fav/CS	Fav/CS Yeas 18 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, April 13, 2017, 9:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	SCR 1360 Thurston	National Statuary Hall; Requesting the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune, etc. AP 04/13/2017 Favorable RC	Favorable Yeas 18 Nays 0
15	CS/SB 1402 Community Affairs / Latvala (Identical CS/H 1289)	Local Governmental Financial Emergencies; Expanding the entities that have oversight over local governmental entities, charter schools, charter technical career centers, and district school boards under certain circumstances; providing that certain board members of a local governmental entity or district school board who fail to vote affirmatively to take certain actions in certain circumstances are subject to suspension by the Governor, etc. CA 04/03/2017 Fav/CS AP 04/13/2017 Favorable RC	Favorable Yeas 14 Nays 4
16	SB 1582 Bradley (Compare CS/H 7085)	Workers' Compensation Insurance; Requiring carriers to authorize or decline, rather than respond to, certain requests for authorization within a specified time; revising conditions under which the Office of the Judges of Compensation Claims must dismiss petitions for benefits; adding prospective loss costs to a list of reviewable matters in certain proceedings by appellate courts; requiring copies of prospective loss costs to be filed with the Office of Insurance Regulation, etc. BI 04/03/2017 Favorable AP 04/13/2017 Fav/CS RC	Fav/CS Yeas 16 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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 114

INTRODUCER: Senator Brandes

SUBJECT: Cosmetic Product Registration

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	Favorable
2.	<u>Davis</u>	<u>Betta</u>	<u>AGG</u>	Recommend: Favorable
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	Favorable

I. Summary:

SB 114 removes product registration filing requirements by cosmetic manufacturers for cosmetic products. The Department of Business and Professional Regulation (DBPR), Division of Drugs, Devices, and Cosmetics (division), regulates cosmetics that are manufactured and repackaged by licensed cosmetic manufacturers in Florida. Each product produced or repackaged in Florida is required to be registered with the division every two years.

The bill removes the authority of the DBPR to issue a “certificate of free sale” certifying that a cosmetic is registered with the DBPR and may be legally sold in Florida.¹

For Fiscal Year 2017-2018, the DBPR estimates the bill will have a negative fiscal impact of \$226,141 on the Drugs, Devices, and Cosmetics account within the Professional Regulation Trust Fund and an \$18,091 reduction in the service charge on trust fund revenues paid to the General Revenue Fund.

The bill appropriates \$222,564 in recurring funds from the General Revenue Fund for Fiscal Year 2017-2018 to the Division of Drugs, Devices, and Cosmetics to offset a portion of the reduced trust fund revenues.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

State and Federal Regulation

Section 499.003(12), F.S., defines “cosmetic” as an article other than soap, which is either:

¹ See s. 499.003(6), F.S.

- Intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering appearance; or
- Intended for use as a component of the article.

The regulation of cosmetics is addressed in ch. 499, F.S., which regulates drugs, devices, and cosmetics by the DBPR.² The Florida Drug and Cosmetic Act (the act)³ is intended to safeguard public health and promote public welfare by protecting against injuries and merchandising deceit involving drugs, devices, and cosmetics or the use of such products. Currently, cosmetics manufactured outside of Florida are not required to be registered with the division.

Administration of the act must conform to the Federal Food, Drug, and Cosmetic Act (the federal act)⁴ and the applicable portions of the Federal Trade Commission Act⁵, which prohibit the false advertising of drugs, devices, and cosmetics. According to a national trade association,⁶ personal care products valued at \$113 billion were distributed in the United States in 2013 through wholesale trade, retail trade, and personal care services,⁷ with nearly 130,000 industry-related jobs located in Florida (both salaried and self-employed, including part-time).⁸

The act authorizes the division to issue permits to Florida cosmetic manufacturers and register cosmetic products manufactured or repackaged in Florida. Cosmetic manufacturers physically located in Florida must obtain a cosmetic manufacturer permit through the division. The term “manufacture” in this context means the preparation, deriving, compounding, propagation, processing, producing, or fabrication of any cosmetic.⁹ Cosmetic manufacturers also repackage products by changing the container, wrapper, or label of a product, which may include altering the quantity of a product into different containers. A person that only labels or changes the label of a cosmetic, but does not open the container sealed by the manufacturer of the product, is exempt from obtaining a permit.¹⁰

Florida law requires any person who manufactures, packages, repackages, labels, or relabels a cosmetic in Florida to register “each separate and distinct” cosmetic every two years.¹¹ New

² The Drug, Device, and Cosmetic program was transferred to the Department of Business and Professional Regulation from the Department of Health effective November 1, 2012. See ch. 2012-184, Law of Fla., s. 122, at <http://laws.flrules.org/2012/184> (last visited Jan. 21, 2017) and ch. 2012-143, Laws of Fla. s. 3, at <http://laws.flrules.org/2012/143> (last visited Jan. 21, 2017).

³ See ss. 499.001-499.081, F.S.

⁴ Section 499.003(20), F.S., defines the federal act referencing 21 U.S.C. ss. 301 *et seq.* and 52 Stat. 1040 *et seq.*

⁵ See 15 U.S.C. §§ 41-58, as amended.

⁶ The Personal Care Products Council is a national trade association representing the global cosmetic and personal care products industry, with more than 600 member companies that manufacture, distribute, and supply personal care products marketed in the United States. See <http://www.personalcarecouncil.org/> (last visited January 21, 2017).

⁷ See *Economic and Social Contributions of the US Personal Care Products Industry, 2013* (last visited January 21, 2017) at page 6.

⁸ *Id.* at pages B-11 and B-12.

⁹ Florida Department of Business and Professional Regulation, *Cosmetic Manufacturer*, accessible at <http://www.myfloridalicense.com/dbpr/ddc/CosmeticManufacturer.html> (last viewed Jan. 21, 2017).

¹⁰ Section 499.01(2)(o), F.S.

¹¹ See s. 499.015, F.S., and Application for Product Registration - Cosmetics (Main & Identical), Form No.: DBPR-DDC-228 at <https://www.flrules.org/Gateway/reference.asp?No=Ref-05666> (last visited Jan. 21, 2017).

cosmetic products must be registered prior to sale.¹² The biennial registration fee is \$30 for each cosmetic product and \$15 for each identical product.¹³

Neither a formula marketed under differing brand names, sizes, quantities, or distributions, nor the adding of color, flavor, or scents to a formula, are considered to create a separate and distinct product for registration purposes. The different variations must be listed, however, pursuant to the division's administrative rules.¹⁴ The process for identical products requires submission of an application and a \$15 biennial renewal fee.¹⁵ For renewal of a product registration, an applicant must submit product labels, an Application for Product Registration Renewal, and the required fee.¹⁶

Because registration is a prerequisite to sales of a cosmetic, Florida's registration system is a pre-market reporting system that is handled by the division.¹⁷ This is in contrast with the system of the United States Food and Drug Administration (FDA), which is a post-market reporting system for use by manufacturers, packers, and distributors of cosmetic products that are in commercial distribution in the United States.¹⁸

Under the FDA's system, any representation in labeling or advertising that creates an impression of official approval because of registration or possession of a registration number is considered misleading. Misleading labeling makes a cosmetic misbranded, and marketing a misbranded cosmetic violates federal law.¹⁹ Enforcement of the federal act is initiated by a complaint by a consumer, which may be accomplished by mail, fax, through a health provider, pharmacist, or via an online report.²⁰ The division, in a "Helpful Links and Resources" section on its website,²¹ provides a link to the FDA website.

Certificates of Free Sale

The DBPR issues certificates of free sale (COFS)²² for a fee of \$25 to certify that a cosmetic that is registered with the DBPR may be legally sold in Florida. A COFS is required by many foreign countries before a product may be sent into the country. A COFS need not be obtained from the

¹² See Rule 61N-1.016(2), F.A.C. for requirements imposed upon applicants.

¹³ See Rule 61N-1.018(3)(f) and (g), F.A.C.

¹⁴ See Rule 61N-1.016(1)(b), F.A.C.

¹⁵ Rule 61N-1.016(2), F.A.C.

¹⁶ See Rule 61N-1.016(3), F.A.C., and Form DBPR-DDC-235, at <https://www.flrules.org/Gateway/reference.asp?No=Ref-05666> (last visited Jan. 21, 2017).

¹⁷ See <http://www.myfloridalicense.com/dbpr/ddc/index.html> (last visited Jan. 21, 2017).

¹⁸ See the FDA's description of its Voluntary Cosmetics Registration Program and its benefits at <http://www.fda.gov/Cosmetics/RegistrationProgram/default.htm> (last visited Jan. 21, 2017). The program does not apply to cosmetic products for professional use only, such as products used in beauty salons, spas, or skin care clinics, or to products that are not for sale, such as hotel samples, free gifts, or cosmetic products made at home and given to family and friends.

¹⁹ *Id.*

²⁰ See <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm354560.htm> (last visited Jan. 21, 2017).

²¹ See http://www.myfloridalicense.com/dbpr/ddc/ddc_helpful_links.html (last visited Jan. 21, 2017).

²² Section 499.041(7), F.S., uses the term "free-sale certificate," and imposes a fee of \$25, with \$2 for each copy obtained at the same time that the certificate is issued. See Rules 61N-1.017 and 61N-1.018(3)(g), F.A.C.

DBPR but may be obtained from the FDA²³ and other organizations, such as Enterprise Florida.²⁴

III. Effect of Proposed Changes:

The requirement that Florida cosmetic manufacturers register cosmetic products with the division is eliminated. In addition, the bill makes conforming changes by eliminating registration and renewal requirements for cosmetic products, including the requirements to submit applications, product labels, and fees to the division. Florida cosmetic manufacturers' products will be treated in a similar manner to those cosmetic products manufactured outside of Florida that are distributed and sold in the state.²⁵

The bill also removes the authority granted to the DBPR to issue a "certificate of free sale" certifying that a cosmetic is registered with the DBPR and may be legally sold in Florida.²⁶

The bill provides an effective date of July 1, 2017.

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:

The bill removes fees for cosmetic product registrations and renewals, as well as fees for the issuance of certificates of free sale for cosmetic products.

²³ See http://www.fda.gov/Cosmetics/InternationalActivities/Exporters/ucm129593.htm#Are_there_other (last visited Jan. 21, 2017).

²⁴ According to the FDA, some foreign governments accept certificates issued by a state or local health department, board of trade, or trade association. Due to limited resources, the FDA recommends that firms pursue such alternative sources for export certificates whenever possible, provided they are acceptable to the country requiring a certificate. See http://www.fda.gov/Cosmetics/InternationalActivities/Exporters/ucm129593.htm#Are_there_other (last visited Jan. 21, 2017). These online sites offer certificates of free sale services: <http://icmad.org/programs/certificates-of-free-sale> (last visited Jan. 21, 2017), <http://www.personalcarecouncil.org/member-industry-resources/certificates-free-sale> (last visited Jan. 21, 2017), and <http://www.enterpriseflorida.com/wp-content/uploads/certificate-of-free-sale-request-form.pdf> (last visited Jan. 21, 2017).

²⁵ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 114, dated January 11, 2017 and revised January 20, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

²⁶ See s. 499.003(6), F.S.

B. Private Sector Impact:

The bill has a positive fiscal impact for cosmetic manufacturers due to the elimination of the fees associated with product registration and renewal. The elimination of premarket registration requirements in Florida may require manufacturers, who have relied upon issuance by the DBPR for certificates of free sale, to obtain that service from third parties.

C. Government Sector Impact:

The DBPR estimates the bill will reduce the annual revenue to the Drugs, Devices, and Cosmetics account within the Professional Regulation Trust Fund by \$226,141²⁷ in Fiscal Year 2017-2018, \$297,973 in Fiscal Year 2018-2019, and \$393,072 in Fiscal Year 2019-2020. The revenues transferred to the General Revenue Fund, based on the service charge on trust fund revenues, will be reduced by \$18,091 in Fiscal Year 2017-2018, \$23,838 in Fiscal Year 2018-2019, and \$31,446 in Fiscal Year 2019-2020.²⁸

The bill appropriates \$222,564 in recurring funds from the General Revenue Fund for Fiscal Year 2017-2018 to the Division of Drugs, Devices, and Cosmetics to offset a portion of the reduced trust fund revenues. The appropriation from the Professional Regulation Trust Fund is reduced by the same amount.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 499.015, 499.003, 499.041, and 499.051.

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

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

None.

²⁷ The total amount of estimated cosmetic products revenue to DBPR in Fiscal Year 2017-2018 of \$226,141 is the sum of: \$103,729 (new product registrations), \$120,396 (product registration renewals), and \$2,016, (fees for issuance of certificates of free sale (COFS)). See *2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 114, dated January 11, 2017, revised January 20, 2017 and revised March 9, 2017 (on file with Senate Appropriations Subcommittee on General Government) at page 5.

²⁸ See *2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for SB 114, dated January 11, 2017, revised January 20, 2017, and revised March 9, 2017 (on file with Senate Appropriations Subcommittee on General Government) at page 3.

B. Amendments:

None.

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

By Senator Brandes

24-00152-17

2017114__

1 A bill to be entitled
2 An act relating to cosmetic product registration;
3 amending s. 499.015, F.S.; deleting the requirement
4 that a person who manufactures, packages, repackages,
5 labels, or relabels a cosmetic in this state register
6 such cosmetic biennially with the Department of
7 Business and Professional Regulation; amending ss.
8 499.003, 499.041, and 499.051, F.S.; conforming
9 provisions to changes made by the act; providing an
10 appropriation; providing an effective date.

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

14 Section 1. Section 499.015, Florida Statutes, is amended to
15 read:

16 499.015 Registration of drugs and devices, ~~and cosmetics~~;
17 issuance of certificates of free sale.—

18 (1)(a) Except for those persons exempted from the
19 definition of manufacturer in s. 499.003, any person who
20 manufactures, packages, repackages, labels, or relabels a drug
21 or device, ~~or cosmetic~~ in this state must register such drug
22 or device, ~~or cosmetic~~ biennially with the department; pay a
23 fee in accordance with the fee schedule provided by s. 499.041;
24 and comply with this section. The registrant must list each
25 separate and distinct drug or device, ~~or cosmetic~~ at the time
26 of registration.

27 (b) The department may not register any product that does
28 not comply with the Federal Food, Drug, and Cosmetic Act, as
29 amended, or Title 21 C.F.R. Registration of a product by the
30 department does not mean that the product does in fact comply
31 with all provisions of the Federal Food, Drug, and Cosmetic Act,
32 as amended.

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

24-00152-17

2017114__

33 (2) The department may require the submission of a catalog
34 and specimens of labels at the time of application for
35 registration of drugs or devices, ~~and cosmetics~~ packaged and
36 prepared in compliance with the federal act, which submission
37 constitutes a satisfactory compliance for registration of the
38 products. With respect to all other drugs and devices, ~~and~~
39 ~~cosmetics~~, the department may require the submission of a
40 catalog and specimens of labels at the time of application for
41 registration, but the registration will not become effective
42 until the department has examined and approved the label of the
43 drug or device, ~~or cosmetic product~~. This approval or denial
44 must include written notification to the manufacturer.

45 (3) Except for those persons exempted from the definition
46 of manufacturer in s. 499.003, a person may not sell any product
47 that he or she has failed to register in conformity with this
48 section. Such failure to register subjects such drug or device,
49 ~~or cosmetic product~~ to seizure and condemnation as provided in
50 s. 499.062, and subjects such person to the penalties and
51 remedies provided in this part.

52 (4) Unless a registration is renewed, it expires 2 years
53 after the last day of the month in which it was issued. Any
54 product registration issued or renewed on or after July 1, 2016,
55 shall expire on the same date as the manufacturer or repackager
56 permit of the person seeking to register the product. If the
57 first product registration issued to a person on or after July
58 1, 2016, expires less than 366 days after issuance, the fee for
59 product registration shall be \$15. If the first product
60 registration issued to a person on or after July 1, 2016,
61 expires more than 365 days after issuance, the fee for product

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

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62 registration shall be \$30. The department may issue a stop-sale
63 notice or order against a person that is subject to the
64 requirements of this section and that fails to comply with this
65 section within 31 days after the date the registration expires.
66 The notice or order shall prohibit such person from selling or
67 causing to be sold any drugs or devices, ~~or cosmetics~~ covered
68 by this part until he or she complies with the requirements of
69 this section.

70 (5) A product regulated under this section which is not
71 included in the biennial registration may not be sold until it
72 is registered and complies with this section.

73 (6) The department may issue a certificate of free sale for
74 any product that is required to be registered under this part.

75 (7) A product registration is valid only for the company
76 named on the registration and located at the address on the
77 registration. A person whose product is registered by the
78 department under this section must notify the department before
79 any change in the name or address of the establishment to which
80 the product is registered. If a person whose product is
81 registered ceases conducting business, the person must notify
82 the department before closing the business.

83 (8) Notwithstanding any requirements set forth in this
84 part, a manufacturer of medical devices that is registered with
85 the federal Food and Drug Administration is exempt from this
86 section and s. 499.041(6) if:

87 (a) The manufacturer's medical devices are approved for
88 marketing by, or listed with the federal Food and Drug
89 Administration in accordance with federal law for commercial
90 distribution; or

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91 (b) The manufacturer subcontracts with a manufacturer of
92 medical devices to manufacture components of such devices.

93 (9) However, the manufacturer must submit evidence of such
94 registration, listing, or approval with its initial application
95 for a permit to do business in this state, as required in s.
96 499.01, and any changes to such information previously submitted
97 at the time of renewal of the permit. Evidence of approval,
98 listing, and registration by the federal Food and Drug
99 Administration must include:

100 (a) For Class II devices, a copy of the premarket
101 notification letter (510K);

102 (b) For Class III devices, a federal Food and Drug
103 Administration premarket approval number;

104 (c) For a manufacturer who subcontracts with a manufacturer
105 of medical devices to manufacture components of such devices, a
106 federal Food and Drug Administration registration number; or

107 (d) For a manufacturer of medical devices whose devices are
108 exempt from premarket approval by the federal Food and Drug
109 Administration, a federal Food and Drug Administration
110 registration number.

111 Section 2. Subsection (6) of section 499.003, Florida
112 Statutes, is amended to read:

113 499.003 Definitions of terms used in this part.—As used in
114 this part, the term:

115 (6) "Certificate of free sale" means a document prepared by
116 the department which certifies a drug or device, ~~or cosmetic,~~
117 that is registered with the department, as one that can be
118 legally sold in the state.

119 Section 3. Subsection (6) of section 499.041, Florida

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120 Statutes, is amended to read:

121 499.041 Schedule of fees for drug, device, and cosmetic
122 applications and permits, product registrations, and free-sale
123 certificates.-

124 (6) A person that is required to register drugs ~~or~~
125 devices, ~~or cosmetic products~~ under s. 499.015 shall pay an
126 annual product registration fee of not less than \$5 or more than
127 \$15 for each separate and distinct product in package form. The
128 registration fee is in addition to the fee charged for a free-
129 sale certificate.

130 Section 4. Subsection (2) of section 499.051, Florida
131 Statutes, is amended to read:

132 499.051 Inspections and investigations.-

133 (2) In addition to the authority set forth in subsection
134 (1), the department and any duly designated officer or employee
135 of the department may enter and inspect any other establishment
136 for the purpose of determining compliance with this chapter and
137 rules adopted under this chapter regarding any drug, device, or
138 cosmetic ~~product~~.

139 Section 5. For the 2017-2018 fiscal year, the sum of
140 \$222,564 in recurring funds is appropriated from the General
141 Revenue Fund to the Division of Drugs, Devices, and Cosmetics in
142 the Department of Business and Professional Regulation for the
143 purpose of implementing this act, and the appropriation from the
144 Professional Regulation Trust Fund to the division shall be
145 reduced by \$222,564.

146 Section 6. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 16, 2016

I respectfully request that **Senate Bill #114**, relating to **Cosmetic Product Registration**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 13, 2017

SB 114

Meeting Date

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name John Ray

Job Title _____

Address 310 W. College Ave, Suite 212

Phone 850.445.5044

Street

Tallahassee

FL

32301

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Seychelles Organics, 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.

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 196 (918062)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); and Senator Flores and others

SUBJECT: Juvenile Civil Citation and Similar Diversion Programs

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sadberry</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 196 requires a law enforcement officer to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing one of the following first-time misdemeanor offenses:

- Possession of alcoholic beverages by a person under age 21 (s. 562.111, F.S.);
- Battery (s. 784.03(1), F.S.);
- Criminal Mischief (s. 806.13, F.S.);
- Trespass (ss. 810.08, and 810.09, F.S.);
- Theft (ss. 812.04(2)(e) and (3)(a), F.S.);
- Retail and farm theft (s. 812.015(2), F.S.);
- Loitering and prowling (s. 856.021, F.S.);
- Affrays and riots (s. 870.01(1), F.S.);
- Disorderly conduct (s. 877.03, F.S.);
- Possession of 20 grams or less of cannabis (s. 893.13(6)(b), F.S.);
- Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia (s. 893.147, F.S.); or
- Resisting an officer without violence (s. 843.02, F.S.).

The bill permits a law enforcement officer to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing:

- A misdemeanor offense not enumerated in the bill;
- A misdemeanor offense not enumerated in the bill and the juvenile has one or two prior misdemeanors from a separate criminal episode; or
- A misdemeanor offense not enumerated in the bill and the juvenile is currently alleged to have committed, or is currently charged with, a felony.

A law enforcement officer must provide written documentation articulating why an arrest is warranted when he or she has the discretion to issue a civil citation but instead chooses to arrest the juvenile.

The bill specifies that the option of the issuance of a civil citation or referral to a similar diversion program does not apply to a misdemeanor offense arising out of an episode in which the juvenile is also alleged to have committed a felony.

The bill may have a positive fiscal impact to state and local governments because an increase in civil citation or similar diversion programs may result in juveniles being diverted from the Department of Juvenile Justice's more costly residential program. It also may reduce the cost to state and local governments for housing youth in juvenile detention, which is currently at a 50/50 cost share.

The bill is effective July 1, 2017.

II. Present Situation:

Section 985.12, F.S., establishes a civil citation process that provides law enforcement an alternative to arresting juveniles for nonserious delinquent acts. The Department of Juvenile Justice (DJJ) is required to assist in the implementation of civil citation or other similar diversion programs. The DJJ must also develop guidelines for these programs that include intervention services based upon proven civil citation or similar diversion programs within the state.¹

These civil citation or similar diversion programs are discretionary and are established at the local level in concurrence with the chief judge, state attorney, public defender, and head of each local law enforcement agency. The program may be operated by law enforcement, the DJJ, a juvenile assessment center, a county or municipality, or an entity selected by the county or municipality.

Currently, if a juvenile admits to committing a misdemeanor² a law enforcement officer has the discretion to:

- Issue a warning or inform the juvenile's parent of the child's infraction;
- Issue a civil citation or require participation in a similar diversion program; or
- Arrest the juvenile.³

¹ Section 985.12(1) and (2), F.S.

² Misdemeanors involving sexual or firearm offenses are currently ineligible for civil citation programs under the DJJ Civil Citation Model Plan. *2017 Bill Analysis for SB 196*, Department of Juvenile Justice, (January 18, 2017) (on file with the Senate Criminal Justice Committee).

³ Section 985.12(1), F.S.

A law enforcement officer can issue a civil citation to any juvenile who admits to committing a first-time, second-time, or third-time misdemeanor.⁴ When issuing a civil citation the law enforcement officer must advise the juvenile that he or she has the option of refusing the civil citation and of being referred to the DJJ.⁵ If an arrest is made, the law enforcement officer must provide written documentation as to why an arrest was warranted.⁶

A juvenile issued a civil citation or required to participate in a similar diversion program may be assessed up to 50 hours of community service and must participate in intervention services as indicated by a needs assessment. Intervention services include family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.

A juvenile is required to report to a community service performance monitor within seven working days after the civil citation has been issued and complete at least five community service hours per week. The monitor also reports information regarding the juvenile's service hour completion and the expected completion date to the DJJ.⁷

If a juvenile fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or commits a subsequent misdemeanor, the law enforcement officer must issue a report to the DJJ alleging that the juvenile has committed a delinquent act, thereby initiating formal judicial processing.⁸

Sixty counties have implemented a civil citation or similar program in Florida. Taylor and Polk counties are in the process of implementing programs. Bradford, Calhoun, Gulf, Hardee, and Washington counties have not established civil citation programs; however, these counties do utilize a different type of diversion program.⁹

For Fiscal Year 2015-16, 19,386 juveniles were eligible for a civil citation, and only 9,636 eligible juveniles were issued a civil citation. The recidivism rate for the juveniles who completed a civil citation program in Fiscal Year 2014-15 was 3.8 percent.¹⁰

III. Effect of Proposed Changes:

Section 985.12, F.S., is amended to require the establishment of one or more civil citation or similar diversion programs in each county. At least one program must be applicable countywide. Any additional programs must complement the countywide program. Programs can work with any other programs in the state to best serve the juveniles in the jurisdiction.

⁴ *Id.*

⁵ Section 985.12(6), F.S. A juvenile may refuse the civil citation at any time before completion of the work assignment.

⁶ Section 985.12(1), F.S.

⁷ Section 985.12(4), F.S.

⁸ Section 985.12(5), F.S.

⁹ *2017 Bill Analysis for SB 196*, Department of Juvenile Justice, (January 18, 2017) (on file with the Senate Criminal Justice Committee).

¹⁰ *Id.*

The bill requires a law enforcement officer¹¹ to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing one of the following first-time misdemeanor offenses:¹²

- Possession of alcoholic beverages by a person under age 21 (s. 562.111, F.S.);
- Battery (s. 784.03(1), F.S.);
- Criminal Mischief (s. 806.13, F.S.);
- Trespass (ss. 810.08 and 810.09, F.S.);
- Theft (ss. 812.04(2)(e) and (3)(a), F.S.);
- Retail and farm theft (s. 812.015(2), F.S.);
- Loitering and prowling (s. 853.021, F.S.);
- Affrays and riots (s. 870.01(1), F.S.);
- Disorderly conduct (s. 877.03, F.S.);
- Possession of 20 grams or less of cannabis (s. 893.13(6)(b), F.S.);
- Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia (s. 893.147, F.S.); or
- Resisting an officer without violence (s. 843.02, F.S.).

The bill permits a law enforcement officer to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing:

- A misdemeanor offense not enumerated in the bill;
- A misdemeanor offense not enumerated in the bill and the juvenile has one or two prior misdemeanors from a separate criminal episode; or
- A misdemeanor offense not enumerated in the bill and the juvenile is currently alleged to have committed, or is currently charged with, a felony.

As in current law, a law enforcement officer can choose to issue a simple warning or inform the child's guardian or parent of the child's infraction.

A law enforcement officer must provide written documentation articulating why an arrest is warranted when he or she has the discretion to issue a civil citation but instead chooses to arrest the juvenile.

The bill specifies that the option for receiving a civil citation or referral to a similar diversion program does not apply to a misdemeanor offense arising out of an episode in which the juvenile is also alleged to have committed a felony.

¹¹ The bill defines "law enforcement officer" to have the same meaning as in s. 943.10, F.S. Section 943.10, F.S., defines the term to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

¹² A "misdemeanor offense" is defined as one or more violations of law arising out of the same criminal episode, act, or transaction.

If a juvenile fails to timely report for a community service assignment, complete such assignment, or comply with assigned intervention services within a prescribed time, the entity operating the program must notify the law enforcement officer. The law enforcement officer then must determine if there is a good cause to arrest the juvenile for the original misdemeanor offense and refer the case to the state attorney or to allow the juvenile to continue in the program.

If the juvenile commits a subsequent delinquent act, the entity operating the program must notify the law enforcement officer and the law enforcement officer shall arrest of the juvenile for the original misdemeanor offense and refer the case to the state attorney.

The bill requires the department to annually report on the best practices of the programs.

The bill retains current statutory provisions relating to:

- The program requirements placed upon juveniles participating in a civil citation program, including community service hours, intervention services, and time frames to complete the program;
- The ability of juveniles to refuse participation in a civil citation or similar diversion program;
- The requirement of law enforcement officers to forward civil citations to specified parties;
- The requirement for civil citation or similar diversion programs to report the juveniles' outcomes to the DJJ and law enforcement officers; and
- Participation in a civil citation or similar diversion program not being considered a referral to the DJJ.

The bill extends the time period in which a juvenile is required to report to a community service performance monitor from seven to ten working days after the civil citation or documentation for a similar diversion program has been issued.

The bill amends ss. 943.051 and 985.11, F.S., to make conforming changes.

The bill is effective October 1, 2017.

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:

Expanding the use of civil citation or similar diversion programs could result in more juveniles having future opportunities for employment since these juveniles will not have the hurdle of an arrest record.

C. Government Sector Impact:

The bill could have positive fiscal impacts to state and local governments because an increase in civil citation or similar diversion programs could lead to juveniles being diverted from the DJJ's more costly residential program. This bill should have the impact of reducing the number of residential beds in the DJJ.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 985.12 of the Florida Statutes.

This bill makes conforming technical changes to the following sections of the Florida Statutes: 943.051 and 985.11.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on March 8, 2017:**

The committee substitute:

- Provides discretion for a law enforcement officer to issue a civil citation if a juvenile has a pending felony charge;
- Allows a law enforcement officer to determine if there is good cause to arrest a juvenile who has failed to comply with program requirements or allow the juvenile to continue in the program;
- Specifies that at least one program must be countywide and that counties can work together;

- Requires the DJJ to report annually on the best practices of the programs; and
- Makes technical and stylistic changes.

CS by Criminal Justice on January 23, 2017:

The committee substitute:

- Adds the second degree misdemeanor of loitering and prowling to the list of qualifying offenses for a civil citation;
- Specifies that at least one program must be operated by the county;
- Clarifies program requirements; and
- Makes technical changes recommended by the DJJ.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Flores) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 25.052, Florida Statutes, is created to
read:

25.052 Annual report.-

(1) Between October 1 and October 15 of each year, the
Supreme Court shall provide a report with data as of September
30 of that year, to the Governor, the Attorney General, the



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11 President of the Senate, and the Speaker of the House of
12 Representatives consisting of two parts.

13 (a) In part I of the report, the court shall provide the
14 following information regarding each case on the court's docket
15 as of September 30 of the current year, for which a decision or
16 disposition has not been rendered within 180 days after oral
17 argument was heard or after the date on which the case was
18 submitted to the court panel for a decision without oral
19 argument:

20 1. The case name and number.

21 2. The case type.

22 3. A brief description of the case.

23 4. The date on which the case was added to the court's
24 docket.

25 5. The date of oral argument or the date the case was
26 submitted to the court panel for decision without oral argument.

27 6. The number of days that have elapsed since the date the
28 oral argument was heard or the date the case was submitted to
29 the court panel for a decision without oral argument.

30 7. A detailed explanation of the court's failure to render
31 a decision or disposition within 180 days after oral argument
32 was heard or after the date on which the case was submitted to
33 the court panel for a decision without oral argument.

34 8. The date on which, or the time period within which, the
35 court expects to render a decision or disposition.

36 (b) In part II of the report, the court shall provide the
37 following information regarding each case decided or disposed of
38 by the court between October 1 of the prior year and September
39 30 of the current year, for which the decision or disposition



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40 was not rendered within 180 days after oral argument was heard
41 or after the date on which the case was submitted to the court
42 panel for a decision without oral argument:

43 1. The information required in subparagraphs (a)1.-5. and
44 7.

45 2. The date that a decision or disposition was issued.

46 3. The number of days that had elapsed between the date
47 oral argument was heard or the date the case was submitted to
48 the court panel for a decision without oral argument and the
49 date on which a decision or disposition was issued.

50 (2) The report shall be submitted in an electronic
51 spreadsheet format capable of being sorted and filtered by the
52 following elements:

53 (a) The case number.

54 (b) The case type.

55 (c) The date on which the case was added to the court's
56 docket.

57 (d) The date of oral argument or the date the case was
58 submitted to the court panel for decision without oral argument.

59 (e) The number of days that elapsed since the date oral
60 argument was heard or the date the case was submitted to the
61 court panel for a decision without oral argument.

62 (f) The date of decision or disposition.

63 (3) The case type of each case reported shall include
64 civil, criminal not seeking the death penalty, criminal seeking
65 the death penalty, court rules, bar discipline, or judicial
66 discipline.

67 (4) This section is repealed July 1, 2022, unless reviewed
68 and reenacted by the Legislature before that date.



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69 Section 2. Effective October 1, 2017, section 985.12,
70 Florida Statutes, is amended to read:

71 985.12 Civil citation and similar diversion programs.—

72 (1) As used in this section, the term:

73 (a) "Law enforcement officer" has the same meaning as
74 provided in s. 943.10.

75 (b) "Misdemeanor offense" means one misdemeanor violation
76 of law.

77 (2) (a) ~~(1)~~ There is established a process for the use of
78 juvenile civil citation and similar diversion programs to
79 provide process for the purpose of providing an efficient and
80 innovative alternative to custody by the department of Juvenile
81 Justice for juveniles children who commit nonserious delinquent
82 acts and to ensure swift and appropriate consequences. The
83 department shall encourage and assist in the implementation and
84 improvement of civil citation and programs or other similar
85 diversion programs in around the state.

86 (b) One or more The civil citation or similar diversion
87 programs program shall be established in each county to serve
88 juveniles who commit misdemeanor offenses as provided in this
89 section. Such programs must meet the requirements of this
90 section and be established at the local level with the
91 concurrence of the chief judge of the circuit, state attorney,
92 public defender, and the head of each local law enforcement
93 agency involved. At least one program must be applicable
94 countywide. The countywide program may be established by a
95 county or by interlocal agreement pursuant to s. 163.01 by a
96 county working jointly with any municipalities or other entities
97 within the county's boundaries or contiguous counties and any



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98 municipalities or other entities within the counties'
99 boundaries. The program may be operated by an entity such as a
100 law enforcement agency, the department, a juvenile assessment
101 center, the county or municipality, or another entity selected
102 by the county or municipality. Any additional programs shall
103 complement the countywide program. Any program may work with any
104 other program in the state to best serve the juveniles in the
105 jurisdiction. An entity operating such a ~~the civil citation or~~
106 ~~similar diversion~~ program must do so in consultation and
107 agreement with the state attorney and local law enforcement
108 agencies.

109 (3) Under ~~such~~ a juvenile civil citation or similar
110 diversion program, a law enforcement officer who makes, ~~upon~~
111 ~~making~~ contact with a juvenile who admits having committed a
112 misdemeanor offense for the first time ~~misdemeanor,~~ may:

113 (a) Choose to issue a simple warning or inform the child's
114 guardian or parent of the child's infraction; ~~or may~~

115 (b) Issue a civil citation to the juvenile or require the
116 juvenile's participation in a similar diversion program, as
117 follows:

118 1. A law enforcement officer shall issue the citation if
119 the violation of law is a misdemeanor offense and is one of the
120 following:

121 a. Section 562.111, relating to possession of alcoholic
122 beverages by persons under age 21;

123 b. Section 784.03(1), relating to battery. This sub-
124 subparagraph excludes battery relating to domestic violence as
125 defined in s. 741.28;

126 c. Section 806.13, relating to criminal mischief;



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- 127 d. Section 810.08 or s. 810.09, relating to trespass;
128 e. Section 812.014(2)(e) or s. 812.014(3)(a), relating to
129 theft;
130 f. Section 812.015(2), relating to retail and farm theft;
131 g. Section 856.021, relating to loitering or prowling;
132 h. Section 870.01(1), relating to affrays and riots;
133 i. Section 877.03, relating to disorderly conduct;
134 j. Section 893.13(6)(b), relating to possession of certain
135 amounts of cannabis;
136 k. Section 893.147, relating to use, possession,
137 manufacture, delivery, transportation, advertisement, or retail
138 sale of drug paraphernalia; or
139 1. Section 843.02, relating to resisting an officer without
140 violence.
141 2. A law enforcement officer may issue a civil citation to
142 a juvenile or require the juvenile's participation in a similar
143 diversion program if the violation of law is a misdemeanor
144 offense not enumerated in subparagraph 1.
145 3. Notwithstanding subparagraph 1., a law enforcement
146 officer may issue a civil citation to a juvenile or require the
147 juvenile's participation in a similar diversion program if the
148 violations of law are more than one misdemeanor offense arising
149 out of the same criminal episode.
150 (4) Under a juvenile civil citation or similar diversion
151 program, a law enforcement officer who makes contact with a
152 juvenile who admits to having committed a misdemeanor offense
153 and has one or two prior misdemeanors from a separate criminal
154 episode may issue a civil citation to the juvenile or require
155 the juvenile's participation in a similar diversion program,



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156 regardless of whether the violations of law are enumerated in
157 subparagraph (3) (b)1.

158 (5) Under a juvenile civil citation or similar diversion
159 program, a law enforcement officer who makes contact with a
160 juvenile who admits to having committed a misdemeanor offense
161 and is currently alleged to have committed, or is currently
162 charged with and awaiting final disposition, of an offense that
163 would be a felony, may issue a civil citation to the juvenile or
164 require the juvenile's participation in a similar diversion
165 program, regardless of whether the violations of law are
166 enumerated in subparagraph (3) (b)1.

167 (6) If an arrest is made for a misdemeanor offense subject
168 to paragraph (3) (b)2., paragraph (3) (b)3., subsection (4), or
169 subsection (5) a law enforcement officer must provide written
170 documentation as to why the arrest was warranted.

171 (7) A law enforcement officer shall advise a juvenile
172 eligible to receive a civil citation under subsection (3), (4),
173 or (5) that he or she has the option to refuse the civil
174 citation or other similar diversion program and be referred to
175 the department. This option may be exercised at any time before
176 completion of the community service assignment required under
177 subsection (9). Participation in a civil citation or similar
178 diversion program is not considered a referral to the
179 department.

180 (8) Upon issuance of the civil citation or documentation
181 requiring a similar diversion program, the law enforcement
182 officer shall send a copy to the county sheriff, the state
183 attorney, the department or the entity operating the program as
184 designated by the department, the parent or guardian of the



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185 juvenile, and the victim. The entity operating the program shall
186 enter such information into the juvenile justice information
187 system.

188 (9) A juvenile who elects to participate in a civil
189 citation or similar diversion program shall complete, and assess
190 up to 50 community service hours, and participate require
191 participation in intervention services as indicated by an
192 assessment of the needs of the juvenile, including family
193 counseling, urinalysis monitoring, and substance abuse and
194 mental health treatment services.

195 (a) The juvenile shall report to the entity operating the
196 program within 10 business days after the date of issuance of
197 the civil citation or documentation for a similar diversion
198 program. The juvenile shall spend a minimum of 5 hours per week
199 completing the community service assignment. The entity
200 operating the program shall immediately notify the department
201 through the juvenile justice information system that a juvenile
202 has reported to the entity operating the program and the
203 expected date on which the juvenile will complete the community
204 service assignment ~~A copy of each citation issued under this~~
205 ~~section shall be provided to the department, and the department~~
206 ~~shall enter appropriate information into the juvenile offender~~
207 ~~information system. Use of the civil citation or similar~~
208 ~~diversion program is not limited to first-time misdemeanors and~~
209 ~~may be used in up to two subsequent misdemeanors. If an arrest~~
210 ~~is made, a law enforcement officer must provide written~~
211 ~~documentation as to why an arrest was warranted.~~

212 (b) At the conclusion of a juvenile's civil citation
213 program or similar diversion program, the entity agency



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214 operating the program shall report the outcome of the program to
215 the department.

216 (c) If the juvenile fails to timely report for a community
217 service assignment, complete such assignment, or comply with
218 assigned intervention services within the prescribed time, the
219 entity operating the program shall notify the law enforcement
220 officer. The law enforcement officer shall determine if there is
221 good cause to arrest the juvenile for the original misdemeanor
222 offense and refer the case to the state attorney or allow the
223 juvenile to continue in the program.

224 (d) If the juvenile commits a subsequent delinquent act
225 then the entity operating the program shall notify the law
226 enforcement officer and the law enforcement officer shall arrest
227 the juvenile for the original misdemeanor offense and refer the
228 case to the state attorney. ~~The issuance of a civil citation is~~
229 ~~not considered a referral to the department.~~

230 (10)-(2) The department shall develop guidelines for the
231 civil citation and similar diversion programs ~~program~~ which
232 include intervention services that are based on ~~upon~~ proven
233 civil citation or similar diversion programs ~~in within~~ the
234 state. The department shall generate a report annually on the
235 best practices of the programs. The department must provide the
236 report annually to the Governor, the President of the Senate,
237 and the Speaker of the House of Representatives no later than
238 January 31 each year. The department must also provide an
239 electronic copy of the annual report to the civil citation and
240 similar diversion programs no later than January 31 each year.

241 (11) The department shall generate a report annually on
242 participation and outcomes for civil citation and similar



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243 diversion programs, reported as statewide aggregate data and
244 data for each civil citation and similar diversion program from
245 the previous calendar year. The annual report shall be available
246 on the department's website no later than January 31, of each
247 year. The department must also provide an electronic copy of the
248 annual report to each civil citation and similar diversion
249 program. At a minimum, the data shall include:

250 (a) Race, ethnicity, gender and age of the juvenile;

251 (b) The juvenile's county of residence;

252 (c) The misdemeanor offenses committed;

253 (d) The county where the misdemeanor offenses were

254 committed;

255 (e) Whether the juvenile has previously participated in a
256 civil citation or similar diversion program;

257 (f) Whether the juvenile successfully completed or failed
258 to complete a civil citation or similar diversion program; and

259 (g) Recidivism data for juveniles in paragraph (f).

260 (12) This section does not apply to:

261 (a) A juvenile who has entered a plea of nolo contendere or
262 guilty to, or has been found to have committed, an offense that
263 would be a felony if committed by an adult.

264 (b) A misdemeanor offense arising out of a criminal episode
265 in which the juvenile is also alleged to have committed an
266 offense that would be a felony if committed by an adult.

267 ~~(3) Upon issuing such citation, the law enforcement officer~~
268 ~~shall send a copy to the county sheriff, state attorney, the~~
269 ~~appropriate intake office of the department, or the community~~
270 ~~service performance monitor designated by the department, the~~
271 ~~parent or guardian of the child, and the victim.~~



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272 ~~(4) The child shall report to the community service~~
273 ~~performance monitor within 7 working days after the date of~~
274 ~~issuance of the citation. The work assignment shall be~~
275 ~~accomplished at a rate of not less than 5 hours per week. The~~
276 ~~monitor shall advise the intake office immediately upon~~
277 ~~reporting by the child to the monitor, that the child has in~~
278 ~~fact reported and the expected date upon which completion of the~~
279 ~~work assignment will be accomplished.~~

280 ~~(5) If the child fails to report timely for a work~~
281 ~~assignment, complete a work assignment, or comply with assigned~~
282 ~~intervention services within the prescribed time, or if the~~
283 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~
284 ~~officer shall issue a report alleging the child has committed a~~
285 ~~delinquent act, at which point a juvenile probation officer~~
286 ~~shall process the original delinquent act as a referral to the~~
287 ~~department and refer the report to the state attorney for~~
288 ~~review.~~

289 ~~(6) At the time of issuance of the citation by the law~~
290 ~~enforcement officer, such officer shall advise the child that~~
291 ~~the child has the option to refuse the citation and to be~~
292 ~~referred to the intake office of the department. That option may~~
293 ~~be exercised at any time before completion of the work~~
294 ~~assignment.~~

295 Section 3. Effective October 1, 2017, paragraph (b) of
296 subsection (3) of section 943.051, Florida Statutes, is amended
297 to read:

298 943.051 Criminal justice information; collection and
299 storage; fingerprinting.—

300 (3)



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301 (b) A minor who is charged with or found to have committed
302 the following offenses shall be fingerprinted and the
303 fingerprints shall be submitted electronically to the
304 department, unless the minor participates in ~~is issued~~ a civil
305 citation or similar diversion program pursuant to s. 985.12:
306 1. Assault, as defined in s. 784.011.
307 2. Battery, as defined in s. 784.03.
308 3. Carrying a concealed weapon, as defined in s. 790.01(1).
309 4. Unlawful use of destructive devices or bombs, as defined
310 in s. 790.1615(1).
311 5. Neglect of a child, as defined in s. 827.03(1)(e).
312 6. Assault or battery on a law enforcement officer, a
313 firefighter, or other specified officers, as defined in s.
314 784.07(2)(a) and (b).
315 7. Open carrying of a weapon, as defined in s. 790.053.
316 8. Exposure of sexual organs, as defined in s. 800.03.
317 9. Unlawful possession of a firearm, as defined in s.
318 790.22(5).
319 10. Petit theft, as defined in s. 812.014(3).
320 11. Cruelty to animals, as defined in s. 828.12(1).
321 12. Arson, as defined in s. 806.031(1).
322 13. Unlawful possession or discharge of a weapon or firearm at a
323 school-sponsored event or on school property, as provided in s.
324 790.115.
325 Section 4. Effective October 1, 2017, paragraph (b) of
326 subsection (1) of section 985.11, Florida Statutes, is amended
327 to read:
328 985.11 Fingerprinting and photographing.—
329 (1)



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330 (b) Unless the child is participating in ~~is issued~~ a civil
331 citation or ~~is participating in a~~ similar diversion program
332 pursuant to s. 985.12, a child who is charged with or found to
333 have committed one of the following offenses shall be
334 fingerprinted, and the fingerprints shall be submitted to the
335 Department of Law Enforcement as provided in s. 943.051(3)(b):
336 1. Assault, as defined in s. 784.011.
337 2. Battery, as defined in s. 784.03.
338 3. Carrying a concealed weapon, as defined in s. 790.01(1).
339 4. Unlawful use of destructive devices or bombs, as defined
340 in s. 790.1615(1).
341 5. Neglect of a child, as defined in s. 827.03(1)(e).
342 6. Assault on a law enforcement officer, a firefighter, or
343 other specified officers, as defined in s. 784.07(2)(a).
344 7. Open carrying of a weapon, as defined in s. 790.053.
345 8. Exposure of sexual organs, as defined in s. 800.03.
346 9. Unlawful possession of a firearm, as defined in s.
347 790.22(5).
348 10. Petit theft, as defined in s. 812.014.
349 11. Cruelty to animals, as defined in s. 828.12(1).
350 12. Arson, resulting in bodily harm to a firefighter, as
351 defined in s. 806.031(1).
352 13. Unlawful possession or discharge of a weapon or firearm
353 at a school-sponsored event or on school property as defined in
354 s. 790.115.
355
356 A law enforcement agency may fingerprint and photograph a child
357 taken into custody upon probable cause that such child has
358 committed any other violation of law, as the agency deems



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359 appropriate. Such fingerprint records and photographs shall be
360 retained by the law enforcement agency in a separate file, and
361 these records and all copies thereof must be marked "Juvenile
362 Confidential." These records are not available for public
363 disclosure and inspection under s. 119.07(1) except as provided
364 in ss. 943.053 and 985.04(2), but shall be available to other
365 law enforcement agencies, criminal justice agencies, state
366 attorneys, the courts, the child, the parents or legal
367 custodians of the child, their attorneys, and any other person
368 authorized by the court to have access to such records. In
369 addition, such records may be submitted to the Department of Law
370 Enforcement for inclusion in the state criminal history records
371 and used by criminal justice agencies for criminal justice
372 purposes. These records may, in the discretion of the court, be
373 open to inspection by anyone upon a showing of cause. The
374 fingerprint and photograph records shall be produced in the
375 court whenever directed by the court. Any photograph taken
376 pursuant to this section may be shown by a law enforcement
377 officer to any victim or witness of a crime for the purpose of
378 identifying the person who committed such crime.

379 Section 5. Subsection (5) is added to section 985.557,
380 Florida Statutes, to read:

381 985.557 Direct filing of an information; discretionary and
382 mandatory criteria.—

383 (5) DATA COLLECTION RELATING TO DIRECT FILE.—

384 (a) Beginning March 1, 2018, the department shall collect
385 data relating to children who qualify to be prosecuted as adults
386 under this section and s. 985.556 regardless of the outcome of
387 the case, including, but not limited to:



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- 388 1. Age.
- 389 2. Race and ethnicity.
- 390 3. Gender.
- 391 4. Circuit and county of residence.
- 392 5. Circuit and county of offense.
- 393 6. Prior adjudications or adjudications withheld.
- 394 7. Prior periods of probation including any violations of
395 probation.
- 396 8. Previous contacts with law enforcement agencies or the
397 court which resulted in a civil citation, arrest, or charges
398 being filed with the state.
- 399 9. Initial charges.
- 400 10. Charges at disposition.
- 401 11. Whether child codefendants were involved who were
402 transferred to adult court.
- 403 12. Whether the child was represented by counsel or whether
404 the child waived counsel.
- 405 13. Risk assessment instrument score.
- 406 14. The child's medical, mental health, substance abuse, or
407 trauma history.
- 408 15. The child's history of mental impairment or disability-
409 related accommodations.
- 410 16. The child's history of abuse or neglect.
- 411 17. The child's history of foster care placements,
412 including the number of prior placements.
- 413 18. Whether the child has below-average intellectual
414 functioning.
- 415 19. Whether the child has received mental health services
416 or treatment.



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417 20. Whether the child has been the subject of a child-in-
418 need-of-services or families-in-need-of-services petition or a
419 dependency petition.

420 21. Whether the child was transferred for criminal
421 prosecution as an adult.

422 22. The case resolution in juvenile court.

423 23. The case resolution in adult court.

424 (b) Beginning March 1, 2018, for a child transferred for
425 criminal prosecution as an adult, the department shall also
426 collect:

427 1. Disposition data, including, but not limited to, whether
428 the child received adult sanctions, juvenile sanctions, or
429 diversion and, if sentenced to prison, the length of the prison
430 sentence or the enhanced sentence; and

431 2. Whether the child was previously found incompetent to
432 proceed in juvenile court.

433 (c) For every juvenile case transferred between July 1,
434 2016, and June 30, 2017, the department shall work with the
435 Office of Program Policy Analysis and Government Accountability
436 to generate a report analyzing the aggregated data. The
437 department must provide this report to the Governor, the
438 President of the Senate, and the Speaker of the House of
439 Representatives by January 31, 2018.

440 (d) The department must work with the Office of Program
441 Policy Analysis and Government Accountability to generate a
442 report analyzing the aggregated data under paragraphs (a) and
443 (b) on an annual basis. The department must provide this report
444 annually to the Governor, the President of the Senate, and the
445 Speaker of the House of Representatives no later than January 31



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446 of the following calendar year.

447 Section 6. If any provision of this act or its application
448 to any person or circumstance is held invalid, the invalidity
449 does not affect other provisions or applications of the act
450 which can be given effect without the invalid provision or
451 application, and to this end the provisions of this act are
452 severable.

453 Section 7. Except as otherwise provided, this act shall
454 take effect July 1, 2017.

455
456 ===== T I T L E A M E N D M E N T =====

457 And the title is amended as follows:

458 Delete everything before the enacting clause
459 and insert:

460 A bill to be entitled
461 An act relating to Judicial Resources; creating s.
462 25.052, F.S.; requiring the Supreme Court to issue an
463 annual report regarding certain cases; specifying data
464 to be included in such report; providing for future
465 legislative review and repeal; amending s. 985.12,
466 F.S.; requiring the establishment of civil citation or
467 similar diversion programs for juveniles; providing
468 definitions; specifying program eligibility,
469 participation, and implementation requirements;
470 providing exceptions; providing applicability;
471 requiring the Department of Juvenile Justice generate
472 annual reports; requiring reports by specified dates;
473 amending ss. 943.051 and 985.11, F.S.; conforming
474 provisions to changes made by the act; amending s.



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475 985.557, F.S.; requiring the department, beginning on
476 a certain date, to collect specified information
477 relating to children who qualify for prosecution as
478 adults and for children who are transferred for
479 criminal prosecution as adults; requiring the
480 department to work with the Office of Program Policy
481 Analysis and Government Accountability to generate a
482 report analyzing the data of juveniles transferred for
483 prosecution as adults during a certain period;
484 requiring the department to provide the report to the
485 Governor and the Legislature by a certain date;
486 requiring the department to work with the Office of
487 Program Policy Analysis and Government Accountability
488 to generate an annual report to include certain
489 information and provide it to the Governor and the
490 Legislature by a specified date; providing
491 severability; providing effective dates.



576-02204-17

Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Criminal and Civil Justice)

A bill to be entitled

An act relating to juvenile civil citation and similar diversion programs; amending s. 985.12, F.S.; requiring the establishment of civil citation or similar diversion programs for juveniles; providing definitions; specifying program eligibility, participation, and implementation requirements; providing exceptions; providing applicability; amending ss. 943.051 and 985.11, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 985.12, Florida Statutes, is amended to read:

985.12 Civil citation and similar diversion programs.—

(1) As used in this section, the term:

(a) "Law enforcement officer" has the same meaning as provided in s. 943.10.

(b) "Misdemeanor offense" means one misdemeanor violation of law.

(2) (a) ~~(1)~~ There is established a process for the use of juvenile civil citation and similar diversion programs to provide process for the purpose of providing an efficient and innovative alternative to custody by the department of Juvenile Justice for juveniles ~~children~~ who commit nonserious delinquent acts and to ensure swift and appropriate consequences. The



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department shall encourage and assist in the implementation and improvement of civil citation ~~and programs or other~~ similar diversion programs ~~in around~~ the state.

(b) One or more ~~The~~ civil citation or similar diversion programs ~~program~~ shall be established in each county to serve juveniles who commit misdemeanor offenses as provided in this section. Such programs must meet the requirements of this section and be established at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved. At least one program must be applicable countywide. The countywide program may be established by a county or by interlocal agreement pursuant to s. 163.01 by a county working jointly with any municipalities or other entities within the county's boundaries or contiguous counties and any municipalities or other entities within the counties' boundaries. The program may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, the county or municipality, or another entity selected by the county or municipality. Any additional programs shall complement the countywide program. Any program may work with any other program in the state to best serve the juveniles in the jurisdiction. An entity operating ~~such a the civil citation or similar diversion~~ program must do so in consultation and agreement with the state attorney and local law enforcement agencies.

(3) Under ~~such~~ a juvenile civil citation or similar diversion program, a law enforcement officer who makes, ~~upon~~ making contact with a juvenile who admits having committed a



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57 misdeemeanor offense for the first time ~~misdeemeanor~~, may:
58 (a) Choose to issue a simple warning or inform the child's
59 guardian or parent of the child's infraction, ~~or may~~
60 (b) Issue a civil citation to the juvenile or require the
61 juvenile's participation in a similar diversion program, as
62 follows:
63 1. The officer shall issue the citation if the violation of
64 law is a misdemeanor offense and is one of the following:
65 a. Section 562.111, relating to possession of alcoholic
66 beverages by persons under age 21;
67 b. Section 784.03(1), relating to battery;
68 c. Section 806.13, relating to criminal mischief;
69 d. Section 810.08 or s. 810.09, relating to trespass;
70 e. Section 812.014(2) (e) or s. 812.014(3) (a), relating to
71 theft;
72 f. Section 812.015(2), relating to retail and farm theft;
73 g. Section 856.021, relating to loitering or prowling;
74 h. Section 870.01(1), relating to affrays and riots;
75 i. Section 877.03, relating to disorderly conduct;
76 j. Section 893.13(6) (b), relating to possession of certain
77 amounts of cannabis;
78 k. Section 893.147, relating to use, possession,
79 manufacture, delivery, transportation, advertisement, or retail
80 sale of drug paraphernalia; or
81 1. Section 843.02, relating to resisting an officer without
82 violence.
83 2. The officer may issue a civil citation to the juvenile
84 or require the juvenile's participation in a similar diversion
85 program if the violation of law is a misdemeanor not enumerated



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86 in subparagraph 1.
87 (4) Under a juvenile civil citation or similar diversion
88 program, a law enforcement officer who makes contact with a
89 juvenile who admits to having committed a misdemeanor offense
90 and has one or two prior misdemeanors from a separate criminal
91 episode may issue a civil citation to the juvenile or require
92 the juvenile's participation in a similar diversion program,
93 regardless of whether the violations of law are enumerated in
94 subparagraph (3) (b)1.
95 (5) Under a juvenile civil citation or similar diversion
96 program, a law enforcement officer who makes contact with a
97 juvenile who admits to having committed a misdemeanor offense
98 and is currently alleged to have committed, or is currently
99 charged with and awaiting final disposition, of an offense that
100 would be a felony, may issue a civil citation to the juvenile or
101 require the juvenile's participation in a similar diversion
102 program, regardless of whether the violations of law are
103 enumerated in subparagraph (3) (b)1.
104 (6) If an arrest is made for a misdemeanor offense subject
105 to paragraph (3) (b)2., subsection (4), or subsection (5) a law
106 enforcement officer must provide written documentation as to why
107 the arrest was warranted.
108 (7) A law enforcement officer shall advise a juvenile
109 eligible to receive a civil citation under subsection (3), (4),
110 or (5) that he or she has the option to refuse the civil
111 citation or other similar diversion program and be referred to
112 the department. This option may be exercised at any time before
113 completion of the community service assignment required under
114 subsection (9). Participation in a civil citation or similar



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115 diversion program is not considered a referral to the
116 department.

117 (8) Upon issuance of the civil citation or documentation
118 requiring a similar diversion program, the law enforcement
119 officer shall send a copy to the county sheriff, the state
120 attorney, the department or the entity operating the program as
121 designated by the department, the parent or guardian of the
122 juvenile, and the victim. The entity operating the program shall
123 enter such information into the juvenile justice information
124 system.

125 (9) A juvenile who elects to participate in a civil
126 citation or similar diversion program shall complete, and assess
127 up to 50 community service hours, and participate require
128 participation in intervention services as indicated by an
129 assessment of the needs of the juvenile, including family
130 counseling, urinalysis monitoring, and substance abuse and
131 mental health treatment services.

132 (a) The juvenile shall report to the entity operating the
133 program within 10 business days after the date of issuance of
134 the civil citation or documentation for a similar diversion
135 program. The juvenile shall spend a minimum of 5 hours per week
136 completing the community service assignment. The entity
137 operating the program shall immediately notify the department
138 through the juvenile justice information system that a juvenile
139 has reported to the entity operating the program and the
140 expected date on which the juvenile will complete the community
141 service assignment. A copy of each citation issued under this
142 section shall be provided to the department, and the department
143 shall enter appropriate information into the juvenile offender



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144 ~~information system. Use of the civil citation or similar~~
145 ~~diversion program is not limited to first-time misdemeanors and~~
146 ~~may be used in up to two subsequent misdemeanors. If an arrest~~
147 ~~is made, a law enforcement officer must provide written~~
148 ~~documentation as to why an arrest was warranted.~~

149 (b) At the conclusion of a juvenile's civil citation
150 program or similar diversion program, the entity agency
151 operating the program shall report the outcome of the program to
152 the department.

153 (c) If the juvenile fails to timely report for a community
154 service assignment, complete such assignment, or comply with
155 assigned intervention services within the prescribed time, the
156 entity operating the program shall notify the law enforcement
157 officer. The law enforcement officer shall determine if there is
158 good cause to arrest the juvenile for the original misdemeanor
159 offense and refer the case to the state attorney or allow the
160 juvenile to continue in the program.

161 (d) If the juvenile commits a subsequent delinquent act
162 then the entity operating the program shall notify the law
163 enforcement officer and the law enforcement officer shall arrest
164 the juvenile for the original misdemeanor offense and refer the
165 case to the state attorney. The issuance of a civil citation is
166 not considered a referral to the department.

167 (10)(2) The department shall develop guidelines for the
168 civil citation and similar diversion programs program which
169 include intervention services that are based on upon proven
170 civil citation or similar diversion programs in within the
171 state. The department shall report annually on best practices of
172 the programs.



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173 ~~(11) This section does not apply to:~~
174 ~~(a) A juvenile who has entered a plea of nolo contendere or~~
175 ~~guilty to, or has been found to have committed, an offense that~~
176 ~~would be a felony if committed by an adult.~~
177 ~~(b) A misdemeanor offense arising out of a criminal episode~~
178 ~~in which the juvenile is also alleged to have committed an~~
179 ~~offense that would be a felony if committed by an adult.~~
180 ~~(3) Upon issuing such citation, the law enforcement officer~~
181 ~~shall send a copy to the county sheriff, state attorney, the~~
182 ~~appropriate intake office of the department, or the community~~
183 ~~service performance monitor designated by the department, the~~
184 ~~parent or guardian of the child, and the victim.~~
185 ~~(4) The child shall report to the community service~~
186 ~~performance monitor within 7 working days after the date of~~
187 ~~issuance of the citation. The work assignment shall be~~
188 ~~accomplished at a rate of not less than 5 hours per week. The~~
189 ~~monitor shall advise the intake office immediately upon~~
190 ~~reporting by the child to the monitor, that the child has in~~
191 ~~fact reported and the expected date upon which completion of the~~
192 ~~work assignment will be accomplished.~~
193 ~~(5) If the child fails to report timely for a work~~
194 ~~assignment, complete a work assignment, or comply with assigned~~
195 ~~intervention services within the prescribed time, or if the~~
196 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~
197 ~~officer shall issue a report alleging the child has committed a~~
198 ~~delinquent act, at which point a juvenile probation officer~~
199 ~~shall process the original delinquent act as a referral to the~~
200 ~~department and refer the report to the state attorney for~~
201 ~~review.~~



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202 ~~(6) At the time of issuance of the citation by the law~~
203 ~~enforcement officer, such officer shall advise the child that~~
204 ~~the child has the option to refuse the citation and to be~~
205 ~~referred to the intake office of the department. That option may~~
206 ~~be exercised at any time before completion of the work~~
207 ~~assignment.~~
208 Section 2. Paragraph (b) of subsection (3) of section
209 943.051, Florida Statutes, is amended to read:
210 943.051 Criminal justice information; collection and
211 storage; fingerprinting.-
212 (3)
213 (b) A minor who is charged with or found to have committed
214 the following offenses shall be fingerprinted and the
215 fingerprints shall be submitted electronically to the
216 department, unless the minor participates in is issued a civil
217 citation or similar diversion program pursuant to s. 985.12:
218 1. Assault, as defined in s. 784.011.
219 2. Battery, as defined in s. 784.03.
220 3. Carrying a concealed weapon, as defined in s. 790.01(1).
221 4. Unlawful use of destructive devices or bombs, as defined
222 in s. 790.1615(1).
223 5. Neglect of a child, as defined in s. 827.03(1)(e).
224 6. Assault or battery on a law enforcement officer, a
225 firefighter, or other specified officers, as defined in s.
226 784.07(2)(a) and (b).
227 7. Open carrying of a weapon, as defined in s. 790.053.
228 8. Exposure of sexual organs, as defined in s. 800.03.
229 9. Unlawful possession of a firearm, as defined in s.
230 790.22(5).



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- 231 10. Petit theft, as defined in s. 812.014(3).
232 11. Cruelty to animals, as defined in s. 828.12(1).
233 12. Arson, as defined in s. 806.031(1).
234 13. Unlawful possession or discharge of a weapon or firearm
235 at a school-sponsored event or on school property, as provided
236 in s. 790.115.
- 237 Section 3. Paragraph (b) of subsection (1) of section
238 985.11, Florida Statutes, is amended to read:
239 985.11 Fingerprinting and photographing.—
240 (1)
241 (b) Unless the child is participating in ~~is issued~~ a civil
242 citation or ~~is participating in~~ a similar diversion program
243 pursuant to s. 985.12, a child who is charged with or found to
244 have committed one of the following offenses shall be
245 fingerprinted, and the fingerprints shall be submitted to the
246 Department of Law Enforcement as provided in s. 943.051(3)(b):
247 1. Assault, as defined in s. 784.011.
248 2. Battery, as defined in s. 784.03.
249 3. Carrying a concealed weapon, as defined in s. 790.01(1).
250 4. Unlawful use of destructive devices or bombs, as defined
251 in s. 790.1615(1).
252 5. Neglect of a child, as defined in s. 827.03(1)(e).
253 6. Assault on a law enforcement officer, a firefighter, or
254 other specified officers, as defined in s. 784.07(2)(a).
255 7. Open carrying of a weapon, as defined in s. 790.053.
256 8. Exposure of sexual organs, as defined in s. 800.03.
257 9. Unlawful possession of a firearm, as defined in s.
258 790.22(5).
259 10. Petit theft, as defined in s. 812.014.



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- 260 11. Cruelty to animals, as defined in s. 828.12(1).
261 12. Arson, resulting in bodily harm to a firefighter, as
262 defined in s. 806.031(1).
263 13. Unlawful possession or discharge of a weapon or firearm
264 at a school-sponsored event or on school property as defined in
265 s. 790.115.
- 266
267 A law enforcement agency may fingerprint and photograph a child
268 taken into custody upon probable cause that such child has
269 committed any other violation of law, as the agency deems
270 appropriate. Such fingerprint records and photographs shall be
271 retained by the law enforcement agency in a separate file, and
272 these records and all copies thereof must be marked "Juvenile
273 Confidential." These records are not available for public
274 disclosure and inspection under s. 119.07(1) except as provided
275 in ss. 943.053 and 985.04(2), but shall be available to other
276 law enforcement agencies, criminal justice agencies, state
277 attorneys, the courts, the child, the parents or legal
278 custodians of the child, their attorneys, and any other person
279 authorized by the court to have access to such records. In
280 addition, such records may be submitted to the Department of Law
281 Enforcement for inclusion in the state criminal history records
282 and used by criminal justice agencies for criminal justice
283 purposes. These records may, in the discretion of the court, be
284 open to inspection by anyone upon a showing of cause. The
285 fingerprint and photograph records shall be produced in the
286 court whenever directed by the court. Any photograph taken
287 pursuant to this section may be shown by a law enforcement
288 officer to any victim or witness of a crime for the purpose of



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289 identifying the person who committed such crime.

290 Section 4. This act shall take effect October 1, 2017.

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 196

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Flores and others

SUBJECT: Juvenile Civil Citation and Similar Diversion Programs

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sadberry</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 196 requires the Supreme Court to provide an annual report on its cases that do not have a decision or disposition within the 180-day period.

The bill also requires a law enforcement officer to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing one of the following first-time misdemeanor offenses:

- Possession of alcoholic beverages by a person under age 21 (s. 562.111, F.S.);
- Battery (s. 784.03(1), F.S.), excluding battery relating to domestic violence as defined in s. 741.28, F.S.;
- Criminal Mischief (s. 806.13, F.S.);
- Trespass (ss. 810.08, and 810.09, F.S.);
- Theft (ss. 812.04(2)(e) and (3)(a), F.S.);
- Retail and farm theft (s. 812.015(2), F.S.);
- Loitering and prowling (s. 856.021, F.S.);
- Affrays and riots (s. 870.01(1), F.S.);
- Disorderly conduct (s. 877.03, F.S.);
- Possession of 20 grams or less of cannabis (s. 893.13(6)(b), F.S.);
- Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia (s. 893.147, F.S.); or

- Resisting an officer without violence (s. 843.02, F.S.).

The bill requires the Department of Juvenile Justice (DJJ) to report annually on the best practices of juvenile civil citation or similar diversion programs and on the participation and outcomes for such programs from the previous calendar year.

The bill also requires the DJJ, beginning March 1, 2018, to collect data regarding children who qualify to be prosecuted as adults. The department must work with Office of Program Policy and Analysis and Government Accountability to generate a report. The report must be presented to the Governor, President of the Senate, and Speaker of the House by January 31 annually, beginning January 31, 2019.

The bill also includes a severability clause.

The bill may have a fiscal impact on many different agencies. See Section V. Fiscal Impact Statement.

Except as otherwise provided, the bill is effective July 1, 2017.

II. Present Situation:

Supreme Court Reporting

Article V, s. 2 of the Florida Constitution requires the Supreme Court to adopt rules for the practice and procedure in all courts and rules for the administrative supervision of all courts.¹ Florida Rule of Judicial Administration 2.250 provides time standards for all courts to dispose of cases.² The general time standard for the Supreme Court and the District Courts of Appeal requires a decision to be rendered in a case within 180 days of either oral argument or submission of the case to the court panel for a decision without oral argument.³

Rule 2.250 also requires a report from each trial and district court on cases not resolved within the time standards.⁴ All pending cases in circuit courts and district courts of appeal exceeding the time standards must be listed separately in a report submitted quarterly to the Chief Justice of the Supreme Court.⁵

The Supreme Court, by practice, also produces a report detailing its pending cases exceeding the appellate time standard, which it files with itself. Pursuant to Rule 2.250(b), the report must include the case number, case type, case status, the date of arrest in criminal cases, and the original filing date in civil cases for each case in the report.⁶

¹ Article V, s. 2(a), Fla. Const.

² Fla. R. Jud. Admin. 2.250(a).

³ *Id.* The time standard for juvenile dependency and termination of parental rights appeals, however, is within 60 days of oral arguments or submission to the court without oral arguments.

⁴ Fla. R. Jud. Admin. 2.250(b).

⁵ *Id.*

⁶ *Id.*

Juvenile Civil Citations

Section 985.12, F.S., establishes a civil citation process that provides law enforcement an alternative to arresting juveniles for nonserious delinquent acts. The Department of Juvenile Justice (DJJ) is required to assist in the implementation of civil citation or other similar diversion programs. The DJJ must also develop guidelines for these programs that include intervention services based upon proven civil citation or similar diversion programs within the state.⁷

These civil citation or similar diversion programs are discretionary and are established at the local level in concurrence with the chief judge, state attorney, public defender, and head of each local law enforcement agency. The program may be operated by law enforcement, the DJJ, a juvenile assessment center, a county or municipality, or an entity selected by the county or municipality.

Currently, if a juvenile admits to committing a misdemeanor⁸ a law enforcement officer has the discretion to:

- Issue a warning or inform the juvenile's parent of the child's infraction;
- Issue a civil citation or require participation in a similar diversion program; or
- Arrest the juvenile.⁹

A law enforcement officer can issue a civil citation to any juvenile who admits to committing a first-time, second-time, or third-time misdemeanor.¹⁰ When issuing a civil citation the law enforcement officer must advise the juvenile that he or she has the option of refusing the civil citation and of being referred to the DJJ.¹¹ If an arrest is made, the law enforcement officer must provide written documentation as to why an arrest was warranted.¹²

A juvenile issued a civil citation or required to participate in a similar diversion program may be assessed up to 50 hours of community service and must participate in intervention services as indicated by a needs assessment. Intervention services include family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.

A juvenile is required to report to a community service performance monitor within seven working days after the civil citation has been issued and complete at least five community service hours per week. The monitor also reports information regarding the juvenile's service hour completion and the expected completion date to the DJJ.¹³

If a juvenile fails to timely report or complete a work assignment, fails to timely comply with assigned intervention services, or commits a subsequent misdemeanor, the law enforcement

⁷ Section 985.12(1) and (2), F.S.

⁸ Misdemeanors involving sexual or firearm offenses are currently ineligible for civil citation programs under the DJJ Civil Citation Model Plan. *2017 Bill Analysis for SB 196*, Department of Juvenile Justice, (January 18, 2017) (on file with the Senate Criminal Justice Committee).

⁹ Section 985.12(1), F.S.

¹⁰ *Id.*

¹¹ Section 985.12(6), F.S. A juvenile may refuse the civil citation at any time before completion of the work assignment.

¹² Section 985.12(1), F.S.

¹³ Section 985.12(4), F.S.

officer must issue a report to the DJJ alleging that the juvenile has committed a delinquent act, thereby initiating formal judicial processing.¹⁴

Sixty counties have implemented a civil citation or similar program in Florida. Taylor and Polk counties are in the process of implementing programs. Bradford, Calhoun, Gulf, Hardee, and Washington counties have not established civil citation programs; however, these counties do utilize a different type of diversion program.¹⁵

For Fiscal Year 2015-16, 19,386 juveniles were eligible for a civil citation, and only 9,636 eligible juveniles were issued a civil citation. The recidivism rate for the juveniles who completed a civil citation program in Fiscal Year 2014-15 was 3.8 percent.¹⁶

Reporting on Children Who Are Eligible to be Prosecuted as an Adult

There are three methods of transferring a child to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing an information.

Judicial Waiver

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. Section 985.556, F.S., provides three types of judicial waivers:

- Voluntary Waiver – the child requests to have his or her case transferred to adult court;¹⁷
- Involuntary Discretionary Waiver – the state attorney may file a motion requesting the court to transfer any case where the child is 14 years of age or older;¹⁸ and
- Involuntary Mandatory Waiver – the state attorney must request the transfer of a child 14 years of age or older if the child:
 - Has been previously adjudicated delinquent for an enumerated felony¹⁹ and the child is currently charged with a second or subsequent violent crime against a person; or
 - Was 14 years of age or older at the time of commission of a fourth or subsequent felony offense and was previously adjudicated delinquent or had adjudication withheld for three felony offenses, one or more of which involved the use or possession of a firearm or violence against a person.²⁰

Direct File

Direct file is when a state attorney files an information charging a child in adult court. Direct file under s. 985.557, F.S., can either be discretionary or mandatory. Direct file is the predominant transfer method to adult court accounting for 98 percent of the transfers each year.²¹

¹⁴ Section 985.12(5), F.S.

¹⁵ Department of Juvenile Justice, *2017 Bill Analysis for SB 196*, (January 18, 2017) (on file with the Senate Criminal Justice Committee).

¹⁶ *Id.*

¹⁷ Section 985.556(1), F.S.

¹⁸ Section 985.556(2), F.S.

¹⁹ The enumerated felonies are: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; aggravated assault; or burglary with an assault or battery.

²⁰ Section 985.556(3), F.S.

²¹ Department of Juvenile Justice, *2016 Bill Analysis for SB 314 (2016)*, (September 28, 2015) (on file with the Senate Criminal Justice Committee).

Discretionary Direct File

Section 985.557(1), F.S., provides the state attorney with the discretion to file a case in adult court for certain juvenile cases when he or she believes the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may file an information (direct file a child) in adult court when a child is:

- 14 or 15 years of age and is charged with one of the following felony offenses:
 - Murder; manslaughter; sexual battery; robbery; aggravated assault; aggravated child abuse; arson; kidnapping; unlawful throwing, placing, or discharging of a destructive device or bomb; aggravated battery; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.; home invasion robbery; aggravated stalking; carjacking; any lewd or lascivious offense committed upon or in the presence of a person less than 16; burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.; specified burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.; armed burglary in violation of s. 810.02(2)(b), F.S.; grand theft in violation of s. 812.014(2)(a), F.S.; grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the child has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.²²
- 16 or 17 years of age and is charged with any felony offense;²³ or
- 16 or 17 years of age and is charged with any misdemeanor, provided the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which was a felony.²⁴

If a child transferred to adult court by discretionary direct file is found to have committed the offense or a lesser included offense, the court may sentence the child as an adult, a youthful offender, or a juvenile.²⁵

Mandatory Direct File

Section 985.557(2), F.S., requires the state attorney to file a case in adult court when the child is:

- 16 or 17 years of age at the time of the alleged offense:
 - Is charged with a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony;²⁶

²² Section 985.557(1)(a)1.-19., F.S.

²³ Section 985.557(1)(b), F.S.

²⁴ *Id.*

²⁵ Sections 985.565(4)(a)2. and (b), F.S.

²⁶ The enumerated felonies include: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; or aggravated assault.

- Is charged with a forcible felony²⁷ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other;²⁸ or
- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-p., F.S.,²⁹ and during the commission of the offense the child actually possessed or discharged a firearm or destructive device;³⁰ or
- Any age and is alleged to have committed an act that involves stealing a vehicle in which the child, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.

III. Effect of Proposed Changes:

Supreme Court Reporting (Section 1)

The bill creates s. 25.052, F.S, requiring the Supreme Court to provide an annual report on its cases that do not have a decision or disposition within the 180-day period. The report must be provided to the Governor, the Attorney General, the President of the Senate, and the Speaker of the House of Representatives by October 15 and contain data as of September 30 of that year.

The report must include the cases on the court's docket have not been disposed of within 180 days. The following information about these cases must be included:

- Case name and number;
- Case type;
- A brief description of the case;
- The date on which the case was added to the court's docket;
- The date of oral argument or submission to the court panel without oral argument;
- The number of days that have elapsed since the date of oral argument or submission without oral argument for each case;
- A detailed explanation of the court's failure to render a decision or disposition within 180 days; and
- The date on which, or time period within which, the court expects to render a decision or disposition.

²⁷ Section 776.08, F.S., defines “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

²⁸ Section 985.557(2)(b), F.S., provides that this provision does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the child in adult court.

²⁹ The offenses include murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1), F.S.

³⁰ The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

The report also must include data for cases that were decided outside of the 180 period. The following information about these cases must be included:

- Case name and number;
- Case type;
- A brief description of the case;
- The date on which the case was added to the court's docket;
- The date of oral argument or submission to the court panel without oral argument;
- A detailed explanation of the court's failure to render a decision or disposition within 180 days;
- The date that a decision or disposition was issued; and
- The number of days that had elapsed between the date oral argument was heard or the date that the case was submitted to the court panel for a decision without oral argument and the date on which a decision or disposition was issued.

The bill requires the report be submitted in an electronic spreadsheet format capable of being sorted and filtered by the:

- Case number;
- Case type;
- Date on which the case was added to the court's docket;
- Date of oral argument or submission without oral argument;
- Number of days that have elapsed since oral argument or submission without oral argument; and
- Date of decision or disposition.

The case type of each case reported must specify the following: civil, criminal not seeking the death penalty, criminal seeking the death penalty, court rules, bar discipline, and judicial discipline.

This section is repealed on July 1, 2022, unless it is reviewed and reenacted by the Legislature before that date.

Juvenile Civil Citations (Section 2)

Section 985.12, F.S., is amended to require the establishment of one or more civil citation or similar diversion programs in each county. At least one program must be applicable countywide. Any additional programs must complement the countywide program. Programs can work with any other programs in the state to best serve the juveniles in the jurisdiction.

The bill requires a law enforcement officer³¹ to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing one of the following first-time misdemeanor offenses:³²

- Possession of alcoholic beverages by a person under age 21 (s. 562.111, F.S.);
- Battery (s. 784.03(1), F.S.), excluding battery relating to domestic violence as defined in s. 741.28, F.S.;
- Criminal Mischief (s. 806.13, F.S.);
- Trespass (ss. 810.08 and 810.09, F.S.);
- Theft (ss. 812.04(2)(e) and (3)(a), F.S.);
- Retail and farm theft (s. 812.015(2), F.S.);
- Loitering and prowling (s. 853.021, F.S.);
- Affrays and riots (s. 870.01(1), F.S.);
- Disorderly conduct (s. 877.03, F.S.);
- Possession of 20 grams or less of cannabis (s. 893.13(6)(b), F.S.);
- Use, possession, manufacture, delivery, transportation, advertisement, or retail sale of drug paraphernalia (s. 893.147, F.S.); or
- Resisting an officer without violence (s. 843.02, F.S.).

The bill permits a law enforcement officer to issue a civil citation or require the juvenile's participation in a similar diversion program when the juvenile admits to committing:

- A misdemeanor offense not enumerated in the bill;
- More than one misdemeanor offense arising out of the same criminal episode;
- A misdemeanor offense not enumerated in the bill and the juvenile has one or two prior misdemeanors from a separate criminal episode; or
- A misdemeanor offense not enumerated in the bill and the juvenile is currently alleged to have committed, or is currently charged with, a felony.

As in current law, a law enforcement officer can choose to issue a simple warning or inform the child's guardian or parent of the child's infraction.

A law enforcement officer must provide written documentation articulating why an arrest is warranted when he or she has the discretion to issue a civil citation but instead chooses to arrest the juvenile.

The bill extends the time period in which a juvenile is required to report to a community service performance monitor from seven to ten working days after the civil citation or documentation for a similar diversion program has been issued.

³¹ The bill defines "law enforcement officer" to have the same meaning as in s. 943.10, F.S. Section 943.10, F.S., defines the term to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

³² A "misdemeanor offense" is defined as one or more violations of law arising out of the same criminal episode, act, or transaction.

If a juvenile fails to timely report for a community service assignment, complete such assignment, or comply with assigned intervention services within a prescribed time, the entity operating the program must notify the law enforcement officer. The law enforcement officer then must determine if there is a good cause to arrest the juvenile for the original misdemeanor offense and refer the case to the state attorney or to allow the juvenile to continue in the program.

If the juvenile commits a subsequent delinquent act, the entity operating the program must notify the law enforcement officer and the law enforcement officer shall arrest of the juvenile for the original misdemeanor offense and refer the case to the state attorney.

The bill requires the DJJ to annually report to the Governor, President of the Senate, and Speaker of the House of Representatives on the best practices of the programs. The report must also be electronically provided to the civil citation and similar diversion programs. The report must be provided no later than January 31 of each year.

The DJJ must also annually report the participation and outcomes for the civil citation and similar diversion programs. The DJJ must post the report on its website by January 31 of each and provide an electronic copy to each civil citation and similar diversion program. The data must be reported as statewide aggregate data and include data for each civil citation and similar diversion program from the previous year. The data must also include:

- The race, ethnicity, gender, and age of the juvenile;
- The juvenile's county of residence;
- The misdemeanor offenses committed;
- The county where the misdemeanor offenses were committed;
- Whether the juvenile has previously participated in a civil citation or similar diversion program;
- Whether the juvenile successfully completed or failed to complete a civil citation or similar diversion program; and
- The recidivism data for juveniles who completed or failed to complete a civil citation or similar diversion program.

The bill retains current statutory provisions relating to:

- The program requirements placed upon juveniles participating in a civil citation program, including community service hours, intervention services, and time frames to complete the program;
- The ability of juveniles to refuse participation in a civil citation or similar diversion program;
- The requirement of law enforcement officers to forward the civil citation or documentation requiring a similar diversion program to specified parties;
- The requirement for civil citation or similar diversion programs to report the juveniles' outcomes to the DJJ and law enforcement officers; and
- Participation in a civil citation or similar diversion program not being considered a referral to the DJJ.

A juvenile may not be given a civil citation or require the juvenile's participation in a similar diversion program if the juvenile:

- Has entered a plea of nolo contendere or guilty to, or has been found to have committed, a felony; or
- Has committed a misdemeanor offense arising out of an episode in which the juvenile is also alleged to have committed a felony.

The bill amends ss. 943.051 and 985.11, F.S., to make conforming changes. (Sections 3 and 4).

This portion of the bill is effective October 1, 2017.

Direct File Reporting (Section 5)

The bill requires the DJJ, beginning March 1, 2018, to collect data regarding children who qualify to be prosecuted as adults. This data includes, but is not limited to:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence and offense;
- Prior adjudications or adjudications withheld;
- Prior periods of probation including any violations of probation;
- Previous contacts with law enforcement agencies or the courts which resulted in a civil citation, arrest, or charges being filed with the state;
- Initial charges;
- Charges at disposition;
- Whether child codefendants were involved who were transferred to adult court;
- Whether the child was represented by counsel or had waived counsel;
- Risk assessment instrument score;
- The child's medical, mental health, substance abuse, or trauma history;
- The child's history of mental impairment or disability-related accommodations;
- The child's history of abuse or neglect;
- The child's history of foster care placements, including the number of prior placements;
- Whether the child has below average intellectual functioning;
- Whether the child has received mental health services or treatment;
- Whether the child has been the subject of a children-in-need-of-services or families-in-need-of-services petition or dependency petition;
- Whether the child was transferred for criminal prosecution as an adult; and
- The case resolution in juvenile court or adult court.

Beginning March 1, 2018, the DJJ must also collect the following data on a child transferred for prosecution as an adult:

- Disposition data, including, but not limited to, whether the child received adult sanctions, juvenile sanctions, or diversion and, if sentenced to prison, the length of the prison sentence or the enhanced sentence; and
- Whether the child was previously found incompetent to proceed in juvenile court.

The DJJ must work with Office of Program Policy and Analysis and Government Accountability (OPPAGA) to generate a report analyzing the aggregate of data discussed above. Such report must be presented to the Governor, President of the Senate, and Speaker of the House by January 31 annually, beginning January 31, 2019.

Additionally, the DJJ must work with the OPPAGA to analyze every juvenile case transferred to adult court from July 1, 2016, and June 30, 2017. A report is due to the Governor, President of the Senate, and Speaker of the House by January 31, 2018.

Severability Clause (Section 6)

The bill includes the following severability clause: If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Except as otherwise provided, bill is effective July 1, 2017. (Section 7).

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:

Expanding the use of civil citation or similar diversion programs could result in more juveniles having future opportunities for employment since these juveniles will not have the hurdle of an arrest record.

C. Government Sector Impact:

The Office of the State Courts Administrator believes that the new requirements for Supreme Court will result in an indeterminate increase in court workload. The office is

unable to determine the exact fiscal impact of the reporting requirements because the data needed to quantify this is unavailable.³³

An increase in civil citation or similar diversion programs could lead to juveniles being diverted from the DJJ's more costly residential program and could have positive fiscal impacts to state and local governments. The bill should have the impact of reducing the number of residential beds in the DJJ.

Additionally, the bill requires the DJJ to collect data regarding juveniles who are eligible to be prosecuted as an adult. This would require modification of the Juvenile Justice Information System at an estimated cost of \$93,600. The time necessary for analysis, design, testing, and implementation could take up to 6 months to complete.³⁴

Any resources required by the OPPAGA to assist the DJJ with the annual reporting required by the bill is unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 25.052 of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 985.12 and 985.557.

This bill makes conforming technical changes to the following sections of the Florida Statutes: 943.051 and 985.11.

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 Appropriations on April 13, 2017:

The committee substitute:

- Requires the Supreme Court to annually report on its cases without a decision or disposition beyond a 180-day period;
- Requires the Supreme Court include specified information in the annual report;

³³ Office of the State Courts Administrator, *2017 Judicial Impact Statement SB 878*, (March 7, 2017) (on file with the Senate Criminal Justice Committee).

³⁴ Department of Juvenile Justice, *2016 Bill Analysis for SB 314 (2016)*, (September 28, 2015) (on file with the Senate Criminal Justice Committee).

- Provides discretion for a law enforcement officer to issue a civil citation if a juvenile has a pending felony charge;
- Allows a law enforcement officer to determine if there is good cause to arrest a juvenile who has failed to comply with program requirements or allow the juvenile to continue in the program;
- Specifies that at least one program must be countywide and that counties can work together;
- Provides a law enforcement officer the discretion to issue a civil citation or require the juvenile's participation in a similar diversion program if the juvenile commits more than one misdemeanor offense that arises out of the same criminal episode;
- Requires the DJJ to report annually on the best practices of the programs and the participation and outcomes for civil citation and similar diversion programs;
- Requires the DJJ to collect data regarding a juveniles who are eligible to be prosecuted as an adult; and
- Makes technical and stylistic changes.

CS by Criminal Justice on January 23, 2017:

The committee substitute:

- Adds the second degree misdemeanor of loitering and prowling to the list of qualifying offenses for a civil citation;
- Specifies that at least one program must be operated by the county;
- Clarifies program requirements; and
- Makes technical changes recommended by the DJJ.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senators Flores,
Bracy, Garcia, and Baxley

591-00895B-17

2017196c1

A bill to be entitled

An act relating to juvenile civil citation and similar diversion programs; amending s. 985.12, F.S.; requiring the establishment of civil citation or similar diversion programs for juveniles; providing definitions; specifying program eligibility, participation, and implementation requirements; providing exceptions; providing applicability; amending ss. 943.051 and 985.11, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 985.12, Florida Statutes, is amended to read:

985.12 Civil citation and similar diversion programs.-

(1) (a) There is established a process for the use of juvenile civil citation and similar diversion programs to provide process for the purpose of providing an efficient and innovative alternative to custody by the department ~~of Juvenile Justice~~ for juveniles children who commit nonserious delinquent acts and to ensure swift and appropriate consequences. The department shall encourage and assist in the implementation and improvement of civil citation and programs or other similar diversion programs in around the state.

(b) One or more ~~The~~ civil citation or similar diversion programs program shall be established in each county which must individually or collectively serve all juveniles who are alleged to have committed a violation of law which would be a misdemeanor offense if committed by an adult. Such programs must

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meet the requirements of this section and be established at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency involved. At least one program must be operated by the county. Additional programs ~~The program~~ may be operated by an entity such as a law enforcement agency, the department, a juvenile assessment center, the county or municipality, or another entity selected by the county or municipality. Any additional programs shall complement the established county program. An entity operating such a the civil citation or similar diversion program must do so in consultation and agreement with the state attorney and local law enforcement agencies.

(2) As used in this section, the term:

(a) "Law enforcement officer" has the same meaning as provided in s. 943.10.

(b) "Misdemeanor offense" means one or more misdemeanor violations of law arising out of the same criminal episode, act, or transaction.

(3) Under ~~such~~ a juvenile civil citation or similar diversion program, a law enforcement officer who makes, upon making contact with a juvenile who admits having committed a first-time misdemeanor offense: misdemeanor, may choose to issue a simple warning or inform the child's guardian or parent of the child's infraction, or may

(a) Shall issue a civil citation to the juvenile or require the juvenile's participation in a similar diversion program if each violation of law is a misdemeanor offense and is one of the following:

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61 1. Section 562.111, relating to possession of alcoholic
 62 beverages by persons under age 21;

63 2. Section 784.03(1), relating to battery;

64 3. Section 806.13, relating to criminal mischief;

65 4. Section 810.08 or s. 810.09, relating to trespass;

66 5. Section 812.014(2)(e) or s. 812.014(3)(a), relating to
 67 theft;

68 6. Section 812.015(2), relating to retail and farm theft;

69 7. Section 856.021, relating to loitering or prowling;

70 8. Section 870.01(1), relating to affrays and riots;

71 9. Section 877.03, relating to disorderly conduct;

72 10. Section 893.13(6)(b), relating to possession of certain
 73 amounts of cannabis or controlled substances;

74 11. Section 893.147, relating to use, possession,
 75 manufacture, delivery, transportation, advertisement, or retail
 76 sale of drug paraphernalia; or

77 12. Section 843.02, relating to resisting an officer
 78 without violence.

79 (b) May issue a civil citation to the juvenile or require
 80 the juvenile's participation in a similar diversion program if
 81 the violations of law are misdemeanors not enumerated in
 82 paragraph (a).

83 (4) Under a juvenile civil citation or similar diversion
 84 program, a law enforcement officer who makes contact with a
 85 juvenile who admits having committed a second-time or third-time
 86 misdemeanor offense may issue a civil citation to the juvenile
 87 or require the juvenile's participation in a similar diversion
 88 program, regardless of whether the violations of law are
 89 enumerated in paragraph (3)(a).

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90 (5) If an arrest is made for a misdemeanor offense subject
 91 to paragraph (3)(b) or subsection (4), a law enforcement officer
 92 must provide written documentation as to why the arrest was
 93 warranted.

94 (6) A law enforcement officer shall advise a juvenile who
 95 is subject to subsection (3) or subsection (4) that the juvenile
 96 has the option to refuse the civil citation or other similar
 97 diversion program and be referred to the department. This option
 98 may be exercised at any time before completion of the community
 99 service assignment required under subsection (8). Participation
 100 in a civil citation or similar diversion program is not
 101 considered a referral to the department.

102 (7) Upon issuance of the civil citation or documentation
 103 requiring a similar diversion program, the law enforcement
 104 officer shall send a copy to the county sheriff, the state
 105 attorney, the department or the entity operating the program as
 106 designated by the department, the parent or guardian of the
 107 juvenile, and the victim. The entity operating the program shall
 108 enter such information into the juvenile justice information
 109 system.

110 (8) A juvenile who elects to participate in a civil
 111 citation or similar diversion program shall complete, ~~and assess~~
 112 up to 50 community service hours, and participate ~~require~~
 113 participation in intervention services as indicated by an
 114 assessment of the needs of the juvenile, including family
 115 counseling, urinalysis monitoring, and substance abuse and
 116 mental health treatment services.

117 (a) The juvenile shall report to the entity operating the
 118 program within 10 business days after the date of issuance of

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119 the civil citation or documentation for a similar diversion
 120 program. The juvenile shall spend a minimum of 5 hours per week
 121 completing the community service assignment. The entity
 122 operating the program shall immediately notify the department
 123 through the juvenile justice information system that a juvenile
 124 has reported to the entity operating the program and the
 125 expected date on which the juvenile will complete the community
 126 service assignment. A copy of each citation issued under this
 127 ~~section shall be provided to the department, and the department~~
 128 ~~shall enter appropriate information into the juvenile offender~~
 129 ~~information system. Use of the civil citation or similar~~
 130 ~~diversion program is not limited to first time misdemeanors and~~
 131 ~~may be used in up to two subsequent misdemeanors. If an arrest~~
 132 ~~is made, a law enforcement officer must provide written~~
 133 ~~documentation as to why an arrest was warranted.~~
 134 (b) At the conclusion of a juvenile's civil citation
 135 program or similar diversion program, the entity agency
 136 operating the program shall report the outcome of the program to
 137 the department.
 138 (c) If the juvenile fails to timely report for a community
 139 service assignment, complete such assignment, or comply with
 140 assigned intervention services within the prescribed time, the
 141 entity operating the program shall notify the law enforcement
 142 officer and the law enforcement officer shall proceed with an
 143 arrest of the juvenile.
 144 (d) If the juvenile commits a subsequent delinquent act
 145 then the entity operating the program shall notify the law
 146 enforcement officer and the law enforcement officer shall
 147 proceed with an arrest of the juvenile. The issuance of a civil

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148 ~~citation is not considered a referral to the department.~~
 149 ~~(9)(2)~~ The department shall develop guidelines for the
 150 civil citation and similar diversion programs program which
 151 include intervention services that are based ~~on upon~~ proven
 152 civil citation or similar diversion programs ~~in within~~ the
 153 state.
 154 (10) This section does not apply to:
 155 (a) A juvenile who is currently alleged to have committed,
 156 or is currently charged with, and awaiting final disposition of
 157 an offense that would be a felony if committed by an adult.
 158 (b) A juvenile who has entered a plea of nolo contendere or
 159 guilty to, or has been found to have committed, an offense that
 160 would be a felony if committed by an adult.
 161 (c) A misdemeanor offense arising out of an episode in
 162 which the juvenile is also alleged to have committed an offense
 163 that would be a felony if committed by an adult.
 164 (11) This section does not modify the authority of a law
 165 enforcement officer who comes into contact with a juvenile who
 166 is alleged to have committed a misdemeanor offense to issue only
 167 a simple warning to the juvenile or notice to a juvenile's
 168 parent or guardian of the alleged offense.
 169 ~~(3) Upon issuing such citation, the law enforcement officer~~
 170 ~~shall send a copy to the county sheriff, state attorney, the~~
 171 ~~appropriate intake office of the department, or the community~~
 172 ~~service performance monitor designated by the department, the~~
 173 ~~parent or guardian of the child, and the victim.~~
 174 ~~(4) The child shall report to the community service~~
 175 ~~performance monitor within 7 working days after the date of~~
 176 ~~issuance of the citation. The work assignment shall be~~

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177 ~~accomplished at a rate of not less than 5 hours per week. The~~
 178 ~~monitor shall advise the intake office immediately upon~~
 179 ~~reporting by the child to the monitor, that the child has in~~
 180 ~~fact reported and the expected date upon which completion of the~~
 181 ~~work assignment will be accomplished.~~

182 ~~(5) If the child fails to report timely for a work~~
 183 ~~assignment, complete a work assignment, or comply with assigned~~
 184 ~~intervention services within the prescribed time, or if the~~
 185 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~
 186 ~~officer shall issue a report alleging the child has committed a~~
 187 ~~delinquent act, at which point a juvenile probation officer~~
 188 ~~shall process the original delinquent act as a referral to the~~
 189 ~~department and refer the report to the state attorney for~~
 190 ~~review.~~

191 ~~(6) At the time of issuance of the citation by the law~~
 192 ~~enforcement officer, such officer shall advise the child that~~
 193 ~~the child has the option to refuse the citation and to be~~
 194 ~~referred to the intake office of the department. That option may~~
 195 ~~be exercised at any time before completion of the work~~
 196 ~~assignment.~~

197 Section 2. Paragraph (b) of subsection (3) of section
 198 943.051, Florida Statutes, is amended to read:

199 943.051 Criminal justice information; collection and
 200 storage; fingerprinting.—

201 (3)

202 (b) A minor who is charged with or found to have committed
 203 the following offenses shall be fingerprinted and the
 204 fingerprints shall be submitted electronically to the
 205 department, unless the minor participates in ~~is issued~~ a civil

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206 citation or similar diversion program pursuant to s. 985.12:

- 207 1. Assault, as defined in s. 784.011.
- 208 2. Battery, as defined in s. 784.03.
- 209 3. Carrying a concealed weapon, as defined in s. 790.01(1).
- 210 4. Unlawful use of destructive devices or bombs, as defined
- 211 in s. 790.1615(1).
- 212 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 213 6. Assault or battery on a law enforcement officer, a
- 214 firefighter, or other specified officers, as defined in s.
- 215 784.07(2)(a) and (b).
- 216 7. Open carrying of a weapon, as defined in s. 790.053.
- 217 8. Exposure of sexual organs, as defined in s. 800.03.
- 218 9. Unlawful possession of a firearm, as defined in s.
- 219 790.22(5).
- 220 10. Petit theft, as defined in s. 812.014(3).
- 221 11. Cruelty to animals, as defined in s. 828.12(1).
- 222 12. Arson, as defined in s. 806.031(1).
- 223 13. Unlawful possession or discharge of a weapon or firearm
- 224 at a school-sponsored event or on school property, as provided
- 225 in s. 790.115.
- 226 Section 3. Paragraph (b) of subsection (1) of section
- 227 985.11, Florida Statutes, is amended to read:
- 228 985.11 Fingerprinting and photographing.—
- 229 (1)
- 230 (b) Unless the child is participating in ~~is issued~~ a civil
- 231 citation or ~~is participating in~~ a similar diversion program
- 232 pursuant to s. 985.12, a child who is charged with or found to
- 233 have committed one of the following offenses shall be
- 234 fingerprinted, and the fingerprints shall be submitted to the

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235 Department of Law Enforcement as provided in s. 943.051(3)(b):

236 1. Assault, as defined in s. 784.011.

237 2. Battery, as defined in s. 784.03.

238 3. Carrying a concealed weapon, as defined in s. 790.01(1).

239 4. Unlawful use of destructive devices or bombs, as defined

240 in s. 790.1615(1).

241 5. Neglect of a child, as defined in s. 827.03(1)(e).

242 6. Assault on a law enforcement officer, a firefighter, or

243 other specified officers, as defined in s. 784.07(2)(a).

244 7. Open carrying of a weapon, as defined in s. 790.053.

245 8. Exposure of sexual organs, as defined in s. 800.03.

246 9. Unlawful possession of a firearm, as defined in s.

247 790.22(5).

248 10. Petit theft, as defined in s. 812.014.

249 11. Cruelty to animals, as defined in s. 828.12(1).

250 12. Arson, resulting in bodily harm to a firefighter, as

251 defined in s. 806.031(1).

252 13. Unlawful possession or discharge of a weapon or firearm

253 at a school-sponsored event or on school property as defined in

254 s. 790.115.

255

256 A law enforcement agency may fingerprint and photograph a child

257 taken into custody upon probable cause that such child has

258 committed any other violation of law, as the agency deems

259 appropriate. Such fingerprint records and photographs shall be

260 retained by the law enforcement agency in a separate file, and

261 these records and all copies thereof must be marked "Juvenile

262 Confidential." These records are not available for public

263 disclosure and inspection under s. 119.07(1) except as provided

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264 in ss. 943.053 and 985.04(2), but shall be available to other

265 law enforcement agencies, criminal justice agencies, state

266 attorneys, the courts, the child, the parents or legal

267 custodians of the child, their attorneys, and any other person

268 authorized by the court to have access to such records. In

269 addition, such records may be submitted to the Department of Law

270 Enforcement for inclusion in the state criminal history records

271 and used by criminal justice agencies for criminal justice

272 purposes. These records may, in the discretion of the court, be

273 open to inspection by anyone upon a showing of cause. The

274 fingerprint and photograph records shall be produced in the

275 court whenever directed by the court. Any photograph taken

276 pursuant to this section may be shown by a law enforcement

277 officer to any victim or witness of a crime for the purpose of

278 identifying the person who committed such crime.

279 Section 4. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 10, 2017

I respectfully request that **Senate Bill #196**, relating to juvenile civil citation and similar diversion programs, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

Anitere Flores

Senator Anitere Flores
Florida Senate, District 39

THE FLORIDA SENATE APPEARANCE RECORD

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

4/13/2017

196

Meeting Date

Bill Number (if applicable)

610616

Amendment Barcode (if applicable)

Topic Juvenile Civil Citation

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Sheriffs 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

13 Apr 17

Meeting Date

196

Bill Number (if applicable)

Topic Juvenile Civil Citation

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

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 _____

196
Bill Number (if applicable) _____

Topic SB 196 / Civil Citations

Amendment Barcode (if applicable) _____

Name ^{Rev.} Rusty May

Job Title LIFE Organization in Ft Myers

Address 13411 Shire Lane Phone _____
Street

Ft Myers, FL 33912 Email _____
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing LIFE and Pastor of Lutheran Church

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)

4/13/17

Meeting Date

SB 196

Bill Number (if applicable)

Topic SB 196 - CIVIL CITATIONS

Amendment Barcode (if applicable)

Name Lois HOEFT

Job Title ICARE BOARD MEMBER

Address 360 RALEIGH RD.
Street

Phone _____

JACKSONVILLE FL 32275
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing ICARE

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)

4/13/17
Meeting Date

SB/96
Bill Number (if applicable)

Topic SB 196 Civil Citation

Amendment Barcode (if applicable)

Name ^{Rev.} Jean H. Cooley

Job Title Parish Associate Good Samaritan Church - Co-chair FAST Criminal Justice Comm.

Address 160 56th Ave S Phone 727-592-1774
Street

St. Petersburg FL 33705 Email revsbjcooley@gmail
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FAST Organization Pinellas 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.

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THE FLORIDA SENATE
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4/13/2017

196

Meeting Date

Bill Number (if applicable)

Topic Juvenile Civil Citation

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Sheriffs 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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THE FLORIDA SENATE
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Meeting Date

Bill Number (if applicable)

Topic Civil Citation SB 196

Amendment Barcode (if applicable)

Name Georgann Polich VanDoren

Job Title Hope team leader WLCCT

Address 2614 N Howard Ave

Phone 813-557-5383

Street

Tampa FL

City

State

Zip

Email giginousiainen@
hotmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Hope of Tampa / Hillsborough

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 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/17

Meeting Date

196

Bill Number (if applicable)

Topic senate B.U 196

Amendment Barcode (if applicable)

Name ANN B199

Job Title member of FAST

Address 2230 AIBRIGHT DR

Phone _____

Street

CI FL 33765

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing #196

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)

4/13/17

Meeting Date

#196

Bill Number (if applicable)

Topic Senate Bill 196

Amendment Barcode (if applicable)

Name Minnie M. Smith

Job Title ICARE Board member

Address 11668 Carepace Ln

Phone _____

Street

Jacksonville, FL 32218

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing ICARE - Senate Bill #196

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)

4-13-17

Meeting Date

SB 196

Bill Number (if applicable)

Topic Civil Citation

Amendment Barcode (if applicable)

Name Jeannette Altman

Job Title SURE INTERN / Network member

Address 5915 Brown Lane Phone

Street

Sarasota, FL 34232 Email

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing SURE

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)

April 13, 2017

Meeting Date

CS/SB 196

Bill Number (if applicable)

Topic Juvenile Civil Citation and Similar Diversion Programs

Amendment Barcode (if applicable)

Name Honorable Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th Street

Phone 305-545-1600

Street

Miami

FL

33125

Email cmartinez@pdmiami.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, 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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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/2017

Meeting Date

SB196

Bill Number (if applicable)

Topic Juvenile Civil Citation

Amendment Barcode (if applicable)

Name Ryan McBride

Job Title Pastor

Address 4805 Country Oaks Blvd.
Street

Phone 941-894-2819

Sarasota, FL 34243
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Sarasota United for Responsibility & Equity

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/17

Meeting Date

38196

Bill Number (if applicable)

Topic CIVIL CITATION

Amendment Barcode (if applicable)

Name STEVE KINSEY

Job Title UNDERSHERIFF

Address 2601 W Broward Blvd

Phone 954-831-8946

Street

FT LAUD, FL 33312

Email Stephen.Kinsey@sheriff.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Broward Sheriff's office

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 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/17

Meeting Date

196

Bill Number (if applicable)

Topic Civil citation

Amendment Barcode (if applicable)

Name Angie Gallo

Job Title Legislation Chair

Address 1747 Central FL Pkwy

Phone _____

Street

Orl FL

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida 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)

4-13-17

Meeting Date

SB 196

Bill Number (if applicable)

Topic CIVIL CITATIONS

Amendment Barcode (if applicable)

Name WILLIAM OBERDICK

Job Title RETIRED

Address 11300 CARAVEL CIR #107

Phone 216-392-7027

Street

FORT MYERS

FL

33908

Email BILL2016OBER@9mail.com

City

State

Zip

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing W.I.F.E. (LEE INTERFAITH FOR EMPOWERMENT)

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)

4-13-17

Meeting Date

SB 196

Bill Number (if applicable)

Topic Civil Citations SB 196

Amendment Barcode (if applicable)

Name Joseph Buczek

Job Title

Address 810 W. Virginia Ave

Phone

Street

Tampa, FL 33610

Email

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Hillsborough Organization for Progress & Equality, HOPE

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)

4/13/17

Meeting Date

196

Bill Number (if applicable)

Topic Civil Citations

Amendment Barcode (if applicable)

Name AMY Mercer

Job Title Executive Director

Address 2636 Mitcham Dr

Phone 291 3631

Street

Tallahassee

FL

32308

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Police Chiefs 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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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/17

Meeting Date

196

Bill Number (if applicable)

Topic Juvenile Civil Citation

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Director

Address 579 E. Call St.

Phone 850-321-9386

Tallahassee FL 32301

Email fcfe@jyadoo.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing Florida Center for Fiscal + Economic Policy

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

Lobbyist registered with Legislature: [X] 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)

4/13/17
Meeting Date

196
Bill Number (if applicable)

Topic Juvenile Diversion

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park Av

Phone _____

Street

Tallahassee

32301

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Conference of Catholic Bishops

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

4/13/2017

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

196

Meeting Date

Bill Number (if applicable)

Topic Juvenile Civil Citation

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Tallahassee, FL 32301

Email jorge@flapartners.com

City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla Association of Criminal Defense Lawyers

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)

4/13/17

Meeting Date

196

Bill Number (if applicable)

Topic

Juvenile Civil Citation

Amendment Barcode (if applicable)

Name

LISA HURLEY

Job Title

Address

311 E. PARK AVE

Phone

850.224.5081

Street

City

TANANHAUSSEE, FL 32301

State

Zip

Email

lhurley@smithbarjeand
niyerj

Speaking: For Against Information

~~Waive Speaking~~

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing

FLORIDA ASSOC OF COUNTIES

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 256

INTRODUCER: Senators Steube and Galvano

SUBJECT: Florida Center for the Partnerships for Arts Integrated Teaching

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	Favorable
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AHE</u>	Recommend: Favorable
3.	<u>Sikes</u>	<u>Hansen</u>	<u>AP</u>	Favorable

I. Summary:

SB 256 removes the July 1, 2017 expiration date for the statutory authority for the Florida Center for the Partnerships for Arts Integrated Teaching (Center) established within the University of South Florida Sarasota/Manatee. The Center was statutorily created in chapter 2016-62, Laws of Florida, the implementing bill for the 2016-2017 General Appropriations Act.

The bill has no fiscal impact.

The bill takes effect June 30, 2017.

II. Present Situation:

In 2016, the Legislature statutorily created¹ the Florida Center for the Partnerships for Arts Integrated Teaching (Center) within the University of South Florida Sarasota/Manatee to conduct research on policies and practices related to arts integrated teaching, partner with various entities to implement arts integrated teaching, and disseminate relevant information.² The Legislature appropriated \$250,000 to the Center in the 2016-2017 General Appropriations Act.³

The goals of the center are to:⁴

- Conduct basic and applied research on policies and practices related to arts integrated teaching.

¹ The Center for Partnerships for Arts Integrated Teaching was launched at the University of South Florida Sarasota/Manatee in 2012. University of South Florida Sarasota-Manatee, *About Us*, <http://usfsm.edu/center-paint/about-us/> (last visited Feb. 3, 2017). The Center was codified in 2016 as the Florida Center for the Partnerships for Arts Integrated Teaching. Section 1004.344, F.S.

² Section 1004.344, F.S.

³ Specific Appropriation 142, s. 2, ch. 2016-66, L.O.F.

⁴ Section 1004.344(2)(a)-(h), F.S.

- Partner with interested Florida College System (FCS) institutions and private educational institutions to conduct arts integrated educational research.
- Seek out agreements to provide technical assistance and support to the Florida Department of Education, school districts, private schools, charter schools, and educator preparation programs in the implementation of evidence-based arts integrated instruction, assessment, programs, and professional development.
- Collaborate with interested arts organizations and Florida school districts in the development of frameworks for arts integrated courses in schools and professional development activities, using multiple delivery methods for arts integrated teaching in different content areas.
- Disseminate information about outcome-based practices related to arts integrated instruction, assessment, curricula, and programs.
- Position Florida as a national leader in arts integrate teaching and research.
- Examine arts integrated teaching in Science, Technology, Engineering, and Math (STEM) educational courses.

III. Effect of Proposed Changes:

This bill removes the July 1, 2017 expiration date for the statutory authority for the Florida Center for the Partnerships for Arts Integrated Teaching (Center) established within the University of South Florida (USF) Sarasota/Manatee.

The Center was statutorily created in 2016 in the implementing bill for the 2016-2017 General Appropriations Act.⁵ As such, the statutory provisions for the Center are effective for one fiscal year, and expire July 1, 2017. Without repeal of the expiration date by the Legislature, the Center may continue to exist within the USF Sarasota/Manatee but the goals for the center will no longer be specified in Florida law.

The bill takes effect June 30, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ Section 1004.344, F.S., as created by s. 31, 2016-62, L.O.F.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has no fiscal impact. Funding for the Florida Center for the Partnerships for Arts Integrated Teaching is contingent upon an appropriation in the General Appropriations Act. As background, the Legislature appropriated \$250,000 to the Florida Center for the Partnerships for Arts Integrated Teaching (Center) in the 2016-2017 General Appropriations Act. SB 2500, the Senate General Appropriations Act for the 2017-2018 Fiscal Year, appropriates \$350,000 to the Center.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1004.344 of the Florida Statutes.

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.

By Senator Steube

23-00473-17

2017256__

1 A bill to be entitled
2 An act relating to the Florida Center for the
3 Partnerships for Arts Integrated Teaching; amending s.
4 1004.344, F.S.; abrogating the scheduled expiration of
5 the center; providing an effective date.

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

9 Section 1. Section 1004.344, Florida Statutes, is amended
10 to read:

11 1004.344 The Florida Center for the Partnerships for Arts
12 Integrated Teaching.—

13 (1) The Florida Center for the Partnerships for Arts
14 Integrated Teaching is created within the University of South
15 Florida Sarasota/Manatee.

16 (2) The goals of the center are to:

17 (a) Conduct basic and applied research on policies and
18 practices related to arts integrated teaching.

19 (b) Partner with interested Florida College System
20 institutions and private educational institutions to conduct
21 arts integrated educational research.

22 (c) Seek out agreements to provide technical assistance and
23 support, upon request, to the Florida Department of Education,
24 Florida school districts, private schools, charter schools, and
25 educator preparation programs in the implementation of evidence-
26 based arts integrated instruction, assessments, programs, and
27 professional development.

28 (d) Collaborate with interested arts organizations and
29 Florida school districts in the development of frameworks for
30 arts integrated courses for use in schools.

31 (e) Collaborate with interested arts organizations and
32 Florida school districts in the development of frameworks for

Page 1 of 2

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

23-00473-17

2017256__

33 professional development activities, using multiple delivery
34 methods for arts integrated teaching in different content areas.

35 (f) Disseminate information about outcome-based practices
36 related to arts integrated instruction, assessment, curricula,
37 and programs.

38 (g) Position Florida as a national leader in arts
39 integrated teaching and research.

40 (h) Examine arts integrated teaching Science, Technology,
41 Engineering, and Math (STEM) educational courses.

42 ~~(3) This section expires July 1, 2017.~~

43 Section 2. This act shall take effect June 30, 2017.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

March 8, 2017

The Honorable Jack Latvala
Florida Senate
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latvala,

I am writing this letter because my bill, SB 256 Florida Partnerships for Arts Integrated Teaching, has been referred to the Senate Appropriations Committee. This bill passed the Senate Education Committee on February 6 and the Appropriations Subcommittee on Higher Education on March 8. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in blue ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

4-13-2017

Meeting Date

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

SB 256

Bill Number (if applicable)

Topic Florida Center for PAINT

Amendment Barcode (if applicable)

Name CASEY WELCH

Job Title Government Relations

Address 8350 North Tamiami Trail

Phone 941-359-4572

Street

Sarasota

FL

34243

Email CaseyWelch@USF.EDU

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing USF Sarasota-Manatee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes 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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/CS/SB 450

INTRODUCER: Appropriations Committee; Governmental Oversight and Accountability Committee;
Criminal Justice Committee; and Senator Brandes

SUBJECT: Public Records

DATE: April 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 450 is linked to the passage of PCS/CS/SB 448, and CS/CS/CS/SB 118.

The bill makes personal identifying information of an adult who participates in a civil citation or prearrest diversion program exempt from public inspection and copying. The personal identifying information is no longer exempt from disclosure if the participant fails to complete the program. This exemption from public inspection and copying has retroactive application.

The bill also expands the public records exemption in section 943.059(4), Florida Statutes, to include criminal history records that are sealed administratively under section 943.0586, Florida Statutes, (created by CS/CS/CS/SB 118).

This bill may have a minimal fiscal impact on agencies responsible for complying with public records requests and redacting exempt information prior to releasing a record. However, these costs should be absorbed within existing resources.

The exemptions are subject to the Open Government Sunset Review Act and are repealed on October 2, 2022, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity for each public records exemption, as required by the State Constitution.

The State Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it creates new public records exemptions.

The bill is effective on July 1, 2017. The new public records exemption for the civil citation program takes effect on the same date that PCS/CS/SB 448 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law. The public records exemption for administratively sealed records takes effects July 1, 2018, and only if CS/CS/CS/SB 118 or similar legislation is adopted in the same legislative session or extension thereof and becomes law.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the State Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

[I]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” 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.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Criminal History Records

A criminal history record is any nonjudicial record maintained by a criminal justice agency containing criminal history information.²⁴ Criminal history information includes information on a person's arrests, detentions, indictments, informations (formal criminal charges), and the disposition of the charges.²⁵

A criminal history information is available free of charge to criminal justice agencies and to the public with payment of a fee.²⁶ Adults or minors seeking to prevent such disclosure may petition the court to seal²⁷ or expunge the record.²⁸

Sections 943.059 and 943.0585, F.S., provide the procedures for sealing and expunging criminal history records. When a record is sealed, it is not destroyed, but access is limited to:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies for criminal justice purposes;

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 943.045(6), F.S.

²⁵ Section 943.045(5), F.S.

²⁶ See s. 943.053, F.S.

²⁷ Section 943.059, F.S.

²⁸ Section 943.0585, F.S.

- Judges; and
- Certain agencies for licensing and employment purposes.²⁹

When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. FDLE is required to retain expunged records.³⁰

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,³¹ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.³²

Sealed or expunged records are confidential and exempt from the public records law.³³ It is a first degree misdemeanor³⁴ to divulge their existence.³⁵

Model Prearrest Diversion Program

PCS/CS/SB 448 creates s. 901.40, F.S., which encourages local communities and public or private educational institutions to implement a prearrest diversion program, and provides a framework for a model adult civil citation program that may be adopted. The model program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation or similar prearrest diversion program notice to an adult who:

- Commits a misdemeanor offense (as determined by the program);
- Admits to committing the offense or does not contest the offense;
- Has not previously been arrested; and
- Has not previously received an adult civil citation or similar prearrest diversion program unless the terms of the local adult prearrest diversion program allows otherwise.

The model program requires an adult who receives a civil citation to complete the required community service hours and pay restitution. If the adult does not successfully complete the program, the officer must determine if there is good cause to arrest the adult for the original misdemeanor offense and refer the case to the state attorney to determine if prosecution is appropriate or allow the adult to continue in the program.

²⁹ Section 943.059(4), F.S.

³⁰ Section 943.0585(4), F.S.

³¹ These include candidates for appointment as a guardian, admission to The Florida Bar, employment with a criminal justice agency, a license by the Division of Insurance Agent and Agent Services of the Department of Financial Services, or a position with an agency which is responsible for the protection of vulnerable persons, including children, disabled persons, and elderly persons.

³² Sections 943.0585(4)(a) and 943.059(4)(a), F.S.

³³ Sections 943.059(4)(c) and 943.0585(4)(c), F.S.

³⁴ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

³⁵ Sections 943.059 and 943.0585, F.S., require FDLE to disclose sealed and expunged criminal history records to specified entities for specified purposes.

A civil citation or similar prearrest diversion program notice is issued in lieu of an arrest so no criminal history record is created. However, records of a civil citation or similar prearrest diversion program notice held by the issuing law enforcement agency, or by a clerk of the circuit court and by a model program are subject to disclosure. Currently, Florida law does not exempt records associated with a civil citation from public inspection and copying.

Administrative Sealing of Criminal History Records

CS/CS/CS/SB 118 creates s. 943.0586, F.S., which requires the Criminal Justice Information Program, within the Florida Department of Law Enforcement (FDLE), to administratively seal the criminal history records pertaining to an arrest or incident of alleged criminal activity of an adult or minor if all of the charges:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial: or
- Resulted in a judgment of acquittal or a verdict of not guilty at trial.

All appeals by the prosecution must also have been exhausted or the time to file an appeal has expired for the criminal history records to be administratively sealed.

III. Effect of Proposed Changes:

Model Prearrest Diversion Program Public Records Exemption (Sections 1 and 2).

This bill exempts the personal identifying information of an adult who participates in a civil citation or prearrest diversion program (created by PCS/CS/SB 448) from public inspection and copying. A participant's personal identifying information is no longer exempt if the participant fails to successfully complete the program.

The public records exemption will apply to records held by a law enforcement agency, a program provider, a clerk of the circuit court, or the operators of a civil citation or prearrest diversion program.

The bill provides a statement of public necessity as required by the State Constitution.³⁶ The statement includes the following findings:

- The goal of a civil citation or prearrest diversion program is to give a second chance to adults who commit misdemeanor offenses and allow them the opportunity to avoid having an arrest record.
- If the personal identifying information of such adults were not exempt from disclosure, it would defeat the goal of giving adults who commit misdemeanor offenses a means to avoid arrest and prosecution.
- If such information were able to be obtained by the public, that disclosure might negatively impact the effectiveness of the civil citation or prearrest diversion program.

The exemption has retroactive application so that it will apply to people who have already participated in a civil citation or prearrest diversion program.

³⁶ Article I, s. 24(c), FLA. CONST.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature, pursuant to the OGSR Act.

This portion of the bill takes effect on the same date that PCS/CS/SB 448 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes a law.

Administrative Sealing of Criminal History Records (Sections 3, 4, and 5).

The bill expands the public records exemption in s. 943.059(4), F.S., to include records that are sealed administratively under s. 943.0586, F.S., (created by CS/CS/CS/SB 118). The bill provides that administratively sealing a record under s. 943.0586, F.S., has the same effect as sealing under s. 943.059, F.S. The bill allows a person to lawfully deny the arrest or fail to acknowledge the arrested covered by the administratively sealed record. A person also cannot be held under any provision of law as committing perjury or be liable for giving a false statement for failing to acknowledge an administratively sealed record.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature, pursuant to the OGSR Act.

The bill provides a statement of public necessity as required by the State Constitution.³⁷ The statement includes the following findings:

- The presence of a criminal history record in an individual's past which has not been validated through a criminal proceeding can jeopardize a person's ability to obtain education, employment, and other achievements necessary in becoming a productive, contributing, self-sustaining member of society.
- Such negative consequences are unwarranted in cases in which the individual was not found to have committed the offense that is the subject of the sealed criminal history record.

These portions of the bill are effective July 1, 2018, and only if CS/CS/CS/SB 118 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law. Otherwise, the bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates two new public record exemptions. Therefore, the following constitutional requirements apply.

³⁷ Article I, s. 24(c), FLA. CONST.

Substance of the Bill

Article I, s. 24(c) of the State Constitution requires that laws enacted to exempt records from public inspection must contain only exemptions and relate to one subject. This bill creates two new public records exemptions, one related to records of a civil citation program and one related to criminal history records that are administratively sealed by the FDLE.

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates two new public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates two new public record exemptions and includes a public necessity statement for each.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in each statement of public necessity, these public records exemptions appear to be no broader than necessary to accomplish their stated purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The public records exemption for model prearrest diversion programs may have a minimal fiscal impact on agencies responsible for complying with public records requests and redacting exempt information prior to releasing a record. However, these costs should be absorbed within existing resources.

The portion of the bill that expands the public records exemption in s. 943.059(4), F.S., to include the criminal history records that are sealed administratively under s. 943.0586, F.S., may have a negative impact on FDLE revenues but likely insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The public records exemption for model prearrest diversion programs is linked to the passage of PCS/CS/SB 448 and the portion of the bill that expands the public records exemption in s. 943.059(4), F.S., to include records that are sealed administratively under s. 943.0586, F.S., is linked to the passage of CS/CS/CS/SB 118.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 901.40 and 943.0586.

This bill amends section 943.059 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/CS by Appropriations on April 13, 2017:

The committee substitute adds an additional public records exemption to the bill:

- Expands the public records exemption in s. 943.059(4), F.S., to include the criminal history records that are sealed administratively under s. 943.0586, F.S., (created by CS/CS/CS/SB 118).
- Provides a statement of public necessity as required by the State Constitution.
- Specifies that this expansion of the public records exemption in s. 943.059, F.S., is effective July 1, 2018 and only if CS/CS/CS/SB 118 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

The committee substitute also adds the clerk of the circuit court to the public records exemption created for civil citations.

CS/CS by Governmental Oversight and Accountability on March 27, 2017:

The CS/CS does the following:

- Provides that the exemption applies to civil citation programs as well as prearrest diversion programs;
- Specifies that the public records exemption is limited to certain records custodians, and is not a public records exemption of general applicability;

- Specifies that the exemption only applies to the records of those people who complete a civil citation or prearrest diversion program, rather than to all participants regardless of whether they complete the program;
- Provides for retroactive application so that current and past participants can have the benefit of the exemptions; and,
- Removes ambiguous language.

CS by Criminal Justice on March 13, 2017:

The committee substitute:

- Creates a public records exemption for the personal identifying information of an adult who participates in a prearrest diversion program; and
- Makes technical and stylistic changes.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Effective upon the same date that SB 448 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law, subsection (6) is added to section 901.40, Florida Statutes, as created by SB 448, 2017 Regular Session, to read:



303428

11 901.40 Prearrest diversion programs.-

12 (6) PUBLIC RECORDS EXEMPTION.-The personal identifying
13 information of an adult participating in a civil citation or
14 prearrest diversion program is exempt from s. 119.07(1) and s.
15 24(a), Art. I of the State Constitution. The exemption does not
16 apply to the personal identifying information of an adult who
17 fails to complete the civil citation or prearrest diversion
18 program. This exemption applies to personal identifying
19 information held by a law enforcement agency, a program services
20 provider, or the entity operating an adult civil citation or
21 prearrest diversion program before, on, or after the effective
22 date of this exemption. This subsection is subject to the Open
23 Government Sunset Review Act in accordance with s. 119.15 and
24 shall stand repealed on October 2, 2022, unless reviewed and
25 saved from such repeal through reenactment by the Legislature.

26 Section 2. Effective upon the same date that SB 448 or
27 similar legislation takes effect, if such legislation is adopted
28 in the same legislative session or an extension thereof and
29 becomes a law: The Legislature finds that it is a public
30 necessity that the personal identifying information of an adult
31 participating in a civil citation or prearrest diversion program
32 be exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
33 Article I of the State Constitution. The exemption does not
34 apply to the personal identifying information of an adult who
35 fails to complete the civil citation or prearrest diversion
36 program. The goal of such programs is to give a second chance to
37 adults who commit misdemeanor offenses and allow them the
38 opportunity to avoid having an arrest record. Such goal would be
39 defeated if the personal identifying information of such adults



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40 were not exempt from disclosure and, consequently, would create
41 negative consequences for these adults. If the public were able
42 to obtain the personal identifying information of these adults,
43 the disclosure might adversely impact the civil citation or
44 prearrest diversion program. For these reasons, the Legislature
45 finds that it is a public necessity that the personal
46 identifying information of an adult participating in a civil
47 citation or prearrest diversion program be exempt from public
48 records requirements.

49 Section 3. Effective July 1, 2018, and only if SB 118 or
50 similar legislation is adopted in the same legislative session
51 or an extension thereof and becomes a law, subsection (2) is
52 added to section 943.0586, Florida Statutes, as created by SB
53 118, 2017 Regular session, to read:

54 943.0586 Administrative sealing of criminal history
55 records.—

56 (2) The sealing under this section of a criminal history
57 record has the same effect as a sealing under s. 943.059(4).

58 Section 4. Effective July 1, 2018, and only if SB 118 or
59 similar legislation is adopted in the same legislative session
60 or an extension thereof and becomes a law, subsection (4) of
61 section 943.059, Florida Statutes, is amended to read:

62 943.059 Court-ordered sealing of criminal history records.—

63 The courts of this state shall continue to have jurisdiction
64 over their own procedures, including the maintenance, sealing,
65 and correction of judicial records containing criminal history
66 information to the extent such procedures are not inconsistent
67 with the conditions, responsibilities, and duties established by
68 this section. Any court of competent jurisdiction may order a



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69 criminal justice agency to seal the criminal history record of a
70 minor or an adult who complies with the requirements of this
71 section. The court shall not order a criminal justice agency to
72 seal a criminal history record until the person seeking to seal
73 a criminal history record has applied for and received a
74 certificate of eligibility for sealing pursuant to subsection
75 (2). A criminal history record that relates to a violation of s.
76 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
77 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
78 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
79 s. 916.1075, a violation enumerated in s. 907.041, or any
80 violation specified as a predicate offense for registration as a
81 sexual predator pursuant to s. 775.21, without regard to whether
82 that offense alone is sufficient to require such registration,
83 or for registration as a sexual offender pursuant to s.
84 943.0435, may not be sealed, without regard to whether
85 adjudication was withheld, if the defendant was found guilty of
86 or pled guilty or nolo contendere to the offense, or if the
87 defendant, as a minor, was found to have committed or pled
88 guilty or nolo contendere to committing the offense as a
89 delinquent act. The court may only order sealing of a criminal
90 history record pertaining to one arrest or one incident of
91 alleged criminal activity, except as provided in this section.
92 The court may, at its sole discretion, order the sealing of a
93 criminal history record pertaining to more than one arrest if
94 the additional arrests directly relate to the original arrest.
95 If the court intends to order the sealing of records pertaining
96 to such additional arrests, such intent must be specified in the
97 order. A criminal justice agency may not seal any record



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98 pertaining to such additional arrests if the order to seal does
99 not articulate the intention of the court to seal records
100 pertaining to more than one arrest. This section does not
101 prevent the court from ordering the sealing of only a portion of
102 a criminal history record pertaining to one arrest or one
103 incident of alleged criminal activity. Notwithstanding any law
104 to the contrary, a criminal justice agency may comply with laws,
105 court orders, and official requests of other jurisdictions
106 relating to sealing, correction, or confidential handling of
107 criminal history records or information derived therefrom. This
108 section does not confer any right to the sealing of any criminal
109 history record, and any request for sealing a criminal history
110 record may be denied at the sole discretion of the court.

111 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
112 history record of a minor or an adult which is ordered sealed by
113 a court pursuant to this section or sealed administratively
114 pursuant to s. 943.0586 is confidential and exempt from the
115 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
116 Constitution and is available only to the person who is the
117 subject of the record, to the subject's attorney, to criminal
118 justice agencies for their respective criminal justice purposes,
119 which include conducting a criminal history background check for
120 approval of firearms purchases or transfers as authorized by
121 state or federal law, to judges in the state courts system for
122 the purpose of assisting them in their case-related
123 decisionmaking responsibilities, as set forth in s. 943.053(5),
124 or to those entities set forth in subparagraphs (a)1., 4., 5.,
125 6., 8., 9., and 10. for their respective licensing, access
126 authorization, and employment purposes.



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127 (a) The subject of a criminal history record sealed under
128 this section, s. 943.0586, or under other provisions of law,
129 including former s. 893.14, former s. 901.33, and former s.
130 943.058, may lawfully deny or fail to acknowledge the arrests
131 covered by the sealed record, except when the subject of the
132 record:

- 133 1. Is a candidate for employment with a criminal justice
134 agency;
- 135 2. Is a defendant in a criminal prosecution;
- 136 3. Concurrently or subsequently petitions for relief under
137 this section, s. 943.0583, or s. 943.0585;
- 138 4. Is a candidate for admission to The Florida Bar;
- 139 5. Is seeking to be employed or licensed by or to contract
140 with the Department of Children and Families, the Division of
141 Vocational Rehabilitation within the Department of Education,
142 the Agency for Health Care Administration, the Agency for
143 Persons with Disabilities, the Department of Health, the
144 Department of Elderly Affairs, or the Department of Juvenile
145 Justice or to be employed or used by such contractor or licensee
146 in a sensitive position having direct contact with children, the
147 disabled, or the elderly;
- 148 6. Is seeking to be employed or licensed by the Department
149 of Education, a district school board, a university laboratory
150 school, a charter school, a private or parochial school, or a
151 local governmental entity that licenses child care facilities;
- 152 7. Is attempting to purchase a firearm from a licensed
153 importer, licensed manufacturer, or licensed dealer and is
154 subject to a criminal history check under state or federal law;
- 155 8. Is seeking to be licensed by the Division of Insurance



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156 Agent and Agency Services within the Department of Financial
157 Services;

158 9. Is seeking to be appointed as a guardian pursuant to s.
159 744.3125; or

160 10. Is seeking to be licensed by the Bureau of License
161 Issuance of the Division of Licensing within the Department of
162 Agriculture and Consumer Services to carry a concealed weapon or
163 concealed firearm. This subparagraph applies only in the
164 determination of an applicant's eligibility under s. 790.06.

165 (b) Subject to the exceptions in paragraph (a), a person
166 who has been granted a sealing under this section, s. 943.0586,
167 former s. 893.14, former s. 901.33, or former s. 943.058 may not
168 be held under any provision of law of this state to commit
169 perjury or to be otherwise liable for giving a false statement
170 by reason of such person's failure to recite or acknowledge a
171 sealed criminal history record.

172 (c) Information relating to the existence of a sealed
173 criminal record provided in accordance with the provisions of
174 paragraph (a) is confidential and exempt from the provisions of
175 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
176 except that the department shall disclose the sealed criminal
177 history record to the entities set forth in subparagraphs (a)1.,
178 4., 5., 6., 8., 9., and 10. for their respective licensing,
179 access authorization, and employment purposes. An employee of an
180 entity set forth in subparagraph (a)1., subparagraph (a)4.,
181 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
182 subparagraph (a)9., or subparagraph (a)10. may not disclose
183 information relating to the existence of a sealed criminal
184 history record of a person seeking employment, access



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185 authorization, or licensure with such entity or contractor,
186 except to the person to whom the criminal history record relates
187 or to persons having direct responsibility for employment,
188 access authorization, or licensure decisions. A person who
189 violates the provisions of this paragraph commits a misdemeanor
190 of the first degree, punishable as provided in s. 775.082 or s.
191 775.083.

192 (d) The expansion of the public records exemption under
193 this subsection to include records sealed administratively under
194 s. 943.0586 is subject to the Open Government Sunset Review Act
195 in accordance with s. 119.15 and shall stand repealed on October
196 2, 2023, unless reviewed and saved from repeal through
197 reenactment by the Legislature. If the expansion of the
198 exemption is not saved from repeal, this subsection shall revert
199 to that in existence on June 30, 2017, except that any
200 amendments to such text other than by this act shall be
201 preserved and continue to operate to the extent that such
202 amendments are not dependent upon the portions of text which
203 expire pursuant to this paragraph.

204 Section 5. Effective July 1, 2018, and only if SB 118 or
205 similar legislation is adopted in the same legislative session
206 or an extension thereof and becomes a law: The Legislature finds
207 that it is a public necessity that the criminal history records
208 of a minor or an adult, which have been administratively sealed
209 pursuant to s. 943.0586, Florida Statutes, because the case was
210 not filed, was dismissed or nolle prosequi, or resulted in the
211 granting of a judgment of acquittal or verdict of not guilty, be
212 made confidential and exempt from s. 119.07(1), Florida
213 Statutes, and s. 24(a), Article I of the State Constitution. The



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214 presence of a criminal history record in an individual's past
215 which has not been validated through criminal proceedings can
216 jeopardize his or her ability to obtain education, employment,
217 and other achievements necessary to becoming a productive,
218 contributing, self-sustaining member of society. Such negative
219 consequences are unwarranted in cases in which the individual
220 was not found to have committed the offense that is the subject
221 of the sealed criminal history record. For these reasons, the
222 Legislature finds that it is a public necessity that the
223 criminal history records of a minor or an adult which have been
224 administratively sealed be confidential and exempt from public
225 records requirements.

226 Section 6. Except as otherwise expressly provided in this
227 act, this act shall take effect on July 1, 2017.

228
229 ===== T I T L E A M E N D M E N T =====

230 And the title is amended as follows:

231 Delete everything before the enacting clause
232 and insert:

233 A bill to be entitled
234 An act relating to public records; amending s. 901.40,
235 F.S.; creating an exemption from public records
236 requirements for the personal identifying information
237 of adults who participate in a civil citation or
238 prearrest diversion program; providing applicability;
239 providing retroactive application; providing for
240 future review and repeal of the exemption; providing a
241 statement of public necessity; amending s. 943.0586,
242 F.S.; providing applicability for the administrative



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243 sealing of specified criminal history records;
244 amending s. 943.059, F.S.; expanding an existing
245 public records exemption to include the administrative
246 sealing of specified criminal history records;
247 conforming provisions to changes made by the act;
248 providing for future review and repeal of the expanded
249 exemption; providing for reversion of specified
250 language if the exemption is not saved from repeal;
251 providing a statement of public necessity; providing
252 effective dates, including contingent effective dates.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
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The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment to Amendment (303428)

Delete line 20
and insert:
provider, a clerk of the circuit court, or the entity operating
an adult civil citation or

By the Committees on Governmental Oversight and Accountability;
and Criminal Justice; and Senator Brandes

585-02942-17

2017450c2

A bill to be entitled

An act relating to public records; amending s. 901.40, F.S.; providing that the personal identifying information of an adult participating in a civil citation or prearrest diversion program is exempt from public records requirements; providing applicability; providing for future review and repeal of the exemption; providing for retroactive application; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (6) is added to section 901.40, Florida Statutes, as created by SB 448, 2017 Regular Session, to read:

901.40 Prearrest diversion programs.—

(6) PUBLIC RECORDS EXEMPTION.—The personal identifying information of an adult participating in a civil citation or prearrest diversion program is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The exemption does not apply to the personal identifying information of an adult who fails to complete the civil citation or prearrest diversion program. This exemption applies to personal identifying information held by a law enforcement agency, a program services provider, or the entity operating an adult civil citation or prearrest diversion program before, on, or after the effective date of this exemption. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and

Page 1 of 2

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

585-02942-17

2017450c2

shall stand repealed on October 2, 2022, unless reviewed and saved from such repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the personal identifying information of an adult participating in a civil citation or prearrest diversion program is exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The exemption does not apply to the personal identifying information of an adult who fails to complete the civil citation or prearrest diversion program. The goal of such programs is to give a second chance to adults who commit misdemeanor offenses and allow them the opportunity to avoid having an arrest record. If the personal identifying information of such adults were not exempt from disclosure, it would defeat the program's goal of giving adults who commit misdemeanor offenses a means to avoid the negative consequences of an arrest and prosecution. If such information were able to be obtained by the public, the disclosure might negatively impact the effectiveness of the program. For these reasons, the Legislature finds that it is a public necessity that the personal identifying information of an adult participating in a civil citation or prearrest diversion program is exempt from public records requirements.

Section 3. This act shall take effect on the same date that SB 448 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 28, 2017th

I respectfully request that **Senate Bill #450**, relating to **Public Records**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-13-17

Meeting Date

450

Bill Number (if applicable)

303428

Amendment Barcode (if applicable)

Topic PUBLIC RECORDS

Name RON DRAA

Job Title DIRECTOR OF EXTERNAL AFFAIRS

Address 2331 PHILLIPS ROAD

Street

Phone 850-410-7020

TALL

City

State

Zip

Email RONALDDRAA@FDLE.STATE.FL.US

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FDLE

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)

4/13/17

Meeting Date

450

Bill Number (if applicable)

Topic PRE-ARREST DIVERSION Pub. REC. EXEMP.

Amendment Barcode (if applicable)

Name GREG FROST

Job Title PRESIDENT

Address 3333 W. PENSACOLA
Street

Phone 850-544-7350

TALLAHASSEE FL 32304
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing CIVIL CITATION NETWORK

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)

April 13, 2017

Meeting Date

CS/SB 450

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Honorable Carlos Martinez

Job Title Public Defender, 11th Circuit

Address 1320 NW 14th Street

Phone 305-545-1600

Street

Miami

FL

33125

Email cmartinez@pdmiami.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association, 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.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/17

450

Meeting Date

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Carla Laroche

Job Title Law Fellow

Address PO Box 10788

Phone 850-521-3003

Street

Tallahassee

FL

32302

Email carla.laroche@splcenter.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Southern Poverty Law Center

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 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/2017

Meeting Date

450

Bill Number (if applicable)

Topic PR / Civil Citations

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Tallahassee, FL 32301

Email jorge@flapartners.com

City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla Association of Criminal Defense Lawyers

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)

13 Apr 17

Meeting Date

450

Bill Number (if applicable)

Topic Public Records - Prearrest Diversion

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla. Smart Justice Alliance

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 716

INTRODUCER: Appropriations Committee; Regulated Industries Committee; and Senator Passidomo

SUBJECT: Real Estate Appraisers

DATE: April 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi/Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Favorable</u>
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 716 revises Florida law to implement registration and supervision systems for appraisal management companies to meet minimum requirements for such companies established by federal rule. An appraisal management company is an entity that serves as an intermediary and provides certain prescribed services to creditors.¹ Implementation of a registration system for appraisal management companies satisfying federal requirements will allow eligible persons and appraisal management companies licensed in Florida to continue to perform appraisal services for federally related transactions.

¹ See the Supplementary Information section in the published Federal Register Notice at <https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 10, 2017) at page 32658, 12 U.S.C. 3350(1) and 12 C.F.R. 225.191(d).

Under 12 C.F.R. §34.211, an “appraisal management company” is a person, other than a department or division that does not provide appraisal management services to only one entity, that (i) provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates; (ii) provides such services in connection with valuing consumer’s principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; (iii) within a given 12-month period, oversees an appraiser panel of 15 or more state-certified or state-licensed appraisers in a state or 25 or more state-certified or state-licensed appraisers in two or more states.

“Appraisal management services” include one or more of the following: (1) recruiting, selecting, and retaining appraisers; (2) contracting with state-certified or state-licensed appraisers; (3) managing the process of having an appraisal performed, including performing administrative services; and (4) reviewing and verifying the work of appraisers.

The bill:

- Defines or revises definitions of the terms “appraisal management company” “appraisal panel,” “covered transaction,” “evaluation,” “secondary mortgage market participant,” and “order file” to conform to the final federal rule that establishes standards for appraisal management companies;
- Requires, as part of the implementation of a federally-compliant registration system for appraisal management companies, the Department of Business and Professional Regulation (DBPR) to collect data and required fees, and to transmit a roster, no less than annually, listing the persons or companies that hold a valid state registration as an appraisal management company to a federal appraisal subcommittee, consisting of federal financial institution regulatory agencies.
- Removes the authority currently granted to the Florida Real Estate Appraisal Board (board) to qualify a person who is otherwise disqualified for licensure, if it appears to the board, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, that the interest of the public is not likely to be endangered by the granting of registration.
- Allows the board to deny the renewal of the registration of an appraisal management company based on disciplinary action against the licensee, rather than limiting denial to the initial application for licensure.
- Authorizes the board to deny an application for registration or renewal of a registration or to reprimand or fine an appraisal management company that has required or attempted to require clients to sign any agreement that would require a client to hold harmless the appraisal management company or its owners, agents, or employees, from any liability, damage, loss, or claim arising from the services performed by an appraiser.
- Permits an appraiser to perform an evaluation of real property in connection with a federally regulated real estate financial transaction, and requires that the appraiser comply with the standards for evaluation imposed by the federal financial institutions regulatory agency and other standards as prescribed by the board.
- Grants authority to the board to adopt rules to establish standards of practice for nonfederal transactions; and
- Requires that the board mandate compliance with the Ethics and Competency Rules of the standards adopted by the Appraisal Standards Board of the Appraisal Foundation for all appraisals other than those in a federal transaction.

Additionally, the bill allows distance learning courses for real estate practice coursework required for initial licensure as a real estate broker or sales associate, repeals duplicative post licensure education requirements for trainee appraisers, and removes obsolete language.

The bill has no significant fiscal impact to state government; however, the DBPR indicates it will require additional non-operating budget authority to transfer certain fees to the federal Appraisal Subcommittee.

The bill takes effect October 1, 2017.

II. Present Situation:

The Florida Real Estate Commission (commission) within the Division of Real Estate in the Department of Business and Professional Regulation (DBPR) administers and enforces the laws governing real estate brokers and may adopt rules to implement the provisions of part I of ch. 475, F.S. The Florida Real Estate Appraisal Board (board) administers and enforces the laws governing real estate appraisers and may adopt rules to implement the provisions of part II of ch. 475, F.S.

The Appraisal Foundation is a private, non-profit educational organization formed to promote professionalism in the valuation industry.² The Appraisal Standards Board within the Appraisal Foundation establishes the standards of the profession, known as the Uniform Standards of Professional Appraisal Practice (USPAP).³ The USPAP, and the rules created by the commission and the board, govern real estate brokers, appraisers, and appraisal management companies in Florida.

Real Estate Brokerage Registration Requirements

Section 475.15, F.S., requires a partnership, limited liability partnership, limited liability company, or corporation that acts as a real estate broker to register with the commission and renew the licenses or registrations of its members, officers, and directors for each license period. For a limited partnership, only the general partners must be licensed brokers or registered brokerage corporations. The registration of a corporation, limited liability company, limited liability partnership, or partnership is canceled automatically during the period of time the entity does not have at least one real estate broker member who has an active license or registration.

Real Estate Broker Education Requirement Exemption

Section 475.17, F.S., sets forth the qualifications for practice for a real estate broker. In part, an applicant must complete a pre-licensing course.⁴ The commission may require licensees to meet post licensure education requirements in order to maintain valid sales associate's or broker's licenses.⁵ The required education courses must be provided by an accredited college, university, or community college, by a career center, by a registered real estate school, or by a commission-approved sponsor.⁶ The schools or sponsors may provide the instruction through classroom courses, distance learning courses, or both. For a person who cannot attend the courses as offered, courses must be made available by correspondence or other suitable means.⁷

²See https://www.appraisalfoundation.org/imis/TAF/About_Us/TAF/About_Us.aspx?hkey=52dedd0a-de2f-4e2d-9efb-51ec94884a91 (last visited Mar. 9, 2017).

³ The *Uniform Standards of Professional Appraisal Practice* (USPAP), was adopted by Congress in 1989, and is the generally recognized ethical and performance standards for the appraisal profession in the United States. Compliance with the USPAP is required for state-licensed and state-certified appraisers involved in federally-related real estate transactions. See https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx (last visited Mar. 9, 2017).

⁴ Section 475.17(2)(a), F.S.

⁵ Sections 475.17(3)(a), and (4)(a), F.S.

⁶ *Id.*

⁷ Sections 475.17(2), and (5), F.S.

A person who has received a four-year, or higher, degree in real estate from an accredited institution of higher education is exempt from pre-licensure education course requirements as well as post licensure education requirements.⁸

Real Estate Brokers – Inactive License

Section 475.183, F.S., deals with the activation of licenses that are voluntarily or involuntarily inactive. Licenses that have been involuntarily inactive for more than two years automatically expire, and become null and void without any further action by the commission or the DBPR. The DBPR must provide notice to the licensee 90 days prior to expiration of a license. The commission adopted a \$45 late fee for the late renewal of an involuntarily inactive license.⁹

The Appraisal Subcommittee Fee

The Appraisal Subcommittee (ASC) was created in 1989,¹⁰ pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The ASC is an independent agency, within the Federal Financial Institutions Examination Council, that oversees the states' appraisal regulatory programs including Florida's appraiser regulatory program.¹¹

The ASC maintains a database of state certified and licensed real estate appraisers called the National Registry.¹² State appraiser regulatory agencies submit appraiser information to the registry. An appraiser must be listed on the National Registry to be eligible to perform appraisals in connection with federally related transactions, including mortgage transactions. The ASC requires an annual \$40 fee from certified or licensed appraisers to support the ASC National Registry.¹³ The state agency that oversees appraisers is required to collect the fee from appraisers and transmit it to the ASC annually. Real estate appraisers in Florida are regulated by the Florida Real Estate Appraisal Board within the Division of Real Estate in the DBPR.¹⁴

Real Estate Appraisers

A “certified general appraiser” is a person who is certified by the DBPR as qualified to issue appraisal reports for any type of real property.¹⁵

⁸ Section 475.17(6), F.S.

⁹ Section 475.183(2)(b), F.S., and *See* Fla. Admin. Code R. 61J2-1.011(5)(c) (2017), at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61J2-1> (last visited Mar. 9, 2017)).

¹⁰ Appraisal Subcommittee, Federal Financial Institutions Examination Council, *ASC History*, at <https://www.asc.gov/About-the-ASC/ASCHistory.aspx> (last visited Mar. 9, 2017). *See also* s. 475.611(1)(b), F.S.

¹¹ <https://www.asc.gov/Legal-Framework/DoddFrank.aspx>

¹² *See* <https://www.asc.gov/National-Registry/NationalRegistry.aspx> (last visited Mar. 9, 2017).

¹³ 12 U.S.C. s. 3332(a) and 3338(a)(4). The notice published in the Federal Register on June 9, 2015 and the final rule to implement minimum requirements the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) for appraisal management companies may be reviewed at <https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 9, 2017).

¹⁴ Section 475.613(2), F.S.

¹⁵ Section 475.611(1)(k), F.S.

A “certified residential appraiser” is a person who is certified by the DBPR as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.¹⁶

A “licensed appraiser” is a person who is licensed by the DBPR as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation.¹⁷

The ASC and the Appraisal Foundation have adopted standard designation for appraisers, including “state certified general appraiser” and “state certified appraiser.” As of July 1, 2003, the DBPR may not issue licenses for the category of licensed appraiser.¹⁸ In 2013, the Legislature removed the term “licensed appraiser” from the definition of “supervisory appraiser,” and the reference to “licensed” appraisers from the supervisory requirements for trainee real estate appraisers. These changes conformed Florida law to federally recognized standards that allow only a “certified” appraiser to act as a supervisor for a trainee appraiser.¹⁹ Under current law, only a certified appraiser may supervise a “registered trainee appraiser.”²⁰

Real Estate Appraisers – Retention of Records

Florida law and the USPAP have different record retention requirements. All registered, licensed, or certified appraisers and registered appraisal management companies must retain the following documents for five years:²¹

- Original or true copies of any contracts to engage the services of the appraiser or appraisal management company;
- Appraisal reports; and
- Supporting data assembled and formulated by the appraiser or company in preparing appraisal reports or engaging in appraisal management services.

These records must be available for inspection or copying by the DBPR. However, the DBPR may only inspect or copy the records of an appraisal management company in connection with a pending investigation or complaint. The DBPR is able to inspect any appraiser or appraisal office for the purposes of determining if any of the provisions of chs. 475 or 455, F.S., or any rule is being violated.²² However, the DBPR does not have the authority to inspect the offices of appraisal management companies.²³

The USPAP requires an appraiser to create a work file that must include:

¹⁶ Section 475.611(1)(l), F.S.

¹⁷ Section 475.611(1)(q), F.S.

¹⁸ *Id.*

¹⁹ Chapter 2013-144, Laws of Fla. See the Real Property Appraiser Qualification Criteria at https://www.appraisalfoundation.org/imis/TAF/Standards/Qualification_Criteria/Qualification_Criteria_RP_/TAF/AQB_RP_AQC.aspx?hkey=5ec61b8d-751b-4a97-90b1-9b3dae5 (last visited Mar. 9, 2017).

²⁰ Section 475.611(1)(r), F.S.

²¹ Section 475.629, F.S., requires documents to be retained for five years or the period required by the USPAP, whichever is longer. The USPAP also requires a 5-year retention period; however, USPAP is not a publicly available document, but a copy may be purchased.

²² Section 475.6295, F.S.

²³ *Id.*

- The name of the client and the identity, by name or type, of any other intended users;
- True copies²⁴ of any written reports, documented on any type of media;
- Summaries of all oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification;
- All other data, information, and documentation necessary to support the appraiser's opinions and calculations and to show compliance with USPAP, or reference to the location(s) of such other documentation; and
- A work file in support of a Restricted Appraisal Report must be sufficient for the appraiser to produce an Appraisal Report.

Registered Trainee Appraiser

A "registered trainee appraiser" is a person who is registered with the DBPR as qualified to perform appraisal services only under the direct supervision of a certified appraiser.²⁵ A registered trainee appraiser may accept appraisal assignments only from his or her primary or secondary supervisory appraiser. Registrations are renewed biennially.²⁶

Section 475.6175, F.S., authorizes the board to prescribe post licensure education requirements for a registered trainee appraiser. The continuing education must consist of one or more courses that total no more than the total educational hours required to qualify as a state certified residential appraiser. Florida Administrative Code Rule 61J1-4.009 requires a registered trainee appraiser to complete 30 hours of post licensure education.

Real Estate Appraisers – Nonresident Licenses and Certifications

Florida requires out-of-state licensees to meet all of the requirements for appraiser licensure. However, s. 475.631, F.S., allows the board to enter into agreements with other states that have similar licensure requirements. These agreements allow Florida certified appraisers to become licensed in another state without having to meet all of that state's requirements and vice versa.²⁷

Dodd-Frank Wall Street Reform and Consumer Protection Act

Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to "promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail,' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes."²⁸

²⁴ A true copy is a replica of the report transmitted to the client. A photocopy or an electronic copy of the entire report transmitted to the client satisfies that requirement of a true copy.

²⁵ Section 475.611(1)(r), F.S.

²⁶ See Fla. Admin. Code R. 61J1-2.002 (1995)

²⁷ See Fla. Admin. Code R. 61J1-3.004 (2017), at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61J1-3> (last visited Mar. 9, 2017)). If the board determines that other states do not offer comparable nonresident licensure or certification to Florida certified appraisers that Florida offers to those states, the board must require certified appraisers or licensees of that jurisdiction to meet the education, experience, and examination requirements of other nonresident licensure or certification. See s. 475.631(1), F.S.

²⁸ See <https://www.asc.gov/Legal-Framework/DoddFrank.aspx> (last visited Mar. 9, 2017)

The Dodd-Frank Act became effective on July 1, 2013,²⁹ amended the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and requires states to have policies in place for issuing a reciprocal certification or license to an appraiser from another state when:

- The appraiser licensing and certification program of the other state complies with FIRREA;³⁰ and
- The appraiser holds a valid certification from a state with requirements for certification or licensing that meet or exceed the certification and licensure standards established by the state where the individual seeks appraisal licensure (i.e., reciprocity).³¹

The minimum requirements for the registration and supervision of appraisal management companies are also mandated by the Dodd-Frank Act.³² The affected federal agencies³³ adopted a final rule on June 9, 2015. Under Dodd-Frank, states must require that appraisal management companies:

- Register with and be subject to supervision by the state agency that certifies and licenses appraisers in the state in which the appraiser operates.
- Verify that only state-certified or state-licensed appraisers are used for federally related transactions.
- Require that appraisals comply with the USPAP.
- Require that appraisals are conducted in accordance with statutory valuation independence standards pursuant to the Truth in Lending Act and its regulations.

An appraisal management company that is a subsidiary owned and controlled by an insured depository institution and regulated by a federal financial institutions regulatory agency is subject to all of those minimum requirements, except the requirement to register with the state.³⁴

Section 1124 of the Dodd-Frank Act does *not* compel a state to establish an appraisal management company registration and supervision program and no penalty is imposed on a state that does not establish an appraisal management company regulatory structure. However, if a state does not establish a regulatory structure for appraisal management companies by August 10, 2018 (i.e., 36 months after the effective date of the final rule), s. 1124 of the Dodd-Frank Act bars appraisal management companies from providing appraisal management services for federally related transactions, unless the appraisal management company is owned and controlled by a federally regulated financial institution.³⁵ However, appraisal management

²⁹ Appraisal Subcommittee, Federal Financial Institutions Examination Council, *The Dodd-Frank Wall Street Reform and Consumer Protection Act*, at <https://www.asc.gov/Legal-Framework/DoddFrank.aspx> (last visited Mar. 9, 2017).

³⁰ Written agreements between states are not required by FIRREA.

³¹ 12 U.S.C. s. 3351(b); and Appraisal Subcommittee Policy Statement 5 (June 1, 2013) at <https://www.asc.gov/Documents/PolicyStatements/ASC%20Policy%20Statements%2006.01.13.pdf> (last visited March 9, 2017).

³² See <https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 10, 2017).

³³ The final rule adopted on June 9, 2015 may be reviewed at <https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 9, 2017).

³⁴ *Id.*

³⁵ *Id.*

companies that are below the minimum statutory panel size threshold will continue to be eligible to provide appraisal management services for federally related transactions.³⁶

III. Effect of Proposed Changes:

Section 1 amends s. 475.451(6), F.S., to allow schools teaching real estate practice to provide instruction in a classroom or by distance learning courses approved pursuant to s. 475.17(2), F.S., and to remove obsolete language authorizing videotaped instruction. The bill also requires real estate practice coursework for initial licensure as a broker; such coursework is currently required for licensure as a sales associate.

Section 2 amends s. 475.611, F.S., to conform the terms “appraisal panel,”³⁷ “covered transaction,” “evaluation,” “secondary mortgage market participant,” and “order file” to the final federal rule that establishes standards for appraisal management companies.³⁸

The section revises the definition of “appraisal management company” to further define the term to mean a person who, within a 12-month period, oversees an appraisal panel of more than 15 state-certified or state-licensed appraisers in a state or 25 or more state-certified or state-licensed appraisers in two or more states.³⁹

An “evaluation” means a valuation permitted by a regulatory agency for federal financial institutions, when no appraisal is required because a federal exemption applies. The bill provides that an “evaluation” may not be referred to or construed as an “appraisal.”

Section 3 creates s. 475.612(7), F.S., to permit an appraiser to perform an evaluation of real property in connection with a federally regulated real estate financial transaction. The bill also requires an appraiser providing services in a federally related transaction to comply with the standards for evaluation imposed by the federal financial institutions regulatory agency and other standards as prescribed by the Florida Real Estate Appraisal Board (board). An evaluation may not be referred to as an appraisal.

Section 4 repeals s. 475.6175, F.S., concerning post licensure education requirements for trainee appraisers. Currently, s. 475.618, F.S., requires the Department of Business and Professional Regulation (DBPR) to renew a registration, license, or certification of an appraiser upon receipt

³⁶ See the Supplementary Information section in the published Federal Register Notice at <https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 10, 2017) at page 32658, 12 U.S.C. 3350(1) and 12 C.F.R. 225.191(d).

The minimum statutory panel threshold is an appraisal management company that oversees fewer than 15 state-licensed appraisers in a state or fewer than 25 appraisers in two or more states in a calendar year or 12-month period under state law.

³⁷ These definitions are nearly identical in the bill and in the final rule; however, in the definition of “appraiser panel” in the bill, the word “mortgage” is omitted from the phrase “secondary mortgage market” that is used in the final rule. See line 133 of the bill, and s. 323.9(e) of the final rule at

<https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 10, 2017) at page 32679.

³⁸ See 12 C.F.R. Part 323, § 323.9(e), (h), and (k), respectively.

³⁹ See note 36. The definition of “appraisal management company” in 12 U.S.C. 3350(11) and 12 C.F.R. 225.191(d) contains a similar provision for the number of appraisal panels that an appraisal management company must oversee in a year.

of a renewal application, proper fee, and proof of the licensee having satisfactorily completed a continuing education course or courses required by the board. According to the DBPR, education required for initial licensure and continuing education coursework currently provided by real estate schools is duplicative of post licensure education coursework.⁴⁰

Section 5 amends s. 475.621, F.S., to require the DBPR to collect data and required fees, and transmit a roster to the “appraisal subcommittee,” no less than annually, listing the persons or companies that hold a valid state registration as an appraisal management company. Under part II, ch. 475, F.S., the “appraisal subcommittee” is defined as the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.⁴¹ The bill authorizes the DBPR to collect from appraisal management companies seeking to perform appraisal management services in covered transactions (i.e., consumer credit transactions secured by the consumer’s principal dwelling) an annual fee established by the board.

Section 6 amends s. 475.6235(5), F.S., to remove the authority of the board to qualify a person for licensure, if it appears to the board, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, that the interest of the public is not likely to be endangered by the granting of registration. In current law, the board may qualify a person for registration, licensure, or certification as an appraiser who possesses the authority, directly or indirectly, to direct the management or policies of an appraisal management company, through ownership, contract or otherwise, and if the person has:

- Been denied registration, licensure, or certification as an appraiser or has been disbarred;
- Had a registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, any possession or district of the United States, or any court or lawful agency thereof because of any conduct or practices that would have warranted a like result under part II of ch. 475, F.S.; or
- Been guilty of conduct or practices in this state or elsewhere that would have been grounds for disciplining his or her registration, license, or certification under part II of ch. 475, F.S., had the person then been a registered trainee appraiser or a licensed or certified appraiser.

Additionally, the bill amends s. 475.6235(8)(b), F.S., to revise the types of entities to which s. 475.6235, F.S., does not apply by:

- Deleting reference to appraisal management companies owned and controlled by a financial institution defined in s. 655.005, F.S.; and
- Substituting a reference to “federally regulated appraisal management company” (which is defined in new paragraph (r) of s. 475.611, F.S., created in this bill).

Section 7 amends s. 475.6245, F.S., to allow the board also to deny the renewal of the license of an appraisal management company based on disciplinary action against the licensee, rather than just allowing denial of the initial application for licensure.

⁴⁰ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 716, dated Feb. 27, 2017 (on file with Senate Committee on Regulated Industries) at page 3.

⁴¹ See s. 475.611(1)(g), F.S.

The section authorizes the board to deny an application for registration or renewal of a registration or to reprimand or fine an appraisal management company that has required or attempt to require clients to sign any agreement that would require a client to hold harmless the appraisal management company or its owners, agents, or employees, from any liability, damage, loss, or claim arising from the services performed by an appraiser.

Section 8 re-enacts s. 475.626(1)(b), F.S., for the purpose of incorporating amendments to s. 475.626, F.S.

Section 9 amends s. 475.628(2), F.S., to authorize the board to adopt rules to establish standards of practice, other than the standards adopted by the Appraisal Standards Board of the Appraisal Foundation, for nonfederal transactions. The rules of the board must also require that the board mandate compliance with the Ethics and Competency Rules of the standards adopted by the Appraisal Standards Board of the Appraisal Foundation, for all appraisals other than those in federal transactions.

Section 10 re-enacts s. 475.629, F.S., on retention of records to incorporate the amendments made by the bill to s. 475.611, F.S., to include additional definitions.

Section 11 provides an effective date of October 1, 2017.

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:

According to the Department of Business and Professional Regulation (DBPR), the bill will not increase the fees payable to and retained by the state.⁴² The federal Appraisal

⁴² See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 716, dated Feb. 27, 2017 (on file with Senate Committee on Regulated Industries) at page 5.

Subcommittee (ASC) charges a fee for each person (panelist) who serves on an appraiser panel⁴³ and performs services for the appraisal management company.⁴⁴

According to the DBPR, the fee charged by the ASC will range from \$25 to \$50 per panelist and is a pass-through payment the state must collect and remit to the ASC.⁴⁵ The DBPR indicates a similar process is currently in place for individual appraisers, including an annual charge of \$40 to each appraiser.⁴⁶

The DBPR indicates that the number of persons required to submit a set of fingerprints will increase because the number of persons for whom information must be submitted for licensure of an appraisal management company is expanded by the bill.

B. Private Sector Impact:

The DBPR reports that the ASC charges a fee for each person (panelist) who serves on an appraiser panel, ranging from \$25 to \$50.⁴⁷

C. Government Sector Impact:

The DBPR will experience an increased workload to bring the program into compliance with the final federal rules; however, the additional costs can be absorbed within existing resources.⁴⁸ In addition, the DBPR indicates it will require additional non-operating budget authority to transfer certain fees to the ASC.⁴⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 475.451, 475.611, 475.612, 475.621, 475.6235, 475.6245, and 475.628.

This bill re-enacts the following sections of the Florida Statutes: 475.626 and 475.629 .

⁴³ See s. 475.511(1)(i), F.S.

⁴⁴ See

<https://www.asc.gov/documents/othercorrespondence/final%20rule%20for%20minimum%20requirements%20for%20amcs.pdf> (last visited Mar. 10, 2017) at page 32658.

⁴⁵ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 716, dated Feb. 27, 2017 (on file with Senate Committee on Regulated Industries) at pages 5-6.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ ⁴⁸ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 716, dated Mar. 23, 2017 (on file with Senate Appropriations Subcommittee on General Government) at pages 7-8.

⁴⁹ *Id.* at page 6-8.

This bill repeals section 475.6175 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 Appropriations on April 13, 2017:

The committee substitute:

- Revises the definition of “appraisal management company” in s. 475.611(1)(c), F.S.
- Amends s. 475.6245, F.S., to authorize the Florida Real Estate Appraisal Board to deny an application for registration or renewal of a registration or to reprimand or fine an appraisal management company that has required or attempt to require clients to sign any agreement that would require a client to hold harmless the appraisal management company or its owners, agents, or employees, from any liability, damage, loss, or claim arising from the services performed by an appraiser.
- Re-enacts s. 475.626(1)(b), F.S., for the purpose of incorporating amendments to s. 475.626, F.S.

CS by Regulated Industries on March 15, 2017:

The committee substitute:

- Amends the definition of the term “appraisal panel” in s. 565.611(1)(i), F.S., to replace the term “appraisers engaged by the appraisal management company” with the term “appraisers employed by, contracted with, or otherwise retained by the appraisal management company;”
- Defines the term “evaluation” in s. 475.611(1)(q), F.S.;
- Revises the definition of “secondary mortgage market participant” in s. 475.611(1)(w), F.S., to include an underwriter or issuer of a mortgage-backed security;
- Creates s. 475.612(7), F.S., to permit an appraiser to perform an evaluation of real property in connection with federally regulated real estate financial transactions.
- Requires an appraiser providing services in a federally related transaction to comply with the standards for evaluation imposed by the federal financial institutions regulatory agency and other standards as prescribed by the board. An evaluation may not be referred to as an appraisal.
- Does not amend s. 475.6235(2)(f)5., F.S., to revise the required disclosure in an application for registration of an appraisal management company, to include each person who, directly or indirectly, owns or controls 10 percent or more of an ownership interest in the appraisal management company;
- Does not amend s. 475.6235(5), F.S., to remove the authority of the Florida Real Estate Appraisal Board (board) to disqualify certain persons with management responsibilities from registration, licensure, or certification as an appraiser, if they have been denied registration, licensure, or certification as an appraiser, have been disbarred, or had a license revoked or suspended in Florida or elsewhere for conduct that would have warranted a similar result or been grounds for discipline.

- Does not authorize the board to discipline an appraisal management company for failure to pay an appraiser in accordance with the federal Truth in Lending Act;
- Does not re-enact s. 475.626(1)(b), F.S., on violations and penalties to incorporate the amendments made by the bill to s. 475.6245, F.S.; and
- Amends s. 475.628 (2), F.S., to authorize the board to adopt rules to establish standards of practice, other than the standards adopted by the Appraisal Standards Board of the Appraisal Foundation, for nonfederal transactions.
- Requires the board to mandate compliance with the Ethics and Competency Rules of the standards adopted by the Appraisal Standards Board of the Appraisal Foundation for all appraisals other than those in a federal transaction.

B. Amendments:

None.



342196

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Passidomo) recommended the following:

Senate Amendment

Delete line 93

and insert:

(c) "Appraisal management company" means a person who, within a 12-month period, oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state or 25 or more state-certified or state-licensed appraisers in two or more states, and who



396950

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Between lines 506 and 507

insert:

(w) Has required or attempted to require a client to sign any agreement that would require the client to hold harmless the appraisal management company or its owners, agents, or employees from any liability, damage, loss, or claim arising from the services performed by the appraiser.

Section 8. For the purpose of incorporating the amendment



396950

11 made by this act to section 475.6245, Florida Statutes, in a
12 reference thereto, paragraph (b) of subsection (1) of section
13 475.626, Florida Statutes, is reenacted to read:

14 475.626 Violations and penalties.-

15 (1) A person may not:

16 (b) If an appraisal management company, commit any conduct
17 or practice set forth in s. 475.6245.

18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete line 27

21 and insert:

22 specified grounds; adding certain grounds for
23 discipline by the board against appraisal management
24 companies; reenacting s. 475.626(1)(b), F.S., relating
25 to violations and penalties, to incorporate the
26 amendment made to s. 475.6245, F.S., in a reference
27 thereto; amending s. 475.628, F.S.;

By the Committee on Regulated Industries; and Senator Passidomo

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1 A bill to be entitled
 2 An act relating to real estate appraisers; amending s.
 3 475.451, F.S.; revising authorized methods of
 4 instruction and certain requirements for specified
 5 real estate practice courses; amending s. 475.611,
 6 F.S.; defining and redefining terms; amending s.
 7 475.612, F.S.; authorizing appraisers to perform real
 8 property evaluations in connection with certain
 9 federally regulated transactions; requiring such
 10 appraisers to comply with certain standards; requiring
 11 the Florida Real Estate Appraisal Board to adopt
 12 rules; providing construction; repealing s. 475.6175,
 13 F.S., relating to registered trainee appraisers;
 14 amending s. 475.621, F.S.; requiring the Department of
 15 Business and Professional Regulation to transmit a
 16 specified roster to a certain appraisal subcommittee;
 17 requiring the department to collect an annual fee from
 18 certain appraisal management companies and transmit
 19 the fee to such appraisal subcommittee; requiring the
 20 board to establish a certain procedure and adopt
 21 rules; amending s. 475.6235, F.S.; deleting an
 22 exception by which the board may grant a registration
 23 to a person otherwise deemed not qualified; revising
 24 applicability; amending s. 475.6245, F.S.; authorizing
 25 the board to deny an application for renewal of an
 26 appraisal management company's registration on
 27 specified grounds; amending s. 475.628, F.S.;
 28 authorizing the board to adopt rules establishing
 29 certain standards of practice for nonfederally related

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30 transactions; providing requirements and construction
 31 for such standards; reenacting s. 475.629, F.S.,
 32 relating to retention of records, to incorporate the
 33 amendment made by the act to s. 475.611, F.S., in a
 34 reference thereto; providing an effective date.
 35
 36 Be It Enacted by the Legislature of the State of Florida:
 37
 38 Section 1. Subsection (6) of section 475.451, Florida
 39 Statutes, is amended to read:
 40 475.451 Schools teaching real estate practice.—
 41 (6) Any course prescribed by the commission as a condition
 42 precedent to a person ~~any person's~~ becoming initially licensed
 43 as a sales associate or broker may be taught by a ~~in any~~ real
 44 estate school in a classroom or via distance learning pursuant
 45 to s. 475.17(2) through the use of a video tape of instruction
 46 by a currently permitted instructor from any such school ~~or may~~
 47 ~~be taught by distance learning pursuant to s. 475.17(2). The~~
 48 ~~commission may require that any such video tape course have a~~
 49 ~~single session of live instruction by a currently permitted~~
 50 ~~instructor from any such school; however, this requirement shall~~
 51 ~~not exceed 3 classroom hours.~~ All other prescribed courses,
 52 except the continuing education course required by s. 475.182,
 53 shall be taught by a currently permitted school instructor
 54 personally in attendance at such course or by distance learning
 55 pursuant to s. 475.17. The continuing education course required
 56 by s. 475.182 may be taught by distance learning pursuant to s.
 57 475.17 or by an equivalent correspondence course; however, any
 58 such correspondence course shall be required to have a final

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59 examination, prepared and administered by the school or course
 60 provider issuing the correspondence course. The continuing
 61 education requirements provided in this chapter do not apply to
 62 an attorney who is otherwise qualified under this chapter and
 63 who is a member in good standing of The Florida Bar.

64 Section 2. Subsections (1) and (2) of section 475.611,
 65 Florida Statutes, are amended to read:

66 475.611 Definitions.—

67 (1) As used in this part, the term:

68 (a) "Appraisal" or "appraisal services" means the services
 69 provided by certified or licensed appraisers or registered
 70 trainee appraisers, and includes:

71 1. "Appraisal assignment" denotes an engagement for which a
 72 person is employed or retained to act, or could be perceived by
 73 third parties or the public as acting, as an agent or a
 74 disinterested third party in rendering an unbiased analysis,
 75 opinion, review, or conclusion relating to the nature, quality,
 76 value, or utility of specified interests in, or aspects of,
 77 identified real property.

78 2. "Analysis assignment" denotes appraisal services that
 79 relate to the employer's or client's individual needs or
 80 investment objectives and includes specialized marketing,
 81 financing, and feasibility studies as well as analyses,
 82 opinions, and conclusions given in connection with activities
 83 such as real estate brokerage, mortgage banking, real estate
 84 counseling, or real estate consulting.

85 3. "Appraisal review assignment" denotes an engagement for
 86 which an appraiser is employed or retained to develop and
 87 communicate an opinion about the quality of another appraiser's

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88 appraisal, appraisal report, or work. An appraisal review may or
 89 may not contain the reviewing appraiser's opinion of value.

90 (b) "Appraisal Foundation" or "foundation" means The
 91 Appraisal Foundation established on November 20, 1987, as a not-
 92 for-profit corporation under the laws of Illinois.

93 (c) "Appraisal management company" means a person who
 94 performs appraisal management services regardless of the use of
 95 the term "appraisal management company," "appraiser
 96 cooperative," "appraiser portal," "mortgage technology company,"
 97 or other term.

98 (d) "Appraisal management services" means the coordination
 99 or management of appraisal services for compensation by:

100 1. Employing, contracting with, or otherwise retaining one
 101 or more licensed or certified appraisers to perform appraisal
 102 services for a client; or

103 2. Acting as a broker or intermediary between a client and
 104 one or more licensed or certified appraisers to facilitate the
 105 client's employing, contracting with, or otherwise retaining the
 106 appraisers.

107 (e) "Appraisal report" means any communication, written or
 108 oral, of an appraisal, appraisal review, appraisal consulting
 109 service, analysis, opinion, or conclusion relating to the
 110 nature, quality, value, or utility of a specified interest in,
 111 or aspect of, identified real property, and includes any report
 112 communicating an appraisal analysis, opinion, or conclusion of
 113 value, regardless of title. However, in order to be recognized
 114 in a federally related transaction, an appraisal report must be
 115 written.

116 (f) "Appraisal review" means the act or process of

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117 developing and communicating an opinion about the quality of
 118 another appraiser's appraisal, appraisal report, or work.

119 (g) "Appraisal subcommittee" means the designees of the
 120 heads of the federal financial institutions regulatory agencies
 121 established by the Federal Financial Institutions Examination
 122 Council Act of 1978 (12 U.S.C. ss. 3301 et seq.), as amended.

123 (h) "Appraiser" means any person who is a registered
 124 trainee real estate appraiser, a licensed real estate appraiser,
 125 or a certified real estate appraiser. An appraiser renders a
 126 professional service and is a professional within the meaning of
 127 s. 95.11(4) (a).

128 (i) "Appraiser panel" means a network, list, or roster of
 129 licensed or certified appraisers approved by an appraisal
 130 management company to perform appraisals as independent
 131 contractors for the appraisal management company. An appraiser
 132 is an independent contractor for purposes of this paragraph if
 133 the appraiser is treated as an independent contractor by the
 134 appraisal management company for federal income tax purposes.

135 The term "appraiser panel" includes:

136 1. Appraisers accepted by the appraisal management company
 137 for consideration for future appraisal assignments in covered
 138 transactions or secondary mortgage market participants in
 139 connection with covered transactions.

140 2. Appraisers employed by, contracted with, or otherwise
 141 retained by the appraisal management company to perform one or
 142 more appraisals in covered transactions or for secondary
 143 mortgage market participants in connection with covered
 144 transactions ~~group of appraisers selected by an appraisal~~
 145 ~~management company to perform appraisal services for clients on~~

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146 ~~behalf of the company.~~

147 (j) "Board" means the Florida Real Estate Appraisal Board
 148 established under this section.

149 (k) "Certified general appraiser" means a person who is
 150 certified by the department as qualified to issue appraisal
 151 reports for any type of real property.

152 (l) "Certified residential appraiser" means a person who is
 153 certified by the department as qualified to issue appraisal
 154 reports for residential real property of one to four residential
 155 units, without regard to transaction value or complexity, or
 156 real property as may be authorized by federal regulation.

157 (m) "Client" means a person who contracts with an appraiser
 158 or appraisal management company for the performance of appraisal
 159 services.

160 (n) "Covered transaction" means a consumer credit
 161 transaction secured by the consumer's principal dwelling.

162 (o) ~~(n)~~ "Department" means the Department of Business and
 163 Professional Regulation.

164 (p) ~~(o)~~ "Direct supervision" means the degree of supervision
 165 required of a supervisory appraiser overseeing the work of a
 166 registered trainee appraiser by which the supervisory appraiser
 167 has control over and detailed professional knowledge of the work
 168 being done. Direct supervision is achieved when a registered
 169 trainee appraiser has regular direction, guidance, and support
 170 from a supervisory appraiser who has the competencies as
 171 determined by rule of the board.

172 (q) "Evaluation" means a valuation permitted by any
 173 appraisal regulation of a federal financial institutions
 174 regulatory agency for transactions that do not require an

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175 appraisal because they qualify for an applicable exemption under
 176 federal law. The board shall adopt rules, as necessary, to
 177 define evaluations and the applicable exemptions under federal
 178 law.

179 (r) "Federally regulated appraisal management company"
 180 means an appraisal management company that is owned and
 181 controlled by an insured depository institution, as defined in
 182 12 U.S.C. s. 1813, and regulated by the Office of the
 183 Comptroller of the Currency, the Board of Governors of the
 184 Federal Reserve System, or the Federal Deposit Insurance
 185 Corporation.

186 (s) ~~(p)~~ "Federally related transaction" means any real
 187 estate-related financial transaction which a federal financial
 188 institutions regulatory agency or the Resolution Trust
 189 Corporation engages in, contracts for, or regulates, and which
 190 requires the services of a state-licensed or state-certified
 191 appraiser.

192 (t) ~~(q)~~ "Licensed appraiser" means a person who is licensed
 193 by the department as qualified to issue appraisal reports for
 194 residential real property of one to four residential units or on
 195 such real estate or real property as may be authorized by
 196 federal regulation. After July 1, 2003, the department shall not
 197 issue licenses for the category of licensed appraiser.

198 (u) "Order file" means the documentation necessary to
 199 support the performance of appraisal management services.

200 (v) ~~(x)~~ "Registered trainee appraiser" means a person who is
 201 registered with the department as qualified to perform appraisal
 202 services only under the direct supervision of a certified
 203 appraiser. A registered trainee appraiser may accept appraisal

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204 assignments only from her or his primary or secondary
 205 supervisory appraiser.

206 (w) "Secondary mortgage market participant" means a
 207 guarantor, insurer, underwriter, or issuer of mortgage-backed
 208 securities. The term includes an individual investor in a
 209 mortgage-backed security only if such investor also serves in
 210 the capacity of a guarantor, an insurer, an underwriter, or an
 211 issuer for the mortgage-backed security.

212 (x) ~~(s)~~ "Signature" means personalized evidence indicating
 213 authentication of work performed by an appraiser and the
 214 acceptance of responsibility for the content of an appraisal,
 215 appraisal review, or appraisal consulting service or conclusions
 216 in an appraisal report.

217 (y) ~~(t)~~ "Subsidiary" means an organization that is owned and
 218 controlled by a financial institution that is regulated by a
 219 federal financial institution regulatory agency.

220 (z) ~~(u)~~ "Supervisory appraiser" means a certified
 221 residential appraiser or a certified general appraiser
 222 responsible for the direct supervision of one or more registered
 223 trainee appraisers and fully responsible for appraisals and
 224 appraisal reports prepared by those registered trainee
 225 appraisers. The board, by rule, shall determine the
 226 responsibilities of a supervisory appraiser, the geographic
 227 proximity required, the minimum qualifications and standards
 228 required of a certified appraiser before she or he may act in
 229 the capacity of a supervisory appraiser, and the maximum number
 230 of registered trainee appraisers to be supervised by an
 231 individual supervisory appraiser.

232 (aa) ~~(v)~~ "Training" means the process of providing for and

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233 making available to a registered trainee appraiser, under direct
 234 supervision, a planned, prepared, and coordinated program, or
 235 routine of instruction and education, in appraisal professional
 236 and technical appraisal skills as determined by rule of the
 237 board.

238 ~~(bb) (w)~~ "Uniform Standards of Professional Appraisal
 239 Practice" means the most recent standards approved and adopted
 240 by the Appraisal Standards Board of The Appraisal Foundation.

241 ~~(cc) (w)~~ "Valuation services" means services pertaining to
 242 aspects of property value and includes such services performed
 243 by certified appraisers, registered trainee appraisers, and
 244 others.

245 ~~(dd) (w)~~ "Work file" means the documentation necessary to
 246 support an appraiser's analysis, opinions, and conclusions.

247 (2) Wherever the word "operate" or "operating" appears in
 248 this part with respect to a registered trainee appraiser,
 249 registered appraisal management company, licensed appraiser, or
 250 certified appraiser; in any order, rule, or regulation of the
 251 board; in any pleading, indictment, or information under this
 252 part; in any court action or proceeding; or in any order or
 253 judgment of a court, it shall be deemed to mean the commission
 254 of one or more acts described in this part as constituting or
 255 defining a registered trainee appraiser, registered appraisal
 256 management company, licensed appraiser, or certified appraiser,
 257 not including, however, any of the exceptions stated therein. A
 258 single act is sufficient to bring a person within the meaning of
 259 this subsection, and each act, if prohibited herein, constitutes
 260 a separate offense.

261 Section 3. Subsection (7) is added to section 475.612,

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262 Florida Statutes, to read:

263 475.612 Certification, licensure, or registration
 264 required.—

265 (7) Notwithstanding any other law, an appraiser may perform
 266 an evaluation of real property in connection with a real estate-
 267 related financial transaction, as defined by rule of the board,
 268 where the transaction is regulated by a federal financial
 269 institutions regulatory agency. The appraiser shall comply with
 270 the standards for evaluations imposed by the federal financial
 271 institutions regulatory agency and other standards as prescribed
 272 by the board. However, in no event may an evaluation be referred
 273 to or construed as an appraisal.

274 Section 4. Section 475.6175, Florida Statutes, is repealed.

275 Section 5. Section 475.621, Florida Statutes, is amended to
 276 read:

277 475.621 Registry of licensed and certified appraisers;
 278 registry of appraisal management companies.—

279 (1) The department shall transmit to the appraisal
 280 subcommittee, at least ~~no less than~~ annually, a roster listing
 281 individuals who hold a valid state license or certification as
 282 an appraiser. The department shall transmit to the appraisal
 283 subcommittee, at least annually, a roster listing individuals or
 284 companies that hold a valid state registration as an appraisal
 285 management company.

286 (2) The department shall collect from such individuals who
 287 perform or seek to perform appraisals in federally related
 288 transactions, an annual fee as set by rule of, and transmitted
 289 to, the appraisal subcommittee. The department shall collect
 290 from such appraisal management companies that perform or seek to

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291 perform appraisal management services in covered transactions an
 292 annual fee set by rule of the board and transmitted to the
 293 appraisal subcommittee.

294 (3) Notwithstanding the prohibition against requiring
 295 registration of a federally regulated appraisal management
 296 company as provided in s. 475.6235(8)(b), the board shall
 297 establish a procedure to collect from a federally regulated
 298 appraisal management company an annual fee as set by rule of the
 299 board and transmitted to the appraisal subcommittee.

300 Section 6. Subsections (5) and (8) of section 475.6235,
 301 Florida Statutes, are amended to read:

302 475.6235 Registration of appraisal management companies
 303 required; exemptions.-

304 (5) Each person listed in paragraph (2)(f) must be
 305 competent and qualified to engage in appraisal management
 306 services with safety to the general public and those with whom
 307 the person may undertake a relationship of trust and confidence.
 308 If any person listed in paragraph (2)(f) has been denied
 309 registration, licensure, or certification as an appraiser or has
 310 been disbarred, or if the person's registration, license, or
 311 certificate to practice or conduct any regulated profession,
 312 business, or vocation has been revoked or suspended by this or
 313 any other state, any nation, any possession or district of the
 314 United States, or any court or lawful agency thereof because of
 315 any conduct or practices that would have warranted a like result
 316 under this part, or if the person has been guilty of conduct or
 317 practices in this state or elsewhere that would have been
 318 grounds for disciplining her or his registration, license, or
 319 certification under this part had the person then been a

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320 registered trainee appraiser or a licensed or certified
 321 appraiser, the person ~~is shall be~~ deemed not to be qualified to
 322 be registered unless, because of lapse of time and subsequent
 323 good conduct and reputation, or other reason deemed sufficient,
 324 it appears to the board that the interest of the public is not
 325 likely to be endangered by the granting of registration.

326 (8) This section does not apply to:

327 (a) A financial institution, as defined in s. 655.005,
 328 which owns and operates an internal appraisal office, business
 329 unit, or department; or

330 (b) A federally regulated ~~A~~ appraisal management company
 331 that is a subsidiary owned and controlled by a financial
 332 institution, as defined in s. 655.005, that is regulated by a
 333 federal financial institution regulatory agency.

334 Section 7. Subsection (1) of section 475.6245, Florida
 335 Statutes, is amended to read:

336 475.6245 Discipline of appraisal management companies.-

337 (1) The board may deny an application for registration or
 338 renewal registration of an appraisal management company; may
 339 investigate the actions of any appraisal management company
 340 registered under this part; may reprimand or impose an
 341 administrative fine not to exceed \$5,000 for each count or
 342 separate offense against any such appraisal management company;
 343 and may revoke or suspend, for a period not to exceed 10 years,
 344 the registration of any such appraisal management company, or
 345 place any such appraisal management company on probation, if the
 346 board finds that the appraisal management company or any person
 347 listed in s. 475.6235(2)(f):

348 (a) Has violated any provision of this part or s.

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349 455.227(1); however, any appraisal management company registered
350 under this part is exempt from s. 455.227(1)(i).

351 (b) Has been guilty of fraud, misrepresentation,
352 concealment, false promises, false pretenses, dishonest conduct,
353 culpable negligence, or breach of trust in any business
354 transaction in this state or any other state, nation, or
355 territory; has violated a duty imposed upon her or him by law or
356 by the terms of a contract, whether written, oral, express, or
357 implied, in an appraisal assignment; has aided, assisted, or
358 conspired with any other person engaged in any such misconduct
359 and in furtherance thereof; or has formed an intent, design, or
360 scheme to engage in such misconduct and committed an overt act
361 in furtherance of such intent, design, or scheme. It is
362 immaterial to the guilt of the appraisal management company that
363 the victim or intended victim of the misconduct has sustained no
364 damage or loss; that the damage or loss has been settled and
365 paid after discovery of the misconduct; or that such victim or
366 intended victim was a customer or a person in confidential
367 relation with the appraisal management company or was an
368 identified member of the general public.

369 (c) Has advertised services in a manner that is fraudulent,
370 false, deceptive, or misleading in form or content.

371 (d) Has violated any provision of this part or any lawful
372 order or rule issued under this part or chapter 455.

373 (e) Has been convicted or found guilty of, or entered a
374 plea of nolo contendere to, regardless of adjudication, a crime
375 in any jurisdiction that directly relates to the activities of
376 an appraisal management company or that involves moral turpitude
377 or fraudulent or dishonest conduct. The record of a conviction

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378 certified or authenticated in such form as admissible in
379 evidence under the laws of the state shall be admissible as
380 prima facie evidence of such guilt.

381 (f) Has had a registration, license, or certification as an
382 appraiser or a registration as an appraisal management company
383 revoked, suspended, or otherwise acted against; has been
384 disbarred; has had her or his registration, license, or
385 certificate to practice or conduct any regulated profession,
386 business, or vocation revoked or suspended by this or any other
387 state, any nation, or any possession or district of the United
388 States; or has had an application for such registration,
389 licensure, or certification to practice or conduct any regulated
390 profession, business, or vocation denied by this or any other
391 state, any nation, or any possession or district of the United
392 States.

393 (g) Has become temporarily incapacitated from acting as an
394 appraisal management company with safety to those in a fiduciary
395 relationship with her or him because of drunkenness, use of
396 drugs, or temporary mental derangement; however, suspension of a
397 registration in such cases shall only be for the period of such
398 incapacity.

399 (h) Is confined in any county jail, postadjudication; is
400 confined in any state or federal prison or mental institution;
401 or, through mental disease or deterioration, can no longer
402 safely be entrusted to deal with the public or in a confidential
403 capacity.

404 (i) Has failed to inform the board in writing within 30
405 days after pleading guilty or nolo contendere to, or being
406 convicted or found guilty of, any felony.

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407 (j) Has been found guilty, for a second time, of any
408 misconduct that warrants disciplinary action, or has been found
409 guilty of a course of conduct or practice that shows that she or
410 he is incompetent, negligent, dishonest, or untruthful to an
411 extent that those with whom she or he may sustain a confidential
412 relationship may not safely do so.

413 (k) Has made or filed a report or record, either written or
414 oral, that the appraisal management company knows to be false;
415 has willfully failed to file a report or record required by
416 state or federal law; has willfully impeded or obstructed such
417 filing; or has induced another person to impede or obstruct such
418 filing. However, such reports or records shall include only
419 those that are signed or presented in the capacity of an
420 appraisal management company.

421 (l) Has obtained or attempted to obtain a registration,
422 license, or certification by means of knowingly making a false
423 statement, submitting false information, refusing to provide
424 complete information in response to an application question, or
425 engaging in fraud, misrepresentation, or concealment.

426 (m) Has paid money or other valuable consideration, except
427 as required by this section, to any member or employee of the
428 board to obtain a registration, license, or certification under
429 this section.

430 (n) Has instructed an appraiser to violate any standard of
431 professional practice established by rule of the board,
432 including standards for the development or communication of a
433 real estate appraisal or other provision of the Uniform
434 Standards of Professional Appraisal Practice.

435 (o) Has engaged in the development of an appraisal or the

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436 preparation of an appraisal report, unless the appraisal
437 management company is owned or controlled by certified
438 appraisers.

439 (p) Has failed to communicate an appraisal without good
440 cause.

441 (q) Has accepted an appraisal assignment if the employment
442 itself is contingent upon the appraisal management company
443 reporting a predetermined result, analysis, or opinion or if the
444 fee to be paid for the performance of the appraisal assignment
445 is contingent upon the opinion, conclusion, or valuation reached
446 upon the consequences resulting from the appraisal assignment.

447 (r) Has failed to timely notify the department of any
448 change in principal business location as an appraisal management
449 company.

450 (s) Has influenced or attempted to influence the
451 development, reporting, or review of an appraisal through
452 coercion, extortion, collusion, compensation, inducement,
453 intimidation, bribery, or any other means, including, but not
454 limited to:

455 1. Withholding or threatening to withhold timely payment
456 for an appraisal, unless such nonpayment is based upon specific
457 quality or other service issues that constitute noncompliance
458 with the appraisal engagement agreement.

459 2. Withholding or threatening to withhold future business
460 from an appraiser.

461 3. Promising future business, promotions, or increased
462 compensation for an appraiser, whether the promise is express or
463 implied.

464 4. Conditioning a request for appraisal services or the

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465 payment of an appraisal fee, salary, or bonus upon the opinion,
 466 conclusion, or valuation to be reached or upon a preliminary
 467 estimate or opinion requested from an appraiser.

468 5. Requesting that an appraiser provide an estimated,
 469 predetermined, or desired valuation in an appraisal report or
 470 provide estimated values or comparable sales at any time before
 471 the appraiser's completion of appraisal services.

472 6. Providing to an appraiser an anticipated, estimated,
 473 encouraged, or desired value for a subject property or a
 474 proposed or target amount to be loaned to the borrower, except
 475 that a copy of the sales contract for purchase transactions may
 476 be provided.

477 7. Providing to an appraiser, or any person related to the
 478 appraiser, stock or other financial or nonfinancial benefits.

479 8. Allowing the removal of an appraiser from an appraiser
 480 panel without prior written notice to the appraiser.

481 9. Obtaining, using, or paying for a second or subsequent
 482 appraisal or ordering an automated valuation model in connection
 483 with a mortgage financing transaction unless there is a
 484 reasonable basis to believe that the initial appraisal was
 485 flawed or tainted and such basis is clearly and appropriately
 486 noted in the loan file, or unless such appraisal or automated
 487 valuation model is issued pursuant to a bona fide prefunding or
 488 postfunding appraisal review or quality control process.

489 10. Any other act or practice that impairs or attempts to
 490 impair an appraiser's independence, objectivity, or
 491 impartiality.

492 (t) Has altered, modified, or otherwise changed a completed
 493 appraisal report submitted by an appraiser to an appraisal

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494 management company.

495 (u) Has employed, contracted with, or otherwise retained an
 496 appraiser whose registration, license, or certification is
 497 suspended or revoked to perform appraisal services or appraisal
 498 management services.

499 (v) Has required or attempted to require an appraiser to
 500 sign any indemnification agreement that would require the
 501 appraiser to hold harmless the appraisal management company or
 502 its owners, agents, employees, or independent contractors from
 503 any liability, damage, loss, or claim arising from the services
 504 performed by the appraisal management company or its owners,
 505 agents, employees, or independent contractors and not the
 506 services performed by the appraiser.

507 Section 8. Section 475.628, Florida Statutes, is amended to
 508 read:

509 475.628 Professional standards for appraisers registered,
 510 licensed, or certified under this part.—

511 (1) The board shall adopt rules establishing standards of
 512 professional practice which meet or exceed nationally recognized
 513 standards of appraisal practice, including standards adopted by
 514 the Appraisal Standards Board of the Appraisal Foundation. Each
 515 appraiser registered, licensed, or certified under this part
 516 must comply with the rules. Statements on appraisal standards
 517 which may be issued for the purpose of clarification,
 518 interpretation, explanation, or elaboration through the
 519 Appraisal Foundation are binding on any appraiser registered,
 520 licensed, or certified under this part, upon adoption by rule of
 521 the board.

522 (2) The board may adopt rules establishing standards of

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523 practice, other than standards adopted by the Appraisal
 524 Standards Board of the Appraisal Foundation, for nonfederally
 525 related transactions. The board shall require that an appraiser,
 526 when performing an appraisal or appraisal service for any
 527 purpose other than a federally related transaction, must also
 528 comply with the Ethics and Competency Rules of the standards
 529 adopted by the Appraisal Standards Board of the Appraisal
 530 Foundation and other requirements as determined by rule of the
 531 board. Assignments completed using alternate standards do not
 532 satisfy the experience requirements of s. 475.617 unless those
 533 assignments comply with the standards adopted by the Appraisal
 534 Standards Board of the Appraisal Foundation.

535 Section 9. For the purpose of incorporating the amendment
 536 made by this act to section 475.611, Florida Statutes, in a
 537 reference thereto, section 475.629, Florida Statutes, is
 538 reenacted to read:

539 475.629 Retention of records.—An appraiser registered,
 540 licensed, or certified under this part shall prepare and retain
 541 a work file for each appraisal, appraisal review, or appraisal
 542 consulting assignment. An appraisal management company
 543 registered under this part shall prepare and retain an order
 544 file for each appraisal, appraisal review, or appraisal
 545 consulting assignment. The work file and the order file shall be
 546 retained for 5 years or the period specified in the Uniform
 547 Standards of Professional Appraisal Practice, whichever is
 548 greater. The work file must contain original or true copies of
 549 any contracts engaging the appraiser's or appraisal management
 550 company's services, appraisal reports, and supporting data
 551 assembled and formulated by the appraiser or company in

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552 preparing appraisal reports or engaging in appraisal management
 553 services and all other data, information, and documentation
 554 required by the standards for the development or communication
 555 of a real estate appraisal as approved and adopted by the
 556 Appraisal Standards Board of The Appraisal Foundation, as
 557 established by rule of the board. The order file must contain
 558 original or true copies of any contracts engaging the
 559 appraiser's services, the appraisal reports, any engagement
 560 materials or instructions from the client, and all other
 561 documents required by the standards for the development or
 562 communication of a real estate appraisal as approved and adopted
 563 by the Appraisal Standards Board of The Appraisal Foundation, as
 564 established by rule of the board. Notwithstanding the foregoing,
 565 while general contracts and materials pertaining to impaneling
 566 of an appraiser by an appraisal management company shall be
 567 retained under this section, such contracts and materials are
 568 not required to be maintained within the order file. Except as
 569 otherwise specified in the Uniform Standards of Professional
 570 Appraisal Practice, the period for retention of the records
 571 applicable to each engagement of the services of the appraiser
 572 or appraisal management company runs from the date of the
 573 submission of the appraisal report to the client. Appraisal
 574 management companies shall also retain the company accounts,
 575 correspondence, memoranda, papers, books, and other records in
 576 accordance with administrative rules adopted by the board. These
 577 records must be made available by the appraiser or appraisal
 578 management company for inspection and copying by the department
 579 upon reasonable notice to the appraiser or company. If an
 580 appraisal has been the subject of or has served as evidence for

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581 litigation, reports and records must be retained for at least 2
582 years after the trial or the period specified in the Uniform
583 Standards of Professional Appraisal Practice, whichever is
584 greater.

585 Section 10. This act shall take effect October 1, 2017.



**SENATOR KATHLEEN
PASSIDOMO**
28th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health
and
Human Services
Appropriations Subcommittee on
Transportation,
Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:

Joint Select Committee on Collective
Bargaining

JOINT COMMITTEE:

Joint Legislative Auditing Committee

March 29, 2017

The Honorable Jack Latvala, Chair
Senate Committee on Appropriations
Florida Senate
201 Capitol
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Latvala:

CS/Senate Bill 716, Real Estate Appraisers, has been referred to the Appropriations Committee. I would appreciate the placing of this bill on the committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Passidomo".

Kathleen C. Passidomo

Cc: Mike Hansen, Staff Director
Alicia Weiss, Committee Assistant

REPLY TO:

- 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/17

Meeting Date

SB 716

Bill Number (if applicable)

Topic SB 716

Amendment Barcode (if applicable)

Name Andrew Forst

Job Title Legislative Coordinator (DBPR)

Address 2601 Blair Stone Road

Phone (850) 487-4827

Street

City

Tallahassee

State

FL

Zip

32399

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing DBPR

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)

4/13/17

Meeting Date

SB 716

Bill Number (if applicable)

Topic REAL ESTATE APPRAISERS

Amendment Barcode (if applicable)

Name KENNETH PRATT

Job Title SENIOR VP OF GOVERNMENTAL AFFAIRS

Address 1001 THOMASVILLE RD STE 201

Phone 850-509-8020

Street

TALLAHASSEE

City

FL

State

32308

Zip

Email kpratt@floridabankers.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.13.17

Meeting Date

716

Bill Number (if applicable)

Topic APPRAISERS

Amendment Barcode (if applicable)

Name Trey Goldman

Job Title Legislative Counsel

Address 200 S. Monroe Street

Phone 850/224-1400

Street

Tallahassee

Email treyg@floridarealtors.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Realtors

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 (10/14/14)

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 730

INTRODUCER: Banking and Insurance Committee and Senator Passidomo

SUBJECT: Insurer Insolvency

DATE: April 12, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.	Sanders	Betta	AGG	Recommend: Favorable
3.	Sanders	Hansen	AP	Favorable
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 730 amends Florida’s Insurer’s Rehabilitation and Liquidation Act to include various provisions from the National Association of Insurance Commissioners’ “Insurer Receivership Model Act.” The bill:

- Adds the Florida Health Maintenance Organization Consumer Assistance Plan to the list of organizations to which notice of hearings shall be delivered pertaining to the insolvency of a member insurer;
- Provides exclusive jurisdiction to the Circuit Court of Leon County over all assets and property of an insurer in receivership, regardless of whether such assets or property are located in or out of Florida;
- Creates deadlines for written responses from an insurer subject to an order to show cause pursuant to chapter 631, Florida Statutes, and establishes a deadline for commencement of a hearing to determine whether cause exists for the Department of Financial Services (DFS) to be appointed receiver;
- Exempts the Office of Insurance Regulation (OIR) from the automatic stay provisions;
- Provides that the DFS may assume or reject unexpired leases or executory contracts of an insurer and pay expenses during the pendency of a receivership under contracts, leases, and other arrangements entered by insurers before commencement of the receivership;
- Provides that officers, directors, and managers, of a liquidated insurer are discharged of authority except as may be delegated by the DFS;

- Limits certain defenses which may be raised by third parties in actions brought by or against the DFS in its capacity as receiver;
- Limits third parties from asserting or raising obligations, claims, and defenses, which were not recorded in the records of the insurer in receivership, with certain exceptions;
- Allows the court more flexibility in approving procedures for the “deem filing” of claims, or claims where the DFS deems a claim filed and can distribute funds, such as a refund of unearned premium, to the claimant without the need of a formal claim;
- Allows the court to set a deadline for the filing of claims;
- Disallows claims for post-judgment interest accrued after the liquidation date;
- Creates a process for administering large deductible workers’ compensation policies and the collateral for large deductible workers’ compensation policies;
- Adds all costs and expenses related to administrative supervision to Class 1 of the priority of claims to be paid in distribution;
- Adds claims related to healthcare coverage by physicians, hospitals, and other providers of a health insurer or health maintenance organization to Class 2 of the priority of claims to be paid in a distribution;
- Adds claims of residents which arise out of a continuing care contract to Class 2 of the priority of claims to be paid in a distribution;
- Adds claims of certain creditors, including claims for punitive damages, bad faith, or wrongful settlement practices to Class 6 of the priority of claims to be paid in a distribution; and
- Removes certain notice requirements related to early access distributions to guaranty associations.

The bill does not affect state revenues or expenditures.¹

The bill has an effective date of July 1, 2017.

II. Present Situation:

Receivership is a judicial proceeding in which the Department of Financial Services (DFS) is placed in control of the insurer for the purpose of rehabilitating or liquidating the insurer. The DFS may seek to be appointed receiver² through a delinquency proceeding in court for the purpose of rehabilitating an impaired insurer or, if appropriate, liquidating the insolvent company. The primary goal of rehabilitation is to restore the financial solvency of the insurer³ while the primary goal of liquidation is to secure and maximize the assets of the insolvent company for the benefit of its policyholders.⁴ Over the years, the National Association of

¹ Office of Insurance Regulation, *Bill Analysis of SB 730* (March 6, 2017) (on file with Appropriations Subcommittee on General Government).

² The DFS Division of Rehabilitation and Liquidation acts as receiver when the DFS is appointed. See <http://www.myfloridacfo.com/Division/Receiver/>.

³ See <http://www.myfloridacfo.com/Division/Receiver/SummaryofRehabilitationunderChapter631PartIFloridaStatutes.htm> (last accessed March 22, 2017).

⁴ See <http://www.myfloridacfo.com/Division/Receiver/LiquidationSummary.htm> (last accessed March 22, 2017).

Insurance Commissioners (NAIC) has drafted various model laws to govern insurer insolvency.⁵ The NAIC adopted the Insurer Receivership Model Act in 2005.⁶

This bill amends various provisions of part I of ch. 631, F.S., governing insurer rehabilitation and liquidation in Florida. Many of the revisions are to adopt portions of the NAIC Insurer Receivership Model Act (Model Act).

Delinquency Proceedings

A delinquency proceeding is a proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving the insurer.⁷ The Circuit Court in Leon County has jurisdiction over delinquency proceedings.⁸ Florida law provides for various guaranty associations to protect policyholders in the event an insurer becomes insolvent. Insurers are generally required to be members of the associations related to their lines of business. The DFS must give notice of all hearings pertain to the adjudication of a member insurer to the Florida Insurance Guaranty Association, the Florida Workers' Compensation Insurance Guaranty Association, and the Florida Life and Health Guaranty Association.

Section 631.031, F.S., governs the initiation of delinquency proceedings. It requires the Office of Insurance Regulation (OIR) to notify the DFS upon a determination that one or more grounds for the initiation of delinquency proceedings exist. The OIR must provide the DFS with evidence and documentation of the delinquency. The DFS may commence a proceeding by application to the court for an order directing the insurer to show cause why the relief (such as rehabilitation or liquidation) should not be granted. The DFS has noted periods of extended delay in some cases where the insurer does not respond or the court does not hold a hearing.⁹

Once the DFS files an application or a petition for an order to show cause, s. 631.041, F.S., provides for an automatic stay. The stay prohibits:

- The commencement or continuation of judicial, administrative, or other action or proceeding against the insurer or against its assets;
- The enforcement of a judgment against the insurer obtained either before or after the commencement of the delinquency proceeding;
- Any act to obtain possession of property of the insurer;
- Any act to create, perfect, or enforce a lien against property of the insurer with specified exceptions;
- Any act to collect, assess, or recover a claim against the insurer; and
- The setoff or offset of any debt owing to the insurer with specified exceptions.¹⁰

⁵ Prior model acts include the Uniform Insurers Liquidation Act and the Rehabilitation and Liquidation Model Act. *See* <https://www.irmi.com/articles/expert-commentary/insurer-insolvency-and-reinsurance> (last accessed February 28, 2017).

⁶ *See* <http://www.naic.org/store/free/MDL-555.pdf> (last accessed March 22, 2017).

⁷ Section 631.011(6), F.S.

⁸ Section 631.021(1)-(3), F.S.

⁹ Department of Financial Services, *Analysis of SB 730* (February 19, 2017) (on file with Senate Appropriations Subcommittee on General Government).

¹⁰ Section 631.041(1), F.S.

The stay applies to all persons except the DFS. According to the DFS, there has been confusion over whether the stay applies to regulatory actions taken by the OIR.¹¹

Actions by and Against the Receiver

Section 112 of the Model Act prohibits third parties from raising insurer management misconduct as a defense to a claim by the receiver. For example, there have been cases where the insurer's managers set up a scheme to issue high-risk policies without sufficient funds to cover claims. When the insurer became insolvent, the liquidator sued auditors for negligently failing to discover the scheme. The auditors argued that the liquidator, who stands in the shoes of the insurer, cannot prevail because the misdeeds of the insurer's management should be imputed to the liquidator.¹² Section 112 of the Model Act prohibits such defenses.

Workers' Compensation Large Deductible Policies and Insured Collateral

Some employers use what is referred to as a "large-deductible" workers' compensation policy to fulfill workers' compensation insurance requirements. Under a large-deductible policy, the insurance carrier is obligated to pay the claim in full; however, the carrier seeks reimbursement from the employer for the deductible amount for each claim. Employers provide collateral to secure the payment of the deductible. Employers use these policies to obtain lower premiums from the carrier. Issues have arisen over how to disburse the collateral used to secure the payment of large deductible claims and how to deal with large deductible policies when a company is placed in receivership.¹³

Claim Priority

Section 631.271, F.S., sets the priority order in which claims against the receivership will be paid. Class 1 claims, the first claims paid, include the receiver's costs and expenses of administration and the expenses of guaranty associations in handling claims. It does not include costs and expenses of administrative supervision.¹⁴

In general, loss claims under health insurance are Class 2 claims.¹⁵ The DFS considers medical provider claims in HMO receiverships to be Class 6 claims.¹⁶

Current law does not specify in which class claims against insurers in excess of policy limits, such as bad faith or punitive damage claims, belong.¹⁷ Courts have issued different rulings in

¹¹ Department of Financial Services, *Analysis of SB 730* (February 19, 2017).

¹² *Thaubalt v. Chait*, 541 F.3d 512, 528 (3rd Cir. 2008); *Schacht v. Brown*, 711 F.2d 1343 (7th Cir. 1982).

¹³ NAIC 2016 Workers' Compensation Large Deductible Study (http://www.naic.org/documents/committees_c_wctf_naic_iaiaabc_exposure_wc_study_combined.pdf).

¹⁴ The OIR can place an insurer in administrative supervision if it finds the insurer is in an unsound condition or other reasons. *See* s. 624.81, F.S. It may appoint a deputy supervisor to supervise the insurer during the period of administrative supervision. *See* s. 624.87, F.S.

¹⁵ Section 631.271(1)(b), F.S.

¹⁶ Department of Financial Services, *Bill Analysis of SB 730* (February 10, 2017) at p. 3-4.

¹⁷ Department of Financial Services, *Bill Analysis of SB 730* (February 19, 2017) at p. 3.

different cases with one court holding a bad faith claim is a Class 2 claim and another holding it is a Class 6 claim.¹⁸

III. Effect of Proposed Changes:

The bill makes various changes to ch. 631, F.S., relating to insurer insolvency, rehabilitation, and liquidation.

Section 1 amends s. 631.015, F.S., to provide that Florida will provide reciprocity in the treatment of policyholders in receivership with states that enact the NAIC Insurer Model Receivership Act.

Delinquency Proceedings

Section 2 amends s. 631.021, F.S., to require the DFS to give notice of hearings to the Florida Health Maintenance Organization Consumer Assistance Plan¹⁹ that pertain to the insolvency of a member insurer. It provides that the Circuit Court in Leon County has exclusive jurisdiction over all insurer assets or property wherever located once it enters an order of rehabilitation or liquidation.²⁰ The bill also provides that ch. 631, F.S., constitutes the state's receivership laws, which prevail in any conflict with any other law.²¹

Section 3 amends s. 631.031, F.S., to require an insurer subject to an order to show cause to file a response to the order, together with any defenses it may have, no later than 20 days after service of the order to show cause. The response must be filed at least 15 days before the date of the hearing set by the order to show cause. The hearing to determine whether cause exists for the DFS to be appointed receiver must be commenced within 60 days directing an insurer to show cause.

Section 4 amends s. 631.041, F.S., to provide that the automatic stay does not apply to the OIR. This will allow OIR to continue to perform its regulatory role as necessary during a receivership.

Section 5 amends s. 631.141, F.S., to allow the DFS to assume or reject any executory contract or unexpired lease of the insurer and allow the DFS to pay any expenses under contracts, leases, employment agreements, or other arrangements entered into by the insurer before receivership. These provisions are from sections 114 and 116 of the Model Act and give the DFS the flexibility to review contracts and other obligations and determine how to proceed based on the best interest of the receivership.

The section additionally provides that all officers, directors, and managers of the insurer are discharged except as provided by the DFS. This resolves any conflicts between ch. 631, F.S., and other statutes relating to the dissolution of business entities.

¹⁸ Department of Financial Services, *Bill Analysis of SB 730* (February 19, 2017) at p. 3.

¹⁹ The Florida Health Maintenance Organization Consumer Assistance Plan is created to protect the subscribers of HMOs against the failure of the HMO to perform its contractual obligations due to its insolvency. *See* s. 631.812, F.S. HMOs are required to be members of the plan. *See* s. 631.815, F.S.

²⁰ The language in the bill is from section 105 of the Model Act.

²¹ Section 102 of the Model Act.

Section 6 makes a technical change to s. 631.152, F.S.

Actions by and Against the Receiver

Section 7 creates s. 631.1521, F.S., to adopt the provisions of section 112 of the Model Act in Florida law. An allegation by the receiver of improper or fraudulent conduct against any person may not be the basis of a defense by a third party to the enforcement of a contractual obligation owed to the insurer. The bill does not bar a third party from raising a defense that the conduct was materially and substantially related to the contractual obligation for which enforcement is sought. This will limit the ability of third parties to avoid contractual obligations based on improper conduct by, for example, officers of the insurer that is unrelated to the contractual obligation.

This section further provides that a prior wrongful or negligent action of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may not be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise. Section 7 further provides that the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract. Evidence of fraud in the inducement is admissible only if it is contained in the records of the insurer.

Additionally, this section provides that an action or inaction by an insurance regulatory authority may not be asserted as a defense to a claim by the DFS. This will prevent, for example, an officer of the insurer from arguing that the OIR should have known of the insolvency sooner and taken steps to prevent it.²²

Section 8 creates s. 631.1552, F.S., based on section 113 of the Model Act. It requires evidence of claims or defenses raised by certain parties other than the DFS to be recorded in the books or records of the insurer. This puts the DFS on notice of the possible claims or defenses. It provides that in a proceeding by the receiver against an affiliate, a controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any defense unless:

- Evidence of the defense was recorded in the books and records of the insurer at or about the time the events giving rise to the defense occurred; and
- Such events were timely reported on the insurer's official financial statements filed with the OIR, if required by statutory accounting practices and procedures.

The bill prohibits an affiliate, a controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer from asserting any claim unless:

- The obligations were recorded in the books and records of the insurer at or about the time the obligations were incurred; and
- If required by statutory accounting practices and procedures, the obligations were reported on the insurer's official financial statements filed with the OIR.

²² Such an argument was made, and rejected, in *Wooley v. Lucksinger*, 61 So.3d 507 (La. 2011).

In addition, this section does not bar claims based on unrecorded or unreported transactions by the receiver against any affiliate, controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer.

Claim Filing

Section 631.181, F.S., generally requires claimants to file a proof of claim with the DFS before receiving a distribution from the estate. There are some situations, such as returning unearned premium, where the DFS can determine the claim without requiring a claimant to submit proof. **Section 9** amends s. 631.181, F.S., to allow the court to permit alternative procedures and requirements for claim filing and proof of claims. This is consistent with section 701 of the Model Act.

This section grants specific authority to the court to set a deadline for the filing of claims.

Administration of Workers' Compensation Large Deductible Policies

Section 10 amends s. 631.131, F.S., to create a process for administering large deductible workers' compensation policies and the collateral related to those policies. The section applies to delinquency proceedings that commence on or after July 1, 2017. The bill defines a "large deductible policy" as a combination of one or more workers' compensation policies and endorsements issued to an insured, and contracts or security agreements entered into between an insured and the insurer, in which the insured has agreed with the insurer to:

- Pay directly the initial portion of any claim up to a specified dollar amount or the expenses related to any claim; or
- Reimburse the insurer for its payment of any claim up to the specified dollar amount of the deductible.

As defined within this section, large deductible policy also includes those policies that contain an aggregate limit on the insured's liability for all deductible claims in addition to a per-claim deductible limit. This section provides guidelines and eligibility standards for large deductible workers' compensation filings as defined by DFS. In addition, this section provides that the term "large deductible policy" does not include:

- Policies, endorsements, or agreements providing that the initial portion of any covered claim must be self-insured and that the insurer has no payment obligation within the self-insured retention; and,
- Policies that provide for retrospectively rated premium payments by the insured or reinsurance arrangements or agreements unless such arrangements or agreements assume, secure, or pay the policyholder's large deductible obligations.

This section provides that a large deductible claim must be turned over to the guaranty association for handling. To the extent the insured funds or pays the deductible claim pursuant to an agreement by the guaranty fund, the insured's funding or payment of a deductible claim extinguishes the obligations of the DFS and any guaranty association to pay such claim.

This section provides that, if a guaranty association pays any deductible claim for which an insurer would have been entitled to reimbursement from an insured, a guaranty association is

entitled to the amount of reimbursements received or collateral available. If a guaranty association pays a deductible claim that is not reimbursed from collateral or by insured payments, the guaranty association is entitled to assert a claim for those amounts in the delinquency proceeding.

The section provides that the DFS may collect reimbursements owed for deductible claims. The DFS must use reasonable efforts to collect such reimbursements from the insured or the party that is obligated to pay the deductible as specified in the large deductible policy. The DFS may bill insureds and others for reimbursement of deductible claims that are:

- Paid by the insurer before the commencement of delinquency proceedings;
- Paid by a guaranty association upon receipt by the DFS of notice from a guaranty association of reimbursable payments; or
- Paid or allowed by the DFS.

The section provides that the receiver must take reasonable steps to collect any reimbursements owed if the insured or other party does not make payment within the time specified in the large deductible policy or within a reasonable time, after the date of billing, if no time is specified within the policy.

The section requires the DFS to use collateral, when available, to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or payment obligations. The guaranty association is entitled to collateral to the extent needed to reimburse a guaranty association for the payment of a deductible claim. The section requires the DFS to draw down collateral to the extent necessary if the insured fails to:

- Perform its funding or payment obligations under any large deductible policy;
- Pay deductible claim reimbursements within the time specified in the large deductible policy;
- Pay amounts due to the estate for preliquidation obligations;
- Timely fund any other secured obligation; or
- Timely pay expenses.

The section provides that claims that are validly asserted against the collateral must be satisfied in the order in which such claims are received by the DFS. If more than one creditor has a valid claim against the same collateral and the available collateral and other funds are together insufficient to pay each creditor in full, the DFS must prorate payments. Payments must be based upon the relationship the amount of claims each creditor has paid bears to the total of all claims paid by all such creditors. The bill provides that excess collateral may be returned to the insured.

The section allows the DFS to deduct from the collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the collateral and deductible reimbursements.

Claim Priority

Section 12 amends s. 631.271, F.S., to provide that the deputy supervisor's costs and expenses of administration are Class 1 claims. All claims related to a patient's healthcare coverage by physicians, hospitals, and other providers of a health insurer or health maintenance organization are Class 2 claims. The bill provides that interest on allowed claims accrue from the date of

liquidation until the receivership court approves the distribution. The interest rate is the statutory rate calculated according to s. 55.03, F.S.

Miscellaneous Provisions

Section 11 amends s. 631.192, F.S., to provide that claims for postjudgment interest accrued after the date of liquidation are not allowed.

Section 13 amends s. 631.391, F.S., to require former officers, directors, managers, trustees, agents, adjusters, employees, independent contractors, or a controlling person of an insurer or affiliate to cooperate with the DFS or OIR in any proceeding under ch. 631, F.S., or any investigation preliminary or incidental to the proceeding.

Section 631.395, F.S., provides that an order of liquidation must direct the DFS to coordinate the operation of the receivership with the relevant insurance guaranty fund. The authorization must include authorization to release copies of claim files or other documents related to claims on file with the insolvent insurer. **Section 14** amends s. 631.395, F.S., to provide that the DFS may release the original documents to the guaranty fund.

Section 631.397, F.S., deals with “early access” distributions by the DFS to guaranty associations to allow the associations to begin paying claims without the need to assess member insurers. Current law requires the DFS to propose a plan to the court within 120 days of the determination of insolvency and give notice of the plan to other insurance commissioners at least 15 days before filing the plan with the court. **Section 15** amends s. 631.397, F.S., by eliminating the 120-day requirement and the notice to other insurance commissioners. In practice, the DFS coordinates early access distributions with the appropriate guaranty associations so the DFS believes the requirements are not necessary.²³

Section 16 provides a July 1, 2017, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ Department of Financial Services, *Bill Analysis of SB 730* at p. 6-7.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not affect state revenues or expenditures.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 631.015, 631.021, 631.031, 631.041, 631.141, 631.152, 631.181, 631.191, 631.192, 631.271, 631.391, 631.395, and 631.397.

This bill creates the following sections of the Florida Statutes: 631.1521 and 631.1522.

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 6, 2017:

The CS creates a process for administering large deductible workers' compensation policies and the collateral for large deductible workers' compensation policies. It also removes provisions from the bill prohibiting the payment of claims in excess of policy limits and provisions placing bad faith claims, punitive damages claims, and wrongful settlement practices claims in Class 6.

B. Amendments:

None.

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

²⁴ Office of Insurance Regulation, *Bill Analysis of SB 730* (March 6, 2017) (on file with Appropriations Subcommittee on General Government).

By the Committee on Banking and Insurance; and Senator Passidomo

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1 A bill to be entitled
 2 An act relating to insurer insolvency; amending s.
 3 631.015, F.S.; adding the Insurer Receivership Model
 4 Act to a list of acts that extend reciprocity in the
 5 treatment of policyholders in receivership if such act
 6 is enacted in other states; amending s. 631.021, F.S.;
 7 adding the Florida Health Maintenance Organization
 8 Consumer Assistance Plan to a list of entities that
 9 must be given reasonable written notice by the
 10 Department of Financial Services of hearings
 11 pertaining to certain insurers; revising the exclusive
 12 jurisdiction of the Circuit Court of Leon County, upon
 13 issuance of specified orders, of an insurer's assets
 14 or property in a delinquency proceeding; providing
 15 construction; amending s. 631.031, F.S.; requiring an
 16 insurer to file its response and defenses to a certain
 17 order within a specified timeframe; requiring that a
 18 hearing to determine whether cause exists to appoint
 19 the department as receiver must be commenced by a
 20 specified time; amending s. 631.041, F.S.; providing
 21 an exception for the Office of Insurance Regulation
 22 from applicability of a certain application or
 23 petition operating as an automatic stay; amending s.
 24 631.141, F.S.; authorizing a receiver to assume or
 25 reject an insurer's executory contract or unexpired
 26 lease; authorizing the department as domiciliary
 27 receiver to pay certain expenses or reject certain
 28 contracts; providing that, under certain
 29 circumstances, certain persons of an insurer that is

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30 under liquidation are permanently discharged and have
 31 no further authority over the affairs or assets of the
 32 insurer; amending s. 631.152, F.S.; conforming a
 33 cross-reference; creating s. 631.1521, F.S.;
 34 prohibiting certain defenses in actions by and against
 35 a receiver; authorizing certain defenses in actions by
 36 and against a receiver; specifying that a principal
 37 under a surety bond or surety undertaking, under
 38 certain circumstances, is entitled to credit for the
 39 value of certain property against a reimbursement
 40 obligation to the receiver; limiting admissibility of
 41 evidence of fraud in the inducement to evidence
 42 contained in insurer records; creating s. 631.1522,
 43 F.S.; prohibiting, in a receiver's proceeding or
 44 claim, the assertion of defenses or claims by an
 45 affiliate or certain persons of an insurer except
 46 under certain circumstances; providing construction;
 47 amending s. 631.181, F.S.; authorizing a receivership
 48 court to allow alternative procedures and requirements
 49 for filing proofs of claim or allowing or proving
 50 claims; providing construction; prohibiting a
 51 receivership court from waiving certain filing
 52 requirements; authorizing a receiver to petition the
 53 receivership court to set certain deadlines; requiring
 54 a receiver to provide notice of filing a certain
 55 petition to certain claimants; amending s. 631.191,
 56 F.S.; defining terms; providing applicability;
 57 requiring that specified large deductible claims under
 58 certain workers' compensation policies must be turned

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59 over to the applicable responsible guaranty
60 association for handling; providing for construction
61 relating to payment of deductible claims; authorizing
62 receivers to collect reimbursements owed for certain
63 deductible claims; providing requirements for such
64 collections; providing for construction relating to
65 such collections; requiring receivers to use
66 collateral, when available, to secure certain
67 obligations; providing that a guaranty association is
68 entitled to collateral for a certain purpose;
69 providing for construction relating to certain
70 distributions; requiring receivers to draw down
71 collateral under certain circumstances; providing a
72 procedure for payment of claims; authorizing the
73 return of excess collateral under certain
74 circumstances; providing that a receiver is entitled
75 to deduct certain expenses from the collateral or
76 deductible reimbursements; providing for construction;
77 amending s. 631.192, F.S.; prohibiting claims for
78 postjudgment interest accrued after the date of
79 liquidation; amending s. 631.271, F.S.; adding and
80 revising claims to a list that establishes the
81 priority of distribution of claims from an insurer's
82 estate; specifying when interest on claims accrue and
83 the interest rate calculation; amending s. 631.391,
84 F.S.; specifying that certain persons in relation to
85 an insurer who must cooperate with the department or
86 office in certain proceedings or investigations
87 include present or former roles; defining the term

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88 "person"; amending s. 631.395, F.S.; requiring an
89 order of liquidation to authorize the release of
90 certain claims files, records, documents, or claims,
91 rather than only copies of the claims files, records,
92 documents, or claims; amending s. 631.397, F.S.;
93 authorizing the department as receiver to apply to the
94 court for approval of a specified proposal, rather
95 than requiring the department to make such application
96 within a specified timeframe; deleting a specified
97 notice requirement of the department; deleting a
98 provision authorizing the court to take action on the
99 application under certain circumstances; providing an
100 effective date.

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

104 Section 1. Section 631.015, Florida Statutes, is amended to
105 read:

106 631.015 Reciprocity; treatment of policyholders.-
107 Reciprocity in the treatment of policyholders in receivership is
108 extended to those states which, in substance and effect, enact
109 the National Association of Insurance Commissioners
110 Rehabilitation and Liquidation Model Act, ~~or~~ the Uniform
111 Insurers Liquidation Act, or the Insurer Receivership Model Act.

112 Section 2. Section 631.021, Florida Statutes, is amended to
113 read:

114 631.021 Jurisdiction of delinquency proceeding; venue;
115 change of venue; exclusiveness of remedy; appeal; construction.-
116 (1) The circuit court shall have original jurisdiction of

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117 any delinquency proceeding under this chapter, and any court
 118 with jurisdiction is authorized to make all necessary or proper
 119 orders to carry out the purposes of this chapter. Any
 120 delinquency proceeding in this chapter is in equity.

121 (2) The venue of a delinquency proceeding or summary
 122 proceeding against a domestic, foreign, or alien insurer shall
 123 be in the Circuit Court of Leon County.

124 (3) A delinquency proceeding pursuant to this chapter
 125 constitutes the sole and exclusive method of liquidating,
 126 rehabilitating, reorganizing, or conserving an insurer. A No
 127 court may not ~~shall~~ entertain a petition for the commencement of
 128 such a proceeding unless the petition has been filed in the name
 129 of the state on the relation of the department. The Florida
 130 Insurance Guaranty Association, Incorporated, the Florida
 131 Workers' Compensation Insurance Guaranty Association,
 132 Incorporated, the Florida Health Maintenance Organization
 133 Consumer Assistance Plan, and the Florida Life and Health
 134 Guaranty Association, Incorporated, shall be given reasonable
 135 written notice by the department of all hearings that which
 136 pertain to an adjudication of insolvency of a member insurer.

137 (4) An appeal shall lie to the District Court of Appeal,
 138 First District, from an order granting or refusing
 139 rehabilitation, liquidation, or conservation and from every
 140 order in a delinquency proceeding having the character of a
 141 final order as to the particular portion of the proceeding
 142 embraced therein.

143 (5) No service of process against the department in its
 144 capacity as receiver shall be effective unless served upon a
 145 person designated by the receiver and filed with the circuit

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146 court having jurisdiction over the delinquency proceeding. The
 147 designated person shall refuse to accept service if acceptance
 148 would violate a stay against legal proceedings involving an
 149 insurer that is the subject of delinquency proceedings or would
 150 violate any orders of the circuit court governing a delinquency
 151 proceeding. The person denied service may petition the circuit
 152 court having jurisdiction over the delinquency proceeding for
 153 relief from the receiver's refusal to accept service. This
 154 subsection shall be strictly construed, and any purported
 155 service on the receiver or the department that is not in
 156 accordance with this subsection shall be null and void.

157 (6) The domiciliary court acquiring jurisdiction over
 158 persons subject to this chapter may exercise exclusive
 159 jurisdiction to the exclusion of all other courts, except as
 160 limited by the provisions of this chapter. Upon the issuance of
 161 an order of conservation, rehabilitation, or liquidation, the
 162 Circuit Court of Leon County has ~~shall have~~ exclusive
 163 jurisdiction over all with respect to assets or property of the
 164 any insurer, wherever located, including property located
 165 outside the territorial limits of the state ~~subject to such~~
 166 ~~proceedings and claims against said insurer's assets or~~
 167 ~~property.~~

168 (7) This chapter constitutes this state's insurer
 169 receivership laws, and these laws must be construed as
 170 consistent with each other. If there is a conflict between this
 171 chapter and any other law, this chapter prevails.

172 Section 3. Subsections (3) and (4) are added to section
 173 631.031, Florida Statutes, to read:

174 631.031 Initiation and commencement of delinquency

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175 proceeding.-

176 (3) An insurer subject to an order to show cause entered
 177 pursuant to this chapter must file its written response to the
 178 order, together with any defenses it may have to the
 179 department's allegations, no later than 20 days after service of
 180 the order to show cause, but no less than 15 days before the
 181 date of the hearing set by the order to show cause.

182 (4) A hearing held pursuant to this chapter to determine
 183 whether cause exists for the department to be appointed receiver
 184 must be commenced within 60 days after an order directing an
 185 insurer to show cause.

186 Section 4. Subsection (1) of section 631.041, Florida
 187 Statutes, is amended to read:

188 631.041 Automatic stay; relief from stay; injunctions.-

189 (1) An application or petition under s. 631.031 operates as
 190 a matter of law as an automatic stay applicable to all persons
 191 and entities, other than the receiver and the office, which
 192 shall be permanent and survive the entry of an order of
 193 conservation, rehabilitation, or liquidation, and which shall
 194 prohibit:

195 (a) The commencement or continuation of judicial,
 196 administrative, or other action or proceeding against the
 197 insurer or against its assets or any part thereof;

198 (b) The enforcement of a judgment against the insurer or an
 199 affiliate obtained either before or after the commencement of
 200 the delinquency proceeding;

201 (c) Any act to obtain possession of property of the
 202 insurer;

203 (d) Any act to create, perfect, or enforce a lien against

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204 property of the insurer, except that a secured claim as defined
 205 in s. 631.011(21) may proceed under s. 631.191 after the order
 206 of liquidation is entered;

207 (e) Any act to collect, assess, or recover a claim against
 208 the insurer, except claims as provided for under this chapter;
 209 and

210 (f) The setoff or offset of any debt owing to the insurer,
 211 except offsets as provided in s. 631.281.

212 Section 5. Present subsections (3) through (5) and (6)
 213 through (10) of section 631.141, Florida Statutes, are
 214 redesignated as subsections (4) through (6) and (8) through
 215 (12), respectively, new subsections (3) and (7) are added to
 216 that section, and present subsection (8) is amended, to read:
 217 631.141 Conduct of delinquency proceeding; domestic and
 218 alien insurers.-

219 (3) The receiver may assume or reject any executory
 220 contract or unexpired lease of the insurer.

221 (7) The department as domiciliary receiver may pay any
 222 expenses under contracts, leases, employment agreements, or
 223 other arrangements entered into by the insurer before
 224 receivership as the department deems necessary for the purposes
 225 of this chapter. The department is not required to pay any such
 226 expenses that it determines are not necessary and may reject any
 227 contract pursuant to subsection (3).

228 ~~(10)(8)~~ The department as domiciliary receiver may take
 229 such action as it deems necessary or appropriate to reform and
 230 revitalize the insurer. The department shall have all the powers
 231 of the directors, officers, and managers, whose authority shall
 232 be suspended, except as they are redelegated by the receiver.

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233 The receiver shall have full power to direct and manage the
 234 affairs of the insurer, to hire and discharge employees, and to
 235 deal with the property and business of the insurer. In the event
 236 of the liquidation of an insurer domiciled in this state, and
 237 notwithstanding any provision of chapter 605, chapter 607,
 238 chapter 617, chapter 620, or chapter 621, all officers,
 239 directors, and managers of the insurer are permanently
 240 discharged and have no further authority of any kind over the
 241 affairs or assets of the insurer, except as may be redelegated
 242 by the department.

243 Section 6. Subsection (4) of section 631.152, Florida
 244 Statutes, is amended to read:

245 631.152 Conduct of delinquency proceeding; foreign
 246 insurers.—

247 (4) Paragraph 631.141(9)(b) ~~Section 631.141(7)(b)~~ applies
 248 to ancillary delinquency proceedings opened for the purpose of
 249 obtaining records necessary to adjudicate the covered claims of
 250 Florida policyholders.

251 Section 7. Section 631.1521, Florida Statutes, is created
 252 to read:

253 631.1521 Actions by and against the receiver.—

254 (1) An allegation by the receiver of improper or fraudulent
 255 conduct against any person may not be the basis of a defense by
 256 a third party to the enforcement of a contractual obligation
 257 owed to the insurer. This section does not bar a third party
 258 from the right to raise a defense that the conduct was
 259 materially and substantially related to the contractual
 260 obligation for which enforcement is sought.

261 (2) A prior wrongful or negligent action of any present or

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262 former officer, manager, director, trustee, owner, employee, or
 263 agent of the insurer may not be asserted as a defense to a claim
 264 by the receiver under a theory of estoppel, comparative fault,
 265 intervening cause, proximate cause, reliance, mitigation of
 266 damages, or otherwise. However, the affirmative defense of fraud
 267 in the inducement may be asserted against the receiver in a
 268 claim based on a contract; and a principal under a surety bond
 269 or a surety undertaking is entitled to credit for the value of
 270 any property pledged to secure the reimbursement obligation
 271 against any reimbursement obligation to the receiver, to the
 272 extent that the receiver has possession or control of the
 273 property, or that the insurer or its agents misappropriated such
 274 property, which includes, but is not limited to, the comingling
 275 of such property. Evidence of fraud in the inducement is
 276 admissible only if it is contained in the records of the
 277 insurer.

278 (3) An action or inaction by an insurance regulatory
 279 authority may not be asserted as a defense to a claim by the
 280 department.

281 Section 8. Section 631.1522, Florida Statutes, is created
 282 to read:

283 631.1522 Unrecorded obligations and defenses and claims of
 284 affiliates.—

285 (1) In any proceeding or claim by the receiver, an
 286 affiliate, a controlled or controlling person, or a present or
 287 former officer, manager, director, trustee, or shareholder of
 288 the insurer may not assert any defense unless:

289 (a) Evidence of the defense was recorded in the books and
 290 records of the insurer at or about the time the events giving

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291 rise to the defense occurred; and

292 (b) If required by statutory accounting practices and
 293 procedures, such events were timely reported on the insurer's
 294 official financial statements filed with the office.

295 (2) An affiliate, a controlled or controlling person, or a
 296 present or former officer, manager, director, trustee, or
 297 shareholder of the insurer may not assert any claim unless:

298 (a) The obligations were recorded in the books and records
 299 of the insurer at or about the time the obligations were
 300 incurred; and

301 (b) If required by statutory accounting practices and
 302 procedures, the obligations were timely reported on the
 303 insurer's official financial statements filed with the office.

304 (3) This section does not bar claims based on unrecorded or
 305 unreported transactions by the receiver against any affiliate,
 306 controlled or controlling person, or present or former officer,
 307 manager, director, trustee, or shareholder of the insurer.

308 Section 9. Paragraph (g) of subsection (2) and subsections
 309 (4) and (5) are added to section 631.181, Florida Statutes, to
 310 read:

311 631.181 Filing and proof of claim.—

312 (2)

313 (g) Upon application of the receiver:

314 1. The receivership court may allow alternative procedures
 315 and requirements for the filing of proofs of claim or for
 316 allowing or proving claims.

317 2. If the receivership court waives the requirements of
 318 filing a proof of claim for a person, class, or group of
 319 persons, a timely proof of claim by such person, class, or group

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320 is deemed to be filed for all purposes. However, the
 321 receivership court may not waive guaranty association or
 322 coverage determination proof of claim filing requirements, to
 323 the extent that the guaranty fund statute or filing requirements
 324 are inconsistent with the receivership court's waiver of proof.

325 (4) The receiver may petition the receivership court to set
 326 a date certain before which all contingent or unliquidated
 327 claims are final. In addition to the notice requirements in this
 328 section, the receiver shall give notice of filing the petition
 329 to all claimants with claims that remain contingent or
 330 unliquidated under this section.

331 (5) Notwithstanding any other provision of this chapter,
 332 the receiver may petition the receivership court to set a date
 333 certain after which no further claims may be filed.

334 Section 10. Section 631.191, Florida Statutes, is amended
 335 to read:

336 631.191 Special deposit claims; ~~and~~ secured claims;
 337 administration of workers' compensation large deductible
 338 policies and insured collateral.—

339 (1) SPECIAL DEPOSIT CLAIMS.—The owners of special deposit
 340 claims against an insurer against which a liquidation order has
 341 been entered in this or any other state shall be given priority
 342 against their several special deposits in accordance with the
 343 provisions of the statutes governing the creation and
 344 maintenance of such deposits. If there is a deficiency in any
 345 such deposit so that the claims secured thereby are not fully
 346 discharged therefrom, the claimants may share in the general
 347 assets, but such sharing shall be deferred until general
 348 creditors, and also claimants against other special deposits who

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349 have received smaller percentages from their respective special
 350 deposits, have been paid percentages of their claims equal to
 351 the percentage paid from the special deposit.

352 (2) SECURED CLAIMS.—

353 (a) The owner of a secured claim against an insurer against
 354 which a liquidation order has been entered in this or any other
 355 state may surrender her or his security and file her or his
 356 claim as a general creditor, or the claim may be discharged by
 357 resort to the security, in which case the deficiency, if any,
 358 shall be treated as a claim against the general assets of the
 359 insurer on the same basis as claims of unsecured creditors. If
 360 the amount of the deficiency has been adjudicated in ancillary
 361 proceedings as provided in this chapter, or if it has been
 362 adjudicated by a court of competent jurisdiction in a proceeding
 363 in which the domiciliary receiver has had notice and an
 364 opportunity to be heard, such amount shall be conclusive;
 365 otherwise the amount shall be determined in the delinquency
 366 proceeding in the domiciliary state.

367 (b) The value of any security held by a secured creditor
 368 shall be determined under supervision of the court by:

369 1. Converting the same into money according to the terms of
 370 the agreement pursuant to which the security was delivered to
 371 such creditor; or

372 2. If no such agreement exists, the court shall determine
 373 the value in the event the creditor and the receiver cannot
 374 agree upon same.

375 (3) ADMINISTRATION OF WORKERS' COMPENSATION LARGE
 376 DEDUCTIBLE POLICIES AND INSURED COLLATERAL.—

377 (a) Definitions.—As used in this subsection, the term:

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378 1. "Collateral" means cash, a letter of credit, a surety
 379 bond, or any other form of security posted by the insured, or by
 380 a captive insurer or reinsurer, to secure the insured's
 381 obligation under a large deductible policy to pay deductible
 382 claims or to reimburse the insurer for deductible claim
 383 payments. "Collateral" may also secure an insured's obligation
 384 to reimburse or pay the insurer as may be required for other
 385 secured obligations.

386 2. "Deductible claim" means any claim that is within the
 387 deductible under a large deductible policy, including a claim
 388 for loss and defense and cost containment expense, unless such
 389 expense is excluded by the terms of the policy.

390 3.a. "Large deductible policy" means a combination of one
 391 or more workers' compensation policies and endorsements issued
 392 to an insured, and contracts or security agreements entered into
 393 between an insured and the insurer, in which the insured has
 394 agreed with the insurer to:

395 (I) Pay directly the initial portion of any claim under the
 396 policy up to a specified dollar amount or the expenses related
 397 to any claim; or

398 (II) Reimburse the insurer for its payment of any claim or
 399 related expenses under the policy up to the specified dollar
 400 amount of the deductible.

401 b. The term also includes policies that contain an
 402 aggregate limit on the insured's liability for all deductible
 403 claims in addition to a per-claim deductible limit. A policy
 404 must meet the current guidelines for large deductible workers'
 405 compensation filings as defined by the office, including the
 406 eligibility standards regarding the minimum standard premium and

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407 the minimum deductible to be deemed a large deductible policy.

408 c. The term does not include policies, endorsements, or
 409 agreements providing that the initial portion of any covered
 410 claim must be self-insured and that the insurer has no payment
 411 obligation within the self-insured retention.

412 d. The term does not include policies that provide for
 413 retrospectively rated premium payments by the insured or
 414 reinsurance arrangements or agreements, except to the extent
 415 such arrangements or agreements assume, secure, or pay the
 416 policyholder's large deductible obligations.

417 4. "Other secured obligations" means obligations of an
 418 insured to an insurer other than those under a large deductible
 419 policy, such as those under a reinsurance agreement or other
 420 agreement involving retrospective premium obligations, the
 421 performance of which is secured by collateral that also secures
 422 an insured's obligations under a large deductible policy.

423 (b) Applicability.—

424 1. This subsection applies to workers' compensation large
 425 deductible policies issued by an insurer that is subject to
 426 delinquency proceedings under this chapter. This subsection does
 427 not apply to first-party claims, or to covered claims funded by
 428 a guaranty association above the deductible unless paragraph (c)
 429 applies. Large deductible policies must be administered in
 430 accordance with the terms of the policy, except to the extent
 431 such terms conflict with this subsection.

432 2. This subsection applies to all delinquency proceedings
 433 that commence on or after July 1, 2017.

434 (c) Handling of large deductible claims.—Unless otherwise
 435 agreed to by the responsible guaranty association, all large

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436 deductible claims that are also covered claims as defined by an
 437 applicable guaranty association law, including those that may
 438 have been funded by an insured before liquidation, must be
 439 turned over to the guaranty association for handling. To the
 440 extent the insured funds or pays the deductible claim pursuant
 441 to an agreement by the guaranty fund or otherwise, the insured's
 442 funding or payment of a deductible claim extinguishes the
 443 obligations, if any, of the receiver and any guaranty
 444 association to pay such claim. A charge may not be made against
 445 the receiver or a guaranty association on the basis of an
 446 insured's funding or payment of a deductible claim.

447 (d) Deductible claims paid by a guaranty association.—

448 1. To the extent a guaranty association pays any deductible
 449 claim for which an insurer would have been entitled to
 450 reimbursement from an insured, a guaranty association is
 451 entitled to the amount of reimbursements received or collateral
 452 available, subject to paragraph (g). Reimbursements paid to the
 453 guaranty association pursuant to this paragraph may not be
 454 treated as distributions under s. 631.271 or as early access
 455 payments under s. 631.397(1).

456 2. To the extent that a guaranty association pays a
 457 deductible claim that is not reimbursed from collateral or by
 458 insured payments, or the guaranty association incurred expenses
 459 in connection with large deductible policies that are not
 460 reimbursed under this subsection, the guaranty association is
 461 entitled to assert a claim for those amounts in the delinquency
 462 proceeding.

463 3. This paragraph does not limit any right of the receiver
 464 or a guaranty association which may otherwise exist under

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465 applicable law to obtain reimbursement from insureds for claims
 466 payments made by the guaranty association under policies of the
 467 insurer or for the guaranty association's related expenses.
 468 (e) Collections.-
 469 1. The receiver may collect reimbursements owed for
 470 deductible claims as provided in this paragraph, and must use
 471 reasonable efforts to collect such reimbursements from the
 472 insured or the party that is obligated to pay the deductible as
 473 specified in the large deductible policy or other agreement. The
 474 receiver may bill insureds and others for reimbursement of
 475 deductible claims that are:
 476 a. Paid by the insurer before the commencement of
 477 delinquency proceedings;
 478 b. Paid by a guaranty association upon receipt by the
 479 receiver of notice from a guaranty association of reimbursable
 480 payments; or
 481 c. Paid or allowed by the receiver.
 482 2. If the insured or other party does not make payment
 483 within the time specified in the large deductible policy, or, if
 484 no time is specified, within a reasonable time after the date of
 485 billing, the receiver must take reasonable steps to collect any
 486 reimbursements owed.
 487 3. The insolvency of the insurer or its inability to
 488 perform any of its obligations under the large deductible policy
 489 may not be a defense to the insured's reimbursement obligation
 490 under the large deductible policy.
 491 4. An allegation of improper handling or payment of a
 492 deductible claim by the insurer, the receiver, or a guaranty
 493 association may not be a defense to the insured's reimbursement

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494 obligations under the large deductible policy.
 495 (f) Collateral.-
 496 1. Subject to this paragraph, the receiver shall use
 497 collateral, when available, to secure the insured's obligation
 498 to fund or reimburse deductible claims or other secured
 499 obligations or payment obligations. A guaranty association is
 500 entitled to collateral as provided for in this paragraph to the
 501 extent needed to reimburse a guaranty association for the
 502 payment of a deductible claim. Any distributions made to a
 503 guaranty association pursuant to this paragraph may not be
 504 treated as distributions under s. 631.271 or as early access
 505 payments under s. 631.397(1).
 506 2. The receiver shall draw down collateral to the extent
 507 necessary in the event the insured fails to:
 508 a. Perform its funding or payment obligations under any
 509 large deductible policy;
 510 b. Pay deductible claim reimbursements within the time
 511 specified in the large deductible policy, or, if no time is
 512 specified, within 60 days after the date of the billing;
 513 c. Pay amounts due to the estate for preliquidation
 514 obligations;
 515 d. Timely fund any other secured obligation; or
 516 e. Timely pay expenses.
 517 3. Claims that are validly asserted against the collateral
 518 must be satisfied in the order in which such claims are received
 519 by the receiver. However, if more than one creditor has a valid
 520 claim against the same collateral and the available collateral,
 521 along with billing collection efforts and to the extent that the
 522 collateral is subject to other known secured obligations, are

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523 together insufficient to pay each creditor in full, the receiver
 524 must prorate payments to each creditor based upon the
 525 relationship the amount of claims each creditor has paid bears
 526 to the total of all claims paid by all such creditors.

527 4. Excess collateral may be returned to the insured, as
 528 determined by the receiver, after a periodic review of claims
 529 paid, outstanding case reserves, and a factor for claims that
 530 were incurred but not reported.

531 (g) Receiver's expenses.—The receiver is entitled to deduct
 532 from the collateral or from the deductible reimbursements
 533 reasonable and actual expenses incurred in connection with the
 534 collection of the collateral and deductible reimbursements as
 535 provided pursuant to s. 631.271.

536 (h) Construction.—This subsection does not limit or
 537 adversely affect any rights or powers a guaranty association may
 538 have under applicable state law to obtain reimbursement from
 539 certain classes of policyholders for claims payments made by the
 540 guaranty association under policies of the insolvent insurer, or
 541 for related expenses the guaranty association incurs.

542 Section 11. Subsection (5) is added to section 631.192,
 543 Florida Statutes, to read:

544 631.192 Allowance of certain claims.—

545 (5) A claim may not be allowed for postjudgment interest
 546 accrued after the date of liquidation.

547 Section 12. Paragraphs (a), (b), and (j) of subsection (1)
 548 of section 631.271, Florida Statutes, are amended to read:

549 631.271 Priority of claims.—

550 (1) The priority of distribution of claims from the
 551 insurer's estate shall be in accordance with the order in which

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552 each class of claims is set forth in this subsection. Every
 553 claim in each class shall be paid in full or adequate funds
 554 shall be retained for such payment before the members of the
 555 next class may receive any payment. No subclasses may be
 556 established within any class. The order of distribution of
 557 claims shall be:

558 (a) Class 1.—

559 1. All of the receiver's costs and expenses of
 560 administration.

561 2. All of the expenses of a guaranty association or foreign
 562 guaranty association in handling claims.

563 3. All of the deputy supervisor's costs and expenses of
 564 administration incurred as a result of administrative
 565 supervision under part VI of chapter 624.

566 (b) Class 2.—All claims under policies for losses incurred,
 567 including third-party claims, all claims against the insurer for
 568 liability for bodily injury or for injury to or destruction of
 569 tangible property which claims are not under policies, ~~and~~ all
 570 claims of a guaranty association or foreign guaranty
 571 association, and all claims related to a patient's healthcare
 572 coverage by physicians, hospitals, and other providers of a
 573 health insurer or health maintenance organization. All claims
 574 under life insurance and annuity policies, whether for death
 575 proceeds, annuity proceeds, or investment values, shall be
 576 treated as loss claims. That portion of any loss,
 577 indemnification for which is provided by other benefits or
 578 advantages recovered by the claimant, may not be included in
 579 this class, other than benefits or advantages recovered or
 580 recoverable in discharge of familial obligations of support or

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581 by way of succession at death or as proceeds of life insurance,
 582 or as gratuities. No payment by an employer to her or his
 583 employee may be treated as a gratuity.

584 (j) Class 10.—Interest on allowed claims of Classes 1
 585 through 9. The rate of interest payable on an allowed claim must
 586 accrue from the date of liquidation until such time as the
 587 receivership court approves the distribution. The interest rate
 588 must be calculated in accordance with s. 55.03, ~~according to the~~
 589 ~~terms of a plan to pay interest on allowed claims proposed by~~
 590 ~~the liquidator and approved by the receivership court.~~

591 Section 13. Section 631.391, Florida Statutes, is amended
 592 to read:

593 631.391 Cooperation of officers and employees.—

594 (1) Any present or former officer, director, manager,
 595 trustee, agent, adjuster, employee, or independent contractor of
 596 any insurer or affiliate and any other person who possesses any
 597 executive authority over, or who exercises any control over, any
 598 segment of the affairs of the insurer or affiliate shall fully
 599 cooperate with the department and office in any proceeding under
 600 this chapter or any investigation preliminary or incidental to
 601 the proceeding. An order of rehabilitation or liquidation which
 602 results in the discharge or suspension of any of the persons
 603 listed above does not operate to release such person from the
 604 duty to cooperate with the department and office as set out
 605 herein. As used in this section, the term "person" includes any
 606 person who directly or indirectly exercises control over
 607 activities of the insurer through any holding company or other
 608 affiliate of the insurer. The term ~~to~~ "cooperate" includes, but
 609 is not limited to, the following:

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610 (a) To reply promptly in writing to any inquiry from the
 611 department or office requesting such a reply;

612 (b) Promptly to make available and deliver to the
 613 department or office any books, accounts, documents, other
 614 records, information, data processing software, or property of
 615 or pertaining to the insurer and in her or his possession,
 616 custody, or control; or

617 (c) Promptly to provide access to all data processing
 618 records in hard copy and in electronic form and to data
 619 processing facilities and services.

620 (2) No person shall obstruct or interfere with the
 621 department or office in the conduct of any delinquency
 622 proceeding or any investigation preliminary or incidental
 623 thereto.

624 (3) This section does not prohibit any person from seeking
 625 legal relief from a court when aggrieved by the petition for
 626 liquidation or other delinquency proceeding or by other orders.

627 (4) Any person referred to in subsection (1) who fails to
 628 cooperate with the department or office, or any other person who
 629 obstructs or interferes with the department or office, in the
 630 conduct of any delinquency proceeding or any investigation
 631 preliminary or incidental thereto, is guilty of a misdemeanor of
 632 the first degree, punishable as provided in s. 775.082 or by
 633 fine of not more than \$10,000.

634 (5) Refusal by any person referred to in subsection (1) to
 635 provide records upon the request of the department or office is
 636 grounds for revocation of any insurance-related license,
 637 including, but not limited to, agent and third-party
 638 administrator licenses.

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639 (6) Any person referred to in subsection (1) who refuses to
 640 cooperate in providing records upon the request of the
 641 department or office is liable for any penalties, fines, or
 642 other costs assessed against the guaranty association or the
 643 receiver that result from the refusal or delay to provide
 644 records.

645 Section 14. Section 631.395, Florida Statutes, is amended
 646 to read:

647 631.395 Guaranty fund; orders of court.—Any order of
 648 liquidation issued pursuant to s. 631.111 or s. 631.131 must
 649 ~~shall~~ authorize and direct the department as receiver to
 650 coordinate the operation of the receivership with the operation
 651 of any insurance guaranty fund authorized to operate in this
 652 state and may authorize the department to provide data
 653 processing services for any appropriate guaranty fund. Such
 654 authorization must shall include, but not be limited to, release
 655 of copies of any of the following:

656 (1) Claims files, records, or documents pertaining to
 657 claims on file with the insolvent insurer; and

658 (2) Insurance claims filed with the receiver.

659 Section 15. Subsections (1), (4), and (5) of section
 660 631.397, Florida Statutes, are amended to read:

661 631.397 Use of certain marshaled assets.—

662 (1) ~~Within 120 days of a final determination of insolvency~~
 663 ~~of an insurer by a court of competent jurisdiction of this~~
 664 ~~state,~~ The department, as receiver, may shall apply to the court
 665 for approval of a proposal to disburse assets out of such
 666 insurer's marshaled assets, as such assets become available, to
 667 each association entitled thereto or, if there are no assets

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668 available for such disbursement, then for approval of such
 669 proposal as the receiver deems appropriate. For the purposes of
 670 this section, the term "association" includes the Florida
 671 Insurance Guaranty Association, Incorporated, the Florida
 672 Workers' Compensation Insurance Guaranty Association, and any
 673 entity or person performing a function in another state similar
 674 to that performed in this state by the Florida Insurance
 675 Guaranty Association, Incorporated, or the Florida Workers'
 676 Compensation Insurance Guaranty Association, provided the
 677 Florida Insurance Guaranty Association, Incorporated, or the
 678 Florida Workers' Compensation Insurance Guaranty Association, is
 679 entitled to like payment under the laws of the association's
 680 state of domicile in respect to insolvent companies doing
 681 business in that state.

682 ~~(4) Notice of such application shall be given by the~~
 683 ~~department to the associations in, and to the commissioners of~~
 684 ~~insurance of, each of the states to which disbursement may be~~
 685 ~~made. Such notice shall be made by certified mail, first-class~~
 686 ~~postage prepaid, at least 15 days prior to submission of such~~
 687 ~~application to the court. Such notice shall be deemed to have~~
 688 ~~been made when deposited in the mail.~~

689 ~~(5) Action on the application may be taken by the court if~~
 690 ~~notice has been given pursuant to subsection (4) and the~~
 691 ~~department's proposal complies with subsection (2).~~

692 Section 16. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 29, 2017

I respectfully request that **Senate Bill #730**, relating to Insurer Insolvency, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-13-17

Meeting Date

SB 730

Bill Number (if applicable)

Topic SB 730

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Affairs Director

Address 400 N. Monroe St

Phone 850-413-2863

Street

Tallahassee FL 32399

City

State

Zip

Email elizabeth.boyd@myfloridacfo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing CFO Atwater

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 (10/14/14)

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 736 (567188)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senators Mayfield and Steube

SUBJECT: International Financial Institutions

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders/Johnson</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 736 modernizes the regulatory framework of international financial services under the Office of Financial Regulation (OFR), which will promote the growth of international financial services market in Florida. The bill revises provisions relating to the regulation of international banking corporations and international trust company representative offices (ITCROs) of international trust entities and creates a regulatory framework for limited service affiliates (LSAs). The LSAs are marketing and liaison offices that engage in activities for the benefit of an international trust entity (ITE). An ITE is an international trust company, an international business, an international business organization, or an affiliated or subsidiary entities that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised. An ITCRO may conduct any nonfiduciary activities that are ancillary to the fiduciary business of its international trust entity, such as marketing and soliciting for fiduciary business on behalf of the ITE. The bill provides the following changes:

- Establishes oversight of limited service affiliates and offices of international trust entities.
- Provides an abbreviated application process to establish additional locations of an entity that meets certain conditions.
- Authorizes the OFR to implement a risk-based approach for capital requirements, which will allow the OFR to calculate capital requirements that reflect an entity's business model and its particular inherent risk profile.

- Provides the OFR with discretion to allow an after-the-fact licensure process of an entity in the event of an acquisition, merger, or consolidation, which would allow continuity of operations.
- Clarifies permissible activities of entities regulated under chapter 663, Florida Statutes.

The bill creates regulatory fines and fees. In its analysis, the OFR indicates it can maintain regulatory oversight with current staffing levels.¹

The bill has an effective date of January 1, 2018.

II. Present Situation:

Regulation of the International Financial Services Market

Miami, the gateway to Latin America, is home to the second-largest banking and finance hub in the United States.² Estate, tax, and asset protection planning are important components of the region's financial sector, attracting international financial institutions from Europe, Latin America, and Canada serving individual, family, and business customers.

The Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes).³

International Banking Corporations

The OFR licenses and regulates international banking corporations⁴ that transact business in Florida.⁵ International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions chartered and regulated by foreign jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable codes.

¹ Office of Financial Regulation, Senate Bill 736 Fiscal Analysis (on file with the Senate Appropriations Subcommittee on General Government).

² See http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html (Fall 2014) (last viewed Feb. 27, 2017).

³ Financial Institutions Codes include chs. 655 relating to financial institutions generally, 657 relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665 relating to associations, and 657 relating to savings banks.

⁴ An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. *See* s. 663.01(6), F.S.

⁵ Sections 663.04 and 663.05, F.S.

An international banking corporation may operate through a variety of business models, all of which are subject to licensure by the OFR.⁶ These models include international bank agencies, international representative offices, international trust company representative offices (ITCRO), international administrative offices, and international branches. The definition of “financial institution”⁷ includes an international banking corporation and all of these entities. As of February 2017, there were no ITCROs licensed with the OFR; however, two international administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.⁸ In addition, the OFR qualified six entities for the moratorium on the OFR’s enforcement of licensing requirements for an international trust entity or related parties pursuant to s. 663.0441, F.S.⁹

If an international banking corporation (IBC) wants to operate an office in Florida, which includes an ITCRO, the IBC is required to meet minimum licensure requirements, and is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an international banking corporation unless it:

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;¹⁰
- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of \$20 million.

Section 663.02, F.S., subjects international banking corporations with offices in Florida to the provisions of ch. 655, F.S., as though such corporations are state banks or trust companies.¹¹ Further, s. 663.02, F.S., provides that neither an international bank agency nor an international

⁶ Section 663.06(1), F.S.

⁷ Section 655.005(i), F.S.

⁸ Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited February 25, 2017).

⁹ The following entities qualified for the moratorium: JTC Miami Corporation, Citco Corporate Services, Inc., Amicorp Services Ltd., Corpag Services USA, Inc., Integritas Inc., and Cisa Latam LLC. Email correspondence from the Office of Financial Regulation (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

¹⁰ Section 663.05(8), F.S. requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation’s foreign establishments, and must address at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the international banking corporation. See Rule 69U-140.003, F.A.C., *Principles of Adequate Supervision of an International Banking Corporation’s Foreign Establishment*.

¹¹ Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities: s. 655.031, F.S., relating to administrative enforcement guidelines; s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access; s. 655.033, F.S., relating to cease and desist orders; s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, F.S., relating to administrative fines and enforcement; and s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31 F.S., for facilitating or furthering terrorism.

branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state.

International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution. These activities include making and servicing loans, acting as a custodian, furnishing investment advice, conducting foreign exchange activities and trading in securities and commercial paper.¹² An international branch has the same rights and privileges as a federally licensed international branch.¹³

International Representative Offices and International Administrative Offices

International representative offices and international administrative offices perform activities that are more limited, such as soliciting business for the IBC, providing information to customers concerning their accounts, receiving applications for services, transmitting documents for customers, and arranging for customers to transact business on their accounts.¹⁴ In addition to the powers delineated above, an administrative office may administer personnel and operations, engage in data processing and recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.¹⁵

International Trust Company Representative Offices

An ITCRO is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in the nonfiduciary activities described in s. 663.0625, F.S.¹⁶ An ITCRO may also include any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.¹⁷ An ITCRO is not a bank and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers and answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers; and

¹² Section 663.061, F.S.

¹³ Section 663.064, F.S.

¹⁴ Section 663.062, F.S.

¹⁵ Section 663.063, F.S.

¹⁶ In 2010, legislation was enacted to establish OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida [ch. 2010-9, Laws of Fla.]. The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was in response to the exposure of the \$8 billion dollar Ponzi scheme perpetrated by Allen Stanford. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office in Miami, Florida.

¹⁷ Section 663.01(9), F.S.

- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (commission).¹⁸

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in ITCRO activities described in s. 663.0625, F.S., if it meets certain conditions. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is defined to mean any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

III. Effect of Proposed Changes:

Regulation of International Banking Corporations and their Offices

Sections 1 through 19 amend provisions of part I of ch. 663, F.S., and ss. 655.00 and 655.059, F.S., relating to the regulation of international banking corporations. In addition, technical conforming changes are made to transfer provisions relating to the regulation of offices of international trust entities and international trust company representative offices (ITCROs) to the newly created part III of ch. 663, F.S., and creates the regulation of limited service affiliates in the newly created part IV of ch. 663, F.S. Many of the sections provide technical, conforming changes relating to the newly created parts III or IV.

Sections 1, 4, 5, and 6 revise definitions. **Section 1** amends s. 655.005, F.S. The section expands the definition of the term "financial institution" to include an international trust entity and a limited service affiliate, which are located in the newly created parts III and IV. **Section 4** amends s. 663.01, F.S. This section revises the definition of the term "international banking corporation" by removing the term "foreign trust companies" from the definition. A foreign trust company will be included within the definition of the term "international trust entity," which is transferred along with the regulation of offices of international trust entities in the newly created part III. The term, "international trust entity," is also defined and used in part IV. Section 4 removes the term, "international trust company representative office," to conform to Section 22. **Section 5** amends s. 663.002, F.S. The definition of the term, "international banking corporation," conforms to reflect definition changes in Section 4. **Section 6** revises s. 663.021, F.S. This section removes the term "international trust company representative officer" to conform to the definition change reflected in Section 4.

Section 2 amends s. 665.059, F.S., to allow home-country supervisors access to confidential books and records of an international banking corporation or international trust entity that conducts onsite or offsite examinations outside Florida. The supervision of licensed locations of an international banking corporation or international trust entity in Florida requires the sharing of information with the bank regulatory agency or other similarly sanctioned organization located in the home jurisdiction of the international entity. These regulatory agencies known as the "home-

¹⁸ Section 663.0625, F.S.

country supervisor,” fulfill a similar function to the Office of Financial Regulation (OFR) in the home jurisdiction. Currently, the home-country supervisor of an international banking corporation or international trust company must travel to Florida to review and examine documents at the licensee’s location.

Section 3 creates s. 663.001, F.S., to establish a legal and regulatory framework for the conduct by international banking corporations of financial services business in Florida. Section 3 serves to:

- Support the Florida operations of international banking corporations and promote the growth of international financial services to benefit the economy and consumers of this state; and,
- Provide for appropriate supervision and regulatory oversight to ensure that financial services activities of international banking corporations in this state are conducted responsibly and in a safe and sound manner.

Section 7 amends s. 663.04, F.S. Section 7 reduces the time that an international institution must wait to qualify for licensure after experiencing certain changes in status or control (e.g., bankruptcy or government intervention such as bailouts) from seven to three years. The section further authorizes the OFR to permit an international branch, international bank agency, international administrative office, or international representative office to remain operational while the international banking corporation is experiencing certain types of status or control in the home country pursuant to the provisions s. 663.11(11)(1)(b), F.S. (*See* Section 17.) Currently, if an international banking corporation is placed in bankruptcy, conservatorship, receivership, liquidation, or is operating under the direct control of its home government or regulator due to government intervention or other extraordinary actions, then the license of is automatically terminated and that entity may not transact any banking or trust business or maintain any office in Florida. This change may allow the entity to remain open for business to ensure continuity of operations, as issues affecting the home country institution are resolved.

Section 8 adds and redesignates subsections within s. 663.05, F.S. This section creates an abbreviated application process for international banking corporations to establish additional locations in Florida. Currently, international banking corporations are subject to a full licensure process for each new office location. The OFR will maintain the discretion, as provided in current law, to require an international banking corporation seeking such approval to submit a full application. For applications filed on or after January 1, 2018, the time limitations for approval or disapproval must be prescribed by commission rule. Currently, there are no time limitations governing applications for licensure under ch. 663, F.S.

This section expands the group of international financial institutions that may establish facilities or exercise their powers in Florida. Currently, the OFR is not permitted to grant a license to an international banking corporation if the laws of their home country did not contemplate a Florida bank, specifically, establishing a similar type of operation in the international banking corporation’s home country. In order to enforce this requirement, the application for approval to establish an international branch or international bank agency requires the applicant (the international banking corporation) to provide documentation that the international banking corporation is chartered in a jurisdiction in which any bank having its principal place of business in Florida may establish similar facilities or exercise similar powers, or that Federal law permits the appropriate federal regulatory authority to issue a comparable license to the international

banking corporation. This section is amended to provide that reciprocity is dependent upon whether a financial institution based anywhere in the United States, not just in Florida, could establish a similar type of operation in the international banking corporation's home country. This approach also eliminates potential ambiguity since the laws of other countries typically do not contemplate reciprocity on a state level. This section provides technical and conforming changes.

Section 9 amends s. 663.055, F.S. The bill authorizes the OFR to adopt a risk-based approach for capital requirements of international banks. This approach will allow the OFR to evaluate the varying levels and types of risk inherent in the activities of a particular bank. However, the total capital amounts must meet at least the minimum required under s. 658.21(2), F.S. Current statutes contain a static approach for capital requirements:

- \$20 million to establish a representative office; and,
- \$40 million, or between \$20 million and \$40 million if certain conditions are met, to establish an agency, branch, or administrative office.

The commission will establish by rule the criteria for determining the adequacy of an international banking corporation's financial resources prior to establishing an office in Florida. Additionally, the section deletes a provision that references OFR's role in adopting rules to maintain the safe and sound condition of international banking corporations since the OFR does not examine such entities for safety and soundness. Rather, the OFR determines whether the corporation has adequate supervision by the home country supervisor.

Section 10 makes technical changes to s. 663.06, F.S.

Section 11 amends s. 663.0601, F.S. This section authorizes the OFR to implement an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international banking corporations.¹⁹ Subject to certain requirements, in the event that an international banking corporation proposes to acquire, merge, or consolidate with an international banking corporation that currently has an office in Florida, the transaction in the home country is permitted to occur prior to the OFR receiving an application for the resulting entity to have an office in Florida. Currently, as soon as such a transaction occurs, the statute terminates the license of an international banking corporation's Florida office. This change will allow continuity of operations of the Florida office despite a merger, acquisition, or consolidation of the international banking corporation.

Section 12 amends s. 663.061, F.S. This section authorizes additional permissible activities for international bank agencies. This will allow an international bank agency to provide nonresidents with investment management services for domestic investments. Currently, an international bank agency can only do so with regard to international or foreign investments. Additionally, the section clarifies that an international bank agency may engage in any activities permissible for an international administrative office and international representative office. International bank agencies are already permitted by s. 663.06(5)(b), F.S., to engage in those activities.

¹⁹ This provision is modeled after federal regulations [12 C.F.R. s. 211.24(6)].

Sections 13 through 15 clarify the permissible activities of offices of an IBC. **Section 13** amends s. 663.062, F.S. This section clarifies that a representative office of an international banking corporation is not subject to licensure under the newly created part III of ch. 663, F.S., because it may engage in any activities permissible for an ITCRO. **Section 14** amends s. 663.063, F.S., and clarifies that an international administrative office may engage in the activities permissible for an international representative office, which is already permitted by s. 663.06(5)(c), F.S., to engage in those activities. **Section 15** amends s. 663.064, F.S. This section authorizes the commission to prescribe by rule the types of deposits international branches may accept. The current statute does not provide an enumerated list of permissible deposits. The section also clarifies that an international branch may engage in any activities permissible for an international bank agency, international administrative office, and international representative office. International branches are already permitted by s. 663.06(5)(a), F.S., to engage in those activities.

Section 16 amends s. 663.09, F.S. This section revises record requirements by allowing a licensed office to maintain certain documents in a language other than English. Currently, each international banking corporation with a licensed office in Florida must keep a correct and complete books and records of that office, policies and procedures, ledger, charter, and bylaws in the English language. The OFR maintains the right to request any document it deems necessary for regulation and supervision be translated into English at the expense of the international banking corporation.

Section 17 amends s. 663.11, F.S., to allow an international branch, international bank agency, international administrative office, or international representative office to remain open and in operation while the international banking corporation is experiencing certain types of changes in status or control (e.g., bankruptcy or government intervention such as bailouts) if certain conditions are met. Within 30 days of a change in status or control, the licensee must provide the OFR with a plan to wind down the business, or as an alternative, the licensee may submit an interim operational plan for its continued operations. If the OFR determines that the plan does not allow for the conduct of business in a safe and sound manner, the OFR must revoke the license. This change may allow continuity of operations as operations in the home country institution are being resolved.

Section 18 amends s. 663.12, F.S. This section removes language relating to the nonrefundable application fee for establishing an international trust company representative office since the regulation of these entities is transferred to part III.

Section 19 makes technical changes to s. 663.17, F.S.

Regulation of International Trust Entities and ITCROs

Sections 20 through 37 create part III of ch. 663, F.S., (ss. 663.4001 - 663.415, F.S.) to provide for the regulation of licensed offices of international trust entities and be applicable to trust business. According to the OFR, these provisions will create a level playing field between the representative offices of an international banking corporation and the similarly functioning ITCROs of an international trust entity.

Section 21 creates s. 663.4001, F.S. This section establishes a legal and regulatory framework for the conduct by international trust entities within the state.

Section 22 creates s. 663.401, F.S., and provides definitions for part III. The definition of “international trust company representative office” is transferred from part I and other definitions are provided.

Section 23 creates s. 663.402, F.S. This section provides applicability of the financial institutions codes and specifies that the financial institutions codes do not authorize an international trust entity to conduct trust business in Florida.

Section 24 creates s. 663.403, F.S., and provides applicability of the Florida Business Corporation Act. This section is consistent with s. 663.03, F.S., which applies to international banking corporations and their Florida offices.

Section 25 creates s. 663.404, F.S. This section specifies requirements an international trust entity must meet to establish and maintain an ITCRO in Florida. This section also permits an ITCRO to remain open while the international trust entity is experiencing certain types of changes in status, or control (e.g., bankruptcy or government intervention such as bailouts) pursuant to the provisions of s. 663.412(1)(b), F.S., (*See* Section 34). Currently, termination of an ITCRO’s license occurs if the home country institution experiences one of these events. This change ensures continuity of operations as issues in the home country institution are resolved.

Section 26 creates s. 663.405, F.S. This section provides that ITCROs are not required to produce certain books and records in response to a civil subpoena if the books and records are maintained outside of the United States and not in its possession or control of the ITCRO. Section 663.021, F.S., providing the same language, had previously applied to international trust company representative offices along with all offices of international banking corporations. Since the bill transfers the regulation of ITCRO to part III, this is a conforming change and provides parity with the treatment of Florida offices of an international banking corporation.

Sections 27, 34, 35, and 37 create ss. 663.406, 663.412, 663.413 and 663.415, F.S., respectively. These sections specify licensure requirements and grounds for termination of a license of an office of an international trust entity. The international trust entity must submit an application along with a nonrefundable \$5,000 filing fee, and provide detailed background information to the OFR. The section authorizes the OFR to allow an international trust entity meeting certain requirements to establish additional locations in Florida by submitting an abbreviated application to the OFR. This provision creates parity between ITCROs and the Florida offices of an international banking corporation. (*See* Section 8.) The commission is authorized to adopt rules. An ITE that maintains an office licensed under part III is also responsible for paying for the costs of OFR examinations.

The bill delineates the circumstances that would result in the termination of a license of an office of an international trust entity. The section also authorizes the OFR to permit an ITCRO to remain open and operational while the international trust entity is experiencing certain types of status or control if certain conditions are met. Currently, any international banking corporation (the definition of which encompasses an ITCRO) placed in bankruptcy, conservatorship,

receivership, liquidation, or is operating under the direct control of its home government or regulator due to government intervention or other extraordinary actions, may no longer transact any banking or trust business or maintain any office in Florida to carry on such business. This provision may provide continuity of operations as the entity addresses issues in the home country institution. The bill provides similar flexibility for international banking corporations (*See* Section 7.). The section maintains parity between international trust company representative offices and the Florida offices of an international banking corporation.

Section 28 creates s. 663.407, F.S., and authorizes the OFR to adopt a risk-based approach for capital requirements of international trust entities rather than requiring the same minimum amount for all entities. Currently, in s. 663.055, F.S., of part I. addresses ITCROs, which requires the home country institution to meet a minimum a \$20 million capital requirement in order to establish a representative office.

Section 29 creates s. 663.408, F.S., and establishes the requirements and limitations for the licenses of international trust companies. The section specifies grounds for the OFR to revoke a license to operate an ITCRO and provides rulemaking authority for the commission to prescribe procedures for the surrender of a license. This is consistent with the provisions of s. 663.06, F.S., which applies to offices of an international banking corporation.

Section 30 creates s. 663.4081, F.S. This section authorizes the OFR to issue an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international trust entities. Subject to certain requirements, in the event that an international trust entity proposes to acquire, merge, or consolidate with another international trust entity that currently has an office in Florida, the transaction in the home country is permitted to occur prior to the OFR receiving an application for the resulting entity to have an office in Florida. Currently, as soon as the transaction occurs, the license for the Florida office is terminated. This change permits continuity of operations of the Florida office despite a merger, acquisition, or consolidation of the international banking corporation, and ensures parity between the Florida offices of an international banking corporation and ITCROs.

Section 31 transfers and renumbers s. 663.0625, F.S., to s. 663.409, F.S. This section transfers and clarifies the existing ITCRO permissible activities from part I and provides that a licensed ITCRO may engage in any activities permissible for a limited service affiliate under part IV.

Section 32 creates s. 663.410, F.S. This section requires a licensed ITCRO to certify to the OFR the amount of its capital accounts, both prior to opening an ITCRO and on an annual basis thereafter by the specified date. This section is consistent with s. 663.08, F.S., which requires international banking corporations licensed to operate a Florida office must provide the same certification. This section maintains parity between international trust entities operating ITCROs in Florida and international banking corporations operating offices in Florida.

Section 33 creates s. 663.411, F.S. This section requires an international trust entity that operates an office in Florida to maintain certain reports and records. Failure to comply with this provision is grounds for suspension or revocation of any license under part III.

Section 36 creates s. 663.414, F.S. This section authorizes the commission to adopt rules for the administration of part III. This section provides an exemption to the applicability of ss. 120.54(3)(b) and 120.541, F.S., which requires a statement of regulatory costs, due to difficulty in obtaining economic data. An identical exemption exists in s. 663.13, F.S. This provision ensures parity between ITCROs and the Florida offices of an international banking corporation.

Regulation of Limited Service Affiliates of International Trust Entities

Sections 38 through 48 create part IV of ch. 663 (ss. 663.530 - 663.540, F.S.) to establish the regulatory framework for limited service affiliates (LSA) of international trust entities. Unlike an ITCRO, whose license for operation is issued to an international trust entity, a limited service affiliate is a stand-alone entity whose registration is independent of any affiliated international trust entities. While an ITCRO may only provide services for the international trust entity licensed to operate that office, a limited service affiliate may provide services for any number of affiliated international trust entities. Since a limited service affiliate is a stand-alone entity and is not subject to any other regulations, the permissible activities are more limited than that of an ITCRO.

Section 39 creates s. 663.530, F.S. This section creates definitions for part IV and defines the term “limited service affiliate” to mean a marketing and liaison office that engages in the permissible activities enumerated in s. 663.531, F.S., for the benefit of an international trust entity.

Section 40 creates s. 663.531, F.S., and specifies the permissible activities of LSA. Permissible activities include marketing and liaison activities, advertising and marketing at trade events, and transmitting documents between affiliated international trust entities and their clients. This section further:

- Provides descriptions of impermissible activities and includes acting as a fiduciary, advertising to the public, and otherwise engaging in banking or trust business;
- Prescribes guidance for permissible website usage and mandatory disclosure; and,
- Authorizes the OFR to enforce the chapter through the remedies and penalties available to it through the financial institutions codes.

Section 41 creates s. 663.532, F.S., to provide no later than March 1, 2018, a person or entity that previously qualified under the moratorium in s. 663.041, F.S., must apply for registration as a LSA or cease doing business in Florida. Notwithstanding the expiration of the moratorium, a person or entity that previously qualified under such moratorium may remain open and operational but must refrain from engaging in new lines of business in Florida until the disposition of the registration as a LSA.

Section 42 as created by this act, s. 663.5333, F.S., is amended to provide the requirements and process for the registration of limited service affiliates. An applicant must submit a nonrefundable \$2,500 registration fee along with a written notice containing specified information regarding the registrant. This information includes services and activities of the applicant on behalf of the international trust entity (ITE), disclosures about officers, directors, and other parties who will be part of the operations of the limited service affiliate, and

disclosures about the ITEs that the limited service affiliate will be providing services for in Florida. Once OFR deems the notice complete, the OFR has 120 days to register the limited services affiliates or issue a denial with notice of ch. 120, F.S., rights for denied applicants. This section authorizes the OFR to suspend, revoke, or deny a registration in certain circumstances. A person or entity in operation as of January 1, 2018, which meets the definition of a LSA under the moratorium must apply for registration as LSA on or before March 31, 2018, or cease doing business in Florida.

Section 43 creates s. 663.5395, F.S. This section provides for civil action subpoena enforcement. A LSA is not required to produce certain books and records pertaining to a customer of an affiliated ITE, located outside of the United States, in response to a civil subpoena if the book or record is maintained outside of the United States and is not in the possession or control of the affiliated LSA. This section does not apply to subpoenas issued by or on behalf of a federal, state, or local government law enforcement agency, administrative or regulatory agency, legislative body or grand jury and does not limit the power of the OFR to access all books and records under regulatory and supervisory powers under the financial institution codes. Parts I and III have the same provision applicable to international banking corporations and ITCROs, respectively.

Section 44 creates s. 663.533, F.S. This section provides applicability of the financial institutions codes to the regulation of the LSA, which create parity with the regulation of Florida offices of international banking corporations and international trust company representative offices, which are subject to the financial institutions codes in Sections 5 and 23 of the bill, respectively.

Section 45 requires registrants to report any changes in the information provided to the OFR during registration.

Section 46 requires a disclosure that must accompany any marketing or advertising materials disseminated by a limited service affiliate. The disclosure notifies those in receipt of the marketing or advertising materials that the OFR does not have regulatory oversight of the affiliated international trust entities served by the limited service affiliate. Further, the OFR does not provide safety and soundness oversight of the LSA. The disclosure also notifies those in receipt of the marketing or advertising materials that the limited service affiliate may not act as a fiduciary. The disclosure delineates impermissible activities and puts the consumer on notice of which activities are impermissible.

Section 47 creates s. 663.536, F.S., to require a limited service affiliate to maintain specified records of their activities at trade, industry, or professional events.

Section 48 creates s. 663.537, F.S. This section authorizes the OFR to examine and investigate a limited service affiliate pursuant to ensure compliance with the financial institutions codes. The limited service affiliate is responsible for the payment of the examination fee. Further, this section:

- Establishes the commission is authorized to adopt rules to define the procedure for payment of the examination fees; and
- Requires submission of all fees in the manner prescribed and deposited into the Financial Institutions' Regulatory Trust Fund for administering part IV.

Section 49 creates s. 663.538, F.S. This section establishes grounds for the suspension, revocation, or voluntary surrender of a registration and authorizes the commission to adopt rules. A limited service affiliate seeking to surrender its registration must notify the OFR of its intention to do so at least 60 days prior to the date of the proposed surrender. The section authorizes the OFR to conduct an examination of the books and records of a limited service affiliate who proposes to surrender their registration to ensure the winding down of operations.

Section 50 creates s. 663.539, F.S. This section requires renewal of registrations every two years. At renewal, a registrant must provide any information as required by the commission, and pay a \$500 nonrefundable renewal fee. Further, a registrant must provide a statement under penalty of perjury that the information for the purposes of renewal is true and correct.

Section 51 reenacts subsection (4) of section 663.16, F.S., to incorporate an amendment to s. 663.01, F.S.

Section 52 provides this act will take effect January 1, 2018.

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:

The bill creates registration fees, renewal fees, examination fees, and late fees that are applicable to offices of international trust entities and limited service affiliates under parts III and IV. International banking corporations are already subject to such fees under part I.

B. Private Sector Impact:

The bill modernizes and streamlines the regulatory framework of international financial services under ch. 663, F.S., thereby reducing regulatory burden and ensuring Florida remains competitive with other states.

C. **Government Sector Impact:**

The bill has an indeterminate increase in revenues relating to new regulatory fees and fines. While the Office of Financial Regulation (OFR) may have additional workload, OFR states that it can maintain regulatory oversight with current staffing levels.²⁰

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.059, 663.01, 663.02, 663.021, 663.04, 663.05, 663.055, 663.06, 663.061, 663.062, 663.063, 663.064, 663.09, 663.11, 663.12, 663.17, and 663.0625.

This bill creates the following sections of the Florida Statutes: 663.001, 663.0601, 663.4001, 663.401, 663.402, 663.403, 663.404, 663.405, 663.406, 663.407, 663.408, 663.4081, 663.410, 663.411, 663.412, 663.413, 663.414, 663.415, 663.530, 663.531, 663.532, 663.533, 663.534, 663.535, 663.537, 663.538, and 663.539.

This bill reenacts section 663.16 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.)

Recommended CS/CS by Appropriations Subcommittee on General Government on March 29, 2017:

The committee substitute provides specific conditions that must be met for the Office of Financial Regulation (OFR) to permit a licensed office to remain open for business as issues affecting the home country institutions are resolved. The committee substitute also clarifies the registration process for limited service affiliates.

CS by Banking and Insurance on March 6, 2017:

The CS clarifies the registration process for limited service affiliates (LSAs) and the Office of Financial Regulation's authority to take action against LSAs. Further, the LSA is not required to produce certain books and records pertaining to a customer of an affiliated international trust entity (ITE) that is located outside of the United States in response to a civil subpoena if the book or record is maintained outside of the United States and are not in the possession or control of the affiliated LSA with exceptions.

²⁰ Office of Financial Regulation, *2017 Legislative Bill Analysis of SB 736* (on file with Senate Committee on Banking and Insurance).

B. Amendments:

None.

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	.	
04/13/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Mayfield) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (i) 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:

(i) "Financial institution" means a state or federal



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11 savings or thrift association, bank, savings bank, trust
12 company, international bank agency, international banking
13 corporation, international branch, international representative
14 office, international administrative office, international trust
15 entity, international trust company representative office,
16 qualified limited service affiliate, credit union, or an
17 agreement corporation operating pursuant to s. 25 of the Federal
18 Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation
19 organized pursuant to s. 25(a) of the Federal Reserve Act, 12
20 U.S.C. ss. 611 et seq.

21 Section 2. Subsection (1) and paragraph (b) of subsection
22 (2) of section 655.059, Florida Statutes, are amended to read:

23 655.059 Access to books and records; confidentiality;
24 penalty for disclosure.—

25 (1) The books and records of a financial institution are
26 confidential and shall be made available for inspection and
27 examination only:

28 (a) To the office or its duly authorized representative;

29 (b) To any person duly authorized to act for the financial
30 institution;

31 (c) To any federal or state instrumentality or agency
32 authorized to inspect or examine the books and records of an
33 insured financial institution;

34 (d) With respect to an international banking corporation or
35 international trust entity, to the home-country supervisor of
36 the international banking corporation or international trust
37 entity, provided:

38 1. The home-country supervisor provides advance notice to
39 the office that the home-country supervisor intends to examine



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40 the Florida office of the international banking corporation or
41 international trust entity. Such examination may be conducted
42 onsite or offsite and may include ongoing reporting by the
43 Florida office of the international banking corporation or
44 international trust entity to the home-country supervisor.

45 2. The home-country supervisor confirms to the office that
46 the purpose of the examination is to ensure the safety and
47 soundness of the international banking corporation or
48 international trust entity.

49 3. The books and records pertaining to customer deposit,
50 investment, ~~and~~ custodial, and trust accounts are not disclosed
51 to the home-country supervisor.

52 4. At any time during the conduct of the examination, the
53 office reserves the right to have an examiner present, ~~or~~ to
54 participate jointly in the examination, or to receive copies of
55 all information provided to the home-country supervisor.

56
57 As used in ~~For purposes of~~ this paragraph, the term "home-
58 country supervisor" means the governmental entity in the
59 international banking corporation's or international trust
60 entity's home country with responsibility for the supervision
61 and regulation of the safety and soundness of the international
62 banking corporation or international trust entity;

63 (e) As compelled by a court of competent jurisdiction,
64 pursuant to a subpoena issued pursuant to the Florida Rules of
65 Civil Procedure, the Florida Rules of Criminal Procedure, or the
66 Federal Rules of Civil Procedure, or pursuant to a subpoena
67 issued in accordance with state or federal law. Before ~~Prior to~~
68 the production of the books and records of a financial



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69 institution, the party seeking production must reimburse the
70 financial institution for the reasonable costs and fees incurred
71 in compliance with the production. If the parties disagree
72 regarding the amount of reimbursement, the party seeking the
73 records may request the court or agency having jurisdiction to
74 set the amount of reimbursement;

75 (f) As compelled by legislative subpoena as provided by
76 law, in which case the provisions of s. 655.057 apply;

77 (g) Pursuant to a subpoena, to any federal or state law
78 enforcement or prosecutorial instrumentality authorized to
79 investigate suspected criminal activity;

80 (h) As authorized by the board of directors of the
81 financial institution; or

82 (i) As provided in subsection (2).

83 (2)

84 (b) The books and records pertaining to trust accounts and
85 the deposit accounts and loans of depositors, borrowers,
86 members, and stockholders of any financial institution shall be
87 kept confidential by the financial institution and its
88 directors, officers, and employees and may ~~shall~~ not be released
89 except upon express authorization of the account holder as to
90 her or his own accounts, loans, or voting rights. However,
91 information relating to any loan made by a financial institution
92 may be released without the borrower's authorization in a manner
93 prescribed by the board of directors for the purpose of meeting
94 the needs of commerce and for fair and accurate credit
95 information. Information may also be released, without the
96 authorization of a member or depositor but in a manner
97 prescribed by the board of directors, to verify or corroborate



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98 the existence or amount of a customer's or member's account when
99 such information is reasonably provided to meet the needs of
100 commerce and to ensure accurate credit information. In addition,
101 a financial institution, affiliate, and its subsidiaries, and
102 any holding company of the financial institution or subsidiary
103 of such holding company, may furnish to one another information
104 relating to their customers or members, subject to the
105 requirement that each corporation receiving information that is
106 confidential maintain the confidentiality of such information
107 and not provide or disclose such information to any unaffiliated
108 person or entity. Notwithstanding this paragraph, ~~nothing in~~
109 this subsection does not shall prohibit:

110 1. A financial institution from disclosing financial
111 information as referenced in this subsection as authorized
112 permitted by Pub. L. No. 106-102 (1999), as set forth in 15
113 U.S.C.A. s. 6802, as amended.

114 2. The Florida office of the international banking
115 corporation or international trust entity from sharing books and
116 records under this subsection with the home-country supervisor
117 in accordance with subsection (1).

118 Section 3. Section 663.001, Florida Statutes, is created in
119 part I of chapter 663, Florida Statutes, to read:

120 663.001 Purpose.—The purpose of this part is to establish a
121 legal and regulatory framework for the conduct by international
122 banking corporations of financial services business in this
123 state. This part is intended to:

124 (1) Support the Florida operations of international banking
125 corporations and promote the growth of international financial
126 services to benefit the economy and consumers in this state.



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127 (2) Provide for appropriate supervision and regulatory
128 oversight to ensure that financial services activities of
129 international banking corporations in this state are conducted
130 responsibly and in a safe and sound manner.

131 Section 4. Subsections (6) and (9) and paragraph (b) of
132 subsection (11) of section 663.01, Florida Statutes, are amended
133 to read:

134 663.01 Definitions.—As used in this part, the term:

135 (6) "International banking corporation" means a banking
136 corporation organized and licensed under the laws of a foreign
137 country. The term ~~"international banking corporation"~~ includes,
138 without limitation, a foreign commercial bank, foreign merchant
139 bank, or other foreign institution that engages in banking
140 activities usual in connection with the business of banking in
141 the country where such foreign institution is organized or
142 operating, including a corporation: the sole shareholders of
143 which are one or more international banking corporations or
144 holding companies which own or control one or more international
145 banking corporations which are authorized to carry on a banking
146 business, or a central bank or government agency of a foreign
147 country and any affiliate or division thereof; which has the
148 power to receive deposits from the general public in the country
149 where it is chartered and organized; and which is under the
150 supervision of the central bank or other bank regulatory
151 authority of such country. The term also includes ~~foreign trust~~
152 ~~companies, or any similar business entities, including, but not~~
153 ~~limited to,~~ foreign banks with fiduciary powers which, ~~that~~
154 conduct trust business as defined in the financial institutions
155 codes.



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156 ~~(9) "International trust company representative office"~~
157 ~~means an office of an international banking corporation or trust~~
158 ~~company organized and licensed under the laws of a foreign~~
159 ~~country which office is established or maintained in this state~~
160 ~~for the purpose of engaging in nonfiduciary activities described~~
161 ~~in s. 663.0625, or any affiliate, subsidiary, or other person~~
162 ~~that engages in such activities on behalf of such international~~
163 ~~banking corporation or trust company from an office located in~~
164 ~~this state.~~

165 (10)~~(11)~~ "Nonresident" means:

166 (b) A person, other than an individual, whose principal
167 place of business or domicile is outside the United States and
168 includes a person who conducts a majority of its business
169 activities in a foreign country and any foreign government and
170 its subdivision, agencies, and instrumentalities. Any person who
171 conducts business in the United States is considered to have its
172 principal place of business outside the United States if any one
173 of the following requirements is satisfied for its most recent
174 fiscal year:

- 175 1. Its assets located outside the United States exceed its
176 assets located within the United States;
- 177 2. Its gross revenues generated outside the United States
178 exceed its gross revenues generated within the United States; or
- 179 3. Its payroll expenses incurred outside the United States
180 exceed its payroll expenses incurred within the United States.

181 Section 5. Section 663.02, Florida Statutes, is amended to
182 read:

183 663.02 Applicability of the financial institutions codes
184 ~~state banking laws.~~



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185 (1) International banking corporations having offices in
186 this state are subject to all the provisions of the financial
187 institutions codes and ~~chapter 655~~ as though such corporations
188 were state banks ~~or trust companies~~, except where it may appear,
189 from the context or otherwise, that such provisions are clearly
190 applicable only to banks ~~or trust companies~~ organized under the
191 laws of this state or the United States. Without limiting the
192 foregoing general provisions, it is the intent of the
193 Legislature that the following provisions are applicable to such
194 banks or trust companies: s. 655.031, relating to administrative
195 enforcement guidelines; s. 655.032, relating to investigations,
196 subpoenas, hearings, and witnesses; s. 655.0321, relating to
197 hearings, proceedings, and related documents and restricted
198 access thereto; s. 655.033, relating to cease and desist orders;
199 s. 655.037, relating to removal by the office of an officer,
200 director, committee member, employee, or other person; s.
201 655.041, relating to administrative fines and enforcement; s.
202 655.50, relating to the control of money laundering and
203 terrorist financing; and any law for which the penalty is
204 increased under s. 775.31 for facilitating or furthering
205 terrorism. International banking corporations do not have the
206 powers conferred on domestic banks by s. 658.60, relating to
207 deposits of public funds. Chapter 687, relating to interest and
208 usury, applies to all bank loans.

209 (2) Neither an international bank agency nor an
210 international branch shall have any greater right under, or by
211 virtue of, this section than is granted to banks organized under
212 the laws of this state. Legal and financial terms used herein
213 shall be deemed to refer to equivalent terms used by the country



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214 in which the international banking corporation is organized.
215 This chapter and the financial institutions codes may not be
216 construed to authorize any international banking corporation ~~or~~
217 ~~trust company~~ to conduct trust business, as defined in s.
218 658.12, from an office in this state except for those activities
219 specifically authorized by s. 663.061(5) ~~ss. 663.061(5) and~~
220 ~~663.0625~~.

221 Section 6. Subsection (1) of section 663.021, Florida
222 Statutes, is amended to read:

223 663.021 Civil action subpoena enforcement.—

224 (1) Notwithstanding s. 655.059, an international
225 representative office, international bank agency, international
226 branch, ~~international trust company representative office~~, or
227 international administrative office established under this
228 chapter is not required to produce a book or record pertaining
229 to a deposit account, investment account, or loan of a customer
230 of the international banking corporation's offices that are
231 located outside the United States or its territories in response
232 to a subpoena if the book or record is maintained outside the
233 United States or its territories and is not in the possession,
234 custody, or control of the international banking corporation's
235 office, agency, or branch established in this state.

236 Section 7. Section 663.04, Florida Statutes, is amended to
237 read:

238 663.04 Requirements for carrying on financial institution
239 business.—An international banking corporation ~~or trust company~~,
240 or any affiliate, subsidiary, or other person or business entity
241 acting as an agent for, on behalf of, or for the benefit of such
242 international banking corporation ~~or trust company~~ who engages



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243 in such activities from an office located in this state, may not
244 transact a banking or trust business, or maintain in this state
245 any office for carrying on such business, or any part thereof,
246 unless such corporation, ~~trust company~~, affiliate, subsidiary,
247 person, or business entity:

248 (1) Has been authorized by its charter to carry on a
249 banking or trust business and has complied with the laws of the
250 jurisdiction in which it is chartered.

251 (2) Has furnished to the office such proof as to the nature
252 and character of its business and as to its financial condition
253 as the commission or office requires.

254 (3) Has filed with the office a certified copy of that
255 information required to be supplied to the Department of State
256 by those provisions of part I of chapter 607 which are
257 applicable to foreign corporations.

258 (4) Has received a license duly issued to it by the office.

259 (5) Has sufficient capital in accordance with the
260 requirements of capital accounts no less than the minimums
261 required per s. 663.055 and the rules adopted thereunder and is
262 not imminently insolvent or insolvent, as those terms are
263 defined in per s. 655.005(1).

264 (6) (a) Is not in bankruptcy, conservatorship, receivership,
265 liquidation, or similar status under the laws of any country.

266 (b) Is not operating under the direct control of the
267 government, regulatory, or supervisory authority of the
268 jurisdiction of its incorporation through government
269 intervention or any other extraordinary actions.

270 (c) Has not been in such status or control at any time
271 within the 3 7 years preceding the date of application for a



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272 license.

273

274 Notwithstanding paragraphs (a) and (b), the office may permit an
275 international branch, international bank agency, international
276 administrative office, or international representative office to
277 remain open and in operation pursuant to s. 663.11(1)(b).

278 Section 8. Present subsections (4) through (8) of section
279 663.05, Florida Statutes, are redesignated as subsections (5)
280 through (9), respectively, a new subsection (4) is added to that
281 section, and present subsections (4), (5), and (6), paragraph
282 (c) of present subsection (7), and present subsection (8) of
283 that section are amended, to read:

284 663.05 Application for license; approval or disapproval.-

285 (4) Notwithstanding subsection (1), an international
286 banking corporation that has operated an international branch,
287 international bank agency, international administrative office,
288 or international representative office in this state for a
289 minimum of 3 years in a safe and sound manner, as defined by
290 commission rule, and that is otherwise eligible to establish an
291 additional office may establish one or more additional
292 international branches, international bank agencies,
293 international administrative offices, or international
294 representative offices by providing an abbreviated application
295 and paying the appropriate license fee pursuant to s. 663.12.
296 This subsection does not permit an international banking
297 corporation to file an abbreviated application for any license
298 type whose permissible activities are broader than those in
299 which the international banking corporation is currently
300 authorized to engage.



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301 (5)-(4) An application filed pursuant to this section must
302 ~~shall~~ be made on a form prescribed by the commission office and
303 must shall contain such information as the commission or office
304 requires.

305 (6)-(5) The office may, in its discretion, approve or
306 disapprove the application, but it may shall not approve the
307 application unless, in its opinion, the applicant meets each and
308 every requirement of this part and any other applicable
309 provision of the financial institutions codes. The office shall
310 approve the application only if it has determined that the
311 directors, executive officers, and principal shareholders of the
312 international banking corporation are qualified by reason of
313 their financial ability, reputation, and integrity and have
314 sufficient banking and other business experience to indicate
315 that they will manage and direct the affairs of the
316 international banking corporation in a safe, sound, and lawful
317 manner. In the processing of an application filed pursuant to
318 this section applications, the time limitations under the
319 Administrative Procedure Act do shall not apply as to approval
320 or disapproval of the application. For applications filed on or
321 after January 1, 2018, the time limitations for approval or
322 disapproval of an application must be prescribed by rule of the
323 commission.

324 (7)-(6) The office may not issue a license to an
325 international banking corporation unless:

326 (a) It is chartered in a jurisdiction in which any
327 financial institution licensed or chartered by any state or any
328 federal bank regulatory agency in the United States bank or
329 trust company having its principal place of business in this



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330 ~~state~~ may establish similar facilities or exercise similar
331 powers; or

332 (b) Federal law permits the appropriate federal regulatory
333 authority to issue a comparable license to the international
334 banking corporation.

335 (8)~~(7)~~ The office may not issue a license to an
336 international banking corporation for the purpose of operating:

337 ~~(c) A trust representative office in this state unless the~~
338 ~~corporation:~~

339 1. ~~Holds an unrestricted license to conduct trust business~~
340 ~~in the foreign country under the laws of which it is organized~~
341 ~~and chartered.~~

342 2. ~~Has been authorized by the foreign country's trust~~
343 ~~business regulatory authority to establish the proposed~~
344 ~~international trust representative office.~~

345 3. ~~Is adequately supervised by the central bank or trust~~
346 ~~regulatory agency in the foreign country in which it is~~
347 ~~organized and chartered.~~

348 4. ~~Meets all requirements under the financial institutions~~
349 ~~codes for the operation of a trust company or trust department~~
350 ~~as if it were a state chartered trust company or bank authorized~~
351 ~~to exercise fiduciary powers.~~

352 (9)~~(8)~~ The commission shall establish, by rule, the general
353 principles which shall determine the adequacy of supervision of
354 an international banking corporation's foreign establishments.
355 These principles shall be based upon the need for cooperative
356 supervisory efforts and consistent regulatory guidelines and
357 shall address, at a minimum, the capital adequacy, asset
358 quality, management, earnings, liquidity, internal controls,



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359 audits, and foreign exchange operations and positions of the
360 international banking corporation. This subsection does ~~shall~~
361 not require examination by the home-country regulatory
362 authorities of any office of an international banking
363 corporation in this state. The commission may also establish, by
364 rule, other standards for approval of an application for a
365 license as considered necessary to ensure the safe and sound
366 operations of the international banking corporation ~~bank or~~
367 ~~trust representative office~~ in this state.

368 Section 9. Section 663.055, Florida Statutes, is amended to
369 read:

370 663.055 Capital requirements.—

371 (1) To qualify for a license under ~~the provisions of this~~
372 part, the proposed capitalization of the international banking
373 corporation must be in such amount as the office determines is
374 necessary, taking into consideration the risk profile of the
375 international banking corporation and the ability of the
376 international banking corporation to operate a licensed office
377 in a safe and sound manner. In making this determination, the
378 office must consider the financial resources of the
379 international banking corporation, including an international
380 banking corporation must have net capital accounts, calculated
381 according to United States generally accepted accounting
382 principles and practices, of at least:

383 (a) The international banking corporation's current and
384 projected capital position, profitability, level of
385 indebtedness, and business and strategic plans ~~Forty million~~
386 ~~dollars for the establishment of an international bank agency,~~
387 ~~an international branch, or an international administrative~~



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388 ~~office; or~~

389 (b) The financial condition of any of the international
390 banking corporation's existing offices located in the United
391 States; ~~Twenty million dollars for the establishment of an~~
392 ~~international representative office or international trust~~
393 ~~representative office.~~

394 (c) The minimum capital requirements of the international
395 banking corporation's home-country jurisdiction; and

396 (d) The capital ratio standards used in the United States
397 and in the international banking corporation's home-country
398 jurisdiction.

399 (2) The proposed capitalization of the international
400 banking corporation must be in such amount as the office deems
401 adequate, but in no case may the total capital accounts of the
402 international banking corporation be less than the minimum
403 required under s. 658.21(2) to establish a state bank
404 ~~Notwithstanding the provisions of paragraph (1)(a), the office~~
405 ~~may approve an application for a license to establish an~~
406 ~~international bank agency, an international branch, or an~~
407 ~~international administrative office if:~~

408 ~~(a) The international banking corporation is licensed to~~
409 ~~receive deposits from the general public in the country where it~~
410 ~~is organized and licensed and to engage in such other activities~~
411 ~~as are usual in connection with the business of banking in such~~
412 ~~country;~~

413 ~~(b) The office receives a certificate that is issued by the~~
414 ~~banking or supervisory authority of the country in which the~~
415 ~~international banking corporation is organized and licensed and~~
416 ~~states that the international banking corporation is duly~~



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417 ~~organized and licensed and lawfully existing in good standing,~~
418 ~~and is empowered to conduct a banking business; and~~

419 ~~(c) The international banking corporation has been in the~~
420 ~~business of banking for at least 10 years and is ranked by the~~
421 ~~banking or supervisory authority of the country in which it is~~
422 ~~organized and licensed as one of the five largest banks in that~~
423 ~~country in terms of domestic deposits, as of the date of its~~
424 ~~most recent statement of financial condition. However, in no~~
425 ~~event shall the office approve an application under this~~
426 ~~subsection for any international banking corporation with~~
427 ~~capital accounts of less than \$20 million.~~

428 ~~(3) The office may specify such other conditions as it~~
429 ~~determines are appropriate, considering the public interest and,~~
430 ~~the need to maintain a safe, sound, and competitive banking~~
431 ~~system in this state, and the preservation of an environment~~
432 ~~conducive to the conduct of an international banking business in~~
433 ~~this state. In translating the capital accounts of an~~
434 ~~international banking corporation, the office may consider~~
435 ~~monetary corrections accounts that reflect results consistent~~
436 ~~with the requirements of generally accepted accounting~~
437 ~~principles in the United States.~~

438 ~~(4) For the purpose of this part, the capital accounts of~~
439 ~~and capital ratio standards for an international banking~~
440 ~~corporation must ~~shall~~ be determined in accordance with rules~~
441 ~~adopted by the commission. In adopting such rules, the~~
442 ~~commission shall consider similar rules adopted by bank~~
443 ~~regulatory agencies in the United States and the need to provide~~
444 ~~reasonably consistent regulatory requirements for international~~
445 ~~banking corporations ~~which will maintain the safe and sound~~~~



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446 ~~condition of international banking corporations~~ doing business
447 in this state, as well as capital adequacy standards of an
448 international banking corporation's home-country jurisdiction.

449 Section 10. Subsections (1) and (3) of section 663.06,
450 Florida Statutes, are amended to read:

451 663.06 Licenses; permissible activities.—

452 (1) (a) An international banking corporation licensed to
453 operate an office in this state may engage in the business
454 authorized by this part at the office specified in such license
455 for an indefinite period.

456 (b) An international banking corporation may operate more
457 than one licensed office, each at a different place of business,
458 provided that each office is ~~shall be~~ separately licensed.

459 (c) A ~~Ne~~ license is not transferable or assignable.
460 However, the location of a licensed office may be changed after
461 notification of the office.

462 (d) Every such license must ~~shall~~ be, at all times,
463 conspicuously displayed in the place of business specified
464 therein.

465 (3) The license for any international banking corporation
466 office in this state may be suspended or revoked by the office,
467 with or without examination, upon its determination that the
468 international banking corporation or the licensed office does
469 not meet all requirements for original licensing. Additionally,
470 the office shall revoke the license of any licensed office that
471 the office determines has been inactive for 6 months or longer.
472 The commission may by rule prescribe additional conditions or
473 standards under which the license of an international bank
474 agency, international branch, international representative



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475 office, ~~international trust company representative office,~~ or
476 international administrative office may be suspended or revoked.

477 Section 11. Section 663.0601, Florida Statutes, is created
478 to read:

479 663.0601 After-the-fact licensure process in the event of
480 the acquisition, merger, or consolidation of international
481 banking corporations.-If an international banking corporation
482 proposes to acquire, merge, or consolidate with an international
483 banking corporation that presently operates an international
484 branch, international bank agency, international administrative
485 office, or international representative office licensed in this
486 state, the office may authorize the currently licensed
487 international branch, international bank agency, international
488 administrative office, or international representative office to
489 remain open and in operation after consummation of the proposed
490 acquisition, merger, or consolidation, if the acquiring
491 international banking corporation files an after-the-fact
492 application and all of the following conditions are met:

493 (1) The international banking corporation or corporations
494 resulting from the acquisition, merger, or consolidation will
495 not directly or indirectly own or control more than 5 percent of
496 any class of the voting securities of, or control, a United
497 States bank.

498 (2) Before consummation of the acquisition, merger, or
499 consolidation, the international banking corporation currently
500 licensed to operate an international branch, international bank
501 agency, international administrative office, or international
502 representative office in this state must provide the office at
503 least 30 days' advance written notice, as prescribed by rules



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504 adopted by the commission, of the proposed acquisition, merger,
505 or consolidation.

506 (3) Before consummation of the acquisition, merger, or
507 consolidation, each international banking corporation commits in
508 writing that it will either:

509 (a) Comply with the conditions in subsections (1) and (2)
510 and file an after-the-fact application for a license under s.
511 663.05(1) within 60 days after consummation of the proposed
512 acquisition, merger, or consolidation; and refrain from engaging
513 in new lines of business and from otherwise expanding the
514 activities of such establishment in this state until the
515 disposition of the after-the-fact license application, in
516 accordance with chapter 120; or

517 (b) Promptly wind down and close any international branch,
518 international bank agency, international administrative office,
519 or international representative office in this state if the
520 international banking corporations that are party to the
521 acquisition, merger, or consolidation elect not to file an
522 application for a license in accordance with paragraph (a); and,
523 before such wind-down and closure, refrain from engaging in new
524 lines of business or otherwise expanding the activities of such
525 establishment in this state.

526 Section 12. Subsection (1) of section 663.061, Florida
527 Statutes, is amended to read:

528 663.061 International bank agencies; permissible
529 activities.—

530 (1) An international bank agency licensed under this part
531 may make any loan, extension of credit, or investment which it
532 could make if incorporated and operating as a bank organized



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533 under the laws of this state. An international bank agency may
534 act as custodian and may furnish investment management, and
535 investment advisory services authorized under rules adopted by
536 the commission, to nonresident entities or persons whose
537 principal places of business or domicile are outside the United
538 States and to resident entities or persons with respect to
539 international, ~~or~~ foreign, or domestic investments. An
540 international banking corporation that ~~which~~ has an
541 international bank agency licensed under the terms of this part
542 is shall be exempt from the registration requirements of s.
543 517.12. An international bank agency licensed by the office may
544 engage in any activity permissible for an international
545 administrative office or international representative office.

546 Section 13. Section 663.062, Florida Statutes, is amended
547 to read:

548 663.062 International representative offices; permissible
549 activities.—An international representative office may promote
550 or assist the deposit-taking, lending, or other financial or
551 banking activities of an international banking corporation. An
552 international representative office may serve as a liaison in
553 Florida between an international banking corporation and its
554 existing and potential customers. Representatives and employees
555 based at such office may solicit business for the international
556 banking corporation and its subsidiaries and affiliates, provide
557 information to customers concerning their accounts, answer
558 questions, receive applications for extensions of credit and
559 other banking services, transmit documents on behalf of
560 customers, and make arrangements for customers to transact
561 business on their accounts, but a representative office may not



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562 conduct any banking or trust business in this state. An
563 international representative office of an international banking
564 corporation that has fiduciary powers may engage in the
565 international trust representative office activities enumerated
566 in s. 663.409.

567 Section 14. Subsection (2) of section 663.063, Florida
568 Statutes, is amended to read:

569 663.063 International administrative offices.—

570 (2) An office established pursuant to ~~the provisions of~~
571 this section may ~~not~~ engage only in ~~any activity except~~ those
572 activities set forth in subsection (1) and the activities
573 permissible for an international representative office pursuant
574 to s. 663.062.

575 Section 15. Section 663.064, Florida Statutes, is amended
576 to read:

577 663.064 International branches; permissible activities;
578 requirements.—

579 (1) An international banking corporation that meets the
580 requirements of ss. 658.26, 663.04, and 663.05 may, with the
581 approval of the office, establish one or more branches in this
582 state. ~~An international branch shall have the same rights and~~
583 ~~privileges as a federally licensed international branch.~~ The
584 operations of an international branch shall be conducted
585 pursuant to requirements determined by the office as necessary
586 to ensure compliance with the provisions of the financial
587 institutions codes, including requirements for the maintenance
588 of accounts and records separate from those of the international
589 banking corporation of which it is a branch.

590 (2) An international branch has the same rights and



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591 privileges as a federally licensed international branch. The
592 permissible deposits of an international branch must be
593 determined in accordance with rules adopted by the commission.
594 In adopting such rules, the commission shall consider the
595 similar deposit-taking authority of a federally licensed
596 international branch and the need to provide reasonably
597 consistent regulatory requirements for international banking
598 corporations doing business in this state.

599 (3) An international branch licensed by the office may
600 engage in any activity permissible for an international bank
601 agency, international administrative office, or international
602 representative office.

603 Section 16. Subsection (3) of section 663.09, Florida
604 Statutes, is amended, and subsection (5) is added to that
605 section, to read:

606 663.09 Reports; records.—

607 (3) Each international banking corporation that ~~which~~
608 operates an office licensed under this part shall cause to be
609 kept, at a location accepted by the office:

610 (a) Correct and complete books and records of account of
611 the business operations transacted by such office. All policies
612 and procedures relating specifically to ~~governing~~ the operations
613 of such office, as well as any existing general ledger or
614 subsidiary accounts, must ~~shall~~ be maintained in the English
615 language. Any policies and procedures of the international
616 banking corporation which are not specific to the operations of
617 such office may be maintained in a language other than English
618 ~~The office may require that any other document not written in~~
619 ~~the English language which the office deems necessary for the~~



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620 ~~purposes of its regulatory and supervisory functions be~~
621 ~~translated into English at the expense of the international~~
622 ~~banking corporation.~~

623 (b) Current copies of the charter and bylaws of the
624 international banking corporation, relative to the operations of
625 the office, and minutes of the proceedings of its directors,
626 officers, or committees relative to the business of the office.
627 Such records may be maintained in a language other than English
628 and must ~~shall~~ be kept pursuant to s. 655.91 and ~~shall be~~ made
629 available to the office, upon request, at any time during
630 regular business hours of the office. Any failure to keep such
631 records as aforesaid or any refusal to produce such records upon
632 request by the office is ~~shall be~~ grounds for suspension or
633 revocation of any license issued under this part.

634 (5) The office may require at any time that any document
635 not written in the English language which the office deems
636 necessary for the purposes of its regulatory and supervisory
637 functions be translated into English at the expense of the
638 international banking corporation.

639 Section 17. Section 663.11, Florida Statutes, is amended to
640 read:

641 663.11 Termination of international banking corporation's
642 charter or authority.-

643 (1) (a) An international banking corporation that is
644 licensed to maintain an office in this state may not continue to
645 conduct its licensed business in this state if the international
646 banking corporation:

647 1. Is dissolved, or its authority or existence is otherwise
648 terminated or canceled in the jurisdiction of its



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649 incorporation;7

650 2. Is in bankruptcy, conservatorship, receivership,
651 liquidation, or similar status under the laws of any country;7
652 or

653 3. Is operating under the direct control of the government
654 or the regulatory or supervisory authority of the jurisdiction
655 of its incorporation through government intervention or any
656 other extraordinary actions.

657 (b)1. Notwithstanding subparagraphs (a)2. and 3., the
658 office may permit an international branch, international bank
659 agency, international administrative office, or international
660 representative office to remain open and in operation under the
661 following conditions:

662 a. Within 30 days after the occurrence of an event
663 described in subparagraph (a)2. or subparagraph (a)3., the
664 international branch, international bank agency, international
665 administrative office, or international representative office
666 provides the office with a plan to wind down its affairs and
667 business within the subsequent 90 days or provides an interim
668 operational plan outlining parameters for its continued
669 operation. If the office finds that such interim operational
670 plan does not allow for the conduct of business in a safe and
671 sound manner, the office shall revoke the license.

672 b. The international banking corporation is authorized by
673 the foreign country in which it is organized and licensed to
674 address the affairs of any international branch, international
675 bank agency, international administrative office, or
676 international representative office in this state.

677 c. The international branch, international bank agency,



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678 international administrative office, or international
679 representative office does not engage in any new lines of
680 business or otherwise expand its activities in this state.

681 d. The office determines that allowing the international
682 branch, international bank agency, international administrative
683 office, or international representative office to remain open
684 furtheres domestic and foreign supervisory cooperation.

685 e. The office determines that allowing the international
686 branch, international bank agency, international administrative
687 office, or international representative office to remain open is
688 in the public's interest and does not present an immediate or
689 serious danger to the public health, safety, or welfare.

690 2. The commission may establish, by rule, additional
691 standards and conditions for approval of an interim operational
692 plan and for ongoing compliance with the plan. Such standards
693 and conditions shall be based upon the need for cooperative
694 supervisory efforts, consistent regulatory oversight, and the
695 orderly administration of the international banking
696 corporation's affairs.

697 3. After the resolution of all applicable events described
698 in subparagraphs (a)2. and 3., if an international banking
699 corporation is no longer authorized by the foreign country in
700 which it is organized and licensed to conduct banking business,
701 the international branch, international bank agency,
702 international administrative office, or international
703 representative office shall surrender its license in accordance
704 with s. 663.06.

705 (2) A certificate of the official who is responsible for
706 records of banking corporations of the jurisdiction of



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707 ~~incorporation of such international banking corporation,~~
708 ~~attesting to the occurrence of any such event, or a certified~~
709 ~~copy of an order or decree of a court of such jurisdiction,~~
710 ~~directing the dissolution of such international banking~~
711 ~~corporation, the termination of its existence, or the~~
712 ~~cancellation of its authority, or declaring its status in~~
713 ~~bankruptcy, conservatorship, receivership, liquidation, or~~
714 ~~similar proceedings, or other reliable documentation that the~~
715 ~~international banking corporation is operating under the direct~~
716 ~~control of its government or a regulatory or supervisory~~
717 ~~authority, shall be delivered by~~ The international banking
718 corporation or its surviving officers and directors shall
719 deliver to the office:-

720 (a) A certificate of the official who is responsible for
721 records of banking corporations of the jurisdiction of
722 incorporation of such international banking corporation,
723 attesting to the occurrence of any event described in paragraph
724 (1) (a);

725 (b) A certified copy of an order or decree of a court of
726 such jurisdiction, directing the dissolution of such
727 international banking corporation, the termination of its
728 existence, or the cancellation of its authority or declaring its
729 status in bankruptcy, conservatorship, receivership,
730 liquidation, or similar proceedings; or

731 (c) Other reliable documentation evidencing that the
732 international banking corporation is operating under the direct
733 control of its government or a regulatory or supervisory
734 authority.

735 (3) The filing of the certificate, order, documentation, or



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736 decree has ~~shall have~~ the same effect as the revocation of the
737 license of such international banking corporation as provided in
738 s. 663.06, unless the office has permitted the international
739 branch, international bank agency, international administrative
740 office, or international representative office to remain open
741 and in operation pursuant to paragraph (1) (b).

742 Section 18. Subsection (1) of section 663.12, Florida
743 Statutes, is amended to read:

744 663.12 Fees; assessments; fines.—

745 (1) Each application for a license under ~~the provisions of~~
746 this part must ~~shall~~ be accompanied by a nonrefundable filing
747 fee payable to the office in the following amount:

748 (a) Ten thousand dollars for establishing a state-chartered
749 investment company.

750 (b) Ten thousand dollars for establishing an international
751 bank agency or branch.

752 (c) Five thousand dollars for establishing an international
753 administrative office.

754 (d) Five thousand dollars for establishing an international
755 representative office.

756 ~~(e) Five thousand dollars for establishing an international~~
757 ~~trust company representative office.~~

758 (e)-(f) An amount equal to the initial filing fee for an
759 application to convert from one type of license to another. The
760 commission may increase the filing fee for any type of license
761 to an amount established by rule and calculated in a manner so
762 as to cover the direct and indirect cost of processing such
763 applications.

764 Section 19. Subsection (11) of section 663.17, Florida



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765 Statutes, is amended to read:

766 663.17 Liquidation; possession of business and property;
767 inventory of assets; wages; depositing collected assets;
768 appointing agents; appointment of judges.—

769 (11) The compensation of agents and any other employees
770 appointed by the office to assist in the liquidation of an
771 international banking corporation, or any of the corporation's
772 licensed offices located in this state, the distribution of its
773 assets, or the expenses of supervision, must ~~shall~~ be paid out
774 of the assets of the corporation in the possession hands of the
775 office. Expenses of liquidation and approved claims for fees and
776 assessments due the office must ~~shall~~ be given first priority
777 among unsecured creditors.

778 Section 20. The Division of Law Revision and Information is
779 directed to create part III of chapter 663, Florida Statutes,
780 consisting of ss. 663.4001-663.416, Florida Statutes, to be
781 entitled "International Trust Company Representative Offices."

782 Section 21. Section 663.4001, Florida Statutes, is created
783 to read:

784 663.4001 Purpose.—The purpose of this part is to establish
785 a legal and regulatory framework for the conduct by
786 international trust entities of financial services business in
787 this state. This part is intended to:

788 (1) Support the Florida operations of international trust
789 entities and promote the growth of international financial
790 services to benefit the economy and consumers in this state.

791 (2) Provide for appropriate supervision and regulatory
792 oversight to ensure that financial services activities of
793 international trust entities in this state are conducted



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794 responsibly and in a safe and sound manner.

795 Section 22. Section 663.401, Florida Statutes, is created
796 to read:

797 663.401 Definitions.—

798 (1) "Affiliate" means a person or business or a group of
799 persons or businesses acting in concert which controls, is
800 controlled by, or is under common control of an international
801 trust entity.

802 (2) "International trust company representative office"
803 means an office of an international trust entity which is
804 established or maintained in this state for the purpose of
805 engaging in nonfiduciary activities described in s. 663.409, or
806 any affiliate, subsidiary, or other person that engages in such
807 activities on behalf of such international trust entity from an
808 office located in this state.

809 (3) "International trust entity" means an international
810 trust company or organization, or any similar business entity,
811 or an affiliated or subsidiary entity that is licensed,
812 chartered, or similarly permitted to conduct trust business in a
813 foreign country or countries under the laws where such entity is
814 organized and supervised.

815 Section 23. Section 663.402, Florida Statutes, is created
816 to read:

817 663.402 Applicability of the financial institutions codes.—

818 (1) An international trust entity that operates an office
819 licensed under this part is subject to all the financial
820 institutions codes as though such international trust entity
821 were a state trust company, except when it appears, from the
822 context or otherwise, that such provisions are clearly



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823 applicable only to trust companies organized under the laws of
824 this state or the United States. Without limiting the foregoing
825 general provisions, it is the intent of the Legislature that the
826 following provisions are applicable to such international trust
827 entities having offices in this state: s. 655.031, relating to
828 administrative enforcement guidelines; s. 655.032, relating to
829 investigations, subpoenas, hearings, and witnesses; s. 655.0321,
830 relating to restricted access hearings, proceedings, and related
831 documents; s. 655.033, relating to cease and desist orders; s.
832 655.037, relating to removal of a financial institution-related
833 party by the office; s. 655.041, relating to administrative
834 finances and enforcement; s. 655.50, the Florida Control of Money
835 Laundering and Terrorist Financing in Financial Institutions
836 Act; and any law for which the penalty is increased under s.
837 775.31 for facilitating or furthering terrorism.

838 (2) An international trust entity does not have any greater
839 right under, or by virtue of, this section than is granted to
840 trust companies organized under the laws of this state. Legal
841 and financial terms used in this chapter are deemed to refer to
842 equivalent terms used by the country in which the international
843 trust entity is organized. This chapter and the financial
844 institutions codes may not be construed to authorize any
845 international trust entity to conduct trust business, as defined
846 in s. 658.12, from an office in this state.

847 Section 24. Section 663.403, Florida Statutes, is created
848 to read:

849 663.403 Applicability of the Florida Business Corporation
850 Act.—Notwithstanding s. 607.01401(12), the provisions of part I
851 of chapter 607 which are not in conflict with the financial



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852 institutions codes and which relate to foreign corporations
853 apply to all international trust entities and their offices
854 doing business in this state.

855 Section 25. Section 663.404, Florida Statutes, is created
856 to read:

857 663.404 Requirements for conducting financial institution
858 business.—An international trust entity, or any affiliated,
859 subsidiary, or other person or business entity acting as an
860 agent for, on behalf of, or for the benefit of such
861 international trust entity, who engages in such activities from
862 an office located in this state, may not transact a trust
863 business, or maintain in this state any office for carrying on
864 such business, or any part thereof, unless such international
865 trust entity, affiliate, subsidiary, person, or business entity:

866 (1) Has been authorized by charter, license, or similar
867 authorization by operation of law to carry on trust business and
868 has complied with the laws of each jurisdiction in which it is
869 chartered, licensed, or otherwise authorized and created under
870 operation of law.

871 (2) Has furnished to the office such proof as to the nature
872 and character of its business and as to its financial condition
873 as the commission or office requires.

874 (3) Has filed with the office a certified copy of that
875 information required to be supplied to the Department of State
876 by those provisions of part I of chapter 607 which are
877 applicable to foreign corporations.

878 (4) Has received a license duly issued to it by the office.

879 (5) Has sufficient capital in accordance with the
880 requirements of s. 663.407 and the rules adopted thereunder and



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881 is not imminently insolvent or insolvent, as those terms are
882 defined under s. 655.005(1).

883 (6) (a) Is not in bankruptcy, conservatorship, receivership,
884 liquidation, or similar status under the laws of any country.

885 (b) Is not operating under the direct control of the
886 government or the regulatory or supervisory authority of the
887 home jurisdiction in which it has been chartered, licensed, or
888 otherwise authorized and created under operation of law, through
889 government intervention or any other extraordinary actions.

890 (c) Has not been in such status or control at any time
891 within the 3 years preceding the date of application for a
892 license.

893
894 Notwithstanding paragraphs (a) and (b), the office may permit an
895 international trust company representative office to remain open
896 and in operation pursuant to s. 663.412(1)(b).

897 Section 26. Section 663.405, Florida Statutes, is created
898 to read:

899 663.405 Civil action subpoena enforcement.-

900 (1) Notwithstanding s. 655.059, an international trust
901 company representative office established under this chapter is
902 not required to produce a book or record pertaining to a deposit
903 account, investment account, trust account, or loan of a
904 customer of the international trust entity's offices that are
905 located outside the United States or its territories in response
906 to a subpoena, if the book or record is maintained outside the
907 United States or its territories and is not in the possession,
908 custody, or control of the international trust entity's
909 representative office established in this state.



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910 (2) This section applies only to a subpoena issued pursuant
911 to the Florida Rules of Civil Procedure, the Federal Rules of
912 Civil Procedure, or other similar law or rule of civil procedure
913 in another state. This section does not apply to a subpoena
914 issued by or on behalf of a federal, state, or local government
915 law enforcement agency, administrative or regulatory agency,
916 legislative body, or grand jury and does not limit the power of
917 the office to access all books and records in the exercise of
918 the office's regulatory and supervisory powers under the
919 financial institutions codes.

920 Section 27. Section 663.406, Florida Statutes, is created
921 to read:

922 663.406 Application for license; approval or disapproval.-

923 (1) An international trust entity, before being licensed by
924 the office to maintain any office in this state, must subscribe
925 and acknowledge, and submit to the office, an application that
926 contains all of the following:

927 (a) The name of the international trust entity.

928 (b) The proposed location, by street and post office
929 address and county, where its business is to be transacted in
930 this state, and the name of the person who will be in charge of
931 the business and affairs of the office.

932 (c) The location where its initial registered office will
933 be located in this state.

934 (d) The total amount of the capital accounts of the
935 international trust entity.

936 (e) A complete and detailed statement of its financial
937 condition as of a date within 180 days before the date of such
938 application, except that the office in its discretion may, when



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939 necessary or expedient, accept such statement of financial
940 condition as of a date within 240 days before the date of such
941 application. The office in its discretion may, when necessary or
942 expedient, require an independent opinion audit or the
943 equivalent satisfactory to the office.

944 (f) A listing of any occasion within the 10-year period
945 before the application on which either the international trust
946 entity or any of its directors, executive officers, or principal
947 shareholders have been arrested for, charged with, convicted of,
948 or pled guilty or nolo contendere to, regardless of
949 adjudication, any offense with respect to which the penalties
950 include the possibility of imprisonment for 1 year or more, or
951 to any offense involving money laundering, currency transaction
952 reporting, facilitating or furthering terrorism, or fraud, or
953 otherwise related to the operation of a financial institution.

954 (2) The office shall disallow any illegally obtained
955 currency, monetary instruments, funds, or other financial
956 resources from the capitalization requirements of this section,
957 and the existence of such illegally obtained resources is
958 grounds for denial of the application for license.

959 (3) An international trust entity that submits an
960 application to the office shall concurrently submit a
961 certificate issued by the supervisory authority of the country
962 in which the international trust entity is chartered or
963 organized which states that the international trust entity is
964 duly organized and licensed, or otherwise authorized by
965 operation of law to transact business as a trust entity, and
966 lawfully existing in good standing.

967 (4) An international trust entity that has operated an



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968 international trust company representative office in this state
969 for at least 3 years in a safe and sound manner, as defined by
970 commission rule, and that is otherwise eligible to establish an
971 additional office may establish one or more international trust
972 company representative offices by providing an abbreviated
973 application, and paying the appropriate license fee pursuant to
974 s. 663.413.

975 (5) An application filed pursuant to this section must be
976 made on a form prescribed by the commission and must contain
977 such information as the commission or office requires.

978 (6) The office may, in its discretion, approve or
979 disapprove the application, but it may not approve the
980 application unless, in its opinion, the applicant meets each and
981 every requirement of this part and any other applicable
982 provision of the financial institutions codes. The office may
983 approve the application only if it has determined that the
984 directors, executive officers, and principal shareholders of the
985 international trust entity are qualified by reason of their
986 financial ability, reputation, and integrity and have sufficient
987 trust company and other business experience to indicate that
988 they will manage and direct the affairs of the international
989 trust entity in a safe, sound, and lawful manner. In the
990 processing of any application filed pursuant to this section,
991 the time limitations under the Administrative Procedure Act do
992 not apply as to approval or disapproval of the application. For
993 applications filed on or after January 1, 2018, the time
994 limitations for approval or disapproval of an application must
995 be prescribed by rule of the commission.

996 (7) The office may not issue a license to an international



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997 trust entity unless it is chartered, licensed, or similarly
998 authorized by operation of law in a jurisdiction in which any
999 financial institution licensed or chartered by any state or
1000 federal regulatory agency in the United States may establish
1001 similar facilities or exercise similar powers.

1002 (8) The office may not issue a license to an international
1003 trust entity for the purpose of operating an international trust
1004 company representative office in this state unless the trust
1005 entity:

1006 (a) Holds an unrestricted license to conduct trust business
1007 in the foreign country under whose laws it is organized and
1008 chartered;

1009 (b) Has been authorized by the foreign country's
1010 appropriate regulatory authority to establish the proposed
1011 international trust company representative office; and

1012 (c) Is adequately supervised by the appropriate regulatory
1013 agency in the foreign country in which it is organized and
1014 chartered.

1015 (9) The commission shall establish, by rule, the general
1016 principles that determine the adequacy of supervision of an
1017 international trust entity's foreign establishments. These
1018 principles must be based upon the need for cooperative
1019 supervisory efforts and consistent regulatory guidelines and
1020 must address, at a minimum, the capital adequacy, asset quality,
1021 management, earnings, liquidity, internal controls, audits, and
1022 foreign exchange operations and positions of the international
1023 trust entity. This subsection does not require examination by
1024 the home-country regulatory authorities of any office of an
1025 international trust entity in this state. The commission may



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1026 also establish, by rule, other standards for approval of an
1027 application for a license as considered necessary to ensure the
1028 safe and sound operations of the international trust entity in
1029 this state.

1030 Section 28. Section 663.407, Florida Statutes, is created
1031 to read:

1032 663.407 Capital requirements.-

1033 (1) For an international trust entity to qualify for a
1034 license under this part, the proposed capitalization of the
1035 international trust entity must be in such amount as the office
1036 determines is necessary, taking into consideration the risk
1037 profile of the international trust entity and the ability of the
1038 international trust entity to operate a licensed office in a
1039 safe and sound manner. In making this determination, the office
1040 shall consider the financial resources of the international
1041 trust entity, including:

1042 (a) The international trust entity's current and projected
1043 capital position, profitability, level of indebtedness, business
1044 and strategic plans, and off-balance sheet asset management and
1045 administration activities;

1046 (b) The financial condition of any of the international
1047 trust entity's existing offices located in the United States;

1048 (c) The minimum capital requirements of the international
1049 trust entity's home-country jurisdiction; and

1050 (d) The capital ratio standards used in the United States
1051 and in the international trust entity's home-country
1052 jurisdiction.

1053 (2) The proposed capitalization of the international trust
1054 entity must be in such amount as the office deems adequate, but



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1055 in no case may the total capital accounts of the international
1056 trust entity be less than \$1 million.

1057 (3) The office may specify such other conditions as it
1058 determines are appropriate, considering the public interest and
1059 the need to maintain a safe, sound, and competitive financial
1060 marketplace in this state.

1061 (4) For purposes of this part, the capital accounts of and
1062 capital ratio standards for an international trust entity must
1063 be determined in accordance with rules adopted by the
1064 commission. In adopting such rules, the commission shall
1065 consider similar rules adopted by regulatory agencies in the
1066 United States and the need to provide reasonably consistent
1067 regulatory requirements for international trust entities doing
1068 business in this state, as well as capital adequacy standards of
1069 an international trust entity's home-country jurisdiction.

1070 Section 29. Section 663.408, Florida Statutes, is created
1071 to read:

1072 663.408 Licenses; permissible activities of licensees.-

1073 (1) (a) An international trust entity licensed to operate an
1074 office in this state may engage in the business authorized by
1075 this part at the office specified in such license for an
1076 indefinite period.

1077 (b) An international trust entity may operate more than one
1078 licensed office, each at a different place of business, provided
1079 that each office is separately licensed.

1080 (c) A license is not transferable or assignable. However,
1081 the location of a licensed office may be changed after
1082 notification to the office.

1083 (d) A license must at all times be conspicuously displayed



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1084 in the place of business specified therein.

1085 (2) An international trust entity that proposes to
1086 terminate the operations of a licensed office in this state must
1087 surrender its license to the office and comply with such
1088 procedures as the commission may prescribe by rule.

1089 (3) The license for an international trust company
1090 representative office in this state may be suspended or revoked
1091 by the office, with or without examination, upon its
1092 determination that the international trust entity or the
1093 licensed office does not meet all requirements for original
1094 licensing. Additionally, the office shall revoke the license of
1095 any licensed office that the office determines has been inactive
1096 for 6 months or longer. The commission may by rule prescribe
1097 additional conditions or standards under which the license of an
1098 international trust company representative office may be
1099 suspended or revoked.

1100 (4) If any such license is surrendered by the international
1101 trust entity or is suspended or revoked by the office, all
1102 rights and privileges of the international trust entity to
1103 transact the business under the license cease. The commission
1104 shall prescribe by rule procedures for the surrender of a
1105 license and for the orderly cessation of business by an
1106 international trust entity in a manner that is not harmful to
1107 the interests of its customers or of the public.

1108 Section 30. Section 663.4081, Florida Statutes, is created
1109 to read:

1110 663.4081 After-the-fact licensure process in the event of
1111 the acquisition, merger, or consolidation of international trust
1112 entities.-If an international trust entity proposes to acquire,



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1113 merge, or consolidate with an international trust entity that
1114 presently operates an international trust company representative
1115 office licensed in this state, the office may allow the
1116 currently licensed international trust company representative
1117 office to remain open and in operation after consummation of the
1118 proposed acquisition, merger, or consolidation, subject to the
1119 filing with the office of an after-the-fact license application
1120 in accordance with all of the following conditions:

1121 (1) The international trust entity or entities resulting
1122 from the acquisition, merger, or consolidation will not directly
1123 or indirectly own or control more than 5 percent of any class of
1124 the voting securities of, or control, a United States bank.

1125 (2) Before consummation of the acquisition, merger, or
1126 consolidation, the international trust entity currently licensed
1127 to operate an international trust company representative office
1128 in this state must provide the office at least 30 days' advance
1129 written notice, as prescribed by rules adopted by the
1130 commission, of the proposed acquisition, merger, or
1131 consolidation.

1132 (3) Before consummation of the acquisition, merger, or
1133 consolidation, each international trust entity commits in
1134 writing that it will:

1135 (a) Comply with the conditions in subsections (1) and (2)
1136 and file an after-the-fact application for a license under s.
1137 663.406(1) within 60 days after consummation of the proposed
1138 acquisition, merger, or consolidation; and refrain from engaging
1139 in new lines of business and from otherwise expanding the
1140 activities of such establishment in this state until the
1141 disposition of the after-the-fact license application, in



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1142 accordance with chapter 120; or

1143 (b) Promptly wind down and close any international trust
1144 company representative office in this state if the international
1145 trust entities that are party to the acquisition, merger, or
1146 consolidation elect not to file an application for a license in
1147 accordance with paragraph (a); and, before such wind-down and
1148 closure, refrain from engaging in new lines of business or
1149 otherwise expanding the activities of such establishment in this
1150 state.

1151 Section 31. Section 663.0625, Florida Statutes, is
1152 transferred, renumbered as section 663.409, Florida Statutes,
1153 and amended to read:

1154 663.409 ~~663.0625~~ International trust company representative
1155 offices; permissible activities; requirements.—

1156 (1) An international trust company representative office
1157 may conduct any nonfiduciary activities that are ancillary to
1158 the fiduciary business of its international trust entity ~~banking~~
1159 ~~corporation or trust company~~, but may not act as a fiduciary.
1160 Permissible activities include advertising, marketing, and
1161 soliciting for fiduciary business on behalf of an international
1162 trust entity ~~banking corporation or trust company~~; contacting
1163 existing or potential customers, answering questions, and
1164 providing information about matters related to their accounts;
1165 serving as a liaison in this state between the international
1166 trust entity ~~banking corporation or trust company~~ and its
1167 existing or potential customers; and engaging in any other
1168 activities approved by the office or under rules of the
1169 commission.

1170 (2) Representatives and employees at such office may not



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1171 act as a fiduciary, including, but not limited to, accepting the
1172 fiduciary appointment, executing the fiduciary documents that
1173 create the fiduciary relationship, ~~or~~ making discretionary
1174 decisions regarding the investment or distribution of fiduciary
1175 accounts, or accepting custody of any trust property or any
1176 other good, asset, or thing of value on behalf of the affiliated
1177 international trust entity, its subsidiaries or affiliates, or
1178 subsidiaries and affiliates of the international trust company
1179 representative office.

1180 (3) An international trust company representative office
1181 licensed by the office may engage in any activities permissible
1182 for a qualified limited service affiliate under part IV of this
1183 chapter.

1184 Section 32. Section 663.410, Florida Statutes, is created
1185 to read:

1186 663.410 Certification of capital accounts.—Before opening
1187 an office in this state, and annually thereafter so long as an
1188 international trust company representative office is maintained
1189 in this state, an international trust entity licensed pursuant
1190 to this part must certify to the office the amount of its
1191 capital accounts, expressed in the currency of the home
1192 jurisdiction where it has been authorized by charter, license,
1193 or similar authorization by operation of law to carry on trust
1194 business. The dollar equivalent of these amounts, as determined
1195 by the office, is deemed to be the amount of its capital
1196 accounts. The annual certification of capital accounts must be
1197 received by the office on or before June 30 of each year.

1198 Section 33. Section 663.411, Florida Statutes, is created
1199 to read:



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1200 663.411 Reports; records.-
1201 (1) An international trust entity that operates an office
1202 licensed under this part shall, at such times and in such form
1203 as the commission prescribes, make written reports in the
1204 English language to the office, under the oath of one of its
1205 officers, managers, or agents transacting business in this
1206 state, showing the amount of its assets and liabilities and
1207 containing such other matters as the commission or office
1208 requires. An international trust entity that maintains two or
1209 more representative offices may consolidate such information in
1210 one report unless the office requires otherwise for purposes of
1211 its supervision of the condition and operations of each such
1212 office. The late filing of such reports is subject to an
1213 administrative fine as prescribed under s. 655.045(2). If the
1214 international trust entity fails to make such report as directed
1215 by the office or if such report contains a false statement
1216 knowingly made, the same are grounds for revocation of the
1217 license of the international trust entity.
1218 (2) An international trust entity that operates an office
1219 licensed under this part shall cause to be kept, at a location
1220 accepted by the office:
1221 (a) Correct and complete books and records of account of
1222 the business operations transacted by such office. All policies
1223 and procedures relating specifically to the operations of such
1224 office, as well as any existing general ledger or subsidiary
1225 accounts, must be maintained in the English language; however,
1226 any policies and procedures of the international trust entity
1227 which are not specific to the operations of such office may be
1228 maintained in a language other than English.



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1229 (b) Current copies of the charter or statement of operation
1230 and bylaws of the international trust entity, relative to the
1231 operations of the international trust company representative
1232 office, and minutes of the proceedings of its directors,
1233 officers, or committees relative to the business of the
1234 international trust company representative office. Such records
1235 may be maintained in a language other than English and must be
1236 kept pursuant to s. 655.91 and be made available to the office,
1237 upon request, at any time during regular business hours of the
1238 international trust company representative office.

1239 (3) Any failure to keep such records as required in
1240 subsection (2) or any refusal to produce such records upon
1241 request by the office is grounds for suspension or revocation of
1242 any license issued under this part.

1243 (4) The office may require at any time that any document
1244 not written in the English language which the office deems
1245 necessary for the purposes of its regulatory and supervisory
1246 functions be translated into English at the expense of the
1247 international trust entity.

1248 Section 34. Section 663.412, Florida Statutes, is created
1249 to read:

1250 663.412 Termination of international trust entity's charter
1251 or authority.-

1252 (1) (a) An international trust entity that is licensed to
1253 maintain an office in this state may not continue to conduct its
1254 licensed business in this state if the international trust
1255 entity:

1256 1. Is dissolved, or its authority or existence is otherwise
1257 terminated or canceled in the home jurisdiction where it has



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1258 been authorized by charter, license, or similar authorization by
1259 operation of law to carry on trust business;

1260 2. Is in bankruptcy, conservatorship, receivership,
1261 liquidation, or similar status under the laws of any country; or

1262 3. Is operating under the direct control of the government
1263 or the regulatory or supervisory authority of the jurisdiction
1264 where it has been authorized by charter, license, or similar
1265 authorization by operation of law to carry on trust business
1266 through government intervention or any other extraordinary
1267 actions.

1268 (b)1. Notwithstanding subparagraphs (a)2. and 3., the
1269 office may permit an international trust company representative
1270 office to remain open and in operation under the following
1271 conditions:

1272 a. Within 30 days after the occurrence of an event
1273 described in subparagraph (a)2. or subparagraph (a)3., the
1274 international trust company representative office provides the
1275 office with a plan to wind down its affairs and business within
1276 the subsequent 90 days or provides an interim operational plan
1277 outlining parameters for its continued operation. If the office
1278 finds that such interim operational plan does not allow for the
1279 conduct of business in a safe and sound manner, the office shall
1280 revoke the license.

1281 b. The international trust entity is authorized by the
1282 foreign country in which it is organized and licensed to address
1283 the affairs of any international trust company representative
1284 office in this state.

1285 c. The international trust company representative office
1286 does not engage in any new lines of business or otherwise expand



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1287 its activities in this state.

1288 d. The office determines that allowing the international
1289 trust company representative office to remain open furthers
1290 domestic and foreign supervisory cooperation.

1291 e. The office determines that allowing the international
1292 trust company representative office to remain open is in the
1293 public's interest and does not present an immediate or serious
1294 danger to the public health, safety, or welfare.

1295 2. The commission may establish, by rule, additional
1296 standards and conditions for approval of an interim operational
1297 plan and for ongoing compliance with the plan. Such standards
1298 and conditions shall be based upon the need for cooperative
1299 supervisory efforts, consistent regulatory oversight, and the
1300 orderly administration of the international trust entity's
1301 affairs.

1302 3. After the resolution of all applicable events described
1303 in subparagraphs (a)2. and 3., if an international trust entity
1304 is no longer authorized by the foreign country in which it is
1305 organized and supervised to conduct trust business, the
1306 international trust company representative office shall
1307 surrender its license in accordance with s. 663.408.

1308 (2) The international trust entity or its surviving
1309 officers and directors shall deliver to the office:

1310 (a) A certificate of the official who is responsible for
1311 records of trust entities in the jurisdiction where the
1312 international trust entity has been authorized by charter,
1313 license, or similar authorization by operation of law to carry
1314 on trust business of the international trust entity, attesting
1315 to the occurrence of any event described in paragraph (1) (a);



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1316 (b) A certified copy of an order or decree of a court of
1317 such jurisdiction, directing the dissolution of such
1318 international trust entity, the termination of its existence, or
1319 the cancellation of its authority, or declaring its status in
1320 bankruptcy, conservatorship, receivership, liquidation, or
1321 similar proceedings; or

1322 (c) Other reliable documentation evidencing that the
1323 international trust entity is operating under the direct control
1324 of its government or a regulatory or supervisory authority.

1325 (3) The filing of the certificate, order, documentation, or
1326 decree has the same effect as the revocation of the license of
1327 such international trust entity as provided in s. 663.408,
1328 unless the office has permitted the international trust company
1329 representative office to remain open and in operation pursuant
1330 to paragraph (1) (b).

1331 Section 35. Section 663.413, Florida Statutes, is created
1332 to read:

1333 663.413 Application and examination fees.-

1334 (1) An application for a license to establish an
1335 international trust company representative office under this
1336 part must be accompanied by a nonrefundable \$5,000 filing fee,
1337 payable to the office.

1338 (2) An international trust entity that maintains an office
1339 licensed under this part must pay to the office examination fees
1340 that are determined by the commission by rule and that are
1341 calculated in a manner so as to be equal to the actual cost of
1342 each examiner's participation in the examination, as measured by
1343 the examiner's pay scale, plus any other expenses directly
1344 incurred in the examination. However, the examination fees may



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1345 not be less than \$200 per day for each examiner participating in
1346 the examination.

1347 Section 36. Section 663.414, Florida Statutes, is created
1348 to read:

1349 663.414 Rules; exemption from statement of estimated
1350 regulatory costs requirements.—In addition to any other
1351 rulemaking authority it has under the financial institutions
1352 codes, the commission may adopt reasonable rules that it deems
1353 advisable for the administration of international trust entities
1354 under this part in the interest of protecting depositors,
1355 creditors, borrowers, or the public interest and in the interest
1356 of maintaining a sound banking and trust system in this state.
1357 Because of the difficulty in obtaining economic data with regard
1358 to such trusts, ss. 120.54(3)(b) and 120.541 do not apply to the
1359 adoption of rules pursuant to this section.

1360 Section 37. Section 663.415, Florida Statutes, is created
1361 to read:

1362 663.415 Travel expenses.—If domestic or foreign travel is
1363 deemed necessary by the office to effectuate the purposes of
1364 this part, the office must be reimbursed for actual, reasonable,
1365 and necessary expenses incurred in such domestic or foreign
1366 travel by the international trust company representative office
1367 under examination.

1368 Section 38. The Division of Law Revision and Information is
1369 directed to create part IV of chapter 663, Florida Statutes,
1370 consisting of ss. 663.530–663.540, Florida Statutes, to be
1371 entitled “Qualified Limited Service Affiliates of International
1372 Trust Entities.”

1373 Section 39. Section 663.530, Florida Statutes, is created



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1374 to read:

1375 663.530 Definitions.—

1376 (1) As used in ss. 663.531-663.539, the term:

1377 (a) "Foreign country" means a country other than the United
1378 States and includes any colony, dependency, or possession of
1379 such country notwithstanding any definitions in chapter 658, and
1380 any territory of the United States, including Guam, American
1381 Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico.

1382 (b) "Home-country regulator" means the supervisory
1383 authority or equivalent or other similarly sanctioned body,
1384 organization, governmental entity, or recognized authority,
1385 which has similar responsibilities in a foreign country in which
1386 and by whom an international trust entity is licensed,
1387 chartered, or has similar authorization to organize and operate.

1388 (c) "International trust entity" means an international
1389 trust company or organization, or any similar business entity,
1390 or an affiliated or subsidiary entity that is licensed,
1391 chartered, or similarly permitted to conduct trust business in a
1392 foreign country or countries under the laws where such entity is
1393 organized and supervised.

1394 (d) "Limited service affiliate" means a marketing and
1395 liaison office that engages in the permissible activities
1396 enumerated in s. 663.531 for the benefit of an international
1397 trust entity.

1398 (e) "Nonresident" has the same meaning as in s. 663.01.

1399 (f) "Professional" means an accountant, attorney, or other
1400 financial services and wealth planning professional who is
1401 licensed by a governing body or affiliated with a licensed,
1402 chartered, or similarly authorized entity.



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1403 (g) "Qualified limited service affiliate" means a person or
1404 entity that is qualified under this part to perform the
1405 permissible activities outlined in s. 663.531 related to or for
1406 the benefit of an affiliated international trust entity.

1407 (2) As used in ss. 663.531-663.539, the terms "affiliate,"
1408 "commission," "executive officer," "financial institution,"
1409 "financial institution-affiliated party," "financial
1410 institutions codes," "office," "officer," "state," and
1411 "subsidiary" have the same meaning as provided in s. 655.005.

1412 Section 40. Section 663.531, Florida Statutes, is created
1413 to read:

1414 663.531 Permissible activities; prohibited activities.—

1415 (1) Qualification as a qualified limited service affiliate
1416 under this part does not provide any exemption from licensure,
1417 registration, application, and requirements to conduct licensed
1418 business activities in this state. A qualified limited service
1419 affiliate may engage in any of the following permissible
1420 activities, which are not meant to be restrictive unless an
1421 activity is prohibited under subsection (2):

1422 (a) Marketing and liaison services related to or for the
1423 benefit of the affiliated international trust entities, directed
1424 exclusively at professionals and current or prospective
1425 nonresident clients of an affiliated international trust entity;

1426 (b) Advertising and marketing at trade, industry, or
1427 professional events;

1428 (c) Transmission of documents between the international
1429 trust entity and its current or prospective clients or a
1430 designee of such clients; and

1431 (d) Transmission of information about the trust or trust



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1432 holdings of current clients between current clients or their
1433 designees and the international trust entity.

1434 (2) A qualified limited service affiliate may not engage in
1435 any of the following activities:

1436 (a) Advertising and marketing related to or for the benefit
1437 of the international trust entity which are directed to the
1438 general public;

1439 (b) Acting as a fiduciary, including, but not limited to,
1440 accepting the fiduciary appointment, executing the fiduciary
1441 documents that create the fiduciary relationship, or making
1442 discretionary decisions regarding the investment or distribution
1443 of fiduciary accounts;

1444 (c) Accepting custody of any trust property or any other
1445 good, asset, or thing of value on behalf of the affiliated
1446 international trust entity, its subsidiaries or affiliates, or
1447 subsidiaries and affiliates of the qualified limited service
1448 affiliate;

1449 (d) Soliciting business within this state from the general
1450 public related to or for the benefit of an affiliated
1451 international trust entity;

1452 (e) Adding a director, an executive officer, a principal
1453 shareholder, a manager, a managing member, or an equivalent
1454 position to the qualified limited service affiliate without
1455 prior written notification to the office;

1456 (f) Commencing services for an international trust entity
1457 without complying with the requirements of s. 663.532;

1458 (g) Providing services for any international trust entity
1459 that is in bankruptcy, conservatorship, receivership,
1460 liquidation, or a similar status under the laws of any country;



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1461 or

1462 (h) Otherwise conducting banking or trust business.

1463 (3) The provisions of subsection (2) are not deemed to
1464 prevent the qualified limited service affiliate's use of an
1465 international trust entity's website, or its own website, if the
1466 posted information or communication includes the following:

1467 (a) The following statement: "Certain described services
1468 are not offered to the general public in Florida, but are
1469 marketed by ...(insert name of qualified limited service
1470 affiliate)... exclusively to professionals and current or
1471 prospective non-U.S. resident clients of the affiliated
1472 international trust entity or entities."

1473 (b) The notice required by s. 663.535.

1474 (4) In addition to any other power conferred upon it to
1475 enforce and administer this chapter and the financial
1476 institutions codes, the office may impose any remedy or penalty
1477 pursuant to s. 655.033, relating to cease and desist orders; s.
1478 655.034, relating to injunctions; s. 655.037, relating to
1479 removal of a financial institution-affiliated party by the
1480 office; or s. 655.041, relating to administrative fines and
1481 enforcement, if a qualified limited service affiliate engages in
1482 any of the impermissible activities in subsection (2).

1483 Section 41. Effective upon this act becoming a law, section
1484 663.532, Florida Statutes, is created to read:

1485 663.532 Qualification.—No later than March 31, 2018, a
1486 person or entity that previously qualified under the moratorium
1487 in s. 663.041 must seek qualification as a qualified limited
1488 service affiliate or cease doing business in this state.

1489 Notwithstanding the expiration of the moratorium under s.



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1490 663.041, a person or entity that previously qualified under such
1491 moratorium may remain open and in operation but shall refrain
1492 from engaging in new lines of business in this state until
1493 qualified as a qualified limited service affiliate under this
1494 part.

1495 Section 42. Section 663.532, Florida Statutes, as created
1496 by this act, is amended to read:

1497 663.532 Qualification.—

1498 (1) To qualify as a qualified limited service affiliate
1499 under this part, a limited service affiliate must file a written
1500 notice with the office, in the manner and on a form prescribed
1501 by the commission. Such written notice must include:

1502 (a) The name under which the proposed qualified limited
1503 service affiliate will conduct business in this state.

1504 (b) A copy of the articles of incorporation or articles of
1505 organization, or the equivalent, of the proposed qualified
1506 limited service affiliate.

1507 (c) The physical address where the proposed qualified
1508 limited service affiliate will conduct business.

1509 (d) The mailing address of the proposed qualified limited
1510 service affiliate.

1511 (e) The name and biographical information of each director,
1512 executive officer, manager, managing member, or equivalent
1513 position of the proposed qualified limited service affiliate, to
1514 be submitted on a form prescribed by the commission.

1515 (f) The number of officers and employees of the proposed
1516 qualified limited service affiliate.

1517 (g) A detailed list and description of the activities to be
1518 conducted by the proposed qualified limited service affiliate.



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1519 The detailed list and description must include:

1520 1. The services and activities of the proposed qualified
1521 limited service affiliate;

1522 2. An explanation of how the services and activities of the
1523 proposed qualified limited service affiliate serve the business
1524 purpose of each international trust entity; and

1525 3. An explanation of how the services and activities of the
1526 proposed qualified limited service affiliate are distinguishable
1527 from those of the permissible activities of an international
1528 trust company representative office described under s. 663.409.

1529 (h) Disclosure of any instance occurring within the prior
1530 10 years when the proposed qualified limited service affiliate's
1531 director, executive officer, principal shareholder, manager,
1532 managing member, or equivalent position was:

1533 1. Arrested for, charged with, or convicted of, or who pled
1534 guilty or nolo contendere to, regardless of adjudication, any
1535 offense that is punishable by imprisonment for a term exceeding
1536 1 year, or to any offense that involves money laundering,
1537 currency transaction reporting, tax evasion, facilitating or
1538 furthering terrorism, fraud, theft, larceny, embezzlement,
1539 fraudulent conversion, misappropriation of property, dishonesty,
1540 breach of trust, breach of fiduciary duty, or moral turpitude,
1541 or that is otherwise related to the operation of a financial
1542 institution;

1543 2. Fined or sanctioned as a result of a complaint to the
1544 office or any other state or federal regulatory agency; or

1545 3. Ordered to pay a fine or penalty in a proceeding
1546 initiated by a federal, state, foreign, or local law enforcement
1547 agency or an international agency related to money laundering,



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1548 currency transaction reporting, tax evasion, facilitating or
1549 furthering terrorism, fraud, theft, larceny, embezzlement,
1550 fraudulent conversion, misappropriation of property, dishonesty,
1551 breach of trust, breach of fiduciary duty, or moral turpitude,
1552 or that is otherwise related to the operation of a financial
1553 institution.

1554 (i) A declaration under penalty of perjury signed by the
1555 executive officer, manager, or managing member of the proposed
1556 qualified limited service affiliate that, to the best of his or
1557 her knowledge:

1558 1. No employee, representative, or agent provides, or will
1559 provide, banking services; promotes or sells, or will promote or
1560 sell, investments; or accepts, or will accept, custody of
1561 assets.

1562 2. No employee, representative, or agent acts, or will act,
1563 as a fiduciary in this state, which includes, but is not limited
1564 to, accepting the fiduciary appointment, executing the fiduciary
1565 documents that create the fiduciary relationship, or making
1566 discretionary decisions regarding the investment or distribution
1567 of fiduciary accounts.

1568 3. The jurisdiction of the international trust entity or
1569 its offices, subsidiaries, or any affiliates that are directly
1570 involved in or facilitate the financial services functions,
1571 banking, or fiduciary activities of the international trust
1572 entity is not listed on the Financial Action Task Force Public
1573 Statement or on its list of jurisdictions with deficiencies in
1574 anti-money laundering or counterterrorism.

1575 (j) For each international trust entity that the proposed
1576 qualified limited service affiliate will provide services for in



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- 1577 this state, the following:
- 1578 1. The name of the international trust entity;
- 1579 2. A list of the current officers and directors of the
- 1580 international trust entity;
- 1581 3. Any country where the international trust entity is
- 1582 organized or authorized to do business;
- 1583 4. The name of the home-country regulator;
- 1584 5. Proof that the international trust entity has been
- 1585 authorized by charter, license, or similar authorization by its
- 1586 home-country regulator to engage in trust business;
- 1587 6. Proof that the international trust entity lawfully
- 1588 exists and is in good standing under the laws of the
- 1589 jurisdiction where it is chartered, licensed, or organized;
- 1590 7. A statement that the international trust entity is not
- 1591 in bankruptcy, conservatorship, receivership, liquidation, or in
- 1592 a similar status under the laws of any country;
- 1593 8. Proof that the international trust entity is not
- 1594 operating under the direct control of the government or the
- 1595 regulatory or supervisory authority of the jurisdiction of its
- 1596 incorporation, through government intervention or any other
- 1597 extraordinary actions, and confirmation that it has not been in
- 1598 such a status or under such control at any time within the prior
- 1599 3 years;
- 1600 9. Proof and confirmation that the proposed qualified
- 1601 limited service affiliate is affiliated with the international
- 1602 trust entities provided in the notice; and
- 1603 10. Proof that the jurisdictions where the international
- 1604 trust entity or its offices, subsidiaries, or any affiliates
- 1605 that are directly involved in or that facilitate the financial



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1606 services functions, banking, or fiduciary activities of the
1607 international trust entity are not listed on the Financial
1608 Action Task Force Public Statement or on its list of
1609 jurisdictions with deficiencies in anti-money laundering or
1610 counterterrorism.

1611 (k) A declaration under penalty of perjury, signed by an
1612 executive officer, manager, or managing member of each
1613 affiliated international trust entity, declaring that the
1614 information provided to the office is true and correct to the
1615 best of his or her knowledge.

1616
1617 The proposed qualified limited service affiliate may provide
1618 additional information in the form of exhibits when attempting
1619 to satisfy any of the qualification requirements. All
1620 information that the proposed qualified limited service
1621 affiliate desires to present to support the written notice must
1622 be submitted with the notice.

1623 (2) The office may request additional information as the
1624 office reasonably requires. Any request for additional
1625 information must be made by the office within 30 days after
1626 initial receipt of the written notice. Additional information
1627 must be submitted within 60 days after a request has been made
1628 by the office. Failure to respond to such request within 60 days
1629 after the date of the request is a ground for denial of the
1630 qualification. A notice is not deemed complete until all
1631 requested information has been submitted to the office. Upon
1632 deeming the notice complete, the office has 120 days to qualify
1633 the limited service affiliate or issue a denial. An order
1634 denying a qualification must contain notice of opportunity for a



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1635 hearing pursuant to ss. 120.569 and 120.57.

1636 (3) A qualification under this part must be summarily
1637 suspended by the office if the qualified limited service
1638 affiliate made a material false statement in the written notice.
1639 The summary suspension must remain in effect until a final order
1640 is entered by the office. For purposes of s. 120.60(6), a
1641 material false statement made in the qualified limited service
1642 affiliate's written notice constitutes an immediate and serious
1643 danger to the public health, safety, and welfare. If a qualified
1644 limited service affiliate made a material false statement in the
1645 written notice, the office must enter a final order revoking the
1646 qualification and may issue a fine as prescribed by s. 655.041
1647 or issue an order of suspension, removal, or prohibition under
1648 s. 655.037 to a financial institution-affiliated party of the
1649 qualified limited service affiliate.

1650 (4) Upon the filing of a completed qualification notice
1651 under this section, the office shall make an investigation of
1652 the character, reputation, business experience, and business
1653 qualifications of the proposed qualified limited service
1654 affiliate's proposed directors, executive officers, principal
1655 shareholder, managers, managing members, or equivalent
1656 positions. The office shall approve the qualification only if it
1657 has determined that such persons are qualified by reason of
1658 their ability, reputation, and integrity and have sufficient
1659 experience to manage and direct the affairs of the qualified
1660 limited service affiliate in a lawful manner and in accordance
1661 with the requirements for obtaining and maintaining a
1662 qualification under this part. When evaluating a qualification
1663 notice, the office may consider factors reasonably related to an



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1664 offense or related to a violation, fine, or penalty, such as
1665 mitigating factors, history of multiple violations, severity of
1666 the offense, and showings of rehabilitation.

1667 (5) A qualification is not transferable or assignable.

1668 (6) A person or entity in operation as of January 1, 2018,
1669 which meets the definition of a limited service affiliate under
1670 s. 663.530 must, on or before March 31, 2018, file the written
1671 notice pursuant to this section seeking qualification as a
1672 qualified limited service affiliate or cease doing business in
1673 this state.

1674 (7) No later than March 31, 2018, a person or entity that
1675 previously qualified under the moratorium in s. 663.041 must
1676 seek qualification as a qualified limited service affiliate or
1677 cease doing business in this state. Notwithstanding the
1678 expiration of the moratorium under s. 663.041, a person or
1679 entity that previously qualified under such moratorium may
1680 remain open and in operation but shall refrain from engaging in
1681 new lines of business in this state until qualified as a
1682 qualified limited service affiliate under this part.

1683 Section 43. Section 663.5325, Florida Statutes, is created
1684 to read:

1685 663.5325 Civil action subpoena enforcement.—

1686 (1) Notwithstanding s. 655.059, a qualified limited service
1687 affiliate established under this chapter is not required to
1688 produce a book or record pertaining to a customer of an
1689 affiliated international trust entity that is located outside
1690 the United States or its territories in response to a subpoena
1691 if the book or record is maintained outside the United States or
1692 its territories and is not in the possession, custody, or



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1693 control of the qualified limited service affiliate.

1694 (2) This section applies only to a subpoena issued pursuant
1695 to the Florida Rules of Civil Procedure, the Federal Rules of
1696 Civil Procedure, or other similar law or rule of civil procedure
1697 in another state or territory of the United States. This section
1698 does not apply to a subpoena issued by or on behalf of a
1699 federal, state, or local government law enforcement agency,
1700 administrative or regulatory agency, legislative body, or grand
1701 jury and does not limit the power of the office to access all
1702 books and records in the exercise of the office's regulatory and
1703 supervisory powers under the financial institutions codes.

1704 Section 44. Section 663.533, Florida Statutes, is created
1705 to read:

1706 663.533 Applicability of the financial institutions codes.-
1707 A qualified limited service affiliate is subject to the
1708 financial institutions codes. Without limiting the foregoing,
1709 the following provisions are applicable to a qualified limited
1710 service affiliate:

1711 (1) Section 655.012, relating to general supervisory powers
1712 of the office.

1713 (2) Section 655.031, relating to administrative enforcement
1714 guidelines.

1715 (3) Section 655.032, relating to investigations, subpoenas,
1716 hearings, and witnesses.

1717 (4) Section 655.0321, relating to restricted access to
1718 certain hearings, proceedings, and related documents.

1719 (5) Section 655.033, relating to cease and desist orders.

1720 (6) Section 655.034, relating to injunctions.

1721 (7) Section 655.037, relating to removal of a financial



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1722 institution-affiliated party by the office.

1723 (8) Section 655.041, relating to administrative fines and
1724 enforcement.

1725 (9) Section 655.057, relating to restrictions on access to
1726 public records.

1727 (10) Section 655.059, relating to access to books and
1728 records.

1729 (11) Section 655.0591, relating to trade secret documents.

1730 (12) Section 655.91, relating to records of institutions
1731 and copies thereof; retention and destruction.

1732 (13) Section 655.968, relating to financial institutions;
1733 transactions relating to Iran or terrorism.

1734
1735 This section does not prohibit the office from investigating or
1736 examining an entity to ensure that it is not in violation of
1737 this chapter or applicable provisions of the financial
1738 institutions codes.

1739 Section 45. Section 663.534, Florida Statutes, is created
1740 to read:

1741 663.534 Events that require notice to be provided to the
1742 office.—A qualified limited service affiliate must report to the
1743 office, within 15 days of its knowledge of the occurrence, any
1744 changes to the information previously relied upon by the office
1745 when qualifying or renewing a qualification under this part.

1746 Section 46. Section 663.535, Florida Statutes, is created
1747 to read:

1748 663.535 Notice to customers.—All marketing documents and
1749 advertisements and any display at the location of the qualified
1750 limited service affiliate or at any trade or marketing event



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1751 must contain the following statement in a contrasting color in
1752 at least 10-point type: "The Florida Office of Financial
1753 Regulation DOES NOT provide safety and soundness oversight of
1754 this company, does not provide any opinion as to any affiliated
1755 companies or products, and does not provide the oversight of
1756 this company's affiliated international trust entities or the
1757 jurisdictions within which they operate. This company may not
1758 act as a fiduciary and may not accept the fiduciary appointment,
1759 execute or transmit fiduciary documents, take possession of any
1760 assets, create a fiduciary relationship, make discretionary
1761 decisions regarding the investment or distribution of fiduciary
1762 accounts, provide banking services, or promote or sell
1763 investments."

1764 Section 47. Section 663.536, Florida Statutes, is created
1765 to read:

1766 663.536 Recordkeeping requirements for trade, industry, or
1767 professional events.—A qualified limited service affiliate who
1768 participates in a trade, industry, or professional event
1769 pursuant to s. 663.531 must keep a record of its participation
1770 in the event. The record must be maintained for at least 2 years
1771 following the event and must contain the following information:

- 1772 (1) The date, time, and location of the event;
1773 (2) To the extent known or available, a list of
1774 participants in the event, including other vendors, presenters,
1775 attendees, and targeted attendees;
1776 (3) The nature and purpose of the event;
1777 (4) The qualified limited service affiliate's purpose for
1778 participating in the event; and
1779 (5) Samples of materials or, when samples are unavailable,



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1780 descriptions of materials provided by the qualified limited
1781 service affiliate to attendees and other participants.

1782 Section 48. Section 663.537, Florida Statutes, is created
1783 to read:

1784 663.537 Examination or investigation of a qualified limited
1785 service affiliate.—The office may conduct an examination or
1786 investigation of a qualified limited service affiliate at any
1787 time that it deems necessary to determine whether the qualified
1788 limited service affiliate or financial institution-affiliated
1789 party thereof has violated, or is about to violate, any
1790 provision of this chapter, any applicable provision of the
1791 financial institutions codes, or any rule adopted by the
1792 commission pursuant to this chapter or the financial
1793 institutions codes. The office shall conduct an examination of
1794 each qualified limited service affiliate at least once every 18
1795 months to assess compliance with this part and the financial
1796 institutions codes. The office may conduct an examination,
1797 before or after qualification, of any person or entity that
1798 submits the written notice for qualification pursuant to s.
1799 663.532 to confirm information provided in the written notice
1800 and to confirm the activities of the person or entity seeking
1801 qualification.

1802 Section 49. Section 663.538, Florida Statutes, is created
1803 to read:

1804 663.538 Suspension, revocation, or voluntary surrender of
1805 qualification.—

1806 (1) A qualified limited service affiliate that proposes to
1807 terminate operations in this state shall surrender its
1808 qualification to the office and comply with such procedures as



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1809 required by rule of the commission.

1810 (2) A qualified limited service affiliate that fails to
1811 renew its qualification may be subject to a fine and penalty;
1812 however, such qualified limited service affiliate may renew its
1813 qualification within 30 days after expiration or may surrender
1814 the qualification in accordance with procedures prescribed by
1815 commission rule.

1816 (3) The qualification of a qualified limited service
1817 affiliate in this state may be suspended or revoked by the
1818 office, with or without examination, upon the office's
1819 determination that the qualified limited service affiliate does
1820 not meet all requirements for original or renewal qualification.

1821 (4) If a qualified limited service affiliate surrenders its
1822 qualification or its qualification is suspended or revoked by
1823 the office, all rights and privileges afforded by this part to
1824 the qualified limited service affiliate cease.

1825 (5) At least 60 days before a proposed date of voluntary
1826 termination of a qualification, a qualified limited service
1827 affiliate must provide to the office written notice by letter of
1828 its intention to surrender its qualification and terminate
1829 operations. The notice must include the proposed date of
1830 termination and the name of the officer in charge of the
1831 termination procedures.

1832 (6) The office may conduct an examination of the books and
1833 records of a qualified limited service affiliate at any time
1834 after receipt of the notice of surrender of qualification to
1835 confirm the winding down of operations.

1836 (7) Operations of a qualified limited service affiliate are
1837 deemed terminated effective upon the later of the expiration of



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1838 60 days from the date of the filing of the notice of voluntary
1839 surrender or upon the date provided in the notice of voluntary
1840 surrender, unless the office provides written notice specifying
1841 the grounds for denial of such proposed termination. The office
1842 may not deny a request to terminate unless it learns of the
1843 existence of any outstanding claim or claims against the
1844 qualified limited service affiliate, it finds that the
1845 requirements to terminate operations have not been satisfied, or
1846 there is an immediate and serious danger to the public health,
1847 safety, and welfare if the termination occurred.

1848 Section 50. Section 663.539, Florida Statutes, is created
1849 to read:

1850 663.539 Biennial qualification renewal.—A qualification
1851 must be renewed every 2 years. A qualification must be renewed
1852 by furnishing such information as the commission requires. A
1853 complete biennial renewal of qualification must include a
1854 declaration under penalty of perjury, signed by the executive
1855 officer or managing member of the qualified limited service
1856 affiliate seeking renewal, declaring that the information
1857 submitted for the purposes of renewal is true and correct to the
1858 best of his or her knowledge, and confirming or providing all of
1859 the following:

1860 (1) That the qualified limited service affiliate is in
1861 compliance with this part.

1862 (2) The physical location of the principal place of
1863 business of the qualified limited service affiliate.

1864 (3) The telephone number of the qualified limited service
1865 affiliate.

1866 (4) A list of the qualified limited service affiliate's



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1867 current directors, executive officers, principal shareholder,
1868 managers, managing members, or equivalent positions.

1869 (5) Any updates or changes in information which were not
1870 previously provided either in the initial qualification or in
1871 subsequent qualification renewals or which were not previously
1872 disclosed to the office.

1873 Section 51. For the purpose of incorporating the amendment
1874 made by this act to section 663.01, Florida Statutes, in a
1875 reference thereto, subsection (4) of section 663.16, Florida
1876 Statutes, is reenacted to read:

1877 663.16 Definitions; ss. 663.17-663.181.—As used in ss.
1878 663.17-663.181, the term:

1879 (4) Except where the context otherwise requires,
1880 "international banking corporation" or "corporation" has the
1881 same meaning as that provided in s. 663.01 and includes any
1882 licensed office of an international banking corporation
1883 operating in this state.

1884 Section 52. Except as otherwise expressly provided in this
1885 act and except for this section, which shall take effect upon
1886 this act becoming a law, this act shall take effect January 1,
1887 2018.

1888
1889 ===== T I T L E A M E N D M E N T =====

1890 And the title is amended as follows:

1891 Delete everything before the enacting clause
1892 and insert:

1893 A bill to be entitled
1894 An act relating to international financial
1895 institutions; amending s. 655.005, F.S.; redefining



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1896 the term "financial institution" to include
1897 international trust entities and qualified limited
1898 service affiliates; amending s. 655.059, F.S.;
1899 specifying conditions under which confidential books
1900 and records of international trust entities may be
1901 disclosed to their home-country supervisors; revising
1902 conditions for such disclosure for international
1903 banking corporations; redefining the term "home-
1904 country supervisor"; requiring books and records
1905 pertaining to trust accounts to be kept confidential
1906 by financial institutions and their directors,
1907 officers, and employees; providing an exception;
1908 providing construction; creating s. 663.001, F.S.;
1909 providing legislative intent; amending s. 663.01,
1910 F.S.; redefining terms; deleting the definition of the
1911 term "international trust company representative
1912 office"; amending s. 663.02, F.S.; revising
1913 applicability of the financial institutions codes as
1914 to international banking corporations; amending s.
1915 663.021, F.S.; conforming a provision to changes made
1916 by the act; amending s. 663.04, F.S.; deleting
1917 international trust companies from requirements for
1918 carrying on financial institution business; conforming
1919 a provision to changes made by the act; authorizing
1920 the Office of Financial Regulation to permit certain
1921 entities that would otherwise be prohibited from
1922 carrying on financial institution business to remain
1923 open and in operation under certain circumstances;
1924 amending s. 663.05, F.S.; providing for an abbreviated



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1925 application procedure for certain entities established
1926 by an international banking corporation; specifying
1927 that the Financial Services Commission, rather than
1928 the office, prescribes a certain application form;
1929 requiring the commission to adopt rules for a time
1930 limitation for an application decision after a
1931 specified date; revising conditions for the office to
1932 issue an international banking corporation license;
1933 conforming a provision to changes made by the act;
1934 amending s. 663.055, F.S.; revising capital
1935 requirements for international banking corporations;
1936 amending s. 663.06, F.S.; making technical changes;
1937 conforming a provision to changes made by the act;
1938 creating s. 663.0601, F.S.; providing an after-the-
1939 fact licensure process in the event of the
1940 acquisition, merger, or consolidation of international
1941 banking corporations; specifying conditions for such
1942 license; amending s. 663.061, F.S.; providing
1943 permissible activities for international bank
1944 agencies; amending s. 663.062, F.S.; providing
1945 permissible activities for certain international
1946 representative offices; amending s. 663.063, F.S.;
1947 providing permissible activities for international
1948 administrative offices; amending s. 663.064, F.S.;
1949 requiring the commission to adopt rules relating to
1950 permissible deposits of international branches;
1951 providing permissible activities for international
1952 branches; amending s. 663.09, F.S.; revising
1953 requirements for the maintenance of books and records



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1954 of international banking corporations; authorizing the
1955 office to require international banking corporations
1956 to translate certain documents into English at the
1957 expense of the international banking corporations;
1958 amending s. 663.11, F.S.; authorizing the office to
1959 permit certain entities that would otherwise be
1960 prohibited from continuing business to remain open and
1961 in operation under certain circumstances; authorizing
1962 the commission to adopt certain rules; requiring an
1963 entity to surrender its license under certain
1964 circumstances; making technical and conforming
1965 changes; amending s. 663.12, F.S.; conforming a
1966 provision to changes made by the act; amending s.
1967 663.17, F.S.; making technical changes; providing a
1968 directive to the Division of Law Revision and
1969 Information to create part III of ch. 663, F.S.,
1970 entitled "International Trust Company Representative
1971 Offices"; creating s. 663.4001, F.S.; providing
1972 legislative intent; creating s. 663.401, F.S.;

1973 defining terms; creating s. 663.402, F.S.; providing
1974 applicability of the financial institutions codes as
1975 to international trust entities; creating s. 663.403,
1976 F.S.; providing applicability of the Florida Business
1977 Corporation Act as to international trust entities;
1978 creating s. 663.404, F.S.; specifying requirements for
1979 an international trust entity or certain related
1980 entities to conduct financial institution business;
1981 authorizing the office to permit an international
1982 trust company representative office that would



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1983 otherwise be prohibited from continuing business to
1984 remain open and in operation under certain
1985 circumstances; creating s. 663.405, F.S.; providing
1986 that an international trust company representative
1987 office is not required to produce certain books and
1988 records under certain circumstances; providing
1989 applicability; creating s. 663.406, F.S.; providing
1990 requirements for applications for an international
1991 trust entity license; requiring the office to disallow
1992 certain financial resources from capitalization
1993 requirements; requiring the international trust entity
1994 to submit to the office a certain certificate;
1995 providing an abbreviated application process for
1996 certain international trust entities to establish
1997 international trust company representative offices;
1998 specifying parameters and requirements for the office
1999 in determining whether to approve or disapprove an
2000 application; requiring the commission to adopt by rule
2001 general principles regarding the adequacy of
2002 supervision of an international trust entity's foreign
2003 establishments rules; creating s. 663.407, F.S.;
2004 providing capital requirements for an international
2005 trust entity; requiring the commission to adopt rules;
2006 creating s. 663.408, F.S.; providing permissible
2007 activities under and requirements and limitations for
2008 international trust entity licenses; providing
2009 procedures, conditions, and requirements for the
2010 suspension, revocation, or surrender of an
2011 international trust entity license; creating s.



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2012 663.4081, F.S.; providing for an after-the-fact
2013 licensure process in the event of the acquisition,
2014 merger, or consolidation of international trust
2015 entities; specifying conditions for such licensure;
2016 transferring, renumbering, and amending s. 663.0625,
2017 F.S.; adding prohibited activities of representatives
2018 and employees of an international trust company
2019 representative office; providing permissible
2020 activities of such offices; conforming provisions to
2021 changes made by the act; creating s. 663.410, F.S.;
2022 requiring international trust entities to certify to
2023 the office the amount of their capital accounts at
2024 specified intervals; providing construction; creating
2025 s. 663.411, F.S.; specifying reporting and
2026 recordkeeping requirements for international trust
2027 entities; providing penalties; authorizing the office
2028 to require an international trust entity to translate
2029 certain documents into English at the international
2030 trust entity's expense; creating s. 663.412, F.S.;
2031 prohibiting an international trust entity from
2032 continuing to conduct business in this state under
2033 certain circumstances; authorizing the office to
2034 permit an international trust company representative
2035 office to remain open and in operation under certain
2036 circumstances; authorizing the commission to adopt
2037 certain rules; requiring an entity to surrender its
2038 license under certain circumstances; requiring an
2039 international trust entity or its surviving officers
2040 and directors to deliver specified documents to the



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2041 office; providing construction; creating s. 663.413,
2042 F.S.; specifying application and examination fees for
2043 international trust company representative offices;
2044 creating s. 663.414, F.S.; authorizing the commission
2045 to adopt certain rules; providing an exemption from
2046 statement of estimated regulatory costs requirements;
2047 creating s. 663.415, F.S.; requiring international
2048 trust company representative offices that are under
2049 examination to reimburse domestic or foreign travel
2050 expenses of the office; providing a directive to the
2051 Division of Law Revision and Information to create
2052 part IV of ch. 663, F.S., entitled "Qualified Limited
2053 Service Affiliates of International Trust Entities";
2054 creating s. 663.530, F.S.; defining terms; creating s.
2055 663.531, F.S.; specifying permissible and prohibited
2056 activities of a qualified limited service affiliate;
2057 requiring specified notices to be posted on an
2058 international trust entity's or qualified limited
2059 service affiliate's website; authorizing enforcement
2060 actions by the office; providing construction;
2061 creating s. 663.532, F.S.; requiring certain persons
2062 or entities to qualify as qualified limited service
2063 affiliates by a specified date or cease doing business
2064 in this state; permitting certain persons or entities
2065 to remain open and in operation under certain
2066 circumstances; amending s. 663.532, F.S., as created
2067 by this act; specifying qualification notice
2068 requirements; providing requirements and procedures
2069 for additional information requested by the office;



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2070 providing summary suspension requirements and
2071 procedures; requiring the office to make investigation
2072 of specified persons upon the filing of a completed
2073 qualification notice; requiring the office to approve
2074 a qualification only if certain conditions are met;
2075 providing factors for the office to consider when
2076 evaluating a previous offense or violation committed
2077 by, or a previous fine or penalty imposed on,
2078 specified persons; providing that qualifications are
2079 not transferable or assignable; requiring certain
2080 persons or entities to file notices seeking
2081 qualification by a specified date or cease doing
2082 business in this state; creating s. 663.5325, F.S.;
2083 providing that a qualified limited service affiliate
2084 is not required to produce certain books and records
2085 under certain circumstances; providing applicability;
2086 creating s. 663.533, F.S.; providing applicability of
2087 the financial institutions codes as to qualified
2088 limited service affiliates; providing construction;
2089 creating s. 663.534, F.S.; requiring qualified limited
2090 service affiliates to report changes of certain
2091 information to the office within a specified
2092 timeframe; creating s. 663.535, F.S.; requiring a
2093 specified notice to customers in marketing documents,
2094 advertisements, and displays at the qualified limited
2095 service affiliate's location or at certain events;
2096 creating s. 663.536, F.S.; specifying recordkeeping
2097 requirements relating to certain events that a
2098 qualified limited service affiliate participates in;



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2099 creating s. 663.537, F.S.; authorizing the office to
2100 conduct examinations or investigations of qualified
2101 limited service affiliates for certain purposes;
2102 specifying a minimum interval of examinations to
2103 assess compliance; authorizing the office to examine a
2104 person or entity submitting a notice of qualification
2105 for certain purposes; creating s. 663.538, F.S.;
2106 providing requirements and procedures relating to the
2107 suspension, revocation, or voluntary surrender of a
2108 qualified limited service affiliate's qualification;
2109 providing a penalty; authorizing the office to conduct
2110 examinations under certain circumstances; prohibiting
2111 the office from denying a request to terminate
2112 operations except under certain circumstances;
2113 providing construction; creating s. 663.539, F.S.;
2114 requiring a qualified limited service affiliate to
2115 renew its qualification biennially; specifying
2116 requirements for the renewal qualification; reenacting
2117 s. 663.16, F.S., relating to definitions, to
2118 incorporate the amendment made to s. 663.01, F.S., in
2119 a reference thereto; providing effective dates.



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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to international financial institutions; amending s. 655.005, F.S.; redefining the term "financial institution" to include international trust entities and limited service affiliates; amending s. 655.059, F.S.; specifying conditions under which confidential books and records of international trust entities may be disclosed to their home-country supervisors; revising conditions for such disclosure for international banking corporations; redefining the term "home-country supervisor"; requiring books and records pertaining to trust accounts to be kept confidential by financial institutions and their directors, officers, and employees; providing an exception; providing construction; creating s. 663.001, F.S.; providing legislative intent; amending s. 663.01, F.S.; redefining terms; deleting the definition of the term "international trust company representative office"; amending s. 663.02, F.S.; revising applicability of the financial institutions codes as to international banking corporations; amending s. 663.021, F.S.; conforming a provision to changes made by the act; amending s. 663.04, F.S.; deleting international trust companies from requirements for carrying on financial institution business; conforming a provision to changes made by the act; authorizing the Office of



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Financial Regulation to permit certain entities that would otherwise be prohibited from carrying on financial institution business to remain open and in operation under certain circumstances; amending s. 663.05, F.S.; providing for an abbreviated application procedure for certain entities established by an international banking corporation; specifying that the Financial Services Commission, rather than the office, prescribes a certain application form; requiring the commission to adopt rules for a time limitation for an application decision after a specified date; revising conditions for the office to issue an international banking corporation license; conforming a provision to changes made by the act; amending s. 663.055, F.S.; revising capital requirements for international banking corporations; amending s. 663.06, F.S.; making technical changes; conforming a provision to changes made by the act; creating s. 663.0601, F.S.; providing an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international banking corporations; specifying conditions for such license; amending s. 663.061, F.S.; providing permissible activities for international bank agencies; amending s. 663.062, F.S.; providing permissible activities for certain international representative offices; amending s. 663.063, F.S.; providing permissible activities for international administrative offices; amending s. 663.064, F.S.; requiring the commission to adopt rules



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57 relating to permissible deposits of international
58 branches; providing permissible activities for
59 international branches; amending s. 663.09, F.S.;
60 revising requirements for the maintenance of books and
61 records of international banking corporations;
62 authorizing the office to require international
63 banking corporations to translate certain documents
64 into English at the expense of the international
65 banking corporations; amending s. 663.11, F.S.;
66 authorizing the office to permit certain entities that
67 would otherwise be prohibited from continuing business
68 to remain open and in operation under certain
69 circumstances; authorizing the commission to adopt
70 certain rules; requiring an entity to surrender its
71 license under certain circumstances; making technical
72 and conforming changes; amending s. 663.12, F.S.;
73 conforming a provision to changes made by the act;
74 amending s. 663.17, F.S.; making technical changes;
75 providing a directive to the Division of Law Revision
76 and Information to create part III of ch. 663, F.S.,
77 entitled "International Trust Company Representative
78 Offices"; creating s. 663.4001, F.S.; providing
79 legislative intent; creating s. 663.401, F.S.;
80 defining terms; creating s. 663.402, F.S.; providing
81 applicability of the financial institutions codes as
82 to international trust entities; creating s. 663.403,
83 F.S.; providing applicability of the Florida Business
84 Corporation Act as to international trust entities;
85 creating s. 663.404, F.S.; specifying requirements for



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86 an international trust entity or certain related
87 entities to conduct financial institution business;
88 authorizing the office to permit an international
89 trust company representative office that would
90 otherwise be prohibited from continuing business to
91 remain open and in operation under certain
92 circumstances; creating s. 663.405, F.S.; providing
93 that an international trust company representative
94 office is not required to produce certain books and
95 records under certain circumstances; providing
96 applicability; creating s. 663.406, F.S.; providing
97 requirements for applications for an international
98 trust entity license; requiring the office to disallow
99 certain financial resources from capitalization
100 requirements; requiring the international trust entity
101 to submit to the office a certain certificate;
102 providing an abbreviated application process for
103 certain international trust entities to establish
104 international trust company representative offices;
105 specifying parameters and requirements for the office
106 in determining whether to approve or disapprove an
107 application; requiring the commission to adopt by rule
108 general principles regarding the adequacy of
109 supervision of an international trust entity's foreign
110 establishments rules; creating s. 663.407, F.S.;
111 providing capital requirements for an international
112 trust entity; requiring the commission to adopt rules;
113 creating s. 663.408, F.S.; providing permissible
114 activities under and requirements and limitations for



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115 international trust entity licenses; providing
116 procedures, conditions, and requirements for the
117 suspension, revocation, or surrender of an
118 international trust entity license; creating s.
119 663.4081, F.S.; providing for an after-the-fact
120 licensure process in the event of the acquisition,
121 merger, or consolidation of international trust
122 entities; specifying conditions for such licensure;
123 transferring, renumbering, and amending s. 663.0625,
124 F.S.; adding prohibited activities of representatives
125 and employees of an international trust company
126 representative office; conforming provisions to
127 changes made by the act; creating s. 663.410, F.S.;
128 requiring international trust entities to certify to
129 the office the amount of their capital accounts at
130 specified intervals; providing construction; creating
131 s. 663.411, F.S.; specifying reporting and
132 recordkeeping requirements for international trust
133 entities; providing penalties; authorizing the office
134 to require an international trust entity to translate
135 certain documents into English at the international
136 trust entity's expense; creating s. 663.412, F.S.;
137 prohibiting an international trust entity from
138 continuing to conduct business in this state under
139 certain circumstances; authorizing the office to
140 permit an international trust company representative
141 office to remain open and in operation under certain
142 circumstances; authorizing the commission to adopt
143 certain rules; requiring an entity to surrender its



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144 license under certain circumstances; requiring an
145 international trust entity or its surviving officers
146 and directors to deliver specified documents to the
147 office; providing construction; creating s. 663.413,
148 F.S.; specifying application and examination fees for
149 international trust company representative offices;
150 creating s. 663.414, F.S.; authorizing the commission
151 to adopt certain rules; providing an exemption from
152 statement of estimated regulatory costs requirements;
153 creating s. 663.415, F.S.; requiring international
154 trust company representative offices that are under
155 examination to reimburse domestic or foreign travel
156 expenses of the office; providing a directive to the
157 Division of Law Revision and Information to create
158 part IV of ch. 663, F.S., entitled "Limited Service
159 Affiliates of International Trust Entities"; creating
160 s. 663.530, F.S.; defining terms; creating s. 663.531,
161 F.S.; specifying permissible and impermissible
162 activities of a limited service affiliate; requiring
163 specified notices to be posted on an international
164 trust entity's or limited service affiliate's website;
165 authorizing enforcement actions by the office;
166 providing construction; creating s. 663.532, F.S.;
167 requiring certain persons or entities to register as
168 limited service affiliates by a specified date or
169 cease doing business in this state; permitting certain
170 persons or entities to remain open and in operation
171 under certain circumstances; amending s. 663.532,
172 F.S., as created by this act; specifying registration



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173 notice requirements and a fee for limited service
174 affiliates; providing requirements and procedures for
175 additional information requested by the office;
176 providing summary suspension requirements and
177 procedures; requiring the office to make investigation
178 of specified persons upon the filing of a completed
179 registration notice; requiring the office to approve
180 an application under certain conditions; providing
181 factors for the office to consider when evaluating a
182 previous offense or violation committed by, or a
183 previous fine or penalty imposed on, specified
184 persons; providing that registrations are not
185 transferable or assignable; providing for deposit of
186 fees into a specified trust fund; requiring certain
187 persons or entities to register as limited service
188 affiliates by a specified date or cease doing business
189 in this state; creating s. 663.5325, F.S.; providing
190 that a limited service affiliate is not required to
191 produce certain books and records under certain
192 circumstances; providing applicability; creating s.
193 663.533, F.S.; providing applicability of the
194 financial institutions codes as to limited service
195 affiliates; providing construction; creating s.
196 663.534, F.S.; requiring a registrant to report
197 changes of certain information to the office within a
198 specified timeframe; creating s. 663.535, F.S.;
199 requiring a specified notice to customers in marketing
200 documents, advertisements, and displays at the limited
201 service affiliate's location or at certain events;



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202 creating s. 663.536, F.S.; specifying recordkeeping
203 requirements relating to certain events that a
204 registered limited service affiliate participates in;
205 creating s. 663.537, F.S.; authorizing the office to
206 conduct examinations or investigations of limited
207 service affiliates for certain purposes; specifying a
208 minimum interval of examinations to assess compliance;
209 authorizing the office to examine a person or entity
210 submitting a notice of registration for certain
211 purposes; requiring limited service affiliates to pay
212 specified costs of examination within a specified
213 time; defining the terms "costs" and "actual cost";
214 providing penalties; specifying the trust fund where
215 examination fees must be deposited; requiring the
216 commission to adopt rules; creating s. 663.538, F.S.;
217 providing requirements and procedures relating to the
218 suspension, revocation, or voluntary surrender of a
219 limited service affiliate's registration; providing a
220 penalty; authorizing the office to conduct
221 examinations under certain circumstances; prohibiting
222 the office from denying a request to terminate
223 operations except under certain circumstances;
224 providing construction; creating s. 663.539, F.S.;
225 requiring a limited service affiliate to renew its
226 registration biennially; specifying the renewal fee
227 and the trust fund where such fee must be deposited;
228 specifying requirements for the renewal registration;
229 reenacting s. 663.16, F.S., relating to definitions,
230 to incorporate the amendment made to s. 663.01, F.S.,



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231 in a reference thereto; providing effective dates.

232

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

234

235 Section 1. Paragraph (i) of subsection (1) of section
236 655.005, Florida Statutes, is amended to read:

237 655.005 Definitions.—

238 (1) As used in the financial institutions codes, unless the
239 context otherwise requires, the term:

240 (i) "Financial institution" means a state or federal
241 savings or thrift association, bank, savings bank, trust
242 company, international bank agency, international banking
243 corporation, international branch, international representative
244 office, international administrative office, international trust
245 entity, international trust company representative office,
246 limited service affiliate, credit union, or an agreement
247 corporation operating pursuant to s. 25 of the Federal Reserve
248 Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized
249 pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss.
250 611 et seq.

251 Section 2. Subsection (1) and paragraph (b) of subsection
252 (2) of section 655.059, Florida Statutes, are amended to read:

253 655.059 Access to books and records; confidentiality;
254 penalty for disclosure.—

255 (1) The books and records of a financial institution are
256 confidential and shall be made available for inspection and
257 examination only:

- 258 (a) To the office or its duly authorized representative;
259 (b) To any person duly authorized to act for the financial



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260 institution;

261

(c) To any federal or state instrumentality or agency
262 authorized to inspect or examine the books and records of an
263 insured financial institution;

264

(d) With respect to an international banking corporation or
265 international trust entity, to the home-country supervisor of
266 the international banking corporation or international trust
267 entity, provided:

268

1. The home-country supervisor provides advance notice to
269 the office that the home-country supervisor intends to examine
270 the Florida office of the international banking corporation or
271 international trust entity. Such examination may be conducted
272 onsite or offsite and may include ongoing reporting by the
273 Florida office of the international banking corporation or
274 international trust entity to the home-country supervisor.

275

2. The home-country supervisor confirms to the office that
276 the purpose of the examination is to ensure the safety and
277 soundness of the international banking corporation or
278 international trust entity.

279

3. The books and records pertaining to customer deposit,
280 investment, ~~and~~ custodial, and trust accounts are not disclosed
281 to the home-country supervisor.

282

4. At any time during the conduct of the examination, the
283 office reserves the right to have an examiner present, ~~or~~ to
284 participate jointly in the examination, or to receive copies of
285 all information provided to the home-country supervisor.

286

287 As used in For purposes of this paragraph, the term "home-
288 country supervisor" means the governmental entity in the



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289 international banking corporation's or international trust
290 entity's home country with responsibility for the supervision
291 and regulation of the safety and soundness of the international
292 banking corporation or international trust entity;

293 (e) As compelled by a court of competent jurisdiction,
294 pursuant to a subpoena issued pursuant to the Florida Rules of
295 Civil Procedure, the Florida Rules of Criminal Procedure, or the
296 Federal Rules of Civil Procedure, or pursuant to a subpoena
297 issued in accordance with state or federal law. ~~Before~~ ~~Prior to~~
298 the production of the books and records of a financial
299 institution, the party seeking production must reimburse the
300 financial institution for the reasonable costs and fees incurred
301 in compliance with the production. If the parties disagree
302 regarding the amount of reimbursement, the party seeking the
303 records may request the court or agency having jurisdiction to
304 set the amount of reimbursement;

305 (f) As compelled by legislative subpoena as provided by
306 law, in which case the provisions of s. 655.057 apply;

307 (g) Pursuant to a subpoena, to any federal or state law
308 enforcement or prosecutorial instrumentality authorized to
309 investigate suspected criminal activity;

310 (h) As authorized by the board of directors of the
311 financial institution; or

312 (i) As provided in subsection (2).

313 (2)

314 (b) The books and records pertaining to trust accounts and
315 the deposit accounts and loans of depositors, borrowers,
316 members, and stockholders of any financial institution shall be
317 kept confidential by the financial institution and its



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318 directors, officers, and employees and ~~may shall~~ not be released
319 except upon express authorization of the account holder as to
320 her or his own accounts, loans, or voting rights. However,
321 information relating to any loan made by a financial institution
322 may be released without the borrower's authorization in a manner
323 prescribed by the board of directors for the purpose of meeting
324 the needs of commerce and for fair and accurate credit
325 information. Information may also be released, without the
326 authorization of a member or depositor but in a manner
327 prescribed by the board of directors, to verify or corroborate
328 the existence or amount of a customer's or member's account when
329 such information is reasonably provided to meet the needs of
330 commerce and to ensure accurate credit information. In addition,
331 a financial institution, affiliate, and its subsidiaries, and
332 any holding company of the financial institution or subsidiary
333 of such holding company, may furnish to one another information
334 relating to their customers or members, subject to the
335 requirement that each corporation receiving information that is
336 confidential maintain the confidentiality of such information
337 and not provide or disclose such information to any unaffiliated
338 person or entity. Notwithstanding this paragraph, ~~nothing in~~
339 ~~this subsection does not prohibit: shall prohibit~~

340 1. A financial institution from disclosing financial
341 information as referenced in this subsection as authorized
342 permitted by Pub. L. No. 106-102 (1999), as set forth in 15
343 U.S.C.A. s. 6802, as amended.

344 2. The Florida office of the international banking
345 corporation or international trust entity from sharing books and
346 records under this subsection with the home-country supervisor



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347 in accordance with subsection (1).

348 Section 3. Section 663.001, Florida Statutes, is created in
349 part I of chapter 663, Florida Statutes, to read:

350 663.001 Purpose.—The purpose of this part is to establish a
351 legal and regulatory framework for the conduct by international
352 banking corporations of financial services business in this
353 state. This part is intended to:

354 (1) Support the Florida operations of international banking
355 corporations and promote the growth of international financial
356 services to benefit the economy and consumers in this state.

357 (2) Provide for appropriate supervision and regulatory
358 oversight to ensure that financial services activities of
359 international banking corporations in this state are conducted
360 responsibly and in a safe and sound manner.

361 Section 4. Subsections (6) and (9) and paragraph (b) of
362 subsection (11) of section 663.01, Florida Statutes, are amended
363 to read:

364 663.01 Definitions.—As used in this part, the term:

365 (6) "International banking corporation" means a banking
366 corporation organized and licensed under the laws of a foreign
367 country. The term ~~"international banking corporation"~~ includes,
368 without limitation, a foreign commercial bank, foreign merchant
369 bank, or other foreign institution that engages in banking
370 activities usual in connection with the business of banking in
371 the country where such foreign institution is organized or
372 operating, including a corporation: the sole shareholders of
373 which are one or more international banking corporations or
374 holding companies which own or control one or more international
375 banking corporations which are authorized to carry on a banking



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376 business, or a central bank or government agency of a foreign
377 country and any affiliate or division thereof; which has the
378 power to receive deposits from the general public in the country
379 where it is chartered and organized; and which is under the
380 supervision of the central bank or other bank regulatory
381 authority of such country. The term also includes ~~foreign trust~~
382 ~~companies, or any similar business entities, including, but not~~
383 ~~limited to,~~ foreign banks with fiduciary powers ~~which, that~~
384 conduct trust business as defined in the financial institutions
385 codes.

386 ~~(9) "International trust company representative office"~~
387 ~~means an office of an international banking corporation or trust~~
388 ~~company organized and licensed under the laws of a foreign~~
389 ~~country which office is established or maintained in this state~~
390 ~~for the purpose of engaging in nonfiduciary activities described~~
391 ~~in s. 663.0625, or any affiliate, subsidiary, or other person~~
392 ~~that engages in such activities on behalf of such international~~
393 ~~banking corporation or trust company from an office located in~~
394 ~~this state.~~

395 ~~(10)-(11)~~ "Nonresident" means:

396 (b) A person, other than an individual, whose principal
397 place of business or domicile is outside the United States and
398 includes a person who conducts a majority of its business
399 activities in a foreign country and any foreign government and
400 its subdivision, agencies, and instrumentalities. Any person who
401 conducts business in the United States is considered to have its
402 principal place of business outside the United States if any one
403 of the following requirements is satisfied for its most recent
404 fiscal year:



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405 1. Its assets located outside the United States exceed its
406 assets located within the United States;

407 2. Its gross revenues generated outside the United States
408 exceed its gross revenues generated within the United States; or

409 3. Its payroll expenses incurred outside the United States
410 exceed its payroll expenses incurred within the United States.

411 Section 5. Section 663.02, Florida Statutes, is amended to
412 read:

413 663.02 Applicability of the financial institutions codes
414 ~~state banking laws.~~

415 (1) International banking corporations having offices in
416 this state are subject to all the provisions of the financial
417 institutions codes ~~and chapter 655~~ as though such corporations
418 were state banks ~~or trust companies~~, except where it may appear,
419 from the context or otherwise, that such provisions are clearly
420 applicable only to banks ~~or trust companies~~ organized under the
421 laws of this state or the United States. Without limiting the
422 foregoing general provisions, it is the intent of the
423 Legislature that the following provisions are applicable to such
424 banks or trust companies: s. 655.031, relating to administrative
425 enforcement guidelines; s. 655.032, relating to investigations,
426 subpoenas, hearings, and witnesses; s. 655.0321, relating to
427 hearings, proceedings, and related documents and restricted
428 access thereto; s. 655.033, relating to cease and desist orders;
429 s. 655.037, relating to removal by the office of an officer,
430 director, committee member, employee, or other person; s.
431 655.041, relating to administrative fines and enforcement; s.
432 655.50, relating to the control of money laundering and
433 terrorist financing; and any law for which the penalty is



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434 increased under s. 775.31 for facilitating or furthering
435 terrorism. International banking corporations do not have the
436 powers conferred on domestic banks by s. 658.60, relating to
437 deposits of public funds. Chapter 687, relating to interest and
438 usury, applies to all bank loans.

439 (2) Neither an international bank agency nor an
440 international branch shall have any greater right under, or by
441 virtue of, this section than is granted to banks organized under
442 the laws of this state. Legal and financial terms used herein
443 shall be deemed to refer to equivalent terms used by the country
444 in which the international banking corporation is organized.
445 This chapter and the financial institutions codes may not be
446 construed to authorize any international banking corporation ~~or~~
447 ~~trust company~~ to conduct trust business, as defined in s.
448 658.12, from an office in this state except for those activities
449 specifically authorized by s. 663.061(5) ~~ss. 663.061(5) and~~
450 ~~663.0625~~.

451 Section 6. Subsection (1) of section 663.021, Florida
452 Statutes, is amended to read:

453 663.021 Civil action subpoena enforcement.—

454 (1) Notwithstanding s. 655.059, an international
455 representative office, international bank agency, international
456 branch, ~~international trust company representative office~~, or
457 international administrative office established under this
458 chapter is not required to produce a book or record pertaining
459 to a deposit account, investment account, or loan of a customer
460 of the international banking corporation's offices that are
461 located outside the United States or its territories in response
462 to a subpoena if the book or record is maintained outside the



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463 United States or its territories and is not in the possession,
464 custody, or control of the international banking corporation's
465 office, agency, or branch established in this state.

466 Section 7. Section 663.04, Florida Statutes, is amended to
467 read:

468 663.04 Requirements for carrying on financial institution
469 business.—An international banking corporation ~~or trust company,~~
470 or any affiliate, subsidiary, or other person or business entity
471 acting as an agent for, on behalf of, or for the benefit of such
472 international banking corporation ~~or trust company~~ who engages
473 in such activities from an office located in this state, may not
474 transact a banking or trust business, or maintain in this state
475 any office for carrying on such business, or any part thereof,
476 unless such corporation, ~~trust company,~~ affiliate, subsidiary,
477 person, or business entity:

478 (1) Has been authorized by its charter to carry on a
479 banking or trust business and has complied with the laws of the
480 jurisdiction in which it is chartered.

481 (2) Has furnished to the office such proof as to the nature
482 and character of its business and as to its financial condition
483 as the commission or office requires.

484 (3) Has filed with the office a certified copy of that
485 information required to be supplied to the Department of State
486 by those provisions of part I of chapter 607 which are
487 applicable to foreign corporations.

488 (4) Has received a license duly issued to it by the office.

489 (5) Has sufficient capital in accordance with the
490 requirements of capital accounts no less than the minimums
491 required per s. 663.055 and the rules adopted thereunder and is



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492 not imminently insolvent or insolvent, as those terms are
493 defined in per s. 655.005(1).

494 (6) (a) Is not in bankruptcy, conservatorship, receivership,
495 liquidation, or similar status under the laws of any country.

496 (b) Is not operating under the direct control of the
497 government, regulatory, or supervisory authority of the
498 jurisdiction of its incorporation through government
499 intervention or any other extraordinary actions.

500 (c) Has not been in such status or control at any time
501 within the 3 7 years preceding the date of application for a
502 license.

503
504 Notwithstanding paragraphs (a) and (b), the office may permit an
505 international branch, international bank agency, international
506 administrative office, or international representative office to
507 remain open and in operation pursuant to s. 663.11(1)(b).

508 Section 8. Present subsections (4) through (8) of section
509 663.05, Florida Statutes, are redesignated as subsections (5)
510 through (9), respectively, a new subsection (4) is added to that
511 section, and present subsections (4), (5), and (6), paragraph
512 (c) of present subsection (7), and present subsection (8) of
513 that section are amended, to read:

514 663.05 Application for license; approval or disapproval.—

515 (4) Notwithstanding subsection (1), an international
516 banking corporation that has operated an international branch,
517 international bank agency, international administrative office,
518 or international representative office in this state for a
519 minimum of 3 years in a safe and sound manner, as defined by
520 commission rule, and that is otherwise eligible to establish an



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521 additional office may establish one or more additional
522 international branches, international bank agencies,
523 international administrative offices, or international
524 representative offices by providing an abbreviated application
525 and paying the appropriate license fee pursuant to s. 663.12.
526 This subsection does not permit an international banking
527 corporation to file an abbreviated application for any license
528 type whose permissible activities are broader than those in
529 which the international banking corporation is currently
530 authorized to engage.

531 (5)(4) An application filed pursuant to this section must
532 shall be made on a form prescribed by the commission office and
533 must shall contain such information as the commission or office
534 requires.

535 (6)(5) The office may, in its discretion, approve or
536 disapprove the application, but it may shall not approve the
537 application unless, in its opinion, the applicant meets each and
538 every requirement of this part and any other applicable
539 provision of the financial institutions codes. The office shall
540 approve the application only if it has determined that the
541 directors, executive officers, and principal shareholders of the
542 international banking corporation are qualified by reason of
543 their financial ability, reputation, and integrity and have
544 sufficient banking and other business experience to indicate
545 that they will manage and direct the affairs of the
546 international banking corporation in a safe, sound, and lawful
547 manner. In the processing of an application filed pursuant to
548 this section applications, the time limitations under the
549 Administrative Procedure Act do shall not apply as to approval



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550 or disapproval of the application. For applications filed on or
551 after January 1, 2018, the time limitations for approval or
552 disapproval of an application must be prescribed by rule of the
553 commission.

554 (7)(6) The office may not issue a license to an
555 international banking corporation unless:

556 (a) It is chartered in a jurisdiction in which any
557 financial institution licensed or chartered by any state or any
558 federal bank regulatory agency in the United States bank or
559 trust company having its principal place of business in this
560 state may establish similar facilities or exercise similar
561 powers; or

562 (b) Federal law permits the appropriate federal regulatory
563 authority to issue a comparable license to the international
564 banking corporation.

565 (8)(7) The office may not issue a license to an
566 international banking corporation for the purpose of operating:

567 (c) A trust representative office in this state unless the
568 corporation:

569 1. Holds an unrestricted license to conduct trust business
570 in the foreign country under the laws of which it is organized
571 and chartered.

572 2. Has been authorized by the foreign country's trust
573 business regulatory authority to establish the proposed
574 international trust representative office.

575 3. Is adequately supervised by the central bank or trust
576 regulatory agency in the foreign country in which it is
577 organized and chartered.

578 4. Meets all requirements under the financial institutions



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579 ~~codes for the operation of a trust company or trust department~~
580 ~~as if it were a state chartered trust company or bank authorized~~
581 ~~to exercise fiduciary powers.~~

582 (9)(8) The commission shall establish, by rule, the general
583 principles which shall determine the adequacy of supervision of
584 an international banking corporation's foreign establishments.
585 These principles shall be based upon the need for cooperative
586 supervisory efforts and consistent regulatory guidelines and
587 shall address, at a minimum, the capital adequacy, asset
588 quality, management, earnings, liquidity, internal controls,
589 audits, and foreign exchange operations and positions of the
590 international banking corporation. This subsection ~~does shall~~
591 not require examination by the home-country regulatory
592 authorities of any office of an international banking
593 corporation in this state. The commission may also establish, by
594 rule, other standards for approval of an application for a
595 license as considered necessary to ensure the safe and sound
596 operations of the international banking corporation ~~bank or~~
597 ~~trust representative office~~ in this state.

598 Section 9. Section 663.055, Florida Statutes, is amended to
599 read:

600 663.055 Capital requirements.—

601 (1) To qualify for a license under ~~the provisions of~~ this
602 part, the proposed capitalization of the international banking
603 corporation must be in such amount as the office determines is
604 necessary, taking into consideration the risk profile of the
605 international banking corporation and the ability of the
606 international banking corporation to operate a licensed office
607 in a safe and sound manner. In making this determination, the



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608 office must consider the financial resources of the
609 international banking corporation, including an international
610 banking corporation must have net capital accounts, calculated
611 according to United States generally accepted accounting
612 principles and practices, of at least:

613 (a) The international banking corporation's current and
614 projected capital position, profitability, level of
615 indebtedness, and business and strategic plans Forty million
616 dollars for the establishment of an international bank agency,
617 an international branch, or an international administrative
618 office; or

619 (b) The financial condition of any of the international
620 banking corporation's existing offices located in the United
621 States; Twenty million dollars for the establishment of an
622 international representative office or international trust
623 representative office.

624 (c) The minimum capital requirements of the international
625 banking corporation's home-country jurisdiction; and

626 (d) The capital ratio standards used in the United States
627 and in the international banking corporation's home-country
628 jurisdiction.

629 (2) The proposed capitalization of the international
630 banking corporation must be in such amount as the office deems
631 adequate, but in no case may the total capital accounts of the
632 international banking corporation be less than the minimum
633 required under s. 658.21(2) to establish a state bank
634 Notwithstanding the provisions of paragraph (1)(a), the office
635 may approve an application for a license to establish an
636 international bank agency, an international branch, or an



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637 ~~international administrative office if:~~

638 ~~(a) The international banking corporation is licensed to~~
639 ~~receive deposits from the general public in the country where it~~
640 ~~is organized and licensed and to engage in such other activities~~
641 ~~as are usual in connection with the business of banking in such~~
642 ~~country;~~

643 ~~(b) The office receives a certificate that is issued by the~~
644 ~~banking or supervisory authority of the country in which the~~
645 ~~international banking corporation is organized and licensed and~~
646 ~~states that the international banking corporation is duly~~
647 ~~organized and licensed and lawfully existing in good standing,~~
648 ~~and is empowered to conduct a banking business; and~~

649 ~~(c) The international banking corporation has been in the~~
650 ~~business of banking for at least 10 years and is ranked by the~~
651 ~~banking or supervisory authority of the country in which it is~~
652 ~~organized and licensed as one of the five largest banks in that~~
653 ~~country in terms of domestic deposits, as of the date of its~~
654 ~~most recent statement of financial condition. However, in no~~
655 ~~event shall the office approve an application under this~~
656 ~~subsection for any international banking corporation with~~
657 ~~capital accounts of less than \$20 million.~~

658 (3) The office may specify such other conditions as it
659 determines are appropriate, considering the public interest and
660 the need to maintain a safe, sound, and competitive banking
661 system in this state, ~~and the preservation of an environment~~
662 ~~conducive to the conduct of an international banking business in~~
663 ~~this state. In translating the capital accounts of an~~
664 ~~international banking corporation, the office may consider~~
665 ~~monetary corrections accounts that reflect results consistent~~



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666 ~~with the requirements of generally accepted accounting~~
667 ~~principles in the United States.~~

668 (4) For the purpose of this part, the capital accounts of
669 and capital ratio standards for an international banking
670 corporation must ~~shall~~ be determined in accordance with rules
671 adopted by the commission. In adopting such rules, the
672 commission shall consider similar rules adopted by bank
673 regulatory agencies in the United States and the need to provide
674 reasonably consistent regulatory requirements for international
675 banking corporations ~~which will maintain the safe and sound~~
676 ~~condition of international banking corporations~~ doing business
677 in this state, as well as capital adequacy standards of an
678 international banking corporation's home-country jurisdiction.

679 Section 10. Subsections (1) and (3) of section 663.06,
680 Florida Statutes, are amended to read:

681 663.06 Licenses; permissible activities.—

682 (1) (a) An international banking corporation licensed to
683 operate an office in this state may engage in the business
684 authorized by this part at the office specified in such license
685 for an indefinite period.

686 (b) An international banking corporation may operate more
687 than one licensed office, each at a different place of business,
688 provided that each office is ~~shall be~~ separately licensed.

689 (c) ~~A~~ No license is not transferable or assignable.
690 However, the location of a licensed office may be changed after
691 notification of the office.

692 (d) Every such license must ~~shall~~ be, at all times,
693 conspicuously displayed in the place of business specified
694 therein.



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695 (3) The license for any international banking corporation
696 office in this state may be suspended or revoked by the office,
697 with or without examination, upon its determination that the
698 international banking corporation or the licensed office does
699 not meet all requirements for original licensing. Additionally,
700 the office shall revoke the license of any licensed office that
701 the office determines has been inactive for 6 months or longer.
702 The commission may by rule prescribe additional conditions or
703 standards under which the license of an international bank
704 agency, international branch, international representative
705 office, ~~international trust company representative office,~~ or
706 international administrative office may be suspended or revoked.

707 Section 11. Section 663.0601, Florida Statutes, is created
708 to read:

709 663.0601 After-the-fact licensure process in the event of
710 the acquisition, merger, or consolidation of international
711 banking corporations.-If an international banking corporation
712 proposes to acquire, merge, or consolidate with an international
713 banking corporation that presently operates an international
714 branch, international bank agency, international administrative
715 office, or international representative office licensed in this
716 state, the office may authorize the currently licensed
717 international branch, international bank agency, international
718 administrative office, or international representative office to
719 remain open and in operation after consummation of the proposed
720 acquisition, merger, or consolidation, if the acquiring
721 international banking corporation files an after-the-fact
722 application and all of the following conditions are met:

723 (1) The international banking corporation or corporations



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724 resulting from the acquisition, merger, or consolidation will
725 not directly or indirectly own or control more than 5 percent of
726 any class of the voting securities of, or control, a United
727 States bank.

728 (2) Before consummation of the acquisition, merger, or
729 consolidation, the international banking corporation currently
730 licensed to operate an international branch, international bank
731 agency, international administrative office, or international
732 representative office in this state must provide the office at
733 least 30 days' advance written notice, as prescribed by rules
734 adopted by the commission, of the proposed acquisition, merger,
735 or consolidation.

736 (3) Before consummation of the acquisition, merger, or
737 consolidation, each international banking corporation commits in
738 writing that it will either:

739 (a) Comply with the conditions in subsections (1) and (2)
740 and file an after-the-fact application for a license under s.
741 663.05(1) within 60 days after consummation of the proposed
742 acquisition, merger, or consolidation; and refrain from engaging
743 in new lines of business and from otherwise expanding the
744 activities of such establishment in this state until the
745 disposition of the after-the-fact license application, in
746 accordance with chapter 120; or

747 (b) Promptly wind down and close any international branch,
748 international bank agency, international administrative office,
749 or international representative office in this state if the
750 international banking corporations that are party to the
751 acquisition, merger, or consolidation elect not to file an
752 application for a license in accordance with paragraph (a); and,



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753 before such wind-down and closure, refrain from engaging in new
754 lines of business or otherwise expanding the activities of such
755 establishment in this state.

756 Section 12. Subsection (1) of section 663.061, Florida
757 Statutes, is amended to read:

758 663.061 International bank agencies; permissible
759 activities.-

760 (1) An international bank agency licensed under this part
761 may make any loan, extension of credit, or investment which it
762 could make if incorporated and operating as a bank organized
763 under the laws of this state. An international bank agency may
764 act as custodian and may furnish investment management, and
765 investment advisory services authorized under rules adopted by
766 the commission, to nonresident entities or persons whose
767 principal places of business or domicile are outside the United
768 States and to resident entities or persons with respect to
769 international, ~~or~~ foreign, or domestic investments. An
770 international banking corporation ~~that which~~ has an
771 international bank agency licensed under the terms of this part
772 ~~is shall be~~ exempt from the registration requirements of s.
773 517.12. An international bank agency licensed by the office may
774 engage in any activity permissible for an international
775 administrative office or international representative office.

776 Section 13. Section 663.062, Florida Statutes, is amended
777 to read:

778 663.062 International representative offices; permissible
779 activities.-An international representative office may promote
780 or assist the deposit-taking, lending, or other financial or
781 banking activities of an international banking corporation. An



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782 international representative office may serve as a liaison in
783 Florida between an international banking corporation and its
784 existing and potential customers. Representatives and employees
785 based at such office may solicit business for the international
786 banking corporation and its subsidiaries and affiliates, provide
787 information to customers concerning their accounts, answer
788 questions, receive applications for extensions of credit and
789 other banking services, transmit documents on behalf of
790 customers, and make arrangements for customers to transact
791 business on their accounts, but a representative office may not
792 conduct any banking or trust business in this state. An
793 international representative office of an international banking
794 corporation that has fiduciary powers may engage in the
795 international trust representative office activities enumerated
796 in s. 663.409.

797 Section 14. Subsection (2) of section 663.063, Florida
798 Statutes, is amended to read:

799 663.063 International administrative offices.-

800 (2) An office established pursuant to ~~the provisions of~~
801 this section may ~~not~~ engage only in ~~any activity except~~ those
802 activities set forth in subsection (1) and the activities
803 permissible for an international representative office pursuant
804 to s. 663.062.

805 Section 15. Section 663.064, Florida Statutes, is amended
806 to read:

807 663.064 International branches; permissible activities;
808 requirements.-

809 (1) An international banking corporation that meets the
810 requirements of ss. 658.26, 663.04, and 663.05 may, with the



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811 approval of the office, establish one or more branches in this
812 state. ~~An international branch shall have the same rights and~~
813 ~~privileges as a federally licensed international branch.~~ The
814 operations of an international branch shall be conducted
815 pursuant to requirements determined by the office as necessary
816 to ensure compliance with the provisions of the financial
817 institutions codes, including requirements for the maintenance
818 of accounts and records separate from those of the international
819 banking corporation of which it is a branch.

820 (2) An international branch has the same rights and
821 privileges as a federally licensed international branch. The
822 permissible deposits of an international branch must be
823 determined in accordance with rules adopted by the commission.
824 In adopting such rules, the commission shall consider the
825 similar deposit-taking authority of a federally licensed
826 international branch and the need to provide reasonably
827 consistent regulatory requirements for international banking
828 corporations doing business in this state.

829 (3) An international branch licensed by the office may
830 engage in any activity permissible for an international bank
831 agency, international administrative office, or international
832 representative office.

833 Section 16. Subsection (3) of section 663.09, Florida
834 Statutes, is amended, and subsection (5) is added to that
835 section, to read:

836 663.09 Reports; records.—

837 (3) Each international banking corporation ~~that which~~
838 operates an office licensed under this part shall cause to be
839 kept, at a location accepted by the office:



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840 (a) Correct and complete books and records of account of
841 the business operations transacted by such office. All policies
842 and procedures ~~relating specifically to governing~~ the operations
843 of such office, as well as any existing general ledger or
844 subsidiary accounts, ~~must shall~~ be maintained in the English
845 language. Any policies and procedures of the international
846 banking corporation which are not specific to the operations of
847 such office may be maintained in a language other than English
848 ~~The office may require that any other document not written in~~
849 ~~the English language which the office deems necessary for the~~
850 ~~purposes of its regulatory and supervisory functions be~~
851 ~~translated into English at the expense of the international~~
852 ~~banking corporation.~~

853 (b) Current copies of the charter and bylaws of the
854 international banking corporation, relative to the operations of
855 the office, and minutes of the proceedings of its directors,
856 officers, or committees relative to the business of the office.
857 Such records may be maintained in a language other than English
858 ~~and must shall~~ be kept pursuant to s. 655.91 and ~~shall be~~ made
859 available to the office, upon request, at any time during
860 regular business hours of the office. Any failure to keep such
861 records as aforesaid or any refusal to produce such records upon
862 request by the office ~~is shall be~~ grounds for suspension or
863 revocation of any license issued under this part.

864 (5) The office may require at any time that any document
865 not written in the English language which the office deems
866 necessary for the purposes of its regulatory and supervisory
867 functions be translated into English at the expense of the
868 international banking corporation.



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869 Section 17. Section 663.11, Florida Statutes, is amended to
870 read:

871 663.11 Termination of international banking corporation's
872 charter or authority.—

873 (1) (a) An international banking corporation that is
874 licensed to maintain an office in this state may not continue to
875 conduct its licensed business in this state if the international
876 banking corporation:

877 1. Is dissolved, or its authority or existence is otherwise
878 terminated or canceled in the jurisdiction of its
879 incorporation;

880 2. Is in bankruptcy, conservatorship, receivership,
881 liquidation, or similar status under the laws of any country;
882 or

883 3. Is operating under the direct control of the government
884 or the regulatory or supervisory authority of the jurisdiction
885 of its incorporation through government intervention or any
886 other extraordinary actions.

887 (b)1. Notwithstanding subparagraphs (a)2. and 3., the
888 office may permit an international branch, international bank
889 agency, international administrative office, or international
890 representative office to remain open and in operation under the
891 following conditions:

892 a. Within 30 days after the occurrence of an event
893 described in subparagraph (a)2. or subparagraph (a)3., the
894 international branch, international bank agency, international
895 administrative office, or international representative office
896 provides the office with a plan to wind down its affairs and
897 business within the subsequent 90 days or provides an interim



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898 operational plan outlining parameters for its continued
899 operation. If the office finds that such interim operational
900 plan does not allow for the conduct of business in a safe and
901 sound manner, the office shall revoke the license.

902 b. The international banking corporation is authorized by
903 the foreign country in which it is organized and licensed to
904 address the affairs of any international branch, international
905 bank agency, international administrative office, or
906 international representative office in this state.

907 c. The international branch, international bank agency,
908 international administrative office, or international
909 representative office does not engage in any new lines of
910 business or otherwise expand its activities in this state.

911 d. The office determines that allowing the international
912 branch, international bank agency, international administrative
913 office, or international representative office to remain open
914 further domestic and foreign supervisory cooperation.

915 e. The office determines that allowing the international
916 branch, international bank agency, international administrative
917 office, or international representative office to remain open is
918 in the public's interest and does not present an immediate or
919 serious danger to the public health, safety, or welfare.

920 2. The commission may establish, by rule, additional
921 standards and conditions for approval of an interim operational
922 plan and for ongoing compliance with the plan. Such standards
923 and conditions shall be based upon the need for cooperative
924 supervisory efforts, consistent regulatory oversight, and the
925 orderly administration of the international banking
926 corporation's affairs.



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927 3. After the resolution of all applicable events described
928 in subparagraphs (a)2. and 3., if an international banking
929 corporation is no longer authorized by the foreign country in
930 which it is organized and licensed to conduct banking business,
931 the international branch, international bank agency,
932 international administrative office, or international
933 representative office shall surrender its license in accordance
934 with s. 663.06.

935 (2) A certificate of the official who is responsible for
936 records of banking corporations of the jurisdiction of
937 incorporation of such international banking corporation,
938 attesting to the occurrence of any such event, or a certified
939 copy of an order or decree of a court of such jurisdiction,
940 directing the dissolution of such international banking
941 corporation, the termination of its existence, or the
942 cancellation of its authority, or declaring its status in
943 bankruptcy, conservatorship, receivership, liquidation, or
944 similar proceedings, or other reliable documentation that the
945 international banking corporation is operating under the direct
946 control of its government or a regulatory or supervisory
947 authority, shall be delivered by The international banking
948 corporation or its surviving officers and directors shall
949 deliver to the office:-

950 (a) A certificate of the official who is responsible for
951 records of banking corporations of the jurisdiction of
952 incorporation of such international banking corporation,
953 attesting to the occurrence of any event described in paragraph
954 (1) (a);

955 (b) A certified copy of an order or decree of a court of



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956 such jurisdiction, directing the dissolution of such
957 international banking corporation, the termination of its
958 existence, or the cancellation of its authority or declaring its
959 status in bankruptcy, conservatorship, receivership,
960 liquidation, or similar proceedings; or

961 (c) Other reliable documentation evidencing that the
962 international banking corporation is operating under the direct
963 control of its government or a regulatory or supervisory
964 authority.

965 (3) The filing of the certificate, order, documentation, or
966 decree has shall have the same effect as the revocation of the
967 license of such international banking corporation as provided in
968 s. 663.06, unless the office has permitted the international
969 branch, international bank agency, international administrative
970 office, or international representative office to remain open
971 and in operation pursuant to paragraph (1) (b).

972 Section 18. Subsection (1) of section 663.12, Florida
973 Statutes, is amended to read:

974 663.12 Fees; assessments; fines.-

975 (1) Each application for a license under ~~the provisions of~~
976 this part must shall be accompanied by a nonrefundable filing
977 fee payable to the office in the following amount:

978 (a) Ten thousand dollars for establishing a state-chartered
979 investment company.

980 (b) Ten thousand dollars for establishing an international
981 bank agency or branch.

982 (c) Five thousand dollars for establishing an international
983 administrative office.

984 (d) Five thousand dollars for establishing an international



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985 representative office.

986 ~~(e) Five thousand dollars for establishing an international~~
987 ~~trust company representative office.~~

988 ~~(e)-(f)~~ An amount equal to the initial filing fee for an
989 application to convert from one type of license to another. The
990 commission may increase the filing fee for any type of license
991 to an amount established by rule and calculated in a manner so
992 as to cover the direct and indirect cost of processing such
993 applications.

994 Section 19. Subsection (11) of section 663.17, Florida
995 Statutes, is amended to read:

996 663.17 Liquidation; possession of business and property;
997 inventory of assets; wages; depositing collected assets;
998 appointing agents; appointment of judges.-

999 (11) The compensation of agents and any other employees
1000 appointed by the office to assist in the liquidation of an
1001 international banking corporation, or any of the corporation's
1002 licensed offices located in this state, the distribution of its
1003 assets, or the expenses of supervision, ~~must shall~~ be paid out
1004 of the assets of the corporation in the ~~possession hands~~ of the
1005 office. Expenses of liquidation and approved claims for fees and
1006 assessments due the office ~~must shall~~ be given first priority
1007 among unsecured creditors.

1008 Section 20. The Division of Law Revision and Information is
1009 directed to create part III of chapter 663, Florida Statutes,
1010 consisting of ss. 663.4001-663.416, Florida Statutes, to be
1011 entitled "International Trust Company Representative Offices."

1012 Section 21. Section 663.4001, Florida Statutes, is created
1013 to read:



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1014 663.4001 Purpose.-The purpose of this part is to establish
1015 a legal and regulatory framework for the conduct by
1016 international trust entities of financial services business in
1017 this state. This part is intended to:

1018 (1) Support the Florida operations of international trust
1019 entities and promote the growth of international financial
1020 services to benefit the economy and consumers in this state.

1021 (2) Provide for appropriate supervision and regulatory
1022 oversight to ensure that financial services activities of
1023 international trust entities in this state are conducted
1024 responsibly and in a safe and sound manner.

1025 Section 22. Section 663.401, Florida Statutes, is created
1026 to read:

1027 663.401 Definitions.-

1028 (1) "Affiliate" means a person or business or a group of
1029 persons or businesses acting in concert which controls, is
1030 controlled by, or is under common control of an international
1031 trust entity.

1032 (2) "International trust company representative office"
1033 means an office of an international trust entity which is
1034 established or maintained in this state for the purpose of
1035 engaging in nonfiduciary activities described in s. 663.409, or
1036 any affiliate, subsidiary, or other person that engages in such
1037 activities on behalf of such international trust entity from an
1038 office located in this state.

1039 (3) "International trust entity" means an international
1040 trust company or organization, or any similar business entity,
1041 or an affiliated or subsidiary entity that is licensed,
1042 chartered, or similarly permitted to conduct trust business in a



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1043 foreign country or countries under the laws where such entity is
1044 organized and supervised.

1045 Section 23. Section 663.402, Florida Statutes, is created
1046 to read:

1047 663.402 Applicability of the financial institutions codes.-

1048 (1) An international trust entity that operates an office
1049 licensed under this part is subject to all the financial
1050 institutions codes as though such international trust entity
1051 were a state trust company, except when it appears, from the
1052 context or otherwise, that such provisions are clearly
1053 applicable only to trust companies organized under the laws of
1054 this state or the United States. Without limiting the foregoing
1055 general provisions, it is the intent of the Legislature that the
1056 following provisions are applicable to such international trust
1057 entities having offices in this state: s. 655.031, relating to
1058 administrative enforcement guidelines; s. 655.032, relating to
1059 investigations, subpoenas, hearings, and witnesses; s. 655.0321,
1060 relating to restricted access hearings, proceedings, and related
1061 documents; s. 655.033, relating to cease and desist orders; s.
1062 655.037, relating to removal of a financial institution-related
1063 party by the office; s. 655.041, relating to administrative
1064 finances and enforcement; s. 655.50, the Florida Control of Money
1065 Laundering and Terrorist Financing in Financial Institutions
1066 Act; and any law for which the penalty is increased under s.
1067 775.31 for facilitating or furthering terrorism.

1068 (2) An international trust entity does not have any greater
1069 right under, or by virtue of, this section than is granted to
1070 trust companies organized under the laws of this state. Legal
1071 and financial terms used in this chapter are deemed to refer to



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1072 equivalent terms used by the country in which the international
1073 trust entity is organized. This chapter and the financial
1074 institutions codes may not be construed to authorize any
1075 international trust entity to conduct trust business, as defined
1076 in s. 658.12, from an office in this state.

1077 Section 24. Section 663.403, Florida Statutes, is created
1078 to read:

1079 663.403 Applicability of the Florida Business Corporation
1080 Act.-Notwithstanding s. 607.01401(12), the provisions of part I
1081 of chapter 607 which are not in conflict with the financial
1082 institutions codes and which relate to foreign corporations
1083 apply to all international trust entities and their offices
1084 doing business in this state.

1085 Section 25. Section 663.404, Florida Statutes, is created
1086 to read:

1087 663.404 Requirements for conducting financial institution
1088 business.-An international trust entity, or any affiliated,
1089 subsidiary, or other person or business entity acting as an
1090 agent for, on behalf of, or for the benefit of such
1091 international trust entity, who engages in such activities from
1092 an office located in this state, may not transact a trust
1093 business, or maintain in this state any office for carrying on
1094 such business, or any part thereof, unless such international
1095 trust entity, affiliate, subsidiary, person, or business entity:

1096 (1) Has been authorized by charter, license, or similar
1097 authorization by operation of law to carry on trust business and
1098 has complied with the laws of each jurisdiction in which it is
1099 chartered, licensed, or otherwise authorized and created under
1100 operation of law.



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1101 (2) Has furnished to the office such proof as to the nature
1102 and character of its business and as to its financial condition
1103 as the commission or office requires.

1104 (3) Has filed with the office a certified copy of that
1105 information required to be supplied to the Department of State
1106 by those provisions of part I of chapter 607 which are
1107 applicable to foreign corporations.

1108 (4) Has received a license duly issued to it by the office.

1109 (5) Has sufficient capital in accordance with the
1110 requirements of s. 663.407 and the rules adopted thereunder and
1111 is not imminently insolvent or insolvent, as those terms are
1112 defined under s. 655.005(1).

1113 (6) (a) Is not in bankruptcy, conservatorship, receivership,
1114 liquidation, or similar status under the laws of any country.

1115 (b) Is not operating under the direct control of the
1116 government or the regulatory or supervisory authority of the
1117 home jurisdiction in which it has been chartered, licensed, or
1118 otherwise authorized and created under operation of law, through
1119 government intervention or any other extraordinary actions.

1120 (c) Has not been in such status or control at any time
1121 within the 3 years preceding the date of application for a
1122 license.

1123 Notwithstanding paragraphs (a) and (b), the office may permit an
1124 international trust company representative office to remain open
1125 and in operation pursuant to s. 663.412(1)(b).

1126 Section 26. Section 663.405, Florida Statutes, is created
1127 to read:

1128 663.405 Civil action subpoena enforcement.—
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1130 (1) Notwithstanding s. 655.059, an international trust
1131 company representative office established under this chapter is
1132 not required to produce a book or record pertaining to a deposit
1133 account, investment account, trust account, or loan of a
1134 customer of the international trust entity's offices that are
1135 located outside the United States or its territories in response
1136 to a subpoena, if the book or record is maintained outside the
1137 United States or its territories and is not in the possession,
1138 custody, or control of the international trust entity's
1139 representative office established in this state.

1140 (2) This section applies only to a subpoena issued pursuant
1141 to the Florida Rules of Civil Procedure, the Federal Rules of
1142 Civil Procedure, or other similar law or rule of civil procedure
1143 in another state. This section does not apply to a subpoena
1144 issued by or on behalf of a federal, state, or local government
1145 law enforcement agency, administrative or regulatory agency,
1146 legislative body, or grand jury and does not limit the power of
1147 the office to access all books and records in the exercise of
1148 the office's regulatory and supervisory powers under the
1149 financial institutions codes.

1150 Section 27. Section 663.406, Florida Statutes, is created
1151 to read:

1152 663.406 Application for license; approval or disapproval.—

1153 (1) An international trust entity, before being licensed by
1154 the office to maintain any office in this state, must subscribe
1155 and acknowledge, and submit to the office, an application that
1156 contains all of the following:

1157 (a) The name of the international trust entity.

1158 (b) The proposed location, by street and post office



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1159 address and county, where its business is to be transacted in
1160 this state, and the name of the person who will be in charge of
1161 the business and affairs of the office.

1162 (c) The location where its initial registered office will
1163 be located in this state.

1164 (d) The total amount of the capital accounts of the
1165 international trust entity.

1166 (e) A complete and detailed statement of its financial
1167 condition as of a date within 180 days before the date of such
1168 application, except that the office in its discretion may, when
1169 necessary or expedient, accept such statement of financial
1170 condition as of a date within 240 days before the date of such
1171 application. The office in its discretion may, when necessary or
1172 expedient, require an independent opinion audit or the
1173 equivalent satisfactory to the office.

1174 (f) A listing of any occasion within the 10-year period
1175 before the application on which either the international trust
1176 entity or any of its directors, executive officers, or principal
1177 shareholders have been arrested for, charged with, convicted of,
1178 or pled guilty or nolo contendere to, regardless of
1179 adjudication, any offense with respect to which the penalties
1180 include the possibility of imprisonment for 1 year or more, or
1181 to any offense involving money laundering, currency transaction
1182 reporting, facilitating or furthering terrorism, or fraud, or
1183 otherwise related to the operation of a financial institution.

1184 (2) The office shall disallow any illegally obtained
1185 currency, monetary instruments, funds, or other financial
1186 resources from the capitalization requirements of this section,
1187 and the existence of such illegally obtained resources is



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1188 grounds for denial of the application for license.

1189 (3) An international trust entity that submits an
1190 application to the office shall concurrently submit a
1191 certificate issued by the supervisory authority of the country
1192 in which the international trust entity is chartered or
1193 organized which states that the international trust entity is
1194 duly organized and licensed, or otherwise authorized by
1195 operation of law to transact business as a trust entity, and
1196 lawfully existing in good standing.

1197 (4) An international trust entity that has operated an
1198 international trust company representative office in this state
1199 for at least 3 years in a safe and sound manner, as defined by
1200 commission rule, and that is otherwise eligible to establish an
1201 additional office may establish one or more international trust
1202 company representative offices by providing an abbreviated
1203 application, and paying the appropriate license fee pursuant to
1204 s. 663.413.

1205 (5) An application filed pursuant to this section must be
1206 made on a form prescribed by the commission and must contain
1207 such information as the commission or office requires.

1208 (6) The office may, in its discretion, approve or
1209 disapprove the application, but it may not approve the
1210 application unless, in its opinion, the applicant meets each and
1211 every requirement of this part and any other applicable
1212 provision of the financial institutions codes. The office may
1213 approve the application only if it has determined that the
1214 directors, executive officers, and principal shareholders of the
1215 international trust entity are qualified by reason of their
1216 financial ability, reputation, and integrity and have sufficient



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1217 trust company and other business experience to indicate that
1218 they will manage and direct the affairs of the international
1219 trust entity in a safe, sound, and lawful manner. In the
1220 processing of any application filed pursuant to this section,
1221 the time limitations under the Administrative Procedure Act do
1222 not apply as to approval or disapproval of the application. For
1223 applications filed on or after January 1, 2018, the time
1224 limitations for approval or disapproval of an application must
1225 be prescribed by rule of the commission.

1226 (7) The office may not issue a license to an international
1227 trust entity unless it is chartered, licensed, or similarly
1228 authorized by operation of law in a jurisdiction in which any
1229 financial institution licensed or chartered by any state or
1230 federal regulatory agency in the United States may establish
1231 similar facilities or exercise similar powers.

1232 (8) The office may not issue a license to an international
1233 trust entity for the purpose of operating an international trust
1234 company representative office in this state unless the trust
1235 entity:

1236 (a) Holds an unrestricted license to conduct trust business
1237 in the foreign country under whose laws it is organized and
1238 chartered;

1239 (b) Has been authorized by the foreign country's
1240 appropriate regulatory authority to establish the proposed
1241 international trust company representative office; and

1242 (c) Is adequately supervised by the appropriate regulatory
1243 agency in the foreign country in which it is organized and
1244 chartered.

1245 (9) The commission shall establish, by rule, the general



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1246 principles that determine the adequacy of supervision of an
1247 international trust entity's foreign establishments. These
1248 principles must be based upon the need for cooperative
1249 supervisory efforts and consistent regulatory guidelines and
1250 must address, at a minimum, the capital adequacy, asset quality,
1251 management, earnings, liquidity, internal controls, audits, and
1252 foreign exchange operations and positions of the international
1253 trust entity. This subsection does not require examination by
1254 the home-country regulatory authorities of any office of an
1255 international trust entity in this state. The commission may
1256 also establish, by rule, other standards for approval of an
1257 application for a license as considered necessary to ensure the
1258 safe and sound operations of the international trust entity in
1259 this state.

1260 Section 28. Section 663.407, Florida Statutes, is created
1261 to read:

1262 663.407 Capital requirements.-

1263 (1) For an international trust entity to qualify for a
1264 license under this part, the proposed capitalization of the
1265 international trust entity must be in such amount as the office
1266 determines is necessary, taking into consideration the risk
1267 profile of the international trust entity and the ability of the
1268 international trust entity to operate a licensed office in a
1269 safe and sound manner. In making this determination, the office
1270 shall consider the financial resources of the international
1271 trust entity, including:

1272 (a) The international trust entity's current and projected
1273 capital position, profitability, level of indebtedness, business
1274 and strategic plans, and off-balance sheet asset management and



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1275 administration activities;

1276 (b) The financial condition of any of the international
1277 trust entity's existing offices located in the United States;

1278 (c) The minimum capital requirements of the international
1279 trust entity's home-country jurisdiction; and

1280 (d) The capital ratio standards used in the United States
1281 and in the international trust entity's home-country
1282 jurisdiction.

1283 (2) The proposed capitalization of the international trust
1284 entity must be in such amount as the office deems adequate, but
1285 in no case may the total capital accounts of the international
1286 trust entity be less than \$1 million.

1287 (3) The office may specify such other conditions as it
1288 determines are appropriate, considering the public interest and
1289 the need to maintain a safe, sound, and competitive financial
1290 marketplace in this state.

1291 (4) For purposes of this part, the capital accounts of and
1292 capital ratio standards for an international trust entity must
1293 be determined in accordance with rules adopted by the
1294 commission. In adopting such rules, the commission shall
1295 consider similar rules adopted by regulatory agencies in the
1296 United States and the need to provide reasonably consistent
1297 regulatory requirements for international trust entities doing
1298 business in this state, as well as capital adequacy standards of
1299 an international trust entity's home-country jurisdiction.

1300 Section 29. Section 663.408, Florida Statutes, is created
1301 to read:

1302 663.408 Licenses; permissible activities of licensees.-

1303 (1) (a) An international trust entity licensed to operate an



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1304 office in this state may engage in the business authorized by
1305 this part at the office specified in such license for an
1306 indefinite period.

1307 (b) An international trust entity may operate more than one
1308 licensed office, each at a different place of business, provided
1309 that each office is separately licensed.

1310 (c) A license is not transferable or assignable. However,
1311 the location of a licensed office may be changed after
1312 notification to the office.

1313 (d) A license must at all times be conspicuously displayed
1314 in the place of business specified therein.

1315 (2) An international trust entity that proposes to
1316 terminate the operations of a licensed office in this state must
1317 surrender its license to the office and comply with such
1318 procedures as the commission may prescribe by rule.

1319 (3) The license for an international trust company
1320 representative office in this state may be suspended or revoked
1321 by the office, with or without examination, upon its
1322 determination that the international trust entity or the
1323 licensed office does not meet all requirements for original
1324 licensing. Additionally, the office shall revoke the license of
1325 any licensed office that the office determines has been inactive
1326 for 6 months or longer. The commission may by rule prescribe
1327 additional conditions or standards under which the license of an
1328 international trust company representative office may be
1329 suspended or revoked.

1330 (4) If any such license is surrendered by the international
1331 trust entity or is suspended or revoked by the office, all
1332 rights and privileges of the international trust entity to



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1333 transact the business under the license cease. The commission
1334 shall prescribe by rule procedures for the surrender of a
1335 license and for the orderly cessation of business by an
1336 international trust entity in a manner that is not harmful to
1337 the interests of its customers or of the public.

1338 Section 30. Section 663.4081, Florida Statutes, is created
1339 to read:

1340 663.4081 After-the-fact licensure process in the event of
1341 the acquisition, merger, or consolidation of international trust
1342 entities.-If an international trust entity proposes to acquire,
1343 merge, or consolidate with an international trust entity that
1344 presently operates an international trust company representative
1345 office licensed in this state, the office may allow the
1346 currently licensed international trust company representative
1347 office to remain open and in operation after consummation of the
1348 proposed acquisition, merger, or consolidation, subject to the
1349 filing with the office of an after-the-fact license application
1350 in accordance with all of the following conditions:

1351 (1) The international trust entity or entities resulting
1352 from the acquisition, merger, or consolidation will not directly
1353 or indirectly own or control more than 5 percent of any class of
1354 the voting securities of, or control, a United States bank.

1355 (2) Before consummation of the acquisition, merger, or
1356 consolidation, the international trust entity currently licensed
1357 to operate an international trust company representative office
1358 in this state must provide the office at least 30 days' advance
1359 written notice, as prescribed by rules adopted by the
1360 commission, of the proposed acquisition, merger, or
1361 consolidation.



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1362 (3) Before consummation of the acquisition, merger, or
1363 consolidation, each international trust entity commits in
1364 writing that it will:

1365 (a) Comply with the conditions in subsections (1) and (2)
1366 and file an after-the-fact application for a license under s.
1367 663.406(1) within 60 days after consummation of the proposed
1368 acquisition, merger, or consolidation; and refrain from engaging
1369 in new lines of business and from otherwise expanding the
1370 activities of such establishment in this state until the
1371 disposition of the after-the-fact license application, in
1372 accordance with chapter 120; or

1373 (b) Promptly wind down and close any international trust
1374 company representative office in this state if the international
1375 trust entities that are party to the acquisition, merger, or
1376 consolidation elect not to file an application for a license in
1377 accordance with paragraph (a); and, before such wind-down and
1378 closure, refrain from engaging in new lines of business or
1379 otherwise expanding the activities of such establishment in this
1380 state.

1381 Section 31. Section 663.0625, Florida Statutes, is
1382 transferred, renumbered as section 663.409, Florida Statutes,
1383 and amended to read:

1384 663.409 ~~663.0625~~ International trust company representative
1385 offices; permissible activities; requirements.-

1386 (1) An international trust company representative office
1387 may conduct any nonfiduciary activities that are ancillary to
1388 the fiduciary business of its international ~~trust entity banking~~
1389 corporation or trust company, but may not act as a fiduciary.
1390 Permissible activities include advertising, marketing, and



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1391 soliciting for fiduciary business on behalf of an international
1392 ~~trust entity banking corporation or trust company~~; contacting
1393 existing or potential customers, answering questions, and
1394 providing information about matters related to their accounts;
1395 serving as a liaison in this state between the international
1396 ~~trust entity banking corporation or trust company~~ and its
1397 existing or potential customers; and engaging in any other
1398 activities approved by the office or under rules of the
1399 commission.

1400 (2) Representatives and employees at such office may not
1401 act as a fiduciary, including, but not limited to, accepting the
1402 fiduciary appointment, executing the fiduciary documents that
1403 create the fiduciary relationship, ~~or~~ making discretionary
1404 decisions regarding the investment or distribution of fiduciary
1405 accounts, or accepting custody of any trust property or any
1406 other good, asset, or thing of value on behalf of the affiliated
1407 international trust entity, its subsidiaries or affiliates, or
1408 subsidiaries and affiliates of the international trust company
1409 representative office.

1410 (3) An international trust company representative office
1411 licensed by the office may engage in any activities permissible
1412 for a limited service affiliate under part IV of this chapter.

1413 Section 32. Section 663.410, Florida Statutes, is created
1414 to read:

1415 663.410 Certification of capital accounts.—Before opening
1416 an office in this state, and annually thereafter so long as an
1417 international trust company representative office is maintained
1418 in this state, an international trust entity licensed pursuant
1419 to this part must certify to the office the amount of its



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1420 capital accounts, expressed in the currency of the home
1421 jurisdiction where it has been authorized by charter, license,
1422 or similar authorization by operation of law to carry on trust
1423 business. The dollar equivalent of these amounts, as determined
1424 by the office, is deemed to be the amount of its capital
1425 accounts. The annual certification of capital accounts must be
1426 received by the office on or before June 30 of each year.

1427 Section 33. Section 663.411, Florida Statutes, is created
1428 to read:

1429 663.411 Reports; records.—

1430 (1) An international trust entity that operates an office
1431 licensed under this part shall, at such times and in such form
1432 as the commission prescribes, make written reports in the
1433 English language to the office, under the oath of one of its
1434 officers, managers, or agents transacting business in this
1435 state, showing the amount of its assets and liabilities and
1436 containing such other matters as the commission or office
1437 requires. An international trust entity that maintains two or
1438 more representative offices may consolidate such information in
1439 one report unless the office requires otherwise for purposes of
1440 its supervision of the condition and operations of each such
1441 office. The late filing of such reports is subject to an
1442 administrative fine as prescribed under s. 655.045(2). If the
1443 international trust entity fails to make such report as directed
1444 by the office or if such report contains a false statement
1445 knowingly made, the same are grounds for revocation of the
1446 license of the international trust entity.

1447 (2) An international trust entity that operates an office
1448 licensed under this part shall cause to be kept, at a location



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1449 accepted by the office:

1450 (a) Correct and complete books and records of account of
1451 the business operations transacted by such office. All policies
1452 and procedures relating specifically to the operations of such
1453 office, as well as any existing general ledger or subsidiary
1454 accounts, must be maintained in the English language; however,
1455 any policies and procedures of the international trust entity
1456 which are not specific to the operations of such office may be
1457 maintained in a language other than English.

1458 (b) Current copies of the charter or statement of operation
1459 and bylaws of the international trust entity, relative to the
1460 operations of the international trust company representative
1461 office, and minutes of the proceedings of its directors,
1462 officers, or committees relative to the business of the
1463 international trust company representative office. Such records
1464 may be maintained in a language other than English and must be
1465 kept pursuant to s. 655.91 and be made available to the office,
1466 upon request, at any time during regular business hours of the
1467 international trust company representative office.

1468 (3) Any failure to keep such records as required in
1469 subsection (2) or any refusal to produce such records upon
1470 request by the office is grounds for suspension or revocation of
1471 any license issued under this part.

1472 (4) The office may require at any time that any document
1473 not written in the English language which the office deems
1474 necessary for the purposes of its regulatory and supervisory
1475 functions be translated into English at the expense of the
1476 international trust entity.

1477 Section 34. Section 663.412, Florida Statutes, is created



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1478 to read:

1479 663.412 Termination of international trust entity's charter
1480 or authority.-

1481 (1)(a) An international trust entity that is licensed to
1482 maintain an office in this state may not continue to conduct its
1483 licensed business in this state if the international trust
1484 entity:

1485 1. Is dissolved, or its authority or existence is otherwise
1486 terminated or canceled in the home jurisdiction where it has
1487 been authorized by charter, license, or similar authorization by
1488 operation of law to carry on trust business;

1489 2. Is in bankruptcy, conservatorship, receivership,
1490 liquidation, or similar status under the laws of any country; or

1491 3. Is operating under the direct control of the government
1492 or the regulatory or supervisory authority of the jurisdiction
1493 where it has been authorized by charter, license, or similar
1494 authorization by operation of law to carry on trust business
1495 through government intervention or any other extraordinary
1496 actions.

1497 (b)1. Notwithstanding subparagraphs (a)2. and 3., the
1498 office may permit an international trust company representative
1499 office to remain open and in operation under the following
1500 conditions:

1501 a. Within 30 days after the occurrence of an event
1502 described in subparagraph (a)2. or subparagraph (a)3., the
1503 international trust company representative office provides the
1504 office with a plan to wind down its affairs and business within
1505 the subsequent 90 days or provides an interim operational plan
1506 outlining parameters for its continued operation. If the office



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1507 finds that such interim operational plan does not allow for the
1508 conduct of business in a safe and sound manner, the office shall
1509 revoke the license.

1510 b. The international trust entity is authorized by the
1511 foreign country in which it is organized and licensed to address
1512 the affairs of any international trust company representative
1513 office in this state.

1514 c. The international trust company representative office
1515 does not engage in any new lines of business or otherwise expand
1516 its activities in this state.

1517 d. The office determines that allowing the international
1518 trust company representative office to remain open furthers
1519 domestic and foreign supervisory cooperation.

1520 e. The office determines that allowing the international
1521 trust company representative office to remain open is in the
1522 public's interest and does not present an immediate or serious
1523 danger to the public health, safety, or welfare.

1524 2. The commission may establish, by rule, additional
1525 standards and conditions for approval of an interim operational
1526 plan and for ongoing compliance with the plan. Such standards
1527 and conditions shall be based upon the need for cooperative
1528 supervisory efforts, consistent regulatory oversight, and the
1529 orderly administration of the international trust entity's
1530 affairs.

1531 3. After the resolution of all applicable events described
1532 in subparagraphs (a)2. and 3., if an international trust entity
1533 is no longer authorized by the foreign country in which it is
1534 organized and supervised to conduct trust business, the
1535 international trust company representative office shall



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1536 surrender its license in accordance with s. 663.408.

1537 (2) The international trust entity or its surviving
1538 officers and directors shall deliver to the office:

1539 (a) A certificate of the official who is responsible for
1540 records of trust entities in the jurisdiction where the
1541 international trust entity has been authorized by charter,
1542 license, or similar authorization by operation of law to carry
1543 on trust business of the international trust entity, attesting
1544 to the occurrence of any event described in paragraph (1)(a);

1545 (b) A certified copy of an order or decree of a court of
1546 such jurisdiction, directing the dissolution of such
1547 international trust entity, the termination of its existence, or
1548 the cancellation of its authority, or declaring its status in
1549 bankruptcy, conservatorship, receivership, liquidation, or
1550 similar proceedings; or

1551 (c) Other reliable documentation evidencing that the
1552 international trust entity is operating under the direct control
1553 of its government or a regulatory or supervisory authority.

1554 (3) The filing of the certificate, order, documentation, or
1555 decree has the same effect as the revocation of the license of
1556 such international trust entity as provided in s. 663.408,
1557 unless the office has permitted the international trust company
1558 representative office to remain open and in operation pursuant
1559 to paragraph (1)(b).

1560 Section 35. Section 663.413, Florida Statutes, is created
1561 to read:

1562 663.413 Application and examination fees.-

1563 (1) An application for a license to establish an
1564 international trust company representative office under this



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1565 part must be accompanied by a nonrefundable \$5,000 filing fee,
1566 payable to the office.

1567 (2) An international trust entity that maintains an office
1568 licensed under this part must pay to the office examination fees
1569 that are determined by the commission by rule and that are
1570 calculated in a manner so as to be equal to the actual cost of
1571 each examiner's participation in the examination, as measured by
1572 the examiner's pay scale, plus any other expenses directly
1573 incurred in the examination. However, the examination fees may
1574 not be less than \$200 per day for each examiner participating in
1575 the examination.

1576 Section 36. Section 663.414, Florida Statutes, is created
1577 to read:

1578 663.414 Rules; exemption from statement of estimated
1579 regulatory costs requirements.-In addition to any other
1580 rulemaking authority it has under the financial institutions
1581 codes, the commission may adopt reasonable rules that it deems
1582 advisable for the administration of international trust entities
1583 under this part in the interest of protecting depositors,
1584 creditors, borrowers, or the public interest and in the interest
1585 of maintaining a sound banking and trust system in this state.
1586 Because of the difficulty in obtaining economic data with regard
1587 to such trusts, ss. 120.54(3)(b) and 120.541 do not apply to the
1588 adoption of rules pursuant to this section.

1589 Section 37. Section 663.415, Florida Statutes, is created
1590 to read:

1591 663.415 Travel expenses.-If domestic or foreign travel is
1592 deemed necessary by the office to effectuate the purposes of
1593 this part, the office must be reimbursed for actual, reasonable,



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1594 and necessary expenses incurred in such domestic or foreign
1595 travel by the international trust company representative office
1596 under examination.

1597 Section 38. The Division of Law Revision and Information is
1598 directed to create part IV of chapter 663, Florida Statutes,
1599 consisting of ss. 663.530-663.540, Florida Statutes, to be
1600 entitled "Limited Service Affiliates of International Trust
1601 Entities."

1602 Section 39. Section 663.530, Florida Statutes, is created
1603 to read:

1604 663.530 Definitions.-

1605 (1) As used in ss. 663.531-663.539, the term:

1606 (a) "Foreign country" means a country other than the United
1607 States and includes any colony, dependency, or possession of
1608 such country notwithstanding any definitions in chapter 658, and
1609 any territory of the United States, including Guam, American
1610 Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico.

1611 (b) "Home-country regulator" means the supervisory
1612 authority or equivalent or other similarly sanctioned body,
1613 organization, governmental entity, or recognized authority,
1614 which has similar responsibilities in a foreign country in which
1615 and by whom an international trust entity is licensed,
1616 chartered, or has similar authorization to organize and operate.

1617 (c) "International trust entity" means an international
1618 trust company or organization, or any similar business entity,
1619 or an affiliated or subsidiary entity that is licensed,
1620 chartered, or similarly permitted to conduct trust business in a
1621 foreign country or countries under the laws where such entity is
1622 organized and supervised.



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1623 (d) "Limited service affiliate" means a marketing and
1624 liaison office that engages in the permissible activities
1625 enumerated in s. 663.531 for the benefit of an international
1626 trust entity.

1627 (e) "Nonresident" has the same meaning as in s. 663.01.

1628 (f) "Professional" means an accountant, attorney, or other
1629 financial services and wealth planning professional who is
1630 licensed by a governing body or affiliated with a licensed,
1631 chartered, or similarly authorized entity.

1632 (g) "Registrant" means a person or entity that is
1633 registered to perform the permissible activities outlined in s.
1634 663.531 related to or for the benefit of an affiliated
1635 international trust entity.

1636 (2) As used in ss. 663.531-663.539, the terms "affiliate,"
1637 "commission," "executive officer," "financial institution,"
1638 "financial institution-affiliated party," "financial
1639 institutions codes," "office," "officer," "state," and
1640 "subsidiary" have the same meaning as provided in s. 655.005.

1641 Section 40. Section 663.531, Florida Statutes, is created
1642 to read:

1643 663.531 Permissible activities; prohibited activities.-

1644 (1) Registration as a limited service affiliate under this
1645 part does not provide any exemption from licensure,
1646 registration, application, and requirements to conduct licensed
1647 business activities in this state. A limited service affiliate
1648 may engage in any of the following permissible activities, which
1649 are not meant to be restrictive unless an activity is prohibited
1650 under subsection (2):

1651 (a) Marketing and liaison services related to or for the



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1652 benefit of the affiliated international trust entities, directed
1653 exclusively at professionals and current or prospective
1654 nonresident clients of an affiliated international trust entity;

1655 (b) Advertising and marketing at trade, industry, or
1656 professional events;

1657 (c) Transmission of documents between the international
1658 trust entity and its current or prospective clients or a
1659 designee of such clients; and

1660 (d) Transmission of information about the trust or trust
1661 holdings of current clients between current clients or their
1662 designees and the international trust entity.

1663 (2) A limited service affiliate may not engage in any of
1664 the following activities:

1665 (a) Advertising and marketing related to or for the benefit
1666 of the international trust entity which are directed to the
1667 general public;

1668 (b) Acting as a fiduciary, including, but not limited to,
1669 accepting the fiduciary appointment, executing the fiduciary
1670 documents that create the fiduciary relationship, or making
1671 discretionary decisions regarding the investment or distribution
1672 of fiduciary accounts;

1673 (c) Accepting custody of any trust property or any other
1674 good, asset, or thing of value on behalf of the affiliated
1675 international trust entity, its subsidiaries or affiliates, or
1676 subsidiaries and affiliates of the limited service affiliate;

1677 (d) Soliciting business within this state from the general
1678 public related to or for the benefit of an affiliated
1679 international trust entity;

1680 (e) Adding a director, an executive officer, a principal



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1681 shareholder, a manager, a managing member, or an equivalent
1682 position to the limited service affiliate without prior written
1683 notification to the office;

1684 (f) Commencing services for an international trust entity
1685 without complying with the requirements of s. 663.532;

1686 (g) Providing services for any international trust entity
1687 that is in bankruptcy, conservatorship, receivership,
1688 liquidation, or a similar status under the laws of any country;
1689 or

1690 (h) Otherwise conducting banking or trust business.

1691 (3) The provisions of subsection (2) are not deemed to
1692 prevent the limited service affiliate's use of an international
1693 trust entity's website, or its own website, if the posted
1694 information or communication includes the following:

1695 (a) The following statement: "Certain described services
1696 are not offered to the general public in Florida, but are
1697 marketed by ... (insert name of limited service affiliate) ...
1698 exclusively to professionals and current or prospective non-U.S.
1699 resident clients of the affiliated international trust entity or
1700 entities."

1701 (b) The notice required by s. 663.535.

1702 (4) In addition to any other power conferred upon it to
1703 enforce and administer this chapter and the financial
1704 institutions codes, the office may impose any remedy or penalty
1705 pursuant to s. 655.033, relating to cease and desist orders; s.
1706 655.034, relating to injunctions; s. 655.037, relating to
1707 removal of a financial institution-affiliated party by the
1708 office; or s. 655.041, relating to administrative fines and
1709 enforcement, if a limited service affiliate engages in any of



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1710 the impermissible activities in subsection (2).

1711 Section 41. Effective upon this act becoming a law, section
1712 663.532, Florida Statutes, is created to read:

1713 663.532 Registration.—No later than March 31, 2018, a
1714 person or entity that previously qualified under the moratorium
1715 in s. 663.041 must apply for registration as a limited service
1716 affiliate or cease doing business in this state. Notwithstanding
1717 the expiration of the moratorium under s. 663.041, a person or
1718 entity that previously qualified under such moratorium may
1719 remain open and in operation but shall refrain from engaging in
1720 new lines of business in this state until the disposition of
1721 registration as a limited service affiliate.

1722 Section 42. Section 663.532, Florida Statutes, as created
1723 by this act, is amended to read:

1724 663.532 Registration.—

1725 (1) To register as a limited service affiliate, a proposed
1726 registrant must file a written notice with the office, in the
1727 manner and on a form prescribed by the commission, together with
1728 a nonrefundable \$2,500 registration fee. Such written notice
1729 must include:

1730 (a) The name under which the proposed registrant will
1731 conduct business in this state.

1732 (b) A copy of the articles of incorporation or articles of
1733 organization, or the equivalent, of the proposed registrant.

1734 (c) The physical address where the proposed registrant will
1735 conduct business.

1736 (d) The mailing address of the proposed registrant.

1737 (e) The name and biographical information of each director,
1738 executive officer, manager, managing member, or equivalent



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1739 position of the proposed registrant, to be submitted on a form
1740 prescribed by the commission.

1741 (f) The number of officers and employees of the proposed
1742 registrant.

1743 (g) A detailed list and description of the activities to be
1744 conducted by the proposed registrant. The detailed list and
1745 description must include:

1746 1. The services and activities of the proposed registrant;

1747 2. An explanation of how the services and activities of the
1748 proposed registrant serve the business purpose of each
1749 international trust entity; and

1750 3. An explanation of how the services and activities of the
1751 proposed registrant are distinguishable from those of the
1752 permissible activities of an international trust company
1753 representative office described under s. 663.409.

1754 (h) Disclosure of any instance occurring within the prior
1755 10 years of a limited service affiliate's director, executive
1756 officer, principal shareholder, manager, managing member, or
1757 equivalent position who was:

1758 1. Arrested for, charged with, or convicted of, or who pled
1759 guilty or nolo contendere to, regardless of adjudication, any
1760 offense that is punishable by imprisonment for a term exceeding
1761 1 year, or to any offense that involves money laundering,
1762 currency transaction reporting, tax evasion, facilitating or
1763 furthering terrorism, fraud, theft, larceny, embezzlement,
1764 fraudulent conversion, misappropriation of property, dishonesty,
1765 breach of trust, breach of fiduciary duty, or moral turpitude,
1766 or that is otherwise related to the operation of a financial
1767 institution;



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1768 2. Fined or sanctioned as a result of a complaint to the
1769 office or any other state or federal regulatory agency; or

1770 3. Ordered to pay a fine or penalty in a proceeding
1771 initiated by a federal, state, foreign, or local law enforcement
1772 agency or an international agency related to money laundering,
1773 currency transaction reporting, tax evasion, facilitating or
1774 furthering terrorism, fraud, theft, larceny, embezzlement,
1775 fraudulent conversion, misappropriation of property, dishonesty,
1776 breach of trust, breach of fiduciary duty, or moral turpitude,
1777 or that is otherwise related to the operation of a financial
1778 institution.

1779 (i) A declaration under penalty of perjury signed by the
1780 executive officer, manager, or managing member of the proposed
1781 registrant that, to the best of his or her knowledge:

1782 1. No employee, representative, or agent provides, or will
1783 provide, banking services; promotes or sells, or will promote or
1784 sell, investments; or accepts, or will accept, custody of
1785 assets.

1786 2. No employee, representative, or agent acts, or will act,
1787 as a fiduciary in this state, which includes, but is not limited
1788 to, accepting the fiduciary appointment, executing the fiduciary
1789 documents that create the fiduciary relationship, or making
1790 discretionary decisions regarding the investment or distribution
1791 of fiduciary accounts.

1792 3. The jurisdiction of the international trust entity or
1793 its offices, subsidiaries, or any affiliates that are directly
1794 involved in or facilitate the financial services functions,
1795 banking, or fiduciary activities of the international trust
1796 entity is not listed on the Financial Action Task Force Public



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1797 Statement or on its list of jurisdictions with deficiencies in
1798 anti-money laundering or counterterrorism.

1799 (j) For each international trust entity that the proposed
1800 registrant will provide services for in this state, the
1801 following:

1802 1. The name of the international trust entity;

1803 2. A list of the current officers and directors of the
1804 international trust entity;

1805 3. Any country where the international trust entity is
1806 organized or authorized to do business;

1807 4. The name of the home-country regulator;

1808 5. Proof that the international trust entity has been
1809 authorized by charter, license, or similar authorization by its
1810 home-country regulator to engage in trust business;

1811 6. Proof that the international trust entity lawfully
1812 exists and is in good standing under the laws of the
1813 jurisdiction where it is chartered, licensed, or organized;

1814 7. A statement that the international trust entity is not
1815 in bankruptcy, conservatorship, receivership, liquidation, or in
1816 a similar status under the laws of any country;

1817 8. Proof that the international trust entity is not
1818 operating under the direct control of the government or the
1819 regulatory or supervisory authority of the jurisdiction of its
1820 incorporation, through government intervention or any other
1821 extraordinary actions, and confirmation that it has not been in
1822 such a status or under such control at any time within the prior
1823 3 years;

1824 9. Proof and confirmation that the proposed registrant is
1825 affiliated with the international trust entities provided in the



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1826 notice; and

1827 10. Proof that the jurisdictions where the international
1828 trust entity or its offices, subsidiaries, or any affiliates
1829 that are directly involved in or that facilitate the financial
1830 services functions, banking, or fiduciary activities of the
1831 international trust entity are not listed on the Financial
1832 Action Task Force Public Statement or on its list of
1833 jurisdictions with deficiencies in anti-money laundering or
1834 counterterrorism.

1835 (k) A declaration under penalty of perjury, signed by an
1836 executive officer, manager, or managing member of each
1837 affiliated international trust entity, declaring that the
1838 information provided to the office is true and correct to the
1839 best of his or her knowledge.

1840
1841 The proposed registrant may provide additional information in
1842 the form of exhibits when attempting to satisfy any of the
1843 registration requirements. All information that the proposed
1844 registrant desires to present to support the written notice must
1845 be submitted with the notice.

1846 (2) The office may request additional information as the
1847 office reasonably requires. Any request for additional
1848 information must be made by the office within 30 days after
1849 initial receipt of the written notice and the full amount of the
1850 fee specified in subsection (1). Additional information must be
1851 submitted within 60 days after a request has been made by the
1852 office. Failure to respond to such request within 60 days after
1853 the date of the request is a ground for denial of the
1854 registration. A notice is not deemed complete until all



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1855 requested information has been submitted to the office. Upon
1856 deeming the notice complete, the office has 120 days to register
1857 the limited service affiliate or issue a denial. An order
1858 denying a registration must contain notice of opportunity for a
1859 hearing pursuant to ss. 120.569 and 120.57.

1860 (3) A registration under this part must be summarily
1861 suspended by the office if the limited service affiliate made a
1862 material false statement in the written notice. The summary
1863 suspension must remain in effect until a final order is entered
1864 by the office. For purposes of s. 120.60(6), a material false
1865 statement made in the limited service affiliate's written notice
1866 constitutes an immediate and serious danger to the public
1867 health, safety, and welfare. If a limited service affiliate made
1868 a material false statement in the written notice, the office
1869 must enter a final order revoking the registration and may issue
1870 a fine as prescribed by s. 655.041 or issue an order of
1871 suspension, removal, or prohibition under s. 655.037 to a
1872 financial institution-affiliated party of the limited service
1873 affiliate.

1874 (4) Upon the filing of a completed registration notice
1875 under this section, the office shall make investigation of the
1876 character, reputation, business experience, and business
1877 qualifications of the limited service affiliate's proposed
1878 directors, executive officers, principal shareholder, managers,
1879 managing members, or equivalent positions. The office shall
1880 approve the application only if it has determined that such
1881 persons are qualified by reason of their ability, reputation,
1882 and integrity and have sufficient experience to manage and
1883 direct the affairs of the limited service affiliate in a lawful



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1884 manner and in accordance with the requirements for obtaining and
1885 maintaining a registration under this part. When evaluating a
1886 registration notice, the office may consider factors reasonably
1887 related to an offense or related to a violation, fine, or
1888 penalty, such as mitigating factors, history of multiple
1889 violations, severity of the offense, and showings of
1890 rehabilitation.

1891 (5) A registration is not transferable or assignable.

1892 (6) Fees collected under this section must be submitted in
1893 the manner prescribed by the commission and must be deposited
1894 into the Financial Institutions' Regulatory Trust Fund pursuant
1895 to s. 655.049 for the purpose of administering this part.

1896 (7) A person or entity in operation as of January 1, 2018,
1897 which meets the definition of a limited service affiliate under
1898 s. 663.530 must, on or before March 31, 2018, apply for
1899 registration as a limited service affiliate or cease doing
1900 business in this state.

1901 (8) No later than March 31, 2018, a person or entity that
1902 previously qualified under the moratorium in s. 663.041 must
1903 apply for registration as a limited service affiliate or cease
1904 doing business in this state. Notwithstanding the expiration of
1905 the moratorium under s. 663.041, a person or entity that
1906 previously qualified under such moratorium may remain open and
1907 in operation but shall refrain from engaging in new lines of
1908 business in this state until the disposition of registration as a
1909 limited service affiliate.

1910 Section 43. Section 663.5325, Florida Statutes, is created
1911 to read:

1912 663.5325 Civil action subpoena enforcement.-



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1913 (1) Notwithstanding s. 655.059, a limited service affiliate
1914 established under this chapter is not required to produce a book
1915 or record pertaining to a customer of an affiliated
1916 international trust entity that is located outside the United
1917 States or its territories in response to a subpoena if the book
1918 or record is maintained outside the United States or its
1919 territories and is not in the possession, custody, or control of
1920 the limited service affiliate.

1921 (2) This section applies only to a subpoena issued pursuant
1922 to the Florida Rules of Civil Procedure, the Federal Rules of
1923 Civil Procedure, or other similar law or rule of civil procedure
1924 in another state or territory of the United States. This section
1925 does not apply to a subpoena issued by or on behalf of a
1926 federal, state, or local government law enforcement agency,
1927 administrative or regulatory agency, legislative body, or grand
1928 jury and does not limit the power of the office to access all
1929 books and records in the exercise of the office's regulatory and
1930 supervisory powers under the financial institutions codes.

1931 Section 44. Section 663.533, Florida Statutes, is created
1932 to read:

1933 663.533 Applicability of the financial institutions codes.-
1934 A limited service affiliate is subject to the financial
1935 institutions codes. Without limiting the foregoing, the
1936 following provisions are applicable to a limited service
1937 affiliate:

1938 (1) Section 655.012, relating to general supervisory powers
1939 of the office.

1940 (2) Section 655.031, relating to administrative enforcement
1941 guidelines.



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1942 (3) Section 655.032, relating to investigations, subpoenas,
1943 hearings, and witnesses.

1944 (4) Section 655.0321, relating to restricted access to
1945 certain hearings, proceedings, and related documents.

1946 (5) Section 655.033, relating to cease and desist orders.

1947 (6) Section 655.034, relating to injunctions.

1948 (7) Section 655.037, relating to removal of a financial
1949 institution-affiliated party by the office.

1950 (8) Section 655.041, relating to administrative fines and
1951 enforcement.

1952 (9) Section 655.057, relating to restrictions on access to
1953 public records.

1954 (10) Section 655.059, relating to access to books and
1955 records.

1956 (11) Section 655.0591, relating to trade secret documents.

1957 (12) Section 655.91, relating to records of institutions
1958 and copies thereof; retention and destruction.

1959 (13) Section 655.968, relating to financial institutions;
1960 transactions relating to Iran or terrorism.

1961
1962 This section does not prohibit the office from investigating or
1963 examining an entity to ensure that it is not in violation of
1964 this chapter or applicable provisions of the financial
1965 institutions codes.

1966 Section 45. Section 663.534, Florida Statutes, is created
1967 to read:

1968 663.534 Events that require notice to be provided to the
1969 office.-A registrant must report to the office, within 15 days
1970 of its knowledge of the occurrence, any changes to the



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1971 information previously relied upon by the office when
1972 registering or renewing a registration under this part.

1973 Section 46. Section 663.535, Florida Statutes, is created
1974 to read:

1975 663.535 Notice to customers.—All marketing documents and
1976 advertisements and any display at the location of the limited
1977 service affiliate or at any trade or marketing event must
1978 contain the following statement in a contrasting color in at
1979 least 10-point type: “The Florida Office of Financial Regulation
1980 DOES NOT provide safety and soundness oversight of this company,
1981 does not provide any opinion as to any affiliated companies or
1982 products, and does not provide the oversight of this company’s
1983 affiliated international trust entities or the jurisdictions
1984 within which they operate. This company may not act as a
1985 fiduciary and may not accept the fiduciary appointment, execute
1986 or transmit fiduciary documents, take possession of any assets,
1987 create a fiduciary relationship, make discretionary decisions
1988 regarding the investment or distribution of fiduciary accounts,
1989 provide banking services, or promote or sell investments.”

1990 Section 47. Section 663.536, Florida Statutes, is created
1991 to read:

1992 663.536 Recordkeeping requirements for trade, industry, or
1993 professional events.—A registrant registered only under this
1994 part who participates in a trade, industry, or professional
1995 event pursuant to s. 663.531 must keep a record of its
1996 participation in the event. The record must be maintained for at
1997 least 2 years following the event and must contain the following
1998 information:

1999 (1) The date, time, and location of the event;



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2000 (2) To the extent known or available, a list of
2001 participants in the event, including other vendors, presenters,
2002 attendees, and targeted attendees;

2003 (3) The nature and purpose of the event;

2004 (4) The registrant’s purpose for participating in the
2005 event; and

2006 (5) Samples of materials or, when samples are unavailable,
2007 descriptions of materials provided by the registrant to
2008 attendees and other participants.

2009 Section 48. Section 663.537, Florida Statutes, is created
2010 to read:

2011 663.537 Examination or investigation of a limited service
2012 affiliate.—

2013 (1) The office may conduct an examination or investigation
2014 of a limited service affiliate at any time that it deems
2015 necessary to determine whether the limited service affiliate or
2016 financial institution-affiliated party thereof has violated, or
2017 is about to violate, any provision of this chapter, any
2018 applicable provision of the financial institutions codes, or any
2019 rule adopted by the commission pursuant to this chapter or the
2020 financial institutions codes. The office shall conduct an
2021 examination of each limited service affiliate at least once
2022 every 18 months to assess compliance with this part and the
2023 financial institutions codes. The office may conduct an
2024 examination, before or after registration, of any person or
2025 entity that submits a notice for registration to confirm
2026 information provided in the registration filing and to confirm
2027 the activities of the person or entity seeking registration.

2028 (2) For each examination of a limited service affiliate



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2029 authorized under this part, the limited service affiliate shall
2030 pay a fee for the costs of the examination by the office. As
2031 used in this section, the term "costs" means the salary and
2032 travel expenses of field staff which are directly attributable
2033 to the examination of the registrant and the travel expenses of
2034 any supervisory and support staff required as a result of
2035 examination findings. The costs of examination must be
2036 determined as follows:

2037 (a) The office shall charge each limited service affiliate
2038 in this state an examination fee equal to the actual cost of
2039 each examiner's participation during each examination of such
2040 limited service affiliate. The examination fee must equal the
2041 actual cost of the examination, but such fees, inclusive of
2042 travel expenses and other incidental expenses, may not be less
2043 than \$200 per day for each examiner participating in the
2044 examination.

2045 (b) As used in this section, the term "actual cost" means
2046 the direct salary, excluding employee benefits; travel expenses;
2047 and other incidental expenses required as a result of the
2048 examination staff's onsite and offsite examination of the
2049 limited service affiliate. In addition, the term includes the
2050 travel expenses of any supervisory staff required as a result of
2051 examination findings.

2052 (3) All examination fee payments must be received within 30
2053 days after receipt of an invoice from the office and must be
2054 submitted in a manner prescribed by the commission. The office
2055 may levy a late fee of up to \$100 per day that a payment is
2056 overdue, unless waived by the office for good cause. However, if
2057 the late payment of costs is intentional, the office may levy an



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2058 administrative fine of up to \$1,000 per day for each day the
2059 payment is overdue.

2060 (4) All fees collected under this section must be submitted
2061 in the manner prescribed by the commission and must be deposited
2062 into the Financial Institutions' Regulatory Trust Fund pursuant
2063 to s. 655.049 for the purpose of administering this part.

2064 Section 49. Section 663.538, Florida Statutes, is created
2065 to read:

2066 663.538 Suspension, revocation, or voluntary surrender of
2067 registration.—

2068 (1) A registrant that proposes to terminate operations in
2069 this state shall surrender its registration to the office and
2070 comply with such procedures as required by rule of the
2071 commission.

2072 (2) A registrant that fails to renew its registration may
2073 be subject to a fine and penalty; however, such registrant may
2074 renew its registration within 30 days after expiration or may
2075 surrender the registration in accordance with procedures
2076 prescribed by commission rule.

2077 (3) The registration of a limited service affiliate in this
2078 state may be suspended or revoked by the office, with or without
2079 examination, upon the office's determination that the registrant
2080 does not meet all requirements for original or renewal
2081 registration.

2082 (4) If a registrant surrenders its registration or its
2083 registration is suspended or revoked by the office, all rights
2084 and privileges afforded by this part to the registered limited
2085 service affiliate cease.

2086 (5) At least 60 days before a proposed date of voluntary



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2087 termination of a registration, a registrant must provide to the
2088 office written notice by letter of its intention to surrender
2089 its registration and terminate operations. The notice must
2090 include the proposed date of termination and the name of the
2091 officer in charge of the termination procedures.

2092 (6) The office may conduct an examination of the books and
2093 records of a limited service affiliate at any time after receipt
2094 of the notice of surrender of registration to confirm the
2095 winding down of operations.

2096 (7) Operations of a registrant are deemed terminated
2097 effective upon the later of the expiration of 60 days from the
2098 date of the filing of the notice of voluntary surrender or upon
2099 the date provided in the notice of voluntary surrender, unless
2100 the office provides written notice specifying the grounds for
2101 denial of such proposed termination. The office may not deny a
2102 request to terminate unless it learns of the existence of any
2103 outstanding claim or claims against the registrant, it finds
2104 that the requirements to terminate operations have not been
2105 satisfied, or there is an immediate and serious danger to the
2106 public health, safety, and welfare if the termination occurred.

2107 Section 50. Section 663.539, Florida Statutes, is created
2108 to read:

2109 663.539 Biennial registration renewal.—A registration must
2110 be renewed every 2 years. A registration must be renewed by
2111 furnishing such information as the commission requires, together
2112 with payment of a \$500 nonrefundable renewal fee. All fees
2113 received by the office pursuant to this section must be
2114 submitted in the manner prescribed by the commission and must be
2115 deposited into the Financial Institutions' Regulatory Trust Fund



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2116 pursuant to s. 655.049 for the purpose of administering this
2117 part. A complete biennial renewal of registration must include a
2118 declaration under penalty of perjury, signed by the executive
2119 officer or managing member of the registrant, declaring that the
2120 information submitted for the purposes of renewal is true and
2121 correct to the best of his or her knowledge, and confirming or
2122 providing all of the following:

2123 (1) That the registrant is in compliance with this part.

2124 (2) The physical location of the principal place of
2125 business of the registrant.

2126 (3) The telephone number of the registrant.

2127 (4) A list of the registrant's current directors, executive
2128 officers, principal shareholder, managers, managing members, or
2129 equivalent positions.

2130 (5) Any updates or changes in information which were not
2131 previously provided either in the initial registration or in
2132 subsequent registration renewals or which were not previously
2133 disclosed to the office.

2134 Section 51. For the purpose of incorporating the amendment
2135 made by this act to section 663.01, Florida Statutes, in a
2136 reference thereto, subsection (4) of section 663.16, Florida
2137 Statutes, is reenacted to read:

2138 663.16 Definitions; ss. 663.17-663.181.—As used in ss.
2139 663.17-663.181, the term:

2140 (4) Except where the context otherwise requires,
2141 "international banking corporation" or "corporation" has the
2142 same meaning as that provided in s. 663.01 and includes any
2143 licensed office of an international banking corporation
2144 operating in this state.



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2145 Section 52. Except as otherwise expressly provided in this
2146 act and except for this section, which shall take effect upon
2147 this act becoming a law, this act shall take effect January 1,
2148 2018.

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 736

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Banking and Insurance Committee; and Senators Mayfield and Steube

SUBJECT: International Financial Institutions

DATE: April 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders/Johnson</u>	<u>Betta</u>	<u>AGG</u>	<u>Recommend: Fav/CS</u>
3.	<u>Sanders/Johnson</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 736 modernizes the regulatory framework of international financial services under the Office of Financial Regulation (OFR), which will promote the growth of international financial services market in Florida. The bill revises provisions relating to the regulation of international banking corporations and international trust company representative offices (ITCROs) of international trust entities and creates a regulatory framework for qualified limited service affiliates (QLSAs). QLSAs are marketing and liaison offices that engage in permissible activities for the benefit of an international trust entity (ITE) and are qualified by the OFR. An ITE is an international trust company, an international business, an international business organization, or an affiliated or subsidiary entities that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised. An ITCRO may conduct any nonfiduciary activities that are ancillary to the fiduciary business of its international trust entity, such as marketing and soliciting for fiduciary business on behalf of the ITE. The bill provides the following changes:

- Establishes oversight of qualified limited service affiliates and offices of international trust entities.
- Provides an abbreviated application process to establish additional locations of an entity that meets certain conditions.

- Authorizes the OFR to implement a risk-based approach for capital requirements, which will allow the OFR to calculate capital requirements that reflect an entity's business model and its particular inherent risk profile.
- Provides the OFR with discretion to allow an after-the-fact licensure process of an entity in the event of an acquisition, merger, or consolidation, which would allow continuity of operations.
- Clarifies permissible activities of entities regulated under chapter 663, Florida Statutes.

The bill creates regulatory fines and fees. In its analysis, the OFR indicates it can maintain regulatory oversight with current staffing levels.¹

Except as otherwise provided, the bill has an effective date of January 1, 2018.

II. Present Situation:

Regulation of the International Financial Services Market

Miami, the gateway to Latin America, is home to the second-largest banking and finance hub in the United States.² Estate, tax, and asset protection planning are important components of the region's financial sector, attracting international financial institutions from Europe, Latin America, and Canada serving individual, family, and business customers.

The Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes).³

International Banking Corporations

The OFR licenses and regulates international banking corporations⁴ that transact business in Florida.⁵ International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions chartered and regulated by foreign jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do

¹ Office of Financial Regulation, Senate Bill 736 Fiscal Analysis (on file with the Senate Appropriations Subcommittee on General Government).

² See http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html (Fall 2014) (last viewed Feb. 27, 2017).

³ Financial Institutions Codes include chs. 655 relating to financial institutions generally, 657 relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665 relating to associations, and 657 relating to savings banks.

⁴ An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. *See* s. 663.01(6), F.S.

⁵ Sections 663.04 and 663.05, F.S.

so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable codes.

An international banking corporation may operate through a variety of business models, all of which are subject to licensure by the OFR.⁶ These models include international bank agencies, international representative offices, international trust company representative offices (ITCRO), international administrative offices, and international branches. The definition of “financial institution”⁷ includes an international banking corporation and all of these entities. As of February 2017, there were no ITCROs licensed with the OFR; however, two international administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.⁸ In addition, the OFR qualified six entities for the moratorium on the OFR’s enforcement of licensing requirements for an international trust entity or related parties pursuant to s. 663.0441, F.S.⁹

If an international banking corporation (IBC) wants to operate an office in Florida, which includes an ITCRO, the IBC is required to meet minimum licensure requirements, and is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an international banking corporation unless it:

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;¹⁰
- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of \$20 million.

Section 663.02, F.S., subjects international banking corporations with offices in Florida to the provisions of ch. 655, F.S., as though such corporations are state banks or trust companies.¹¹

⁶ Section 663.06(1), F.S.

⁷ Section 655.005(i), F.S.

⁸ Office of Financial Regulation, *Financial Institution Search*, at

<https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited February 25, 2017).

⁹ The following entities qualified for the moratorium: JTC Miami Corporation, Citco Corporate Services, Inc., Amicorp Services Ltd., Corpag Services USA, Inc., Integritas Inc., and Cisa Latam LLC. Email correspondence from the Office of Financial Regulation (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

¹⁰ Section 663.05(8), F.S. requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation’s foreign establishments, and must address at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the international banking corporation. See Rule 69U-140.003, F.A.C., *Principles of Adequate Supervision of an International Banking Corporation’s Foreign Establishment*.

¹¹ Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities: s. 655.031, F.S., relating to administrative enforcement guidelines; s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access; s. 655.033, F.S., relating to cease and desist orders; s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, F.S., relating to administrative fines and enforcement; and

Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state.

International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution. These activities include making and servicing loans, acting as a custodian, furnishing investment advice, conducting foreign exchange activities and trading in securities and commercial paper.¹² An international branch has the same rights and privileges as a federally licensed international branch.¹³

International Representative Offices and International Administrative Offices

International representative offices and international administrative offices perform activities that are more limited, such as soliciting business for the IBC, providing information to customers concerning their accounts, receiving applications for services, transmitting documents for customers, and arranging for customers to transact business on their accounts.¹⁴ In addition to the powers delineated above, an administrative office may administer personnel and operations, engage in data processing and recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.¹⁵

International Trust Company Representative Offices

An ITCRO is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in the nonfiduciary activities described in s. 663.0625, F.S.¹⁶ An ITCRO may also include any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.¹⁷ An ITCRO is not a bank and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers and answering questions and providing information about matters related to customer accounts;

s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31 F.S., for facilitating or furthering terrorism.

¹² Section 663.061, F.S.

¹³ Section 663.064, F.S.

¹⁴ Section 663.062, F.S.

¹⁵ Section 663.063, F.S.

¹⁶ In 2010, legislation was enacted to establish OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida [ch. 2010-9, Laws of Fla.]. The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was in response to the exposure of the \$8 billion dollar Ponzi scheme perpetrated by Allen Stanford. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office in Miami, Florida.

¹⁷ Section 663.01(9), F.S.

- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers; and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (commission).¹⁸

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in ITCRO activities described in s. 663.0625, F.S., if it meets certain conditions. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is defined to mean any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

III. Effect of Proposed Changes:

Regulation of International Banking Corporations and their Offices

Sections 1 through 19 amend provisions of part I of ch. 663, F.S., and ss. 655.005 and 655.059, F.S., relating to the regulation of international banking corporations. In addition, technical conforming changes are made to transfer provisions relating to the regulation of offices of international trust entities and international trust company representative offices (ITCROs) to the newly created part III of ch. 663, F.S., and create the regulation of qualified limited service affiliates (QLSA) in the newly created part IV of ch. 663, F.S. Many of the sections provide technical, conforming changes relating to the newly created parts III or IV.

Sections 1, 4, 5, and 6 revise definitions. **Section 1** amends s. 655.005, F.S. The section expands the definition of the term "financial institution" to include an international trust entity and a QLSA, which are located in the newly created parts III and IV. **Section 4** amends s. 663.01, F.S. This section revises the definition of the term "international banking corporation" by removing the term "foreign trust companies" from the definition. A foreign trust company will be included within the definition of the term "international trust entity," which is transferred along with the regulation of offices of international trust entities in the newly created part III. The term, "international trust entity," is also defined and used in part IV. Section 4 removes the term, "international trust company representative office," to conform to Section 22. **Section 5** amends s. 663.02, F.S. The definition of the term, "international banking corporation," is amended to reflect definition changes in Section 4. **Section 6** revises s. 663.021, F.S. This section removes the term "international trust company representative officer" to conform to the definition change reflected in Section 4.

Section 2 amends s. 665.059, F.S., to allow home-country supervisors access to confidential books and records of an international banking corporation or international trust entity that conducts onsite or offsite examinations outside Florida. The supervision of licensed locations of an international banking corporation or international trust entity in Florida requires the sharing of

¹⁸ Section 663.0625, F.S.

information with the bank regulatory agency or other similarly sanctioned organization located in the home jurisdiction of the international entity. These regulatory agencies known as the “home-country supervisor,” fulfill a similar function to the Office of Financial Regulation (OFR) in the home jurisdiction. Currently, the home-country supervisor of an international banking corporation or international trust company must travel to Florida to review and examine documents at the licensee’s location.

Section 3 creates s. 663.001, F.S., to establish a legal and regulatory framework for the conduct by international banking corporations of financial services business in Florida. Section 3 serves to:

- Support the Florida operations of international banking corporations and promote the growth of international financial services to benefit the economy and consumers of this state; and,
- Provide for appropriate supervision and regulatory oversight to ensure that financial services activities of international banking corporations in this state are conducted responsibly and in a safe and sound manner.

Section 7 amends s. 663.04, F.S. Section 7 reduces the time that an international institution must wait to qualify for licensure after experiencing certain changes in status or control (e.g., bankruptcy or government intervention such as bailouts) from seven to three years. The section further authorizes the OFR to permit an international branch, international bank agency, international administrative office, or international representative office to remain operational while the international banking corporation is experiencing certain types of status or control in the home country pursuant to the provisions of s. 663.11(11)(1)(b), F.S. (*See* Section 17.) Currently, if an international banking corporation is placed in bankruptcy, conservatorship, receivership, liquidation, or is operating under the direct control of its home government or regulator due to government intervention or other extraordinary actions, then the license of is automatically terminated and that entity may not transact any banking or trust business or maintain any office in Florida. This change may allow the entity to remain open for business to ensure continuity of operations, as issues affecting the home country institution are resolved.

Section 8 adds and redesignates subsections within s. 663.05, F.S. This section creates an abbreviated application process for international banking corporations to establish additional locations in Florida. Currently, international banking corporations are subject to a full licensure process for each new office location. The OFR will maintain the discretion, as provided in current law, to require an international banking corporation seeking such approval to submit a full application. For applications filed on or after January 1, 2018, the time limitations for approval or disapproval must be prescribed by commission rule. Currently, there are no time limitations governing applications for licensure under ch. 663, F.S.

This section expands the group of international financial institutions that may establish facilities or exercise their powers in Florida. Currently, the OFR is not permitted to grant a license to an international banking corporation if the laws of their home country did not contemplate a Florida bank, specifically, establishing a similar type of operation in the international banking corporation’s home country. In order to enforce this requirement, the application for approval to establish an international branch or international bank agency requires the applicant (the international banking corporation) to provide documentation that the international banking corporation is chartered in a jurisdiction in which any bank having its principal place of business

in Florida may establish similar facilities or exercise similar powers, or that Federal law permits the appropriate federal regulatory authority to issue a comparable license to the international banking corporation. This section is amended to provide that reciprocity is dependent upon whether a financial institution based anywhere in the United States, not just in Florida, could establish a similar type of operation in the international banking corporation's home country. This approach also eliminates potential ambiguity since the laws of other countries typically do not contemplate reciprocity on a state level. This section provides technical and conforming changes.

Section 9 amends s. 663.055, F.S. The bill authorizes the OFR to adopt a risk-based approach for capital requirements of international banks. This approach will allow the OFR to evaluate the varying levels and types of risk inherent in the activities of a particular bank. However, the total capital amounts must meet at least the minimum required under s. 658.21(2), F.S. Current statutes contain a static approach for capital requirements:

- \$20 million to establish a representative office; and,
- \$40 million, or between \$20 million and \$40 million if certain conditions are met, to establish an agency, branch, or administrative office.

The commission will establish by rule the criteria for determining the adequacy of an international banking corporation's financial resources prior to establishing an office in Florida. Additionally, the section deletes a provision that references OFR's role in adopting rules to maintain the safe and sound condition of international banking corporations since the OFR does not examine such entities for safety and soundness. Rather, the OFR determines whether the corporation has adequate supervision by the home country supervisor.

Section 10 makes technical changes to s. 663.06, F.S.

Section 11 creates s. 663.0601, F.S. This section authorizes the OFR to implement an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international banking corporations.¹⁹ Subject to certain requirements, in the event that an international banking corporation proposes to acquire, merge, or consolidate with an international banking corporation that currently has an office in Florida, the transaction in the home country is permitted to occur prior to the OFR receiving an application for the resulting entity to have an office in Florida. Currently, as soon as such a transaction occurs, the statute terminates the license of an international banking corporation's Florida office. This change will allow continuity of operations of the Florida office despite a merger, acquisition, or consolidation of the international banking corporation.

Section 12 amends s. 663.061, F.S. This section authorizes additional permissible activities for international bank agencies. This will allow an international bank agency to provide nonresidents with investment management services for domestic investments. Currently, an international bank agency can only do so with regard to international or foreign investments. Additionally, the section clarifies that an international bank agency may engage in any activities permissible for an international administrative office and international representative office. International bank agencies are already permitted by s. 663.06(5)(b), F.S., to engage in those activities.

¹⁹ This provision is modeled after federal regulations [12 C.F.R. s. 211.24(6)].

Sections 13 through 15 clarify the permissible activities of offices of an IBC. **Section 13** amends s. 663.062, F.S. This section clarifies that a representative office of an international banking corporation is not subject to licensure under the newly created part III of ch. 663, F.S., because it may engage in any activities permissible for an ITCRO. **Section 14** amends s. 663.063, F.S., and clarifies that an international administrative office may engage in the activities permissible for an international representative office, which is already permitted by s. 663.06(5)(c), F.S., to engage in those activities. **Section 15** amends s. 663.064, F.S. This section authorizes the commission to prescribe by rule the types of deposits international branches may accept. The current statute does not provide an enumerated list of permissible deposits. The section also clarifies that an international branch may engage in any activities permissible for an international bank agency, international administrative office, and international representative office. International branches are already permitted by s. 663.06(5)(a), F.S., to engage in those activities.

Section 16 amends s. 663.09, F.S. This section revises record requirements by allowing a licensed office to maintain certain documents in a language other than English. Currently, each international banking corporation with a licensed office in Florida must keep a correct and complete books and records of that office, policies and procedures, ledger, charter, and bylaws in the English language. The OFR maintains the right to request any document it deems necessary for regulation and supervision be translated into English at the expense of the international banking corporation.

Section 17 amends s. 663.11, F.S., to allow an international branch, international bank agency, international administrative office, or international representative office to remain open and in operation while the international banking corporation is experiencing certain types of changes in status or control (e.g., bankruptcy or government intervention such as bailouts) if certain conditions are met. Within 30 days of a change in status or control, the licensee must provide the OFR with a plan to wind down the business, or as an alternative, the licensee may submit an interim operational plan for its continued operations. If the OFR determines that the plan does not allow for the conduct of business in a safe and sound manner, the OFR must revoke the license. This change may allow continuity of operations as operations in the home country institution are being resolved.

Section 18 amends s. 663.12, F.S. This section removes language relating to the nonrefundable application fee for establishing an international trust company representative office since the regulation of these entities is transferred to part III.

Section 19 makes technical changes to s. 663.17, F.S.

Regulation of International Trust Entities and ITCROs

Sections 20 through 37 create part III of ch. 663, F.S. The Division of Law Revision and Information is directed to create part III consisting of ss. 663.4001 - 663.416, F.S., which provide for the regulation of licensed offices of international trust entities and is applicable to trust business. Part III is entitled "International Trust Company Representative Offices." According to the OFR, these provisions will create a level playing field between the representative offices of

an international banking corporation and the similarly functioning ITCROs of an international trust entity.

Section 21 creates s. 663.4001, F.S. This section establishes a legal and regulatory framework for the conduct by international trust entities within the state.

Section 22 creates s. 663.401, F.S., and provides definitions for part III. The definition of “international trust company representative office” is transferred from part I and other definitions are provided.

Section 23 creates s. 663.402, F.S. This section provides applicability of the financial institutions codes and specifies that the financial institutions codes do not authorize an international trust entity to conduct trust business in Florida.

Section 24 creates s. 663.403, F.S., and provides applicability of the Florida Business Corporation Act. This section is consistent with s. 663.03, F.S., which applies to international banking corporations and their Florida offices.

Section 25 creates s. 663.404, F.S. This section specifies requirements an international trust entity must meet to establish and maintain an ITCRO in Florida. This section also permits an ITCRO to remain open while the international trust entity is experiencing certain types of changes in status, or control (e.g., bankruptcy or government intervention such as bailouts) pursuant to the provisions of s. 663.412(1)(b), F.S., (*See* Section 34). Currently, termination of an ITCRO’s license occurs if the home country institution experiences one of these events. This change ensures continuity of operations while issues in the home country institution are resolved.

Section 26 creates s. 663.405, F.S. This section provides that ITCROs are not required to produce certain books and records in response to a civil subpoena if the books and records are maintained outside of the United States and not in its possession or control of the ITCRO. Section 663.021, F.S., providing the same language, had previously applied to international trust company representative offices along with all offices of international banking corporations. Since the bill transfers the regulation of ITCRO to part III, this is a conforming change and provides parity with the treatment of Florida offices of an international banking corporation.

Sections 27, 34, 35, and 37 create ss. 663.406, 663.412, 663.413 and 663.415, F.S., respectively. These sections specify licensure requirements and grounds for termination of a license of an office of an international trust entity. The international trust entity must submit an application along with a nonrefundable \$5,000 filing fee, and provide detailed background information to the OFR. The section authorizes the OFR to allow an international trust entity meeting certain requirements to establish additional locations in Florida by submitting an abbreviated application to the OFR. This provision creates parity between ITCROs and the Florida offices of an international banking corporation. (*See* Section 8.) The commission is authorized to adopt rules. An ITE that maintains an office licensed under part III is also responsible for paying for the costs of OFR examinations.

The bill delineates the circumstances that would result in the termination of a license of an office of an international trust entity. The section also authorizes the OFR to permit an ITCRO to

remain open and operational while the international trust entity is experiencing certain types of status or control if certain conditions are met. Currently, any international banking corporation (the definition of which encompasses an ITCRO) placed in bankruptcy, conservatorship, receivership, liquidation, or is operating under the direct control of its home government or regulator due to government intervention or other extraordinary actions, may no longer transact any banking or trust business or maintain any office in Florida to carry on such business. This provision may provide continuity of operations as the entity addresses issues in the home country institution. The bill provides similar flexibility for international banking corporations (*See Section 7.*). The section maintains parity between international trust company representative offices and the Florida offices of an international banking corporation.

Section 28 creates s. 663.407, F.S., and authorizes the OFR to adopt a risk-based approach for capital requirements of international trust entities rather than requiring the same minimum amount for all entities. Currently, s. 663.055, F.S., of part I addresses ITCROs, which requires the home country institution to meet a minimum a \$20 million capital requirement in order to establish a representative office.

Section 29 creates s. 663.408, F.S., and establishes the requirements and limitations for the licenses of international trust companies. The section specifies grounds for the OFR to revoke a license to operate an ITCRO and provides rulemaking authority for the commission to prescribe procedures for the surrender of a license. This is consistent with the provisions of s. 663.06, F.S., which applies to offices of an international banking corporation.

Section 30 creates s. 663.4081, F.S. This section authorizes the OFR to issue an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international trust entities. Subject to certain requirements, in the event that an international trust entity proposes to acquire, merge, or consolidate with another international trust entity that currently has an office in Florida, the transaction in the home country is permitted to occur prior to the OFR receiving an application for the resulting entity to have an office in Florida. Currently, as soon as the transaction occurs, the license for the Florida office is terminated. This change permits continuity of operations of the Florida office despite a merger, acquisition, or consolidation of the international banking corporation, and ensures parity between the Florida offices of an international banking corporation and ITCROs.

Section 31 transfers and renumbers s. 663.0625, F.S., to s. 663.409, F.S. This section transfers and clarifies the existing ITCRO permissible activities from part I and provides that a licensed ITCRO may engage in any activities permissible for a limited service affiliate under part IV.

Section 32 creates s. 663.410, F.S. This section requires a licensed ITCRO to certify to the OFR the amount of its capital accounts, both prior to opening an ITCRO and on an annual basis thereafter by the specified date. This section is consistent with s. 663.08, F.S., which requires international banking corporations licensed to operate a Florida office must provide the same certification. This section maintains parity between international trust entities operating ITCROs in Florida and international banking corporations operating offices in Florida.

Section 33 creates s. 663.411, F.S. This section requires an international trust entity that operates an office in Florida to maintain certain reports and records. Failure to comply with this provision is grounds for suspension or revocation of any license under part III.

Section 36 creates s. 663.414, F.S. This section authorizes the commission to adopt rules for the administration of part III. This section provides an exemption to the applicability of ss. 120.54(3)(b) and 120.541, F.S., which requires a statement of regulatory costs, due to difficulty in obtaining economic data. An identical exemption exists in s. 663.13, F.S. This provision ensures parity between ITCROs and the Florida offices of an international banking corporation.

Regulation of Limited Service Affiliates of International Trust Entities

Sections 38 through 50 create part IV of ch. 663, F.S. The Division of Law Revision and Information is directed to create part IV of ch. 663, F.S., consisting of ss. 663.530 - 663.540, F.S. Part IV establishes the regulatory framework for qualified limited service affiliates (QLSA) of international trust entities. Unlike an ITCRO, whose license for operation is issued to an international trust entity, a qualified limited service affiliate is a stand-alone entity whose qualification by the OFR is independent of any affiliated international trust entities. While an ITCRO may only provide services for the international trust entity licensed to operate that office, a qualified limited service affiliate may provide services for any number of affiliated international trust entities. Since a qualified limited service affiliate is a stand-alone entity and is not subject to any other regulations, the permissible activities are more limited than that of an ITCRO.

Section 39 creates s. 663.530, F.S. This section creates definitions for part IV and defines the term “limited service affiliate” to mean a marketing and liaison office that engages in the permissible activities enumerated in s. 663.531, F.S., for the benefit of an international trust entity. A “qualified limited service affiliate” is a person or entity that is qualified by the OFR under part IV to perform permissible activities outlined in s. 663.531, F.S., for the benefit of an international trust entity.

Section 40 creates s. 663.531, F.S., and specifies the permissible activities of QLSA. Permissible activities include marketing and liaison activities, advertising and marketing at trade events, and transmitting documents between affiliated international trust entities and their clients. This section further:

- Provides descriptions of impermissible activities and includes acting as a fiduciary, advertising to the public, and otherwise engaging in banking or trust business;
- Prescribes guidance for permissible website usage and mandatory disclosure; and,
- Authorizes the OFR to enforce the chapter through the remedies and penalties available to it through the financial institutions codes.

Section 41 creates s. 663.532, F.S., to provide that no later than March 1, 2018, a person or entity that previously qualified under the moratorium in s. 663.041, F.S., must seek qualification as a QLSA or cease doing business in Florida. Notwithstanding the expiration of the moratorium, a person or entity that previously qualified under such moratorium may remain open and

operational but must refrain from engaging in new lines of business in Florida until qualified as a QLSA. This section is effective upon this act becoming a law.

Section 42 as created by this act, s. 663.532, F.S., is amended to provide the requirements and process for qualification as qualified limited service affiliates. A proposed QLSA must submit a written notice containing specified information regarding the proposed QLSA. This information includes services and activities of the applicant on behalf of the international trust entity (ITE), disclosures about officers, directors, and other parties who will be part of the operations of the proposed qualified limited service affiliate, and disclosures about the ITEs that the proposed qualified limited service affiliate will be providing services for in Florida. Once OFR deems the notice complete, the OFR has 120 days to qualify the limited services affiliates or issue a denial with notice of ch. 120, F.S., rights for denied limited service affiliates. This section authorizes the OFR to suspend, revoke, or deny a qualification in certain circumstances. A person or entity in operation as of January 1, 2018, which meets the definition of a LSA under the moratorium must file a written notice with the OFR seeking qualification as a qualified LSA on or before March 31, 2018, or cease doing business in Florida.

Section 43 creates s. 663.5325, F.S. This section provides for civil action subpoena enforcement. A QLSA is not required to produce certain books and records pertaining to a customer of an affiliated ITE, located outside of the United States, in response to a civil subpoena if the book or record is maintained outside of the United States and is not in the possession or control of the QLSA. This section does not apply to subpoenas issued by or on behalf of a federal, state, or local government law enforcement agency, administrative or regulatory agency, legislative body or grand jury and does not limit the power of the OFR to access all books and records under regulatory and supervisory powers under the financial institution codes. Parts I and III have the same provision applicable to international banking corporations and ITCROs, respectively.

Section 44 creates s. 663.533, F.S. This section provides applicability of the financial institutions codes to the regulation of the QLSA. This creates parity with the regulation of Florida offices of international banking corporations and international trust company representative offices, which are subject to the financial institutions codes in Sections 5 and 23 of the bill, respectively.

Section 45 creates s. 663.534, F.S., and requires QLSAs to report any changes in the information provided to the OFR during the initial qualification or renewal process.

Section 46 creates s. 633.535, F.S., and requires a disclosure that must accompany any marketing or advertising materials disseminated by a qualified limited service affiliate. The disclosure notifies those in receipt of the marketing or advertising materials that the OFR does not have regulatory oversight of the affiliated international trust entities served by the qualified limited service affiliate. Further, the OFR does not provide safety and soundness oversight of the QLSA. The disclosure also notifies those in receipt of the marketing or advertising materials that the qualified limited service affiliate may not act as a fiduciary. The disclosure delineates impermissible activities and puts the consumer on notice of which activities are impermissible.

Section 47 creates s. 663.536, F.S., to require a qualified limited service affiliate to maintain specified records of their activities at trade, industry, or professional events.

Section 48 creates s. 663.537, F.S. This section authorizes the OFR to examine and investigate a limited service affiliate before or after qualification to ensure compliance with the financial institutions codes.

Section 49 creates s. 663.538, F.S. This section establishes grounds for the suspension, revocation, or voluntary surrender of a qualification and authorizes the commission to adopt rules. A qualified limited service affiliate seeking to surrender its qualification must notify the OFR of its intention to do so at least 60 days prior to the date of the proposed surrender. The section authorizes the OFR to conduct an examination of the books and records of a qualified limited service affiliate who proposes to surrender their qualification to ensure the winding down of operations.

Section 50 creates s. 663.539, F.S. This section requires qualification renewal every two years. At renewal, a QLSA must provide any information as required by the commission. Further, a QLSA must provide a statement under penalty of perjury that the information for the purposes of renewal is true and correct.

Section 51 reenacts subsection (4) of section 663.16, F.S., to incorporate an amendment to s. 663.01, F.S.

Section 52 provides, except as otherwise expressly provided in this act and except for this section, which takes effect upon becoming a law, this act will take effect January 1, 2018.

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:

The bill creates registration fees, renewal fees, examination fees, and late fees that are applicable to offices of international trust entities under part III. International banking corporations are already subject to such fees under part I.

B. Private Sector Impact:

The bill modernizes and streamlines the regulatory framework of international financial services under ch. 663, F.S., thereby reducing regulatory burden and ensuring Florida remains competitive with other states.

C. Government Sector Impact:

The bill has an indeterminate increase in revenues relating to new regulatory fees and fines. While the Office of Financial Regulation (OFR) may have additional workload, OFR states that it can maintain regulatory oversight with current staffing levels.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.059, 663.01, 663.02, 663.021, 663.04, 663.05, 663.055, 663.06, 663.061, 663.062, 663.063, 663.064, 663.09, 663.11, 663.12, 663.17, and 663.0625.

This bill creates the following sections of the Florida Statutes: 663.001, 663.0601, 663.4001, 663.401, 663.402, 663.403, 663.404, 663.405, 663.406, 663.407, 663.408, 663.4081, 663.410, 663.411, 663.412, 663.413, 663.414, 663.415, 663.530, 663.531, 663.532, 663.533, 663.534, 663.535, 663.537, 663.538, and 663.539.

This bill reenacts section 663.16 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 Appropriations on April 13, 2017:

The committee substitute provides specific conditions that must be met for the Office of Financial Regulation (OFR) to permit a licensed office to remain open for business as issues affecting the home country institutions are resolved. The committee substitute also revises definitions; clarifies the qualification process for limited service affiliates; eliminates associated registration and renewal fees, and removes examination fees for qualified limited service affiliates.

²⁰ Office of Financial Regulation, *2017 Legislative Bill Analysis of SB 736* (on file with Senate Committee on Banking and Insurance).

CS by Banking and Insurance on March 6, 2017:

The CS clarifies the registration process for limited service affiliates (LSAs) and the Office of Financial Regulation's authority to take action against LSAs. Further, the LSA is not required to produce certain books and records pertaining to a customer of an affiliated international trust entity (ITE) that is located outside of the United States in response to a civil subpoena if the book or record is maintained outside of the United States and are not in the possession or control of the affiliated LSA with exceptions.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senators Mayfield and Steube

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1 A bill to be entitled
 2 An act relating to international financial
 3 institutions; amending s. 655.005, F.S.; redefining
 4 the term "financial institution" to include
 5 international trust entities and limited service
 6 affiliates; amending s. 655.059, F.S.; specifying
 7 conditions under which confidential books and records
 8 of international trust entities may be disclosed to
 9 their home-country supervisors; revising conditions
 10 for such disclosure for international banking
 11 corporations; redefining the term "home-country
 12 supervisor"; requiring books and records pertaining to
 13 trust accounts to be kept confidential by financial
 14 institutions and their directors, officers, and
 15 employees; providing an exception; providing
 16 construction; creating s. 663.001, F.S.; providing
 17 legislative intent; amending s. 663.01, F.S.;
 18 redefining terms; deleting the definition of the term
 19 "international trust company representative office";
 20 amending s. 663.02, F.S.; revising applicability of
 21 the financial institutions codes as to international
 22 banking corporations; amending s. 663.021, F.S.;
 23 conforming a provision to changes made by the act;
 24 amending s. 663.04, F.S.; deleting international trust
 25 companies from requirements for carrying on financial
 26 institution business; conforming a provision to
 27 changes made by the act; authorizing the Office of
 28 Financial Regulation to permit certain entities that
 29 would otherwise be prohibited from carrying on

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30 financial institution business to remain open and in
 31 operation under certain circumstances; amending s.
 32 663.05, F.S.; providing for an abbreviated application
 33 procedure for certain entities established by an
 34 international banking corporation; specifying that the
 35 Financial Services Commission, rather than the office,
 36 prescribes a certain application form; requiring the
 37 commission to adopt rules for a time limitation for an
 38 application decision after a specified date; revising
 39 conditions for the office to issue an international
 40 banking corporation license; conforming a provision to
 41 changes made by the act; amending s. 663.055, F.S.;
 42 revising capital requirements for international
 43 banking corporations; amending s. 663.06, F.S.; making
 44 technical changes; conforming a provision to changes
 45 made by the act; creating s. 663.0601, F.S.; providing
 46 an after-the-fact licensure process in the event of
 47 the acquisition, merger, or consolidation of
 48 international banking corporations; specifying
 49 conditions for such license; amending s. 663.061,
 50 F.S.; providing additional permissible activities for
 51 international bank agencies; amending s. 663.062,
 52 F.S.; providing additional permissible activities for
 53 certain international representative offices; amending
 54 s. 663.063, F.S.; providing additional permissible
 55 activities for international administrative offices;
 56 amending s. 663.064, F.S.; requiring the commission to
 57 adopt rules relating to permissible deposits of
 58 international branches; providing additional

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59 permissible activities for international branches;
 60 amending s. 663.09, F.S.; revising requirements for
 61 the maintenance of books and records of international
 62 banking corporations; authorizing the office to
 63 require international banking corporations to
 64 translate certain documents into English at the
 65 expense of the international banking corporations;
 66 amending s. 663.11, F.S.; authorizing the office to
 67 permit certain entities that would otherwise be
 68 prohibited from continuing business to remain open and
 69 in operation under certain circumstances; making
 70 technical and conforming changes; amending s. 663.12,
 71 F.S.; conforming a provision to changes made by the
 72 act; amending s. 663.17, F.S.; making technical
 73 changes; providing a directive to the Division of Law
 74 Revision and Information; creating part III of ch.
 75 663, F.S., entitled "International Trust Company
 76 Representative Offices"; creating s. 663.4001, F.S.;
 77 providing legislative intent; creating s. 663.401,
 78 F.S.; defining terms; creating s. 663.402, F.S.;
 79 providing applicability of the financial institutions
 80 codes as to international trust entities; creating s.
 81 663.403, F.S.; providing applicability of the Florida
 82 Business Corporation Act as to international trust
 83 entities; creating s. 663.404, F.S.; specifying
 84 requirements for an international trust entity or
 85 certain related entities to conduct financial
 86 institution business; authorizing the office to permit
 87 an international trust company representative office

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88 that would otherwise be prohibited from continuing
 89 business to remain open and in operation under certain
 90 circumstances; creating s. 663.405, F.S.; providing
 91 that an international trust company representative
 92 office is not required to produce certain books and
 93 records under certain circumstances; providing
 94 applicability; creating s. 663.406, F.S.; providing
 95 requirements for applications for an international
 96 trust entity license; requiring the office to disallow
 97 certain financial resources from capitalization
 98 requirements; requiring the international trust entity
 99 to submit to the office a certain certificate;
 100 providing an abbreviated application process for
 101 certain international trust entities to establish
 102 international trust company representative offices;
 103 specifying parameters and requirements for the office
 104 in determining whether to approve or disapprove an
 105 application; requiring the commission to adopt by rule
 106 general principles regarding the adequacy of
 107 supervision of an international trust entity's foreign
 108 establishments rules; creating s. 663.407, F.S.;
 109 providing capital requirements for an international
 110 trust entity; requiring the commission to adopt rules;
 111 creating s. 663.408, F.S.; providing permissible
 112 activities under and requirements and limitations for
 113 international trust entity licenses; providing
 114 procedures, conditions, and requirements for the
 115 suspension, revocation, or surrender of an
 116 international trust entity license; creating s.

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117 663.4081, F.S.; providing for an after-the-fact
 118 licensure process in the event of the acquisition,
 119 merger, or consolidation of international trust
 120 entities; specifying conditions for such licensure;
 121 transferring, renumbering, and amending s. 663.0625;
 122 adding prohibited activities of representatives and
 123 employees of an international trust company
 124 representative office; conforming provisions to
 125 changes made by the act; creating s. 663.410, F.S.;
 126 requiring international trust entities to certify to
 127 the office the amount of their capital accounts at
 128 specified intervals; providing construction; creating
 129 s. 663.411, F.S.; specifying reporting and
 130 recordkeeping requirements for international trust
 131 entities; providing penalties; authorizing the office
 132 to require an international trust entity to translate
 133 certain documents into English at the international
 134 trust entity's expense; creating s. 663.412, F.S.;
 135 prohibiting an international trust entity from
 136 conducting business under certain circumstances;
 137 authorizing the office to permit the international
 138 trust entity to remain open and in operation under
 139 certain circumstances; requiring an international
 140 trust entity or its surviving officers and directors
 141 to deliver specified documents to the office;
 142 providing construction; creating s. 663.413, F.S.;
 143 specifying application and examination fees for
 144 international trust company representative offices;
 145 creating s. 663.414, F.S.; authorizing the commission

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146 to adopt certain rules; providing an exemption from
 147 statement of estimated regulatory costs requirements;
 148 creating s. 663.415, F.S.; requiring international
 149 trust company representative offices that are under
 150 examination to reimburse domestic or foreign travel
 151 expenses of the office; providing a directive to the
 152 Division of Law Revision and Information; creating
 153 part IV of ch. 663, F.S., entitled "Limited Service
 154 Affiliates of International Trust Entities"; creating
 155 s. 663.530, F.S.; defining terms; creating s. 663.531,
 156 F.S.; specifying permissible and impermissible
 157 activities of a limited service affiliate; requiring
 158 specified notices to be posted on an international
 159 trust entity's or limited service affiliate's website;
 160 authorizing enforcement actions by the office;
 161 providing construction; creating s. 663.532, F.S.;
 162 specifying registration notice requirements and a fee
 163 for limited service affiliates; providing requirements
 164 and procedures for additional information requested by
 165 the office; providing summary suspension requirements
 166 and procedures; specifying grounds for denying a
 167 registration; providing that violations, fines, or
 168 penalties of certain entities do not necessarily
 169 disqualify registrants from registration; authorizing
 170 the office to consider certain factors in evaluating
 171 registrations; providing that registrations are not
 172 transferable or assignable; providing for deposit of
 173 fees into a specified trust fund; requiring the
 174 commission to adopt rules; requiring certain persons

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175 or entities to be registered as limited service
 176 affiliates by a specified date; creating s. 663.533,
 177 F.S.; providing applicability of the financial
 178 institutions codes as to limited service affiliates;
 179 providing construction; creating s. 663.534, F.S.;
 180 requiring a registrant to report changes of certain
 181 information to the office within a specified
 182 timeframe; creating s. 663.535, F.S.; requiring a
 183 specified notice to customers in marketing documents,
 184 advertisements, and displays at the limited service
 185 affiliate's location or at certain events; creating s.
 186 663.536, F.S.; specifying recordkeeping requirements
 187 relating to certain events that a registered limited
 188 service affiliate participates in; creating s.
 189 663.537, F.S.; authorizing the office to conduct
 190 examinations or investigations of limited service
 191 affiliates for certain purposes; specifying a minimum
 192 interval of examinations to assess compliance;
 193 authorizing the office to examine a person or entity
 194 submitting a notice of registration for certain
 195 purposes; requiring limited service affiliates to pay
 196 specified costs of examination within a specified
 197 time; defining the terms "costs" and "actual cost";
 198 providing penalties; specifying the trust fund where
 199 examination fees must be deposited; requiring the
 200 commission to adopt rules; creating s. 663.538, F.S.;
 201 providing requirements and procedures relating to the
 202 suspension, revocation, or voluntary surrender of a
 203 limited service affiliate's registration; providing a

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204 penalty; authorizing the office to conduct
 205 examinations under certain circumstances; prohibiting
 206 the office from denying a request to terminate
 207 operations except under certain circumstances;
 208 providing construction; creating s. 663.539, F.S.;
 209 requiring a limited service affiliate to renew its
 210 registration biennially; specifying the renewal fee
 211 and the trust fund where such fee must be deposited;
 212 specifying requirements for the renewal registration;
 213 creating s. 663.5395, F.S.; providing that limited
 214 service affiliates are not required to produce certain
 215 books and records under certain circumstances;
 216 providing applicability; reenacting s. 663.16(4),
 217 F.S., relating to definitions, to incorporate the
 218 amendment made to s. 663.01, F.S., in a reference
 219 thereto; providing an effective date.

220
 221 Be It Enacted by the Legislature of the State of Florida:

222
 223 Section 1. Paragraph (i) of subsection (1) of section
 224 655.005, Florida Statutes, is amended to read:

225 655.005 Definitions.—

226 (1) As used in the financial institutions codes, unless the
 227 context otherwise requires, the term:

228 (i) "Financial institution" means a state or federal
 229 savings or thrift association, bank, savings bank, trust
 230 company, international bank agency, international banking
 231 corporation, international branch, international representative
 232 office, international administrative office, international trust

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233 entity, international trust company representative office,
 234 limited service affiliate, credit union, or an agreement
 235 corporation operating pursuant to s. 25 of the Federal Reserve
 236 Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized
 237 pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss.
 238 611 et seq.

239 Section 2. Subsection (1) and paragraph (b) of subsection
 240 (2) of section 655.059, Florida Statutes, are amended to read:
 241 655.059 Access to books and records; confidentiality;
 242 penalty for disclosure.—

243 (1) The books and records of a financial institution are
 244 confidential and shall be made available for inspection and
 245 examination only:

246 (a) To the office or its duly authorized representative;

247 (b) To any person duly authorized to act for the financial
 248 institution;

249 (c) To any federal or state instrumentality or agency
 250 authorized to inspect or examine the books and records of an
 251 insured financial institution;

252 (d) With respect to an international banking corporation or
 253 international trust entity, to the home-country supervisor of
 254 the international banking corporation or international trust
 255 entity, provided:

256 1. The home-country supervisor provides advance notice to
 257 the office that the home-country supervisor intends to examine
 258 the Florida office of the international banking corporation or
 259 international trust entity. Such examination may be conducted
 260 onsite or offsite and may include ongoing reporting by the
 261 Florida office of the international banking corporation or

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262 international trust entity to the home-country supervisor.

263 2. The home-country supervisor confirms to the office that
 264 the purpose of the examination is to ensure the safety and
 265 soundness of the international banking corporation or
 266 international trust entity.

267 3. The books and records pertaining to customer deposit,
 268 investment, ~~and~~ custodial, and trust accounts are not disclosed
 269 to the home-country supervisor.

270 4. At any time during the conduct of the examination, the
 271 office reserves the right to have an examiner present, ~~or~~ to
 272 participate jointly in the examination, or to receive copies of
 273 all information provided to the home-country supervisor.

274

275 As used in ~~For purposes of~~ this paragraph, the term "home-
 276 country supervisor" means the governmental entity in the
 277 international banking corporation's or international trust
 278 entity's home country with responsibility for the supervision
 279 and regulation of the safety and soundness of the international
 280 banking corporation or international trust entity;

281 (e) As compelled by a court of competent jurisdiction,
 282 pursuant to a subpoena issued pursuant to the Florida Rules of
 283 Civil Procedure, the Florida Rules of Criminal Procedure, or the
 284 Federal Rules of Civil Procedure, or pursuant to a subpoena
 285 issued in accordance with state or federal law. ~~Before~~ ~~Prior to~~
 286 the production of the books and records of a financial
 287 institution, the party seeking production must reimburse the
 288 financial institution for the reasonable costs and fees incurred
 289 in compliance with the production. If the parties disagree
 290 regarding the amount of reimbursement, the party seeking the

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291 records may request the court or agency having jurisdiction to
 292 set the amount of reimbursement;

293 (f) As compelled by legislative subpoena as provided by
 294 law, in which case the provisions of s. 655.057 apply;

295 (g) Pursuant to a subpoena, to any federal or state law
 296 enforcement or prosecutorial instrumentality authorized to
 297 investigate suspected criminal activity;

298 (h) As authorized by the board of directors of the
 299 financial institution; or

300 (i) As provided in subsection (2).

301 (2)

302 (b) The books and records pertaining to trust accounts and
 303 the deposit accounts and loans of depositors, borrowers,
 304 members, and stockholders of any financial institution shall be
 305 kept confidential by the financial institution and its
 306 directors, officers, and employees and may shall not be released
 307 except upon express authorization of the account holder as to
 308 her or his own accounts, loans, or voting rights. However,
 309 information relating to any loan made by a financial institution
 310 may be released without the borrower's authorization in a manner
 311 prescribed by the board of directors for the purpose of meeting
 312 the needs of commerce and for fair and accurate credit
 313 information. Information may also be released, without the
 314 authorization of a member or depositor but in a manner
 315 prescribed by the board of directors, to verify or corroborate
 316 the existence or amount of a customer's or member's account when
 317 such information is reasonably provided to meet the needs of
 318 commerce and to ensure accurate credit information. In addition,
 319 a financial institution, affiliate, and its subsidiaries, and

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320 any holding company of the financial institution or subsidiary
 321 of such holding company, may furnish to one another information
 322 relating to their customers or members, subject to the
 323 requirement that each corporation receiving information that is
 324 confidential maintain the confidentiality of such information
 325 and not provide or disclose such information to any unaffiliated
 326 person or entity. Notwithstanding this paragraph, ~~nothing in~~
 327 this subsection does not prohibit: shall prohibit

328 1. A financial institution from disclosing financial
 329 information as referenced in this subsection as authorized
 330 ~~permitted~~ by Pub. L. No. 106-102 (1999), as set forth in 15
 331 U.S.C.A. s. 6802, as amended.

332 2. The Florida office of the international banking
 333 corporation or international trust entity from sharing books and
 334 records under this subsection with the home-country supervisor
 335 in accordance with subsection (1).

336 Section 3. Section 663.001, Florida Statutes, is created in
 337 part I of chapter 663, Florida Statutes, to read:

338 663.001 Purpose.—The purpose of this part is to establish a
 339 legal and regulatory framework for the conduct by international
 340 banking corporations of financial services business in this
 341 state. This part is intended to:

342 (1) Support the Florida operations of international banking
 343 corporations and promote the growth of international financial
 344 services to benefit the economy and consumers in this state.

345 (2) Provide for appropriate supervision and regulatory
 346 oversight to ensure that financial services activities of
 347 international banking corporations in this state are conducted
 348 responsibly and in a safe and sound manner.

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349 Section 4. Subsections (6) and (9) and paragraph (b) of
 350 subsection (11) of section 663.01, Florida Statutes, are amended
 351 to read:

352 663.01 Definitions.—As used in this part, the term:

353 (6) "International banking corporation" means a banking
 354 corporation organized and licensed under the laws of a foreign
 355 country. The term ~~"international banking corporation"~~ includes,
 356 without limitation, a foreign commercial bank, foreign merchant
 357 bank, or other foreign institution that engages in banking
 358 activities usual in connection with the business of banking in
 359 the country where such foreign institution is organized or
 360 operating, including a corporation: the sole shareholders of
 361 which are one or more international banking corporations or
 362 holding companies which own or control one or more international
 363 banking corporations which are authorized to carry on a banking
 364 business, or a central bank or government agency of a foreign
 365 country and any affiliate or division thereof; which has the
 366 power to receive deposits from the general public in the country
 367 where it is chartered and organized; and which is under the
 368 supervision of the central bank or other bank regulatory
 369 authority of such country. The term also includes ~~foreign trust
 370 companies, or any similar business entities, including, but not
 371 limited to,~~ foreign banks with fiduciary powers which, that
 372 conduct trust business as defined in the financial institutions
 373 codes.

374 ~~(9) "International trust company representative office"
 375 means an office of an international banking corporation or trust
 376 company organized and licensed under the laws of a foreign
 377 country which office is established or maintained in this state~~

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378 ~~for the purpose of engaging in nonfiduciary activities described
 379 in s. 663.0625, or any affiliate, subsidiary, or other person
 380 that engages in such activities on behalf of such international
 381 banking corporation or trust company from an office located in
 382 this state.~~

383 ~~(10)(11)~~ "Nonresident" means:

384 (b) A person, other than an individual, whose principal
 385 place of business or domicile is outside the United States and
 386 includes a person who conducts a majority of its business
 387 activities in a foreign country and any foreign government and
 388 its subdivision, agencies, and instrumentalities. Any person who
 389 conducts business in the United States is considered to have its
 390 principal place of business outside the United States if any one
 391 of the following requirements is satisfied for its most recent
 392 fiscal year:

- 393 1. Its assets located outside the United States exceed its
- 394 assets located within the United States;
- 395 2. Its gross revenues generated outside the United States
- 396 exceed its gross revenues generated within the United States; or
- 397 3. Its payroll expenses incurred outside the United States
- 398 exceed its payroll expenses incurred within the United States.

399 Section 5. Section 663.02, Florida Statutes, is amended to
 400 read:

401 663.02 Applicability of the financial institutions codes
 402 ~~state banking laws.~~

403 (1) International banking corporations having offices in
 404 this state are subject to all the provisions of the financial
 405 institutions codes and ~~chapter 655~~ as though such corporations
 406 were state banks ~~or trust companies~~, except where it may appear,

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407 from the context or otherwise, that such provisions are clearly
 408 applicable only to banks ~~or trust companies~~ organized under the
 409 laws of this state or the United States. Without limiting the
 410 foregoing general provisions, it is the intent of the
 411 Legislature that the following provisions are applicable to such
 412 banks or trust companies: s. 655.031, relating to administrative
 413 enforcement guidelines; s. 655.032, relating to investigations,
 414 subpoenas, hearings, and witnesses; s. 655.0321, relating to
 415 hearings, proceedings, and related documents and restricted
 416 access thereto; s. 655.033, relating to cease and desist orders;
 417 s. 655.037, relating to removal by the office of an officer,
 418 director, committee member, employee, or other person; s.
 419 655.041, relating to administrative fines and enforcement; s.
 420 655.50, relating to the control of money laundering and
 421 terrorist financing; and any law for which the penalty is
 422 increased under s. 775.31 for facilitating or furthering
 423 terrorism. International banking corporations do not have the
 424 powers conferred on domestic banks by s. 658.60, relating to
 425 deposits of public funds. Chapter 687, relating to interest and
 426 usury, applies to all bank loans.

427 (2) Neither an international bank agency nor an
 428 international branch shall have any greater right under, or by
 429 virtue of, this section than is granted to banks organized under
 430 the laws of this state. Legal and financial terms used herein
 431 shall be deemed to refer to equivalent terms used by the country
 432 in which the international banking corporation is organized.
 433 This chapter and the financial institutions codes may not be
 434 construed to authorize any international banking corporation ~~or~~
 435 ~~trust company~~ to conduct trust business, as defined in s.

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436 658.12, from an office in this state except for those activities
 437 specifically authorized by s. 663.061(5) ~~ss. 663.061(5) and~~
 438 ~~663.0625~~.

439 Section 6. Subsection (1) of section 663.021, Florida
 440 Statutes, is amended to read:

441 663.021 Civil action subpoena enforcement.—

442 (1) Notwithstanding s. 655.059, an international
 443 representative office, international bank agency, international
 444 branch, ~~international trust company representative office~~, or
 445 international administrative office established under this
 446 chapter is not required to produce a book or record pertaining
 447 to a deposit account, investment account, or loan of a customer
 448 of the international banking corporation's offices that are
 449 located outside the United States or its territories in response
 450 to a subpoena if the book or record is maintained outside the
 451 United States or its territories and is not in the possession,
 452 custody, or control of the international banking corporation's
 453 office, agency, or branch established in this state.

454 Section 7. Section 663.04, Florida Statutes, is amended to
 455 read:

456 663.04 Requirements for carrying on financial institution
 457 business.—An international banking corporation ~~or trust company~~,
 458 or any affiliate, subsidiary, or other person or business entity
 459 acting as an agent for, on behalf of, or for the benefit of such
 460 international banking corporation ~~or trust company~~ who engages
 461 in such activities from an office located in this state, may not
 462 transact a banking or trust business, or maintain in this state
 463 any office for carrying on such business, or any part thereof,
 464 unless such corporation, ~~trust company~~, affiliate, subsidiary,

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465 person, or business entity:

466 (1) Has been authorized by its charter to carry on a
467 banking or trust business and has complied with the laws of the
468 jurisdiction in which it is chartered.

469 (2) Has furnished to the office such proof as to the nature
470 and character of its business and as to its financial condition
471 as the commission or office requires.

472 (3) Has filed with the office a certified copy of that
473 information required to be supplied to the Department of State
474 by those provisions of part I of chapter 607 which are
475 applicable to foreign corporations.

476 (4) Has received a license duly issued to it by the office.

477 (5) Has sufficient capital in accordance with the
478 requirements of capital accounts no less than the minimums
479 required per s. 663.055 and the rules adopted thereunder and is
480 not imminently insolvent or insolvent, as those terms are
481 defined in ~~per~~ s. 655.005(1).

482 (6) (a) Is not in bankruptcy, conservatorship, receivership,
483 liquidation, or similar status under the laws of any country.

484 (b) Is not operating under the direct control of the
485 government, regulatory, or supervisory authority of the
486 jurisdiction of its incorporation through government
487 intervention or any other extraordinary actions.

488 (c) Has not been in such status or control at any time
489 within the 3 7 years preceding the date of application for a
490 license.

491 Notwithstanding subsection (6), the office may, in its
492 discretion, permit an international branch, international bank
493

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494 agency, international administrative office, or international
495 representative office to remain open and in operation under such
496 conditions as the office deems appropriate if the office
497 determines that it is in the public's interest and that it
498 furtheres international supervisory cooperation to allow the
499 international branch, international bank agency, international
500 administrative office, or international representative office to
501 remain open and in operation.

502 Section 8. Present subsections (4) through (8) of section
503 663.05, Florida Statutes, are redesignated as subsections (5)
504 through (9), respectively, a new subsection (4) is added to that
505 section, and present subsections (4), (5), and (6), paragraph
506 (c) of present subsection (7), and present subsection (8) are
507 amended, to read:

508 663.05 Application for license; approval or disapproval.—

509 (4) Notwithstanding subsection (1), an international
510 banking corporation that has operated an international branch,
511 international bank agency, international administrative office,
512 or international representative office in this state for a
513 minimum of 3 years in a safe and sound manner, as defined by
514 commission rule, and that is otherwise eligible to establish an
515 additional office may establish one or more additional
516 international branches, international bank agencies,
517 international administrative offices, or international
518 representative offices by providing an abbreviated application
519 and paying the appropriate license fee pursuant to s. 663.12.
520 This subsection does not permit an international banking
521 corporation to file an abbreviated application for any license
522 type whose permissible activities are broader than those in

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523 which the international banking corporation is currently
524 authorized to engage.

525 ~~(5)(4)~~ An application filed pursuant to this section must
526 ~~shall~~ be made on a form prescribed by the commission office and
527 ~~must shall~~ contain such information as the commission or office
528 requires.

529 ~~(6)(5)~~ The office may, in its discretion, approve or
530 disapprove the application, but it may shall not approve the
531 application unless, in its opinion, the applicant meets each and
532 every requirement of this part and any other applicable
533 provision of the financial institutions codes. The office shall
534 approve the application only if it has determined that the
535 directors, executive officers, and principal shareholders of the
536 international banking corporation are qualified by reason of
537 their financial ability, reputation, and integrity and have
538 sufficient banking and other business experience to indicate
539 that they will manage and direct the affairs of the
540 international banking corporation in a safe, sound, and lawful
541 manner. In the processing of an application filed pursuant to
542 this section applications, the time limitations under the
543 Administrative Procedure Act do shall not apply as to approval
544 or disapproval of the application. For applications filed on or
545 after January 1, 2018, the time limitations for approval or
546 disapproval of an application must be prescribed by rule of the
547 commission.

548 ~~(7)(6)~~ The office may not issue a license to an
549 international banking corporation unless:

550 (a) It is chartered in a jurisdiction in which any
551 financial institution licensed or chartered by any state or any

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552 federal bank regulatory agency in the United States ~~bank or~~
553 ~~trust company~~ having its principal place of business in this
554 state may establish similar facilities or exercise similar
555 powers; or

556 (b) Federal law permits the appropriate federal regulatory
557 authority to issue a comparable license to the international
558 banking corporation.

559 ~~(8)(7)~~ The office may not issue a license to an
560 international banking corporation for the purpose of operating:

561 ~~(e) A trust representative office in this state unless the~~
562 ~~corporation:~~

563 1. ~~Holds an unrestricted license to conduct trust business~~
564 ~~in the foreign country under the laws of which it is organized~~
565 ~~and chartered.~~

566 2. ~~Has been authorized by the foreign country's trust~~
567 ~~business regulatory authority to establish the proposed~~
568 ~~international trust representative office.~~

569 3. ~~Is adequately supervised by the central bank or trust~~
570 ~~regulatory agency in the foreign country in which it is~~
571 ~~organized and chartered.~~

572 4. ~~Meets all requirements under the financial institutions~~
573 ~~codes for the operation of a trust company or trust department~~
574 ~~as if it were a state chartered trust company or bank authorized~~
575 ~~to exercise fiduciary powers.~~

576 ~~(9)(8)~~ The commission shall establish, by rule, the general
577 principles which shall determine the adequacy of supervision of
578 an international banking corporation's foreign establishments.
579 These principles shall be based upon the need for cooperative
580 supervisory efforts and consistent regulatory guidelines and

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581 shall address, at a minimum, the capital adequacy, asset
 582 quality, management, earnings, liquidity, internal controls,
 583 audits, and foreign exchange operations and positions of the
 584 international banking corporation. This subsection does ~~shall~~
 585 not require examination by the home-country regulatory
 586 authorities of any office of an international banking
 587 corporation in this state. The commission may also establish, by
 588 rule, other standards for approval of an application for a
 589 license as considered necessary to ensure the safe and sound
 590 operations of the international banking corporation ~~bank or~~
 591 ~~trust representative office~~ in this state.

592 Section 9. Section 663.055, Florida Statutes, is amended to
 593 read:

594 663.055 Capital requirements.—

595 (1) To qualify for a license under ~~the provisions of this~~
 596 ~~part, the proposed capitalization of the international banking~~
 597 corporation must be in such amount as the office determines is
 598 necessary, taking into consideration the risk profile of the
 599 international banking corporation and the ability of the
 600 international banking corporation to operate a licensed office
 601 in a safe and sound manner. In making this determination, the
 602 office must consider the financial resources of the
 603 international banking corporation, including an international
 604 ~~banking corporation must have net capital accounts, calculated~~
 605 ~~according to United States generally accepted accounting~~
 606 ~~principles and practices, of at least:~~

607 (a) The international banking corporation's current and
 608 projected capital position, profitability, level of
 609 indebtedness, and business and strategic plans ~~Forty million~~

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610 ~~dollars for the establishment of an international bank agency,~~
 611 ~~an international branch, or an international administrative~~
 612 ~~office; or~~

613 (b) The financial condition of any of the international
 614 banking corporation's existing offices located in the United
 615 States; ~~Twenty million dollars for the establishment of an~~
 616 ~~international representative office or international trust~~
 617 ~~representative office.~~

618 (c) The minimum capital requirements of the international
 619 banking corporation's home-country jurisdiction; and

620 (d) The capital ratio standards used in the United States
 621 and in the international banking corporation's home-country
 622 jurisdiction.

623 (2) The proposed capitalization of the international
 624 banking corporation must be in such amount as the office deems
 625 adequate, but in no case may the total capital accounts of the
 626 international banking corporation be less than the minimum
 627 required under s. 658.21(2) to establish a state bank
 628 ~~Notwithstanding the provisions of paragraph (1)(a), the office~~
 629 ~~may approve an application for a license to establish an~~
 630 ~~international bank agency, an international branch, or an~~
 631 ~~international administrative office if:~~

632 (a) ~~The international banking corporation is licensed to~~
 633 ~~receive deposits from the general public in the country where it~~
 634 ~~is organized and licensed and to engage in such other activities~~
 635 ~~as are usual in connection with the business of banking in such~~
 636 ~~country;~~

637 (b) ~~The office receives a certificate that is issued by the~~
 638 ~~banking or supervisory authority of the country in which the~~

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639 ~~international banking corporation is organized and licensed and~~
 640 ~~states that the international banking corporation is duly~~
 641 ~~organized and licensed and lawfully existing in good standing,~~
 642 ~~and is empowered to conduct a banking business; and~~

643 ~~(c) The international banking corporation has been in the~~
 644 ~~business of banking for at least 10 years and is ranked by the~~
 645 ~~banking or supervisory authority of the country in which it is~~
 646 ~~organized and licensed as one of the five largest banks in that~~
 647 ~~country in terms of domestic deposits, as of the date of its~~
 648 ~~most recent statement of financial condition. However, in no~~
 649 ~~event shall the office approve an application under this~~
 650 ~~subsection for any international banking corporation with~~
 651 ~~capital accounts of less than \$20 million.~~

652 (3) The office may specify such other conditions as it
 653 determines are appropriate, considering the public interest and
 654 the need to maintain a safe, sound, and competitive banking
 655 system in this state, ~~and the preservation of an environment~~
 656 ~~conducive to the conduct of an international banking business in~~
 657 ~~this state. In translating the capital accounts of an~~
 658 ~~international banking corporation, the office may consider~~
 659 ~~monetary corrections accounts that reflect results consistent~~
 660 ~~with the requirements of generally accepted accounting~~
 661 ~~principles in the United States.~~

662 (4) For the purpose of this part, the capital accounts of
 663 and capital ratio standards for an international banking
 664 corporation must shall be determined in accordance with rules
 665 adopted by the commission. In adopting such rules, the
 666 commission shall consider similar rules adopted by bank
 667 regulatory agencies in the United States and the need to provide

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668 reasonably consistent regulatory requirements for international
 669 banking corporations ~~which will maintain the safe and sound~~
 670 ~~condition of international banking corporations~~ doing business
 671 in this state, as well as capital adequacy standards of an
 672 international banking corporation's home-country jurisdiction.

673 Section 10. Subsections (1) and (3) of section 663.06,
 674 Florida Statutes, are amended to read:

675 663.06 Licenses; permissible activities.—

676 (1) (a) An international banking corporation licensed to
 677 operate an office in this state may engage in the business
 678 authorized by this part at the office specified in such license
 679 for an indefinite period.

680 (b) An international banking corporation may operate more
 681 than one licensed office, each at a different place of business,
 682 provided that each office is shall be separately licensed.

683 (c) ~~A~~ No license is not transferable or assignable.
 684 However, the location of a licensed office may be changed after
 685 notification of the office.

686 (d) Every such license must shall be, at all times,
 687 conspicuously displayed in the place of business specified
 688 therein.

689 (3) The license for any international banking corporation
 690 office in this state may be suspended or revoked by the office,
 691 with or without examination, upon its determination that the
 692 international banking corporation or the licensed office does
 693 not meet all requirements for original licensing. Additionally,
 694 the office shall revoke the license of any licensed office that
 695 the office determines has been inactive for 6 months or longer.
 696 The commission may by rule prescribe additional conditions or

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697 standards under which the license of an international bank
698 agency, international branch, international representative
699 office, ~~international trust company representative office~~, or
700 international administrative office may be suspended or revoked.

701 Section 11. Section 663.0601, Florida Statutes, is created
702 to read:

703 663.0601 After-the-fact licensure process in the event of
704 the acquisition, merger, or consolidation of international
705 banking corporations.-If an international banking corporation
706 proposes to acquire, merge, or consolidate with an international
707 banking corporation that presently operates an international
708 branch, international bank agency, international administrative
709 office, or international representative office licensed in this
710 state, the office may authorize the currently licensed
711 international branch, international bank agency, international
712 administrative office, or international representative office to
713 remain open and in operation after consummation of the proposed
714 acquisition, merger, or consolidation, if the acquiring
715 international banking corporation files an after-the-fact
716 application and all of the following conditions are met:

717 (1) The international banking corporation or corporations
718 resulting from the acquisition, merger, or consolidation will
719 not directly or indirectly own or control more than 5 percent of
720 any class of the voting securities of, or control, a United
721 States bank.

722 (2) Before consummation of the acquisition, merger, or
723 consolidation, the international banking corporation currently
724 licensed to operate an international branch, international bank
725 agency, international administrative office, or international

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726 representative office in this state must provide the office at
727 least 30 days' advance written notice, as prescribed by rules
728 adopted by the commission, of the proposed acquisition, merger,
729 or consolidation.

730 (3) Before consummation of the acquisition, merger, or
731 consolidation, each international banking corporation commits in
732 writing that it will either:

733 (a) Comply with the conditions in subsections (1) and (2)
734 and file an after-the-fact application for a license under s.
735 663.05(1) within 60 days after consummation of the proposed
736 acquisition, merger, or consolidation; and refrain from engaging
737 in new lines of business and from otherwise expanding the
738 activities of such establishment in this state until the
739 disposition of the after-the-fact license application, in
740 accordance with chapter 120; or

741 (b) Promptly wind down and close any international branch,
742 international bank agency, international administrative office,
743 or international representative office in this state if the
744 international banking corporations that are party to the
745 acquisition, merger, or consolidation elect not to file an
746 application for a license in accordance with paragraph (a); and,
747 before such wind-down and closure, refrain from engaging in new
748 lines of business or otherwise expanding the activities of such
749 establishment in this state.

750 Section 12. Subsection (1) of section 663.061, Florida
751 Statutes, is amended to read:

752 663.061 International bank agencies; permissible
753 activities.-

754 (1) An international bank agency licensed under this part

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755 may make any loan, extension of credit, or investment which it
 756 could make if incorporated and operating as a bank organized
 757 under the laws of this state. An international bank agency may
 758 act as custodian and may furnish investment management, and
 759 investment advisory services authorized under rules adopted by
 760 the commission, to nonresident entities or persons whose
 761 principal places of business or domicile are outside the United
 762 States and to resident entities or persons with respect to
 763 international, ~~or foreign, or domestic~~ investments. An
 764 international banking corporation ~~that which~~ has an
 765 international bank agency licensed under the terms of this part
 766 ~~is shall be~~ exempt from the registration requirements of s.
 767 517.12. An international bank agency licensed by the office may
 768 engage in any activity permissible for an international
 769 administrative office or international representative office.

770 Section 13. Section 663.062, Florida Statutes, is amended
 771 to read:

772 663.062 International representative offices; permissible
 773 activities.—An international representative office may promote
 774 or assist the deposit-taking, lending, or other financial or
 775 banking activities of an international banking corporation. An
 776 international representative office may serve as a liaison in
 777 Florida between an international banking corporation and its
 778 existing and potential customers. Representatives and employees
 779 based at such office may solicit business for the international
 780 banking corporation and its subsidiaries and affiliates, provide
 781 information to customers concerning their accounts, answer
 782 questions, receive applications for extensions of credit and
 783 other banking services, transmit documents on behalf of

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784 customers, and make arrangements for customers to transact
 785 business on their accounts, but a representative office may not
 786 conduct any banking or trust business in this state. An
 787 international representative office of an international banking
 788 corporation that has fiduciary powers may engage in the
 789 international trust representative office activities enumerated
 790 in s. 663.409.

791 Section 14. Subsection (2) of section 663.063, Florida
 792 Statutes, is amended to read:

793 663.063 International administrative offices.—

794 (2) An office established pursuant to ~~the provisions of~~
 795 this section may ~~not~~ engage only in any activity except those
 796 activities set forth in subsection (1) and the activities
 797 permissible for an international representative office pursuant
 798 to s. 663.062.

799 Section 15. Section 663.064, Florida Statutes, is amended
 800 to read:

801 663.064 International branches; permissible activities;
 802 requirements.—

803 (1) An international banking corporation that meets the
 804 requirements of ss. 658.26, 663.04, and 663.05 may, with the
 805 approval of the office, establish one or more branches in this
 806 state. ~~An international branch shall have the same rights and~~
 807 ~~privileges as a federally licensed international branch.~~ The
 808 operations of an international branch shall be conducted
 809 pursuant to requirements determined by the office as necessary
 810 to ensure compliance with the provisions of the financial
 811 institutions codes, including requirements for the maintenance
 812 of accounts and records separate from those of the international

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813 banking corporation of which it is a branch.

814 (2) An international branch has the same rights and
 815 privileges as a federally licensed international branch. The
 816 permissible deposits of an international branch must be
 817 determined in accordance with rules adopted by the commission.
 818 In adopting such rules, the commission shall consider the
 819 similar deposit-taking authority of a federally licensed
 820 international branch and the need to provide reasonably
 821 consistent regulatory requirements for international banking
 822 corporations doing business in this state.

823 (3) An international branch licensed by the office may
 824 engage in any activity permissible for an international bank
 825 agency, international administrative office, or international
 826 representative office.

827 Section 16. Subsection (3) of section 663.09, Florida
 828 Statutes, is amended, and subsection (5) is added to that
 829 section, to read:

830 663.09 Reports; records.—

831 (3) Each international banking corporation ~~that which~~
 832 operates an office licensed under this part shall cause to be
 833 kept, at a location accepted by the office:

834 (a) Correct and complete books and records of account of
 835 the business operations transacted by such office. All policies
 836 and procedures relating specifically to governing the operations
 837 of such office, as well as any existing general ledger or
 838 subsidiary accounts, ~~must shall~~ be maintained in the English
 839 language. Any policies and procedures of the international
 840 banking corporation which are not specific to the operations of
 841 such office may be maintained in a language other than English

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842 ~~The office may require that any other document not written in~~
 843 ~~the English language which the office deems necessary for the~~
 844 ~~purposes of its regulatory and supervisory functions be~~
 845 ~~translated into English at the expense of the international~~
 846 ~~banking corporation.~~

847 (b) Current copies of the charter and bylaws of the
 848 international banking corporation, relative to the operations of
 849 the office, and minutes of the proceedings of its directors,
 850 officers, or committees relative to the business of the office.
 851 Such records may be maintained in a language other than English
 852 and must shall be kept pursuant to s. 655.91 and ~~shall be~~ made
 853 available to the office, upon request, at any time during
 854 regular business hours of the office. Any failure to keep such
 855 records as aforesaid or any refusal to produce such records upon
 856 request by the office ~~is shall be~~ grounds for suspension or
 857 revocation of any license issued under this part.

858 (5) The office may require at any time that any document
 859 not written in the English language which the office deems
 860 necessary for the purposes of its regulatory and supervisory
 861 functions be translated into English at the expense of the
 862 international banking corporation.

863 Section 17. Section 663.11, Florida Statutes, is amended to
 864 read:

865 663.11 Termination of international banking corporation's
 866 charter or authority.—

867 (1) (a) An international banking corporation that is
 868 licensed to maintain an office in this state may not continue to
 869 conduct its licensed business in this state if the international
 870 banking corporation:

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871 1. Is dissolved, or its authority or existence is otherwise
872 terminated or canceled in the jurisdiction of its
873 incorporation;~~;~~

874 2. Is in bankruptcy, conservatorship, receivership,
875 liquidation, or similar status under the laws of any country;~~;~~
876 or

877 3. Is operating under the direct control of the government
878 or the regulatory or supervisory authority of the jurisdiction
879 of its incorporation through government intervention or any
880 extraordinary actions.

881 (b) Notwithstanding subparagraphs (a)2. and 3., the office
882 may, in its discretion, permit an international branch,
883 international bank agency, international administrative office,
884 or international representative office to remain open and in
885 operation under such conditions as the office deems appropriate,
886 if the office determines that it is in the public's interest and
887 that it furthers international supervisory cooperation to allow
888 the international branch, international bank agency,
889 international administrative office, or international
890 representative office to remain open and in operation.

891 ~~(2) A certificate of the official who is responsible for~~
892 ~~records of banking corporations of the jurisdiction of~~
893 ~~incorporation of such international banking corporation,~~
894 ~~attesting to the occurrence of any such event, or a certified~~
895 ~~copy of an order or decree of a court of such jurisdiction,~~
896 ~~directing the dissolution of such international banking~~
897 ~~corporation, the termination of its existence, or the~~
898 ~~cancellation of its authority, or declaring its status in~~
899 ~~bankruptcy, conservatorship, receivership, liquidation, or~~

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900 ~~similar proceedings, or other reliable documentation that the~~
901 ~~international banking corporation is operating under the direct~~
902 ~~control of its government or a regulatory or supervisory~~
903 ~~authority, shall be delivered by~~ The international banking
904 corporation or its surviving officers and directors shall
905 deliver to the office;~~;~~

906 (a) A certificate of the official who is responsible for
907 records of banking corporations of the jurisdiction of
908 incorporation of such international banking corporation,
909 attesting to the occurrence of any event described in paragraph
910 (1) (a);

911 (b) A certified copy of an order or decree of a court of
912 such jurisdiction, directing the dissolution of such
913 international banking corporation, the termination of its
914 existence, or the cancellation of its authority or declaring its
915 status in bankruptcy, conservatorship, receivership,
916 liquidation, or similar proceedings; or

917 (c) Other reliable documentation evidencing that the
918 international banking corporation is operating under the direct
919 control of its government or a regulatory or supervisory
920 authority.

921 (3) The filing of the certificate, order, documentation, or
922 decree ~~has~~ shall have the same effect as the revocation of the
923 license of such international banking corporation as provided in
924 s. 663.06, unless the office has permitted the international
925 branch, international bank agency, international administrative
926 office, or international representative office to remain open
927 and in operation pursuant to paragraph (1) (b).

928 Section 18. Subsection (1) of section 663.12, Florida

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929 Statutes, is amended to read:

930 663.12 Fees; assessments; fines.—

931 (1) Each application for a license under ~~the provisions of~~
932 this part ~~must shall~~ be accompanied by a nonrefundable filing
933 fee payable to the office in the following amount:

934 (a) Ten thousand dollars for establishing a state-chartered
935 investment company.

936 (b) Ten thousand dollars for establishing an international
937 bank agency or branch.

938 (c) Five thousand dollars for establishing an international
939 administrative office.

940 (d) Five thousand dollars for establishing an international
941 representative office.

942 ~~(e) Five thousand dollars for establishing an international~~
943 ~~trust company representative office.~~

944 ~~(e)(f)~~ An amount equal to the initial filing fee for an
945 application to convert from one type of license to another. The
946 commission may increase the filing fee for any type of license
947 to an amount established by rule and calculated in a manner so
948 as to cover the direct and indirect cost of processing such
949 applications.

950 Section 19. Subsection (11) of section 663.17, Florida
951 Statutes, is amended to read:

952 663.17 Liquidation; possession of business and property;
953 inventory of assets; wages; depositing collected assets;
954 appointing agents; appointment of judges.—

955 (11) The compensation of agents and any other employees
956 appointed by the office to assist in the liquidation of an
957 international banking corporation, or any of the corporation's

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958 licensed offices located in this state, the distribution of its
959 assets, or the expenses of supervision, ~~must shall~~ be paid out
960 of the assets of the corporation in the ~~possession hands~~ of the
961 office. Expenses of liquidation and approved claims for fees and
962 assessments due the office ~~must shall~~ be given first priority
963 among unsecured creditors.

964 Section 20. The Division of Law Revision and Information is
965 directed to create part III of chapter 663, Florida Statutes,
966 consisting of ss. 663.4001-663.416, Florida Statutes, to be
967 entitled "International Trust Company Representative Offices."

968 Section 21. Section 663.4001, Florida Statutes, is created
969 to read:

970 663.4001 Purpose.—The purpose of this part is to establish
971 a legal and regulatory framework for the conduct by
972 international trust entities of financial services business in
973 this state. This part is intended to:

974 (1) Support the Florida operations of international trust
975 entities and promote the growth of international financial
976 services to benefit the economy and consumers in this state.

977 (2) Provide for appropriate supervision and regulatory
978 oversight to ensure that financial services activities of
979 international trust entities in this state are conducted
980 responsibly and in a safe and sound manner.

981 Section 22. Section 663.401, Florida Statutes, is created
982 to read:

983 663.401 Definitions.—

984 (1) "Affiliate" means a person or business or a group of
985 persons or businesses acting in concert which controls, is
986 controlled by, or is under common control of an international

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987 trust entity.

988 (2) "International trust company representative office"
 989 means an office of an international trust entity which is
 990 established or maintained in this state for the purpose of
 991 engaging in nonfiduciary activities described in s. 663.409, or
 992 any affiliate, subsidiary, or other person that engages in such
 993 activities on behalf of such international trust entity from an
 994 office located in this state.

995 (3) "International trust entity" means an international
 996 trust company or organization, or any similar business entity;
 997 or an affiliated or subsidiary entity that is licensed,
 998 chartered, or similarly permitted to conduct trust business in a
 999 foreign country or countries under the laws where such entity is
 1000 organized and supervised.

1001 Section 23. Section 663.402, Florida Statutes, is created
 1002 to read:

1003 663.402 Applicability of the financial institutions codes.-

1004 (1) An international trust entity that operates an office
 1005 licensed under this part is subject to all the financial
 1006 institutions codes as though such international trust entity
 1007 were a state trust company, except when it appears, from the
 1008 context or otherwise, that such provisions are clearly
 1009 applicable only to trust companies organized under the laws of
 1010 this state or the United States. Without limiting the foregoing
 1011 general provisions, it is the intent of the Legislature that the
 1012 following provisions are applicable to such international trust
 1013 entities having offices in this state: s. 655.031, relating to
 1014 administrative enforcement guidelines; s. 655.032, relating to
 1015 investigations, subpoenas, hearings, and witnesses; s. 655.0321,

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1016 relating to restricted access hearings, proceedings, and related
 1017 documents; s. 655.033, relating to cease and desist orders; s.
 1018 655.037, relating to removal of a financial institution-related
 1019 party by the office; s. 655.041, relating to administrative
 1020 finances and enforcement; s. 655.50, the Florida Control of Money
 1021 Laundering and Terrorist Financing in Financial Institutions
 1022 Act; and any law for which the penalty is increased under s.
 1023 775.31 for facilitating or furthering terrorism.

1024 (2) An international trust entity does not have any greater
 1025 right under, or by virtue of, this section than is granted to
 1026 trust companies organized under the laws of this state. Legal
 1027 and financial terms used in this chapter are deemed to refer to
 1028 equivalent terms used by the country in which the international
 1029 trust entity is organized. This chapter and the financial
 1030 institutions codes may not be construed to authorize any
 1031 international trust entity to conduct trust business, as defined
 1032 in s. 658.12, from an office in this state.

1033 Section 24. Section 663.403, Florida Statutes, is created
 1034 to read:

1035 663.403 Applicability of the Florida Business Corporation
 1036 Act.—Notwithstanding s. 607.01401(12), the provisions of part I
 1037 of chapter 607 which are not in conflict with the financial
 1038 institutions codes and which relate to foreign corporations
 1039 apply to all international trust entities and their offices
 1040 doing business in this state.

1041 Section 25. Section 663.404, Florida Statutes, is created
 1042 to read:

1043 663.404 Requirements for conducting financial institution
 1044 business.—An international trust entity, or any affiliated,

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1045 subsidiary, or other person or business entity acting as an
 1046 agent for, on behalf of, or for the benefit of such
 1047 international trust entity, who engages in such activities from
 1048 an office located in this state, may not transact a trust
 1049 business, or maintain in this state any office for carrying on
 1050 such business, or any part thereof, unless such international
 1051 trust entity, affiliate, subsidiary, person, or business entity:

1052 (1) Has been authorized by charter, license, or similar
 1053 authorization by operation of law to carry on trust business and
 1054 has complied with the laws of each jurisdiction in which it is
 1055 chartered, licensed, or otherwise authorized and created under
 1056 operation of law.

1057 (2) Has furnished to the office such proof as to the nature
 1058 and character of its business and as to its financial condition
 1059 as the commission or office requires.

1060 (3) Has filed with the office a certified copy of that
 1061 information required to be supplied to the Department of State
 1062 by those provisions of part I of chapter 607 which are
 1063 applicable to foreign corporations.

1064 (4) Has received a license duly issued to it by the office.

1065 (5) Has sufficient capital in accordance with the
 1066 requirements of s. 663.407 and the rules adopted thereunder and
 1067 is not imminently insolvent or insolvent, as those terms are
 1068 defined under s. 655.005(1).

1069 (6) (a) Is not in bankruptcy, conservatorship, receivership,
 1070 liquidation, or similar status under the laws of any country.

1071 (b) Is not operating under the direct control of the
 1072 government or the regulatory or supervisory authority of the
 1073 home jurisdiction in which it has been chartered, licensed, or

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1074 otherwise authorized and created under operation of law, through
 1075 government intervention or any other extraordinary actions.

1076 (c) Has not been in such status or control at any time
 1077 within the 3 years preceding the date of application for a
 1078 license.

1079
 1080 Notwithstanding subsection (6), the office may, in its
 1081 discretion, permit an international trust company representative
 1082 office to remain open and in operation under such conditions as
 1083 the office deems appropriate if the office determines that it is
 1084 in the public's interest and that it furthers international
 1085 supervisory cooperation to allow the international trust company
 1086 representative office to remain open and in operation.

1087 Section 26. Section 663.405, Florida Statutes, is created
 1088 to read:

1089 663.405 Civil action subpoena enforcement.—

1090 (1) Notwithstanding s. 655.059, an international trust
 1091 company representative office established under this chapter is
 1092 not required to produce a book or record pertaining to a deposit
 1093 account, investment account, trust account, or loan of a
 1094 customer of the international trust entity's offices that are
 1095 located outside the United States or its territories in response
 1096 to a subpoena, if the book or record is maintained outside the
 1097 United States or its territories and is not in the possession,
 1098 custody, or control of the international trust entity's
 1099 representative office established in this state.

1100 (2) This section applies only to a subpoena issued pursuant
 1101 to the Florida Rules of Civil Procedure, the Federal Rules of
 1102 Civil Procedure, or other similar law or rule of civil procedure

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1103 in another state. This section does not apply to a subpoena
 1104 issued by or on behalf of a federal, state, or local government
 1105 law enforcement agency, administrative or regulatory agency,
 1106 legislative body, or grand jury and does not limit the power of
 1107 the office to access all books and records in the exercise of
 1108 the office's regulatory and supervisory powers under the
 1109 financial institutions codes.

1110 Section 27. Section 663.406, Florida Statutes, is created
 1111 to read:

1112 663.406 Application for license; approval or disapproval.-

1113 (1) An international trust entity, before being licensed by
 1114 the office to maintain any office in this state, must subscribe
 1115 and acknowledge, and submit to the office, an application that
 1116 contains all of the following:

1117 (a) The name of the international trust entity.

1118 (b) The proposed location, by street and post office
 1119 address and county, where its business is to be transacted in
 1120 this state and the name of the person who will be in charge of
 1121 the business and affairs of the office.

1122 (c) The location where its initial registered office will
 1123 be located in this state.

1124 (d) The total amount of the capital accounts of the
 1125 international trust entity.

1126 (e) A complete and detailed statement of its financial
 1127 condition as of a date within 180 days before the date of such
 1128 application, except that the office in its discretion may, when
 1129 necessary or expedient, accept such statement of financial
 1130 condition as of a date within 240 days before the date of such
 1131 application. The office in its discretion may, when necessary or

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1132 expedient, require an independent opinion audit or the
 1133 equivalent satisfactory to the office.

1134 (f) A listing of any occasion within the 10 year period
 1135 before the application on which either the international trust
 1136 entity or any of its directors, executive officers, or principal
 1137 shareholders have been arrested for, charged with, convicted of,
 1138 or pled guilty or nolo contendere to, regardless of
 1139 adjudication, any offense with respect to which the penalties
 1140 include the possibility of imprisonment for 1 year or more, or
 1141 to any offense involving money laundering, currency transaction
 1142 reporting, facilitating or furthering terrorism, or fraud, or
 1143 otherwise related to the operation of a financial institution.

1144 (2) The office shall disallow any illegally obtained
 1145 currency, monetary instruments, funds, or other financial
 1146 resources from the capitalization requirements of this section,
 1147 and the existence of such illegally obtained resources is
 1148 grounds for denial of the application for license.

1149 (3) An international trust entity that submits an
 1150 application to the office shall concurrently submit a
 1151 certificate issued by the supervisory authority of the country
 1152 in which the international trust entity is chartered or
 1153 organized which states that the international trust entity is
 1154 duly organized and licensed, or otherwise authorized by
 1155 operation of law to transact business as a trust entity, and
 1156 lawfully existing in good standing.

1157 (4) An international trust entity that has operated an
 1158 international trust company representative office in this state
 1159 for at least 3 years in a safe and sound manner, as defined by
 1160 commission rule, and that is otherwise eligible to establish an

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1161 additional office may establish one or more international trust
 1162 company representative offices by providing an abbreviated
 1163 application, and paying the appropriate license fee pursuant to
 1164 s. 663.413.

1165 (5) An application filed pursuant to this section must be
 1166 made on a form prescribed by the commission and must contain
 1167 such information as the commission or office requires.

1168 (6) The office may, in its discretion, approve or
 1169 disapprove the application, but it may not approve the
 1170 application unless, in its opinion, the applicant meets each and
 1171 every requirement of this part and any other applicable
 1172 provision of the financial institutions codes. The office may
 1173 approve the application only if it has determined that the
 1174 directors, executive officers, and principal shareholders of the
 1175 international trust entity are qualified by reason of their
 1176 financial ability, reputation, and integrity and have sufficient
 1177 trust company and other business experience to indicate that
 1178 they will manage and direct the affairs of the international
 1179 trust entity in a safe, sound, and lawful manner. In the
 1180 processing of any application filed pursuant to this section,
 1181 the time limitations under the Administrative Procedure Act do
 1182 not apply as to approval or disapproval of the application. For
 1183 applications filed on or after January 1, 2018, the time
 1184 limitations for approval or disapproval of an application must
 1185 be prescribed by rule of the commission.

1186 (7) The office may not issue a license to an international
 1187 trust entity unless it is chartered, licensed, or similarly
 1188 authorized by operation of law in a jurisdiction in which any
 1189 financial institution licensed or chartered by any state or

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1190 federal regulatory agency in the United States may establish
 1191 similar facilities or exercise similar powers.

1192 (8) The office may not issue a license to an international
 1193 trust entity for the purpose of operating an international trust
 1194 company representative office in this state unless the trust
 1195 entity:

1196 (a) Holds an unrestricted license to conduct trust business
 1197 in the foreign country under whose laws it is organized and
 1198 chartered;

1199 (b) Has been authorized by the foreign country's
 1200 appropriate regulatory authority to establish the proposed
 1201 international trust company representative office; and

1202 (c) Is adequately supervised by the appropriate regulatory
 1203 agency in the foreign country in which it is organized and
 1204 chartered.

1205 (9) The commission shall establish, by rule, the general
 1206 principles that determine the adequacy of supervision of an
 1207 international trust entity's foreign establishments. These
 1208 principles must be based upon the need for cooperative
 1209 supervisory efforts and consistent regulatory guidelines and
 1210 must address, at a minimum, the capital adequacy, asset quality,
 1211 management, earnings, liquidity, internal controls, audits, and
 1212 foreign exchange operations and positions of the international
 1213 trust entity. This subsection does not require examination by
 1214 the home-country regulatory authorities of any office of an
 1215 international trust entity in this state. The commission may
 1216 also establish, by rule, other standards for approval of an
 1217 application for a license as considered necessary to ensure the
 1218 safe and sound operations of the international trust entity in

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1219 this state.

1220 Section 28. Section 663.407, Florida Statutes, is created
1221 to read:

1222 663.407 Capital requirements.—

1223 (1) For an international trust entity to qualify for a
1224 license under this part, the proposed capitalization of the
1225 international trust entity must be in such amount as the office
1226 determines is necessary, taking into consideration the risk
1227 profile of the international trust entity and the ability of the
1228 international trust entity to operate a licensed office in a
1229 safe and sound manner. In making this determination, the office
1230 shall consider the financial resources of the international
1231 trust entity, including:

1232 (a) The international trust entity's current and projected
1233 capital position, profitability, level of indebtedness, business
1234 and strategic plans, and off-balance sheet asset management and
1235 administration activities;

1236 (b) The financial condition of any of the international
1237 trust entity's existing offices located in the United States;

1238 (c) The minimum capital requirements of the international
1239 trust entity's home-country jurisdiction; and

1240 (d) The capital ratio standards used in the United States
1241 and in the international trust entity's home-country
1242 jurisdiction.

1243 (2) The proposed capitalization of the international trust
1244 entity must be in such amount as the office deems adequate, but
1245 in no case may the total capital accounts of the international
1246 trust entity be less than \$1 million.

1247 (3) The office may specify such other conditions as it

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1248 determines are appropriate, considering the public interest and
1249 the need to maintain a safe, sound, and competitive financial
1250 marketplace in this state.

1251 (4) For purposes of this part, the capital accounts of and
1252 capital ratio standards for an international trust entity must
1253 be determined in accordance with rules adopted by the
1254 commission. In adopting such rules, the commission shall
1255 consider similar rules adopted by regulatory agencies in the
1256 United States and the need to provide reasonably consistent
1257 regulatory requirements for international trust entities doing
1258 business in this state, as well as capital adequacy standards of
1259 an international trust entity's home-country jurisdiction.

1260 Section 29. Section 663.408, Florida Statutes, is created
1261 to read:

1262 663.408 Licenses; permissible activities of licensees.—

1263 (1) (a) An international trust entity licensed to operate an
1264 office in this state may engage in the business authorized by
1265 this part at the office specified in such license for an
1266 indefinite period.

1267 (b) An international trust entity may operate more than one
1268 licensed office, each at a different place of business, provided
1269 that each office is separately licensed.

1270 (c) A license is not transferable or assignable. However,
1271 the location of a licensed office may be changed after
1272 notification to the office.

1273 (d) A license must at all times be conspicuously displayed
1274 in the place of business specified therein.

1275 (2) An international trust entity that proposes to
1276 terminate the operations of a licensed office in this state must

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1277 surrender its license to the office and comply with such
 1278 procedures as the commission may prescribe by rule.

1279 (3) The license for an international trust company
 1280 representative office in this state may be suspended or revoked
 1281 by the office, with or without examination, upon its
 1282 determination that the international trust entity or the
 1283 licensed office does not meet all requirements for original
 1284 licensing. Additionally, the office shall revoke the license of
 1285 any licensed office that the office determines has been inactive
 1286 for 6 months or longer. The commission may by rule prescribe
 1287 additional conditions or standards under which the license of an
 1288 international trust company representative office may be
 1289 suspended or revoked.

1290 (4) If any such license is surrendered by the international
 1291 trust entity or is suspended or revoked by the office, all
 1292 rights and privileges of the international trust entity to
 1293 transact the business under the license cease. The commission
 1294 shall prescribe by rule procedures for the surrender of a
 1295 license and for the orderly cessation of business by an
 1296 international trust entity in a manner that is not harmful to
 1297 the interests of its customers or of the public.

1298 Section 30. Section 663.4081, Florida Statutes, is created
 1299 to read:

1300 663.4081 After-the-fact licensure process in the event of
 1301 the acquisition, merger, or consolidation of international trust
 1302 entities.—If an international trust entity proposes to acquire,
 1303 merge, or consolidate with an international trust entity that
 1304 presently operates an international trust company representative
 1305 office licensed in this state, the office may allow the

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1306 currently licensed international trust company representative
 1307 office to remain open and in operation after consummation of the
 1308 proposed acquisition, merger, or consolidation, subject to the
 1309 filing with the office of an after-the-fact license application
 1310 in accordance with all of the following conditions:

1311 (1) The international trust entity or entities resulting
 1312 from the acquisition, merger, or consolidation will not directly
 1313 or indirectly own or control more than 5 percent of any class of
 1314 the voting securities of, or control, a United States bank.

1315 (2) Before consummation of the acquisition, merger, or
 1316 consolidation, the international trust entity currently licensed
 1317 to operate an international trust company representative office
 1318 in this state must provide the office at least 30 days' advance
 1319 written notice, as prescribed by rules adopted by the
 1320 commission, of the proposed acquisition, merger, or
 1321 consolidation.

1322 (3) Before consummation of the acquisition, merger, or
 1323 consolidation, each international trust entity commits in
 1324 writing that it will:

1325 (a) Comply with the conditions in subsections (1) and (2)
 1326 and file an after-the-fact application for a license under s.
 1327 663.406(1) within 60 days after consummation of the proposed
 1328 acquisition, merger, or consolidation and refrain from engaging
 1329 in new lines of business and from otherwise expanding the
 1330 activities of such establishment in this state until the
 1331 disposition of the after-the-fact license application, in
 1332 accordance with chapter 120; or

1333 (b) Promptly wind down and close any international trust
 1334 company representative office in this state if the international

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1335 trust entities that are party to the acquisition, merger, or
 1336 consolidation elect not to file an application for a license in
 1337 accordance with paragraph (a) and, before such wind-down and
 1338 closure, refrain from engaging in new lines of business or
 1339 otherwise expanding the activities of such establishment in this
 1340 state.

1341 Section 31. Section 663.0625, Florida Statutes, is
 1342 transferred, renumbered as section 663.409, Florida Statutes,
 1343 and amended to read:

1344 663.409 ~~663.0625~~ International trust company representative
 1345 offices; permissible activities; requirements.-

1346 (1) An international trust company representative office
 1347 may conduct any nonfiduciary activities that are ancillary to
 1348 the fiduciary business of its international trust entity ~~banking~~
 1349 ~~corporation or trust company~~, but may not act as a fiduciary.
 1350 Permissible activities include advertising, marketing, and
 1351 soliciting for fiduciary business on behalf of an international
 1352 trust entity ~~banking corporation or trust company~~; contacting
 1353 existing or potential customers, answering questions, and
 1354 providing information about matters related to their accounts;
 1355 serving as a liaison in this state between the international
 1356 trust entity ~~banking corporation or trust company~~ and its
 1357 existing or potential customers; and engaging in any other
 1358 activities approved by the office or under rules of the
 1359 commission.

1360 (2) Representatives and employees at such office may not
 1361 act as a fiduciary, including, but not limited to, accepting the
 1362 fiduciary appointment, executing the fiduciary documents that
 1363 create the fiduciary relationship, ~~or~~ making discretionary

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1364 decisions regarding the investment or distribution of fiduciary
 1365 accounts, or accepting custody of any trust property or any
 1366 other good, asset, or thing of value on behalf of the affiliated
 1367 international trust entity, its subsidiaries or affiliates, or
 1368 subsidiaries and affiliates of the international trust company
 1369 representative office.

1370 (3) An international trust company representative office
 1371 licensed by the office may engage in any activities permissible
 1372 for a limited service affiliate under part IV of this chapter.

1373 Section 32. Section 663.410, Florida Statutes, is created
 1374 to read:

1375 663.410 Certification of capital accounts.-Before opening
 1376 an office in this state, and annually thereafter so long as an
 1377 international trust company representative office is maintained
 1378 in this state, an international trust entity licensed pursuant
 1379 to this part must certify to the office the amount of its
 1380 capital accounts, expressed in the currency of the home
 1381 jurisdiction where it has been authorized by charter, license,
 1382 or similar authorization by operation of law to carry on trust
 1383 business. The dollar equivalent of these amounts, as determined
 1384 by the office, is deemed to be the amount of its capital
 1385 accounts. The annual certification of capital accounts must be
 1386 received by the office on or before June 30 of each year.

1387 Section 33. Section 663.411, Florida Statutes, is created
 1388 to read:

1389 663.411 Reports; records.-

1390 (1) An international trust entity that operates an office
 1391 licensed under this part shall, at such times and in such form
 1392 as the commission prescribes, make written reports in the

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1393 English language to the office, under the oath of one of its
 1394 officers, managers, or agents transacting business in this
 1395 state, showing the amount of its assets and liabilities and
 1396 containing such other matters as the commission or office
 1397 requires. An international trust entity that maintains two or
 1398 more representative offices may consolidate such information in
 1399 one report unless the office requires otherwise for purposes of
 1400 its supervision of the condition and operations of each such
 1401 office. The late filing of such reports is subject to an
 1402 administrative fine as prescribed under s. 655.045(2). If the
 1403 international trust entity fails to make such report as directed
 1404 by the office or if such report contains a false statement
 1405 knowingly made, the same are grounds for revocation of the
 1406 license of the international trust entity.

1407 (2) An international trust entity that operates an office
 1408 licensed under this part shall cause to be kept, at a location
 1409 accepted by the office:

1410 (a) Correct and complete books and records of account of
 1411 the business operations transacted by such office. All policies
 1412 and procedures relating specifically to the operations of such
 1413 office, as well as any existing general ledger or subsidiary
 1414 accounts, must be maintained in the English language; however,
 1415 any policies and procedures of the international trust entity
 1416 which are not specific to the operations of such office may be
 1417 maintained in a language other than English.

1418 (b) Current copies of the charter or statement of operation
 1419 and bylaws of the international trust entity, relative to the
 1420 operations of the international trust company representative
 1421 office, and minutes of the proceedings of its directors,

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1422 officers, or committees relative to the business of the
 1423 international trust company representative office. Such records
 1424 may be maintained in a language other than English and must be
 1425 kept pursuant to s. 655.91 and be made available to the office,
 1426 upon request, at any time during regular business hours of the
 1427 international trust company representative office.

1428 (3) Any failure to keep such records as required in
 1429 subsection (2) or any refusal to produce such records upon
 1430 request by the office is grounds for suspension or revocation of
 1431 any license issued under this part.

1432 (4) The office may require at any time that any document
 1433 not written in the English language which the office deems
 1434 necessary for the purposes of its regulatory and supervisory
 1435 functions be translated into English at the expense of the
 1436 international trust entity.

1437 Section 34. Section 663.412, Florida Statutes, is created
 1438 to read:

1439 663.412 Termination of international trust entity's charter
 1440 or authority.—

1441 (1) (a) An international trust entity that is licensed to
 1442 maintain an office in this state may not continue to conduct its
 1443 licensed business in this state if the international trust
 1444 entity:

1445 1. Is dissolved, or its authority or existence is otherwise
 1446 terminated or canceled in the home jurisdiction where it has
 1447 been authorized by charter, license, or similar authorization by
 1448 operation of law to carry on trust business;

1449 2. Is in bankruptcy, conservatorship, receivership,
 1450 liquidation, or similar status under the laws of any country; or

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1451 3. Is operating under the direct control of the government
 1452 or the regulatory or supervisory authority of the jurisdiction
 1453 where it has been authorized by charter, license, or similar
 1454 authorization by operation of law to carry on trust business
 1455 through government intervention or any other extraordinary
 1456 actions.

1457 (b) Notwithstanding subparagraphs (a)2. and 3., the office
 1458 may, in its discretion, permit an international trust company
 1459 representative office to remain open and in operation under such
 1460 conditions as the office deems appropriate, if the office
 1461 determines that it is in the public's interest and that it
 1462 further international supervisory cooperation to allow the
 1463 international trust company representative office to remain open
 1464 and in operation.

1465 (2) The international trust entity or its surviving
 1466 officers and directors shall deliver to the office:

1467 (a) A certificate of the official who is responsible for
 1468 records of trust companies in the jurisdiction where the
 1469 international trust entity has been authorized by charter,
 1470 license, or similar authorization by operation of law to carry
 1471 on trust business of the international trust entity, attesting
 1472 to the occurrence of any event described in paragraph (1) (a);

1473 (b) A certified copy of an order or decree of a court of
 1474 such jurisdiction, directing the dissolution of such
 1475 international trust entity, the termination of its existence, or
 1476 the cancellation of its authority, or declaring its status in
 1477 bankruptcy, conservatorship, receivership, liquidation, or
 1478 similar proceedings; or

1479 (c) Other reliable documentation evidencing that the

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1480 international trust entity is operating under the direct control
 1481 of its government or a regulatory or supervisory authority.

1482 (3) The filing of the certificate, order, documentation, or
 1483 decree has the same effect as the revocation of the license of
 1484 such international trust entity as provided in s. 663.408,
 1485 unless the office has permitted the international trust company
 1486 representative office to remain open and in operation pursuant
 1487 to paragraph (1) (b).

1488 Section 35. Section 663.413, Florida Statutes, is created
 1489 to read:

1490 663.413 Application and examination fees.—

1491 (1) An application for a license to establish an
 1492 international trust company representative office under this
 1493 part must be accompanied by a nonrefundable \$5,000 filing fee,
 1494 payable to the office.

1495 (2) An international trust entity that maintains an office
 1496 licensed under this part must pay to the office examination fees
 1497 that are determined by the commission by rule and that are
 1498 calculated in a manner so as to be equal to the actual cost of
 1499 each examiner's participation in the examination, as measured by
 1500 the examiner's pay scale, plus any other expenses directly
 1501 incurred in the examination. However, the examination fees may
 1502 not be less than \$200 per day for each examiner participating in
 1503 the examination.

1504 Section 36. Section 663.414, Florida Statutes, is created
 1505 to read:

1506 663.414 Rules; exemption from statement of estimated
 1507 regulatory costs requirements.—In addition to any other
 1508 rulemaking authority it has under the financial institutions

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1509 codes, the commission may adopt reasonable rules that it deems
 1510 advisable for the administration of international trust
 1511 companies under this part in the interest of protecting
 1512 depositors, creditors, borrowers, or the public interest and in
 1513 the interest of maintaining a sound banking and trust system in
 1514 this state. Because of the difficulty in obtaining economic data
 1515 with regard to such trusts, ss. 120.54(3)(b) and 120.541 do not
 1516 apply to the adoption of rules pursuant to this section.

1517 Section 37. Section 663.415, Florida Statutes, is created
 1518 to read:

1519 663.415 Travel expenses.—If domestic or foreign travel is
 1520 deemed necessary by the office to effectuate the purposes of
 1521 this part, the office must be reimbursed for actual, reasonable,
 1522 and necessary expenses incurred in such domestic or foreign
 1523 travel by the international trust company representative office
 1524 under examination.

1525 Section 38. The Division of Law Revision and Information is
 1526 directed to create part IV of chapter 663, Florida Statutes,
 1527 consisting of ss. 663.530-663.540, Florida Statutes, to be
 1528 entitled "Limited Service Affiliates of International Trust
 1529 Entities."

1530 Section 39. Section 663.530, Florida Statutes, is created
 1531 to read:

1532 663.530 Definitions.—

1533 (1) As used in ss. 663.531-663.539, the term:

1534 (a) "Foreign country" means a country other than the United
 1535 States and includes any colony, dependency, or possession of
 1536 such country notwithstanding any definitions in chapter 658, and
 1537 any territory of the United States, including Guam, American

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1538 Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico.

1539 (b) "Home-country regulator" means the supervisory
 1540 authority or equivalent or other similarly sanctioned body,
 1541 organization, governmental entity, or recognized authority,
 1542 which has similar responsibilities in a foreign country in which
 1543 and by whom an international trust entity is licensed,
 1544 chartered, or has similar authorization to organize and operate.

1545 (c) "International trust entity" means an international
 1546 trust company or any international business, international
 1547 business organization, or an affiliated or subsidiary entity
 1548 that is licensed, chartered, or similarly permitted to conduct
 1549 trust business in a foreign country or countries under the laws
 1550 of which it is organized and supervised.

1551 (d) "Limited service affiliate" means a marketing and
 1552 liaison office that engages in the permissible activities
 1553 enumerated in s. 663.531 for the benefit of an international
 1554 trust entity.

1555 (e) "Nonresident" has the same meaning as in s. 663.01.

1556 (f) "Professional" means an accountant, attorney, or other
 1557 financial services and wealth planning professional who is
 1558 licensed by a governing body or affiliated with a licensed,
 1559 chartered, or similarly authorized entity.

1560 (g) "Registrant" means a person or entity that is
 1561 registered to perform the permissible activities outlined in s.
 1562 663.531 related to or for the benefit of an affiliated
 1563 international trust entity.

1564 (2) As used in ss. 663.531-663.539, the terms "affiliate,"
 1565 "commission," "executive officer," "financial institution,"
 1566 "financial institution-affiliated party," "financial

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1567 institutions codes," "office," "officer," "state," and
 1568 "subsidiary" have the same meaning as provided in s. 655.005.
 1569 Section 40. Section 663.531, Florida Statutes, is created
 1570 to read:
 1571 663.531 Permissible activities; prohibited activities.-
 1572 (1) Registration as a limited service affiliate under this
 1573 part does not provide any exemption from licensure,
 1574 registration, application, and requirements to conduct licensed
 1575 business activities in this state. A limited service affiliate
 1576 may engage in any of the following permissible activities, which
 1577 are not meant to be restrictive unless an activity is prohibited
 1578 under subsection (2):
 1579 (a) Marketing and liaison services related to or for the
 1580 benefit of the affiliated international trust entities, directed
 1581 exclusively at professionals and current or prospective
 1582 nonresident clients of an affiliated international trust entity;
 1583 (b) Advertising and marketing at trade, industry, or
 1584 professional events;
 1585 (c) Transmission of documents between the international
 1586 trust entity and its current or prospective clients or a
 1587 designee of such clients; and
 1588 (d) Transmission of information about the trust or trust
 1589 holdings of current clients between current clients or their
 1590 designees and the international trust entity.
 1591 (2) A limited service affiliate may not engage in any of
 1592 the following activities:
 1593 (a) Advertising and marketing related to or for the benefit
 1594 of the international trust entity which are directed to the
 1595 general public;

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1596 (b) Acting as a fiduciary, including, but not limited to,
 1597 accepting the fiduciary appointment, executing the fiduciary
 1598 documents that create the fiduciary relationship, or making
 1599 discretionary decisions regarding the investment or distribution
 1600 of fiduciary accounts;
 1601 (c) Accepting custody of any trust property or any other
 1602 good, asset, or thing of value on behalf of the affiliated
 1603 international trust entity, its subsidiaries or affiliates, or
 1604 subsidiaries and affiliates of the international trust company
 1605 representative office;
 1606 (d) Soliciting business within this state from the general
 1607 public related to or for the benefit of an affiliated
 1608 international trust entity;
 1609 (e) Adding a financial institution-affiliated party to the
 1610 limited service affiliate without prior written notification to
 1611 the office;
 1612 (f) Commencing services for an international trust entity
 1613 without complying with the requirements of s. 663.532;
 1614 (g) Providing services for any international trust entity
 1615 that is in bankruptcy, conservatorship, receivership,
 1616 liquidation, or a similar status under the laws of any country;
 1617 or
 1618 (h) Otherwise conducting banking or trust business.
 1619 (3) The provisions of subsection (2) are not deemed to
 1620 prevent the limited service affiliate's use of an international
 1621 trust entity's website, or its own website, if the posted
 1622 information or communication includes the following:
 1623 (a) The following statement: "Certain described services
 1624 are not offered to the general public in Florida, but are

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1625 marketed by ... (insert name of limited service affiliate)...
 1626 exclusively to professionals and current or prospective non-U.S.
 1627 resident clients of the affiliated international trust entity or
 1628 entities."

1629 (b) The notice required by s. 663.535.

1630 (4) In addition to any other power conferred upon it to
 1631 enforce and administer this chapter and the financial
 1632 institutions codes, the office may impose any remedy or penalty
 1633 pursuant to s. 655.033, relating to cease and desist orders; s.
 1634 655.034, relating to injunctions; s. 655.037, relating to
 1635 removal of a financial institution-affiliated party by the
 1636 office; or s. 655.041, relating to administrative fines and
 1637 enforcement, if a limited service affiliate engages in any of
 1638 the impermissible activities in subsection (2).

1639 Section 41. Section 663.532, Florida Statutes, is created
 1640 to read:

1641 663.532 Registration.—

1642 (1) To register as a limited service affiliate, a proposed
 1643 registrant must file a written notice with the office, in the
 1644 manner and on a form prescribed by the commission, together with
 1645 a nonrefundable \$2,500 registration fee. Such written notice
 1646 must include:

1647 (a) The name under which the proposed registrant will
 1648 conduct business in this state;

1649 (b) A copy of the articles of incorporation or articles of
 1650 organization, or the equivalent, of the proposed registrant;

1651 (c) The physical address where the proposed registrant will
 1652 conduct business;

1653 (d) The mailing address of the proposed registrant;

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1654 (e) The name and biographical information of the executive
 1655 officer or managing member of the proposed registrant, to be
 1656 submitted on a form prescribed by the commission;

1657 (f) The number of officers and employees of the proposed
 1658 registrant;

1659 (g) A detailed list and description of the activities to be
 1660 conducted by the proposed registrant. The detailed list and
 1661 description must include:

1662 1. The services and activities of the proposed registrant;

1663 2. An explanation of how the services and activities of the
 1664 proposed registrant serve the business purpose of each
 1665 international trust entity; and

1666 3. An explanation of how the services and activities of the
 1667 proposed registrant are distinguishable from those of the
 1668 permissible activities of an international trust company
 1669 representative office described under s. 663.409;

1670 (h) Disclosure of any instance occurring within the prior
 1671 10 years of a director, executive officer, principal
 1672 shareholder, manager, or the equivalent who was arrested for,
 1673 charged with, or convicted of, or who pled guilty or nolo
 1674 contendere to, regardless of adjudication, any offense that is
 1675 punishable by imprisonment for a term exceeding 1 year, or to
 1676 any offense that involves money laundering, currency transaction
 1677 reporting, tax evasion, facilitating or furthering terrorism,
 1678 fraud, theft, larceny, embezzlement, fraudulent conversion,
 1679 misappropriation of property, dishonesty, breach of trust,
 1680 breach of fiduciary duty, or moral turpitude, or that is
 1681 otherwise related to the operation of a financial institution
 1682 and caused or is likely to cause more than a minimal financial

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1683 loss to, or a significant adverse effect on, the financial
 1684 institution;
 1685 (i) A declaration under penalty of perjury, signed by the
 1686 executive officer or managing member of the proposed registrant,
 1687 that, to the best of his or her knowledge:
 1688 1. No financial institution-affiliated party of the
 1689 proposed registrant or financial institution-affiliated party of
 1690 any affiliated international trust entity:
 1691 a. Has been fined or sanctioned as a result of a complaint
 1692 to the office or any other state or federal regulatory agency;
 1693 b. Has been convicted of a felony; or
 1694 c. Has been ordered to pay a fine or penalty within the
 1695 prior 10 years in a proceeding initiated by a federal, state,
 1696 foreign, or local law enforcement agency or an international
 1697 agency which is related to money laundering, currency
 1698 transaction reporting, tax evasion, facilitating or furthering
 1699 terrorism, fraud, theft, larceny, embezzlement, fraudulent
 1700 conversion, misappropriation of property, dishonesty, breach of
 1701 trust, breach of fiduciary duty, moral turpitude, or which is
 1702 otherwise related to the operation of a financial institution
 1703 and is related to any offense that caused or is likely to cause
 1704 more than a minimal financial loss to, or a significant adverse
 1705 effect on, the financial institution.
 1706 2. No financial institution-affiliated party of the
 1707 proposed registrant:
 1708 a. Provides, or will provide, banking services; promotes or
 1709 sells, or will promote or sell, investments; or accepts, or will
 1710 accept, custody of assets; and
 1711 b. Acts, or will act, as a fiduciary in this state, which

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1712 includes, but is not limited to, accepting the fiduciary
 1713 appointment, executing the fiduciary documents that create the
 1714 fiduciary relationship, or making discretionary decisions
 1715 regarding the investment or distribution of fiduciary accounts.
 1716 3. The jurisdiction of the international trust entity or
 1717 its offices, subsidiaries, or any affiliates that are directly
 1718 involved in or facilitate the financial services functions,
 1719 banking, or fiduciary activities of the international trust
 1720 entity is not listed on the Financial Action Task Force Public
 1721 Statement or on its list of jurisdictions with deficiencies in
 1722 anti-money laundering or counterterrorism;
 1723 (j) For each international trust entity that the proposed
 1724 registrant will provide services for in this state, the
 1725 following:
 1726 1. The name of the international trust entity;
 1727 2. A list of the current officers and directors of the
 1728 international trust entity;
 1729 3. Any country where the international trust entity is
 1730 organized or authorized to do business;
 1731 4. The name of the home-country regulator;
 1732 5. Proof that the international trust entity has been
 1733 authorized by charter, license, or similar authorization by its
 1734 home-country regulator to engage in trust business;
 1735 6. Proof that the international trust entity lawfully
 1736 exists and is in good standing under the laws of the
 1737 jurisdiction where it is chartered, licensed, or organized;
 1738 7. A statement that the international trust entity is not
 1739 in bankruptcy, conservatorship, receivership, liquidation, or a
 1740 similar status under the laws of any country;

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1741 8. Proof that the international trust entity is not
 1742 operating under the direct control of the government or the
 1743 regulatory or supervisory authority of the jurisdiction of its
 1744 incorporation, through government intervention or any other
 1745 extraordinary actions, and confirmation that it has not been in
 1746 such a status or under such control at any time within the prior
 1747 3 years;

1748 9. Proof and confirmation that the proposed registrant is
 1749 affiliated with the international trust entities provided in the
 1750 notice; and

1751 10. Proof that the jurisdictions where the international
 1752 trust entity or its offices, subsidiaries, or any affiliates
 1753 that are directly involved in or that facilitate the financial
 1754 services functions, banking, or fiduciary activities of the
 1755 international trust entity are not listed on the Financial
 1756 Action Task Force Public Statement or on its list of
 1757 jurisdictions with deficiencies in anti-money laundering or
 1758 counterterrorism; and

1759 (k) A declaration under penalty of perjury, signed by an
 1760 executive officer or managing member of each affiliated
 1761 international trust entity, declaring that the information
 1762 provided to the office is true and correct to the best of his or
 1763 her knowledge.

1764 The proposed registrant may provide additional information in
 1765 the form of exhibits when attempting to satisfy any of the
 1766 registration requirements. All information that the proposed
 1767 registrant desires to present to support the written notice must
 1768 be submitted with the notice.
 1769

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1770 (2) The office may request additional information as the
 1771 office reasonably requires. Any request for additional
 1772 information must be made by the office within 30 days after
 1773 initial receipt of the written notice and the full amount of the
 1774 fee specified in subsection (1). Additional information must be
 1775 submitted within 60 days after a request has been made by the
 1776 office. Failure to respond to such request within 60 days after
 1777 the date of the request is a ground for denial of the
 1778 registration. A notice is not deemed complete until all
 1779 requested information has been submitted to the office. Upon
 1780 deeming the notice complete, the office has 120 days to register
 1781 the limited service affiliate or issue a denial. An order
 1782 denying a registration must contain notice of opportunity for a
 1783 hearing pursuant to ss. 120.569 and 120.57.

1784 (3) A registration under this part must be summarily
 1785 suspended by the office if the limited service affiliate made a
 1786 material false statement in the written notice. The summary
 1787 suspension must remain in effect until a final order is entered
 1788 by the office. For purposes of s. 120.60(6), a material false
 1789 statement made in the limited service affiliate's written notice
 1790 constitutes an immediate and serious danger to the public
 1791 health, safety, and welfare. If a limited service affiliate made
 1792 a material false statement in the written notice, the office
 1793 must enter a final order revoking the registration and may
 1794 impose a fine as prescribed by s. 655.041 or issue an order of
 1795 suspension, removal, or prohibition under s. 655.037 to a
 1796 financial institution-affiliated party of the limited service
 1797 affiliate.

1798 (4) Any instance in which a director, executive officer,

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1799 principal shareholder, manager, or the equivalent has ever been
 1800 arrested for, charged with, convicted of, or pled guilty or nolo
 1801 contendere to, regardless of adjudication, any offense that
 1802 involves money laundering, currency transaction reporting, tax
 1803 evasion, facilitating or furthering terrorism, fraud, theft,
 1804 larceny, embezzlement, fraudulent conversion, misappropriation
 1805 of property, dishonesty, breach of trust, breach of fiduciary
 1806 duty, or moral turpitude, or that is otherwise related to the
 1807 operation of a financial institution and caused or is likely to
 1808 cause more than a minimal financial loss to, or a significant
 1809 adverse effect on, the financial institution, is a ground for
 1810 denial of the registration.

1811 (5) The existence of any previous violation, fine, or
 1812 penalty of a financial institution-affiliated party of a limited
 1813 service affiliate or the affiliated international trust entity
 1814 does not necessarily disqualify a registrant under this part.
 1815 When evaluating a registration, the office may consider factors
 1816 reasonably related to the violation, fine, or penalty, such as
 1817 mitigating factors, a history of multiple violations, the
 1818 severity of the offense, and a showing of rehabilitation.

1819 (6) A registration is not transferable or assignable.

1820 (7) Fees collected under this section must be submitted in
 1821 the manner prescribed by the commission and must be deposited
 1822 into the Financial Institutions' Regulatory Trust Fund pursuant
 1823 to s. 655.049 for the purpose of administering this part.

1824 (8) A person or entity in operation as of January 1, 2018,
 1825 which meets the definition of a limited service affiliate under
 1826 s. 663.530 must, on or before March 31, 2018, apply for
 1827 registration as a limited service affiliate or cease doing

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1828 business in this state.

1829 (9) No later than March 31, 2018, a person or entity that
 1830 previously qualified under the moratorium in s. 663.041 must
 1831 register under this part or cease doing business in this state.
 1832 A person or entity that previously qualified under the
 1833 moratorium in s. 663.041 may remain open and in operation until
 1834 March 31, 2018, without registering under this part, but shall
 1835 refrain from engaging in new lines of business in this state
 1836 until the disposition of registration under this part.

1837 Section 42. Section 663.533, Florida Statutes, is created
 1838 to read:

1839 663.533 Applicability of the financial institutions codes.-
 1840 A limited service affiliate is subject to the financial
 1841 institutions codes. Without limiting the foregoing, the
 1842 following provisions are applicable to a limited service
 1843 affiliate:

1844 (1) Section 655.012, relating to general supervisory powers
 1845 of the office.

1846 (2) Section 655.031, relating to administrative enforcement
 1847 guidelines.

1848 (3) Section 655.032, relating to investigations, subpoenas,
 1849 hearings, and witnesses.

1850 (4) Section 655.0321, relating to restricted access to
 1851 certain hearings, proceedings, and related documents.

1852 (5) Section 655.033, relating to cease and desist orders.

1853 (6) Section 655.034, relating to injunctions.

1854 (7) Section 655.037, relating to removal of a financial
 1855 institution-affiliated party by the office.

1856 (8) Section 655.041, relating to administrative fines and

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1857 enforcement.
 1858 (9) Section 655.057, relating to restrictions on access to
 1859 public records.
 1860 (10) Section 655.059, relating to access to books and
 1861 records.
 1862 (11) Section 655.0591, relating to trade secret documents.
 1863 (12) Section 655.91, relating to records of institutions
 1864 and copies thereof; retention and destruction.
 1865 (13) Section 655.968, relating to financial institutions;
 1866 transactions relating to Iran or terrorism.
 1867
 1868 This section does not prohibit the office from investigating or
 1869 examining an entity to ensure that it is not in violation of
 1870 this chapter or applicable provisions of the financial
 1871 institutions codes.
 1872 Section 43. Section 663.534, Florida Statutes, is created
 1873 to read:
 1874 663.534 Events that require notice to be provided to the
 1875 office.—A registrant must report to the office, within 15 days
 1876 of its knowledge of the occurrence, any changes to the
 1877 information previously relied upon by the office when
 1878 registering or renewing a registration under this part.
 1879 Section 44. Section 663.535, Florida Statutes, is created
 1880 to read:
 1881 663.535 Notice to customers.—All marketing documents and
 1882 advertisements and any display at the location of the limited
 1883 service affiliate or at any trade or marketing event must
 1884 contain the following statement in a contrasting color in at
 1885 least 10-point type: "The Florida Office of Financial Regulation

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1886 DOES NOT provide safety and soundness oversight of this company,
 1887 does not provide any opinion as to any affiliated companies or
 1888 products, and does not provide the oversight of this company's
 1889 affiliated international trust entities or the jurisdictions
 1890 within which they operate. This company may not act as a
 1891 fiduciary and may not accept the fiduciary appointment, execute
 1892 or transmit fiduciary documents, take possession of any assets,
 1893 create a fiduciary relationship, make discretionary decisions
 1894 regarding the investment or distribution of fiduciary accounts,
 1895 provide banking services, or promote or sell investments."
 1896 Section 45. Section 663.536, Florida Statutes, is created
 1897 to read:
 1898 663.536 Recordkeeping requirements for trade, industry, or
 1899 professional events.—A registrant registered only under this
 1900 part who participates in a trade, industry, or professional
 1901 event pursuant to s. 663.531 must keep a record of its
 1902 participation in the event. The record must be maintained for at
 1903 least 2 years following the event and must contain the following
 1904 information:
 1905 (1) The date, time, and location of the event;
 1906 (2) To the extent known or available, a list of
 1907 participants in the event, including other vendors, presenters,
 1908 attendees, and targeted attendees;
 1909 (3) The nature and purpose of the event;
 1910 (4) The registrant's purpose for participating in the
 1911 event; and
 1912 (5) Samples of materials or, when samples are unavailable,
 1913 descriptions of materials provided by the registrant to
 1914 attendees and other participants.

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1915 Section 46. Section 663.537, Florida Statutes, is created
1916 to read:

1917 663.537 Examination or investigation of a limited service
1918 affiliate.-

1919 (1) The office may conduct an examination or investigation
1920 of a limited service affiliate at any time that it deems
1921 necessary to determine whether the limited service affiliate or
1922 financial institution-affiliated party thereof has violated, or
1923 is about to violate, any provision of this chapter, any
1924 applicable provision of the financial institutions codes, or any
1925 rule adopted by the commission pursuant to this chapter or the
1926 financial institutions codes. The office shall conduct an
1927 examination of each limited service affiliate at least once
1928 every 18 months to assess compliance with this part and the
1929 financial institutions codes. The office may conduct an
1930 examination, before or after registration, of any person or
1931 entity that submits a notice for registration to confirm
1932 information provided in the registration filing and to confirm
1933 the activities of the person or entity seeking registration.

1934 (2) For each examination of a limited service affiliate
1935 authorized under this part, the limited service affiliate shall
1936 pay a fee for the costs of the examination by the office. As
1937 used in this section, the term "costs" means the salary and
1938 travel expenses of field staff which are directly attributable
1939 to the examination of the registrant and the travel expenses of
1940 any supervisory and support staff required as a result of
1941 examination findings. The costs of examination must be
1942 determined as follows:

1943 (a) The office shall charge each limited service affiliate

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1944 in this state an examination fee equal to the actual cost of
1945 each examiner's participation during each examination of such
1946 limited service affiliate. The examination fee must equal the
1947 actual cost of the examination, but such fees, inclusive of
1948 travel expenses and other incidental expenses, may not be less
1949 than \$200 per day for each examiner participating in the
1950 examination.

1951 (b) As used in this section, the term "actual cost" means
1952 the direct salary, excluding employee benefits; travel expenses;
1953 and other incidental expenses required as a result of the
1954 examination staff's onsite and offsite examination of the
1955 limited service affiliate. In addition, the term includes the
1956 travel expenses of any supervisory staff required as a result of
1957 examination findings.

1958 (3) All examination fee payments must be received within 30
1959 days after receipt of an invoice from the office and must be
1960 submitted in a manner prescribed by the commission. The office
1961 may levy a late fee of up to \$100 per day that a payment is
1962 overdue, unless waived by the office for good cause. However, if
1963 the late payment of costs is intentional, the office may levy an
1964 administrative fine of up to \$1,000 per day for each day the
1965 payment is overdue.

1966 (4) All fees collected under this section must be submitted
1967 in the manner prescribed by the commission and must be deposited
1968 into the Financial Institutions' Regulatory Trust Fund pursuant
1969 to s. 655.049 for the purpose of administering this part.

1970 Section 47. Section 663.538, Florida Statutes, is created
1971 to read:

1972 663.538 Suspension, revocation, or voluntary surrender of

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1973 registration.

1974 (1) A registrant that proposes to terminate operations in
 1975 this state shall surrender its registration to the office and
 1976 comply with such procedures as required by rule of the
 1977 commission.

1978 (2) A registrant that fails to renew its registration may
 1979 be subject to a fine and penalty; however, such registrant may
 1980 renew its registration within 30 days after expiration or may
 1981 surrender the registration in accordance with procedures
 1982 prescribed by commission rule.

1983 (3) The registration of a limited service affiliate in this
 1984 state may be suspended or revoked by the office, with or without
 1985 examination, upon the office's determination that the registrant
 1986 does not meet all requirements for original or renewal
 1987 registration.

1988 (4) If a registrant surrenders its registration or its
 1989 registration is suspended or revoked by the office, all rights
 1990 and privileges afforded by this part to the registered limited
 1991 service affiliate cease.

1992 (5) At least 60 days before a proposed date of voluntary
 1993 termination of a registration, a registrant must provide to the
 1994 office written notice by letter of its intention to surrender
 1995 its registration and terminate operations. The notice must
 1996 include the proposed date of termination and the name of the
 1997 officer in charge of the termination procedures.

1998 (6) The office may conduct an examination of the books and
 1999 records of a limited service affiliate at any time after receipt
 2000 of the notice of surrender of registration to confirm the
 2001 winding down of operations.

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2002 (7) Operations of a registrant are deemed terminated
 2003 effective upon the later of the expiration of 60 days from the
 2004 date of the filing of the notice of voluntary surrender or upon
 2005 the date provided in the notice of voluntary surrender, unless
 2006 the office provides written notice specifying the grounds for
 2007 denial of such proposed termination. The office may not deny a
 2008 request to terminate unless it learns of the existence of any
 2009 outstanding claim or claims against the registrant, it finds
 2010 that the requirements to terminate operations have not been
 2011 satisfied, or there is an immediate and serious danger to the
 2012 public health, safety, and welfare if the termination occurred.

2013 Section 48. Section 663.539, Florida Statutes, is created
 2014 to read:

2015 663.539 Biennial registration renewal.—A registration must
 2016 be renewed every 2 years. A registration must be renewed by
 2017 furnishing such information as the commission requires, together
 2018 with payment of a \$500 nonrefundable renewal fee. All fees
 2019 received by the office pursuant to this section must be
 2020 submitted in the manner prescribed by the commission and must be
 2021 deposited into the Financial Institutions' Regulatory Trust Fund
 2022 pursuant to s. 655.049 for the purpose of administering this
 2023 part. A complete biennial renewal of registration must include a
 2024 declaration under penalty of perjury, signed by the executive
 2025 officer or managing member of the registrant, declaring that the
 2026 information submitted for the purposes of renewal is true and
 2027 correct to the best of his or her knowledge, and confirming or
 2028 providing all of the following:

2029 (1) That the registrant is in compliance with this part.

2030 (2) The physical location of the principal place of

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2031 business of the registrant.

2032 (3) The telephone number of the registrant.

2033 (4) A list of current financial institution-affiliated
 2034 parties operating under the registration to be renewed.

2035 (5) Any updates or changes in information which were not
 2036 previously provided either in the initial registration or in
 2037 subsequent registration renewals or which were not previously
 2038 disclosed to the office.

2039 Section 49. Section 663.5395, Florida Statutes, is created
 2040 to read:

2041 663.5395 Civil action subpoena enforcement.-

2042 (1) Notwithstanding s. 655.059, a limited service affiliate
 2043 established under this chapter is not required to produce a book
 2044 or record pertaining to a customer of an affiliated
 2045 international trust entity that is located outside the United
 2046 States or its territories in response to a subpoena if the book
 2047 or record is maintained outside the United States or its
 2048 territories and is not in the possession, custody, or control of
 2049 the affiliated limited service affiliate established in this
 2050 state.

2051 (2) This section applies only to a subpoena issued pursuant
 2052 to the Florida Rules of Civil Procedure, the Federal Rules of
 2053 Civil Procedure, or other similar law or rule of civil procedure
 2054 in another state or territory of the United States. This section
 2055 does not apply to a subpoena issued by or on behalf of a
 2056 federal, state, or local government law enforcement agency,
 2057 administrative or regulatory agency, legislative body, or grand
 2058 jury and does not limit the power of the office to access all
 2059 books and records in the exercise of the office's regulatory and

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2060 supervisory powers under the financial institutions codes.

2061 Section 50. For the purpose of incorporating the amendment
 2062 made by this act to section 663.01, Florida Statutes, in a
 2063 reference thereto, subsection (4) of section 663.16, Florida
 2064 Statutes, is reenacted to read:

2065 663.16 Definitions; ss. 663.17-663.181.—As used in ss.
 2066 663.17-663.181, the term:

2067 (4) Except where the context otherwise requires,
 2068 "international banking corporation" or "corporation" has the
 2069 same meaning as that provided in s. 663.01 and includes any
 2070 licensed office of an international banking corporation
 2071 operating in this state.

2072 Section 51. This act shall take effect January 1, 2018.

Page 72 of 72

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Vice Chair*
Appropriations Subcommittee on the Environment
and Natural Resources
Appropriations Subcommittee on General
Government
Banking and Insurance
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee,
Alternating Chair

SENATOR DEBBIE MAYFIELD
17th District

March 30, 2017

Chairman Jack Latvala
Appropriation Committee
404 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 736

Dear Chairman Latvala,

I am respectfully requesting Senate Bill 736, a bill relating to the International Financial Institutions, be placed on the agenda for your committee on Appropriations.

I appreciate your consideration of this bill and I look forward to working with you and the Appropriations committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

A handwritten signature in cursive script, appearing to read "Debbie Mayfield".

Senator Debbie Mayfield
District 17

Cc: Mike Hansen, Alicia Weiss, Drew Aldikacti, Tracy Caddell, and Rich Reidy, Tim Sadberry, John Shettle, Joe McVaney, Lily Tysinger

REPLY TO:

- 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
- 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4.13.17
Meeting Date

730
Bill Number (if applicable)

Topic International Banking

398992
Amendment Barcode (if applicable)

Name Courtney Larkin

Job Title Gov. Relations

Address 200 E. Gaines St.

Phone 410.9601

Street

Tallahassee
City

FL
State

32399
Zip

Email Courtney.larkin@Aofr.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Office of Financial Regulation

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)

4.13.17

Meeting Date

736

Bill Number (if applicable)

Topic International Banking

Amendment Barcode (if applicable)

Name Courtney Larkin

Job Title Gov. Relations

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Phone 410-9601

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City

State

Zip

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Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing office of Financial Regulation

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/2017
Meeting Date

736/738
Bill Number (if applicable)

Topic INTERNATIONAL FINANCIAL INSTITUTIONS Amendment Barcode (if applicable)

Name SLATER BAYLISS

Job Title _____

Address 204 S. MAROON ST Phone 222 8900
Street

TALLAHASSEE FL 32301 Email _____
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing THE FLORIDA INTERNATIONAL ADMINISTRATORS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No ASSOC.

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/CS/SB 738

INTRODUCER: Appropriations Committee; Governmental Oversight and Accountability Committee;
Banking and Insurance Committee; and Senators Mayfield and Steube

SUBJECT: Public Records/International Financial Institutions

DATE: April 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Sanders/Knudson</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 738 makes certain records related to international trust entities and qualified limited service affiliates confidential and exempt from public inspection and copying. The Office of Financial Regulation (OFR) must hold the following information confidential and exempt:

- Personal identifying information of the customer or prospective customers of affiliated international trust entities that appear in regulatory records of an international trust company representative office or a qualified limited services affiliate;
- The names of shareholders or members of an affiliated international trust entity or a qualified limited services affiliate; and
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential, or exempt pursuant to the laws of that state or country or pursuant to federal law.

The bill authorizes the OFR to disclose otherwise confidential and exempt information in specified circumstances.

The bill also revises the public records exemption for OFR records and information related to investigations and examinations of financial institutions, and confidential documents supplied by other state and federal agencies, to specify that such records are exempt from section 24(a), Article I of the Florida Constitution. The revision is necessary because CS/CS/SB 736 expands

the definition of “financial institution” to include an “international trust entity” and “qualified limited services affiliate,” thus expanding the existing public records exemption.

The public records exemptions created and amended by this bill are subject to the Open Government Sunset Review Act and repeal on October 2, 2022, unless the Legislature reviews and saves them from repeal through reenactment.

This bill requires a two-thirds vote from each chamber for passage because the bill creates a series of public records exemptions.

The bill does not affect state revenues or expenditures.

The bill will be effective on the same date CS/CS/SB 736 takes effect, should that bill be adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” 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.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Regulation of the International Financial Services Market

Miami is home to the second-largest banking and finance hub in the United States.²⁴ Estate, tax, and asset protection planning are important components of the region's financial sector, attracting international financial institutions from Europe, Latin America, and Canada serving individual, family, and business customers.

The Office of Financial Regulation (OFR) regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes).²⁵

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ See http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html (Fall 2014) (last viewed Feb. 27, 2017).

²⁵ Financial Institutions Codes include chs. 655 relating to financial institutions generally, 657 relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665 relating to associations, and 657 relating to savings banks.

International Banking Corporations

The OFR licenses and regulates international banking corporations²⁶ that transact business in Florida.²⁷ International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions that are chartered and regulated by foreign jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable codes.

An international banking corporation may operate through a variety of business models, all of which are subject to licensure by the OFR.²⁸ These models include international bank agencies, international representative offices, international trust company representative offices (ITCRO), international administrative offices, and international branches. The definition of “financial institution”²⁹ includes an international banking corporation and all of these entities. As of February 2017, there were no ITCROs licensed with the OFR; however, two international administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.³⁰ In addition, the OFR qualified six entities for the moratorium on the OFR’s enforcement of licensing requirements for an international trust entity or related parties pursuant to s. 663.0441, F.S.³¹

If an international banking corporation (IBC) wants to operate an office in Florida, which includes an ITCRO, the IBC is required to meet minimum licensure requirements, and is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an international banking corporation unless it:

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;³²

²⁶ An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. See s. 663.01(6), F.S.

²⁷ Sections 663.04 and 663.05, F.S.

²⁸ Section 663.06(1), F.S.

²⁹ Section 655.005(i), F.S.

³⁰ Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited February 25, 2017).

³¹ The following entities qualified for the moratorium: JTC Miami Corporation, Citco Corporate Services, Inc., Amicorp Services Ltd., Corpag Services USA, Inc., Integritas Inc., and Cisa Latam LLC. Email correspondence from the OFR (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

³² Section 663.05(8), F.S., requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation’s foreign establishments, and must address at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the

- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of \$20 million.

Section 663.02, F.S., provides that international banking corporations with offices in Florida are subject to the provisions of ch. 655, F.S., as though such corporations were state banks or trust companies.³³ Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state.

International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution. These activities include making and servicing loans, acting as a custodian, furnishing investment advice, conducting foreign exchange activities and trading in securities and commercial paper.³⁴ An international branch has the same rights and privileges as a federally licensed international branch.³⁵

International Representative Offices and International Administrative Offices

International representative offices and international administrative offices perform activities that are more limited, such as soliciting business for the IBC, providing information to customers concerning their accounts, receiving applications for services, transmitting documents for customers, and arranging for customers to transact business on their accounts.³⁶ In addition to the powers delineated above, an administrative office may administer personnel and operations, engage in data processing and recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.³⁷

International Trust Company Representative Offices

An ITCRO is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in nonfiduciary activities described in s. 663.0625, F.S.³⁸ An ITCRO may also include

international banking corporation. See Rule 69U-140.003, F.A.C., *Principles of Adequate Supervision of an International Banking Corporation's Foreign Establishment*.

³³ Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities: s. 655.031, F.S., relating to administrative enforcement guidelines; s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access; s. 655.033, F.S., relating to cease and desist orders; s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, F.S., relating to administrative fines and enforcement; and s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31, F.S., for facilitating or furthering terrorism.

³⁴ Section 663.061, F.S.

³⁵ Section 663.064, F.S.

³⁶ Section 663.062, F.S.

³⁷ Section 663.063, F.S.

³⁸ In 2010, legislation was enacted to establish OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida [ch. 2010-9, Laws of Fla.]. The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was in

any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.³⁹ An ITCRO is not a bank and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers and answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers; and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (commission).⁴⁰

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in ITCRO activities described in s. 663.0625, F.S., if certain conditions are met. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is defined to mean any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

Senate Bill 736 (2017)

CS/CS/SB 738 provides public records exemptions that accompany the classification of international trust entities and qualified limited service affiliates as financial institutions in CS/CS/SB 736 (2017). CS/CS/SB 736 modernizes the regulatory framework of international financial services under the OFR, which will promote the growth of international financial services market in Florida. The bill revises provisions relating to the regulation of international banking corporations and international trust company representative offices (ITCROs) of international trust entities and creates a regulatory framework for qualified limited service affiliates (QLSAs). The QLSAs are marketing and liaison offices that engage in activities for the benefit of an international trust entity (ITE). An ITE is an international trust company, an international business, an international business organization, or an affiliated or subsidiary entities that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised. An ITCRO may conduct any nonfiduciary activities that are ancillary to the fiduciary business of its international trust entity, such as marketing and soliciting for fiduciary business on behalf of the ITE. The bill provides the following changes:

response to the exposure of the \$8 billion dollar Ponzi scheme perpetrated by Allen Stanford. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office in Miami, Florida.

³⁹ Section 663.01(9), F.S.

⁴⁰ Section 663.0625, F.S.

- Establishes oversight of qualified limited service affiliates and offices of international trust entities.
- Provides an abbreviated application process to establish additional locations of an entity that meets certain conditions.
- Authorizes the OFR to implement a risk-based approach for capital requirements, which will allow the OFR to calculate capital requirements that reflect an entity's business model and its particular inherent risk profile.
- Provides the OFR with discretion to allow an after-the-fact licensure process of an entity in the event of an acquisition, merger, or consolidation, which would allow continuity of operations.
- Clarifies permissible activities of entities regulated under ch. 663, F.S.

III. Effect of Proposed Changes:

International Trust Entity Member and Customer Public Records Exemption Created in Section 633.416, F.S.

Section 1 creates s. 663.416, F.S., to create a public records exemption that requires the OFR to hold confidential and exempt from disclosure specified information relating to international trust entities. The bill exempts the following from the requirements of s. 119.07(1), F.S., and Art. I, s. 24(a) of the State Constitution:

- Personal identifying information of the customer or prospective customers of an affiliated international trust entity. The exemption applies to all such information that appears in books and records relating to reports and working papers regarding examinations, the operations, or the condition of an international trust company representative office.
- The names of shareholders or members of an affiliated international trust entity.
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential, or exempt pursuant to the laws of that state or country or pursuant to federal law.

The OFR may disclose information governed by the public records exemption to the following persons and in the following situations:

- The authorized representative of the international trust company representative office under examination, if identified by resolution or written consent of the board of directors, or the equivalent, of the international trust entity.
- A fidelity insurance company, upon written consent of the board of directors, or the equivalent, of the international trust entity.
- An independent auditor, upon written consent of the board of directors, or the equivalent, of the international trust entity.
- The liquidator, receiver, or conservator for the international trust entity, if the OFR redacts the personal identifying information of customers, prospective customers, shareholders, and members of the international trust entity.
- A law enforcement agency in furtherance of its official duties and responsibilities.
- Law enforcement or a prosecutorial agency, to report suspected criminal activity.
- Pursuant to a legislative subpoena. The legislative body or committee must maintain confidentiality. Disclosure may be made to the extent the legislative body or committee

deems necessary in a case involving the investigation of charges against a public official subject to impeachment or removal.

The public records exemption does not prevent or restrict publication of a report required by federal law.

The willful disclosure of information made confidential and exempt by the bill is a third-degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

The public records exemption is subject to the Open Government Sunset Review Act and is repealed effective October 2, 2022, unless the Legislature reviews and reenacts it.

Section 2 provides legislative findings that the public records exemption is a public necessity.

This section justifies the public records exemption for personal identifying information of customers, prospective customers, shareholders, or members of the affiliated international trust entity because disclosure could defame or jeopardize the personal and financial safety of those individuals and their family members. Such individuals are often of high net worth and the target of criminal predators seeking their assets through extortion, kidnapping, and other crimes.

This section justifies the public records exemption for public disclosure of information received by OFR from a person from another state or country or the Federal Government because disclosure may hinder the OFR's ability to receive information from other regulatory bodies and to engage in joint examinations with federal regulators.

Qualified Limited Service Affiliate Public Records Exemption Created in Section 633.540, F.S.

Section 3 creates s. 663.540, F.S., to create a public records exemption that requires the OFR to hold confidential and exempt from disclosure specified information relating to qualified limited service affiliates. The bill exempts the following from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Personal identifying information of the customers and prospective customers of an affiliated international trust entity. The exemption applies to all such information that appears in books and records relating to reports and working papers regarding examinations, the operations, or the condition of a limited service affiliate.
- The names of shareholders or members of a limited service affiliate.
- Information received by the OFR from a person from another state or country or the Federal Government that is confidential or exempt pursuant to the laws of that state or country or pursuant to federal law.

The OFR may disclose information governed by the public records exemption to the following persons and in the following situations:

- The authorized representative of the qualified limited service affiliate under examination, if identified by resolution or written consent of the board of directors or managers of the qualified limited service affiliate.

- A fidelity insurance company, upon written consent of the board of directors or managers of the qualified limited service affiliate.
- An independent auditor, upon written consent of the board of directors or managers of the qualified limited service affiliate.
- The liquidator, receiver, or conservator for the qualified limited service affiliate, if the OFR redacts the personal identifying information of customers, shareholders, and members of the limited service affiliate.
- A law enforcement agency in furtherance of its official duties and responsibilities.
- A law enforcement or a prosecutorial agency, to report suspected criminal activity.
- Pursuant to a legislative subpoena. The legislative body or committee must maintain confidentiality. Disclosure may be made to the extent the legislative body or committee deems necessary in a case involving the investigation of charges against a public official subject to impeachment or removal.

The public records exemption does not prevent or restrict publication of a report required by federal law.

The willful disclosure of information made confidential and exempt by the bill is a third-degree felony punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

The public records exemption is subject to the Open Government Sunset Review Act and is repealed effective October 2, 2022, unless the Legislature reviews and reenacts it.

Section 4 provides legislative findings that the public records exemption is a public necessity.

This section justifies the public records exemption for personal identifying information of customers, prospective customers, shareholders, or members of a qualified limited service affiliate because disclosure could defame or jeopardize the personal and financial safety of those individuals and their family members. Such individuals are often of high net worth and the target of criminal predators seeking their assets through extortion, kidnapping, and other crimes.

This section justifies the public records exemption for public disclosure of information received by OFR from a person from another state or country or the Federal Government because disclosure may hinder the OFR's ability to receive information from other regulatory bodies and to engage in joint examinations with federal regulators.

Expansion of Public Records Exemption for Investigations of Financial Institutions Amended in Sections 655.057(1), (2), (5), (9), and (15), F.S.

Section 5 amends s. 655.057, F.S., to specify that the existing public records exemption for records and information of an OFR investigation or examination of a financial institution, and confidential documents supplied by other state and federal agencies, are exempt from s. 24(a), Art. I of the State Constitution. The amendment is necessary because CS/CS/SB 736 expands the definition of "financial institution" to include an "international trust entity" and "limited services affiliate," thus expanding the existing public records exemption. Expanding the public records exemptions also subjects them to an Open Government Sunset Review and repeal on October 2, 2022, unless the Legislature reviews and saves the exemptions from repeal by reenacting them.

Section 6 provides legislative findings that expanding the public records exemptions to international trust entities and qualified limited services affiliates is a public necessity. Such entities should receive the same protections afforded to other financial institutions to prevent them from being disadvantaged. The exemption for reports of examinations, operations, or condition and associated working papers is needed to allow the OFR to administer its duties, which deter fraud and ensure the safety and soundness of the financial system. Disclosure of such records could cause unwarranted damage to the good name or reputation of a financial institution and impair its, and the financial system's, safety and soundness. Disclosure of records and information relating to an investigation could jeopardize the integrity of another investigation or reveal investigative techniques, to the detriment of the OFR's ability to administer its duties. Revealing personal financial information or a confidential source's identity could damage those persons or jeopardize their safety.

Effective Date

Section 7 makes the bill effective on the date CS/CS/SB 736 or similar legislation takes effect during the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption.

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 section 655.057 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 663.416 and 663.540.

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/CS by Appropriations on April 13, 2017:

The committee substitute references that the public records exemptions apply to qualified limited service affiliates of an international trust entity.

CS/CS by Governmental Oversight and Accountability on March 27, 2017:

This CS/CS does the following:

- Adds “books and records” of an international trust company representative office to the public records exemption for personal identifying information contained in affiliated international trust entity records;
- Clarifies language about the criminal penalty for willful disclosure of confidential and exempt information;
- Removes “books and records” from the definition of “working papers” for limited service affiliates;
- Adds “books and records” of an limited service affiliate to the public records exemption for personal identifying information contained in limited services affiliate records;
- Removes the public records exemption for reports of examinations or operations of limited service affiliates;
- Modifies the public necessity statement to reflect these changes; and
- Adds a reference to ch. 119 and Art. 1 s. 24(a) of the Florida Constitution to one of the public necessity statements to clarify that it supports the expansions in the definitions in the bill.

CS by Banking and Insurance on March 6, 2017:

Links the bill to SB 736 and creates an effective date.

B. Amendments:

None.

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	.	
04/13/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Mayfield) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 663.416, Florida Statutes, is created
and incorporated into part III of chapter 663, Florida Statutes,
as created by CS/CS/SB 736, 2017 Regular Session, to read:

663.416 Public records exemption.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Reports of examinations, operations, or condition"



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11 means records submitted to or prepared by the office as part of
12 the office's duties performed pursuant to s. 655.012 or s.
13 655.045.

14 (b) "Working papers" means the records of the procedure
15 followed, the tests performed, the information obtained, and the
16 conclusions reached in an investigation or examination performed
17 under s. 655.032 or s. 655.045. The term includes planning
18 documentation, work programs, analyses, memoranda, letters of
19 confirmation and representation, abstracts of the books and
20 records of a financial institution, as defined in s. 655.005,
21 and schedules or commentaries prepared or obtained in the course
22 of such investigation or examination.

23 (2) PUBLIC RECORDS EXEMPTION.—The following information
24 held by the office is confidential and exempt from s. 119.07(1)
25 and s. 24(a), Art. I of the State Constitution:

26 (a) Any personal identifying information of the customers
27 or prospective customers of an affiliated international trust
28 entity which appears in the books and records of an
29 international trust company representative office or in records
30 relating to reports of examinations, operations, or condition of
31 an international trust company representative office, including
32 working papers.

33 (b) Any portion of a list of names of the shareholders or
34 members of an affiliated international trust entity.

35 (c) Information received by the office from a person from
36 another state or country or the Federal Government which is
37 otherwise confidential or exempt pursuant to the laws of that
38 state or country or pursuant to federal law.

39 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT



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40 INFORMATION.—Information made confidential and exempt under
41 subsection (2) may be disclosed by the office:

42 (a) To the authorized representative or representatives of
43 the international trust company representative office under
44 examination. The authorized representative or representatives
45 must be identified in a resolution or by written consent of the
46 board of directors, or the equivalent, of the international
47 trust entity.

48 (b) To a fidelity insurance company, upon written consent
49 of the board of directors, or the equivalent, of the
50 international trust entity.

51 (c) To an independent auditor, upon written consent of the
52 board of directors, or the equivalent, of the international
53 trust entity.

54 (d) To the liquidator, receiver, or conservator for the
55 international trust entity, if a liquidator, receiver, or
56 conservator is appointed. However, any portion of the
57 information which discloses the identity of a customer or
58 prospective customer of the international trust entity, or a
59 shareholder or member of the international trust entity, must be
60 redacted by the office before releasing such portion to the
61 liquidator, receiver, or conservator.

62 (e) To a law enforcement agency in furtherance of the
63 agency's official duties and responsibilities.

64 (f) To the appropriate law enforcement or prosecutorial
65 agency for the purpose of reporting any suspected criminal
66 activity.

67 (g) Pursuant to a legislative subpoena. A legislative body
68 or committee that receives records or information pursuant to



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69 such a subpoena must maintain the confidential status of the
70 records or information, except in a case involving the
71 investigation of charges against a public official subject to
72 impeachment or removal, in which case the records or information
73 may be disclosed only to the extent necessary as determined by
74 such legislative body or committee.

75 (4) PUBLICATION OF INFORMATION.—This section does not
76 prevent or restrict the publication of a report required by
77 federal law.

78 (5) PENALTY.—A person who willfully, in violation of this
79 section, discloses information made confidential and exempt by
80 this section commits a felony of the third degree, punishable as
81 provided in s. 775.082, s. 775.083, or s. 775.084.

82 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
83 to the Open Government Sunset Review Act in accordance with s.
84 119.15 and is repealed on October 2, 2022, unless reviewed and
85 saved from repeal through reenactment by the Legislature.

86 Section 2. The Legislature finds that it is a public
87 necessity to make confidential and exempt from s. 119.07(1),
88 Florida Statutes, and s. 24(a), Article I of the State
89 Constitution personal identifying information of the customers
90 or prospective customers of an affiliated international trust
91 entity which appears in the books and records of an
92 international trust company representative office or in records
93 relating to reports of examinations, operations, or condition of
94 an international trust company representative office, including
95 working papers; any portion of a list of names of the
96 shareholders or members of an affiliated international trust
97 entity which is held by the office; and information received by



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98 the Office of Financial Regulation from a person from another
99 state or country or the Federal Government which is otherwise
100 confidential or exempt pursuant to the laws of that state or
101 country or pursuant to federal law.

102 (1) An exemption from public records requirements is
103 necessary for such records and information because the Office of
104 Financial Regulation may receive sensitive personal and
105 financial information, including personal identifying
106 information relating to such entities, in the course of its
107 investigation and examination duties. Public disclosure of the
108 personal identifying information of existing customers,
109 prospective customers, shareholders, or members of the
110 affiliated international trust entity could defame or jeopardize
111 the personal and financial safety of those individuals and their
112 family members. The individuals served by the affiliated
113 international trust entity are often individuals of high net
114 worth. Individuals of high net worth and shareholders or members
115 of financial institutions are frequently the targets of criminal
116 predators seeking access to their assets. It is important that
117 the exposure of such individuals and their family members to
118 threats of extortion, kidnapping, and other crimes not be
119 increased. Placing the personal identifying information of these
120 individuals within the public domain would increase the security
121 risk that those individuals or their families could become the
122 target of criminal activity.

123 (2) Public disclosure of information received by the Office
124 of Financial Regulation from a person from another state or
125 country or the Federal Government which is otherwise
126 confidential or exempt pursuant to the laws of that state or



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127 country or pursuant to federal law may deteriorate the office's
128 relationships with other regulatory bodies. The office
129 frequently engages in joint examinations with federal
130 regulators. If such information were subject to disclosure to
131 the public, not only would such disclosure deter other
132 regulatory bodies from communicating vital information to the
133 office, but the office would violate existing information-
134 sharing agreements governing the sharing of confidential
135 supervisory information.

136 Section 3. Section 663.540, Florida Statutes, is created
137 and incorporated into part IV of chapter 663, Florida Statutes,
138 as created by CS/CS/SB 736, 2017 Regular Session, to read:

139 663.540 Public records exemption.-

140 (1) DEFINITIONS.-As used in this section, the term:

141 (a) "Reports of examinations, operations, or condition"
142 means records submitted to or prepared by the office as part of
143 the office's duties performed pursuant to s. 655.012 or s.
144 663.537.

145 (b) "Working papers" means the records of the procedure
146 followed, the tests performed, the information obtained, and the
147 conclusions reached in an investigation or examination performed
148 under s. 655.032 or s. 663.537. The term includes planning
149 documentation, work programs, analyses, memoranda, letters of
150 confirmation and representation, abstracts of the books and
151 records of a financial institution, as defined in s. 655.005,
152 and schedules or commentaries prepared or obtained in the course
153 of such investigation or examination.

154 (2) PUBLIC RECORDS EXEMPTION.-The following information
155 held by the office is confidential and exempt from s. 119.07(1)



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156 and s. 24(a), Art. I of the State Constitution:

157 (a) Any personal identifying information of the customers
158 or prospective customers of an affiliated international trust
159 entity which appears in the books and records of a qualified
160 limited service affiliate or in records relating to reports of
161 examinations, operations, or condition of a qualified limited
162 service affiliate, including working papers.

163 (b) Any portion of a list of names of the shareholders or
164 members of a qualified limited service affiliate.

165 (c) Information received by the office from a person from
166 another state or country or the Federal Government which is
167 otherwise confidential or exempt pursuant to the laws of that
168 state or country or pursuant to federal law.

169 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT
170 INFORMATION.—Information made confidential and exempt under
171 subsection (2) may be disclosed by the office:

172 (a) To the authorized representative or representatives of
173 the qualified limited service affiliate under examination. The
174 authorized representative or representatives must be identified
175 in a resolution or by written consent of the board of directors,
176 if the qualified limited service affiliate is a corporation, or
177 of the managers, if the qualified limited service affiliate is a
178 limited liability company.

179 (b) To a fidelity insurance company, upon written consent
180 of the qualified limited service affiliate's board of directors,
181 if the qualified limited service affiliate is a corporation, or
182 of the managers, if the qualified limited service affiliate is a
183 limited liability company.

184 (c) To an independent auditor, upon written consent of the



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185 qualified limited service affiliate's board of directors, if the
186 qualified limited service affiliate is a corporation, or of the
187 managers, if the qualified limited service affiliate is a
188 limited liability company.

189 (d) To the liquidator, receiver, or conservator for a
190 qualified limited service affiliate, if a liquidator, receiver,
191 or conservator is appointed. However, any portion of the
192 information which discloses the identity of a customer of the
193 affiliated international trust entity, or a shareholder or
194 member of the qualified limited service affiliate, must be
195 redacted by the office before releasing such portion to the
196 liquidator, receiver, or conservator.

197 (e) To a law enforcement agency in furtherance of the
198 agency's official duties and responsibilities.

199 (f) To the appropriate law enforcement or prosecutorial
200 agency for the purpose of reporting any suspected criminal
201 activity.

202 (g) Pursuant to a legislative subpoena. A legislative body
203 or committee that receives records or information pursuant to
204 such a subpoena must maintain the confidential status of the
205 records or information, except in a case involving the
206 investigation of charges against a public official subject to
207 impeachment or removal, in which case the records or information
208 may be disclosed only to the extent necessary as determined by
209 such legislative body or committee.

210 (4) PUBLICATION OF INFORMATION.—This section does not
211 prevent or restrict the publication of a report required by
212 federal law.

213 (5) PENALTY.—A person who willfully, in violation of this



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214 section, discloses information made confidential and exempt by
215 this section commits a felony of the third degree, punishable as
216 provided in s. 775.082, s. 775.083, or s. 775.084.

217 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
218 to the Open Government Sunset Review Act in accordance with s.
219 119.15 and is repealed on October 2, 2022, unless reviewed and
220 saved from repeal through reenactment by the Legislature.

221 Section 4. The Legislature finds that it is a public
222 necessity to make confidential and exempt from s. 119.07(1),
223 Florida Statutes, and s. 24(a), Article I of the State
224 Constitution personal identifying information of the customers
225 or prospective customers of an affiliated international trust
226 entity which appears in the books and records of a qualified
227 limited service affiliate or in records relating to reports of
228 examinations, operations, or condition of a qualified limited
229 service affiliate, including working papers; any portion of a
230 list of names of the shareholders or members of a qualified
231 limited service affiliate which is held by the Office of
232 Financial Regulation; and information received by the office
233 from a person from another state or country or the Federal
234 Government which is otherwise confidential or exempt pursuant to
235 the laws of that state or country or pursuant to federal law.

236 (1) An exemption from public records requirements is
237 necessary for personal identifying information of existing and
238 prospective customers of an affiliated international trust
239 entity or shareholders or members of a qualified limited service
240 affiliate, because if such information is available for public
241 access, such access could defame or jeopardize the personal and
242 financial safety of those individuals. The individuals served by



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243 the affiliated international trust entity are often individuals
244 of high net worth. Individuals of high net worth and
245 shareholders or members of financial institutions are frequently
246 the targets of criminal predators seeking access to their
247 assets. It is important that the exposure of such individuals
248 and their family members to threats of extortion, kidnapping,
249 and other crimes not be increased. Placing the personal
250 identifying information of these individuals within the public
251 domain would increase the security risk that those individuals
252 or their families could become the target of criminal activity.

253 (2) An exemption from public records requirements is
254 necessary for information received by the Office of Financial
255 Regulation from a person from another state or country or the
256 Federal Government which is otherwise confidential or exempt
257 pursuant to the laws of that state or country or pursuant to
258 federal law, as public disclosure may deteriorate the office's
259 relationships with other regulatory bodies. The office
260 frequently engages in joint examinations with federal
261 regulators. If such information were subject to disclosure to
262 the public, not only would this disclosure deter other
263 regulatory bodies from communicating vital information to the
264 office, but the office would violate existing information-
265 sharing agreements governing the sharing of confidential
266 supervisory information.

267 Section 5. Subsections (1), (2), (5), and (9) of section
268 655.057, Florida Statutes, are amended, and subsection (15) is
269 added to that section, to read:

270 655.057 Records; limited restrictions upon public access.-

271 (1) Except as otherwise provided in this section and except



272 for such portions thereof which are otherwise public record, all
273 records and information relating to an investigation by the
274 office are confidential and exempt from s. 119.07(1) and s.
275 24(a), Art. I of the State Constitution until such investigation
276 is completed or ceases to be active. For purposes of this
277 subsection, an investigation is considered "active" while such
278 investigation is being conducted by the office with a
279 reasonable, good faith belief that it may lead to the filing of
280 administrative, civil, or criminal proceedings. An investigation
281 does not cease to be active if the office is proceeding with
282 reasonable dispatch, and there is a good faith belief that
283 action may be initiated by the office or other administrative or
284 law enforcement agency. After an investigation is completed or
285 ceases to be active, portions of the records relating to the
286 investigation are confidential and exempt from s. 119.07(1) and
287 s. 24(a), Art. I of the State Constitution to the extent that
288 disclosure would:

- 289 (a) Jeopardize the integrity of another active
290 investigation;
 - 291 (b) Impair the safety and soundness of the financial
292 institution;
 - 293 (c) Reveal personal financial information;
 - 294 (d) Reveal the identity of a confidential source;
 - 295 (e) Defame or cause unwarranted damage to the good name or
296 reputation of an individual or jeopardize the safety of an
297 individual; or
 - 298 (f) Reveal investigative techniques or procedures.
- 299 (2) Except as otherwise provided in this section and except
300 for such portions thereof which are public record, reports of



301 examinations, operations, or condition, including working
302 papers, or portions thereof, prepared by, or for the use of, the
303 office or any state or federal agency responsible for the
304 regulation or supervision of financial institutions in this
305 state are confidential and exempt from s. 119.07(1) and s.
306 24(a), Art. I of the State Constitution. However, such reports
307 or papers or portions thereof may be released to:

308 (a) The financial institution under examination;

309 (b) Any holding company of which the financial institution
310 is a subsidiary;

311 (c) Proposed purchasers if necessary to protect the
312 continued financial viability of the financial institution, upon
313 prior approval by the board of directors of such institution;

314 (d) Persons proposing in good faith to acquire a
315 controlling interest in or to merge with the financial
316 institution, upon prior approval by the board of directors of
317 such financial institution;

318 (e) Any officer, director, committee member, employee,
319 attorney, auditor, or independent auditor officially connected
320 with the financial institution, holding company, proposed
321 purchaser, or person seeking to acquire a controlling interest
322 in or merge with the financial institution; or

323 (f) A fidelity insurance company, upon approval of the
324 financial institution's board of directors. However, a fidelity
325 insurance company may receive only that portion of an
326 examination report relating to a claim or investigation being
327 conducted by such fidelity insurance company.

328 (g) Examination, operation, or condition reports of a
329 financial institution shall be released by the office within 1



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330 year after the appointment of a liquidator, receiver, or
331 conservator to the financial institution. However, any portion
332 of such reports which discloses the identities of depositors,
333 bondholders, members, borrowers, or stockholders, other than
334 directors, officers, or controlling stockholders of the
335 institution, shall remain confidential and exempt from s.
336 119.07(1) and s. 24(a), Art. I of the State Constitution.

337
338 Any confidential information or records obtained from the office
339 pursuant to this paragraph shall be maintained as confidential
340 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
341 Constitution.

342 (5) This section does not prevent or restrict:

343 (a) Publishing reports that are required to be submitted to
344 the office pursuant to s. 655.045(2) or required by applicable
345 federal statutes or regulations to be published.

346 (b) Furnishing records or information to any other state,
347 federal, or foreign agency responsible for the regulation or
348 supervision of financial institutions.

349 (c) Disclosing or publishing summaries of the condition of
350 financial institutions and general economic and similar
351 statistics and data, provided that the identity of a particular
352 financial institution is not disclosed.

353 (d) Reporting any suspected criminal activity, with
354 supporting documents and information, to appropriate law
355 enforcement and prosecutorial agencies.

356 (e) Furnishing information upon request to the Chief
357 Financial Officer or the Division of Treasury of the Department
358 of Financial Services regarding the financial condition of any



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359 financial institution that is, or has applied to be, designated
360 as a qualified public depository pursuant to chapter 280.

361 (f) Furnishing information to Federal Home Loan Banks
362 regarding its member institutions pursuant to an information
363 sharing agreement between the Federal Home Loan Banks and the
364 office.

365
366 Any confidential information or records obtained from the office
367 pursuant to this subsection shall be maintained as confidential
368 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
369 Constitution.

370 (9) Materials supplied to the office or to employees of any
371 financial institution by other state or federal governmental
372 agencies remain the property of the submitting agency or the
373 corporation, and any document request must be made to the
374 appropriate agency. Any confidential documents supplied to the
375 office or to employees of any financial institution by other
376 state or federal governmental agencies are confidential and
377 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
378 Constitution. Such information shall be made public only with
379 the consent of such agency or the corporation.

380 (15) Subsections (1), (2), (5), and (9) are subject to the
381 Open Government Sunset Review Act in accordance with s. 119.15
382 and are repealed on October 2, 2022, unless reviewed and saved
383 from repeal through reenactment by the Legislature.

384 Section 6. The Legislature finds that it is a public
385 necessity to make confidential and exempt from s. 119.07(1),
386 Florida Statutes, and s. 24(a), Article I of the State
387 Constitution records and information relating to an



388 investigation by the Office of Financial Regulation; portions of
389 records relating to a completed or inactive investigation by the
390 office which would jeopardize the integrity of another active
391 investigation, impair the safety and soundness of the financial
392 institution, reveal personal financial information, reveal the
393 identity of a confidential source, defame or cause unwarranted
394 damage to the good name or reputation of an individual or
395 jeopardize the safety of an individual, or reveal investigative
396 techniques or procedures; reports of examinations, operations,
397 or condition, including working papers, or portions thereof,
398 prepared by, or for the use of, the office or any state or
399 federal agency responsible for the regulation or supervision of
400 financial institutions in this state; any portion of such
401 reports which discloses the identities of depositors,
402 bondholders, members, borrowers, or stockholders, other than
403 directors, officers, or controlling stockholders of the
404 institution; and materials supplied to the office or to
405 employees of any financial institution by other state or federal
406 governmental agencies.

407 (1) The terms "international trust entity" and "qualified
408 limited service affiliate" referenced in newly created parts III
409 and IV of chapter 663, Florida Statutes, are added to the
410 definition of the term "financial institution" in s.
411 655.005(1)(i), Florida Statutes, in CS/CS/SB 736. The
412 international trust company representative offices and qualified
413 limited service affiliates servicing international trust
414 entities are thus subject to examination by the Office of
415 Financial Regulation. As a result, the office may receive
416 sensitive personal and financial information relating to such



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417 entities in conjunction with its duties under chapters 655 and
418 663, Florida Statutes. An exemption from public records
419 requirements prevents gaps in the law by providing the same
420 protections to international trust entities and qualified
421 limited service affiliates which are afforded to other financial
422 institutions, thereby preventing any disadvantage to these
423 similarly regulated entities in comparison to other entities
424 currently defined as "financial institutions." An exemption from
425 public records requirements for reports of examinations,
426 operations, or condition, including working papers, is necessary
427 to ensure the office's ability to effectively and efficiently
428 administer its examination and investigation duties. Examination
429 and investigation are essential components of financial
430 institutions regulation. They deter fraud and ensure the safety
431 and soundness of the financial system. Examinations also provide
432 a means of early detection of violations, allowing for
433 corrective action to be taken before any harm can be done.

434 (2) The Legislature finds that it is a public necessity
435 that information and records relating to an examination or
436 investigation by the office be held confidential and exempt from
437 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
438 State Constitution. Public disclosure of records and information
439 relating to an examination or investigation by the office could
440 expose the subject financial institution to unwarranted damage
441 to its good name or reputation and impair its safety and
442 soundness, as well as the safety and soundness of the financial
443 system in the state. Public disclosure of records and
444 information relating to an investigation by the office which
445 could jeopardize the integrity of another active investigation



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446 or reveal investigative techniques or procedures of the office
447 would impair the office's ability to effectively and efficiently
448 administer its duties under ss. 655.032 and 655.045, Florida
449 Statutes. Any portion of a record or information relating to an
450 investigation or examination which reveals personal financial
451 information or the identity of a confidential source may defame,
452 or cause unwarranted damage to the good name or reputation of,
453 those individuals, or jeopardize their safety.

454 Section 7. This act shall take effect on the same date that
455 CS/CS/SB 736 or similar legislation takes effect, if such
456 legislation is adopted in the same legislative session or an
457 extension thereof and becomes a law.

458
459 ===== T I T L E A M E N D M E N T =====

460 And the title is amended as follows:

461 Delete everything before the enacting clause
462 and insert:

463 A bill to be entitled
464 An act relating to public records; creating ss.
465 663.416 and 663.540, F.S.; defining terms; providing
466 exemptions from public records requirements for
467 certain information held by the Office of Financial
468 Regulation relating to international trust company
469 representative offices or qualified limited service
470 affiliates, respectively, and relating to affiliated
471 international trust entities; authorizing the
472 disclosure of the information by the office to
473 specified persons; providing construction; providing
474 criminal penalties; providing future legislative



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475 review and repeal of the exemptions; providing
476 statements of public necessity; amending s. 655.057,
477 F.S.; providing that certain exemptions from public
478 records requirements for information relating to
479 investigations, reports of examinations, operations,
480 or condition, including working papers, and certain
481 materials supplied by governmental agencies are exempt
482 from Section 24(a) of Article I of the State
483 Constitution, as a result of the expansion of such
484 exemptions to include the records of international
485 trust entities and qualified limited service
486 affiliates, as made by CS/CS/SB 736, 2017 Regular
487 Session; providing a statement of public necessity;
488 providing a contingent effective date.

By the Committees on Governmental Oversight and Accountability;
and Banking and Insurance; and Senators Mayfield and Steube

585-02944-17

2017738c2

1 A bill to be entitled
2 An act relating to public records; creating ss.
3 663.416 and 663.540, F.S.; defining terms; providing
4 exemptions from public records requirements for
5 certain information held by the Office of Financial
6 Regulation relating to international trust company
7 representative offices or limited service affiliates,
8 respectively, and relating to affiliated international
9 trust entities; authorizing the disclosure of the
10 information by the office to specified persons;
11 providing construction; providing criminal penalties;
12 providing future legislative review and repeal of the
13 exemptions; providing statements of public necessity;
14 amending s. 655.057, F.S.; providing that certain
15 exemptions from public records requirements for
16 information relating to investigations, reports of
17 examinations, operations, or condition, including
18 working papers, and certain materials supplied by
19 governmental agencies are exempt from s. 24(a) of
20 Article I of the State Constitution, as a result of
21 the expansion of such exemptions to include the
22 records of international trust entities and limited
23 service affiliates, as made by CS/SB 736, 2017 Regular
24 Session; providing a statement of public necessity;
25 providing a contingent effective date.

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

28
29 Section 1. Section 663.416, Florida Statutes, is created

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30 and incorporated into part III of chapter 663, Florida Statutes,
31 as created by CS/SB 736, 2017 Regular Session, to read:
32 663.416 Public records exemption.—
33 (1) DEFINITIONS.—As used in this section, the term:
34 (a) "Reports of examinations, operations, or condition"
35 means records submitted to or prepared by the office as part of
36 the office's duties performed pursuant to s. 655.012 or s.
37 655.045.
38 (b) "Working papers" means the records of the procedure
39 followed, the tests performed, the information obtained, and the
40 conclusions reached in an investigation or examination performed
41 under s. 655.032 or s. 655.045. The term includes planning
42 documentation, work programs, analyses, memoranda, letters of
43 confirmation and representation, abstracts of the books and
44 records of a financial institution, as defined in s. 655.005,
45 and schedules or commentaries prepared or obtained in the course
46 of such investigation or examination.
47 (2) PUBLIC RECORDS EXEMPTION.—The following information
48 held by the office is confidential and exempt from s. 119.07(1)
49 and s. 24(a), Art. I of the State Constitution:
50 (a) Any personal identifying information of the customers
51 or prospective customers of an affiliated international trust
52 entity which appears in the books and records of an
53 international trust company representative office or in records
54 relating to reports of examinations, operations, or condition of
55 an international trust company representative office, including
56 working papers.
57 (b) Any portion of a list of names of the shareholders or
58 members of an affiliated international trust entity.

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59 (c) Information received by the office from a person from
 60 another state or country or the Federal Government which is
 61 otherwise confidential or exempt pursuant to the laws of that
 62 state or country or pursuant to federal law.

63 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT
 64 INFORMATION.—Information made confidential and exempt under
 65 subsection (2) may be disclosed by the office:

66 (a) To the authorized representative or representatives of
 67 the international trust company representative office under
 68 examination. The authorized representative or representatives
 69 must be identified in a resolution or by written consent of the
 70 board of directors, or the equivalent, of the international
 71 trust entity.

72 (b) To a fidelity insurance company, upon written consent
 73 of the board of directors, or the equivalent, of the
 74 international trust entity.

75 (c) To an independent auditor, upon written consent of the
 76 board of directors, or the equivalent, of the international
 77 trust entity.

78 (d) To the liquidator, receiver, or conservator for the
 79 international trust entity, if a liquidator, receiver, or
 80 conservator is appointed. However, any portion of the
 81 information which discloses the identity of a customer or
 82 prospective customer of the international trust entity, or a
 83 shareholder or member of the international trust entity, must be
 84 redacted by the office before releasing such portion to the
 85 liquidator, receiver, or conservator.

86 (e) To a law enforcement agency in furtherance of the
 87 agency's official duties and responsibilities.

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88 (f) To the appropriate law enforcement or prosecutorial
 89 agency for the purpose of reporting any suspected criminal
 90 activity.

91 (g) Pursuant to a legislative subpoena. A legislative body
 92 or committee that receives records or information pursuant to
 93 such a subpoena must maintain the confidential status of the
 94 records or information, except in a case involving the
 95 investigation of charges against a public official subject to
 96 impeachment or removal, in which case the records or information
 97 may be disclosed only to the extent necessary as determined by
 98 such legislative body or committee.

99 (4) PUBLICATION OF INFORMATION.—This section does not
 100 prevent or restrict the publication of a report required by
 101 federal law.

102 (5) PENALTY.—A person who willfully, in violation of this
 103 section, discloses information made confidential and exempt by
 104 this section commits a felony of the third degree, punishable as
 105 provided in s. 775.082, s. 775.083, or s. 775.084.

106 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
 107 to the Open Government Sunset Review Act in accordance with s.
 108 119.15 and is repealed on October 2, 2022, unless reviewed and
 109 saved from repeal through reenactment by the Legislature.

110 Section 2. The Legislature finds that it is a public
 111 necessity to make confidential and exempt from s. 119.07(1),
 112 Florida Statutes, and s. 24(a), Article I of the State
 113 Constitution personal identifying information of the customers
 114 or prospective customers of an affiliated international trust
 115 entity which appears in the books and records of an
 116 international trust company representative office or in records

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117 relating to reports of examinations, operations, or condition of
 118 an international trust company representative office, including
 119 working papers; any portion of a list of names of the
 120 shareholders or members of an affiliated international trust
 121 entity which is held by the office; and information received by
 122 the Office of Financial Regulation from a person from another
 123 state or country or the Federal Government which is otherwise
 124 confidential or exempt pursuant to the laws of that state or
 125 country or pursuant to federal law.

126 (1) An exemption from public records requirements is
 127 necessary for such records and information because the Office of
 128 Financial Regulation may receive sensitive personal and
 129 financial information, including personal identifying
 130 information relating to such entities, in the course of its
 131 investigation and examination duties. Public disclosure of the
 132 personal identifying information of existing customers,
 133 prospective customers, shareholders, or members of the
 134 affiliated international trust entity could defame or jeopardize
 135 the personal and financial safety of those individuals and their
 136 family members. The individuals served by the affiliated
 137 international trust entity are often individuals of high net
 138 worth. Individuals of high net worth and shareholders or members
 139 of financial institutions are frequently the targets of criminal
 140 predators seeking access to their assets. It is important that
 141 the exposure of such individuals and their family members to
 142 threats of extortion, kidnapping, and other crimes not be
 143 increased. Placing the personal identifying information of these
 144 individuals within the public domain would increase the security
 145 risk that those individuals or their families could become the

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146 target of criminal activity.

147 (2) Public disclosure of information received by the Office
 148 of Financial Regulation from a person from another state or
 149 country or the Federal Government which is otherwise
 150 confidential or exempt pursuant to the laws of that state or
 151 country or pursuant to federal law may deteriorate the office's
 152 relationships with other regulatory bodies. The office
 153 frequently engages in joint examinations with federal
 154 regulators. If such information were subject to disclosure to
 155 the public, not only would such disclosure deter other
 156 regulatory bodies from communicating vital information to the
 157 office, but the office would violate existing information-
 158 sharing agreements governing the sharing of confidential
 159 supervisory information.

160 Section 3. Section 663.540, Florida Statutes, is created
 161 and incorporated into part IV of chapter 663, Florida Statutes,
 162 as created by CS/SB 736, 2017 Regular Session, to read:

163 663.540 Public records exemption.—

164 (1) DEFINITIONS.—As used in this section, the term:

165 (a) "Reports of examinations, operations, or condition"
 166 means records submitted to or prepared by the office as part of
 167 the office's duties performed pursuant to s. 655.012 or s.
 168 663.537.

169 (b) "Working papers" means the records of the procedure
 170 followed, the tests performed, the information obtained, and the
 171 conclusions reached in an investigation or examination performed
 172 under s. 655.032 or s. 663.537. The term includes planning
 173 documentation, work programs, analyses, memoranda, letters of
 174 confirmation and representation, abstracts of the books and

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175 records of a financial institution, as defined in s. 655.005,
 176 and schedules or commentaries prepared or obtained in the course
 177 of such investigation or examination.

178 (2) PUBLIC RECORDS EXEMPTION.—The following information
 179 held by the office is confidential and exempt from s. 119.07(1)
 180 and s. 24(a), Art. I of the State Constitution:

181 (a) Any personal identifying information of the customers
 182 or prospective customers of an affiliated international trust
 183 entity which appears in the books and records of a limited
 184 service affiliate or in records relating to reports of
 185 examinations, operations, or condition of a limited service
 186 affiliate, including working papers.

187 (b) Any portion of a list of names of the shareholders or
 188 members of a limited service affiliate.

189 (c) Information received by the office from a person from
 190 another state or country or the Federal Government which is
 191 otherwise confidential or exempt pursuant to the laws of that
 192 state or country or pursuant to federal law.

193 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT
 194 INFORMATION.—Information made confidential and exempt under
 195 subsection (2) may be disclosed by the office:

196 (a) To the authorized representative or representatives of
 197 the limited service affiliate under examination. The authorized
 198 representative or representatives must be identified in a
 199 resolution or by written consent of the board of directors, if
 200 the limited service affiliate is a corporation, or of the
 201 managers, if the limited service affiliate is a limited
 202 liability company.

203 (b) To a fidelity insurance company, upon written consent

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204 of the limited service affiliate's board of directors, if the
 205 limited service affiliate is a corporation, or of the managers,
 206 if the limited service affiliate is a limited liability company.

207 (c) To an independent auditor, upon written consent of the
 208 limited service affiliate's board of directors, if the limited
 209 service affiliate is a corporation, or of the managers, if the
 210 limited service affiliate is a limited liability company.

211 (d) To the liquidator, receiver, or conservator for a
 212 limited service affiliate, if a liquidator, receiver, or
 213 conservator is appointed. However, any portion of the
 214 information which discloses the identity of a customer of the
 215 affiliated international trust entity, or a shareholder or
 216 member of the limited service affiliate, must be redacted by the
 217 office before releasing such portion to the liquidator,
 218 receiver, or conservator.

219 (e) To a law enforcement agency in furtherance of the
 220 agency's official duties and responsibilities.

221 (f) To the appropriate law enforcement or prosecutorial
 222 agency for the purpose of reporting any suspected criminal
 223 activity.

224 (g) Pursuant to a legislative subpoena. A legislative body
 225 or committee that receives records or information pursuant to
 226 such a subpoena must maintain the confidential status of the
 227 records or information, except in a case involving the
 228 investigation of charges against a public official subject to
 229 impeachment or removal, in which case the records or information
 230 may be disclosed only to the extent necessary as determined by
 231 such legislative body or committee.

232 (4) PUBLICATION OF INFORMATION.—This section does not

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233 prevent or restrict the publication of a report required by
 234 federal law.

235 (5) PENALTY.—A person who willfully, in violation of this
 236 section, discloses information made confidential and exempt by
 237 this section commits a felony of the third degree, punishable as
 238 provided in s. 775.082, s. 775.083, or s. 775.084.

239 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
 240 to the Open Government Sunset Review Act in accordance with s.
 241 119.15 and is repealed on October 2, 2022, unless reviewed and
 242 saved from repeal through reenactment by the Legislature.

243 Section 4. The Legislature finds that it is a public
 244 necessity to make confidential and exempt from s. 119.07(1),
 245 Florida Statutes, and s. 24(a), Article I of the State
 246 Constitution personal identifying information of the customers
 247 or prospective customers of an affiliated international trust
 248 entity which appears in the books and records of a limited
 249 service affiliate or in records relating to reports of
 250 examinations, operations, or condition of a limited service
 251 affiliate, including working papers; any portion of a list of
 252 names of the shareholders or members of a limited service
 253 affiliate which is held by the office; and information received
 254 by the office from a person from another state or country or the
 255 Federal Government which is otherwise confidential or exempt
 256 pursuant to the laws of that state or country or pursuant to
 257 federal law.

258 (1) An exemption from public records requirements is
 259 necessary for personal identifying information of existing and
 260 prospective customers of an affiliated international trust
 261 entity or shareholders or members of a limited service

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262 affiliate, because if such information is available for public
 263 access, such access could defame or jeopardize the personal and
 264 financial safety of those individuals. The individuals served by
 265 the affiliated international trust entity are often individuals
 266 of high net worth. Individuals of high net worth and
 267 shareholders or members of financial institutions are frequently
 268 the targets of criminal predators seeking access to their
 269 assets. It is important that the exposure of such individuals
 270 and their family members to threats of extortion, kidnapping,
 271 and other crimes not be increased. Placing the personal
 272 identifying information of these individuals within the public
 273 domain would increase the security risk that those individuals
 274 or their families could become the target of criminal activity.

275 (2) An exemption from public records requirements is
 276 necessary for information received by the Office of Financial
 277 Regulation from a person from another state or country or the
 278 Federal Government which is otherwise confidential or exempt
 279 pursuant to the laws of that state or country or pursuant to
 280 federal law, as public disclosure may deteriorate the office's
 281 relationships with other regulatory bodies. The office
 282 frequently engages in joint examinations with federal
 283 regulators. If such information were subject to disclosure to
 284 the public, not only would this disclosure deter other
 285 regulatory bodies from communicating vital information to the
 286 office, but the office would violate existing information-
 287 sharing agreements governing the sharing of confidential
 288 supervisory information.

289 Section 5. Subsections (1), (2), (5), and (9) of section
 290 655.057, Florida Statutes, are amended, and subsection (15) is

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291 added to that section, to read:

292 655.057 Records; limited restrictions upon public access.—

293 (1) Except as otherwise provided in this section and except
 294 for such portions thereof which are otherwise public record, all
 295 records and information relating to an investigation by the
 296 office are confidential and exempt from s. 119.07(1) and s.
 297 24(a), Art. I of the State Constitution until such investigation
 298 is completed or ceases to be active. For purposes of this
 299 subsection, an investigation is considered "active" while such
 300 investigation is being conducted by the office with a
 301 reasonable, good faith belief that it may lead to the filing of
 302 administrative, civil, or criminal proceedings. An investigation
 303 does not cease to be active if the office is proceeding with
 304 reasonable dispatch, and there is a good faith belief that
 305 action may be initiated by the office or other administrative or
 306 law enforcement agency. After an investigation is completed or
 307 ceases to be active, portions of the records relating to the
 308 investigation are confidential and exempt from s. 119.07(1) and
 309 s. 24(a), Art. I of the State Constitution to the extent that
 310 disclosure would:

311 (a) Jeopardize the integrity of another active
 312 investigation;

313 (b) Impair the safety and soundness of the financial
 314 institution;

315 (c) Reveal personal financial information;

316 (d) Reveal the identity of a confidential source;

317 (e) Defame or cause unwarranted damage to the good name or
 318 reputation of an individual or jeopardize the safety of an
 319 individual; or

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320 (f) Reveal investigative techniques or procedures.

321 (2) Except as otherwise provided in this section and except
 322 for such portions thereof which are public record, reports of
 323 examinations, operations, or condition, including working
 324 papers, or portions thereof, prepared by, or for the use of, the
 325 office or any state or federal agency responsible for the
 326 regulation or supervision of financial institutions in this
 327 state are confidential and exempt from s. 119.07(1) and s.
 328 24(a), Art. I of the State Constitution. However, such reports
 329 or papers or portions thereof may be released to:

330 (a) The financial institution under examination;

331 (b) Any holding company of which the financial institution
 332 is a subsidiary;

333 (c) Proposed purchasers if necessary to protect the
 334 continued financial viability of the financial institution, upon
 335 prior approval by the board of directors of such institution;

336 (d) Persons proposing in good faith to acquire a
 337 controlling interest in or to merge with the financial
 338 institution, upon prior approval by the board of directors of
 339 such financial institution;

340 (e) Any officer, director, committee member, employee,
 341 attorney, auditor, or independent auditor officially connected
 342 with the financial institution, holding company, proposed
 343 purchaser, or person seeking to acquire a controlling interest
 344 in or merge with the financial institution; or

345 (f) A fidelity insurance company, upon approval of the
 346 financial institution's board of directors. However, a fidelity
 347 insurance company may receive only that portion of an
 348 examination report relating to a claim or investigation being

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349 conducted by such fidelity insurance company.

350 (g) Examination, operation, or condition reports of a
 351 financial institution shall be released by the office within 1
 352 year after the appointment of a liquidator, receiver, or
 353 conservator to the financial institution. However, any portion
 354 of such reports which discloses the identities of depositors,
 355 bondholders, members, borrowers, or stockholders, other than
 356 directors, officers, or controlling stockholders of the
 357 institution, shall remain confidential and exempt from s.
 358 119.07(1) and s. 24(a), Art. I of the State Constitution.

359
 360 Any confidential information or records obtained from the office
 361 pursuant to this paragraph shall be maintained as confidential
 362 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 363 Constitution.

364 (5) This section does not prevent or restrict:

365 (a) Publishing reports that are required to be submitted to
 366 the office pursuant to s. 655.045(2) or required by applicable
 367 federal statutes or regulations to be published.

368 (b) Furnishing records or information to any other state,
 369 federal, or foreign agency responsible for the regulation or
 370 supervision of financial institutions.

371 (c) Disclosing or publishing summaries of the condition of
 372 financial institutions and general economic and similar
 373 statistics and data, provided that the identity of a particular
 374 financial institution is not disclosed.

375 (d) Reporting any suspected criminal activity, with
 376 supporting documents and information, to appropriate law
 377 enforcement and prosecutorial agencies.

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378 (e) Furnishing information upon request to the Chief
 379 Financial Officer or the Division of Treasury of the Department
 380 of Financial Services regarding the financial condition of any
 381 financial institution that is, or has applied to be, designated
 382 as a qualified public depository pursuant to chapter 280.

383 (f) Furnishing information to Federal Home Loan Banks
 384 regarding its member institutions pursuant to an information
 385 sharing agreement between the Federal Home Loan Banks and the
 386 office.

387
 388 Any confidential information or records obtained from the office
 389 pursuant to this subsection shall be maintained as confidential
 390 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 391 Constitution.

392 (9) Materials supplied to the office or to employees of any
 393 financial institution by other state or federal governmental
 394 agencies remain the property of the submitting agency or the
 395 corporation, and any document request must be made to the
 396 appropriate agency. Any confidential documents supplied to the
 397 office or to employees of any financial institution by other
 398 state or federal governmental agencies are confidential and
 399 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 400 Constitution. Such information shall be made public only with
 401 the consent of such agency or the corporation.

402 (15) Subsections (1), (2), (5), and (9) are subject to the
 403 Open Government Sunset Review Act in accordance with s. 119.15
 404 and are repealed on October 2, 2022, unless reviewed and saved
 405 from repeal through reenactment by the Legislature.

406 Section 6. The Legislature finds that it is a public

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407 necessity to make confidential and exempt from s. 119.07(1),
 408 Florida Statutes, and s. 24(a), Article I of the State
 409 Constitution records and information relating to an
 410 investigation by the Office of Financial Regulation; portions of
 411 records relating to a completed or inactive investigation by the
 412 office which would jeopardize the integrity of another active
 413 investigation, impair the safety and soundness of the financial
 414 institution, reveal personal financial information, reveal the
 415 identity of a confidential source, defame or cause unwarranted
 416 damage to the good name or reputation of an individual or
 417 jeopardize the safety of an individual, or reveal investigative
 418 techniques or procedures; reports of examinations, operations,
 419 or condition, including working papers, or portions thereof,
 420 prepared by, or for the use of, the office or any state or
 421 federal agency responsible for the regulation or supervision of
 422 financial institutions in this state; any portion of such
 423 reports which discloses the identities of depositors,
 424 bondholders, members, borrowers, or stockholders, other than
 425 directors, officers, or controlling stockholders of the
 426 institution; and materials supplied to the office or to
 427 employees of any financial institution by other state or federal
 428 governmental agencies.

429 (1) The terms "international trust entity" and "limited
 430 service affiliate" referenced in newly created parts III and IV
 431 of chapter 663, Florida Statutes, are added to the definition of
 432 the term "financial institution" in s. 655.005(1)(i), Florida
 433 Statutes, in CS/SB 736. The international trust company
 434 representative offices and limited service affiliates servicing
 435 international trust entities are thus subject to examination by

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436 the Office of Financial Regulation. As a result, the office may
 437 receive sensitive personal and financial information relating to
 438 such entities in conjunction with its duties under chapters 655
 439 and 663, Florida Statutes. An exemption from public records
 440 requirements prevents gaps in the law by providing the same
 441 protections to international trust entities and limited service
 442 affiliates which are afforded to other financial institutions,
 443 thereby preventing any disadvantage to these similarly regulated
 444 entities in comparison to other entities currently defined as
 445 "financial institutions." An exemption from public records
 446 requirements for reports of examinations, operations, or
 447 condition, including working papers, is necessary to ensure the
 448 office's ability to effectively and efficiently administer its
 449 examination and investigation duties. Examination and
 450 investigation are essential components of financial institutions
 451 regulation. They deter fraud and ensure the safety and soundness
 452 of the financial system. Examinations also provide a means of
 453 early detection of violations, allowing for corrective action to
 454 be taken before any harm can be done.

455 (2) The Legislature finds that it is a public necessity
 456 that information and records relating to an examination or
 457 investigation by the office be held confidential and exempt from
 458 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 459 State Constitution. Public disclosure of records and information
 460 relating to an examination or investigation by the office could
 461 expose the subject financial institution to unwarranted damage
 462 to its good name or reputation and impair its safety and
 463 soundness, as well as the safety and soundness of the financial
 464 system in the state. Public disclosure of records and

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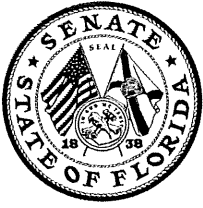
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465 information relating to an investigation by the office which
466 could jeopardize the integrity of another active investigation
467 or reveal investigative techniques or procedures of the office
468 would impair the office's ability to effectively and efficiently
469 administer its duties under ss. 655.032 and 655.045, Florida
470 Statutes. Any portion of a record or information relating to an
471 investigation or examination which reveals personal financial
472 information or the identity of a confidential source may defame,
473 or cause unwarranted damage to the good name or reputation of,
474 those individuals, or jeopardize their safety.

475 Section 7. This act shall take effect on the same date that
476 CS/SB 736 or similar legislation takes effect, if such
477 legislation is adopted in the same legislative session or an
478 extension thereof and becomes a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DEBBIE MAYFIELD
17th District

COMMITTEES:
Education, *Vice Chair*
Appropriations Subcommittee on the Environment
and Natural Resources
Appropriations Subcommittee on General
Government
Banking and Insurance
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee,
Alternating Chair

March 30, 2017

Chairman Jack Latvala
Appropriation Committee
404 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 738

Dear Chairman Latvala,

I am respectfully requesting Senate Bill 738, a bill relating to the Public Records and International Financial Institutions, be placed on the agenda for your committee on Appropriations.

I appreciate your consideration of this bill and I look forward to working with you and the Appropriations committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

A handwritten signature in cursive script, appearing to read "Debbie", written in black ink.

Senator Debbie Mayfield
District 17

Cc: Mike Hansen, Alicia Weiss, Drew Aldikacti, Tracy Caddell, and Rich Reidy, Tim Sadberry, John Shettle, Joe McVaney, Lily Tysinger

REPLY TO:

- 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
- 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/2017
Meeting Date

736/738
Bill Number (if applicable)

Topic INTERNATIONAL FINANCIAL INSTITUTIONS Amendment Barcode (if applicable)

Name SLATER BAYLISS

Job Title _____

Address 204 S. MAROON ST Phone 222 8900
Street

TALLAHASSEE FL 32301 Email _____
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing THE FLORIDA INTERNATIONAL ADMINISTRATORS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No ASSOC.

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)

9.13.17

Meeting Date

738

Bill Number (if applicable)

Topic International banking

Amendment Barcode (if applicable)

Name Courtney Lanin

Job Title Gov. Relations

Address 200 E. Barnes St.

Phone 910.9601

Street

Tallahassee

City

FL

State

32399

Zip

Email Courtney.lanin@flifr.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Office of Financial Regulation

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1078

INTRODUCER: Banking and Insurance Committee and Senator Garcia

SUBJECT: International Financial Institutions

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1078 extends until July 1, 2018, the moratorium on the Office of Financial Regulation's (OFR) enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in international trust company representative office (ITCRO) activities described in section 663.0625, Florida Statutes, if it meets certain conditions. The Legislature imposed the moratorium during the 2016 Legislative Session. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

The bill has an indeterminate impact on state revenues and expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Regulation of the International Financial Services Market

Miami is home to the second-largest banking and finance hub in the United States.¹ Estate, tax, and asset protection planning are important components of the region's financial sector, attracting international financial institutions from Europe, Latin America, and Canada serving individual, family, and business customers.

The OFR regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to protect consumers while preserving the integrity of Florida's markets and financial service industries. To achieve this goal, Florida law provides the OFR with regulatory authority over entities regulated under the Financial Institutions Codes (codes).²

International Banking Corporations

The OFR licenses and regulates international banking corporations³ that transact business in Florida.⁴ International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions chartered and regulated by foreign jurisdictions, except to the extent that those foreign institutions seek to engage in the banking or trust business in Florida. If foreign institutions do so, they must obtain a Florida charter and comply with the provisions of ch. 663, F.S., and the applicable codes.

An international banking corporation may operate through a variety of business models, all of which are subject to licensure by the OFR.⁵ These models include international bank agencies, international representative offices, international trust company representative offices (ITCRO), international administrative offices, and international branches. The definition of "financial institution"⁶ includes an international banking corporation and all of these entities. As of February 2017, there were no ITCROs licensed with the OFR; however, two international administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.⁷ In addition, the OFR qualified

¹ See http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html (Fall 2014) (last viewed March 24, 2017).

² Financial Institutions Codes include chs. 655, F.S., relating to financial institutions generally, 657, F.S., relating to banks and trust companies, 660 relating to trust business, 662 family trust companies, 663 relating to international banking, 665, F.S., relating to associations, and 657, F.S., relating to savings banks.

³ An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities used in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. See s. 663.01(6), F.S.

⁴ Sections 663.04 and 663.05, F.S.

⁵ Section 663.06(1), F.S.

⁶ Section 655.005(i), F.S.

⁷ Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited March 24, 2017).

six entities for the moratorium on the OFR's enforcement of licensing requirements for an international trust entity or related parties pursuant to s. 663.0441, F.S.⁸

If an international banking corporation (IBC) wants to operate an office in Florida, which includes an ITCRO, the IBC is required to meet minimum licensure requirements, and is subject to the examination and enforcement authority of the OFR. The OFR may not issue a license to an international banking corporation unless it:

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;⁹
- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of \$20 million.

Section 663.02, F.S., subjects international banking corporations with offices in Florida to the provisions of ch. 655, F.S., as though such corporations are state banks or trust companies.¹⁰ Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state.

International Bank Agencies and International Branches.

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution. These activities include making and servicing loans, acting as a custodian, furnishing investment advice, conducting foreign exchange activities and trading in securities and commercial paper.¹¹ An international branch has the same rights and privileges as a federally licensed international branch.¹²

⁸ The following entities qualified for the moratorium: JTC Miami Corporation, Citco Corporate Services, Inc., Amicorp Services Ltd., Corpag Services USA, Inc., Integritas Inc., and Cisa Latam LLC. Email correspondence from the Office of Financial Regulation (Feb. 27, 2017) (on file with Senate Committee on Banking and Insurance).

⁹ Section 663.05(8), F.S., requires the OFR to establish general principles to evaluate the adequacy of supervision of an international banking corporation's foreign establishments, and must address at a minimum, the capital adequacy, asset quality, management, earnings, liquidity, internal controls, audits, and foreign exchange operations and positions of the international banking corporation. See Rule 69U-140.003, F.A.C., *Principles of Adequate Supervision of an International Banking Corporation's Foreign Establishment*.

¹⁰ Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities: s. 655.031, F.S., relating to administrative enforcement guidelines; s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access; s. 655.033, F.S., relating to cease and desist orders; s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, F.S., relating to administrative fines and enforcement; and s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31, F.S., for facilitating or furthering terrorism.

¹¹ Section 663.061, F.S.

¹² Section 663.064, F.S.

International Representative Offices and International Administrative Offices.

International representative offices and international administrative offices perform activities that are more limited, such as soliciting business for the IBC, providing information to customers concerning their accounts, receiving applications for services, transmitting documents for customers, and arranging for customers to transact business on their accounts.¹³ In addition to the powers delineated above, an administrative office may administer personnel and operations, engage in data processing and recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.¹⁴

International Trust Company Representative Offices.

An ITCRO is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in the nonfiduciary activities described in s. 663.0625, F.S.¹⁵ An ITCRO may also include any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.¹⁶ An ITCRO is not a bank and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers and answering questions and providing information about matters related to customer accounts;
- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers; and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission (commission).¹⁷

In 2016, the Legislature imposed a moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in ITCRO activities described in s. 663.0625, F.S., if it meets certain conditions. The moratorium expires June 30, 2017, and applies to the ITE, which is the offshore entity and the Florida entity that is providing marketing and customer assistance on behalf of the ITE. An "international trust entity," is defined to mean any international trust company, international business, international business organization, or affiliated or subsidiary entities that are licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws of which it is organized and supervised.

¹³ Section 663.062, F.S.

¹⁴ Section 663.063, F.S.

¹⁵ In 2010, legislation was enacted to establish OFR's oversight responsibilities of "offshore" international non-depository trust companies that wanted to maintain an ITCRO in Florida [ch. 2010-9, Laws of Fla.]. The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities under the OFR. This legislation was in response to the exposure of the \$8 billion dollar Ponzi scheme perpetrated by Allen Stanford. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office in Miami, Florida.

¹⁶ Section 663.01(9), F.S.

¹⁷ Section 663.0625, F.S.

The moratorium on the enforcement of licensing requirements applies to any person who manages or controls or is employed by an organization or entity providing services to an ITE that engages in ITCRO activities that:

- Has been organized to conduct business in Florida before October 1, 2013;
- Has not been fined or sanctioned as a result of any complaint with the OFR or any other state or federal regulatory agency;
- Has not been convicted of a felony or ordered to pay a fine or penalty in any proceeding initiated by any local, state, foreign law enforcement or international agency within 10 years before the effective date of the moratorium;
- Has not had any of its directors, executive directors, principal shareholders, or managers or employees arrested for, charged with, convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any offense that is punishable by imprisonment for one year or more, or to any offense involving money laundering, tax evasion, fraud, or that is otherwise related to the operation of a financial institution within ten years before the effective date of this section;
- Does not provide any services to any ITE that is in bankruptcy, conservatorship, receivership, liquidation, or similar status under the laws of any country;
- Does not provide banking services or promote or sell investments or accept custody of assets;
- Does not act as a fiduciary, including but not limited to, accepting the fiduciary appointment, executing the fiduciary documents that create the fiduciary relationship, make discretionary decisions regarding the investment or distribution of fiduciary accounts; and
- Conducts those activities permissible for an ITCRO, as described in s. 663.0625, F.S.

III. Effect of Proposed Changes:

The bill extends until July 1, 2018, the moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in international trust company representative office (ITCRO) activities described in s. 663.0625, F.S., if it complied with the requirements of s. 631.041(4), F.S., and, before July 1, 2017, provided written notice to the OFR of its intent to continue operations in Florida.

The bill is effective upon becoming 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:

None.

C. Government Sector Impact:

This bill has an indeterminate impact on state revenues and expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 663.01 and 663.041.

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 27, 2017:**

The bill deletes the entirety of the filed bill and instead extends until July 1, 2018, the moratorium on the OFR's enforcement with respect to the licensure of an entity in Florida providing services to an international trust entity (ITE) that engages in international trust company representative office (ITCRO) activities described in s. 663.0625, F.S., if it meets certain conditions.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Garcia

597-02948-17

20171078c1

1 A bill to be entitled
 2 An act relating to international financial
 3 institutions; amending s. 663.01, F.S.; extending the
 4 expiration date of the term "international trust
 5 entity"; amending s. 663.041, F.S.; extending the
 6 expiration date of a moratorium on the Office of
 7 Financial Regulation's enforcement of licensing
 8 requirements for certain organizations or entities
 9 under certain circumstances; repealing s. 3 of chapter
 10 2016-192, Laws of Florida, relating to the repeal of
 11 the definition of the term "international trust
 12 entity" and to the moratorium on the office's
 13 enforcement of certain licensing requirements;
 14 providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Subsection (10) of section 663.01, Florida
 19 Statutes, is amended to read:

20 663.01 Definitions.—As used in this part, the term:

21 (10) "International trust entity" means an international
 22 trust company, an international business, an international
 23 business organization, or an affiliated or subsidiary entity
 24 that is licensed, chartered, or similarly permitted to conduct
 25 trust business in a foreign country or countries under the laws
 26 of which it is organized and supervised. This subsection expires
 27 July 1, 2018.

28 Section 2. Subsections (7) and (8) are added to section
 29 663.041, Florida Statutes, to read:

Page 1 of 2

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

597-02948-17

20171078c1

30 663.041 Moratorium on the office's enforcement of licensing
 31 requirements for an international trust entity or related
 32 entities.—

33 (7) Notwithstanding this section, the moratorium in this
 34 section is extended through June 30, 2018, for an organization
 35 or entity that:

36 (a) Complied with the requirements of subsection (3) and
 37 subsequently qualified for the moratorium under this section;
 38 and

39 (b) Before July 1, 2017, provides the office a written
 40 notice of its intent to continue operations in this state.

41 (8) This section expires July 1, 2018.

42 Section 3. Section 3 of chapter 2016-192, Laws of Florida,
 43 is repealed.

44 Section 4. 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
State Senator René García
36th District

Please reply to:

□ **District Office:**

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

March 28th, 2017

The Honorable Jack Latvala
Chairman, Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latvala,

Please have this letter serve as my formal request to have **SB 1078: International Financial Institutions** be heard during the next scheduled Appropriations Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 36

CC: Mike Hansen
Alicia Weiss

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1124

INTRODUCER: Appropriations Committee; Health Policy Committee; and Senator Book

SUBJECT: Newborn Screenings

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1124 amends section 383.14, Florida Statutes, to require the Department of Health (DOH) to adopt rules requiring every newborn in the state, at the appropriate age, to be tested for any condition included in the federal Recommended Uniform Screening Panel (RUSP) that the Genetics and Newborn Screening Advisory Council (GNSAC) advises should be included in the Newborn Screening Program's (NSP) panel of hereditary and congenital disorders.

The DOH is required to adopt the rules to include any condition the GNSAC recommends within 18 months if a test that has been approved by the United States Food and Drug Administration (FDA), or suitable alternative that meets state guidelines, is available. If such a test is not available within 18 months, the DOH shall implement the screening as soon as such a test becomes available.

The bill also requires the DOH to adopt rules requiring the GNSAC to consider the addition of a condition in the NSP panel within one year after a condition is added to the federal RUSP. After the GNSAC recommends a condition be included, the DOH must submit a legislative budget request to seek an appropriation to add testing of the condition to the NSP panel.

The bill has no impact on state revenues or expenditures.

The effective date of the bill is July 1, 2017.

II. Present Situation:

According to the Association of Maternal and Child Health Programs, nearly all infants born in the United States are screened by state newborn screening programs.¹ From these screening programs, approximately 12,500 newborns are diagnosed annually with detectable, treatable disorders.²

Advisory Committee on Heritable Disorders in Children and Newborns

At the federal level, the Secretary of the Department of Health and Human Services' Committee on Heritable Disorders in Children and Newborns (SACHDNC) is tasked with providing the Secretary with recommendations, advice, and technical information on the most appropriate use of technologies, policies, guidelines, and standards that meet two objectives:

- Effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders; and
- Enhancing the ability of state and local health agencies to provide newborn and child screening, counseling, and health care services for newborns and children having, or at risk for, heritable disorders.³

The SACHDNC was re-established in federal law in 2014⁴ and the committee was chartered on May 7, 2015.⁵ The committee is authorized to operate through the end of the 2019 fiscal year.⁶ Up to 15 individuals may serve as an organizational representative on the committee. These organizations represent broad health care interests in public health, primary care, specialty care, consumer and family organizations, and professional societies.⁷ The committee must meet at least four times per year.⁸

The SACHDNC's Nomination and Prioritization Workgroup reviews nominated conditions to decide if sufficient evidence is available for an external evidence review by the Condition Review Workgroup (CRW). The CRW performs an independent, evidence-based review of the

¹ Kate Taft, Association of Maternal and Child Health Programs, *National Newborn Screening Contingency Plan Update* (Presentation to Advisory Committee on Heritable Disorders in Newborns and Children Meeting, Feb. 9, 2017), <https://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/meetings/2017/0209/newbornscreeningconplan.PDF> (last visited Mar. 21, 2017).

² Association of Maternal and Child Health Programs, *Issue Brief: State Newborn Screening and Birth Defects Program Roles in Screening for Critical Congenital Heart Defects (CCHD)* (October 2013), pg. 2, http://www.amchp.org/programsandtopics/CHILD-HEALTH/projects/newborn-screening/Documents/AMCHP_Screening_for_CCHD_Issue_Brief_FINAL-Oct2013.pdf#search=newborn%20screening%20programs%20detectable%20diseases, (last visited Mar. 22, 2017).

³ Secretary's Advisory Committee on Heritable Disorders in Newborns and Children, *2013 Annual Report*, <https://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/reportsrecommendations/reports/heritdisordersnewbornschildrenannualrpt13.pdf> (last visited Mar. 21, 2017).

⁴ Public Health Service Act, Title XI, s. 1111 (42 U.S.C. 300b-10), as amended by P.L. 113-240.

⁵ Advisory Committee on Heritable Disorders in Newborns and Children, <https://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/index.html>, (last visited Mar. 21, 2017).

⁶ Advisory Committee on Heritable Disorders in Newborns and Children, *Charter*, <https://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/about/charterdachdnc.pdf>, (last visited Mar. 21, 2017).

⁷ Advisory Committee on Heritable Disorders in Newborns and Children, *About the Committee*, <https://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/about/index.html>, (last visited Mar. 21, 2017).

⁸ *Supra* note 6.

condition if received to determine the suitability and potential net benefit of screening for the condition.⁹ The review process includes a review of the results of controlled trials, observational studies, case studies, expert opinions, focus groups, cost-effectiveness analysis, policy analysis, and an ethical analysis.

After the CRW completes its review, the SACHDNC votes to recommend the addition of a condition to the recommended uniform screening panel (RUSP) to the Secretary. The Secretary makes the final decision to add a condition to the RUSP.¹⁰ States make their own determination as to which conditions they will add to their own screening programs.

Currently, the RUSP recommends screening for 32 core disorders and 26 secondary disorders.¹¹ The most recently added disorder to the RUSP was in February 2016, when the Secretary approved the committee's recommendation to add X-Linked Adrenoleukodystrophy (X-ALD).¹²

Florida Newborn Screening Program

Florida has had a newborn screening program since 1965¹³ and currently screens for 31 core disorders and 22 secondary disorders unless a parent objects in writing. Of these disorders, 50 are included on the federal RUSP.¹⁴ In Florida, the state's Genetics and Newborn Screening and Advisory Council (GNSAC) advises the DOH on which disorders to include in Florida's NSP panel.

Before leaving the hospital, a few drops of blood are taken from a baby's heel, and the baby's ears are tested for hearing. Results are sent back to the hospital and forwarded to the baby's doctor, or the doctor can retrieve the results from a provider portal.¹⁵ Children's Medical Services within the DOH will contact parents for additional testing when there is an abnormal test result.¹⁶

Newborn screenings are funded by billing Medicaid and private insurance for the screening tests and a \$15 fee paid by birthing facilities.¹⁷ Families without insurance or Medicaid coverage are not billed.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Advisory Committee on Heritable Disorders in Newborns and Children, *Recommended Uniform Screening Panel*, <https://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendedpanel/uniformscreeningpanel.pdf> (last visited Mar. 21, 2017).

¹² Letter from Sylvia M. Burwell, Secretary, Health and Human Services, to Joseph A. Bocchini, Jr., M.D., Committee Chairperson, Advisory Committee on Heritable Disorders in Newborns and Children (February 16, 2016), <https://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendations/secretary-final-response-x-ald.pdf>, (last visited Mar. 21, 2017).

¹³ Rick Scott, Proclamation, *Florida's 50th Anniversary of Newborn Screening*, (June 25, 2015) (on file with the Senate Committee on Health Policy).

¹⁴ Department of Health, *Senate Bill 1124 Analysis* (Apr. 3, 2017) (on file with the Senate Committee on Health Policy).

¹⁵ Department of Health, *Newborn Screening* <http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/index.html> (last visited Mar. 21, 2017).

¹⁶ *Id.*

¹⁷ Department of Health, *Bureau of Public Health Laboratories Newborn Screening*, <http://www.floridahealth.gov/programs-and-services/childrens-health/newborn-screening/BPHL/index.html> (last visited Mar. 21, 2017).

The 15-member GNSAC is established within the DOH.¹⁸ The council includes consumer members, pediatricians, medical school representatives, the State Surgeon General, a Florida Hospital Association representative, an individual with experience in newborn screening programs, an individual who represents audiologists, and a representative from the Agency for Persons with Disabilities. The council is directed to meet at least twice per year.

The GNSAC is given three purposes under the statute. The council is to advise the DOH about:

- Conditions for which testing should be included under the screening program and the genetics program;
- Procedures for collecting and transmitting specimens and recording results; and
- Methods to more effectively evaluate, coordinate, and consolidate screening programs and genetics services for children.¹⁹

When the SACHDNC makes a recommendation and adds a disorder to the RUSP, the GNSAC carefully reviews the recommendation to ensure:

- The disorder is known to result in significant impairment in health, intellect, or functional ability if not treated before clinical signs appear;
- The disorder can be detected using screening methods which are accepted by current medical practice;
- The disorder can be detected prior to the infant becoming 2 weeks of age, or at the appropriate age as indicated by accepted medical practice;
- After screening for the disorder, reasonable cost benefits can be anticipated through a comparison of tangible program costs with those medical, institutional, and special educational costs likely to be incurred by an undetected population; and
- When screening for a disorder, sufficient pediatric medical infrastructure is available to provide continued services for patients' diagnostic services and medical maintenance.²⁰

Historically, it has taken the DOH a minimum of one and a half years to implement a new disorder to the screening panel.²¹ The most recently added disorders, Severe Combined Immunodeficiency and Critical Congenital Heart Defect, took 1 year and 10 months and 2 years and 6 months, respectively, to be included in testing in Florida.²² Currently, there are three disorders on the RUSP that are not currently screened in Florida: X-ALD, Pompe, and Muccopolysaccharioidosis Type I.²³

When the GNSAC recommends adding a new disorder to Florida's NSP panel, the DOH's newborn screening laboratory prepares a fiscal impact analysis and requests a specific legislative appropriation if funding is needed. When all of the criteria are met, the condition is added to the screening program.

¹⁸ Section 383.14, F.S.

¹⁹ Section 383.14(5), F.S.

²⁰ *Supra* note 14.

²¹ *Supra* note 14.

²² *Supra* note 14.

²³ *Supra* note 14.

X-ALD was recommended for inclusion in Florida's NSP panel by the GNSAC on February 19, 2016. Funding to implement screening has been requested through a Legislative Budget Request for Fiscal Year 2017-2018, and statewide screening will commence once a test kit is approved by the FDA that incorporates X-ALD. The test kit has been submitted to the FDA, and the approval is anticipated to be received in early 2018.²⁴

III. Effect of Proposed Changes:

The bill amends s. 383.14, F.S., to require the DOH to adopt rules requiring every newborn in the state, at the appropriate age, to be tested for any condition included in the federal RUSP that the GNSAC advises should be included in Florida's NSP panel.

The DOH is required to adopt the rules to include any condition the GNSAC recommends within 18 months if an FDA-approved test, or suitable alternative that meets state guidelines, is available. If such a test is not available within 18 months, the DOH shall implement the proposed screening as soon as a test offered by the FDA or alternative vendor becomes available.

The DOH is also required to adopt rules requiring the GNSAC to consider addition of a condition in the NSP panel within one year after a condition is added to the federal RUSP. After the GNSAC recommends a condition be included, the DOH must submit a legislative budget request to seek an appropriation to add testing of the condition to the NSP panel.

The effective date of the bill is July 1, 2017.

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.

²⁴ Department of Health, *Senate Bill 1124 Analysis* (Apr. 3, 2017) (on file with the Senate Committee on Health Policy).

B. Private Sector Impact:

Private health care providers, insurance carriers, and facilities may experience a negative fiscal impact depending on which conditions are added to the NSP panel that may need follow-ups with either additional testing or referrals for specialty care.

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures.

The DOH is required – after receiving a recommendation from the GNSAC to add a new condition to the NSP panel – to submit a legislative budget request to seek an appropriation to add testing of the condition to the NSP panel.

The type or amount of conditions that will be added in the future by the RUSP and recommended by the GNSAC is unknown; however, for the X-ALD condition recently approved by the Secretary of Health and Human Services but awaiting implementation in Florida, the DOH estimates the additional costs to be \$1,331,492 annually.²⁵ SB 2500, the Senate General Appropriations Act for Fiscal Year 2017-2018, includes an appropriation for this purpose. These costs will be funded from amounts appropriated for the Newborn Screening Program within the DOH's Division of Children's Medical Services.

The Public Health Laboratory in Jacksonville has estimated increased costs of \$850,000 to \$3,000,000 per disorder that is added to the panel. The cost range is based on:

- Whether the testing kit has been approved by the FDA;
- Whether the test can be run on an existing test's platform;
- Whether additional instrumentation will be required to perform the test; and
- The additional workload required to implement testing of the new condition. The exact amount is unknown and dependent upon the additional labor required to perform the tests and analyze, interpret, record, review, and report the results.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:**Implementation**

The DOH has indicated that for the last two conditions added to the newborn screening panel, the earliest the DOH has been able to implement a new test has been 22 months. The bill does not address what happens if the DOH is unable to meet the implementation deadline of 18 months.

²⁵ *Supra* note 14, at 5.

²⁶ *Supra* note 14, at 5.

VIII. Statutes Affected:

This bill substantially amends section 383.14 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 Appropriations Committee on April 13, 2017:

After the GNSAC recommends a condition be included, the DOH must submit a legislative budget request to seek an appropriation to add testing of the condition to the NSP panel.

CS by Health Policy on March 27, 2017:

The DOH is required to expand statewide screening for any condition within 18 months (rather than one year) after the council renders its advice to the DOH for additions to the screening panel, if a test approved by the United States Food and Drug Administration (FDA) or a compatible alternative test that meets state guidelines is available. If such a test is not available within 18 months of the council's recommendation, the DOH shall implement the new screening as soon as a test approved by the FDA or an alternative vendor is available.

B. Amendments:

None.



642038

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Book) recommended the following:

Senate Amendment (with title amendment)

Delete line 28
and insert:
program. After the council recommends that a condition be included, the department shall submit a legislative budget request to seek an appropriation to add testing of the condition to the newborn screening program. The department shall expand statewide screening of

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642038

11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 Delete line 11

14 and insert:

15 to the federal panel; requiring the department to
16 submit a legislative budget request to fund additional
17 testing; providing an effective date.

By the Committee on Health Policy; and Senator Book

588-02956-17

20171124c1

1 A bill to be entitled
 2 An act relating to newborn screenings; amending s.
 3 383.14, F.S.; requiring the Department of Health, upon
 4 the advice of the Genetics and Newborn Screening
 5 Advisory Council, to expand within a specified period
 6 the statewide screening of newborns to include any
 7 condition on the federal Recommended Uniform Screening
 8 Panel; requiring the council to determine whether a
 9 condition should be included in the state's screening
 10 program within a specified period after its addition
 11 to the federal panel; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Subsection (2) and paragraph (a) of subsection
 16 (5) of section 383.14, Florida Statutes, are amended to read:
 17 383.14 Screening for metabolic disorders, other hereditary
 18 and congenital disorders, and environmental risk factors.—
 19 (2) RULES.—
 20 (a) After consultation with the Genetics and Newborn
 21 Screening Advisory Council, the department shall adopt and
 22 enforce rules requiring that every newborn in this state shall:
 23 1. Before, prior to becoming 1 week of age, be subjected to
 24 a test for phenylketonuria;
 25 2. Be tested for any condition included on the federal
 26 Recommended Uniform Screening Panel which the council advises
 27 the department should be included under the state's screening
 28 program. The department shall expand statewide screening of
 29 newborns to include screening for such conditions within 18

Page 1 of 3

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

588-02956-17

20171124c1

30 months after the council renders such advice, if a test approved
 31 by the United States Food and Drug Administration or a test
 32 offered by an alternative vendor which is compatible with the
 33 clinical standards established under part I of chapter 483 is
 34 available. If such a test is not available within 18 months
 35 after the council makes its recommendation, the department shall
 36 implement such screening as soon as a test offered by the United
 37 States Food and Drug Administration or by an alternative vendor
 38 is available; and
 39 3. and, At the appropriate age, be tested for such other
 40 metabolic diseases and hereditary or congenital disorders as the
 41 department may deem necessary from time to time.
 42 (b) After consultation with the Office of Early Learning,
 43 the department shall ~~also~~ adopt and enforce rules requiring
 44 every newborn in this state to be screened for environmental
 45 risk factors that place children and their families at risk for
 46 increased morbidity, mortality, and other negative outcomes.
 47 (c) The department shall adopt such additional rules as are
 48 found necessary for the administration of this section and s.
 49 383.145, including rules providing definitions of terms, rules
 50 relating to the methods used and time or times for testing as
 51 accepted medical practice indicates, rules relating to charging
 52 and collecting fees for the administration of the newborn
 53 screening program authorized by this section, rules for
 54 processing requests and releasing test and screening results,
 55 and rules requiring mandatory reporting of the results of tests
 56 and screenings for these conditions to the department.
 57 (5) ADVISORY COUNCIL.—There is established a Genetics and
 58 Newborn Screening Advisory Council made up of 15 members

Page 2 of 3

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

588-02956-17

20171124c1

59 appointed by the State Surgeon General. The council shall be
60 composed of two consumer members, three practicing
61 pediatricians, at least one of whom must be a pediatric
62 hematologist, one representative from each of the four medical
63 schools in the state, the State Surgeon General or his or her
64 designee, one representative from the Department of Health
65 representing Children's Medical Services, one representative
66 from the Florida Hospital Association, one individual with
67 experience in newborn screening programs, one individual
68 representing audiologists, and one representative from the
69 Agency for Persons with Disabilities. All appointments shall be
70 for a term of 4 years. The chairperson of the council shall be
71 elected from the membership of the council and shall serve for a
72 period of 2 years. The council shall meet at least semiannually
73 or upon the call of the chairperson. The council may establish
74 ad hoc or temporary technical advisory groups to assist the
75 council with specific topics which come before the council.
76 Council members shall serve without pay. Pursuant to the
77 provisions of s. 112.061, the council members are entitled to be
78 reimbursed for per diem and travel expenses. It is the purpose
79 of the council to advise the department about:

80 (a) Conditions for which testing should be included under
81 the screening program and the genetics program. Within 1 year
82 after a condition is added to the federal Recommended Uniform
83 Screening Panel, the council shall consider whether the
84 condition should be included under the state's screening
85 program.

86 Section 2. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environmental Preservation and
Conservation, *Chair*
Appropriations Subcommittee on the Environment
and Natural Resources, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and
Human Services
Health Policy
Rules

SENATOR LAUREN FRANCES BOOK

Democratic Leader Pro Tempore
32nd District

March 29, 2017

The Honorable Jack Latvala
Chair, Appropriations Committee

Via Email

Dear Chairman Latvala:

Senate Bill 1124, Newborn Screening, has passed out of the Health Policy Committee.
It was re-referenced to Appropriations today.

This is a very important bill for me, and I would really appreciate it if you would
agenda it at the next opportunity.

Thank you for your consideration.

Sincerely,

Lauren Book
Senator, District 32

Cc: Mr. Mike Hansen, Staff Director; Ms. Alicia Weiss, Committee Administrative Assistant

REPLY TO:

☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/2017

Meeting Date

1124

Bill Number (if applicable)

Topic NEWBORN SCREENING

Amendment Barcode (if applicable)

Name George Fox

Job Title President

Address 737 NW 134th way

Phone 352-328-6571

Street

Newberry, FL 32669

Email gfox1@bellsouth.net

City

State

Zip

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Phoenix Fox Foundation

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.

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)

4/13/17
Meeting Date

1124
Bill Number (if applicable)

Topic Newborn Screening

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title _____

Address 104 W. Jefferson Street
Street

Phone (850) 224-3427

Tallahassee, FL 32301
City State Zip

Email kelly@r/bodkpa.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing EveryLife Foundation for Rare Diseases

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.

9:30 am
412 K

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/17

Meeting Date

1124

Bill Number (if applicable)

Topic Newborn Screenings

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr.
Street

Phone 878-7364

City

State

Zip

Email winnsr@earthlink.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Osteopathic Medical 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-13-17

Meeting Date

1124

Bill Number (if applicable)

Topic Newborn Screenings

Amendment Barcode (if applicable)

Name Rob Johnson

Job Title _____

Address 110 E. Jefferson St.

Phone 850-491-1430

Street

Tallahassee FL 32301

Email Rob@themayernickgroup.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing March of Dimes

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1146

INTRODUCER: Appropriations Committee; Communications, Energy, and Public Utilities Committee;
and Senators Broxson and Mayfield

SUBJECT: Representation by the Public Counsel

DATE: April 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Fav/CS
2.	Sanders	Hansen	AP	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1146 requires the Office of Public Counsel (OPC) to provide legal representation for ratepayers living outside the jurisdictional boundary of a local government that provides water and wastewater service to those ratepayers in proceedings of municipal and other local government utilities in which water and wastewater rates are determined.

The bill appropriates \$1,229,130 in recurring funds from the General Revenue Fund to cover the costs of nine full-time equivalent positions, contractual services, and expenses, including travel, to implement this act.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Section 350.0611, F.S., requires the OPC to provide legal representation for the people of the state in proceedings before the commission and in certain proceedings before counties.¹ The OPC has specific powers, including, but not limited to, the following:

- To recommend to the commission or the counties, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or

¹ Section 367.171(8), F.S.

action before the commission or the counties and urge therein any position which the OPC deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the commission or the counties, and utilize therein all forms of discovery available to attorneys in civil actions generally, subject to protective orders of the commission or the counties which shall be reviewable by summary procedure in the circuit courts of this state;

- To have access to and use of all files, records, and data of the commission or the counties available to any other attorney representing parties in a proceeding before the commission or the counties;
- In any proceeding in which the OPC has participated as a party, to seek review of any determination, finding, or order of the commission or the counties, or of any hearing examiner designated by the commission or the counties, in the name of the state or its citizens;
- To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make such recommendations as he or she deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions; and
- To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission, in the name of the state or its citizens.

Section 367.171(8), F.S., authorizes a county to regulate the rates of water and wastewater utilities in its jurisdiction that are subject to regulation. The county or its agency must follow the same procedures as the commission. These are the county proceedings in which the OPC may represent the people of the state.

Municipalities may operate water and wastewater utilities to serve their residents and may also serve residents immediately outside their jurisdictional boundaries. A municipality operating a water or sewer utility outside of its jurisdictional boundaries must charge consumers outside the boundaries rates, fees, and charges determined in one of the following manners:

- The municipal utility may charge the same rates, fees, and charges as consumers inside the municipal boundaries and, additionally, may add a surcharge of not more than 25 percent of such rates, fees, and charges to consumers outside the boundaries. Fixing of such rates, fees, and charges in this manner does not require a public hearing unless a hearing is provided for service to consumers inside the municipality.
- The municipal utility may charge rates, fees, and charges that are just and equitable and which are based on the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries. In addition, the municipality may add a surcharge not to exceed 25 percent of such rates, fees, and charges for those services to consumers outside the boundaries. However, the total of all such rates, fees, and charges for the services to consumers outside the boundaries may not be more than 50 percent in excess of the total amount the municipality charges consumers served within the municipality for corresponding service. Such rates, fees, and charges may not be fixed until after a public hearing at which all of the users of the water or sewer systems; owners, tenants, or occupants of property served or to be served; and all others interested have an opportunity to be heard concerning the proposed rates, fees, and charges. Any change or revision of the rates, fees, or charges

may be made in the same manner as such rates, fees, or charges were originally established, but if such change or revision is to be made substantially pro rata as to all classes of service, both inside and outside the municipality, a hearing or notice is not required.

The procedures apply to municipally owned water and wastewater utilities within the confines of a single county and may apply, pursuant to interlocal agreement, to municipally owned water and wastewater utilities beyond the confines of a single county.²

III. Effect of Proposed Changes:

The bill amends s. 350.0611, F.S., to require the OPC to provide legal representation for ratepayers living outside the jurisdictional boundary of a local government that provides water and wastewater utility service to those ratepayers in proceedings of municipal and other local government utilities in which water and wastewater rates are determined.

The bill has an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of Article VII, s. 18, of the Florida Constitution, do not appear to apply.

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:

Some ratepayers may have lower utility rates resulting from the OPC's representation before local governments that operate water and wastewater utilities.

C. Government Sector Impact:

The bill requires the OPC to represent the ratepayers living outside a municipality's jurisdictional boundaries in proceedings before local governments. An estimated 200 municipally owned water and wastewater utilities provide service to customers outside of

² Section 180.191, F.S.

its jurisdictional boundaries. Generally, utility rates are discussed and determined during workshops on a city's budget during the summer months and finalized at a local government council or commission meeting in the fall before the October 31 end of fiscal year. Although not every council or commission meets every year on this issue, significant travel is anticipated.

Currently, the OPC is comprised of 15 positions, of which six are attorneys.³ Outside legal counsel may be required where conflicts arise within a residential rate class.

The bill appropriates \$1,229,130 in recurring funds from the General Revenue Fund to cover the costs of nine full-time equivalent positions, contractual services and expenses, including travel, necessary to implement this act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Municipal electric utilities do not have formal proceedings in which rates are set other than when a local government council or commission or the governing authority meets to approve such rates. Therefore, the OPC does not have a clear point of entry at which to raise concerns. Moreover, it is unclear in what forum the OPC would challenge or appeal a rate or decision.

VIII. Statutes Affected:

This bill substantially amends section 350.0611 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 Appropriations on April 13, 2017:

The Committee Substitute provides an appropriation of \$1,229,130 in recurring funds from the General Revenue Fund and nine full-time equivalent positions to the Office of Public Counsel for the implementation of this act.

CS by Communications, Energy, and Public Utilities on March 28, 2017:

The Committee Substitute removes the requirement that the Public Counsel represent residential ratepayers in rate structure proceedings before the Public Service Commission. The bill authorizes the Public Counsel to represent water and wastewater customers who live outside the jurisdictional boundaries in rate proceedings of a municipal water and wastewater utility. The requirement that the Public Counsel represent municipal and cooperative electric utility customers in ratemaking proceedings is removed.

³ The Office of Public Counsel, *Frequently Asked Questions*, www.floridaopc.gov, <http://www.floridaopc.gov/Pages/FAQs.aspx> (last visited April 7, 2017).

B. Amendments:

None.

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



547244

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Broxson) recommended the following:

Senate Amendment (with title amendment)

Between lines 59 and 60
insert:

Section 2. Effective July 1, 2017, the sum of \$1,229,130 in recurring funds from the General Revenue Fund is appropriated to the Office of Public Counsel, and nine full-time equivalent positions are authorized, for the purpose of implementing this act.



547244

11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 Between lines 9 and 10

14 insert:

15 providing an appropriation and authorizing positions;

By the Committee on Communications, Energy, and Public Utilities; and Senator Broxson

579-02999-17

20171146c1

1 A bill to be entitled
 2 An act relating to representation by the Public
 3 Counsel; amending s. 350.0611, F.S.; authorizing the
 4 Public Counsel to provide representation in
 5 proceedings of municipal and other government water
 6 and wastewater utilities; authorizing the Public
 7 Counsel to represent customers living outside the
 8 jurisdictional boundaries of a local government water
 9 and wastewater utility in ratesetting proceedings;
 10 providing an effective date.

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

13
 14 Section 1. Section 350.0611, Florida Statutes, is amended
 15 to read:
 16 350.0611 Public Counsel; duties and powers.—It shall be the duty
 17 of the Public Counsel to provide legal representation for the
 18 people of the state in proceedings before the commission, ~~and~~ in
 19 proceedings before counties pursuant to s. 367.171(8), and in
 20 proceedings of municipal and other local government water and
 21 wastewater utilities. The Public Counsel shall have such powers
 22 as are necessary to carry out the duties of his or her office,
 23 including, but not limited to, the following specific powers:
 24 (1) (a) To recommend to the commission or the counties, by
 25 petition, the commencement of any proceeding or action or to
 26 appear, in the name of the state or its citizens, in any
 27 proceeding or action before the commission or the counties and
 28 urge therein any position which he or she deems to be in the
 29 public interest, whether consistent or inconsistent with

Page 1 of 3

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

579-02999-17

20171146c1

30 positions previously adopted by the commission or the counties,
 31 and utilize therein all forms of discovery available to
 32 attorneys in civil actions generally, subject to protective
 33 orders of the commission or the counties which shall be
 34 reviewable by summary procedure in the circuit courts of this
 35 state; and

36 (b) To represent ratepayers living outside the
 37 jurisdictional boundary of a local government that provides a
 38 water and wastewater utility service to those ratepayers in a
 39 proceeding in which rates for the local government water and
 40 wastewater utility services are determined;

41 (2) To have access to and use of all files, records, and
 42 data of the commission or the counties available to any other
 43 attorney representing parties in a proceeding before the
 44 commission or the counties;

45 (3) In any proceeding in which he or she has participated
 46 as a party, to seek review of any determination, finding, or
 47 order of the commission or the counties, or of any hearing
 48 examiner designated by the commission or the counties, in the
 49 name of the state or its citizens;

50 (4) To prepare and issue reports, recommendations, and
 51 proposed orders to the commission, the Governor, and the
 52 Legislature on any matter or subject within the jurisdiction of
 53 the commission, and to make such recommendations as he or she
 54 deems appropriate for legislation relative to commission
 55 procedures, rules, jurisdiction, personnel, and functions; and

56 (5) To appear before other state agencies, federal
 57 agencies, and state and federal courts in connection with
 58 matters under the jurisdiction of the commission, in the name of

Page 2 of 3

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

579-02999-17

20171146c1

59 the state or its citizens.

60 Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/17
Meeting Date

1146
Bill Number (if applicable)

Topic Public Counsel

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Asst General Counsel

Address PO Box 1757

Phone 850 227 9684

Tallah FL 32302
City State Zip

Email rohara@flcities.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla League of Cities

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1156

INTRODUCER: Appropriations Committee and Senator Stargel

SUBJECT: Corporate Income Tax

DATE: April 14, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	Recommend: Favorable
2.	<u>Babin</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1156:

- Updates Florida's corporate Income Tax Code by adopting the Internal Revenue Code in effect on January 1, 2017.
- Increases the filing extension period for certain corporate income taxpayers from 5 months to 6 months.
- Requires that payments of estimated tax for corporate income tax that are due on the last Saturday or Sunday of June be paid by the last Friday of June.

The bill takes effect upon becoming law.

The Revenue Estimating Conference has estimated that the provisions of the bill that require estimated payments to be paid in June will increase Fiscal Year 2017-2018 General Revenue Fund collections by \$83.9 million; increase Fiscal Year 2018-2019 General Revenue Fund collections by \$0.6 million; and decrease Fiscal Year 2019-2020 General Revenue Fund collections by \$84.5 million. The remaining provisions of the bill have an indeterminate impact on General Revenue Fund collections.

II. Present Situation:

The present situation of each issue is discussed in Section III., Effect of Proposed Changes.

III. Effect of Proposed Changes:

Adopting the 2017 Internal Revenue Code

Present situation

Florida imposes a 5.5 percent tax on the taxable income of corporations and financial institutions doing business in Florida.¹ The determination of taxable income for Florida tax purposes begins with the taxable income determined for federal income tax purposes.² Additional adjustments are then made to determine Florida's taxable income. By starting with federal taxable income, Florida eases the administrative burden on Florida taxpayers.

Florida maintains this relationship with the federal Internal Revenue Code by each year adopting the federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income.

Proposed change

The bill updates Florida's corporate Income Tax Code to reflect changes in the federal Internal Revenue Code.

This section applies retroactively to January 1, 2017.

Extension of Time to File a Corporate Income Tax Return

Present situation

A corporate income taxpayer is required to file a Florida income tax return in every year that it is liable for Florida corporate income tax or is required to file a federal income tax return.³ Returns are due on or before the 1st day of the 5th month following the close of the taxable year.⁴ Typically, corporate taxpayers may receive a 6-month extension of the time to file a return for both federal and Florida returns.⁵

In 2015, the federal government passed the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015.⁶ This federal legislation moved the filing dates for most federal corporate income taxpayers to one month later, and, for taxable years beginning on or between January 1, 2016, and January 1, 2026, it limited the normal 6-month extension period to 5 months for calendar year taxpayers. The 2016 Legislature made identical changes to the relevant provisions of Florida law.⁷

¹ Sections 220.11(2) and 220.63(2), F.S.

² *See generally* s. 220.13(2), F.S.

³ Section 220.22, F.S.

⁴ Section 220.222, F.S.

⁵ *See* 26 U.S.C. s. 6081(b); s. 220.222(2)(b), F.S.

⁶ Pub. Law No. 114-41, H.R. 3236, 114th Cong. (July 31, 2015).

⁷ Section 16, ch. 2016-220, Laws of Fla.

In February 2017, the Internal Revenue Service (IRS) announced that although federal law provides for a 5-month extension for certain corporate taxpayers, the IRS will continue to grant a 6-month extension to these taxpayers.⁸

Proposed change

The bill extends from 5 months to 6 months, the extension time for calendar year corporate taxpayers to file their Florida returns for taxable years beginning on or after January 1, 2016, and before January 1, 2026.

This section applies retroactively to taxable years beginning on or after January 1, 2016.

“Speed Up” of Estimated Corporate Income Tax Payments

Present situation

Florida requires each corporate income taxpayer to declare its estimated tax for the taxable year, if the amount payable as estimated tax can be expected to be more than \$2,500.⁹ Taxpayers must pay estimated taxes in equal installments, depending on when they are required to file their declarations of estimated taxes.¹⁰ For the majority of taxpayers, the second estimated payment is due by June 30.¹¹ Generally, if the day on which a payment is due falls on a Saturday, Sunday, or legal holiday, payments may be made on the next succeeding business day.¹² When June 30 is a Saturday or Sunday, payments made on the following Monday fall into the next state fiscal year.

Proposed change

The bill provides that, notwithstanding any administrative rule or determination of the Department of Revenue to the contrary, an estimated payment that would otherwise be due on the last Saturday or Sunday of June must be paid by the last Friday of June.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁸ IRS Article, dated February 8, 2017, available at: <https://www.irs.gov/uac/rda-2017-02-08-2016-form-7004> (last visited April 12, 2017).

⁹ Section 220.24(1), F.S.

¹⁰ Section 220.33, F.S.

¹¹ Section 220.33(1), F.S.

¹² See, e.g., Rule 12C-1.0222(1)(a), Fla. Admin. Code (relating to filing of corporate income tax returns).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has estimated that the provisions of the bill that require estimated payments to be paid in June will increase Fiscal Year 2017-2018 General Revenue Fund collections by \$83.9 million; increase Fiscal Year 2018-2019 General Revenue Fund collections by \$0.6 million; and decrease Fiscal Year 2019-2020 General Revenue Fund collections by \$84.5 million. The remaining provisions of the bill will have an indeterminate impact on General Revenue Fund collections.

B. Private Sector Impact:

By adopting recent changes to the Internal Revenue Code, Florida provides consistent tax treatment for Florida corporate taxpayers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 220.03, 220.222, and 220.33.

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 Appropriations on April 13, 2017:

The committee substitute:

- Changes the extension time for certain corporate income taxpayers to file returns from 5 months to 6 months.
- Requires that payments of estimated tax for corporate income tax that are due on the last Saturday or Sunday of June be paid by the last Friday of June.

B. Amendments:

None.

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



941158

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete lines 30 - 31

and insert:

Section 2. The amendments made by this act to s. 220.03, Florida Statutes, apply retroactively to January 1, 2017.

Section 3. Paragraph (d) of subsection (2) of section 220.222, Florida Statutes, is amended to read:

220.222 Returns; time and place for filing.-

(2)



941158

11 (d) For taxable years beginning before January 1, 2026, the
12 6-month time period in paragraphs (a) and (b) shall be 7 months
13 for taxpayers with a taxable year ending June 30 ~~and shall be 5~~
14 ~~months for taxpayers with a taxable year ending December 31.~~

15 Section 4. The amendment made by this act to s. 220.222,
16 Florida Statutes, applies retroactively to taxable years
17 beginning on or after January 1, 2016.

18 Section 5. Present subsection (7) of section 220.33,
19 Florida Statutes, is redesignated as subsection (8), and a new
20 subsection (7) is added to that section, to read:

21 220.33 Payments of estimated tax.—A taxpayer required to
22 file a declaration of estimated tax pursuant to s. 220.24 shall
23 pay such estimated tax as follows:

24 (7) Notwithstanding any administrative rule or
25 determination of the department which allows estimated payments
26 otherwise due on a Saturday, Sunday, or legal holiday to be paid
27 on the next succeeding day that is not a Saturday, Sunday, or
28 legal holiday, any estimated tax payment required under this
29 section which would otherwise be due on the last Saturday or
30 Sunday of June shall be paid on or before the last Friday of
31 June.

32 Section 6. This act shall take effect upon becoming a law.

33
34 ===== T I T L E A M E N D M E N T =====

35 And the title is amended as follows:

36 Delete line 5

37 and insert:

38 applicability; amending s. 220.222, F.S.; extending
39 the extension to file a corporate return under certain



941158

40 circumstances; providing retroactive applicability;
41 amending s. 220.33, F.S.; revising the filing date for
42 estimated tax under certain circumstances; providing
43 an effective date.

By Senator Stargel

22-00747A-17

20171156__

1 A bill to be entitled
 2 An act relating to the corporate income tax; amending
 3 s. 220.03, F.S.; adopting the 2017 version of the
 4 Internal Revenue Code; providing retroactive
 5 operation; providing an effective date.
 6
 7 Be It Enacted by the Legislature of the State of Florida:
 8
 9 Section 1. Paragraph (n) of subsection (1) and paragraph
 10 (c) of subsection (2) of section 220.03, Florida Statutes, are
 11 amended to read:
 12 220.03 Definitions.—
 13 (1) SPECIFIC TERMS.—When used in this code, and when not
 14 otherwise distinctly expressed or manifestly incompatible with
 15 the intent thereof, the following terms shall have the following
 16 meanings:
 17 (n) "Internal Revenue Code" means the United States
 18 Internal Revenue Code of 1986, as amended and in effect on
 19 January 1, 2017 ~~2016~~, except as provided in subsection (3).
 20 (2) DEFINITIONAL RULES.—When used in this code and neither
 21 otherwise distinctly expressed nor manifestly incompatible with
 22 the intent thereof:
 23 (c) Any term used in this code has the same meaning as when
 24 used in a comparable context in the Internal Revenue Code and
 25 other statutes of the United States relating to federal income
 26 taxes, as such code and statutes are in effect on January 1,
 27 2017 ~~2016~~. However, if subsection (3) is implemented, the
 28 meaning of a term shall be taken at the time the term is applied
 29 under this code.

Page 1 of 2

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

22-00747A-17

20171156__

30 Section 2. This act shall take effect upon becoming a law
 31 and operate retroactively to January 1, 2017.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL

22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

3/15/2017

The Honorable Jack Latvala
Senate Committee on Appropriations, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Latvala:

I respectfully request that SB 1156, related to *Corporate Income Tax*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
22nd District

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

March 28, 2017

The Honorable Jack Latvala
Senate Committee on Appropriations, Chair
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Latvala:

I respectfully request that the following bills be placed on the next committee agenda:

- CS/SB 370, related to *Florida Wing of the Civil Air Patrol*; the House companion CS/HB 635 is in its final committee.
- SB 514, related to *Fees of the Department of Business and Professional Regulation (if received)*; the House companion HB 741 is on the agenda of its final committee.
- CS/SB 880, related to *Government Accountability*; the House companion CS/CS/CS/HB 479 is on the House Special Order Calendar.
- CS/SB 986, related to *Department of Financial Services (if received)*; the House companion CS/HB 925 is in its final committee.
- SB 1156, related to *Corporate Income Tax*.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Mike Hansen/ Staff Director
Alicia Weiss/ AA

REPLY TO:

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1272

INTRODUCER: Appropriations Committee; Regulated Industries Committee; and Senators Brandes and Stargel

SUBJECT: Professional Regulation

DATE: April 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Favorable</u>
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1272 creates the “Occupational Opportunity Act,” which grants new and expands existing exemptions from professional licensure application and renewal requirements by certain boards and programs in the Department of Business and Professional Regulation (DBPR) for current and former active duty members of the U.S. Armed Forces¹ and certain spouses and surviving spouses of such members.

Eligible spouses and surviving spouses in good standing with a DBPR board or program who are absent from the state due to the active duty member’s duties with the Armed Forces are exempted from licensure renewal provisions. The period of time that active duty members remain in good standing after discharge from active duty is expanded from six months to two years.

The DBPR is required to issue a professional license to an applicant who holds a valid professional license issued by another state or jurisdiction and is or was an active duty member of the Armed Forces, is the spouse of an active duty member, or is the surviving spouse of a member who died while on active duty. An applicant who was an active duty member must have received an honorable discharge from the Armed Forces. The bill specifies additional application

¹ The term “Armed Forces” includes “the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.” See s. 250.01(4), F.S., and 5 U.S. Code § 2101 and 10 U.S. Code § 101(a)(4).

requirements for such licensure including fingerprints for state and federal criminal history checks and compliance with any insurance bonding requirements.

Additionally, the bill requires the DBPR, or the appropriate board, to waive the initial licensure fee for applicants who are active duty members of the Armed Forces, certain spouses and surviving spouses of active duty members, and low-income individuals.

With the waiver of professional licensure fees and other charges of the professional boards, the bill is expected to reduce the revenue raising authority of DBPR, resulting in a negative fiscal impact on DBPR trust funds and the General Revenue Fund (based on reduced general revenue service charges). In addition, the bill appropriates a nonrecurring sum of \$31,000 from the Administrative Trust Fund for Fiscal Year 2017-2018 to the DBPR to implement this act. *See* Section V, Fiscal Impact Statement.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR), and provides for 12 divisions.²

Fifteen boards and programs exist within the Division of Professions,³ two boards are within the Division of Real Estate,⁴ and one board exists in the Division of Certified Public Accounting.⁵

The boards and programs within the Division of Professions, noted with the respective chapter in Florida Statutes concerning each, are the:

- Board of Architecture and Interior Design, part I of ch. 481;
- Florida Board of Auctioneers, part VI of ch. 468;
- Barbers' Board, ch. 476;
- Florida Building Code Administrators and Inspectors Board, part XII of ch. 468;
- Construction Industry Licensing Board, part I of ch. 489;
- Board of Cosmetology, ch. 477;
- Electrical Contractors' Licensing Board, part II of ch. 489;
- Board of Employee Leasing Companies, part XI of ch. 468;
- Board of Landscape Architecture, part II of ch. 481;
- Board of Pilot Commissioners, ch. 310;
- Board of Professional Engineers, ch. 471;
- Board of Professional Geologists, ch. 492;

² The divisions in the DBPR are: Administration, Alcoholic Beverages and Tobacco, Certified Public Accounting, Drugs, Devices, and Cosmetics, Florida Condominiums, Timeshares, and Mobile Homes, Hotels and Restaurants, Pari-mutuel Wagering, Professions, Real Estate, Regulation, Service Operations, and Technology.

³ *See* s. 20.165(4)(a), F.S.

⁴ *See* s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

⁵ *See* s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

- Board of Veterinary Medicine, ch. 474;
- Home Inspection Services Licensing Program, part XV of ch. 468; and
- Mold-related Services Licensing Program, part XVI of ch. 468, F.S.⁶

The boards within the Division of Real Estate are the Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and the Florida Real Estate Commission, created under part I of ch. 475, F.S.⁷

The board within the Division of Certified Public Accounting is the Board of Accountancy, created under ch. 473, F.S.⁸

The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.⁹ The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”¹⁰

Under Florida law, regulation of professions is undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”¹¹ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.¹²

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.¹³

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.¹⁴

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.¹⁵

⁶ See s. 20.165(4)(a), F.S.

⁷ See s. 20.165(4)(b), F.S.

⁸ See s. 20.165(4)(c), F.S.

⁹ Section 548.003(1), F.S.

¹⁰ Section 455.01(6), F.S.

¹¹ Section 455.201(2), F.S.

¹² *Id.*

¹³ Section 455.201(4)(b), F.S.

¹⁴ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

¹⁵ Sections 455.01(4) and (5), F.S.

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by administrative rule¹⁶ the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.¹⁷

A licensee may practice a profession only if the licensee has an active status license.¹⁸ Generally, most licensees who practice a profession without an active status license¹⁹ are subject to the imposition of discipline, fines, or assessments as described in s. 455.227, F.S. At least 90 days before the end of a licensure cycle, the DBPR must provide a licensure renewal notification to an active or inactive licensee, and a notice of pending cancellation of licensure to a delinquent status licensee.²⁰

Each board, or the department when there is no board (board),²¹ must permit a licensee to choose active or inactive status at the time of licensure renewal, and impose a fee for an inactive status license that does not exceed the fee for an active status license.²² An inactive status licensee may change to active status at any time, if the licensee meets all requirements for active status, including payment of all required fees, and meeting all continuing education requirements. Failure of a licensee to renew a license before its expiration causes the license to become delinquent in the license cycle following expiration (delinquency cycle).²³

A delinquent status licensee must re-apply for active or inactive status during the delinquency cycle. Failure by a delinquent status licensee to become active or inactive before the expiration of the delinquency cycle renders the license void, with no further action by the board.²⁴

The DBPR may, at its discretion, reinstate a license that has become void (except public accountancy licenses issued under ch. 473, F.S.) if the DBPR determines that the individual failed to comply because of illness or economic hardship. The individual must apply to the DBPR for reinstatement, pay all required fees, including a reinstatement fee, meet all continuing education requirements, and otherwise be eligible for renewal of licensure.²⁵

¹⁶ The administrative rules of the DBPR and of each Board are available through the DBPR's website at <http://www.myfloridalicense.com/dbpr/divisions.html> (last visited Mar. 10, 2017).

¹⁷ Section 455.219(1), F.S.

¹⁸ Section 455.271(1), F.S.

¹⁹ Section 455.271, F.S., on inactive and delinquent status of licenses, does not apply to a business establishment registered, permitted, or licensed by the department to do business or to a person licensed, permitted, registered, or certified pursuant to ch. 310, F.S. on Pilots, Piloting, and Pilotage, or ch. 475, F.S., on Real Estate Brokers, Sales Associates, Schools, and Appraisers.

²⁰ See s. 455.273, F.S.

²¹ Whenever a board for a profession does not exist, the DBPR is generally authorized by law to act instead. See e.g., ss. 455.219 and 455.271, F.S., for multiple references to actions of "the board, or the department when there is no board."

²² The status or a change in status of a licensee does not alter the board's right to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent. See s. 455.271(11), F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

Section 455.271(7), F.S., provides that each board must impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, when a delinquent status licensee applies for active or inactive status.

United States Armed Forces

The term “Armed Forces” is defined in Florida law as the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.²⁶ The term “active duty” means full-time duty in active military service of the United States, and includes other federal duty such as full-time training, annual training, and attendance at a service school²⁷ while a person is in active military service. The term also includes the period during which a person in active military service is absent from duty as a result of illness, being wounded, being on leave, or other lawful cause, but does not mean full-time duty in the National Guard.²⁸

Pursuant to s. 455.02(1), F.S., active duty members of the Armed Forces of the United States who, at the time they became active duty members, held a license in good standing with any state administrative board, must be kept in good standing and are exempted from performing any required act or paying any fee, during the period of active duty service and for six months after discharge from active duty. If the licensee engages in the licensed profession or vocation in the private sector for profit, the exemption does not apply.

Boards within the DBPR must adopt rules exempting a spouse of an active duty member of the Armed Forces from licensure renewal requirements, but only if the spouse is absent from the state due to the active duty member’s duties with the Armed Forces.²⁹

A six-month, nonrenewable temporary license may be issued to a spouse of an active duty member of the Armed Forces.³⁰ The application for such a license must be accompanied by the application fee and fingerprints for criminal history checks, with proof that the applicant:

- Is married to an active duty member of the Armed Forces;
- Holds a valid license issued by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction; and
- The applicant’s spouse is assigned to a duty station in Florida.³¹

Section 455.213(12), F.S. provides that the DBPR must waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran or his or her spouse at the time of discharge, if application for a license is made within 60 months after the veteran is honorably discharged. Eligibility for the waiver is conditioned upon the veteran having been honorably discharged.

²⁶ See s. 250.01(4), F.S., and 5 U.S. Code § 2101 and 10 U.S. Code § 101(a)(4).

²⁷ See s. 250.01(1), F.S.; service schools must be designated by law or by the secretary of the applicable military department.

²⁸ *Id.*

²⁹ See s. 455.02(2), F.S.

³⁰ See s. 455.02(3)(a), F.S.

³¹ *Id.*

License Fee Waivers for Low-income Individuals

Waivers of application fees for professional licenses issued in Florida are not based on the income of an applicant. The United States Department of Health and Human Services (HHS) has established the following federal poverty guidelines:³²

Persons in Family/Household	Poverty Guideline for 48 Contiguous States and the District of Columbia	Poverty Guideline for Alaska	Poverty Guideline for Hawaii
1	\$12,060	\$15,060	\$13,860
2	\$16,240	\$20,290	\$18,670
3	\$20,420	\$25,520	\$23,480
4	\$24,600	\$30,750	\$28,290
5	\$28,780	\$35,980	\$33,100
6	\$32,960	\$41,210	\$37,910
7	\$37,140	\$46,440	\$42,720
8	\$41,320	\$51,670	\$47,530

The term ‘public assistance’ refers to government aid to the poor, disabled, or aged, or to dependent children.³³ One example of an income-dependent public assistance program³⁴ is the Supplemental Nutrition Assistance Program (SNAP) for nutrition assistance and benefits to low-income individuals and families. Eligibility for SNAP benefits is dependent upon meeting certain gross income and net income limits.³⁵

III. Effect of Proposed Changes:

Section 1 provides the act may be cited as the “Occupational Opportunity Act.”

Section 2 amends s. 455.02, F.S., concerning licensure of active duty members of the Armed Forces³⁶ in good standing, to require good standing status with any “of the boards or programs listed in s. 20.165, F.S.” (the DBPR boards). Under current law, the reference is to “administrative boards of the state.”

This section also provides that a member of the Armed Forces who was licensed to practice or engage in a profession regulated by the DBPR at the time of entering the military is exempt from licensure renewal provisions while on active duty and for a period of two years after discharge from the military. Current law states that this exemption applies for six months after discharge from the military.

This section also provides that a spouse married to a member of the Armed Forces during a period of active duty, or the surviving spouse of a member who was on active duty at the time of

³² See <https://aspe.hhs.gov/poverty-guidelines> (last visited Mar. 24, 2017).

³³ See <http://www.dictionay.com/browse/public-assistance> (last visited Mar. 24, 2017).

³⁴ Comprehensive lists of available public assistance programs per state are located on the official benefits website of the United States government; see Benefits.gov, *About Us*, at <https://www.benefits.gov/about-us> (last visited Mar. 24, 2017).

³⁵ See <https://www.fns.usda.gov/snap/eligibility#Income> (last visited Mar. 24 2017).

³⁶ Section 250.01(4), F.S. The term “Armed Forces” includes the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

death, is exempted from licensure renewal provisions and must be kept in good standing, provided the spouse is in good standing with a DBPR board and is absent from the state due to the member's duties with the Armed Forces.

The section removes a current provision of law that allows the DBPR to issue a temporary professional license to the spouse of an active duty member of the Armed Forces and in its place requires the DBPR to issue a professional license to the following applicants under certain conditions:

- A current or former active duty member of the Armed Forces;
- The spouse of an active duty member of the Armed Forces; and
- The surviving spouse of a member of the Armed Forces who died while serving on active duty.

An application for a professional license under this section must include proof that the applicant:

- Is or was an active duty member of the Armed Forces, or is married to a member of the Armed Forces and was married to the member during any period of active duty, or is the surviving spouse of a member of the Armed Forces who at the time of death was serving on active duty;
- Received, if the applicant was an active duty member of the Armed Forces, an honorable discharge upon separation or discharge from the Armed Forces;
- Holds a valid license for the profession issued by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction;
- Has complied with insurance or bonding requirements, if required by the specific practice act; and
- Submits a complete set of the applicant's fingerprints to the Department of Law Enforcement.

The DBPR must waive the initial licensure application fee for those applicants who apply for licensure pursuant to this section.

An applicant who is issued a license under this section may renew such license upon completion of the conditions for renewal required of license holders under the applicable practice act, including, without limitation, continuing education requirements.

Section 3 amends s. 455.219, F.S., to require the DBPR or the applicable board, to waive the initial licensure fee for the following individuals upon application:

- A member of the Armed Forces that has served on active duty;
- The spouse of a member of the Armed Forces, who is married to such member during a period of active duty;
- The surviving spouse of a member of the Armed Forces who at the time of death was serving on active duty; or
- A low-income individual.

The application must include the applicant's signature under penalty of perjury and the supporting documentation required by the DBPR.

The term “low-income individual” is defined in the bill as a person whose household income before taxes is at or below 130 percent of the federal poverty guidelines for the family’s household size by the United States Department of Health and Human Services. Proof of eligibility may be shown through enrollment in a state or federal public assistance program that requires participants to be at or below 130 percent of the federal poverty guidelines to qualify.

The DBPR, or the appropriate board, must process an application for a fee waiver within thirty days of receiving the application. This section provides that the DBPR must adopt rules necessary to implement s. 455.219(7), F.S., created in the bill.

Section 4 appropriates a nonrecurring sum of \$31,000 from the Administrative Trust Fund for Fiscal Year 2017-2018 to the DBPR for technology infrastructure and licensing modifications.

Section 5 provides an effective date of July 1, 2017.

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:

The Department of Business and Professional Regulation (DBPR) notes that this bill will have an indeterminate impact upon fees because of the difficulty of estimating how many members of the Armed Forces, their spouses, surviving spouses, and low-income persons will apply for a waiver of initial license application fees.³⁷ The DBPR indicates that other “licenses may have to assume the additional cost of processing the applications [for those exempted by the bill from paying license fees].”³⁸

³⁷ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for HB 615 (identical to SB 1272), dated Feb. 27, 2017, (on file with Senate Committee on Regulated Industries) at pages 4 - 5.

³⁸ *Id.* at page 5.

B. Private Sector Impact:

The DBPR indicates there is no fiscal impact to the private sector.³⁹ However, there may be an increase in the number of people in the workforce practicing their chosen professions.

C. Government Sector Impact:

The bill appropriates \$31,000 in nonrecurring funds from the Administrative Trust Fund to the DBPR in Fiscal Year 2017-2018 for technology infrastructure and licensing modifications.

The DBPR indicates that the fiscal impact on revenues is indeterminate due to the unknown number of members of the Armed Forces, their spouses, surviving spouses, and low-income persons will apply for a waiver of initial license application fees.⁴⁰

The DBPR may see an increase in the number of applications received from active military members, their spouses or surviving spouses, and low-income individuals, which may increase staff workloads. However, the fiscal impact and potential workload increase are indeterminate but could be absorbed within existing resources in Fiscal Year 2017-2018.⁴¹

According to the DBPR, the bill will require modifications to its software to address the various license types for all the professions it regulates, (Versa: Regulation (VR)), including an application to identify active duty members of the Armed Forces, their spouses, surviving spouses, as well as low-income individuals, changes to fee calculations, and changes to application and renewal requirements.⁴² According to the DBPR, these modifications can be made using existing resources.⁴³

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the initial application fee be waived for active duty members of the Armed Forces, their spouses, and surviving spouses for certain professional licenses. Under current law, honorably discharged military veterans, and their spouses at the time of such discharge, are granted a waiver of all initial licensing fees, initial application fees, and initial unlicensed activity fees, if an application for initial licensure is made within 60 months of the discharge.⁴⁴ The

³⁹ *Id.* at pages 4-5.

⁴⁰ *Id.* at page 4.

⁴¹ Telephone conference with DBPR staff on April 11, 2017.

⁴² See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for CS/CS/HB 615, dated Mar. 13, 2017 (on file with Senate Committee on Regulated Industries) at pages 4-9. See also, Agency Analysis of HB 615 and SB 1272 dated Feb. 27, 2017 (*supra* at note 37, at pages 4-8).

⁴³ *Id.*

⁴⁴ See s. 455.213(12), F.S.

different requirements for waiver of initial application and other fees for professional licensure for active duty members and certain spouses, and for honorably discharged veterans and their spouses, may cause confusion to active duty and retired members of the Armed Forces, their spouses, and the public.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 455.02 and 455.219.

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 Appropriations on April 13, 2017:

The committee substitute:

- Requires an applicant for licensure who was an active duty member of the Armed Forces to have been honorably discharged upon separation or discharge from the Armed Forces;
- Conforms use of the term “Armed Forces” rather than “Armed Services”; and
- Conforms use of the term “licensure” rather than “licensing.”

CS by Regulated Industries on March 28, 2017:

The committee substitute:

- Clarifies the bill also applies to DBPR programs as well as DBPR boards;
- Requires that applicants comply with bonding or insurance requirements if required by a specific practice act;
- Clarifies the definition of the term ‘low-income individual; and
- Provides for Fiscal Year 2017-2018 a nonrecurring sum of \$31,000 to be appropriated from the Administrative Trust Fund for technology infrastructure and licensing modifications required to implement the bill.

- B. **Amendments:**

None.



827850

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Brandes) recommended the following:

Senate Amendment

Delete lines 49 - 121
and insert:

(2) A spouse of a member of the Armed Forces of the United States who is married to a member during a period of active duty, or a surviving spouse of a member who at the time of death was serving on active duty, ~~The boards listed in s. 20.165 shall adopt rules that exempt the spouse of a member of the Armed Forces of the United States~~ who is in good standing with any of



827850

11 the boards or programs listed in s. 20.165 shall be kept in good
12 standing by the applicable board or program as described in
13 subsection (1) and shall be exempt from licensure renewal
14 provisions, but only in cases of his or her absence from the
15 state because of his or her spouse's duties with the Armed
16 Forces.

17 (3) (a) The department shall ~~may~~ issue a ~~temporary~~
18 professional license to an applicant who is or was ~~the spouse of~~
19 an active duty member of the Armed Forces of the United States,
20 or who is a spouse or surviving spouse of such member, upon
21 application ~~if the spouse applies~~ to the department in a ~~the~~
22 format prescribed by the department. An application must include
23 proof that:

24 1. The applicant is or was an active duty member of the
25 Armed Forces of the United States or is married to a member of
26 the Armed Forces of the United States and was married to the
27 member during any period of ~~who is on~~ active duty or was married
28 to such a member who at the time of the member's death was
29 serving on active duty. An applicant who was an active duty
30 member of the Armed Forces of the United States must have
31 received an honorable discharge upon separation or discharge
32 from the Armed Forces of the United States.

33 2. The applicant holds a valid license for the profession
34 issued by another state, the District of Columbia, any
35 possession or territory of the United States, or any foreign
36 jurisdiction.

37 3. The applicant, when required by the specific practice
38 act, has complied with insurance or bonding requirements ~~The~~
39 ~~applicant's spouse is assigned to a duty station in this state~~



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40 ~~and that the applicant is also assigned to a duty station in~~
41 ~~this state pursuant to the member's official active duty~~
42 ~~military orders.~~

43 4.a. A complete set of the applicant's fingerprints is
44 submitted to the Department of Law Enforcement for a statewide
45 criminal history check.

46 b. The Department of Law Enforcement shall forward the
47 fingerprints submitted pursuant to sub-subparagraph a. to the
48 Federal Bureau of Investigation for a national criminal history
49 check. The department shall, and the board may, review the
50 results of the criminal history checks according to the level 2
51 screening standards in s. 435.04 and determine whether the
52 applicant meets the licensure requirements. The costs of
53 fingerprint processing shall be borne by the applicant. If the
54 applicant's fingerprints are submitted through an authorized
55 agency or vendor, the agency or vendor shall collect the
56 required processing fees and remit the fees to the Department of
57 Law Enforcement.

58 (b) The department shall waive the applicant's initial
59 licensure application fee ~~An application must be accompanied by~~
60 ~~an application fee prescribed by the department that is~~
61 ~~sufficient to cover the cost of issuance of the temporary~~
62 ~~license.~~

63 (c) An applicant who is issued a license under this section
64 may renew such license upon completion of the conditions for
65 renewal required of licenseholders under the applicable practice
66 act, including, without limitation, continuing education
67 requirements. This paragraph does not limit waiver of initial
68 licensure requirements under this subsection ~~A temporary license~~



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69 ~~expires 6 months after the date of issuance and is not~~
70 ~~renewable.~~

71 Section 3. Subsection (7) is added to section 455.219,
72 Florida Statutes, to read:

73 455.219 Fees; receipts; disposition; periodic management
74 reports.—

75 (7) (a) The department, or a board thereunder, shall waive
76 the initial licensure fee for a member of the Armed Forces of
77 the United States who has served on active duty, the spouse of a
78 member of the Armed Forces of the United States who was married
79 to the member during a period of active duty, the surviving
80 spouse of a member of the Armed Forces of the United

By the Committee on Regulated Industries; and Senator Brandes

580-02978B-17

20171272c1

A bill to be entitled

An act relating to professional regulation; providing a short title; amending s. 455.02, F.S.; revising the length of time that an active duty member of the Armed Forces of the United States may remain in good standing with an administrative board or program under certain circumstances; requiring that a spouse or surviving spouse be kept in good standing and be exempt from licensure renewal provisions under certain circumstances; requiring, rather than authorizing, the Department of Business and Professional Regulation to issue a professional license, rather than a temporary license, to specified applicants; revising application requirements; requiring the department to waive the applicant's initial licensure application fee; authorizing licensure renewal; amending s. 455.219, F.S.; providing for a fee waiver for active duty members of the Armed Forces, certain spouses or surviving spouses of an active duty member, and low-income individuals; defining the term "low-income individual"; requiring an application for a fee waiver to be processed within a specified time; providing rulemaking authority; providing an appropriation; providing an effective date.

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

Section 1. This act may be cited as the "Occupational Opportunity Act."

Page 1 of 6

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

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Section 2. Section 455.02, Florida Statutes, is amended to read:

455.02 Licensure of members of the Armed Forces in good standing and their spouses or surviving spouses with administrative boards or programs.—

(1) Any member of the Armed Forces of the United States now or hereafter on active duty who, at the time of becoming such a member, was in good standing with any of the boards or programs listed in s. 20.165 ~~administrative board of the state~~ and was entitled to practice or engage in his or her profession or vocation in the state shall be kept in good standing by the applicable ~~such administrative board or program~~, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the Armed Forces of the United States on active duty and for a period of 2 years ~~6 months~~ after discharge from active duty as a member of the Armed Forces of the United States, if he or she is not engaged in his or her licensed profession or vocation in the private sector for profit.

(2) A spouse of a member of the Armed Services of the United States who is married to a member during a period of active duty, or a surviving spouse of a member who at the time of death was serving on active duty, ~~The boards listed in s. 20.165 shall adopt rules that exempt the spouse of a member of the Armed Forces of the United States who is in good standing with any of the boards or programs listed in s. 20.165 shall be kept in good standing by the applicable board or program as described in subsection (1) and shall be exempt from licensure renewal provisions, but only in cases of his or her absence from~~

Page 2 of 6

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

580-02978B-17

20171272c1

59 the state because of his or her spouse's duties with the Armed
60 Forces.

61 (3) (a) The department ~~shall~~ may issue a ~~temporary~~
62 professional license to an applicant who is or was the spouse of
63 an active duty member of the Armed Forces of the United States,
64 or who is a spouse or surviving spouse of such member, upon
65 application if the spouse applies to the department in a the
66 format prescribed by the department. An application must include
67 proof that:

68 1. The applicant is or was an active duty member of the
69 Armed Forces of the United States or is married to a member of
70 the Armed Forces of the United States and was married to the
71 member during any period of who is on active duty or was married
72 to such a member who at the time of the member's death was
73 serving on active duty.

74 2. The applicant holds a valid license for the profession
75 issued by another state, the District of Columbia, any
76 possession or territory of the United States, or any foreign
77 jurisdiction.

78 3. The applicant, when required by the specific practice
79 act, has complied with insurance or bonding requirements ~~The~~
80 ~~applicant's spouse is assigned to a duty station in this state~~
81 ~~and that the applicant is also assigned to a duty station in~~
82 ~~this state pursuant to the member's official active duty~~
83 ~~military orders.~~

84 4.a. A complete set of the applicant's fingerprints is
85 submitted to the Department of Law Enforcement for a statewide
86 criminal history check.

87 b. The Department of Law Enforcement shall forward the

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88 fingerprints submitted pursuant to sub-subparagraph a. to the
89 Federal Bureau of Investigation for a national criminal history
90 check. The department shall, and the board may, review the
91 results of the criminal history checks according to the level 2
92 screening standards in s. 435.04 and determine whether the
93 applicant meets the licensure requirements. The costs of
94 fingerprint processing shall be borne by the applicant. If the
95 applicant's fingerprints are submitted through an authorized
96 agency or vendor, the agency or vendor shall collect the
97 required processing fees and remit the fees to the Department of
98 Law Enforcement.

99 (b) The department shall waive the applicant's initial
100 licensure application fee ~~An application must be accompanied by~~
101 ~~an application fee prescribed by the department that is~~
102 ~~sufficient to cover the cost of issuance of the temporary~~
103 ~~license.~~

104 (c) An applicant who is issued a license under this section
105 may renew such license upon completion of the conditions for
106 renewal required of licenseholders under the applicable practice
107 act, including, without limitation, continuing education
108 requirements. This paragraph does not limit waiver of initial
109 licensure requirements under this subsection ~~A temporary license~~
110 ~~expires 6 months after the date of issuance and is not~~
111 ~~renewable.~~

112 Section 3. Subsection (7) is added to section 455.219,
113 Florida Statutes, to read:

114 455.219 Fees; receipts; disposition; periodic management
115 reports.—

116 (7) (a) The department, or a board thereunder, shall waive

580-02978B-17

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117 the initial licensing fee for a member of the Armed Services of
 118 the United States that has served on active duty, the spouse of
 119 a member of the Armed Services of the United States who was
 120 married to the member during a period of active duty, the
 121 surviving spouse of a member of the Armed Services of the United
 122 States who at the time of death was serving on active duty, or a
 123 low-income individual upon application by the individual in a
 124 format prescribed by the department. The application format must
 125 include the applicant's signature, under penalty of perjury, and
 126 supporting documentation as required by the department. For
 127 purposes of this subsection, the term "low-income individual"
 128 means a person whose household income, before taxes, is at or
 129 below 130 percent of the federal poverty guidelines prescribed
 130 for the family's household size by the United States Department
 131 of Health and Human Services, proof of which may be shown
 132 through enrollment in a state or federal public assistance
 133 program that requires participants to be at or below 130 percent
 134 of the federal poverty guidelines to qualify.

135 (b) The department, or a board thereunder, shall process an
 136 application for a fee waiver within 30 days after receiving it
 137 from the applicant.

138 (c) The department shall adopt rules necessary to implement
 139 the provisions of this subsection.

140 Section 4. For the 2017-2018 fiscal year, the nonrecurring
 141 sum of \$31,000 from the Administrative Trust Fund is
 142 appropriated to the Department of Business and Professional
 143 Regulation for costs associated with technology infrastructure
 144 and licensing modifications needed for the purposes of
 145 implementing this act.

Page 5 of 6

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580-02978B-17

20171272c1

146 Section 5. This act shall take effect July 1, 2017.

Page 6 of 6

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

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SCR 1360

INTRODUCER: Senator Thurston

SUBJECT: National Statuary Hall

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wells	Hansen	AP	Favorable
2.			RC	

I. Summary:

SB 1360 requests the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Dr. Mary McLeod Bethune.

The bill has no impact on state revenues or expenditures. The Florida Council on Arts and Culture (council) is permitted to raise funds from private sources to fund the costs associated with the replacement of the statue. The funds must be placed into the Grants and Donations Trust Fund within the Department of State and may be used only for the limited purposes associated with replacing the statue.

This bill takes effect upon becoming law.

II. Present Situation:

National Statuary Hall

In 1864, Congress created the National Statuary Hall, which permits the display of two statues from each state within the Capitol of the United States.¹ Originally located in the Old Hall of the House of Representatives, the placement of statues has expanded throughout the corridors of the Capitol.² Each state is permitted to provide no more than two statues of a deceased citizen of that state who were “illustrious for their historic renown or for distinguished civic or military services, such as each State may deem to be worthy of this national commemoration.”³ An

¹ Architect of the Capitol, *About the National Statuary Hall Collection*, available at <http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/about-national-statuary-hall-collection> (last viewed January 15, 2016).

² *Id.*

³ 2 U.S.C. s. 2131.

individual must have been deceased for 10 years before his or her statue may be displayed in the National Statuary Hall.⁴

Replacement of Statues

A statue must have been on display for at least a decade before it may be replaced.⁵ Like all current statues, a replacement statue must be made of marble or bronze and depict a distinguished, deceased citizen of the donating state.⁶

A state may request that the United States Joint Committee on the Library of Congress approve the replacement of its statues by a resolution from the state's Legislature and the consent of the Governor.⁷ The state is responsible for costs related to the replacement, including the "construction, transportation, and placement of the new statue, the removal and transportation of the statue being replaced, and any unveiling ceremony."⁸

After the Joint Committee has approved the request, ownership of the replaced statue transfers to the state and the replaced statue may only be returned to the Capitol by federal law.⁹ A duly authorized state official must inform the Architect of the Capitol where the replaced statue will be displayed after it is removed from the Capitol.¹⁰

Florida's Statues

The Florida statues in the National Statuary Hall Collection are Dr. John Gorrie and General Edmund Kirby Smith.¹¹ Florida donated a statue of Dr. Gorrie to the National Statuary Hall Collection in 1914. Dr. Gorrie (1802-1855) was a physician in Apalachicola, Florida, who advocated draining swamps, the use of mosquito netting to prevent disease, and the cooling of sickrooms to reduce fever. Dr. Gorrie was granted a patent for a machine to make ice and is credited with being the father of refrigeration and air-conditioning.¹²

In 1922, Florida gave a statue of Gen. Kirby Smith to the National Statuary Hall Collection. General Edmund Kirby Smith (1824-1893) was a soldier and educator who served in the Mexican War and taught mathematics at the United States Military Academy (West Point). He resigned from the United States Army in 1861 to join the Confederate States of America. He rose to the rank of general and surrendered the last military force of the Confederacy in the Civil War.

⁴ 2 U.S.C. s. 2131a(a).

⁵ 2 U.S.C. s. 2132(a)(2)(B). The Joint Committee on the Library of Congress may grant a waiver of this requirement.

⁶ 2 U.S.C. s. 2132(b)(1).

⁷ 2 U.S.C. s. 2132(a).

⁸ 2 U.S.C. s. 2132(b)(2).

⁹ 2 U.S.C. s. 2132(d).

¹⁰ Architect of the Capitol, Office of the Curator, *Procedure and Guidelines for Replacement of Statues in the National Statuary Hall Collection*, (January 2014), available at http://www.aoc.gov/sites/default/files/statue_replacement_guidelines_2014.pdf (last viewed January 15, 2016).

¹¹ Architect of the Capitol, *National Statuary Hall Collection*, available at <http://www.aoc.gov/the-national-statuary-hall-collection> (last viewed January 15, 2016).

¹² Architect of the Capitol, *National Statuary Hall Collection, John Gorrie*, available at <http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/john-gorrie> (last viewed January 15, 2016).

After the Civil War, he moved to Tennessee where he pursued an academic career and served as Chancellor of the University of Nashville.¹³

During the 2016 Session, CS/SB 310 was enacted to direct the Great Floridians Program within the DOS to select a prominent Florida citizen to replace the statue of General Edmund Kirby Smith in the National Statuary Hall Collection. The bill directed the council to select a sculptor.

The bill instructed the council and the DOS to estimate the costs associated with replacement of the statue, including the costs:

- To design, construct, transport, and place the new statue;
- To remove and transport the current statue; and
- Any unveiling ceremony for the new statue.

Great Floridians Program

The Great Floridians Program recognizes and records the achievements of living and deceased Floridians who have made major contributions to the progress and welfare of Florida.¹⁴ The Division of Historical Resources of the DOS (division) nominates present or former Florida citizens who made major contributions to the progress of the United States or Florida.¹⁵ In identifying people worthy of a nomination, the division is required seek the advice of people who are experienced in informing the public about Florida's history.¹⁶ Annually, the division must convene an ad hoc committee composed of representatives of specified government officials. The committee must meet as least twice a year and must nominate at least two individuals to be submitted to the Secretary of State.¹⁷ The Secretary of State then selects two individuals to be honored as 'Great Floridians.'¹⁸ The division is required to educate the public about the Great Floridians selected by the Secretary of State.¹⁹

The Florida Council on Arts and Culture

The Florida Council on Arts and Culture (council) is an advisory body within the DOS that promotes arts and culture throughout the state.²⁰ The council consists of 15 members who are appointed by the Governor, the Speaker of the House of Representatives, and the President of the Senate. The members must have a substantial history of community service in the performing or visual arts, science, history, or children's museums.²¹ The council advises the Secretary of the State regarding the administration of grants pertaining to arts and culture, and reviews applications for grants related to cultural facilities.²²

¹³ Architect of the Capitol, *National Statuary Hall Collection, Edmund Kirby Smith*, available at <http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/edmund-kirby-smith> (last viewed January 15, 2016).

¹⁴ Section 267.0731, F.S.

¹⁵ Section 267.0731(1), F.S.

¹⁶ Section 267.0731(1)(a), F.S.

¹⁷ Section 267.0731(1)(b), F.S.

¹⁸ Section 267.0731(1), F.S.

¹⁹ Section 267.0731(2), F.S.

²⁰ Section 265.285(1)(a) and (2)(a), F.S.

²¹ Section 265.285(1), F.S.

²² Section 265.285(2)(f) and (h), F.S.

In January 2017, the Great Floridians ad hoc committee submitted three names to be submitted for consideration:

- Marjorie Stoneman Douglas, author
- Dr. Mary McLeod Bethune, educator
- George Washington Jenkins, businessman

III. Effect of Proposed Changes:

This bill recommends that a statue of Dr. Mary McLeod Bethune replace the statue of General Edmund Kirby Smith in the National Statuary Hall.

Born Mary Jane McLeod, July 10, 1875, in Mayesville, South Carolina, she studied at Scotia Seminary in North Carolina and Moody Bible Institute in Chicago with the goal of becoming a missionary. When no missionary openings were available, she became a teacher, first at the Haines Institute in Augusta, Georgia and then at the Kendall Institute in Sumpter, South Carolina, where she met and married Albertus Bethune. The dream of opening her own school took Mary McLeod Bethune to Florida first to Palatka and then to Daytona Beach, where she started the school that would become Bethune-Cookman University.²³

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.

²³ http://www.cookman.edu/about_bcu/history/our_founder.html

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures. The Florida Council on Arts and Culture is permitted to raise funds from private sources to fund the costs associated with the replacement of the statue. The funds must be placed into the Grants and Donations Trust Fund within the Department of State and may be used only for the limited purposes associated with replacing the statue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.

By Senator Thurston

33-01441-17

20171360__

Senate Concurrent Resolution

A concurrent resolution requesting the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune.

WHEREAS, in March 2016, the Florida Legislature passed, and the Governor signed into law, Senate Bill 310, authorizing the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a prominent Florida citizen recommended by the ad hoc committee of the Great Floridians Program within the Division of Historical Resources of the Department of State, and

WHEREAS, one of the three prominent Florida citizens recommended by the ad hoc committee is Mary McLeod Bethune, and

WHEREAS, Mary McLeod Bethune was born on July 10, 1875, in Mayesville, South Carolina, and she was the first member of her family, including all of her 16 siblings, born free following the conclusion of the Civil War, and

WHEREAS, beginning at a young age, Mary McLeod Bethune became engaged with learning and teaching after receiving an opportunity to attend Presbyterian Mission School in her hometown, and her dedication was evidenced through attending as many classes as she could and teaching her parents and siblings what she had learned, and

WHEREAS, Mary McLeod Bethune was awarded a scholarship allowing her to enroll at the then-Scotia Seminary for Girls in Concord, North Carolina, from which she graduated in 1893, and

33-01441-17

20171360__

went on to continue her studies at the Moody Bible Institute in Chicago, and

WHEREAS, upon graduating from the Moody Bible Institute, Mary McLeod Bethune became a teacher and taught at schools in Georgia and South Carolina before moving to Florida to teach at the Palatka Mission School, and

WHEREAS, through observing the burgeoning black population in the area prompted by labor needed for railroad construction, Mary McLeod Bethune decided to follow through with her dream of opening her own school, and

WHEREAS, Mary McLeod Bethune bought a small cottage in Daytona Beach to allow for the opening of the Daytona Literary and Industrial Training School for Negro Girls in 1904 and through her commitment to fundraising, the school's enrollment grew from 5 to 250 students in just 2 years, and

WHEREAS, the school continued to grow, which eventually resulted in its merger with the Cook Institute for Men in Jacksonville to form Bethune-Cookman College, where she later served as president, and

WHEREAS, Mary McLeod Bethune's advocacy continued with her founding of the National Council of Negro Women and her appointment as Director of the Division of Negro Affairs of the National Youth Administration by President Franklin Delano Roosevelt, and

WHEREAS, through her position as the highest ranking African-American woman in the Federal Government, Mary McLeod Bethune was able to assist African-American youth in finding employment and worked with the Women's Army Corps during World War II to recruit African-American female officers, and

33-01441-17

20171360__

59 WHEREAS, upon her death in 1955, Mary McLeod Bethune's
60 inspirational leadership was praised by many, including former
61 First Lady Eleanor Roosevelt, who lauded "her wisdom and her
62 goodness," and

63 WHEREAS, in 1995, the United States National Park Service
64 established the Mary McLeod Bethune Council House National
65 Historic Site in Washington, D.C., which has preserved the
66 townhouse that was once her personal residence and the first
67 headquarters of the National Council of Negro Women, and

68 WHEREAS, Mary McLeod Bethune's legacy continues to be felt
69 in Florida through the continued success of Bethune-Cookman
70 University, whose record high enrollment is currently
71 approaching 4,000 students, and

72 WHEREAS, it is appropriate to honor Mary McLeod Bethune as
73 one of two Floridians memorialized in statues in the National
74 Statuary Hall Collection given her significant and continuing
75 impact on this state, NOW, THEREFORE,

76

77 Be It Resolved by the Senate of the State of Florida, the House
78 of Representatives Concurring:

79

80 That the Legislature of the State of Florida hereby
81 respectfully requests the Joint Committee on the Library of
82 Congress to approve the replacement of the statue of Confederate
83 General Edmund Kirby Smith in the National Statuary Hall
84 Collection with a statue of Mary McLeod Bethune.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 5, 2017

I respectfully request that **Senate Bill #1360**, relating to National Statuary Hall, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

Perry E. Thurston, Jr.

Senator Perry E. Thurston, Jr.
Florida Senate, District 33



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Education
Judiciary
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR PERRY E. THURSTON, JR.

Democratic Caucus Rules Chair
33rd District

April 5, 2017

The Honorable Jack Latyala
Florida Senate
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latyala,

I am writing you this letter because my bill SCR 1360: National Statuary Hall, has been referred to the Senate Appropriations Committee. I am writing respectfully requesting you to place the bill on you committee' calendar for the next committee agenda.

Thank you for your consideration. Please contact me if you have any questions.

Respectfully,

Perry E. Thurston, Jr.

Perry E. Thurston, Jr.
District 33

A handwritten signature in blue ink, appearing to be "Perry E. Thurston, Jr.", written over the typed name.

REPLY TO:

- 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (954) 321-2707
- 208 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flisenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/17

1360

Meeting DateBill Number (if applicable)Topic National Statuary HallAmendment Barcode (if applicable)Name Carla LarocheJob Title Law FellowAddress PO Box 10788Phone 850-521-3003*Street*TallahasseeFL32302Email carla.laroche@splcenter.org*City**State**Zip*Speaking: For Against InformationWaive Speaking: In Support Against
*(The Chair will read this information into the record.)*Representing Southern Poverty Law CenterAppearing at request of Chair: Yes NoLobbyist 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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

5/13/17

Meeting Date

1360

Bill Number (if applicable)

Topic Statuary Hall

Amendment Barcode (if applicable)

Name Mario Bailey

Job Title Sen Gov Relations Consult

Address 555 NE 34TH ST Apt 1608

Phone 215-246-3932

Street

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FL

33132

City

State

Zip

Email mbailey@bpllegal.com

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Bethune-Cookman Univ + Miami-Dade 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.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/17
Meeting Date

1360
Bill Number (if applicable)

Topic NATIONAL Statuary Hall

Amendment Barcode (if applicable)

Name Seber Newsome III

Job Title _____

Address 86110 Fieldstone Drive

Phone 904-225-5591

Street

Yulee
City

FL
State

32097
Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing myself + Veterans

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1402

INTRODUCER: Community Affairs Committee and Senator Latvala

SUBJECT: Local Governmental Financial Emergencies

DATE: April 12, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.	Sikes	Hansen	AP	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1402 makes numerous changes to the “Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act.” Specifically, the bill:

- Expands the entities that have oversight over local governmental entities, charter schools, charter technical career centers, and district school boards when certain conditions exist to include the Senate, the House of Representatives, and the Legislative Auditing Committee.
- Requires a local governmental entity, or an agency in certain cases to notify the President of the Senate and the Speaker of the House of Representatives when certain financial emergencies exist.
- Requires, upon notification of financial emergency, the Governor, in cooperation with the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee to contact the local governmental entity or the Commissioner of Education to determine which actions have been taken by the local governmental entity or district school board to resolve or prevent the condition and determine whether the local governmental entity or district school board needs state assistance to resolve or prevent the condition into the future.

The bill revises the composition and duties of financial emergency boards by:

- Specifying who can nominate and appoint members,
- Establishing member qualifications,
- Revising the duties of the board, and

- Authorizing the Governor to suspend a member of the governing body of the local governmental entity or district school board for malfeasance and misfeasance under certain circumstances.

The bill may have an indeterminate fiscal impact on the state. The bill specifies the number of members on a financial emergency board and provides that such boards may hire or retain legal counsel among other duties. As such, there may be increased costs associated with the creation of financial emergency boards depending on the nature of the board and actions of the board. The establishment of a financial emergency board is not required and remains an optional measure that may be implemented in instances of a financial emergency.

The bill take effect upon becoming a law.

II. Present Situation:

Financial Emergencies

The Local Governmental Entity, Charter School, Charter Technical Career Center, and District School Board Financial Emergencies Act (act) governs certain local governmental financial emergencies.¹ The purposes of the act are to promote financial responsibility of the entities, assist the entities in providing essential services without interruption and in meeting their financial obligations, and to assist the entities through improvement of local financial management procedures.²

The act provides that local governmental entities, charter schools, charter technical career centers, and district school boards are subject to review and oversight by the Governor, the charter school sponsor, the charter technical career center sponsor, or the Commissioner of Education, as appropriate, when any of the following conditions occur:³

- Failure within the same fiscal year in which due to pay short-term loans or failure to make bond debt service or other long-term debt payments when due, as a result of lack of funds.
- Failure to pay uncontested claims from creditors within 90 days after the claim is presented, as a result of lack of funds.
- Failure to transfer at the appropriate time, due to lack of funds:
 - Taxes withheld on the income of employees; or
 - Employer and employee contributions for:
 - Federal social security; or
 - Any pension, retirement, or benefit plan of an employee.
- Failure for one pay period to pay, due to lack of funds:
 - Wages and salaries owed to employees; or
 - Retirement benefits owed to former employees.

If a financial emergency exists due to a lack of funds, or will occur if action is not taken, a local government entity must notify the Governor and the Legislative Auditing Committee.⁴ A charter

¹ Sections 218.50-218.504, F.S.

² Section 218.501, F.S.

³ Section 218.503(1), F.S.

⁴ Section 218.503(2), F.S.

school must notify the charter school sponsor, the Commissioner of Education, and the Legislative Auditing Committee. A charter technical career center must notify the charter technical career center sponsor, the Commissioner of Education, and the Legislative Auditing Committee. A district school board must notify the Commissioner of Education and the Legislative Auditing Committee.⁵

Additionally, any state agency must notify the Governor, charter school sponsor, charter technical career center sponsor, or the Commissioner of Education, as appropriate, within 30 days after determining a financial emergency has occurred or will occur if action is not taken to assist the local governmental entity, charter school, charter technical career center, or district school board.⁶

Upon notification that a financial emergency occurred or will occur, the Governor or his or her designee must contact the local governmental entity or the Commissioner of Education or his or her designee to determine which actions have been taken by the local governmental entity or district school board to resolve or prevent the condition.⁷ The information requested must be provided within 45 days of the request. The Governor, or the Commissioner of Education, as appropriate, must determine whether the local governmental entity or district school board needs state assistance to resolve or prevent the condition. If state assistance is needed, the local governmental entity or district school board is considered to be in a state of financial emergency and certain measures of assistance may occur, including:

- Requiring approval of the local governmental entity's budget by the Governor or approval of the district school board's budget by the Commissioner of Education;
- Authorizing a state loan to a local governmental entity and providing for repayment of same;
- Prohibiting a local governmental entity or district school board from issuing bonds, notes, certificates of indebtedness, or any other form of debt until such time as it is no longer in a financial emergency;
- Making such inspections and reviews of records, information, reports, and assets of the local governmental entity or district school board as are needed;
- Consulting with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports into compliance with state requirements;
- Providing technical assistance to the local governmental entity or the district school board;
- Establishing a financial emergency board to oversee the activities of the local governmental entity or the district school board; and
- Requiring and approving a plan, to be prepared by officials of the local governmental entity or district school board in consultation with the appropriate state officials, prescribing actions that will cause the local governmental entity or district school board to no longer be in a financial emergency.⁸

⁵ *Id.*

⁶ *Id.*

⁷ Section 218.503(3), F.S.

⁸ *Id.*

Financial Emergency Boards

If a financial emergency board is established for a local governmental entity, the Governor must appoint board members and select a chair.⁹ If the board is established for a district school board, the State Board of Education must appoint the board members and select a chair.¹⁰ The board must adopt rules necessary for conducting board business. The financial emergency board may:

- Review records, reports, and assets of the local governmental entity or the district school board as needed;
- Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or district school board into compliance with state requirements;
- Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board; and
- Consult with other governmental entities for consolidation of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.¹¹

Recommendations and reports made by the board must be submitted to the Governor for local governmental agencies or to the Commissioner of Education and the State Board of Education for district school boards for appropriate action.¹²

Suspension by Governor

The Governor may suspend any county officer or district school board member for stated cause and fill the office by appointment for the period of the suspension.¹³ A separate statute provides that a member of a district school board who votes to incur indebtedness against district funds in excess of appropriations in the district budget, or takes other action in violation of the statute, has committed malfeasance and misfeasance subjecting that member to removal by the Governor.¹⁴ The Governor also may suspend any elected or appointed municipal officer for cause and, unless there is an alternative method to replace the official, the Governor may fill the office by temporary appointment.¹⁵ Members of special district governing boards also are subject to suspension by the Governor.¹⁶

⁹ Section 218.503(3)(g), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Art. IV, s. 7(a), Fla. Const. The causes listed in the State Constitution are “malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.” For purposes of this constitutional provision, district school board members are county officers. In re Advisory Opinion to the Governor – Sch. Bd. Member – Suspension Auth., 626 So. 2d 684, 687 (Fla. 1993).

¹⁴ Section 1011.10, F.S.

¹⁵ Section 112.51(1), (3), F.S. The causes listed by the statute are “malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform official duties.

¹⁶ Section 112.511, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 218.503, F.S., to expand the entities that have oversight over local governmental entities, charter schools, charter technical career centers, and district school boards for financial emergencies. Specifically, this section provides that those local governmental entities are subject to review and oversight by the Senate, the House of Representatives, and the Legislative Auditing Committee. When certain financial emergencies exist, a local governmental entity, or an agency in certain cases, must notify the President of the Senate and the Speaker of the House of Representatives. Upon notification of such an emergency, the Governor, in cooperation with the President of the Senate, the Speaker of the House of Representatives, and the Legislative Auditing Committee must contact the local governmental entity or the Commissioner of Education to determine which actions have been taken by the local governmental entity or district school board to resolve or prevent the condition and determine whether the local governmental entity or district school board needs state assistance to resolve or prevent the condition in the future.

Section 1 also revises the composition of financial emergency boards. This section provides that a financial emergency board must consist of an odd number of members comprised of at least 7 members but not more than 13. If the board is established for a local governmental entity, the President of the Senate and the Speaker of the House of Representatives must each nominate five individuals as candidates for appointment to the board. The Governor shall choose two candidates from each list and appoint them as four of the members of the board. The Governor must appoint the remainder of the board members and designate the chair. If the board is established for a district school board, the President of the Senate, the Speaker of the House of Representatives and the State Board of Education must each nominate five individuals as candidates for appointment to the board. The Governor shall choose two candidates from each list and appoint them as six of the members of the board. The State Board of Education shall appoint the remainder of the board members and designate the chair of the board.

This section establishes qualifications for appointees to the financial emergency board. The members should collectively possess the knowledge, skills, and competencies needed to perform their individual responsibilities and accomplish the mission of the board, including, but not limited to, internal quality control, finance, business administration, and public works. The chair must have experience in at least one of the following positions or areas:

- Inspector General.
- Supervisory experience in an office of inspector general or an investigative public agency similar to an office of inspector general.
- Local, state, or federal law enforcement officer.
- Local, state, or federal court judge.
- Senior-level auditor or comptroller.
- The administration and management of complex audits and investigations.
- Managing programs for prevention, examination, detection, elimination of fraud, waste, abuse, mismanagement, malfeasance, or misconduct in government or other organizations.
- Certified fraud examiner.

The board must have access to records, data, and other information of the local governmental entity or the district school board necessary to carry out its duties and must be given the technical

and financial resources necessary to complete those duties. The board must adopt rules as necessary for conducting board business. In addition, the board may:

- Hire or retain legal counsel.
- Obtain external advice and assistance if the financial emergency board or the staff of the entity under review lacks the knowledge, skills, or other competencies needed to perform all or part of the duties necessary to resolve the financial emergency conditions.
- Request and obtain assistance from any federal agency, state agency, or local entity.
- Issue and serve subpoenas or subpoenas duces tecum to compel the attendance of witnesses and the production of documents, reports, answers, records, accounts, and data in any format. In the event of noncompliance with a subpoena issued, the chair of the board may petition the circuit court of the county for an order requiring the person to appear and testify and to produce documents.
- Require a person to file a statement in writing, under oath, as to all the facts and circumstances concerning the matter to be audited, examined, or investigated.
- Makes such reviews of records, reports, and assets of the local governmental entity or the district school board as are needed.
- Consult with officials and auditors of the local governmental entity or the district school board and the appropriate state officials regarding any steps necessary to bring the books of account, accounting systems, financial procedures, and reports of the local governmental entity or the district school board into compliance with state requirements.
- Review the operations, management, efficiency, productivity, and financing of functions and operations of the local governmental entity or the district school board.
- Consult with other governmental entities for the consolidation of all administrative direction and support services, including, but not limited to, services for asset sales, economic and community development, building inspections, parks and recreation, facilities management, engineering and construction, insurance coverage, risk management, planning and zoning, information systems, fleet management, and purchasing.

Each recommendation and report made by the board addressing a local entity must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Legislative Auditing Committee, and the local governmental entity under review. Each recommendation and report addressing a district school board must be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Legislative Auditing Committee, the district school board under review, the Commissioner of Education, and the State Board of Education.

If a local governmental entity or district school board fails to remedy or take action on recommendations made in any report within 60 days after receipt, the Governor may suspend, for malfeasance and misfeasance in office, a member of the governing body of the local governmental entity or the district school board who failed to vote affirmatively to remedy or take action on the recommendations.

Section 2 amends s. 218.504, F.S., to conform cross-references made by the act.

Section 3 provides that this bill takes 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:

None.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on the state. The bill specifies the number of members on a financial emergency board and provides that such boards may hire or retain legal counsel among other duties. As such, there may be increased costs associated with the creation of financial emergency boards depending on the nature of the board and actions of the board. However, the establishment of a financial emergency board is not required and remains an optional measure that may be implemented in instances of a financial emergency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 218.503 and 218.504 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 Community Affairs on April 3, 2017:

- Requires the Speaker of the House and the President of the Senate to nominate five individuals to serve on the board, rather than appoint members, for a local governmental entity. The Governor must then appoint two board members from each list (a total of four).
- Requires the Speaker of the House of Representatives, the President of the Senate, and the State School Board to each nominate five individuals, rather than appoint members, for an emergency financial board for a district school board. The Governor must then appoint two board members from each list (a total of six).
- Revises the potential consequences for a local governmental entity or district school board that does not remedy the financial emergency or take action on the recommendations of the financial emergency board within 60 days. Those members of the governing body for the local governmental entity or district school board who do not vote affirmatively to remedy or take action on the recommendations are deemed to have committed malfeasance and misfeasance in office, subjecting them to suspension by the Governor.
- Removes the authority of the financial emergency board to assume operation and institutional control of the local governmental entity's or district school board's functions.

- B. **Amendments:**

None.

By the Committee on Community Affairs; and Senator Latvala

578-03380-17

20171402c1

1 A bill to be entitled
 2 An act relating to local governmental financial
 3 emergencies; amending s. 218.503, F.S.; expanding the
 4 entities that have oversight over local governmental
 5 entities, charter schools, charter technical career
 6 centers, and district school boards under certain
 7 circumstances; specifying the number of members to be
 8 on a financial emergency board; specifying the manner
 9 of appointing members to the board; providing
 10 qualifications of members and the chair of the board;
 11 revising the information to which the board has
 12 access; requiring the adoption of rules to conduct
 13 board business; authorizing the board to hire or
 14 retain legal counsel; requiring recommendations and
 15 reports to be submitted to specified entities;
 16 providing that certain board members of a local
 17 governmental entity or district school board who fail
 18 to vote affirmatively to take certain actions in
 19 certain circumstances are subject to suspension by the
 20 Governor; amending s. 218.504, F.S.; conforming
 21 provisions to changes made by the act; providing an
 22 effective date.
 23
 24 Be It Enacted by the Legislature of the State of Florida:
 25
 26 Section 1. Subsections (1), (2), and (3) of section
 27 218.503, Florida Statutes, are amended, subsections (4), (5),
 28 and (6) are renumbered as subsections (5), (6), and (7),
 29 respectively, and a new subsection (4) is added to that section,

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30 to read:
 31 218.503 Determination of financial emergency.—
 32 (1) Local governmental entities, charter schools, charter
 33 technical career centers, and district school boards shall be
 34 subject to review and oversight by the Governor, the Senate, the
 35 House of Representatives, the Legislative Auditing Committee,
 36 the charter school sponsor, the charter technical career center
 37 sponsor, or the Commissioner of Education, as appropriate, when
 38 any one of the following conditions occurs:
 39 (a) Failure within the same fiscal year in which due to pay
 40 short-term loans or failure to make bond debt service or other
 41 long-term debt payments when due, as a result of a lack of
 42 funds.
 43 (b) Failure to pay uncontested claims from creditors within
 44 90 days after the claim is presented, as a result of a lack of
 45 funds.
 46 (c) Failure to transfer at the appropriate time, due to
 47 lack of funds:
 48 1. Taxes withheld on the income of employees; or
 49 2. Employer and employee contributions for:
 50 a. Federal social security; or
 51 b. Any pension, retirement, or benefit plan of an employee.
 52 (d) Failure for one pay period to pay, due to lack of
 53 funds:
 54 1. Wages and salaries owed to employees; or
 55 2. Retirement benefits owed to former employees.
 56 (2) A local governmental entity shall notify the Governor,
 57 the President of the Senate, the Speaker of the House of
 58 Representatives, and the Legislative Auditing Committee; a

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59 charter school shall notify the charter school sponsor, the
 60 Commissioner of Education, and the Legislative Auditing
 61 Committee; a charter technical career center shall notify the
 62 charter technical career center sponsor, the Commissioner of
 63 Education, and the Legislative Auditing Committee; and a
 64 district school board shall notify the Commissioner of Education
 65 and the Legislative Auditing Committee, when one or more of the
 66 conditions specified in subsection (1) have occurred or will
 67 occur if action is not taken to assist the local governmental
 68 entity, charter school, charter technical career center, or
 69 district school board. In addition, any state agency must,
 70 within 30 days after a determination that one or more of the
 71 conditions specified in subsection (1) have occurred or will
 72 occur if action is not taken to assist the local governmental
 73 entity, charter school, charter technical career center, or
 74 district school board, notify the Governor, charter school
 75 sponsor, charter technical career center sponsor, or the
 76 Commissioner of Education, as appropriate, and the President of
 77 the Senate, the Speaker of the House of Representatives, and the
 78 Legislative Auditing Committee.

79 (3) Upon notification that one or more of the conditions in
 80 subsection (1) have occurred or will occur if action is not
 81 taken to assist the local governmental entity or district school
 82 board, the Governor or his or her designee, in cooperation with
 83 the President of the Senate or his or her designee, the Speaker
 84 of the House of Representatives or his or her designee, and the
 85 Legislative Auditing Committee, shall contact the local
 86 governmental entity or the Commissioner of Education or his or
 87 her designee ~~shall contact the district school board to~~

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20171402c1

88 determine what actions have been taken by the local governmental
 89 entity or the district school board to resolve or prevent the
 90 condition. The information requested must be provided within 45
 91 days after the date of the request. If the local governmental
 92 entity or the district school board does not comply with the
 93 request, the Governor or his or her designee or the Commissioner
 94 of Education or his or her designee shall notify the members of
 95 the Legislative Auditing Committee who may take action pursuant
 96 to s. 11.40. The Governor or the Commissioner of Education, as
 97 appropriate, shall determine whether the local governmental
 98 entity or the district school board needs state assistance to
 99 resolve or prevent the condition into the future. If state
 100 assistance is needed, the local governmental entity or district
 101 school board is considered to be in a state of financial
 102 emergency. The Governor or the Commissioner of Education, as
 103 appropriate, ~~may has the authority to~~ implement measures as set
 104 forth in ss. 218.50-218.504 to assist the local governmental
 105 entity or district school board in resolving the financial
 106 emergency. Such measures may include, but are not limited to:

107 (a) Requiring approval of the local governmental entity's
 108 budget by the Governor or approval of the district school
 109 board's budget by the Commissioner of Education.

110 (b) Authorizing a state loan to a local governmental entity
 111 and providing for repayment of same.

112 (c) Prohibiting a local governmental entity or district
 113 school board from issuing bonds, notes, certificates of
 114 indebtedness, or any other form of debt until such time as it is
 115 no longer subject to this section.

116 (d) Making such inspections and reviews of records,

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117 information, reports, and assets of the local governmental
118 entity or district school board as are needed. The appropriate
119 local officials shall cooperate in such inspections and reviews.

120 (e) Consulting with officials and auditors of the local
121 governmental entity or the district school board and the
122 appropriate state officials regarding any steps necessary to
123 bring the books of account, accounting systems, financial
124 procedures, and reports into compliance with state requirements.

125 (f) Providing technical assistance to the local
126 governmental entity or the district school board.

127 (g) 1. Establishing and empowering a financial emergency
128 board to oversee the activities of the local governmental entity
129 or the district school board as set forth in subsection (4). If
130 a financial emergency board is established for a local
131 governmental entity, the Governor shall appoint board members
132 and select a chair. If a financial emergency board is
133 established for a district school board, the State Board of
134 Education shall appoint board members and select a chair. The
135 financial emergency board shall adopt such rules as are
136 necessary for conducting board business. The board may:

137 a. Make such reviews of records, reports, and assets of the
138 local governmental entity or the district school board as are
139 needed.

140 b. Consult with officials and auditors of the local
141 governmental entity or the district school board and the
142 appropriate state officials regarding any steps necessary to
143 bring the books of account, accounting systems, financial
144 procedures, and reports of the local governmental entity or the
145 district school board into compliance with state requirements.

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146 ~~e. Review the operations, management, efficiency,~~
147 ~~productivity, and financing of functions and operations of the~~
148 ~~local governmental entity or the district school board.~~

149 ~~d. Consult with other governmental entities for the~~
150 ~~consolidation of all administrative direction and support~~
151 ~~services, including, but not limited to, services for asset~~
152 ~~sales, economic and community development, building inspections,~~
153 ~~parks and recreation, facilities management, engineering and~~
154 ~~construction, insurance coverage, risk management, planning and~~
155 ~~zoning, information systems, fleet management, and purchasing.~~

156 2. The recommendations and reports made by the financial
157 emergency board must be submitted to the Governor for local
158 governmental entities or to the Commissioner of Education and
159 the State Board of Education for district school boards for
160 appropriate action.

161 (h) Requiring and approving a plan, to be prepared by
162 officials of the local governmental entity or the district
163 school board in consultation with the appropriate state
164 officials, prescribing actions that will cause the local
165 governmental entity or district school board to no longer be
166 subject to this section. The plan must include, but need not be
167 limited to:

168 1. Provision for payment in full of obligations outlined in
169 subsection (1), designated as priority items, which are
170 currently due or will come due.

171 2. Establishment of priority budgeting or zero-based
172 budgeting in order to eliminate items that are not affordable.

173 3. The prohibition of a level of operations which can be
174 sustained only with nonrecurring revenues.

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175 4. Provisions implementing the consolidation, sourcing, or
 176 discontinuance of all administrative direction and support
 177 services, including, but not limited to, services for asset
 178 sales, economic and community development, building inspections,
 179 parks and recreation, facilities management, engineering and
 180 construction, insurance coverage, risk management, planning and
 181 zoning, information systems, fleet management, and purchasing.

182 (4) (a) Any financial board established must consist of an
 183 odd number of members comprised of at least 7 but not more than
 184 13 members.

185 1. If a financial emergency board is established for a
 186 local governmental entity, the President of the Senate and the
 187 Speaker of the House of Representatives shall each nominate five
 188 individuals as candidates for appointment to the board. The
 189 Governor shall choose two candidates from each list and appoint
 190 them as four of the members of the board. The Governor shall
 191 appoint the remainder of the board members and shall designate
 192 the chair of the board.

193 2. If a financial emergency board is established for a
 194 district school board, the President of the Senate, the Speaker
 195 of the House of Representatives, and the State Board of
 196 Education shall each nominate five individuals as candidates for
 197 appointment to the board. The Governor shall choose two
 198 candidates from each list and appoint them as six of the members
 199 to the board. The State Board of Education shall appoint the
 200 remainder of the board members and shall designate the chair of
 201 the board.

202 (b) Appointees to a financial emergency board should
 203 collectively possess the knowledge, skills, and competencies

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204 needed to perform their individual responsibilities and
 205 accomplish the mission of the financial emergency board,
 206 including, but not limited to, internal quality control,
 207 finance, business administration, and public works. The chair of
 208 the financial emergency board must have experience in at least
 209 one of the following positions or areas:

210 1. Inspector general.

211 2. Supervisory experience in an office of inspector general
 212 or an investigative public agency similar to an office of
 213 inspector general.

214 3. Local, state, or federal law enforcement officer.

215 4. Local, state, or federal court judge.

216 5. Senior-level auditor or comptroller.

217 6. The administration and management of complex audits and
 218 investigations.

219 7. Managing programs for prevention, examination,
 220 detection, elimination of fraud, waste, abuse, mismanagement,
 221 malfeasance, or misconduct in government or other organizations.

222 8. Certified fraud examiner.

223 (c) The financial emergency board shall have access to
 224 records, data, and other information of the local governmental
 225 entity or the district school board that the board deems
 226 necessary to carry out its duties and shall be given the
 227 technical and financial resources necessary to complete those
 228 duties. The financial emergency board shall adopt such rules as
 229 are necessary for conducting board business. The board may:

230 1. Hire or retain legal counsel.

231 2. Obtain external advice and assistance if the financial
 232 emergency board or the staff of the entity under review lacks

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233 the knowledge, skills, or other competencies needed to perform
 234 all or part of the duties necessary to resolve the financial
 235 emergency conditions.

236 3. Request and obtain assistance from any federal agency,
 237 state agency, or local entity.

238 4. Issue and serve subpoenas or subpoenas duces tecum to
 239 compel the attendance of witnesses and the production of
 240 documents, reports, answers, records, accounts, and data in any
 241 format. In the event of noncompliance with a subpoena issued
 242 pursuant to this subparagraph, the chair of the financial
 243 emergency board may petition the circuit court of the county for
 244 an order requiring the subpoenaed person to appear and testify
 245 and to produce documents.

246 5. Require a person to file a statement in writing, under
 247 oath, as to all the facts and circumstances concerning the
 248 matter to be audited, examined, or investigated.

249 6. Make such reviews of records, reports, and assets of the
 250 local governmental entity or the district school board as are
 251 needed.

252 7. Consult with officials and auditors of the local
 253 governmental entity or the district school board and the
 254 appropriate state officials regarding any steps necessary to
 255 bring the books of account, accounting systems, financial
 256 procedures, and reports of the local governmental entity or the
 257 district school board into compliance with state requirements.

258 8. Review the operations, management, efficiency,
 259 productivity, and financing of functions and operations of the
 260 local governmental entity or the district school board.

261 9. Consult with other governmental entities for the

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262 consolidation of all administrative direction and support
 263 services, including, but not limited to, services for asset
 264 sales, economic and community development, building inspections,
 265 parks and recreation, facilities management, engineering and
 266 construction, insurance coverage, risk management, planning and
 267 zoning, information systems, fleet management, and purchasing.

268 (d)1. Each recommendation and report made by the financial
 269 emergency board addressing a local entity must be submitted to
 270 the Governor, the President of the Senate, the Speaker of the
 271 House of Representatives, the Legislative Auditing Committee,
 272 and the local governmental entity under review.

273 2. Each recommendation and report made by the financial
 274 emergency board addressing a district school board must be
 275 submitted to the Governor, the President of the Senate, the
 276 Speaker of the House of Representatives, the Legislative
 277 Auditing Committee, the district school board under review, the
 278 Commissioner of Education, and the State Board of Education for
 279 appropriate action.

280 (e) If a local governmental entity or the district school
 281 board, as appropriate, fails to remedy or take action on
 282 recommendations made in any report submitted under paragraph (d)
 283 within 60 days after receiving the recommendations, a member of
 284 the governing body of the local governmental entity or the
 285 district school board, as appropriate, who failed to vote
 286 affirmatively to remedy or take action on the recommendations is
 287 subject to suspension from office by the Governor for
 288 malfeasance and misfeasance in office.

289 Section 2. Paragraph (b) of subsection (1) and subsection
 290 (2) of section 218.504, Florida Statutes, are amended to read:

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291 218.504 Cessation of state action.—The Governor or the
292 Commissioner of Education, as appropriate, has the authority to
293 terminate all state actions pursuant to ss. 218.50–218.504.
294 Cessation of state action must not occur until the Governor or
295 the Commissioner of Education, as appropriate, has determined
296 that:

297 (1) The local governmental entity, charter school, charter
298 technical career center, or district school board:

299 (b) Has resolved the conditions outlined in s. 218.503(1)
300 or (4) s. 218.503(1).

301 (2) None of the conditions outlined in s. 218.503(1) or (4)
302 s. 218.503(1) exists.

303 Section 3. 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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1582

INTRODUCER: Appropriations Committee and Senator Bradley

SUBJECT: Workers' Compensation Insurance

DATE: April 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Sanders/Johnson</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1582 amends several provisions in chapter 440, Florida Statutes, Florida's workers' compensation law, and chapter 627, Florida Statutes, the Insurance Code, which governs the rate making approval process for many, but not all, providers of workers' compensation coverage.

The bill:

- Codifies *Westphal v. City of St. Petersburg*,¹ by increasing temporary total disability benefits and temporary partial disability benefits from 104 weeks to 260 weeks.
- Amends the attorney fee provision to require the Judge of Compensation Claims (JCC) to consider certain factors in determining if the attorney fees should be increased or decreased, based on a maximum hourly rate of \$250. The bill removes the criminal penalty for claimant attorneys receiving fees that are not approved by the JCCs, thereby allowing claimants to enter into retainer agreements. The bill eliminates the attorney fee cap of \$1,500 on medical-only claims.
- Requires greater specificity in the information that must be provided in petitions for benefits filed with the Office of Judges of Compensation Claims (OJCC), such as the specific date of maximum medical improvement and the specific date that such permanent benefits are claimed to begin.
- Clarifies that deadlines within multiple provisions relating to medical care are based on business days, not calendar days. For example, the bill requires carriers to authorize or deny medical authorization requests within three business days.

¹ *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. 2016).

- Revises the workers' compensation rating law. Currently, Florida law requires carriers, or rating organization filing on their behalf, to file an administered rate or full rate. The bill implements loss costs rating, which requires each insurer to seek approval for rates based on aggregate claim information filed by a rating organization with individual company data (loss costs multipliers), being used for the final rate, subject to approval by the Office of Insurance Regulation (OIR).
- Limits defense and cost containment expenses of insurers to 15 percent of incurred losses, and provides that excessive defense and cost containment fees must be returned to policyholders.
- Creates a presumption that firefighters who have multiple myeloma or non-Hodgkin's lymphoma are presumed to have contracted one of these occupational diseases in the course and scope of employment. This provision will extend workers' compensation benefits to firefighters who have either of these conditions.

To cover the costs associated with the bill, an appropriation of \$823,118, which includes staffing needs and information technology enhancements to implement the provisions of this bill, is provided to the OIR.² In addition, the bill appropriates the Office of Judges of Compensation Claims \$24,720 for reprogramming and temporary staffing needs. On the other hand, the Division of Risk Management, the state's self-insurance pool, which includes workers' compensation claims, may experience cost savings like other workers' compensation carriers. See Section V. Fiscal Impact Statement.

Except as otherwise expressly provided in this act, the bill has an effective date of July 1, 2017.

II. Present Situation:

Florida's Workers' Compensation Trends

In 2015, 242 commercial insurers actively wrote workers' compensation insurance in Florida. In total, these private sector insurers wrote \$2.6 billion in premium.³ In 2014, Florida rates were ranked 28th highest in the United States. In 2016, Florida rates were ranked even lower at 33.⁴

*Medical-Only and Indemnity Claims*⁵

Approximately 75 percent of claims in Florida are medical-only and the average cost is \$1,378. Medical-only claims represent ten percent of losses. In contrast, 25 percent of the claims in Florida are lost-time claims and the average cost is \$39,296. Lost time claims represent 90 percent of total losses.

² Email from Richard Fox, Budget Director, Office of Insurance Regulation (April 10, 2017) (on file with Senate Appropriations Committee).

³ OIR, *2016 Workers' Compensation Annual Report*, pg. 6 (Jan. 2017).

<http://floir.com/siteDocuments/2016WorkersCompensationAnnualReport.pdf> (last accessed April 4, 2017) (on file with Senate Banking and Insurance Committee).

⁴ Oregon Department of Consumer and Business Services, *2016 Oregon Workers' Compensation Premium Rate Ranking Summary* (Oct. 2016) http://www.cbs.state.or.us/external/dir/wc_cost/files/report_summary.pdf (last accessed on April 4, 2017) (on file with Senate Banking and Insurance Committee).

⁵ NCCI, *Workers' Compensation October 1, 2016, Law-Only Rate Filing Overview* (On file with Senate Banking and Insurance Committee).

Cost Drivers

According to the OIR, there are several cost drivers in the Florida workers' compensation system that the Legislature could address to induce cost savings.⁶ The OIR noted that NCCI compared the medical cost distributions for Florida versus 37 states combined to show that based on recent experience Florida has a higher portion of cost paid for drugs, hospital inpatient, and ambulatory surgical centers.⁷

Attorney Involvement

Attorney involvement is approximately 25 percent on lost-time claims.⁸ Since claimant attorney involvement is reported to NCCI as indemnity, a medical-only claim with claimant attorney involvement would be reported as a lost-time claim.⁹ For lost-time claims with attorney involvement, the cost on average is approximately three times more than lost-time claims without attorney involvement.¹⁰

Section 440.34, F.S., requires the reporting of all fees paid to attorneys for services rendered to the OJCC. The OJCC reported¹¹ that during 2015-2016, a total of \$378,573,902 was incurred on combined claimant attorneys' fees and defense attorneys' fees in the Florida system. This represents a small increase, about two percent, from the 2014-2015 aggregate fee total of \$370,772,783. The 2015-2016 aggregate fee total is also very similar to the 2013-2014 aggregate total of \$379,222,337. Both claimant and defense fees decreased in 2014-2015, more significantly on the claimant side. Both figures increased in 2015-2016, more significantly on the defense side. The following OJCC table provides a snapshot of fees for the period of 2002-2016.

Fiscal Year	Claimant Attorney Fees	Percent Change	Defense Attorney Fees	Percent Change
2002-03	\$210,660,738		\$216,698,474	
2003-04	\$215,322,360	2.21%	\$226,585,434	4.56%
2004-05	\$211,157,073	-1.93%	\$259,021,415	14.32%
2005-06	\$208,369,260	-1.32%	\$290,172,000	12.03%
2006-07	\$191,197,443	-8.24%	\$277,286,580	-4.41%
2007-08	\$188,701,256	-1.31%	\$260,160,496	-6.21%
2008-09	\$181,660,686	-3.73%	\$269,280,414	3.51%
2009-10	\$176,996,765	-2.57%	\$269,657,104	0.14%
2010-11	\$157,081,084	-11.25%	\$259,323,175	-3.83%
2011-12	\$152,848,003	-2.69%	\$242,446,703	-6.51%
2012-13	\$151,889,627	-0.63%	\$240,894,494	-0.64%
2013-14	\$141,858,184	-6.60%	\$237,364,154	-1.47%

⁶ See OIR fn. 1 at pg. 15.

⁷ See *id.*

⁸ See NCCI fn. 3 at pg. 9.

⁹ See *id.*

¹⁰ See *id.*

¹¹ OJCC, *2015-2016 Annual Report*, available at

<https://www.jcc.state.fl.us/JCC/publications/reports/2016AnnualReport/Index.html#> (last viewed Mar. 30, 2017).

2014-15	\$136,180,202	-4.00%	\$234,592,581	-1.17%
2015-16	\$136,461,404	0.21%	\$242,112,498	3.21%

Underwriting Performance of Carriers¹²

According to the OIR, “an important measure of the health of an insurance market is the underwriting performance of the insurers in the market; that is, the combination of pricing, risk management, and application of effective underwriting guidelines contributing to a viable and sustainable market.” Commonly used measures employed by the OIR in the 2016 Workers’ Compensation Annual Report include the loss ratio (defined as direct losses incurred divided by direct premiums earned) and a broader measure that includes direct losses incurred and defense cost containment expenses (DCCE) incurred as a percentage of direct premiums earned. Ratios approaching or exceeding 100 for either measure are not considered profitable. For the Florida workers’ compensation market in 2015, these aggregate ratios based on National Association of Insurance Commissioners (NAIC) Annual Statement data are:

- Direct Loss Ratio 57.76 percent; and
- Direct plus DCCE Ratio 65.32 percent.

While there is year-to-year variation in these ratios, both of these measures are fairly consistent with the ratios (57.90 percent and 66.14 percent, respectively) based on 2014 NAIC Annual Statement data.

The combined ratio is another common measure of underwriting performance. Combined ratios measure underwriting profitability and are generally defined as the sum of losses and expenses divided by earned premium. Typically, dividend payments are included as an expense item in quantifying combined ratios. The NCCI’s presentation at its 2016 State Advisory Forum shows that the Florida workers’ compensation combined ratio for private carriers and self-insureds has been trending down for the past several years.

The Accident Year Combined Ratios for Florida

Accident Year	Combined Ratio
2010	124%
2011	115%
2012	106%
2013	98%
2014	96%

A combined ratio less than 100 percent indicates that insurers are achieving an underwriting gain for workers’ compensation. When the combined ratio is greater than 100 percent, insurers are paying out more in losses and expenses than they are collecting in premiums. Insurers may profit in years where the combined ratio is greater than 100 percent because the ratio does not include investment income.

¹² See OIR fn. 1 at pgs. 9-10.

Recent Florida Supreme Cases

Recent Florida court decisions have found multiple parts of the workers' compensation law unconstitutional. They are *Castellanos v. Next Door Company*,¹³ involving attorney fees; *Westphal v. City of St. Petersburg*,¹⁴ relating to temporary wage replacement benefits (i.e., indemnity); and *Miles v. City of Edgewater Police Department*,¹⁵ which addresses the right of an injured worker to pay for their own attorney.

Castellanos v. Next Door Company

In April 2016, the Florida Supreme Court (Court) rendered its decision in *Castellanos v. Next Door Company*. The Court concluded that:

The right of an injured worker to recover a reasonable prevail party attorney's fee has been a key feature of the state's workers' compensation law since 1941. Through the enactment of a mandatory fee schedule, however, the Legislature has created an irrebutable presumption that every fee calculated in accordance with the fee schedule will be reasonable to compensate the attorney for his or her services. The \$1.53 hourly rate in this case clearly demonstrates that not to be true. We conclude that the mandatory fee schedule is unconstitutional as a violation of due process under both the Florida and United States Constitutions.

As a result of this ruling, judges may deviate from the statutory fee schedule if it results in an unreasonable fee.

Westphal v. City of St. Petersburg

Subsequently, in June 2016, the Court, in the case of *Westphal v. City of St. Petersburg*, found the 104-week statutory limitation on temporary total disability benefits unconstitutional because it causes a statutory gap in benefits in violation of an injured worker's constitutional right of access to courts. The Court reinstated the 260-week limitation in effect prior to the 1994 law change.

Miles v. City of Edgewater Police Department

The First District Court of Appeals (1DCA) held that statutes governing payment of attorney's fees in workers' compensation proceedings violated the claimant's First Amendment rights, and thus were unconstitutional. In *Miles*, the 1DCA invalidated a limitation on attorneys accepting payment directly from the injured worker or others on the injured worker's behalf. Before this case, an injured worker, and anyone paying on their behalf, was prohibited from directly paying for their own attorney.¹⁶ The attorney was only paid by the employer/carrier¹⁷ and only if they

¹³ *Castellanos v. Next Door Company*, 192 So.3d 431 (Fla. 2016).

¹⁴ *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. 2016).

¹⁵ *Miles v. City of Edgewater Police Department*, 190 So.3d 171 (Fla. 1st DCA 2016).

¹⁶ Sections 440.105(2)(c) and 440.34(1), F.S.

¹⁷ Workers' compensation insurers are referred to as carriers. Section 440.02(4), F.S., provides that the term "carrier" means any person or fund authorized under s. 440.38, F.S., to insure under this chapter and includes a self-insurer and a commercial self-insurance fund authorized under s. 624.462. .

won the case. The 1DCA found that the right to freedom of speech requires that the injured worker be able to choose to speak to the courts through an attorney and the right to freedom of contract permits the worker to retain an attorney.

Recent Rate Filing by the National Council on Compensation Insurance

In response to the two 2016 Court opinions, on May 27, 2016, the National Council on Compensation Insurance (NCCI), the rating organization that files rates on behalf of workers' compensation insurers, submitted a rate filing with the Office of Insurance Regulation (OIR) requesting a 17.1 percent increase in rates.¹⁸ As part of the filing, the NCCI requested a 15 percent increase as the first-year impact attributable to the 2016 *Castellanos* case and a 1.8 percent increase caused by updates in the medical provider fee schedule enacted during the 2016 Session.¹⁹ The combined estimated impact of the two components on premiums is an increase of \$623 million in premiums.²⁰ However, on June 30, 2016, NCCI amended its rate filing to include the estimated 2.2 percent impact of the *Westphal* decision, resulting in a filing requesting a 19.6 percent increase in rates or an estimated \$714 million increase in premiums.²¹

On September 27, 2016, the OIR issued its order disapproving the pending 19.6 percent rate filing and advised NCCI it would approve a 14.5 percent rate increase or \$528 million increase in premiums if NCCI submitted an amended filing within one week.²² The NCCI complied and on October 5, 2016, the OIR approved a 14.5 percent increase in rates effective December 1, 2016, applicable to both new and renewal workers' compensation insurance policies.²³

On November 23, 2016, a court order invalidated the 14.5 percent overall combined statewide average rate increase approved by the OIR,²⁴ due to NCCI's violations of the Sunshine Laws relating to public records and meetings, as required under ch. 119, F.S., and s. 627.291, F.S. The appeal is pending in the 1DCA. The order is stayed pursuant to an order issued by the 1DCA on December 12, 2016.²⁵ Oral argument was held on February 22, 2017.²⁶ The 1DCA has not rendered an opinion.²⁷

¹⁸ NCCI, *Analysis of Florida Workers Compensation Rate Filing Proposed Effective 8/1/2016* (May 27, 2016). <http://floir.com/Sections/PandC/NCCIHearing.aspx> (last accessed April 4, 2017).

¹⁹ See NCCI fn. 17 at pg. 1.

²⁰ See NCCI, *NCCI Proposes Florida Workers Compensation Rate Increase Effective August 1, 2016* (May 27, 2016). http://floir.com/siteDocuments/NCCI-FL_Filing_Release-8-1-16.pdf (last accessed Apr. 14, 2017) (on file with the Senate Committee on Banking and Insurance).

²¹ NCCI, *NCCI Amends Pending Florida Workers Compensation Rate Filing to +19.6% Proposed Effective October 1, 2016* (July 1, 2016)(On file with the Senate Committee on Banking and Insurance)

²² OIR, *Order on Rate Filing Case No. 191880-16* (Sept. 27, 2016).

²³ OIR, *Final Order on Rate Filing Case No. 191880-16* (Oct. 5, 2016).

²⁴ Order on Non-Jury Trial and Final Judgement Providing Declaratory and Injunctive Relief, *James F. Fee, Jr., v. the National Council on Compensation Insurance, Inc., etc., The Office of Insurance Regulation etc., and David Altmaier*, Case No. 2016 CA 2159 (Fla. 2nd Jud. Cir. 2016).

²⁵ Order of the Court December 12, 2016, *National Council on Compensation Insurance v. James F. Fee, Jr.*, Case Nos. 1D16-5408 & 1D16-5416 (Fla 1st DCA 2016).

²⁶ Oral Argument, February 22, 2017, *Nat'l Council on Compensation Insur. v. James F. Fee, Jr.*, Case Nos. 1D16-5408 & 1D16-5416 (Fla 1st DCA 2016), <http://oavideo.1dca.org/OAPlayer.aspx?ID=2293&CaseID=68332&File=165408.smil>

²⁷ Conversation with 1st DCA Clerk's Office (April 7, 2017) (Senate Committee on Appropriations).

2003 Reforms

In 2000, Florida had the highest premiums in the country, and was ranked second highest in 2002.²⁸ In response to a downturn in the Florida economy and uncertainties in the marketplace, some insurers were not issuing new policies or renewing policies, or significantly tightening their underwriting requirements. Many small employers were forced to secure significantly more expensive coverage in the Florida Workers' Compensation Joint Underwriting Association ("insurer of last resort") due to availability issues.

In 2003, the Workers' Compensation Research Institute and the NCCI identified major cost drivers in Florida's workers' compensation system and compared Florida with national averages. These cost drivers included higher medical costs for types of claims, higher frequency of permanent total disability claims, and relatively high hospital costs as compared to national averages. The NCCI noted that attorney involvement in Florida was significant and helped explain the major cost drivers. When attorneys were not involved, the difference in claims costs between Florida and the national average was minimal. However, when attorneys were involved, Florida's claim size was nearly 40 percent higher than the national average. Prior to 2003, the average Florida claim cost was \$39,000. In contrast, the countrywide average was \$29,000.

Prior to the 2003 reforms, the JCCs used a three-tier fee schedule to award attorney's fees based upon the amount of benefits secured. Generally, the fees would equal 20 percent of the first \$5,000 of the amount of benefits secured; 15 percent of the next \$5,000 of the amount of benefits secured, ten percent of the remaining amount of the benefits secured and to be provided during the first ten years, and five percent of the benefits secured after ten years. However, the JCCs had the discretion to increase or decrease the attorney's fee without any dollar limitation, based on the following factors:

- Time and labor involved;
- Fee customarily charged in the locality for similar services;
- Amount involved in controversy and the benefits resulting;
- Time limitation imposed by claimant or circumstances;
- Experience, reputation, and the ability of the attorney; and
- Contingency or certainty of a fee.

In 2003, the Florida Legislature enacted significant reforms intended to address the availability and affordability of coverage for employers. These reforms were designed to reduce the overall costs to the system by expediting the dispute resolution process, reducing attorney fees, providing greater enforcement tools to combat fraud, revising standards for compensability and benefits, and changing medical services and reimbursements. The 2003 reforms continued the use of the contingency fee schedule in awarding attorney's fee. However, any additional hourly fees were eliminated and the JCCs were prohibited from approving any agreement related to benefits, which provided for an attorney's fee in excess of the amount permitted under the fee schedule.²⁹ As an alternative to the contingency fee schedule, the JCC were authorized to approve an attorney's fee not to exceed \$1,500 once per accident if the JCC determined that the

²⁸ See Oregon Department of Consumer and Business Services fn 2.

²⁹ Sections 440.34 and 440.105, F.S.

contingency fee schedule, based on benefits secured, fails to compensate fairly the attorney for a disputed medical-only claim.

In late 2003, in response to the passage of the reforms, the OIR approved a rate filing submitted by the NCCI that resulted in a 14 percent rate decrease, which represented a \$420 million decrease in workers' compensation insurance costs for employers.³⁰ Since the implementation of the reforms, the Office of Insurance Regulation (OIR) has approved workers' compensation rate decreases totaling over 60 percent.

Administration of the Workers Compensation System in Florida

The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. These functions include the enforcement of coverage requirements,³¹ administration of workers' compensation health care delivery system,³² data collection,³³ and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities under ch. 440, F.S.³⁴ Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.³⁵ Employees generally cannot sue a covered employer for workplace injuries.³⁶

Medical Benefits

Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.³⁷ Medical services must be provided by a health care provider authorized by the carrier prior to being provided (except for emergency care).³⁸ When the carrier has knowledge of a work-related injury, it will refer the injured employee to an authorized workers' compensation provider.

Authorized medical services and treatment are provided at no cost to the injured employee, except employees are required to pay a \$10 co-payment for medical services provided after they have reached "maximum medical improvement."³⁹ Injured employees are entitled to one change of physician during the course of treatment for any one accident.⁴⁰ After the initial examination

³⁰ OIR, Final Order on Rate Filing (Aug. 12, 2003) available at <http://www.flair.com/siteDocuments/NCCI.pdf> (last viewed Mar. 30, 2017).

³¹ Section 440.107(3), F.S.

³² Section 440.13, F.S.

³³ Section 440.185 and 440.593, F.S.

³⁴ Section 440.191, F.S.

³⁵ "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. s. 440.13(1)(d), F.S.

³⁶ Section 440.11(1), F.S. Employers who fail to obtain required workers' compensation coverage may be sued by an injured worker in civil court. Likewise, an employee who is either exempt or excluded from workers' compensation coverage requirements may sue their employer in civil court for work-related injuries, even if the employer has coverage for their other employees.

³⁷ Section 440.13(2)(a), F.S.

³⁸ Section 440.13(3)(a), F.S.

³⁹ The date of maximum medical improvement is the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated, based upon reasonable medical probability. Section 440.02(10), F.S.

⁴⁰ Section 440.13(2)(f), F.S.

and diagnosis, the workers' compensation health care provider is required to submit a proposed course of treatment to the carrier to determine whether such treatment would be recognized as reasonably prudent.⁴¹

Indemnity Benefits

Indemnity benefits only become payable to employees who are disabled for at least eight days due to a compensable workplace injury.⁴² The first seven days of lost earnings may be paid retroactively to employees who are disabled for more than 21 days.⁴³ These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage (AWW),⁴⁴ up to the maximum weekly benefit established by law.⁴⁵ For 2016, this amount is \$863, which is the statewide average weekly wage (SAWW).⁴⁶ Payments are due every two weeks.⁴⁷ Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.⁴⁸
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.⁴⁹
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for five years.⁵⁰

Office of the Judges of Compensation Claims

The OJCC is responsible for resolving workers' compensation benefit disputes.⁵¹ Injured employees may file a petition for benefits with the OJCC for any benefit that is ripe, due, and

⁴¹ Section 440.13(2)(e), F.S.

⁴² Section 440.12(1), F.S.

⁴³ *Id.*

⁴⁴ An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident. s. 440.14(1), F.S.

⁴⁵ Section 440.15(1)-(4), F.S.

⁴⁶ "Statewide average weekly wage" means the average weekly wage paid by employers subject to the Florida Reemployment Assistance Program Law as reported to the Department of Economic Opportunity (DEO) for the four calendar quarters ending each June 30, which average weekly wage shall be determined by the DEO on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following. s. 440.12(b), F.S. See DFS website at <http://www.myfloridacfo.com/division/wc/Insurer/awwrate.htm#.WOPgOMHr2Uk> (last viewed Apr. 4, 2017).

⁴⁷ Section 440.20(2)(a), F.S.

⁴⁸ Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specifies that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and the statute has reverted to 260 weeks of temporary total disability benefits pursuant to this case law. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in *Westphal* to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

⁴⁹ Section 440.15(3), F.S.

⁵⁰ Section 440.15(1), F.S.

⁵¹ Section 440.192, F.S.

owing.⁵² Within 14 days of receipt of the petition, the carrier is required to either pay the requested benefits or file a response to the petition.⁵³ Forty days after the petition for benefits has been filed, the OJCC will notify the parties that a mediation conference has been scheduled. The mediation will take place within 130 days after the filing of the petition.⁵⁴ If mediation is unsuccessful in resolving the claim, a final hearing must be held within 90 days of the mediation. The overall time limit for dispute resolution from the date of the petition for benefits to the issuance of a final order is 240 days. Generally, an injured worker that prevails on a petition for benefits is entitled to an award for a reasonable attorney's fee payable by the carrier.⁵⁵

Workers' Compensation Coverage

Generally, employers may secure coverage from an authorized carrier or qualify as a self-insurer.⁵⁶ Employers that are not self-insured and are unable to secure coverage from a carrier may purchase coverage from the Workers' Compensation Joint Underwriting Association (WCJUA).⁵⁷ The (WCJUA) is the insurer of last resort for workers' compensation insurance, also known as the residual market.

Florida Workers Compensation Rating System

The OIR regulates workers' compensation rates pursuant to authority granted under part I of ch. 627, F.S. Florida uses a full rate system, which requires the rate to include benefits, loss adjustment expenses, commissions, taxes, general administrative expenses and profits and contingencies. Seven states use an administered pricing or full rate system.

The insurance rate is the "unit charge by which the measure of exposure or the amount of insurance specified in a policy of insurance or coverage there under is multiplied to determine the premium."⁵⁸ A manual rate per \$100 of payroll is developed for each of the 600 classification codes that reflects the potential for loss associated with a group of employers engaged in the same type of business or industry. This rate is multiplied by the employer's payroll to determine the unadjusted premium. Then, the unadjusted premium is multiplied by the employer's experience modification factor to determine the adjusted premium. An experience rating compares an employer's actual losses and the losses that would be expected to occur for an average employer with a similar business.

The OIR must approve or disapprove rates in the voluntary market prior to becoming effective.⁵⁹ In determining whether to approve or disapprove a workers' compensation rate filing, the OIR considers certain statutory standards and factors specified in ss. 627.062 and 627.072, F.S.⁶⁰ The

⁵² Section 440.192(1), F.S.

⁵³ Section 440.192(8), F.S.

⁵⁴ Section 440.25, F.S.

⁵⁵ Section 440.34, F.S., and *Castellanos v. Next Door Company*, 192 So.3d 431 (Fla. Apr. 28, 2016).

⁵⁶ Section 440.38, F.S.

⁵⁷ Section 627.311(5)(a), F.S.

⁵⁸ Section 627.091, F.S.

⁵⁹ Section 627.101, F.S.

⁶⁰ Section 627.151, F.S.

standard for approving insurance rates in Florida and most states is that the rate may not be excessive, inadequate, or unfairly discriminatory.

Florida law requires every workers' compensation insurer to file with the OIR its rates and classifications that the insurer proposes to use.⁶¹ However, the law allows an insurer to satisfy this obligation by becoming a member of a licensed rating organization, which makes such filings on its behalf.⁶² All workers' compensation insurers in Florida have chosen to become members of the NCCI.

The law and the rating plans approved by OIR allow for mechanisms for insurers to vary premiums. Insurers may use the following pricing tools to compete on price, as described below.⁶³

- Consent to Rate – The insurer and employer agree to a rate in excess of the approved rate. The insurer must limit this option to no more than 10 percent of policies written or renewed in each calendar year.
- Deviations – An insurer is allowed to file a uniform percentage increase or decrease applicable to all rates an insurer charges or to rates for a particular class or group of classes of insurance.
- Intermediate Deductibles – For a reduced premium, the employer agrees to reimburse the insurer for each claim up to the deductible amount. Intermediate deductibles range from \$5,000 to \$75,000. Similar to small deductible policies the insurer is responsible from first dollar of loss (i.e. losses below the deductible).
- Large Deductibles – Large deductible policies operate similarly to the small and intermediate deductible, but have a deductible amount of \$100,000 and above. In order to qualify for the large deductible program, an employer must have a standard premium of at least \$500,000.
- Large Risk Alternative Rating Option (LRARO) – In most states, LRARO is defined as a flexible retrospective rating plan mutually agreed to by the employer and carrier. In Florida, LRARO is a provision within the currently approved retrospective rating plan that allows for negotiation of a premium between the employer and the insurer.
- Policyholder Dividends – Insurers reward their policyholders by returning some of their profit at the expiration of the policy by issuing policyholder dividends, which may be based on the policyholder's experience, the carrier's experience, and other factors.

In contrast to Florida's full rate system, approximately 38 states use a loss costs system.⁶⁴ Generally, loss costs are all of the components of a full rate, excluding expenses and profits. The loss costs represent the rate an insurer must charge in order to cover the losses associated with covering all claims for the year. Depending on the state, loss costs may or may not include all expenses associated with loss adjustment. In the majority of states where an advisory or rating organization makes a loss costs filing, an individual insurer may base their rates on their individual loss costs or the advisory loss costs modified by a loss costs multiplier. The loss costs

⁶¹ Section 627.211, F.S.

⁶² Section 627.091, F.S.

⁶³ OIR fn. 1 at pg. 30-31. .

⁶⁴ NCCI Correspondence (Dec. 6, 2016) (on file with Senate Banking and Insurance Committee).

multiplier is a factor that represents an individual insurer's profit and expense portion of the full workers' compensation rate.⁶⁵

State Survey of Occupational Diseases and Presumptive Coverage

The types of diseases defined as occupational diseases for which the firefighter or other first responder presumptive coverage applies most often fall into the following categories: cancer, lung, respiratory conditions, blood, and infectious diseases, and heart and vascular conditions.

The Centers for Disease Control (CDC) reports 12.7 million people are diagnosed with cancer every year, around the world. Furthermore, the CDC states, "[c]ancer is the leading cause of death in developed countries and the second leading cause of death in developing countries."⁶⁶ The CDC reports that there is a direct link between occupational exposure and cancer and estimates 3-6% of all cancers worldwide are caused by exposure to carcinogens in the workplace.⁶⁷

During the course of fighting fires, firefighters are exposed to known carcinogens⁶⁸. The National Institute for Occupational Safety and Health (NIOSH) conducted a multi-year study of 30,000 firefighters from San Francisco, Chicago and Philadelphia Fire Departments.⁶⁹ The study concluded firefighters are at "increased risk of certain types of cancer as a result of occupational exposure."⁷⁰ The NIOSH found that the firefighters studied had a greater number of cancer related deaths and cancer diagnoses.⁷¹ At least 21 states have a workers' compensation presumption available to firefighters diagnosed with various types of cancer.⁷²

III. Effect of Proposed Changes:

Section 1 amends s. 440.02, F.S., to revise the definition of the term "specificity," thereby requiring additional information to be provided in the petition for benefits filed with the Office of Judges of Compensation Claims (OJCC). This includes specific information for each requested benefit, the specific amount of each requested benefit, and the calculation used for computing the requested benefits.

Section 2 amends s. 440.105, F.S., to eliminate the provision that prohibits an attorney or other person from receiving any fee from a person because of services rendered for a person in

⁶⁵ *Id.*

⁶⁶ Centers for Disease Control and Prevention, *Occupational Cancer*, <https://www.cdc.gov/niosh/topics/cancer/> (last visited April 17, 2017).

⁶⁷ *Id.*

⁶⁸ Centers for Disease Control and Prevention, *Occupational Cancer: Carcinogen List*, <https://www.cdc.gov/niosh/topics/cancer/npotocca.html> (last visited April 17, 2017).

⁶⁹ National Institute for Occupational Safety and Health (NIOSH), *Findings from a Study of Cancer among U.S. Fire Fighters*, <https://www.cdc.gov/niosh/pgms/worknotify/pdfs/ff-cancer-factsheet-final.pdf> (last visited April 17, 2017).

⁷⁰ *Id.* at p. 1.

⁷¹ *Id.* at p. 1.

⁷² Alabama, Arkansas, Arizona, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Missouri, Nevada, New Mexico, Oklahoma, Oregon, South Dakota, Texas, Utah, Vermont, and Virginia. (on file with Senate Banking and Insurance Committee).

connection with any preceding arising under ch. 440, F.S., unless such fee is approved by the JCCs.

Section 3 amends s. 440.13, F.S., to define a business day and to clarify deadlines for carriers to respond to requests for medical care. This section requires a carrier to respond to a request for a change in physician within five business days, excluding certain holidays, rather than five days. The section clarifies that a carrier must respond to a request for authorization from an authorized health care provider by either authorizing or declining the request by the close of the third business day after receipt of the request. Other provisions are amended to require responses to requests in the context of business days instead of calendar days.

Section 4 amends s. 440.15, F.S., to codify the *Westphal* decision by increasing temporary total disability benefits and temporary partial disability benefits to 260 weeks instead of 104 weeks.

Section 5 amends s. 440.151, F.S., to provide that for purposes of firefighters, as defined in s. 112.81, F.S.,⁷³ multiple myeloma and non-Hodgkin's lymphoma are deemed to be occupational diseases that arise out of work performed in the course and scope of employment.

Section 6 amends s. 440.192, F.S., relating to the OJCC, to require the Judge of Compensation Claims (JCC) to review each petition for benefits and dismiss any petition or portion of a petition that does not meet on its face the requirements of s. 440.192, F.S., and the definition of "specificity" under s. 440.02, F.S. Further, the petition must specify additional information regarding the location of the injury, such as Florida county, or the state, if outside of Florida. A claim for permanent benefits must include the specific date of maximum medical improvement and the specific date that such permanent benefits are claimed to begin. Additionally, the greater specificity is required for disputes regarding the calculation of average weekly wage.

Dismissal of any petition or portion of a petition under subsection (5)(a) is without prejudice. Upon a motion that a petition or portion of a petition be dismissed for lack of specificity, the JCC is required to enter an order on the motion, unless stipulated in writing by the parties, within ten days after the motion is filed, or if good cause for a hearing is shown, within 20 days after hearing on the motion.

Section 7 amends s. 440.34, F.S., to revise provisions relating to attorney fees. The bill requires the JCC to consider certain factors in each case and may increase or decrease the attorney fees, based on a maximum hourly rate of \$250 per hour, if the JCC in his or her judgment finds that the circumstances of the particular case warrant such action. The JCC must use the following factors in determining attorney fees:

- The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
- The fee customarily charged in the locality for similar legal services;
- The amount involved in the controversy and the benefits resulting to the claimant;

⁷³ Section 112.81, F.S., provides that "firefighter" means a person who is certified in compliance with s. [633.408](#) and who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.

- The time limitation imposed by the claimant or the circumstances;
- The experience, reputation, and ability of the attorney or attorneys performing services; and
- The contingency or certainty of a fee.

This section eliminates the \$1,500 cap on medical-only claims.

Sections 8 through 16 and 19 through 22 amend ss. 624.482, 627.041, 627.0612, 627.062, 627.072, 627.091, 627.093, 627.101, 627.211, 627.291, 627.318, 627.361, and 627.371, F.S., respectively, to revise the current rating system in Florida by implementing a loss costs system. Each insurer will be required to file its own proposed rates. An insurer may satisfy this requirement by adopting the Office of Insurance Regulation's (OIR) approved loss costs and complying with the other provisions in this part. The bill authorizes a licensed rating organization to develop and file for approval with the OIR reference filings containing prospective loss costs and the underlying loss data, and other documentation. Once the loss cost filing is approved, the rating organization would provide its member subscribers with a copy of the approved reference filing. A rating organization may file supplementary rating information and an insurer may use such information approved by the OIR. An insurer may use the approved prospective loss costs filed by a rating organization in combination with the insurer's own approved loss cost multiplier and loss cost modifier. The bill provides technical, conforming changes. The sections relating to the implementation of the loss cost rating system are effective July 1, 2018. **Section 17** also revises the scope of the annual report by the OIR to include information about insurer solvency.

Section 14 amends s. 627.091, F.S., to define the following terms within this section:

- "Expenses" means the portion or a rate which is attributable to acquisition, field supervision, collection expenses, taxes, assessments, and general expenses;
- "Lost cost modifier" means an adjustment to, or a deviation from, the approved prospective loss costs filed by a licensed rating organization;
- "Lost cost multiplier" means the profit and expense factor, expressed as a single nonintegral number to be applied to the prospective loss costs other than loss adjustment expenses, which is associated with writing workers' compensation and employer's liability insurance and which is approved by the office [OIR] in making rates for each classification of risks used by that insurer; and
- "Prospective loss costs" means the portion of a rate that reflects historical industry average aggregate losses and loss adjustment expenses projected through development to their ultimate value and through trending to a future point in time. The term does not include provisions for profit or expenses other than loss adjustment expense.

Section 16 amends s. 627.101, F.S., to require OIR to review all required filings as to workers' compensation and employer's liability insurance. If the OIR determines part of the required filing does not meet applicable requirements, it may reject the portion that does not meet the requirements and approve the remainder of the filing.

Section 18 creates s. 627.2151, F.S., to define the term "defense and cost containment expenses" or "DCCE" to include the following Florida expenses of an insurer group or insurer writing workers' compensation insurance:

- Insurance company attorney fees;
- Expert witnesses;
- Medical examinations and autopsies;
- Medical fee review panels;
- Bill auditing;
- Treatment utilization network expenses; and
- Vocational rehabilitation.

The bill establishes a cap on defense and cost containment expenses. Excessive DCCE occurs when the Florida defense and cost containment expenses for workers' compensation exceed 15 percent of Florida workers' compensation incurred losses by the insurer or insurer group for the three most recent calendar years for which data is to be filed with the OIR. Any excess DCCE must be returned to the policyholders in the form of cash or credit toward the future purchase of coverage on a pro rata basis. Refunds must be completed in one of the following ways:

- A cash refund must be completed within 60 days after entry of a final order indicating that excessive DCCE has been realized; and
- A credit to renewal policies must be applied to policy renewal premium notices that are forwarded to insureds more than 60 calendar days after entry of a final order indicating that excessive DCCE has been realized. If the insured thereafter cancels a policy or otherwise allows the policy to terminate, the insurer or insurer group must make a cash refund not later than 60 days after coverage termination. The insurer shall immediately certify to the OIR that renewal of renewal credits or refunds have been made.

For purposes of reporting, any refund or renewal credit made is treated as a policyholder dividend applicable to the year immediately succeeding the compilation period giving refund to the refund or credit.

Section 23 appropriates, effective July 1, 2017, the sums of \$723,118 in recurring funds and \$100,000 in nonrecurring funds from the Insurance Regulatory Trust Fund are appropriated to the Office of Insurance Regulation, and eight full-time equivalent positions with associated salary rate of 460,000 are authorized, for the purpose of implementing this act.

Section 24 appropriates, effective July 1, 2017, the sum of \$24,720 in nonrecurring funds from the Operating Trust Fund is appropriated to the Office of Judges of Compensation Claims within the Division of Administrative Hearings for the purposes of implementing this act.

Section 25 provides, as except as otherwise provided, the act will take effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless

the Legislature has determined that such law fulfills an important state interest and unless:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

Although the bill does not contain an express finding that the law fulfills an important state interest, the bill does appear to apply to all persons similarly situated, including state agencies, school boards, community colleges, counties, municipalities, special districts, and private entities.

If this exception (similarly situated) does not apply, the bill must be approved by two-thirds vote of each chamber to be binding upon the counties and municipalities.

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:

This bill will provide greater guidance and clarity in the administration of various provisions of ch. 440, F.S.

Carriers may incur additional, indeterminate costs associated with revising their systems to accommodate loss cost filings.

The bill will extend workers' compensation benefits to firefighters who have multiple myeloma or non-Hodgkin's lymphoma since these occupational diseases will be presumed to have been contracted while the firefighters was performing work in the course and scope of employment. A 2014 and 2016⁷⁴ study by the National Council on Compensation Insurance (NCCI) indicated the costs of enacting cancer presumption benefits to firefighters "would increase workers' compensation costs, but...the extent of

⁷⁴ State of Vermont, National Council on Compensation Insurance, *White Paper on Firefighter Presumptive Coverage*, <http://legislature.vermont.gov/assets/Documents/2018/WorkGroups/House%20Commerce/Bills/H.197/H.197~Laura%20Bacus%20Hall~NCCI%20White%20Paper%20on%20Firefighter%20Presumptive%20Coverage~3-16-2017.pdf> (last visited April 17, 2017).

the increase was difficult to estimate due to significant data limitations.”⁷⁵ Furthermore, a 2009 study by the National League of Cities (NLC) determined it is impossible to create “a reasonable and supportable estimate of the number of firefighters who qualify for workers’ compensation under a cancer presumption.”⁷⁶ According to the NCCI, there are two elements that affect cost: the diseases covered; and the restrictions that apply to the presumptions.⁷⁷ The NCCI also indicates judicial environment, shifting from voluntary to residual market and unfunded liability applied retroactively may impact workers’ compensation rates and system.⁷⁸

Workers’ compensation benefits received for an “occupational sickness or injury are fully exempt from [federal income] tax if they are paid under a workers’ compensation act or a statute in the nature of a workers’ compensation act.”⁷⁹

Placing caps on hourly claimant attorney fees may reduce costs to the workers’ compensation system for employers and carriers.

NCCI estimates that the combination of the changes provided in the bill relating to attorney’s fees, will result in a small to moderate decrease on overall workers compensation system costs in Florida.⁸⁰ The NCCI defines small as less than one percent and moderate as between one to three percent of system costs. According to NCCI,

- One percent impact = \$36,450,000;
- Three percent impact = \$109,350,000; and
- Five percent impact = \$182,250,000.

C. Government Sector Impact:

As indicated in the Private Sector Impact, above, NCCI estimates that the combination of the changes provided in the bill will result in a small to moderate decrease on overall workers compensation system costs in Florida.

⁷⁵ State of California, OLR Research Report, *Questions on Firefighter Cancer Presumption Laws*, <https://www.cga.ct.gov/2016/rpt/2016-R-0018.htm> (last visited April 17, 2017).

⁷⁶ *Id.*

⁷⁷ State of Vermont, National Council on Compensation Insurance, *White Paper on Firefighter Presumptive Coverage*, <http://legislature.vermont.gov/assets/Documents/2018/WorkGroups/House%20Commerce/Bills/H.197/H.197~Laura%20Bachus%20Hall~NCCI%20White%20Paper%20on%20Firefighter%20Presumptive%20Coverage~3-16-2017.pdf> at p. 13 (last visited April 17, 2017).

⁷⁸ *Id.* at p. 14.

⁷⁹ Internal Revenue Service, *Publication 525 (2016), Taxable and NonTaxable Income*, <https://www.irs.gov/pub/irs-pdf/p525.pdf> (last visited April 17, 2017).

⁸⁰ NCCI, *Preliminary Cost Impact Analysis, SB 1582* (Mar. 3, 2017) (on file with Senate Banking and Insurance Committee).

Department of Financial Services

Division of Risk Management

The Division of Risk Management (DRM) is a provider of workers' compensation benefits to state and public university employees. The DRM may be impacted in the following manner:⁸¹

- Requiring the claimant to show the calculation for the benefits requested has the potential to increase efficiency of claim management. Frequently petitions are filed that are not definitive on the specific time or amount of benefit alleged to be unpaid. The carrier may be unable to double check or determine if an error in payment has occurred. Failure to correct this error within 30 days of the petition for benefits being filed may result in payment of attorney fees and litigation costs that exceed the amount of the unpaid benefit.
- Clarifying the number of days in terms of business days for many responsive deadlines related to medical care will provide more opportunities for the DRM to respond within statutory requirements since days DRM staff are not at work are not included.
- Limiting attorney fee awards to \$250 per hour may reduce the amount of claimant paid attorney fees paid by the DRM. Current hourly awards frequently exceed \$250. A cost reduction will only occur if the hours awarded by JCCs are not impacted by the statutory cap.
- Requiring specificity in pleadings may result in avoidance of employer/carrier paid claimant fees and enhance claim processing efficiencies.
- Changing the rating law would not affect the DRM since the DRM funds claim expenses.

The fiscal impact of the firefighter' occupational disease presumption relating to myeloma and non-Hodgkin's lymphoma, on the costs of workers' compensation claims is indeterminate.

Division of Workers' Compensation

The Division of Workers' Compensation (DWC) assists injured workers, employers, health care providers, and insurers in following the Florida workers' compensation rules and laws.⁸² The DWC is the sole authority responsible for processing and approving workers' compensation exemption applications.⁸³ The DWC indicates a negligible cost of implementing rules associated with the bill; however, those costs can be absorbed within existing resources.⁸⁴

⁸¹ Department of Financial Services, *Analysis of SB 1582* (Mar. 17, 2017) (on file with Senate Banking and Insurance Committee).

⁸² Division of Workers' Compensation, *About Us*, <http://www.myfloridacfo.com/division/wc/contactUs.htm> (last visited April 7, 2017).

⁸³ Division of Workers' Compensation, *Notice of Election to be Exempt*, <https://apps.fldfs.com/bocexempt/> (last visited April 7, 2017).

⁸⁴ Division of Workers' Compensation, *Analysis of SB 1582* (March 17, 2017) (on file with Senate Appropriations Committee).

Office of Insurance Regulation⁸⁵

The bill makes a substantial change in the manner workers' compensation rates are set in Florida, and therefore, it will have a significant impact on OIR's regulatory process for reviewing rates. The OIR provided the following estimate of staffing needs and costs that would be necessary to implement the bill. The total estimated fiscal impact on the OIR is \$883,118, which includes eight full time equivalent positions at a cost of \$783,118 annually and \$100,000 in nonrecurring funds for information technology enhancements.⁸⁶

Office of Judges of Compensation Claims (OJCC)

According to the OJCC,⁸⁷ the estimated nonrecurring programming costs and OPS staffing expenses associated with the implementation of the bill are \$18,000 and \$6,720, respectively, for a total estimate of \$24,720.

The fiscal impact of the firefighter' occupational disease presumption, relating to myeloma and non-Hodgkin's lymphoma, on local governments' workers' compensation claims is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Assessment provisions relating to the Special Disability Trust Fund (s. 440.49, F.S.), the Workers' Compensation Administration Trust Fund (s. 440.51, F.S.), and the Florida Self-Insurers Guaranty Association, Inc., (s. 440.385, F.S.), may need to be amended to reflect the changes in the rating law and terminology provided in the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 440.02, 440.102, 440.105, 440.13, 440.15, 440.192, 440.34, 624.482, 627.041, 627.0612, 627.062, 627.072, 627.091, 627.093, 627.101, 627.211, 627.291, 627.318, 627.361, and 627.371.

This bill creates section 627.2151 of the Florida Statutes.

⁸⁵ Email from the Office of Insurance Regulation (Mar. 31, 2017) (on file with Senate Banking and Insurance Committee).

⁸⁶ Email from Richard Fox, Budget Director, Office of Insurance Regulation (April 10, 2017) (on file with Senate Appropriations Committee).

⁸⁷ Office of Judges of Compensation Claims of the Division of Administrative Hearings, *Analysis of SB 1582* (Mar. 22, 2017) (on file with Senate Banking and Insurance Committee).

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

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

CS by Appropriations on April 13, 2017:

The committee substitute:

- Creates a presumption that firefighters who have multiple myeloma or non-Hodgkin's lymphoma are presumed to have contracted one of these occupational diseases in the course and scope of employment. This provision will extend workers' compensation benefits to firefighters who have either of these conditions.
- Provides an appropriation of \$823,118 and eight full-time equivalent positions with associated salary rate of 460,000 to the Office of Insurance Regulation.;
- Provides an appropriation of \$24,720 to the Office of Judges of Compensation Claims; and
- Provides technical, conforming changes.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/13/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Latvala and Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 354 and 355

insert:

Section 6. Subsection (2) of section 440.151, Florida Statutes, is amended to read:

440.151 Occupational diseases.—

(2) Whenever used in this section the term "occupational disease" shall be construed to mean only a disease which is due to causes and conditions which are characteristic of and



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11 peculiar to a particular trade, occupation, process, or
12 employment, and to exclude all ordinary diseases of life to
13 which the general public is exposed, unless the incidence of the
14 disease is substantially higher in the particular trade,
15 occupation, process, or employment than for the general public.
16 "Occupational disease" means only a disease for which there are
17 epidemiological studies showing that exposure to the specific
18 substance involved, at the levels to which the employee was
19 exposed, may cause the precise disease sustained by the
20 employee. Notwithstanding any provision of this chapter, for
21 firefighters, as defined in s. 112.81, multiple myeloma or non-
22 Hodgkin's lymphoma are deemed to be occupational diseases that
23 arise out of work performed in the course and scope of
24 employment.

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 line 17
- 29 and insert:
- 30 specified temporary disability benefits; amending s.
- 31 440.151, F.S.; revising the term "occupational
- 32 disease" to provide that specified cancers of
- 33 firefighters are deemed occupational diseases arising
- 34 out of work performed in the course and scope of
- 35 employment; amending s.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
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The Committee on Appropriations (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (40) of section 440.02, Florida
Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the
context clearly requires otherwise, the following terms shall
have the following meanings:

(40) "Specificity" means information on the petition for



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11 benefits sufficient to put the employer or carrier on notice of
12 the exact statutory classification and outstanding time period
13 for each requested benefit, the specific amount of each
14 requested benefit, the calculation used for computing the
15 requested benefit, ~~of benefits being requested~~ and includes a
16 detailed explanation of any benefits received that should be
17 increased, decreased, changed, or otherwise modified. If the
18 petition is for medical benefits, the information must ~~shall~~
19 include specific details as to why such benefits are being
20 requested, why such benefits are medically necessary, and why
21 current treatment, if any, is not sufficient. Any petition
22 requesting alternate or other medical care, including, but not
23 limited to, petitions requesting psychiatric or psychological
24 treatment, must specifically identify the physician, as defined
25 in s. 440.13(1), who is recommending such treatment. A copy of a
26 report from such physician making the recommendation for
27 alternate or other medical care must ~~shall~~ also be attached to
28 the petition. A judge of compensation claims may ~~shall~~ not order
29 such treatment if a physician is not recommending such
30 treatment.

31 Section 2. Paragraph (c) of subsection (3) of section
32 440.105, Florida Statutes, is amended to read:

33 440.105 Prohibited activities; reports; penalties;
34 limitations.-

35 (3) Whoever violates any provision of this subsection
36 commits a misdemeanor of the first degree, punishable as
37 provided in s. 775.082 or s. 775.083.

38 (c) Except for an attorney who is retained by or for an
39 injured worker and who receives a fee or other consideration



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40 from or on behalf of such worker, it is unlawful for any
41 ~~attorney or other~~ person, in his or her individual capacity or
42 in his or her capacity as a public or private employee, or for
43 any firm, corporation, partnership, or association to receive
44 any fee or other consideration or any gratuity from a person on
45 account of services rendered for a person in connection with any
46 proceedings arising under this chapter, unless such fee,
47 consideration, or gratuity is approved by a judge of
48 compensation claims or by the Deputy Chief Judge of Compensation
49 Claims.

50 Section 3. Paragraph (f) of subsection (2), paragraphs (d)
51 and (i) of subsection (3), paragraph (a) of subsection (4),
52 paragraphs (a) and (c) of subsection (5), and paragraphs (c) and
53 (d) of subsection (9) of section 440.13, Florida Statutes, are
54 amended, to read:

55 440.13 Medical services and supplies; penalty for
56 violations; limitations.-

57 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.-

58 (f) Upon the written request of the employee, the carrier
59 shall give the employee the opportunity for one change of
60 physician during the course of treatment for any one accident.
61 Upon the granting of a change of physician, the originally
62 authorized physician in the same specialty as the changed
63 physician shall become deauthorized upon written notification by
64 the employer or carrier. The carrier shall authorize an
65 alternative physician who shall not be professionally affiliated
66 with the previous physician within 5 business days after receipt
67 of the request. If the carrier fails to provide a change of
68 physician as requested by the employee, the employee may select



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69 the physician and such physician shall be considered authorized
70 if the treatment being provided is compensable and medically
71 necessary.

72

73 Failure of the carrier to timely comply with this subsection
74 shall be a violation of this chapter and the carrier shall be
75 subject to penalties as provided for in s. 440.525.

76 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.—

77 (d) A carrier ~~must respond~~, by telephone or in writing,
78 must authorize or deny ~~to~~ a request for authorization from an
79 authorized health care provider by the close of the third
80 business day after receipt of the request. A carrier authorizes
81 the request if it ~~who~~ fails to respond to a written request for
82 authorization for referral for medical treatment by the close of
83 the third business day after receipt of the request ~~consents to~~
84 ~~the medical necessity for such treatment~~. All such requests must
85 be made to the carrier. Notice to the carrier does not include
86 notice to the employer.

87 (i) Notwithstanding paragraph (d), a claim for specialist
88 consultations, surgical operations, physiotherapeutic or
89 occupational therapy procedures, X-ray examinations, or special
90 diagnostic laboratory tests that cost more than \$1,000 and other
91 specialty services that the department identifies by rule is not
92 valid and reimbursable unless the services have been expressly
93 authorized by the carrier, unless the carrier has failed to
94 respond within 10 business days to a written request for
95 authorization, or unless emergency care is required. The insurer
96 shall authorize such consultation or procedure unless the health
97 care provider or facility is not authorized, unless such



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98 treatment is not in accordance with practice parameters and
99 protocols of treatment established in this chapter, or unless a
100 judge of compensation claims has determined that the
101 consultation or procedure is not medically necessary, not in
102 accordance with the practice parameters and protocols of
103 treatment established in this chapter, or otherwise not
104 compensable under this chapter. Authorization of a treatment
105 plan does not constitute express authorization for purposes of
106 this section, except to the extent the carrier provides
107 otherwise in its authorization procedures. This paragraph does
108 not limit the carrier's obligation to identify and disallow
109 overutilization or billing errors.

110 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
111 DEPARTMENT.—

112 (a) Any health care provider providing necessary remedial
113 treatment, care, or attendance to any injured worker shall
114 submit treatment reports to the carrier in a format prescribed
115 by the department. A claim for medical or surgical treatment is
116 not valid or enforceable against such employer or employee,
117 unless, by the close of the third business day following the
118 first treatment, the physician providing the treatment furnishes
119 to the employer or carrier a preliminary notice of the injury
120 and treatment in a format prescribed by the department and,
121 within 15 business days thereafter, furnishes to the employer or
122 carrier a complete report, and subsequent thereto furnishes
123 progress reports, if requested by the employer or insurance
124 carrier, at intervals of not less than 15 business days ~~3 weeks~~
125 apart or at less frequent intervals if requested in a format
126 prescribed by the department.



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127 (5) INDEPENDENT MEDICAL EXAMINATIONS.—

128 (a) In any dispute concerning overutilization, medical
129 benefits, compensability, or disability under this chapter, the
130 carrier or the employee may select an independent medical
131 examiner. If the parties agree, the examiner may be a health
132 care provider treating or providing other care to the employee.
133 An independent medical examiner may not render an opinion
134 outside his or her area of expertise, as demonstrated by
135 licensure and applicable practice parameters. The employer and
136 employee shall be entitled to only one independent medical
137 examination per accident and not one independent medical
138 examination per medical specialty. The party requesting and
139 selecting the independent medical examination shall be
140 responsible for all expenses associated with said examination,
141 including, but not limited to, medically necessary diagnostic
142 testing performed and physician or medical care provider fees
143 for the evaluation. The party selecting the independent medical
144 examination shall identify the choice of the independent medical
145 examiner to all other parties within 15 business days after the
146 date the independent medical examination is to take place.
147 Failure to timely provide such notification shall preclude the
148 requesting party from submitting the findings of such
149 independent medical examiner in a proceeding before a judge of
150 compensation claims. The independent medical examiner may not
151 provide followup care if such recommendation for care is found
152 to be medically necessary. If the employee prevails in a medical
153 dispute as determined in an order by a judge of compensation
154 claims or if benefits are paid or treatment provided after the
155 employee has obtained an independent medical examination based



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156 upon the examiner's findings, the costs of such examination
157 shall be paid by the employer or carrier.

158 (c) The carrier may, at its election, contact the claimant
159 directly to schedule a reasonable time for an independent
160 medical examination. The carrier must confirm the scheduling
161 agreement in writing with the claimant and the claimant's
162 counsel, if any, at least 7 business days before the date upon
163 which the independent medical examination is scheduled to occur.
164 An attorney representing a claimant is not authorized to
165 schedule the self-insured employer's or carrier's independent
166 medical evaluations under this subsection. Neither the self-
167 insured employer nor the carrier shall be responsible for
168 scheduling any independent medical examination other than an
169 employer or carrier independent medical examination.

170 (9) EXPERT MEDICAL ADVISORS.—

171 (c) If there is disagreement in the opinions of the health
172 care providers, if two health care providers disagree on medical
173 evidence supporting the employee's complaints or the need for
174 additional medical treatment, or if two health care providers
175 disagree that the employee is able to return to work, the
176 department may, and the judge of compensation claims shall, upon
177 his or her own motion or within 15 business days after receipt
178 of a written request by either the injured employee, the
179 employer, or the carrier, order the injured employee to be
180 evaluated by an expert medical advisor. The injured employee and
181 the employer or carrier may agree on the health care provider to
182 serve as an expert medical advisor. If the parties do not agree,
183 the judge of compensation claims shall select an expert medical
184 advisor from the department's list of certified expert medical



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185 advisors. If a certified medical advisor within the relevant
186 medical specialty is unavailable, the judge of compensation
187 claims shall appoint any otherwise qualified health care
188 provider to serve as an expert medical advisor without obtaining
189 the department's certification. The opinion of the expert
190 medical advisor is presumed to be correct unless there is clear
191 and convincing evidence to the contrary as determined by the
192 judge of compensation claims. The expert medical advisor
193 appointed to conduct the evaluation shall have free and complete
194 access to the medical records of the employee. An employee who
195 fails to report to and cooperate with such evaluation forfeits
196 entitlement to compensation during the period of failure to
197 report or cooperate.

198 (d) The expert medical advisor must complete his or her
199 evaluation and issue his or her report to the department or to
200 the judge of compensation claims within 15 business days after
201 receipt of all medical records. The expert medical advisor must
202 furnish a copy of the report to the carrier and to the employee.

203 Section 4. Paragraph (a) of subsection (2) and paragraph
204 (e) of subsection (4) of section 440.15, Florida Statutes, are
205 amended to read:

206 440.15 Compensation for disability.—Compensation for
207 disability shall be paid to the employee, subject to the limits
208 provided in s. 440.12(2), as follows:

209 (2) TEMPORARY TOTAL DISABILITY.—

210 (a) Subject to subsection (7), in case of disability total
211 in character but temporary in quality, 66 2/3 or 66.67 percent
212 of the average weekly wages shall be paid to the employee during
213 the continuance thereof, not to exceed 260 ~~104~~ weeks except as



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214 provided in this subsection, s. 440.12(1), and s. 440.14(3).
215 Once the employee reaches the maximum number of weeks allowed,
216 or the employee reaches the date of maximum medical improvement,
217 whichever occurs earlier, temporary disability benefits shall
218 cease and the injured worker's permanent impairment shall be
219 determined.

220 (4) TEMPORARY PARTIAL DISABILITY.—

221 (e) Such benefits shall be paid during the continuance of
222 such disability, not to exceed a period of 260 ~~104~~ weeks, as
223 provided by this subsection and subsection (2). Once the injured
224 employee reaches the maximum number of weeks, temporary
225 disability benefits cease and the injured worker's permanent
226 impairment must be determined. If the employee is terminated
227 from postinjury employment based on the employee's misconduct,
228 temporary partial disability benefits are not payable as
229 provided for in this section. The department shall by rule
230 specify forms and procedures governing the method and time for
231 payment of temporary disability benefits for dates of accidents
232 before January 1, 1994, and for dates of accidents on or after
233 January 1, 1994.

234 Section 5. Subsections (2) and (5) of section 440.192,
235 Florida Statutes, are amended to read:

236 440.192 Procedure for resolving benefit disputes.—

237 (2) Upon receipt, the Office of the Judges of Compensation
238 Claims shall review each petition and shall dismiss each
239 petition or any portion of such a petition that does not on its
240 face meet the requirements of this section and the definition of
241 specificity under s. 440.02, and specifically identify or
242 itemize the following:



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- 243 (a) The name, address, and telephone number, ~~and social~~
244 ~~security number~~ of the employee.
- 245 (b) The name, address, and telephone number of the
246 employer.
- 247 (c) A detailed description of the injury and cause of the
248 injury, including the Florida county or, if outside of Florida,
249 the state location of the occurrence and the date or dates of
250 the accident.
- 251 (d) A detailed description of the employee's job, work
252 responsibilities, and work the employee was performing when the
253 injury occurred.
- 254 (e) The specific time period for which compensation and the
255 specific classification of compensation were not timely
256 provided.
- 257 (f) The specific date of maximum medical improvement,
258 character of disability, and specific statement of all benefits
259 or compensation that the employee is seeking. A claim for
260 permanent benefits must include the specific date of maximum
261 medical improvement and the specific date that such permanent
262 benefits are claimed to begin.
- 263 (g) All specific travel costs to which the employee
264 believes she or he is entitled, including dates of travel and
265 purpose of travel, means of transportation, and mileage and
266 including the date the request for mileage was filed with the
267 carrier and a copy of the request filed with the carrier.
- 268 (h) A specific listing of all medical charges alleged
269 unpaid, including the name and address of the medical provider,
270 the amounts due, and the specific dates of treatment.
- 271 (i) The type or nature of treatment care or attendance



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272 sought and the justification for such treatment. If the employee
273 is under the care of a physician for an injury identified under
274 paragraph (c), a copy of the physician's request, authorization,
275 or recommendation for treatment, care, or attendance must
276 accompany the petition.

277 (j) The specific amount of compensation claimed to be
278 accurate and the methodology claimed to accurately calculate the
279 average weekly wage, if the average weekly wage calculated by
280 the employer or carrier is disputed. If the petition does not
281 include a claim under this paragraph, the average weekly wage
282 and corresponding compensation calculated by the employer or
283 carrier are presumed to be accurate.

284 (k) ~~(j)~~ A specific explanation of any other disputed issue
285 that a judge of compensation claims will be called to rule upon.

286
287 The dismissal of any petition or portion of such a petition
288 under this subsection ~~section~~ is without prejudice and does not
289 require a hearing.

290 (5) (a) All motions to dismiss must state with particularity
291 the basis for the motion. The judge of compensation claims shall
292 enter an order upon such motions without hearing, unless good
293 cause for hearing is shown. Dismissal of any petition or portion
294 of a petition under this subsection is without prejudice.

295 (b) Upon motion that a petition or portion of a petition be
296 dismissed for lack of specificity, the judge of compensation
297 claims shall enter an order on the motion, unless stipulated in
298 writing by the parties, within 10 days after the motion is filed
299 or, if good cause for hearing is shown, within 20 days after
300 hearing on the motion. When any petition or portion of a



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301 petition is dismissed for lack of specificity under this
302 subsection, the claimant must be allowed 20 days after the date
303 of the order of dismissal in which to file an amended petition.
304 Any grounds for dismissal for lack of specificity under this
305 section which are not asserted within 30 days after receipt of
306 the petition for benefits are thereby waived.

307 Section 6. Section 440.34, Florida Statutes, is amended to
308 read:

309 440.34 Attorney ~~Attorney's~~ fees; costs.—

310 (1) (a) A fee, gratuity, or other consideration may not be
311 paid by a carrier or employer ~~for a claimant~~ in connection with
312 any proceedings arising under this chapter, unless approved by
313 the judge of compensation claims or court having jurisdiction
314 over such proceedings. Any attorney fees ~~attorney's fee~~ approved
315 by a judge of compensation claims for benefits secured on behalf
316 of a claimant must equal to 20 percent of the first \$5,000 of
317 the amount of the benefits secured, 15 percent of the next
318 \$5,000 of the amount of the benefits secured, 10 percent of the
319 remaining amount of the benefits secured to be provided during
320 the first 10 years after the date the claim is filed, and 5
321 percent of the benefits secured after 10 years.

322 (b) However, the judge of compensation claims shall
323 consider the following factors in each case and may increase or
324 decrease the attorney fees, based on a maximum hourly rate of
325 \$250 per hour, if in his or her judgment he or she expressly
326 finds that the circumstances of the particular case warrant such
327 action:

328 1. The time and labor required, the novelty and difficulty
329 of the questions involved, and the skill requisite to perform



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330 the legal service properly.

331 2. The fee customarily charged in the locality for similar
332 legal services.

333 3. The amount involved in the controversy and the benefits
334 resulting to the claimant.

335 4. The time limitation imposed by the claimant or the
336 circumstances.

337 5. The experience, reputation, and ability of the attorney
338 or attorneys performing services.

339 6. The contingency or certainty of a fee.

340 (c) The judge of compensation claims shall not approve a
341 compensation order, a joint stipulation for lump-sum settlement,
342 a stipulation or agreement between a claimant and his or her
343 attorney, or any other agreement related to benefits under this
344 chapter which provides for attorney fees paid by a carrier or
345 employer an attorney's fee in excess of the amount permitted by
346 this section. The judge of compensation claims is not required
347 to approve any retainer agreement between the claimant and his
348 or her attorney. ~~The retainer agreement as to fees and costs may~~
349 ~~not be for compensation in excess of the amount allowed under~~
350 ~~this subsection or subsection (7).~~

351 (2) In awarding a claimant's attorney fees paid by a
352 carrier or employer attorney's fee, the judge of compensation
353 claims shall consider only those benefits secured by the
354 attorney. An attorney is not entitled to attorney attorney's
355 fees for representation in any issue that was ripe, due, and
356 owing and that reasonably could have been addressed, but was not
357 addressed, during the pendency of other issues for the same
358 injury. The amount, statutory basis, and type of benefits



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359 obtained through legal representation shall be listed on all
360 attorney ~~attorney's~~ fees awarded by the judge of compensation
361 claims. For purposes of this section, the term "benefits
362 secured" does not include future medical benefits to be provided
363 on any date more than 5 years after the date the claim is filed.
364 In the event an offer to settle an issue pending before a judge
365 of compensation claims, including attorney ~~attorney's~~ fees as
366 provided for in this section, is communicated in writing to the
367 claimant or the claimant's attorney at least 30 days prior to
368 the trial date on such issue, for purposes of calculating the
369 amount of attorney ~~attorney's~~ fees to be taxed against the
370 employer or carrier, the term "benefits secured" shall be deemed
371 to include only that amount awarded to the claimant above the
372 amount specified in the offer to settle. If multiple issues are
373 pending before the judge of compensation claims, said offer of
374 settlement shall address each issue pending and shall state
375 explicitly whether or not the offer on each issue is severable.
376 The written offer shall also unequivocally state whether or not
377 it includes medical witness fees and expenses and all other
378 costs associated with the claim.

379 (3) If any party should prevail in any proceedings before a
380 judge of compensation claims or court, there shall be taxed
381 against the nonprevailing party the reasonable costs of such
382 proceedings, not to include attorney ~~attorney's~~ fees. A claimant
383 is responsible for the payment of her or his own attorney
384 ~~attorney's~~ fees, except that a claimant is entitled to recover
385 attorney fees ~~an attorney's fee~~ in an amount equal to the amount
386 provided for in subsection (1) ~~or subsection (7)~~ from a carrier
387 or employer:



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388 (a) Against whom she or he successfully asserts a petition
389 for medical benefits only, if the claimant has not filed or is
390 not entitled to file at such time a claim for disability,
391 permanent impairment, wage-loss, or death benefits, arising out
392 of the same accident;

393 (b) In any case in which the employer or carrier files a
394 response to petition denying benefits with the Office of the
395 Judges of Compensation Claims and the injured person has
396 employed an attorney in the successful prosecution of the
397 petition;

398 (c) In a proceeding in which a carrier or employer denies
399 that an accident occurred for which compensation benefits are
400 payable, and the claimant prevails on the issue of
401 compensability; or

402 (d) In cases where the claimant successfully prevails in
403 proceedings filed under s. 440.24 or s. 440.28.

404

405 Regardless of the date benefits were initially requested,
406 attorney ~~attorney's~~ fees shall not attach under this subsection
407 until 30 days after the date the carrier or employer, if self-
408 insured, receives the petition.

409 (4) In such cases in which the claimant is responsible for
410 the payment of her or his own attorney ~~attorney's~~ fees, such
411 fees are a lien upon compensation payable to the claimant,
412 notwithstanding s. 440.22.

413 (5) If any proceedings are had for review of any claim,
414 award, or compensation order before any court, the court may
415 award the injured employee or dependent attorney fees ~~an~~
416 ~~attorney's fee~~ to be paid by the employer or carrier, in its



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417 discretion, which shall be paid as the court may direct.

418 (6) A judge of compensation claims may not enter an order
419 approving the contents of a retainer agreement that permits
420 placing any portion of the employee's compensation into an
421 escrow account until benefits have been secured.

422 (7) This section may not be interpreted to limit or
423 otherwise infringe on a claimant's right to retain an attorney
424 and pay the attorney reasonable attorney fees for legal services
425 related to a claim under the Workers' Compensation Law ~~If an~~
426 ~~attorney's fee is owed under paragraph (3)(a), the judge of~~
427 ~~compensation claims may approve an alternative attorney's fee~~
428 ~~not to exceed \$1,500 only once per accident, based on a maximum~~
429 ~~hourly rate of \$150 per hour, if the judge of compensation~~
430 ~~claims expressly finds that the attorney's fee amount provided~~
431 ~~for in subsection (1), based on benefits secured, fails to~~
432 ~~fairly compensate the attorney for disputed medical-only claims~~
433 ~~as provided in paragraph (3)(a) and the circumstances of the~~
434 ~~particular case warrant such action.~~

435 Section 7. Effective July 1, 2018, subsection (10) of
436 section 624.482, Florida Statutes, is amended to read:

437 624.482 Making and use of rates.—

438 (10) Any self-insurance fund that writes workers'
439 compensation insurance and employer's liability insurance is
440 subject to, and shall make all rate filings for workers'
441 compensation insurance and employer's liability insurance in
442 accordance with, ss. 627.091, 627.101, 627.111, 627.141,
443 627.151, 627.171, and 627.191, ~~and 627.211.~~

444 Section 8. Effective July 1, 2018, subsections (3), (4),
445 and (6) of section 627.041, Florida Statutes, are amended to



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446 read:

447 627.041 Definitions.—As used in this part:

448 (3) "Rating organization" means every person, other than an
449 authorized insurer, whether located within or outside this
450 state, who has as his or her object or purpose the making of
451 prospective loss costs, rates, rating plans, or rating systems.

452 Two or more authorized insurers that act in concert for the
453 purpose of making prospective loss costs, rates, rating plans,
454 or rating systems, and that do not operate within the specific
455 authorizations contained in ss. 627.311, 627.314(2), (4), and
456 627.351, shall be deemed to be a rating organization. No single
457 insurer shall be deemed to be a rating organization.

458 (4) "Advisory organization" means every group, association,
459 or other organization of insurers, whether located within or
460 outside this state, which prepares policy forms or makes
461 underwriting rules incident to but not including the making of
462 prospective loss costs, rates, rating plans, or rating systems
463 or which collects and furnishes to authorized insurers or rating
464 organizations loss or expense statistics or other statistical
465 information and data and acts in an advisory, as distinguished
466 from a ratemaking, capacity.

467 (6) "Subscriber" means an insurer which is furnished at its
468 request:

469 (a) With prospective loss costs, rates, and rating manuals
470 by a rating organization of which it is not a member; or

471 (b) With advisory services by an advisory organization of
472 which it is not a member.

473 Section 9. Effective July 1, 2018, subsection (1) of
474 section 627.0612, Florida Statutes, is amended to read:



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475 627.0612 Administrative proceedings in rating
476 determinations.—

477 (1) In any proceeding to determine whether prospective loss
478 costs, rates, rating plans, or other matters governed by this
479 part comply with the law, the appellate court shall set aside a
480 final order of the office if the office has violated s.
481 120.57(1)(k) by substituting its findings of fact for findings
482 of an administrative law judge which were supported by competent
483 substantial evidence.

484 Section 10. Effective July 1, 2018, subsection (1) of
485 section 627.062, Florida Statutes, is amended to read:

486 627.062 Rate standards.—

487 (1) The rates and loss costs for all classes of insurance
488 to which the provisions of this part are applicable may not be
489 excessive, inadequate, or unfairly discriminatory.

490 Section 11. Effective July 1, 2018, subsection (1) of
491 section 627.0645, Florida Statutes, is amended to read:

492 627.0645 Annual filings.—

493 (1) Each rating organization filing rates for, and each
494 insurer writing, any line of property or casualty insurance to
495 which this part applies, except:

496 ~~(a) Workers' compensation and employer's liability~~
497 ~~insurance;~~

498 (b) ~~(b)~~ Insurance as defined in ss. 624.604 and 624.605,
499 limited to coverage of commercial risks other than commercial
500 residential multiperil; or

501 (b) ~~(c)~~ Travel insurance, if issued as a master group policy
502 with a situs in another state where each certificateholder pays
503 less than \$30 in premium for each covered trip and where the



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504 insurer has written less than \$1 million in annual written
505 premiums in the travel insurance product in this state during
506 the most recent calendar year,

507
508 shall make an annual base rate filing for each such line with
509 the office no later than 12 months after its previous base rate
510 filing, demonstrating that its rates are not inadequate.

511 Section 12. Effective July 1, 2018, subsections (1) and (5)
512 of section 627.072, Florida Statutes, are amended to read:

513 627.072 Making and use of rates.—

514 (1) As to workers' compensation and employer's liability
515 insurance, the following factors shall be used in the
516 determination and fixing of loss costs or rates, as applicable:

517 (a) The past loss experience and prospective loss
518 experience within and outside this state;

519 (b) The conflagration and catastrophe hazards;

520 (c) A reasonable margin for underwriting profit and
521 contingencies;

522 (d) Dividends, savings, or unabsorbed premium deposits
523 allowed or returned by insurers to their policyholders, members,
524 or subscribers;

525 (e) Investment income on unearned premium reserves and loss
526 reserves;

527 (f) Past expenses and prospective expenses, both those
528 countrywide and those specifically applicable to this state; and

529 (g) All other relevant factors, including judgment factors,
530 within and outside this state.

531 ~~(5)(a) In the case of workers' compensation and employer's~~
532 ~~liability insurance, the office shall consider utilizing the~~



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533 ~~following methodology in rate determinations: Premiums,~~
534 ~~expenses, and expected claim costs would be discounted to a~~
535 ~~common point of time, such as the initial point of a policy~~
536 ~~year, in the determination of rates; the cash flow pattern of~~
537 ~~premiums, expenses, and claim costs would be determined~~
538 ~~initially by using data from 8 to 10 of the largest insurers~~
539 ~~writing workers' compensation insurance in the state; such~~
540 ~~insurers may be selected for their statistical ability to report~~
541 ~~the data on an accident-year basis and in accordance with~~
542 ~~subparagraphs (b)1., 2., and 3., for at least 2 1/2 years; such~~
543 ~~a cash-flow pattern would be modified when necessary in~~
544 ~~accordance with the data and whenever a radical change in the~~
545 ~~payout pattern is expected in the policy year under~~
546 ~~consideration.~~

547 ~~(b) If the methodology set forth in paragraph (a) is~~
548 ~~utilized, to facilitate the determination of such a cash-flow~~
549 ~~pattern methodology:~~

550 ~~1. Each insurer shall include in its statistical reporting~~
551 ~~to the rating bureau and the office the accident year by~~
552 ~~calendar quarter data for paid-claim costs;~~

553 ~~2. Each insurer shall submit financial reports to the~~
554 ~~rating bureau and the office which shall include total incurred~~
555 ~~claim amounts and paid-claim amounts by policy year and by~~
556 ~~injury types as of December 31 of each calendar year; and~~

557 ~~3. Each insurer shall submit to the rating bureau and the~~
558 ~~office paid-premium data on an individual risk basis in which~~
559 ~~risks are to be subdivided by premium size as follows:~~

560
561 ~~Number of Risks in~~



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Premium Range	Standard Premium Size
...(to be filled in by carrier)...	\$300-999
...(to be filled in by carrier)...	1,000-4,999
...(to be filled in by carrier)...	5,000-49,999
...(to be filled in by carrier)...	50,000-99,999
...(to be filled in by carrier)...	100,000 or more

569 ~~Total:~~

570 Section 13. Effective July 1, 2018, section 627.091,
571 Florida Statutes, is amended to read:

572 627.091 Rate filings; workers' compensation and employer's
573 liability insurances.-

574 (1) As used in this section, the term:

575 (a) "Expenses" means the portion of a rate which is
576 attributable to acquisition, field supervision, collection
577 expenses, taxes, reinsurance, assessments, and general expenses.

578 (b) "Loss cost modifier" means an adjustment to, or a
579 deviation from, the approved prospective loss costs filed by a
580 licensed rating organization.

581 (c) "Loss cost multiplier" means the profit and expense
582 factor, expressed as a single nonintegral number to be applied
583 to the prospective loss costs, which is associated with writing
584 workers' compensation and employer's liability insurance and
585 which is approved by the office in making rates for each
586 classification of risks used by that insurer.

587 (d) "Prospective loss costs" means the portion of a rate
588 which reflects historical industry average aggregate losses and
589 loss adjustment expenses projected through development to their
590 ultimate value and through trending to a future point in time.



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591 The term does not include provisions for profit or expenses
592 other than loss adjustment expense.

593 (2)~~(1)~~ As to workers' compensation and employer's liability
594 insurances, every insurer shall file with the office every
595 manual of classifications, rules, and rates, every rating plan,
596 and every modification of any of the foregoing which it proposes
597 to use. Each insurer or insurer group shall independently and
598 individually file with the office the final rates it proposes to
599 use. An insurer may satisfy this filing requirement by adopting
600 the most recent loss costs filed by a licensed rating
601 organization and approved by the office, and by otherwise
602 complying with this part. Each insurer shall file data in
603 accordance with the uniform statistical plan approved by the
604 office. Every filing under this subsection:

605 (a) Must state the proposed effective date and must be made
606 at least 90 days before such proposed effective date;

607 (b) Must indicate the character and extent of the coverage
608 contemplated;

609 (c) May use the most recent approved prospective loss costs
610 filed by a licensed rating organization in combination with the
611 insurer's own approved loss cost multiplier and loss cost
612 modifier;

613 (d) Must include all deductibles required in chapter 440,
614 and may include additional deductible provisions in its manual
615 of classifications, rules, and rates. All deductibles must be in
616 a form and manner that is consistent with the underlying purpose
617 of chapter 440;

618 (e) May use variable or fixed expense loads or a
619 combination thereof, and may vary the expense, profit, or



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620 contingency provisions by class or group of classes, if the
621 insurer files supporting data justifying such variations;

622 (f) May include a schedule of proposed premium discounts,
623 credits, and surcharges. The office may not approve discounts,
624 credits, and surcharges unless they are based on objective
625 criteria that bear a reasonable relationship to the expected
626 loss, expense, or profit experience of an individual
627 policyholder or a class of policyholders; and

628 (g) May file a minimum premium or expense constant ~~Every~~
629 ~~insurer is authorized to include deductible provisions in its~~
630 ~~manual of classifications, rules, and rates. Such deductibles~~
631 ~~shall in all cases be in a form and manner which is consistent~~
632 ~~with the underlying purpose of chapter 440.~~

633 ~~(3)(2) Every such filing shall state the proposed effective~~
634 ~~date thereof, and shall indicate the character and extent of the~~
635 ~~coverage contemplated. When a filing is not accompanied by the~~
636 ~~information upon which the insurer or rating organization~~
637 ~~supports the filing and the office does not have sufficient~~
638 ~~information to determine whether the filing meets the applicable~~
639 ~~requirements of this part, the office, it shall within 15 days~~
640 ~~after the date of filing, shall require the insurer or rating~~
641 ~~organization to furnish the information upon which it supports~~
642 ~~the filing. The information furnished in support of a filing may~~
643 ~~include:~~

644 (a) The experience or judgment of the insurer or rating
645 organization making the filing;

646 (b) The ~~its~~ interpretation of any statistical data which
647 the insurer or rating organization making the filing ~~it~~ relies
648 upon;



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649 (c) The experience of other insurers or rating
650 organizations; or

651 (d) Any other factors which the insurer or rating
652 organization making the filing deems relevant.

653 ~~(4)(3)~~ A filing and any supporting information are ~~shall be~~
654 open to public inspection as provided in s. 119.07(1).

655 ~~(5)(4)~~ An insurer may become ~~satisfy its obligation to make~~
656 ~~such filings by becoming~~ a member of, or a subscriber to, a
657 licensed rating organization that ~~which~~ makes loss costs ~~such~~
658 filings and by authorizing the office to accept such filings in
659 its behalf; but nothing contained in this chapter shall be
660 construed as requiring any insurer to become a member or a
661 subscriber to any rating organization.

662 (6) A licensed rating organization may develop and file for
663 approval with the office reference filings containing
664 prospective loss costs and the underlying loss data, and other
665 supporting statistical and actuarial information. A rating
666 organization may not develop or file final rates or multipliers
667 for expenses, profit, or contingencies. After a loss cost
668 reference filing is filed with the office and is approved, the
669 rating organization must provide its member subscribers with a
670 copy of the approved reference filing.

671 (7) A rating organization may file supplementary rating
672 information and rules, including, but not limited to,
673 policywriting rules, rating plan classification codes and
674 descriptions, experience modification plans, statistical plans
675 and forms, and rules that include factors or relativities, such
676 as increased limits factors, classification relativities, or
677 similar factors, but that exclude minimum premiums. An insurer



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678 may use supplementary rating information if such information is
679 approved by the office.

680 (8)~~(5)~~ Pursuant to the provisions of s. 624.3161, the
681 office may examine the underlying statistical data used in such
682 filings.

683 (9)~~(6)~~ Whenever the committee of a recognized rating
684 organization with authority to file prospective loss costs for
685 use by insurers in determining responsibility for workers'
686 compensation and employer's liability insurance rates in this
687 state meets to discuss the necessity for, or a request for,
688 Florida rate increases or decreases in prospective loss costs in
689 this state, the determination of prospective loss costs in this
690 state Florida rates, the prospective loss costs rates to be
691 requested in this state, and any other matters pertaining
692 specifically and directly to prospective loss costs in this
693 state such Florida rates, such meetings shall be held in this
694 state and are shall be subject to s. 286.011. The committee of
695 such a rating organization shall provide at least 3 weeks' prior
696 notice of such meetings to the office and shall provide at least
697 14 days' prior notice of such meetings to the public by
698 publication in the Florida Administrative Register.

699 (10) An insurer group with multiple insurers writing
700 workers' compensation and employer's liability insurance shall
701 file underwriting rules not contained in rating manuals.

702 Section 14. Effective July 1, 2018, section 627.093,
703 Florida Statutes, is amended to read:

704 627.093 Application of s. 286.011 to workers' compensation
705 and employer's liability insurances.—Section 286.011 shall be
706 applicable to every prospective loss cost and rate filing,



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707 approval or disapproval of filing, rating deviation from filing,
708 or appeal from any of these regarding workers' compensation and
709 employer's liability insurances.

710 Section 15. Effective July 1, 2018, subsection (1) of
711 section 627.101, Florida Statutes, is amended to read:

712 627.101 When filing becomes effective; workers'
713 compensation and employer's liability insurances.-

714 (1) The office shall review all required filings as to
715 workers' compensation and employer's liability insurances as
716 soon as reasonably possible after they have been made in order
717 to determine whether they meet the applicable requirements of
718 this part. If the office determines that part of a required rate
719 filing does not meet the applicable requirements of this part,
720 it may reject so much of the filing as does not meet these
721 requirements, and approve the remainder of the filing.

722 Section 16. Effective July 1, 2018, section 627.211,
723 Florida Statutes, is amended to read:

724 627.211 Annual report by the office on the workers'
725 compensation insurance market ~~Deviations; workers' compensation~~
726 ~~and employer's liability insurances.-~~

727 ~~(1) Every member or subscriber to a rating organization~~
728 ~~shall, as to workers' compensation or employer's liability~~
729 ~~insurance, adhere to the filings made on its behalf by such~~
730 ~~organization; except that any such insurer may make written~~
731 ~~application to the office for permission to file a uniform~~
732 ~~percentage decrease or increase to be applied to the premiums~~
733 ~~produced by the rating system so filed for a kind of insurance,~~
734 ~~for a class of insurance which is found by the office to be a~~
735 ~~proper rating unit for the application of such uniform~~



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736 ~~percentage decrease or increase, or for a subdivision of~~
737 ~~workers' compensation or employer's liability insurance:~~

738 ~~(a) Comprised of a group of manual classifications which is~~
739 ~~treated as a separate unit for ratemaking purposes; or~~

740 ~~(b) For which separate expense provisions are included in~~
741 ~~the filings of the rating organization.~~

742

743 ~~Such application shall specify the basis for the modification~~
744 ~~and shall be accompanied by the data upon which the applicant~~
745 ~~relies. A copy of the application and data shall be sent~~
746 ~~simultaneously to the rating organization.~~

747 ~~(2) Every member or subscriber to a rating organization~~
748 ~~may, as to workers' compensation and employer's liability~~
749 ~~insurance, file a plan or plans to use deviations that vary~~
750 ~~according to factors present in each insured's individual risk.~~
751 ~~The insurer that files for the deviations provided in this~~
752 ~~subsection shall file the qualifications for the plans,~~
753 ~~schedules of rating factors, and the maximum deviation factors~~
754 ~~which shall be subject to the approval of the office pursuant to~~
755 ~~s. 627.091. The actual deviation which shall be used for each~~
756 ~~insured that qualifies under this subsection may not exceed the~~
757 ~~maximum filed deviation under that plan and shall be based on~~
758 ~~the merits of each insured's individual risk as determined by~~
759 ~~using schedules of rating factors which shall be applied~~
760 ~~uniformly. Insurers shall maintain statistical data in~~
761 ~~accordance with the schedule of rating factors. Such data shall~~
762 ~~be available to support the continued use of such varying~~
763 ~~deviations.~~

764 ~~(3) In considering an application for the deviation, the~~



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765 ~~office shall give consideration to the applicable principles for~~
766 ~~ratemaking as set forth in ss. 627.062 and 627.072 and the~~
767 ~~financial condition of the insurer. In evaluating the financial~~
768 ~~condition of the insurer, the office may consider: (1) the~~
769 ~~insurer's audited financial statements and whether the~~
770 ~~statements provide unqualified opinions or contain significant~~
771 ~~qualifications or "subject to" provisions; (2) any independent~~
772 ~~or other actuarial certification of loss reserves; (3) whether~~
773 ~~workers' compensation and employer's liability reserves are~~
774 ~~above the midpoint or best estimate of the actuary's reserve~~
775 ~~range estimate; (4) the adequacy of the proposed rate; (5)~~
776 ~~historical experience demonstrating the profitability of the~~
777 ~~insurer; (6) the existence of excess or other reinsurance that~~
778 ~~contains a sufficiently low attachment point and maximums that~~
779 ~~provide adequate protection to the insurer; and (7) other~~
780 ~~factors considered relevant to the financial condition of the~~
781 ~~insurer by the office. The office shall approve the deviation if~~
782 ~~it finds it to be justified, it would not endanger the financial~~
783 ~~condition of the insurer, and it would not constitute predatory~~
784 ~~pricing. The office shall disapprove the deviation if it finds~~
785 ~~that the resulting premiums would be excessive, inadequate, or~~
786 ~~unfairly discriminatory, would endanger the financial condition~~
787 ~~of the insurer, or would result in predatory pricing. The~~
788 ~~insurer may not use a deviation unless the deviation is~~
789 ~~specifically approved by the office. An insurer may apply the~~
790 ~~premiums approved pursuant to s. 627.091 or its uniform~~
791 ~~deviation approved pursuant to this section to a particular~~
792 ~~insured according to underwriting guidelines filed with and~~
793 ~~approved by the office, such approval to be based on ss. 627.062~~



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794 and ~~627.072.~~

795 ~~(4) Each deviation permitted to be filed shall be effective~~
796 ~~for a period of 1 year unless terminated, extended, or modified~~
797 ~~with the approval of the office. If at any time after a~~
798 ~~deviation has been approved the office finds that the deviation~~
799 ~~no longer meets the requirements of this code, it shall notify~~
800 ~~the insurer in what respects it finds that the deviation fails~~
801 ~~to meet such requirements and specify when, within a reasonable~~
802 ~~period thereafter, the deviation shall be deemed no longer~~
803 ~~effective. The notice shall not affect any insurance contract or~~
804 ~~policy made or issued prior to the expiration of the period set~~
805 ~~forth in the notice.~~

806 ~~(5) For purposes of this section, the office, when~~
807 ~~considering the experience of any insurer, shall consider the~~
808 ~~experience of any predecessor insurer when the business and the~~
809 ~~liabilities of the predecessor insurer were assumed by the~~
810 ~~insurer pursuant to an order of the office which approves the~~
811 ~~assumption of the business and the liabilities.~~

812 ~~(6) The office shall submit an annual report to the~~
813 ~~President of the Senate and the Speaker of the House of~~
814 ~~Representatives by January 15 of each year which evaluates~~
815 ~~insurance company solvency and competition in the workers'~~
816 ~~compensation insurance market in this state. The report must~~
817 ~~contain an analysis of the availability and affordability of~~
818 ~~workers' compensation coverage and whether the current market~~
819 ~~structure, conduct, and performance are conducive to~~
820 ~~competition, based upon economic analysis and tests. The purpose~~
821 ~~of this report is to aid the Legislature in determining whether~~
822 ~~changes to the workers' compensation rating laws are warranted.~~



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823 The report must also document that the office has complied with
824 the provisions of s. 627.096 which require the office to
825 investigate and study all workers' compensation insurers in the
826 state and to study the data, statistics, schedules, or other
827 information as it finds necessary to assist in its review of
828 workers' compensation rate filings.

829 Section 17. Effective July 1, 2018, section 627.2151,
830 Florida Statutes, is created to read:

831 627.2151 Workers' compensation excessive defense and cost
832 containment expenses.-

833 (1) As used in this section, the term "defense and cost
834 containment expenses" or "DCCE" includes the following Florida
835 expenses of an insurer group or insurer writing workers'
836 compensation insurance:

- 837 (a) Insurance company attorney fees;
- 838 (b) Expert witnesses;
- 839 (c) Medical examinations and autopsies;
- 840 (d) Medical fee review panels;
- 841 (e) Bill auditing;
- 842 (f) Treatment utilization reviews; and
- 843 (g) Preferred provider network expenses.

844 (2) Each insurer group or insurer writing workers'
845 compensation insurance shall file with the office a schedule of
846 Florida defense and cost containment expenses and total Florida
847 incurred losses for each of the 3 years before the most recent
848 accident year. The DCCE and incurred losses must be valued as of
849 December 31 of the first year following the latest accident year
850 to be reported, developed to an ultimate basis, and at two 12-
851 month intervals thereafter, each developed to an ultimate basis,



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852 so that a total of three evaluations will be provided for each
853 accident year. The first year reported shall be accident year
854 2018, so that the reporting of 3 accident years under this
855 evaluation will not take place until accident years 2019 and
856 2020 have become available.

857 (3) Excessive DCCE occurs when an insurer includes in its
858 rates Florida defense and cost containment expenses for workers'
859 compensation which exceed 15 percent of Florida workers'
860 compensation incurred losses by the insurer or insurer group for
861 the 3 most recent calendar years for which data is to be filed
862 under this section.

863 (4) If the insurer or insurer group realizes excessive
864 DCCE, the office must order a return of the excess amounts after
865 affording the insurer or insurer group an opportunity for a
866 hearing and otherwise complying with the requirements of chapter
867 120. Excessive DCCE amounts must be returned in all instances
868 unless the insurer or insurer group affirmatively demonstrates
869 to the office that the refund of the excessive DCCE amounts will
870 render a member of the insurer group financially impaired or
871 will render it insolvent under provisions of the Florida
872 Insurance Code.

873 (5) Any excess DCCE amount must be returned to
874 policyholders in the form of a cash refund or credit toward the
875 future purchase of insurance. The refund or credit must be made
876 on a pro rata basis in relation to the final compilation year
877 earned premiums to the policyholders of record of the insurer or
878 insurer group on December 31 of the final compilation year. Cash
879 refunds and data in required reports to the office may be
880 rounded to the nearest dollar and must be consistently applied.



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881 (6) (a) Refunds must be completed in one of the following
882 ways:

883 1. A cash refund must be completed within 60 days after
884 entry of a final order indicating that excessive DCCE has been
885 realized.

886 2. A credit to renewal policies must be applied to policy
887 renewal premium notices that are forwarded to insureds more than
888 60 calendar days after entry of a final order indicating that
889 excessive DCCE has been realized. If the insured thereafter
890 cancels a policy or otherwise allows the policy to terminate,
891 the insurer or insurer group must make a cash refund not later
892 than 60 days after coverage termination.

893 (b) Upon completion of the renewal credits or refunds, the
894 insurer or insurer group shall immediately certify having made
895 the refunds to the office.

896 (7) Any refund or renewal credit made pursuant to this
897 section is treated as a policyholder dividend applicable to the
898 year immediately succeeding the compilation period giving rise
899 to the refund or credit, for purposes of reporting under this
900 section for subsequent years.

901 Section 18. Effective July 1, 2018, section 627.291,
902 Florida Statutes, is amended to read:

903 627.291 Information to be furnished insureds; appeal by
904 insureds; workers' compensation and employer's liability
905 insurances.-

906 (1) As to workers' compensation and employer's liability
907 insurances, every rating organization filing prospective loss
908 costs and every insurer which makes its own rates shall, within
909 a reasonable time after receiving written request therefor and



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910 upon payment of such reasonable charge as it may make, furnish
911 to any insured affected by a rate made by it, or to the
912 authorized representative of such insured, all pertinent
913 information as to such rate.

914 (2) As to workers' compensation and employer's liability
915 insurances, every rating organization filing prospective loss
916 costs and every insurer which makes its own rates shall provide
917 within this state reasonable means whereby any person aggrieved
918 by the application of its rating system may be heard, in person
919 or by his or her authorized representative, on his or her
920 written request to review the manner in which such rating system
921 has been applied in connection with the insurance afforded him
922 or her. If the rating organization filing prospective loss costs
923 or the insurer making its own rates fails to grant or rejects
924 such request within 30 days after it is made, the applicant may
925 proceed in the same manner as if his or her application had been
926 rejected. Any party affected by the action of such rating
927 organization filing prospective loss costs or insurer making its
928 own rates on such request may, within 30 days after written
929 notice of such action, appeal to the office, which may affirm or
930 reverse such action.

931 Section 19. Effective July 1, 2018, section 627.318,
932 Florida Statutes, is amended to read:

933 627.318 Records.—Every insurer, rating organization filing
934 prospective loss costs, and advisory organization and every
935 group, association, or other organization of insurers which
936 engages in joint underwriting or joint reinsurance shall
937 maintain reasonable records, of the type and kind reasonably
938 adapted to its method of operation, of its experience or the



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939 experience of its members and of the data, statistics, or
940 information collected or used by it in connection with the
941 prospective loss costs, rates, rating plans, rating systems,
942 underwriting rules, policy or bond forms, surveys, or
943 inspections made or used by it, so that such records will be
944 available at all reasonable times to enable the office to
945 determine whether such organization, insurer, group, or
946 association, and, in the case of an insurer or rating
947 organization, every prospective loss cost, rate, rating plan,
948 and rating system made or used by it, complies with the
949 provisions of this part applicable to it. The maintenance of
950 such records in the office of a licensed rating organization of
951 which an insurer is a member or subscriber will be sufficient
952 compliance with this section for any such insurer maintaining
953 membership or subscribership in such organization, to the extent
954 that the insurer uses the prospective loss costs, rates, rating
955 plans, rating systems, or underwriting rules of such
956 organization. Such records shall be maintained in an office
957 within this state or shall be made available for examination or
958 inspection within this state by the department at any time upon
959 reasonable notice.

960 Section 20. Effective July 1, 2018, section 627.361,
961 Florida Statutes, is amended to read:

962 627.361 False or misleading information.—No person shall
963 willfully withhold information from or knowingly give false or
964 misleading information to the office, any statistical agency
965 designated by the office, any rating organization, or any
966 insurer, which will affect the prospective loss costs, rates, or
967 premiums chargeable under this part.



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968 Section 21. Effective July 1, 2018, subsections (1) and (2)
969 of section 627.371, Florida Statutes, are amended to read:

970 627.371 Hearings.—

971 (1) Any person aggrieved by any rate charged, rating plan,
972 rating system, or underwriting rule followed or adopted by an
973 insurer, and any person aggrieved by any rating plan, rating
974 system, or underwriting rule followed or adopted by a rating
975 organization, may herself or himself or by her or his authorized
976 representative make written request of the insurer or rating
977 organization to review the manner in which the prospective loss
978 cost, rate, plan, system, or rule has been applied with respect
979 to insurance afforded her or him. If the request is not granted
980 within 30 days after it is made, the requester may treat it as
981 rejected. Any person aggrieved by the refusal of an insurer or
982 rating organization to grant the review requested, or by the
983 failure or refusal to grant all or part of the relief requested,
984 may file a written complaint with the office, specifying the
985 grounds relied upon. If the office has already disposed of the
986 issue as raised by a similar complaint or believes that probable
987 cause for the complaint does not exist or that the complaint is
988 not made in good faith, it shall so notify the complainant.
989 Otherwise, and if it also finds that the complaint charges a
990 violation of this chapter and that the complainant would be
991 aggrieved if the violation is proven, it shall proceed as
992 provided in subsection (2).

993 (2) If after examination of an insurer, rating
994 organization, advisory organization, or group, association, or
995 other organization of insurers which engages in joint
996 underwriting or joint reinsurance, upon the basis of other



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997 information, or upon sufficient complaint as provided in
998 subsection (1), the office has good cause to believe that such
999 insurer, organization, group, or association, or any prospective
1000 loss cost, rate, rating plan, or rating system made or used by
1001 any such insurer or rating organization, does not comply with
1002 the requirements and standards of this part applicable to it, it
1003 shall, unless it has good cause to believe such noncompliance is
1004 willful, give notice in writing to such insurer, organization,
1005 group, or association stating therein in what manner and to what
1006 extent noncompliance is alleged to exist and specifying therein
1007 a reasonable time, not less than 10 days thereafter, in which
1008 the noncompliance may be corrected, including any premium
1009 adjustment.

1010 Section 22. Effective July 1, 2017, the sums of \$723,118 in
1011 recurring funds and \$100,000 in nonrecurring funds from the
1012 Insurance Regulatory Trust Fund are appropriated to the Office
1013 of Insurance Regulation, and eight full-time equivalent
1014 positions with associated salary rate of 460,000 are authorized,
1015 for the purpose of implementing this act.

1016 Section 23. Effective July 1, 2017, the sum of \$24,720 in
1017 nonrecurring funds from the Operating Trust Fund is appropriated
1018 to the Office of Judges of Compensation Claims within the
1019 Division of Administrative Hearings for the purposes of
1020 implementing this act.

1021 Section 24. Except as otherwise expressly provided in this
1022 act, this act shall take effect July 1, 2017.

1023
1024 ===== T I T L E A M E N D M E N T =====

1025 And the title is amended as follows:



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1026 Delete everything before the enacting clause
1027 and insert:

1028 A bill to be entitled
1029 An act relating to workers' compensation insurance;
1030 amending s. 440.02, F.S.; redefining the term
1031 "specificity"; amending s. 440.105, F.S.; revising a
1032 prohibition against receiving certain fees,
1033 consideration, or gratuities under certain
1034 circumstances; amending s. 440.13, F.S.; specifying
1035 certain timeframes in terms of business days, rather
1036 than days; requiring carriers to authorize or deny,
1037 rather than respond to, certain requests for
1038 authorization within a specified timeframe; revising
1039 construction; revising a specified interval for
1040 certain notices furnished by treating physicians to
1041 employers or carriers; amending s. 440.15, F.S.;
1042 revising the maximum period of specified temporary
1043 disability benefits; amending s. 440.192, F.S.;
1044 revising conditions under which the Office of the
1045 Judges of Compensation Claims must dismiss petitions
1046 for benefits; revising requirements for such
1047 petitions; revising construction relating to
1048 dismissals of petitions or portions of such petitions;
1049 requiring judges of compensation claims to enter
1050 orders on certain motions to dismiss within specified
1051 timeframes; amending s. 440.34, F.S.; prohibiting the
1052 payment of certain consideration by carriers or
1053 employers, rather than prohibiting such payment for
1054 claimants, in connection with certain proceedings



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1055 under certain circumstances; requiring judges of
1056 compensation claims to consider specified factors in
1057 increasing or decreasing attorney fees; specifying a
1058 maximum hourly rate for attorney fees; revising
1059 provisions that prohibit such judges from approving
1060 certain agreements and that limit attorney fees in
1061 retainer agreements; providing construction; deleting
1062 a provision authorizing such judges to approve
1063 alternative attorney fees under certain circumstances;
1064 conforming a cross-reference; amending s. 624.482,
1065 F.S.; conforming a provision to changes made by the
1066 act; amending s. 627.041, F.S.; redefining terms;
1067 amending s. 627.0612, F.S.; adding prospective loss
1068 costs to a list of reviewable matters in certain
1069 proceedings by appellate courts; amending s. 627.062,
1070 F.S.; prohibiting loss costs for specified classes of
1071 insurance from being excessive, inadequate, or
1072 unfairly discriminatory; amending s. 627.0645, F.S.;
1073 deleting an annual base rate filing requirement
1074 exception relating to workers' compensation and
1075 employer's liability insurance for certain rating
1076 organizations; amending s. 627.072, F.S.; requiring
1077 certain factors to be used in determining and fixing
1078 loss costs; deleting a specified methodology that may
1079 be used by the Office of Insurance Regulation in rate
1080 determinations; amending s. 627.091, F.S.; defining
1081 terms; requiring insurers or insurer groups writing
1082 workers' compensation and employer's liability
1083 insurances to independently and individually file



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1084 their proposed final rates; specifying requirements
1085 for such filings; deleting a requirement that such
1086 filings contain certain information; revising
1087 requirements for supporting information required to be
1088 furnished to the office under certain circumstances;
1089 deleting a specified method for insurers to satisfy
1090 filing obligations; specifying requirements for a
1091 licensed rating organization that elects to develop
1092 and file certain reference filings and certain other
1093 information; authorizing insurers to use supplementary
1094 rating information approved by the office; revising
1095 applicability of public meetings and records
1096 requirements to certain meetings of recognized rating
1097 organization committees; requiring certain insurer
1098 groups to file underwriting rules not contained in
1099 rating manuals; amending s. 627.093, F.S.; revising
1100 applicability of public meetings and records
1101 requirements to prospective loss cost filings or
1102 appeals; amending s. 627.101, F.S.; conforming a
1103 provision to changes made by the act; amending s.
1104 627.211, F.S.; deleting provisions relating to
1105 deviations; requiring that the office's annual report
1106 to the Legislature relating to the workers'
1107 compensation insurance market evaluate insurance
1108 company solvency; creating s. 627.2151, F.S.; defining
1109 the term "defense and cost containment expenses" or
1110 "DCCE"; requiring insurer groups or insurers writing
1111 workers' compensation insurance to file specified
1112 schedules with the office at specified intervals;



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1113 providing construction relating to excessive DCCE;
1114 requiring the office to order returns of excess
1115 amounts of DCCE, subject to certain hearing
1116 requirements; providing requirements for, and an
1117 exception from, the return of excessive DCCE amounts;
1118 providing construction; amending s. 627.291, F.S.;
1119 providing applicability of certain disclosure and
1120 hearing requirements for rating organizations filing
1121 prospective loss costs; amending s. 627.318, F.S.;
1122 providing applicability of certain recordkeeping
1123 requirements for rating organizations or insurers
1124 filing or using prospective loss costs, respectively;
1125 amending s. 627.361, F.S.; providing applicability of
1126 a prohibition against false or misleading information
1127 relating to prospective loss costs; amending s.
1128 627.371, F.S.; providing applicability of certain
1129 hearing procedures and requirements relating to the
1130 application, making, or use of prospective loss costs;
1131 providing appropriations; providing effective dates.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Latvala and Flores) recommended the following:

1 **Senate Amendment to Amendment (251016) (with title**
2 **amendment)**

3
4 Between lines 233 and 234
5 insert:

6 Section 5. Subsection (2) of section 440.151, Florida
7 Statutes, is amended to read:

8 440.151 Occupational diseases.—

9 (2) Whenever used in this section the term "occupational
10 disease" shall be construed to mean only a disease which is due



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11 to causes and conditions which are characteristic of and
12 peculiar to a particular trade, occupation, process, or
13 employment, and to exclude all ordinary diseases of life to
14 which the general public is exposed, unless the incidence of the
15 disease is substantially higher in the particular trade,
16 occupation, process, or employment than for the general public.
17 "Occupational disease" means only a disease for which there are
18 epidemiological studies showing that exposure to the specific
19 substance involved, at the levels to which the employee was
20 exposed, may cause the precise disease sustained by the
21 employee. Notwithstanding any provision of this chapter, for
22 firefighters, as defined in s. 112.81, multiple myeloma and non-
23 Hodgkin's lymphoma are deemed to be occupational diseases that
24 arise out of work performed in the course and scope of
25 employment.

26
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete line 1043

30 and insert:

31 disability benefits; amending s. 440.151, F.S.;

32 providing that specified cancers of firefighters are

33 deemed occupational diseases arising out of work

34 performed in the course and scope of employment;

35 amending s. 440.192, F.S.;

By Senator Bradley

5-00827B-17

20171582__

1 A bill to be entitled
 2 An act relating to workers' compensation insurance;
 3 amending s. 440.02, F.S.; redefining the term
 4 "specificity"; amending s. 440.102, F.S.; conforming a
 5 cross-reference; amending s. 440.105, F.S.; deleting a
 6 prohibition against receiving certain fees,
 7 consideration, or gratuities under certain
 8 circumstances; amending s. 440.13, F.S.; defining the
 9 term "business day"; specifying certain timeframes in
 10 terms of business days, rather than days; requiring
 11 carriers to authorize or decline, rather than respond
 12 to, certain requests for authorization within a
 13 specified time; revising construction; revising a
 14 specified interval for certain notices furnished by
 15 treating physicians to employers or carriers; amending
 16 s. 440.15, F.S.; revising the maximum period of
 17 specified temporary disability benefits; amending s.
 18 440.192, F.S.; revising conditions under which the
 19 Office of the Judges of Compensation Claims must
 20 dismiss petitions for benefits; revising requirements
 21 for such petitions; revising construction relating to
 22 dismissals of petitions or portions thereof; requiring
 23 judges of compensation claims to enter orders on
 24 certain motions to dismiss within specified
 25 timeframes; amending s. 440.34, F.S.; requiring judges
 26 of compensation claims to consider specified factors
 27 in increasing or decreasing attorney fees; specifying
 28 a basis for a maximum hourly rate for attorney fees;
 29 deleting a provision authorizing such judges to

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

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30 approve alternative attorney fees under certain
 31 circumstances; conforming cross-references; amending
 32 s. 624.482, F.S.; conforming a provision to changes
 33 made by the act; amending s. 627.041, F.S.; redefining
 34 terms; amending s. 627.0612, F.S.; adding prospective
 35 loss costs to a list of reviewable matters in certain
 36 proceedings by appellate courts; amending s. 627.062,
 37 F.S.; requiring insurers and rating organizations to
 38 establish and use prospective loss costs for a
 39 specified purpose; requiring copies of prospective
 40 loss costs to be filed with the Office of Insurance
 41 Regulation; amending s. 627.072, F.S.; deleting a
 42 specified methodology that may be used by the office
 43 in rate determinations; amending s. 627.091, F.S.;
 44 defining terms; requiring insurers writing workers'
 45 compensation and employer's liability insurances to
 46 independently and individually file their proposed
 47 final rates; specifying requirements for such filings;
 48 deleting a requirement that such filings contain
 49 certain information; revising requirements for
 50 supporting information required to be furnished to the
 51 office under certain circumstances; deleting a
 52 specified method for insurers to satisfy filing
 53 obligations; specifying requirements for a licensed
 54 rating organization that elects to develop and file
 55 certain reference filings and certain other
 56 information; authorizing insurers to use supplementary
 57 rating information approved by the office; revising
 58 applicability of public meetings and records

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59 requirements to certain meetings of recognized rating
 60 organization committees; amending s. 627.093, F.S.;
 61 revising applicability of public meetings and records
 62 requirements to prospective loss cost filings or
 63 appeals; amending s. 627.101, F.S.; conforming a
 64 provision to changes made by the act; amending s.
 65 627.211, F.S.; deleting provisions relating to
 66 deviations; revising requirements for the office's
 67 annual report to the Legislature relating to the
 68 workers' compensation insurance market; creating s.
 69 627.2151, F.S.; defining the term "defense and cost
 70 containment expenses" or "DCCE"; requiring insurer
 71 groups or insurers writing workers' compensation
 72 insurance to file specified schedules with the office
 73 at specified intervals; providing construction
 74 relating to excessive DCCE; requiring the office to
 75 order returns of excess amounts of DCCE, subject to
 76 certain hearing requirements; providing requirements
 77 for, and an exception from, the return of excessive
 78 DCCE amounts; providing construction; amending s.
 79 627.291, F.S.; providing applicability of certain
 80 disclosure and hearing requirements for rating
 81 organizations filing prospective loss costs; amending
 82 s. 627.318, F.S.; providing applicability of certain
 83 recordkeeping requirements for rating organizations or
 84 insurers filing or using prospective loss costs,
 85 respectively; amending s. 627.361, F.S.; providing
 86 applicability of a prohibition against false or
 87 misleading information relating to prospective loss

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88 costs; amending s. 627.371, F.S.; providing
 89 applicability of certain hearing procedures and
 90 requirements relating to the application, making, or
 91 use of prospective loss costs; providing an effective
 92 date.

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

96 Section 1. Subsection (40) of section 440.02, Florida
 97 Statutes, is amended to read:

98 440.02 Definitions.—When used in this chapter, unless the
 99 context clearly requires otherwise, the following terms shall
 100 have the following meanings:

101 (40) "Specificity" means information on the petition for
 102 benefits sufficient to put the employer or carrier on notice of
 103 the exact statutory classification and outstanding time period
 104 for each requested benefit, the specific amount of each
 105 requested benefit, the calculation used for computing the
 106 requested benefit, of benefits being requested and ~~includes~~ a
 107 detailed explanation of any benefits received that should be
 108 increased, decreased, changed, or otherwise modified. If the
 109 petition is for medical benefits, the information ~~must shall~~
 110 include specific details as to why such benefits are being
 111 requested, why such benefits are medically necessary, and why
 112 current treatment, if any, is not sufficient. Any petition
 113 requesting alternate or other medical care, including, but not
 114 limited to, petitions requesting psychiatric or psychological
 115 treatment, must specifically identify the physician, as defined
 116 in s. 440.13(1), who is recommending such treatment. A copy of a

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117 report from such physician making the recommendation for
 118 alternate or other medical care ~~must shall~~ also be attached to
 119 the petition. A judge of compensation claims ~~may shall~~ not order
 120 such treatment if a physician is not recommending such
 121 treatment.

122 Section 2. Paragraph (p) of subsection (5) of section
 123 440.102, Florida Statutes, is amended to read:

124 440.102 Drug-free workplace program requirements.—The
 125 following provisions apply to a drug-free workplace program
 126 implemented pursuant to law or to rules adopted by the Agency
 127 for Health Care Administration:

128 (5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen
 129 collection and testing for drugs under this section shall be
 130 performed in accordance with the following procedures:

131 (p) All authorized remedial treatment, care, and attendance
 132 provided by a health care provider to an injured employee before
 133 medical and indemnity benefits are denied under this section
 134 must be paid for by the carrier or self-insurer. However, the
 135 carrier or self-insurer must have given reasonable notice to all
 136 affected health care providers that payment for treatment, care,
 137 and attendance provided to the employee after a future date
 138 certain will be denied. A health care provider, as defined in s.
 139 440.13(1) ~~s. 440.13(1)(g)~~, that refuses, without good cause, to
 140 continue treatment, care, and attendance before the provider
 141 receives notice of benefit denial commits a misdemeanor of the
 142 second degree, punishable as provided in s. 775.082 or s.
 143 775.083.

144 Section 3. Paragraph (c) of subsection (3) of section
 145 440.105, Florida Statutes, is amended to read:

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146 440.105 Prohibited activities; reports; penalties;
 147 limitations.—

148 (3) Whoever violates any provision of this subsection
 149 commits a misdemeanor of the first degree, punishable as
 150 provided in s. 775.082 or s. 775.083.

151 ~~(e) It is unlawful for any attorney or other person, in his~~
 152 ~~or her individual capacity or in his or her capacity as a public~~
 153 ~~or private employee, or for any firm, corporation, partnership,~~
 154 ~~or association to receive any fee or other consideration or any~~
 155 ~~gratuity from a person on account of services rendered for a~~
 156 ~~person in connection with any proceedings arising under this~~
 157 ~~chapter, unless such fee, consideration, or gratuity is approved~~
 158 ~~by a judge of compensation claims or by the Deputy Chief Judge~~
 159 ~~of Compensation Claims.~~

160 Section 4. Present paragraphs (c) through (s) of subsection
 161 (1) of section 440.13, Florida Statutes, are redesignated as
 162 paragraphs (d) through (t), respectively, and a new paragraph
 163 (c) is added to that subsection, and paragraph (f) of subsection
 164 (2), paragraphs (d) and (i) of subsection (3), paragraph (a) of
 165 subsection (4), paragraphs (a) and (c) of subsection (5), and
 166 paragraphs (c) and (d) of subsection (9) of that section are
 167 amended, to read:

168 440.13 Medical services and supplies; penalty for
 169 violations; limitations.—

170 (1) DEFINITIONS.—As used in this section, the term:

171 (c) "Business day" means Monday through Friday, excluding
 172 the following holidays: New Year's Day, Birthday of Dr. Martin
 173 Luther King, Jr., Memorial Day, Independence Day, Labor Day,
 174 Veterans' Day, Thanksgiving Day and the Friday after

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175 Thanksgiving, and Christmas Day. If any of the holidays falls on
 176 Saturday or Sunday, the term does not include the day on Monday
 177 through Friday on which the holiday is observed.

178 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.—

179 (f) Upon the written request of the employee, the carrier
 180 shall give the employee the opportunity for one change of
 181 physician during the course of treatment for any one accident.
 182 Upon the granting of a change of physician, the originally
 183 authorized physician in the same specialty as the changed
 184 physician shall become deauthorized upon written notification by
 185 the employer or carrier. The carrier shall authorize an
 186 alternative physician who shall not be professionally affiliated
 187 with the previous physician within 5 business days after receipt
 188 of the request. If the carrier fails to provide a change of
 189 physician as requested by the employee, the employee may select
 190 the physician and such physician shall be considered authorized
 191 if the treatment being provided is compensable and medically
 192 necessary.

193
 194 Failure of the carrier to timely comply with this subsection
 195 shall be a violation of this chapter and the carrier shall be
 196 subject to penalties as provided for in s. 440.525.

197 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.—

198 (d) A carrier ~~must respond~~, by telephone or in writing,
 199 must authorize or decline to a request for authorization from an
 200 authorized health care provider by the close of the third
 201 business day after receipt of the request. A carrier authorizes
 202 the request if it ~~who~~ fails to respond to a written request for
 203 authorization for referral for medical treatment by the close of

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204 the third business day after receipt of the request ~~consents to~~
 205 ~~the medical necessity for such treatment~~. All such requests must
 206 be made to the carrier. Notice to the carrier does not include
 207 notice to the employer.

208 (i) Notwithstanding paragraph (d), a claim for specialist
 209 consultations, surgical operations, physiotherapeutic or
 210 occupational therapy procedures, X-ray examinations, or special
 211 diagnostic laboratory tests that cost more than \$1,000 and other
 212 specialty services that the department identifies by rule is not
 213 valid and reimbursable unless the services have been expressly
 214 authorized by the carrier, unless the carrier has failed to
 215 respond within 10 business days to a written request for
 216 authorization, or unless emergency care is required. The insurer
 217 shall authorize such consultation or procedure unless the health
 218 care provider or facility is not authorized, unless such
 219 treatment is not in accordance with practice parameters and
 220 protocols of treatment established in this chapter, or unless a
 221 judge of compensation claims has determined that the
 222 consultation or procedure is not medically necessary, not in
 223 accordance with the practice parameters and protocols of
 224 treatment established in this chapter, or otherwise not
 225 compensable under this chapter. Authorization of a treatment
 226 plan does not constitute express authorization for purposes of
 227 this section, except to the extent the carrier provides
 228 otherwise in its authorization procedures. This paragraph does
 229 not limit the carrier's obligation to identify and disallow
 230 overutilization or billing errors.

231 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
 232 DEPARTMENT.—

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233 (a) Any health care provider providing necessary remedial
 234 treatment, care, or attendance to any injured worker shall
 235 submit treatment reports to the carrier in a format prescribed
 236 by the department. A claim for medical or surgical treatment is
 237 not valid or enforceable against such employer or employee,
 238 unless, by the close of the third business day following the
 239 first treatment, the physician providing the treatment furnishes
 240 to the employer or carrier a preliminary notice of the injury
 241 and treatment in a format prescribed by the department and,
 242 within 15 business days thereafter, furnishes to the employer or
 243 carrier a complete report, and subsequent thereto furnishes
 244 progress reports, if requested by the employer or insurance
 245 carrier, at intervals of not less than 15 business days ~~3 weeks~~
 246 apart or at less frequent intervals if requested in a format
 247 prescribed by the department.

248 (5) INDEPENDENT MEDICAL EXAMINATIONS.—

249 (a) In any dispute concerning overutilization, medical
 250 benefits, compensability, or disability under this chapter, the
 251 carrier or the employee may select an independent medical
 252 examiner. If the parties agree, the examiner may be a health
 253 care provider treating or providing other care to the employee.
 254 An independent medical examiner may not render an opinion
 255 outside his or her area of expertise, as demonstrated by
 256 licensure and applicable practice parameters. The employer and
 257 employee shall be entitled to only one independent medical
 258 examination per accident and not one independent medical
 259 examination per medical specialty. The party requesting and
 260 selecting the independent medical examination shall be
 261 responsible for all expenses associated with said examination,

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262 including, but not limited to, medically necessary diagnostic
 263 testing performed and physician or medical care provider fees
 264 for the evaluation. The party selecting the independent medical
 265 examination shall identify the choice of the independent medical
 266 examiner to all other parties within 15 business days after the
 267 date the independent medical examination is to take place.
 268 Failure to timely provide such notification shall preclude the
 269 requesting party from submitting the findings of such
 270 independent medical examiner in a proceeding before a judge of
 271 compensation claims. The independent medical examiner may not
 272 provide followup care if such recommendation for care is found
 273 to be medically necessary. If the employee prevails in a medical
 274 dispute as determined in an order by a judge of compensation
 275 claims or if benefits are paid or treatment provided after the
 276 employee has obtained an independent medical examination based
 277 upon the examiner's findings, the costs of such examination
 278 shall be paid by the employer or carrier.

279 (c) The carrier may, at its election, contact the claimant
 280 directly to schedule a reasonable time for an independent
 281 medical examination. The carrier must confirm the scheduling
 282 agreement in writing with the claimant and the claimant's
 283 counsel, if any, at least 7 business days before the date upon
 284 which the independent medical examination is scheduled to occur.
 285 An attorney representing a claimant is not authorized to
 286 schedule the self-insured employer's or carrier's independent
 287 medical evaluations under this subsection. Neither the self-
 288 insured employer nor the carrier shall be responsible for
 289 scheduling any independent medical examination other than an
 290 employer or carrier independent medical examination.

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291 (9) EXPERT MEDICAL ADVISORS.—

292 (c) If there is disagreement in the opinions of the health
 293 care providers, if two health care providers disagree on medical
 294 evidence supporting the employee's complaints or the need for
 295 additional medical treatment, or if two health care providers
 296 disagree that the employee is able to return to work, the
 297 department may, and the judge of compensation claims shall, upon
 298 his or her own motion or within 15 business days after receipt
 299 of a written request by either the injured employee, the
 300 employer, or the carrier, order the injured employee to be
 301 evaluated by an expert medical advisor. The injured employee and
 302 the employer or carrier may agree on the health care provider to
 303 serve as an expert medical advisor. If the parties do not agree,
 304 the judge of compensation claims shall select an expert medical
 305 advisor from the department's list of certified expert medical
 306 advisors. If a certified medical advisor within the relevant
 307 medical specialty is unavailable, the judge of compensation
 308 claims shall appoint any otherwise qualified health care
 309 provider to serve as an expert medical advisor without obtaining
 310 the department's certification. The opinion of the expert
 311 medical advisor is presumed to be correct unless there is clear
 312 and convincing evidence to the contrary as determined by the
 313 judge of compensation claims. The expert medical advisor
 314 appointed to conduct the evaluation shall have free and complete
 315 access to the medical records of the employee. An employee who
 316 fails to report to and cooperate with such evaluation forfeits
 317 entitlement to compensation during the period of failure to
 318 report or cooperate.

319 (d) The expert medical advisor must complete his or her

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320 evaluation and issue his or her report to the department or to
 321 the judge of compensation claims within 15 business days after
 322 receipt of all medical records. The expert medical advisor must
 323 furnish a copy of the report to the carrier and to the employee.

324 Section 5. Paragraph (a) of subsection (2) and paragraph
 325 (e) of subsection (4) of section 440.15, Florida Statutes, are
 326 amended to read:

327 440.15 Compensation for disability.—Compensation for
 328 disability shall be paid to the employee, subject to the limits
 329 provided in s. 440.12(2), as follows:

330 (2) TEMPORARY TOTAL DISABILITY.—

331 (a) Subject to subsection (7), in case of disability total
 332 in character but temporary in quality, 66 2/3 or 66.67 percent
 333 of the average weekly wages shall be paid to the employee during
 334 the continuance thereof, not to exceed 260 ~~104~~ weeks except as
 335 provided in this subsection, s. 440.12(1), and s. 440.14(3).
 336 Once the employee reaches the maximum number of weeks allowed,
 337 or the employee reaches the date of maximum medical improvement,
 338 whichever occurs earlier, temporary disability benefits shall
 339 cease and the injured worker's permanent impairment shall be
 340 determined.

341 (4) TEMPORARY PARTIAL DISABILITY.—

342 (e) Such benefits shall be paid during the continuance of
 343 such disability, not to exceed a period of 260 ~~104~~ weeks, as
 344 provided by this subsection and subsection (2). Once the injured
 345 employee reaches the maximum number of weeks, temporary
 346 disability benefits cease and the injured worker's permanent
 347 impairment must be determined. If the employee is terminated
 348 from postinjury employment based on the employee's misconduct,

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349 temporary partial disability benefits are not payable as
 350 provided for in this section. The department shall by rule
 351 specify forms and procedures governing the method and time for
 352 payment of temporary disability benefits for dates of accidents
 353 before January 1, 1994, and for dates of accidents on or after
 354 January 1, 1994.

355 Section 6. Subsections (2) and (5) of section 440.192,
 356 Florida Statutes, are amended to read:

357 440.192 Procedure for resolving benefit disputes.—

358 (2) Upon receipt, the Office of the Judges of Compensation
 359 Claims shall review each petition and shall dismiss each
 360 petition or any portion of such a petition that does not on its
 361 face meet the requirements of this section and the definition of
 362 specificity under s. 440.02, and specifically identify or
 363 itemize the following:

364 (a) The name, address, and telephone number,~~and social~~
 365 ~~security number~~ of the employee.

366 (b) The name, address, and telephone number of the
 367 employer.

368 (c) A detailed description of the injury and cause of the
 369 injury, including the Florida county or, if outside of Florida,
 370 the state location of the occurrence and the date or dates of
 371 the accident.

372 (d) A detailed description of the employee's job, work
 373 responsibilities, and work the employee was performing when the
 374 injury occurred.

375 (e) The specific time period for which compensation and the
 376 specific classification of compensation were not timely
 377 provided.

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378 (f) The specific date of maximum medical improvement,
 379 character of disability, and specific statement of all benefits
 380 or compensation that the employee is seeking. A claim for
 381 permanent benefits must include the specific date of maximum
 382 medical improvement and the specific date that such permanent
 383 benefits are claimed to begin.

384 (g) All specific travel costs to which the employee
 385 believes she or he is entitled, including dates of travel and
 386 purpose of travel, means of transportation, and mileage and
 387 including the date the request for mileage was filed with the
 388 carrier and a copy of the request filed with the carrier.

389 (h) A specific listing of all medical charges alleged
 390 unpaid, including the name and address of the medical provider,
 391 the amounts due, and the specific dates of treatment.

392 (i) The type or nature of treatment care or attendance
 393 sought and the justification for such treatment. If the employee
 394 is under the care of a physician for an injury identified under
 395 paragraph (c), a copy of the physician's request, authorization,
 396 or recommendation for treatment, care, or attendance must
 397 accompany the petition.

398 (j) The specific amount of compensation claimed to be
 399 accurate and the methodology claimed to accurately calculate the
 400 average weekly wage, if the average weekly wage calculated by
 401 the employer or carrier is disputed. If the petition does not
 402 include a claim under this paragraph, the average weekly wage
 403 and corresponding compensation calculated by the employer or
 404 carrier are presumed to be accurate.

405 ~~(k) (j)~~ A specific explanation of any other disputed issue
 406 that a judge of compensation claims will be called to rule upon.

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407
408 The dismissal of any petition or portion of such a petition
409 under this ~~subsection section~~ is without prejudice and does not
410 require a hearing.

411 (5) (a) All motions to dismiss must state with particularity
412 the basis for the motion. The judge of compensation claims shall
413 enter an order upon such motions without hearing, unless good
414 cause for hearing is shown. Dismissal of any petition or portion
415 of a petition under this subsection is without prejudice.

416 (b) Upon motion that a petition or portion of a petition be
417 dismissed for lack of specificity, the judge of compensation
418 claims shall enter an order on the motion, unless stipulated in
419 writing by the parties, within 10 days after the motion is filed
420 or, if good cause for hearing is shown, within 20 days after
421 hearing on the motion. When any petition or portion of a
422 petition is dismissed for lack of specificity under this
423 subsection, the claimant must be allowed 20 days after the date
424 of the order of dismissal in which to file an amended petition.
425 Any grounds for dismissal for lack of specificity under this
426 section which are not asserted within 30 days after receipt of
427 the petition for benefits are thereby waived.

428 Section 7. Section 440.34, Florida Statutes, is amended to
429 read:

430 440.34 Attorney ~~Attorney's~~ fees; costs.-

431 (1) (a) A fee, gratuity, or other consideration may not be
432 paid for a claimant in connection with any proceedings arising
433 under this chapter, unless approved by the judge of compensation
434 claims or court having jurisdiction over such proceedings. Any
435 attorney fees ~~attorney's fee~~ approved by a judge of compensation

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436 claims for benefits secured on behalf of a claimant must equal
437 to 20 percent of the first \$5,000 of the amount of the benefits
438 secured, 15 percent of the next \$5,000 of the amount of the
439 benefits secured, 10 percent of the remaining amount of the
440 benefits secured to be provided during the first 10 years after
441 the date the claim is filed, and 5 percent of the benefits
442 secured after 10 years.

443 (b) However, the judge of compensation claims shall
444 consider the following factors in each case and may increase or
445 decrease the attorney fees, based on a maximum hourly rate of
446 \$250 per hour, if in his or her judgment he or she expressly
447 finds that the circumstances of the particular case warrant such
448 action:

449 1. The time and labor required, the novelty and difficulty
450 of the questions involved, and the skill requisite to perform
451 the legal service properly.

452 2. The fee customarily charged in the locality for similar
453 legal services.

454 3. The amount involved in the controversy and the benefits
455 resulting to the claimant.

456 4. The time limitation imposed by the claimant or the
457 circumstances.

458 5. The experience, reputation, and ability of the attorney
459 or attorneys performing services.

460 6. The contingency or certainty of a fee.

461 (c) The judge of compensation claims shall not approve a
462 compensation order, a joint stipulation for lump-sum settlement,
463 a stipulation or agreement between a claimant and his or her
464 attorney, or any other agreement related to benefits under this

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465 chapter which provides for attorney fees ~~an attorney's fee~~ in
 466 excess of the amount permitted by this section. The judge of
 467 compensation claims is not required to approve any retainer
 468 agreement between the claimant and his or her attorney. The
 469 retainer agreement as to fees and costs may not be for
 470 compensation in excess of the amount allowed under this
 471 subsection ~~or subsection (7)~~.

472 (2) In awarding a claimant's attorney fees ~~attorney's fee~~,
 473 the judge of compensation claims shall consider only those
 474 benefits secured by the attorney. An attorney is not entitled to
 475 attorney ~~attorney's~~ fees for representation in any issue that
 476 was ripe, due, and owing and that reasonably could have been
 477 addressed, but was not addressed, during the pendency of other
 478 issues for the same injury. The amount, statutory basis, and
 479 type of benefits obtained through legal representation shall be
 480 listed on all attorney ~~attorney's~~ fees awarded by the judge of
 481 compensation claims. For purposes of this section, the term
 482 "benefits secured" does not include future medical benefits to
 483 be provided on any date more than 5 years after the date the
 484 claim is filed. In the event an offer to settle an issue pending
 485 before a judge of compensation claims, including attorney
 486 ~~attorney's~~ fees as provided for in this section, is communicated
 487 in writing to the claimant or the claimant's attorney at least
 488 30 days prior to the trial date on such issue, for purposes of
 489 calculating the amount of attorney ~~attorney's~~ fees to be taxed
 490 against the employer or carrier, the term "benefits secured"
 491 shall be deemed to include only that amount awarded to the
 492 claimant above the amount specified in the offer to settle. If
 493 multiple issues are pending before the judge of compensation

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494 claims, said offer of settlement shall address each issue
 495 pending and shall state explicitly whether or not the offer on
 496 each issue is severable. The written offer shall also
 497 unequivocally state whether or not it includes medical witness
 498 fees and expenses and all other costs associated with the claim.

499 (3) If any party should prevail in any proceedings before a
 500 judge of compensation claims or court, there shall be taxed
 501 against the nonprevailing party the reasonable costs of such
 502 proceedings, not to include attorney ~~attorney's~~ fees. A claimant
 503 is responsible for the payment of her or his own attorney
 504 ~~attorney's~~ fees, except that a claimant is entitled to recover
 505 attorney fees ~~an attorney's fee~~ in an amount equal to the amount
 506 provided for in subsection (1) ~~or subsection (7)~~ from a carrier
 507 or employer:

508 (a) Against whom she or he successfully asserts a petition
 509 for medical benefits only, if the claimant has not filed or is
 510 not entitled to file at such time a claim for disability,
 511 permanent impairment, wage-loss, or death benefits, arising out
 512 of the same accident;

513 (b) In any case in which the employer or carrier files a
 514 response to petition denying benefits with the Office of the
 515 Judges of Compensation Claims and the injured person has
 516 employed an attorney in the successful prosecution of the
 517 petition;

518 (c) In a proceeding in which a carrier or employer denies
 519 that an accident occurred for which compensation benefits are
 520 payable, and the claimant prevails on the issue of
 521 compensability; or

522 (d) In cases where the claimant successfully prevails in

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523 proceedings filed under s. 440.24 or s. 440.28.

524

525 Regardless of the date benefits were initially requested,
526 ~~attorney attorney's~~ fees shall not attach under this subsection
527 until 30 days after the date the carrier or employer, if self-
528 insured, receives the petition.

529 (4) In such cases in which the claimant is responsible for
530 the payment of her or his own ~~attorney attorney's~~ fees, such
531 fees are a lien upon compensation payable to the claimant,
532 notwithstanding s. 440.22.

533 (5) If any proceedings are had for review of any claim,
534 award, or compensation order before any court, the court may
535 award the injured employee or dependent ~~attorney fees an~~
536 ~~attorney's fee~~ to be paid by the employer or carrier, in its
537 discretion, which shall be paid as the court may direct.

538 (6) A judge of compensation claims may not enter an order
539 approving the contents of a retainer agreement that permits
540 placing any portion of the employee's compensation into an
541 escrow account until benefits have been secured.

542 ~~(7) If an attorney's fee is owed under paragraph (3)(a),~~
543 ~~the judge of compensation claims may approve an alternative~~
544 ~~attorney's fee not to exceed \$1,500 only once per accident,~~
545 ~~based on a maximum hourly rate of \$150 per hour, if the judge of~~
546 ~~compensation claims expressly finds that the attorney's fee~~
547 ~~amount provided for in subsection (1), based on benefits~~
548 ~~secured, fails to fairly compensate the attorney for disputed~~
549 ~~medical only claims as provided in paragraph (3)(a) and the~~
550 ~~circumstances of the particular case warrant such action.~~

551 Section 8. Subsection (10) of section 624.482, Florida

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552 Statutes, is amended to read:

553

624.482 Making and use of rates.—

554

555 (10) Any self-insurance fund that writes workers'
556 compensation insurance and employer's liability insurance is
557 subject to, and shall make all rate filings for workers'
558 compensation insurance and employer's liability insurance in
559 accordance with, ss. 627.091, 627.101, 627.111, 627.141,
627.151, 627.171, and 627.191, ~~and 627.211~~.

560

Section 9. Subsections (3), (4), and (6) of section

561

627.041, Florida Statutes, are amended to read:

562

627.041 Definitions.—As used in this part:

563

564 (3) "Rating organization" means every person, other than an
565 authorized insurer, whether located within or outside this
566 state, who has as his or her object or purpose the making of
567 prospective loss costs, rates, rating plans, or rating systems.
568 Two or more authorized insurers that act in concert for the
569 purpose of making prospective loss costs, rates, rating plans,
570 or rating systems, and that do not operate within the specific
571 authorizations contained in ss. 627.311, 627.314(2), (4), and
627.351, shall be deemed to be a rating organization. No single
572 insurer shall be deemed to be a rating organization.

573

574 (4) "Advisory organization" means every group, association,
575 or other organization of insurers, whether located within or
576 outside this state, which prepares policy forms or makes
577 underwriting rules incident to but not including the making of
578 prospective loss costs, rates, rating plans, or rating systems
579 or which collects and furnishes to authorized insurers or rating
580 organizations loss or expense statistics or other statistical
information and data and acts in an advisory, as distinguished

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581 from a ratemaking, capacity.

582 (6) "Subscriber" means an insurer which is furnished at its
583 request:

584 (a) With prospective loss costs, rates, and rating manuals
585 by a rating organization of which it is not a member; or

586 (b) With advisory services by an advisory organization of
587 which it is not a member.

588 Section 10. Subsection (1) of section 627.0612, Florida
589 Statutes, is amended to read:

590 627.0612 Administrative proceedings in rating
591 determinations.—

592 (1) In any proceeding to determine whether prospective loss
593 costs, rates, rating plans, or other matters governed by this
594 part comply with the law, the appellate court shall set aside a
595 final order of the office if the office has violated s.

596 120.57(1)(k) by substituting its findings of fact for findings
597 of an administrative law judge which were supported by competent
598 substantial evidence.

599 Section 11. Paragraph (a) of subsection (2) of section
600 627.062, Florida Statutes, is amended to read:

601 627.062 Rate standards.—

602 (2) As to all such classes of insurance:

603 (a) Insurers or rating organizations shall establish and
604 use prospective loss costs, rates, rating schedules, or rating
605 manuals that allow the insurer a reasonable rate of return on
606 the classes of insurance written in this state. A copy of
607 prospective loss costs, rates, rating schedules, rating manuals,
608 premium credits or discount schedules, and surcharge schedules,
609 and changes thereto, must be filed with the office under one of

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610 the following procedures:

611 1. If the filing is made at least 90 days before the
612 proposed effective date and is not implemented during the
613 office's review of the filing and any proceeding and judicial
614 review, such filing is considered a "file and use" filing. In
615 such case, the office shall finalize its review by issuance of a
616 notice of intent to approve or a notice of intent to disapprove
617 within 90 days after receipt of the filing. The notice of intent
618 to approve and the notice of intent to disapprove constitute
619 agency action for purposes of the Administrative Procedure Act.
620 Requests for supporting information, requests for mathematical
621 or mechanical corrections, or notification to the insurer by the
622 office of its preliminary findings does not toll the 90-day
623 period during any such proceedings and subsequent judicial
624 review. The rate shall be deemed approved if the office does not
625 issue a notice of intent to approve or a notice of intent to
626 disapprove within 90 days after receipt of the filing.

627 2. If the filing is not made in accordance with
628 subparagraph 1., such filing must be made as soon as
629 practicable, but within 30 days after the effective date, and is
630 considered a "use and file" filing. An insurer making a "use and
631 file" filing is potentially subject to an order by the office to
632 return to policyholders those portions of rates found to be
633 excessive, as provided in paragraph (h).

634 3. For all property insurance filings made or submitted
635 after January 25, 2007, but before May 1, 2012, an insurer
636 seeking a rate that is greater than the rate most recently
637 approved by the office shall make a "file and use" filing. For
638 purposes of this subparagraph, motor vehicle collision and

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639 comprehensive coverages are not considered property coverages.
 640
 641 The provisions of this subsection do not apply to workers'
 642 compensation, employer's liability insurance, and motor vehicle
 643 insurance.
 644 Section 12. Subsection (5) of section 627.072, Florida
 645 Statutes, is amended to read:
 646 627.072 Making and use of rates.-
 647 ~~(5)(a) In the case of workers' compensation and employer's~~
 648 ~~liability insurance, the office shall consider utilizing the~~
 649 ~~following methodology in rate determinations: Premiums,~~
 650 ~~expenses, and expected claim costs would be discounted to a~~
 651 ~~common point of time, such as the initial point of a policy~~
 652 ~~year, in the determination of rates; the cash-flow pattern of~~
 653 ~~premiums, expenses, and claim costs would be determined~~
 654 ~~initially by using data from 8 to 10 of the largest insurers~~
 655 ~~writing workers' compensation insurance in the state; such~~
 656 ~~insurers may be selected for their statistical ability to report~~
 657 ~~the data on an accident-year basis and in accordance with~~
 658 ~~subparagraphs (b)1., 2., and 3., for at least 2 1/2 years; such~~
 659 ~~a cash-flow pattern would be modified when necessary in~~
 660 ~~accordance with the data and whenever a radical change in the~~
 661 ~~payout pattern is expected in the policy year under~~
 662 ~~consideration.~~
 663 ~~(b) If the methodology set forth in paragraph (a) is~~
 664 ~~utilized, to facilitate the determination of such a cash-flow~~
 665 ~~pattern methodology:~~
 666 1. Each insurer shall include in its statistical reporting
 667 to the rating bureau and the office the accident year by

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668 ~~calendar quarter data for paid claim costs;~~
 669 2. Each insurer shall submit financial reports to the
 670 rating bureau and the office which shall include total incurred
 671 claim amounts and paid claim amounts by policy year and by
 672 ~~injury types as of December 31 of each calendar year; and~~
 673 3. Each insurer shall submit to the rating bureau and the
 674 office ~~paid premium data on an individual risk basis in which~~
 675 ~~risks are to be subdivided by premium size as follows:~~
 676
 677 Number of Risks in
 678 ~~Premium Range~~ Standard Premium Size
 679
 680 ... (to be filled in by carrier)... \$300-999
 681 ... (to be filled in by carrier)... 1,000-4,999
 682 ... (to be filled in by carrier)... 5,000-49,999
 683 ... (to be filled in by carrier)... 50,000-99,999
 684 ... (to be filled in by carrier)... 100,000 or more
 685 Total+
 686 Section 13. Section 627.091, Florida Statutes, is amended
 687 to read:
 688 627.091 Rate filings; workers' compensation and employer's
 689 liability insurances.-
 690 (1) As used in this section, the term:
 691 (a) "Expenses" means the portion of a rate which is
 692 attributable to acquisition, field supervision, collection
 693 expenses, taxes, assessments, and general expenses.
 694 (b) "Loss cost modifier" means an adjustment to, or a
 695 deviation from, the approved prospective loss costs filed by a
 696 licensed rating organization.

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697 (c) "Loss cost multiplier" means the profit and expense
 698 factor, expressed as a single nonintegral number to be applied
 699 to the prospective loss costs other than loss adjustment
 700 expenses, which is associated with writing workers' compensation
 701 and employer's liability insurance and which is approved by the
 702 office in making rates for each classification of risks used by
 703 that insurer.

704 (d) "Prospective loss costs" means the portion of a rate
 705 which reflects historical industry average aggregate losses and
 706 loss adjustment expenses projected through development to their
 707 ultimate value and through trending to a future point in time.
 708 The term does not include provisions for profit or expenses
 709 other than loss adjustment expense.

710 (2)(1) As to workers' compensation and employer's liability
 711 insurances, every insurer shall file with the office every
 712 manual of classifications, rules, and rates, every rating plan,
 713 and every modification of any of the foregoing which it proposes
 714 to use. Each insurer shall independently and individually file
 715 with the office the final rates it proposes to use. An insurer
 716 may satisfy this filing requirement by adopting the office's
 717 approved loss costs and otherwise complying with this part. Each
 718 insurer shall file data in accordance with the uniform
 719 statistical plan approved by the office. Every filing under this
 720 subsection:

721 (a) Must state the proposed effective date and must be made
 722 at least 30 days before such proposed effective date;

723 (b) Must indicate the character and extent of the coverage
 724 contemplated;

725 (c) May use the approved prospective loss costs filed by a

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726 licensed rating organization in combination with the insurer's
 727 own approved loss cost multiplier and loss cost modifier;

728 (d) May include deductible provisions in its manual of
 729 classifications, rules, and rates. All deductibles must be in a
 730 form and manner that is consistent with the underlying purpose
 731 of chapter 440;

732 (e) May use variable or fixed expense loads or a
 733 combination thereof, and may vary the expense, profit, or
 734 contingency provisions by class or group of classes, if the
 735 insurer files supporting data justifying such variations; and

736 (f) May include a schedule of proposed premium discounts,
 737 credits, and surcharges. The office may not approve discounts,
 738 credits, and surcharges unless they are based on objective
 739 criteria that bear a reasonable relationship to the expected
 740 loss, expense, or profit experience of an individual
 741 policyholder or a class of policyholders ~~Every insurer is~~
 742 ~~authorized to include deductible provisions in its manual of~~
 743 ~~classifications, rules, and rates. Such deductibles shall in all~~
 744 ~~cases be in a form and manner which is consistent with the~~
 745 ~~underlying purpose of chapter 440.~~

746 ~~(3)(2) Every such filing shall state the proposed effective~~
 747 ~~date thereof, and shall indicate the character and extent of the~~
 748 ~~coverage contemplated. When a prospective loss cost, loss cost~~
 749 ~~multiplier, or loss cost modifier filing is not accompanied by~~
 750 ~~the information upon which the insurer or rating organization~~
 751 ~~supports the filing and the office does not have sufficient~~
 752 ~~information to determine whether the filing meets the applicable~~
 753 ~~requirements of this part, the office ~~it~~ shall within 15 days~~
 754 ~~after the date of filing require the insurer or rating~~

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755 organization to furnish the information upon which it supports
756 the filing. The information furnished in support of a filing may
757 include:

758 (a) The experience or judgment of the insurer or rating
759 organization making the filing;

760 (b) The ~~its~~ interpretation of any statistical data which
761 the insurer or rating organization making the filing ~~it~~ relies
762 upon;

763 (c) The experience of other insurers or rating
764 organizations; or

765 (d) Any other factors which the insurer or rating
766 organization making the filing deems relevant.

767 (4)(3) A filing and any supporting information ~~are~~ shall be
768 open to public inspection as provided in s. 119.07(1).

769 ~~(4) An insurer may satisfy its obligation to make such~~
770 ~~filings by becoming a member of, or a subscriber to, a licensed~~
771 ~~rating organization which makes such filings and by authorizing~~
772 ~~the office to accept such filings in its behalf, but nothing~~
773 ~~contained in this chapter shall be construed as requiring any~~
774 ~~insurer to become a member or a subscriber to any rating~~
775 ~~organization.~~

776 (5) A licensed rating organization may develop and file for
777 approval with the office reference filings containing
778 prospective loss costs and the underlying loss data, and other
779 supporting statistical and actuarial information. A rating
780 organization may not develop or file final rates or multipliers
781 for expenses, profit, or contingencies. After a loss cost
782 reference filing is filed with the office and is approved, the
783 rating organization must provide its member subscribers with a

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784 copy of the approved reference filing.

785 (6) A rating organization may file supplementary rating
786 information that includes policywriting rules, rating plan
787 classification codes and descriptions, experience modification
788 plans, and rules that include factors or relativities, such as
789 increased limits factors, classification relativities, or
790 similar factors, but that exclude minimum premiums. An insurer
791 may use supplementary rating information approved by the office.

792 ~~(7)(5)~~ Pursuant to the provisions of s. 624.3161, the
793 office may examine the underlying statistical data used in such
794 filings.

795 ~~(8)(6)~~ Whenever the committee of a recognized rating
796 organization with authority to file prospective loss costs for
797 use by insurers in determining ~~responsibility for~~ workers'
798 compensation and employer's liability insurance rates in this
799 state meets to discuss the necessity for, or a request for,
800 Florida rate increases or decreases in prospective loss costs in
801 this state, the determination of prospective loss costs in this
802 state Florida rates, the prospective loss costs ~~rates~~ to be
803 requested in this state, and any other matters pertaining
804 specifically and directly to prospective loss costs in this
805 state ~~such Florida rates~~, such meetings shall be held in this
806 state and ~~are shall be~~ subject to s. 286.011. The committee of
807 such a rating organization shall provide at least 3 weeks' prior
808 notice of such meetings to the office and shall provide at least
809 14 days' prior notice of such meetings to the public by
810 publication in the Florida Administrative Register.

811 Section 14. Section 627.093, Florida Statutes, is amended
812 to read:

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813 627.093 Application of s. 286.011 to workers' compensation
814 and employer's liability insurances.—Section 286.011 shall be
815 applicable to every prospective loss cost and rate filing,
816 approval or disapproval of filing, rating deviation from filing,
817 or appeal from any of these regarding workers' compensation and
818 employer's liability insurances.

819 Section 15. Subsection (1) of section 627.101, Florida
820 Statutes, is amended to read:

821 627.101 When filing becomes effective; workers'
822 compensation and employer's liability insurances.—

823 (1) The office shall review all required filings as to
824 workers' compensation and employer's liability insurances as
825 soon as reasonably possible after they have been made in order
826 to determine whether they meet the applicable requirements of
827 this part. If the office determines that part of a required rate
828 filing does not meet the applicable requirements of this part,
829 it may reject so much of the filing as does not meet these
830 requirements, and approve the remainder of the filing.

831 Section 16. Section 627.211, Florida Statutes, is amended
832 to read:

833 627.211 Annual report by the office on the workers'
834 compensation insurance market Deviations; workers' compensation
835 and employer's liability insurances.—

836 ~~(1) Every member or subscriber to a rating organization~~
837 ~~shall, as to workers' compensation or employer's liability~~
838 ~~insurance, adhere to the filings made on its behalf by such~~
839 ~~organization; except that any such insurer may make written~~
840 ~~application to the office for permission to file a uniform~~
841 ~~percentage decrease or increase to be applied to the premiums~~

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842 ~~produced by the rating system so filed for a kind of insurance,~~
843 ~~for a class of insurance which is found by the office to be a~~
844 ~~proper rating unit for the application of such uniform~~
845 ~~percentage decrease or increase, or for a subdivision of~~
846 ~~workers' compensation or employer's liability insurance.~~

847 ~~(a) Comprised of a group of manual classifications which is~~
848 ~~treated as a separate unit for ratemaking purposes; or~~

849 ~~(b) For which separate expense provisions are included in~~
850 ~~the filings of the rating organization.~~

851

852 Such application shall specify the basis for the modification
853 and shall be accompanied by the data upon which the applicant
854 relies. A copy of the application and data shall be sent
855 simultaneously to the rating organization.

856 ~~(2) Every member or subscriber to a rating organization~~
857 ~~may, as to workers' compensation and employer's liability~~
858 ~~insurance, file a plan or plans to use deviations that vary~~
859 ~~according to factors present in each insured's individual risk.~~
860 ~~The insurer that files for the deviations provided in this~~
861 ~~subsection shall file the qualifications for the plans,~~
862 ~~schedules of rating factors, and the maximum deviation factors~~
863 ~~which shall be subject to the approval of the office pursuant to~~
864 ~~s. 627.091. The actual deviation which shall be used for each~~
865 ~~insured that qualifies under this subsection may not exceed the~~
866 ~~maximum filed deviation under that plan and shall be based on~~
867 ~~the merits of each insured's individual risk as determined by~~
868 ~~using schedules of rating factors which shall be applied~~
869 ~~uniformly. Insurers shall maintain statistical data in~~
870 ~~accordance with the schedule of rating factors. Such data shall~~

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871 be available to support the continued use of such varying
872 deviations.

873 ~~(3) In considering an application for the deviation, the~~
874 ~~office shall give consideration to the applicable principles for~~
875 ~~ratemaking as set forth in ss. 627.062 and 627.072 and the~~
876 ~~financial condition of the insurer. In evaluating the financial~~
877 ~~condition of the insurer, the office may consider: (1) the~~
878 ~~insurer's audited financial statements and whether the~~
879 ~~statements provide unqualified opinions or contain significant~~
880 ~~qualifications or "subject to" provisions; (2) any independent~~
881 ~~or other actuarial certification of loss reserves; (3) whether~~
882 ~~workers' compensation and employer's liability reserves are~~
883 ~~above the midpoint or best estimate of the actuary's reserve~~
884 ~~range estimate; (4) the adequacy of the proposed rate; (5)~~
885 ~~historical experience demonstrating the profitability of the~~
886 ~~insurer; (6) the existence of excess or other reinsurance that~~
887 ~~contains a sufficiently low attachment point and maximums that~~
888 ~~provide adequate protection to the insurer; and (7) other~~
889 ~~factors considered relevant to the financial condition of the~~
890 ~~insurer by the office. The office shall approve the deviation if~~
891 ~~it finds it to be justified, it would not endanger the financial~~
892 ~~condition of the insurer, and it would not constitute predatory~~
893 ~~pricing. The office shall disapprove the deviation if it finds~~
894 ~~that the resulting premiums would be excessive, inadequate, or~~
895 ~~unfairly discriminatory, would endanger the financial condition~~
896 ~~of the insurer, or would result in predatory pricing. The~~
897 ~~insurer may not use a deviation unless the deviation is~~
898 ~~specifically approved by the office. An insurer may apply the~~
899 ~~premiums approved pursuant to s. 627.091 or its uniform~~

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900 deviation approved pursuant to this section to a particular
901 insured according to underwriting guidelines filed with and
902 approved by the office, such approval to be based on ss. 627.062
903 and 627.072.

904 ~~(4) Each deviation permitted to be filed shall be effective~~
905 ~~for a period of 1 year unless terminated, extended, or modified~~
906 ~~with the approval of the office. If at any time after a~~
907 ~~deviation has been approved the office finds that the deviation~~
908 ~~no longer meets the requirements of this code, it shall notify~~
909 ~~the insurer in what respects it finds that the deviation fails~~
910 ~~to meet such requirements and specify when, within a reasonable~~
911 ~~period thereafter, the deviation shall be deemed no longer~~
912 ~~effective. The notice shall not affect any insurance contract or~~
913 ~~policy made or issued prior to the expiration of the period set~~
914 ~~forth in the notice.~~

915 ~~(5) For purposes of this section, the office, when~~
916 ~~considering the experience of any insurer, shall consider the~~
917 ~~experience of any predecessor insurer when the business and the~~
918 ~~liabilities of the predecessor insurer were assumed by the~~
919 ~~insurer pursuant to an order of the office which approves the~~
920 ~~assumption of the business and the liabilities.~~

921 ~~(6) The office shall submit an annual report to the~~
922 ~~President of the Senate and the Speaker of the House of~~
923 ~~Representatives by January 15 of each year which evaluates~~
924 ~~insurance company solvency and competition in the workers'~~
925 ~~compensation insurance market in this state. The report must~~
926 ~~contain an analysis of the availability and affordability of~~
927 ~~workers' compensation coverage and whether the current market~~
928 ~~structure, conduct, and performance are conducive to~~

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 929 competition, based upon economic analysis and tests. The report
 930 must also contain an analysis of each insurer's capital compared
 931 to minimum risk-based capital. The purpose of this report is to
 932 aid the Legislature in determining whether changes to the
 933 workers' compensation rating laws are warranted. The report must
 934 also document that the office has complied with the provisions
 935 of s. 627.096 which require the office to investigate and study
 936 all workers' compensation insurers in the state and to study the
 937 data, statistics, schedules, or other information as it finds
 938 necessary to assist in its review of workers' compensation rate
 939 filings.

940 Section 17. Section 627.2151, Florida Statutes, is created
 941 to read:

942 627.2151 Workers' compensation excessive defense and cost
 943 containment expenses.-

944 (1) As used in this section, the term "defense and cost
 945 containment expenses" or "DCCE" includes the following Florida
 946 expenses of an insurer group or insurer writing workers'
 947 compensation insurance:

948 (a) Insurance company attorney fees;

949 (b) Expert witnesses;

950 (c) Medical examinations and autopsies;

951 (d) Medical fee review panels;

952 (e) Bill auditing;

953 (f) Treatment utilization reviews;

954 (g) Preferred provider network expenses; and

955 (h) Vocational rehabilitation.

956 (2) Each insurer group or insurer writing workers'
 957 compensation insurance shall file with the office a schedule of

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 958 Florida defense and cost containment expenses and total Florida
 959 incurred losses for each of the 3 years before the most recent
 960 accident year. The DCCE and incurred losses must be valued as of
 961 December 31 of the first year following the latest accident year
 962 to be reported, developed to an ultimate basis, and at two 12-
 963 month intervals thereafter, each developed to an ultimate basis,
 964 so that a total of three evaluations will be provided for each
 965 accident year. The first year reported shall be accident year
 966 2018, so that the reporting of 3 accident years under this
 967 evaluation will not take place until accident years 2019 and
 968 2020 have become available.

969 (3) Excessive DCCE occurs when the Florida defense and cost
 970 containment expenses for workers' compensation exceed 15 percent
 971 of Florida workers' compensation incurred losses by the insurer
 972 or insurer group for the 3 most recent calendar years for which
 973 data is to be filed under this section.

974 (4) If the insurer or insurer group realizes excessive
 975 DCCE, the office must order a return of the excess amounts after
 976 affording the insurer or insurer group an opportunity for a
 977 hearing and otherwise complying with the requirements of chapter
 978 120. Excessive DCCE amounts must be returned in all instances
 979 unless the insurer or insurer group affirmatively demonstrates
 980 to the office that the refund of the excessive DCCE amounts will
 981 render a member of the insurer group financially impaired or
 982 will render it insolvent under provisions of the Florida
 983 Insurance Code.

984 (5) Any excess DCCE amount must be returned to
 985 policyholders in the form of a cash refund or credit toward the
 986 future purchase of insurance. The refund or credit must be made

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987 on a pro rata basis in relation to the final compilation year
 988 earned premiums to the policyholders of record of the insurer or
 989 insurer group on December 31 of the final compilation year. Cash
 990 refunds and data in required reports to the office may be
 991 rounded to the nearest dollar and must be consistently applied.

992 (6) (a) Refunds must be completed in one of the following
 993 ways:

994 1. A cash refund must be completed within 60 days after
 995 entry of a final order indicating that excessive DCCE has been
 996 realized.

997 2. A credit to renewal policies must be applied to policy
 998 renewal premium notices that are forwarded to insureds more than
 999 60 calendar days after entry of a final order indicating that
 1000 excessive DCCE has been realized. If the insured thereafter
 1001 cancels a policy or otherwise allows the policy to terminate,
 1002 the insurer or insurer group must make a cash refund not later
 1003 than 60 days after coverage termination.

1004 (b) Upon completion of the renewal credits or refunds, the
 1005 insurer or insurer group shall immediately certify having made
 1006 the refunds to the office.

1007 (7) Any refund or renewal credit made pursuant to this
 1008 section is treated as a policyholder dividend applicable to the
 1009 year immediately succeeding the compilation period giving rise
 1010 to the refund or credit, for purposes of reporting under this
 1011 section for subsequent years.

1012 Section 18. Section 627.291, Florida Statutes, is amended
 1013 to read:

1014 627.291 Information to be furnished insureds; appeal by
 1015 insureds; workers' compensation and employer's liability

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1016 insurances.-

1017 (1) As to workers' compensation and employer's liability
 1018 insurances, every rating organization filing prospective loss
 1019 costs and every insurer which makes its own rates shall, within
 1020 a reasonable time after receiving written request therefor and
 1021 upon payment of such reasonable charge as it may make, furnish
 1022 to any insured affected by a rate made by it, or to the
 1023 authorized representative of such insured, all pertinent
 1024 information as to such rate.

1025 (2) As to workers' compensation and employer's liability
 1026 insurances, every rating organization filing prospective loss
 1027 costs and every insurer which makes its own rates shall provide
 1028 within this state reasonable means whereby any person aggrieved
 1029 by the application of its rating system may be heard, in person
 1030 or by his or her authorized representative, on his or her
 1031 written request to review the manner in which such rating system
 1032 has been applied in connection with the insurance afforded him
 1033 or her. If the rating organization filing prospective loss costs
 1034 or the insurer making its own rates fails to grant or rejects
 1035 such request within 30 days after it is made, the applicant may
 1036 proceed in the same manner as if his or her application had been
 1037 rejected. Any party affected by the action of such rating
 1038 organization filing prospective loss costs or insurer making its
 1039 own rates on such request may, within 30 days after written
 1040 notice of such action, appeal to the office, which may affirm or
 1041 reverse such action.

1042 Section 19. Section 627.318, Florida Statutes, is amended
 1043 to read:

1044 627.318 Records.-Every insurer, rating organization filing

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1045 prospective loss costs, and advisory organization and every
 1046 group, association, or other organization of insurers which
 1047 engages in joint underwriting or joint reinsurance shall
 1048 maintain reasonable records, of the type and kind reasonably
 1049 adapted to its method of operation, of its experience or the
 1050 experience of its members and of the data, statistics, or
 1051 information collected or used by it in connection with the
 1052 prospective loss costs, rates, rating plans, rating systems,
 1053 underwriting rules, policy or bond forms, surveys, or
 1054 inspections made or used by it, so that such records will be
 1055 available at all reasonable times to enable the office to
 1056 determine whether such organization, insurer, group, or
 1057 association, and, in the case of an insurer or rating
 1058 organization, every prospective loss cost, rate, rating plan,
 1059 and rating system made or used by it, complies with the
 1060 provisions of this part applicable to it. The maintenance of
 1061 such records in the office of a licensed rating organization of
 1062 which an insurer is a member or subscriber will be sufficient
 1063 compliance with this section for any such insurer maintaining
 1064 membership or subscribership in such organization, to the extent
 1065 that the insurer uses the prospective loss costs, rates, rating
 1066 plans, rating systems, or underwriting rules of such
 1067 organization. Such records shall be maintained in an office
 1068 within this state or shall be made available for examination or
 1069 inspection within this state by the department at any time upon
 1070 reasonable notice.

1071 Section 20. Section 627.361, Florida Statutes, is amended
 1072 to read:

1073 627.361 False or misleading information.—No person shall

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1074 willfully withhold information from or knowingly give false or
 1075 misleading information to the office, any statistical agency
 1076 designated by the office, any rating organization, or any
 1077 insurer, which will affect the prospective loss costs, rates, or
 1078 premiums chargeable under this part.

1079 Section 21. Subsections (1) and (2) of section 627.371,
 1080 Florida Statutes, are amended to read:

1081 627.371 Hearings.—

1082 (1) Any person aggrieved by any rate charged, rating plan,
 1083 rating system, or underwriting rule followed or adopted by an
 1084 insurer, and any person aggrieved by any rating plan, rating
 1085 system, or underwriting rule followed or adopted by a rating
 1086 organization, may herself or himself or by her or his authorized
 1087 representative make written request of the insurer or rating
 1088 organization to review the manner in which the prospective loss
 1089 cost, rate, plan, system, or rule has been applied with respect
 1090 to insurance afforded her or him. If the request is not granted
 1091 within 30 days after it is made, the requester may treat it as
 1092 rejected. Any person aggrieved by the refusal of an insurer or
 1093 rating organization to grant the review requested, or by the
 1094 failure or refusal to grant all or part of the relief requested,
 1095 may file a written complaint with the office, specifying the
 1096 grounds relied upon. If the office has already disposed of the
 1097 issue as raised by a similar complaint or believes that probable
 1098 cause for the complaint does not exist or that the complaint is
 1099 not made in good faith, it shall so notify the complainant.
 1100 Otherwise, and if it also finds that the complaint charges a
 1101 violation of this chapter and that the complainant would be
 1102 aggrieved if the violation is proven, it shall proceed as

Page 38 of 39

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

5-00827B-17

20171582__

1103 provided in subsection (2).

1104 (2) If after examination of an insurer, rating
1105 organization, advisory organization, or group, association, or
1106 other organization of insurers which engages in joint
1107 underwriting or joint reinsurance, upon the basis of other
1108 information, or upon sufficient complaint as provided in
1109 subsection (1), the office has good cause to believe that such
1110 insurer, organization, group, or association, or any prospective
1111 loss cost, rate, rating plan, or rating system made or used by
1112 any such insurer or rating organization, does not comply with
1113 the requirements and standards of this part applicable to it, it
1114 shall, unless it has good cause to believe such noncompliance is
1115 willful, give notice in writing to such insurer, organization,
1116 group, or association stating therein in what manner and to what
1117 extent noncompliance is alleged to exist and specifying therein
1118 a reasonable time, not less than 10 days thereafter, in which
1119 the noncompliance may be corrected, including any premium
1120 adjustment.

1121 Section 22. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: April 5, 2017

I respectfully request that **Senate Bill # 1582**, relating to Workers' Compensation Insurance, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 5

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/17

Meeting Date

1582

Bill Number (if applicable)

259668

Amendment Barcode (if applicable)

Topic Workers Comp - Firefighter Cancer Amendment

Name Rocco Salvatori

Job Title Firefighter

Address 343 West Madison St

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-224-7333

Email RoccoSalvatori@icloud.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Professional Firefighters

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)

4/13/17

Meeting Date

SB 1582

Bill Number (if applicable)

259668

Amendment Barcode (if applicable)

Topic _____

Name Kraig Conn

Job Title _____

Address 301 S. Bronough St. 300

Street

Phone 222 9684

Tall FL 32301

City

State

Zip

Email kconn@flcities.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

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)

4/13/17
Meeting Date

1582
Bill Number (if applicable)

251016
Amendment Barcode (if applicable)

Topic WORKERS COMP

Name NANCY STEPHENS

Job Title

Address 1625 SUNNIT LAKE DR, STE 300
Street

Phone 850 402 2954

TALLAHASSEE FL 32317
City State Zip

Email nancy@nstephens.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing MANUFACTURERS ASSOCIATION OF FLORIDA,
FLORIDA BUILDING MATERIALS ASSOCIATION, FLORIDA POULTRY FEDERATION

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)

4-13-17

Meeting Date

SB 1582

Bill Number (if applicable)

BOTH

251016

Amendment Barcode (if applicable)

Topic WORKERS' COMP

Name CAM FENTRISS

Job Title LOBBYIST

Address 1400 VILLAGE SQUARE # 3-243

Phone 850-222-2772

Street

TALL

FL

32312

City

State

Zip

Email AFENTRISS@AOL.COM

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing FLA. REFRIGERATION + AC CONTRACTORS ASSN

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)

4-13-17

Meeting Date

SB 1582

Bill Number (if applicable)

BOTH

251016

Amendment Barcode (if applicable)

Topic WORKERS' COMP

Name CAM FENTRISS

Job Title LEG. COUNSEL

Address 1400 VILLAGE SQUARE # 3-243

Phone 850-722-2772

Street

TALL

FL

State

32312

Zip

Email CFENTRISS@AOL.COM

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing FLA. ROOFING + SHEET METAL CONTRACTORS ASSN

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)

4-13-17
Meeting Date

BOTH

SB 1582
Bill Number (if applicable)

251016
Amendment Barcode (if applicable)

Topic WORKERS COMP

Name RICHARD WATSON

Job Title LEG. COUNSEL

Address P O Box 10038

Phone 850-222-0000

TAU FL 32302
City State Zip

Email RICK@RWATSONAND ASSOCIATES.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing ASSOCIATED BUILDERS + CONTRACTORS

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)

4/13/17
Meeting Date

1582
Bill Number (if applicable)

Topic WORKERS COMP

Amendment Barcode (if applicable)

Name NANCY STEPHENS

Job Title _____

Address 1625 SUMMIT LAKE DR, STE 300

Phone 850 402 2954

GALLAHUSSEE FL 32317
City State Zip

Email nancy@kstephens.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA BUILDING MATERIALS ASSOCIATION, MANUFACTURERS ASSOCIATION OF FLORIDA, FLORIDA POULTRY FEDERATION

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)

4/13/17

Meeting Date

1582

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.

Phone 850-445-5367

Street

Killbuck

City

FL

State

32301

Zip

Email tim.nungesser@nfib.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing National Federation of Independent Business

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)

4/13/17
Meeting Date

1582
Bill Number (if applicable)

Topic Workers' Compensation

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title VP's General Counsel

Address 227 S Adams St.

Phone 222-4082

Street

Tallahassee

FL

32301

City

State

Zip

Email samantha@frf.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

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)

4/13/17

Meeting Date

1582

Bill Number (if applicable)

Topic workers' Comp

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 130 S Brandon St

Phone 521-1200

Street

Tallahassee

Email Cjohnson@

City

State

Zip

flchamber.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Chamber of 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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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

04.13.17

1582

Meeting Date

Bill Number (if applicable)

Topic Workers Compensation

Amendment Barcode (if applicable)

Name Kim Fernandes

Job Title _____

Address 201 South Monroe Street - Ste. 5

Phone 850-577-1301

Street

Tallahassee

FL

32301

Email kfernandes@kelleykronenberg.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

04.13.17

Meeting Date

1582

Bill Number (if applicable)

251016

Amendment Barcode (if applicable)

Topic Workers Compensation

Name Kim Fernandes

Job Title _____

Address 201 South Monroe Street - Ste. 5

Phone 850-577-1301

Street

Tallahassee

FL

32301

Email kfernandes@kelleykronenberg.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Justice Reform Institute

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-13-17

Meeting Date

1582

Bill Number (if applicable)

Topic Workers' Compensation - Open Rating - "Loss Costs"

Amendment Barcode (if applicable)

Name Tom Stahl

Job Title Executive Director

Address 116 S. Monroe St.

Phone 850-681-6265

Street

Tallahassee FL 32301

Email tstahl@fuba.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FUBA - Florida United ~~in~~ Businesses 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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/13/17
Meeting Date

SB 1582
Bill Number (if applicable)

Topic Workers Comp

Amendment Barcode (if applicable)

Name Jim McConnaughay

Job Title Consultant

Address 516 W Adams St
Street

Phone 224-7173

TLH FL 32312
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of 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.

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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)

4/13/17

Meeting Date

SB1582

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kraig Cann

Job Title _____

Address 3015 Bronough Ste 300

Phone 222 9684

Street

Tall FL 32301

Email k.cann@flcities.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

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)

4/12/17
Meeting Date

1582
Bill Number (if applicable)

Topic WORKERS' COMPENSATION INSURANCE

Amendment Barcode (if applicable)

Name LANCE PIERCE

Job Title ASST. DIRECTOR OF STATE LEGISLATIVE AFFAIRS

Address 310 W. COLLEGE AVE Phone (850) 228-4088

Street

TALLAHASSEE

City

FL

State

32301

Zip

Email LANCE.PIERCE@FPBF.ORG

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA FARM BUREAU

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 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/13/2014
Meeting Date

SB 1582
Bill Number (if applicable)

Topic WORKERS COMPENSATION

Amendment Barcode (if applicable)

Name HOWARD E. "GENE" ADAMS

Job Title ATTORNEY, PENNINGTON LAW FIRM

Address 215 S. MONROE STREET, 2ND FLOOR

Phone 850-222-3533

Tallahassee FLA 32301-1839
City State Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA SHERIFFS RISK MANAGEMENT FUND

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)

04/13/2017

1582

Meeting Date

Bill Number (if applicable)

Topic Workers Compensation Insurance

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850) 205-9000

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against *(Respectfully)*
(The Chair will read this information into the record.)

Representing Florida Restaurant and Lodging 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 (10/14/14)

CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Appropriations Committee

Judge:

Started: 4/13/2017 9:30:32 AM

Ends: 4/13/2017 11:57:59 AM

Length: 02:27:28

9:30:31 AM Sen. Latvala (Chair)
9:32:15 AM S 716
9:32:20 AM Sen. Passidomo
9:33:26 AM Sen. Latvala
9:33:34 AM Am. 342196
9:33:39 AM Sen. Passidomo
9:33:51 AM Sen. Latvala
9:34:09 AM Am. 396950
9:34:13 AM Sen. Passidomo
9:34:25 AM Sen. Latvala
9:34:45 AM S 716 (cont.)
9:34:53 AM Andrew Forst, Legislative Coordinator, Department of Business and Professional Regulation (waives in support)
9:35:04 AM Kenneth Pratt, Senior Vice President of Governmental Affairs, Florida Bankers Association (waives in support)
9:35:08 AM Trey Goldman, Legislative Counsel, Florida Realtors (waives in support)
9:36:14 AM S 730
9:36:17 AM Sen. Passidomo
9:36:58 AM Sen. Latvala
9:37:12 AM Elizabeth Boyd, Legislative Affairs Director, CFO Atwater (waives in support)
9:38:13 AM S 256
9:38:18 AM Sen. Steube
9:38:32 AM Sen. Latvala
9:38:49 AM Casey Welch, Government Relations, University of South Florida (waives in support)
9:39:58 AM S 1146
9:40:05 AM Sen. Broxson
9:41:04 AM Sen. Gibson
9:41:27 AM Sen. Broxson
9:42:19 AM Sen. Latvala
9:42:23 AM Sen. Brandes
9:42:35 AM Sen. Broxson
9:42:39 AM Sen. Latvala
9:42:48 AM Am. 547244
9:42:58 AM Sen. Broxson
9:43:17 AM Sen. Latvala
9:43:49 AM S 1146 (cont.)
9:44:06 AM Rebecca O'Hara, Assistant General Counsel, Florida League of Cities
9:46:28 AM Sen. Latvala
9:46:50 AM Sen. Broxson
9:47:06 AM Sen. Latvala
9:48:06 AM S 1360
9:48:09 AM Sen. Thurston
9:49:04 AM Sen. Latvala
9:49:32 AM Carla Laroche, Law Fellow, Southern Poverty Law Center (waives in support)
9:49:36 AM Mario Bailey, Senior Government Relations Consultant, Bethune-Cookman University and Miami-Dade County (waives in support)
9:50:05 AM Seber Newsome III
9:53:02 AM Sen. Latvala
9:53:06 AM S. Newsome
9:53:36 AM Sen. Latvala
9:53:41 AM S. Newsome
9:53:55 AM Sen. Latvala

9:55:08 AM S 736
9:55:13 AM Sen. Mayfield
9:55:36 AM Sen. Flores (Chair)
9:55:41 AM Am. 567188
9:55:48 AM Am. 398992
9:55:53 AM Sen. Mayfield
9:56:26 AM Sen. Flores
9:56:40 AM Courtney Larkin, Government Relations, Office of Financial Regulation (waives in support)
9:56:50 AM S 736 (cont.)
9:57:41 AM S 738
9:57:57 AM Sen. Mayfield
9:58:18 AM Sen. Flores
9:58:22 AM Am. 900196
9:58:36 AM S 738 (cont.)
9:58:44 AM Slater Bayliss, The Florida International Administrators Association (waives in support)
9:58:46 AM Courtney Larkin, Government Relations, Office of Financial Regulation (waives in support)
9:59:31 AM Sen. Latvala (Chair)
9:59:38 AM S 114
9:59:47 AM Sen. Brandes
10:00:08 AM Sen. Latvala
10:00:21 AM John Ray, Seychelles Organics, Inc. (waives in support)
10:01:43 AM S 450
10:01:46 AM Sen. Bradley
10:01:56 AM Sen. Brandes
10:02:18 AM Sen. Latvala
10:02:34 AM Am. 303428
10:02:48 AM Sen. Brandes
10:03:39 AM Sen. Latvala
10:04:05 AM Am. 719990
10:04:14 AM Sen. Brandes
10:04:22 AM Sen. Latvala
10:04:35 AM Am. 303428 (cont.)
10:04:56 AM Ron Draa, Director of External Affairs, Department of Law Enforcement
10:05:18 AM Sen. Latvala
10:05:25 AM R. Draa
10:05:35 AM Sen. Latvala
10:05:38 AM R. Draa
10:06:01 AM Sen. Latvala
10:06:04 AM R. Draa
10:06:24 AM Sen. Latvala
10:06:36 AM Sen. Bracy
10:06:45 AM R. Draa
10:07:28 AM Sen. Bracy
10:07:51 AM R. Draa
10:08:13 AM Sen. Latvala
10:08:52 AM S 450 (cont.)
10:09:08 AM Greg Frost, President, Civil Citation Network (waives in support)
10:09:17 AM Honorable Carlos Martinez, Public Defender, 11th Circuit, Florida Public Defender Association, Inc.
(waives in support)
10:09:28 AM Carla Laroche, Law Fellow, Southern Poverty Law Center (waives in support)
10:09:30 AM Jorge Chamizo, Attorney, Florida Association of Criminal Defense Lawyers (waives in support)
10:09:47 AM Barney Bishop, President and CEO, Florida Smart Justice Alliance
10:11:03 AM Sen. Latvala
10:12:07 AM S 1272
10:12:10 AM Sen. Brandes
10:12:30 AM Sen. Latvala
10:12:43 AM Am. 827850
10:12:51 AM Sen. Brandes
10:13:02 AM Sen. Latvala
10:13:09 AM S 1272 (cont.)
10:14:05 AM S 196
10:14:08 AM Sen. Flores

10:14:21 AM Am. 918062
10:14:43 AM Am. 610616
10:14:51 AM Sen. Flores
10:17:19 AM Sen. Latvala
10:17:44 AM Matt Dunagan, Deputy Director, Florida Sheriffs Association (waives in opposition)
10:17:58 AM Sen. Braynon
10:18:24 AM Sen. Flores
10:19:08 AM Sen. Latvala
10:19:41 AM S 196 (cont.)
10:20:05 AM Barney Bishop, President and CEO, Florida Smart Justice Alliance
10:20:51 AM Sen. Latvala
10:21:07 AM Reverend Rusty May, Pastor, LIFE Organization, Lutheran Church
10:23:50 AM Sen. Grimsley (Chair)
10:24:07 AM Lois Hoeft, Board Member, ICARE
10:24:55 AM Sen. Grimsley
10:25:06 AM Reverend Jean Cooley, Parish Associate, Good Samaritan Church, Co-chair, FAST Organization
10:26:48 AM Sen. Grimsley
10:27:08 AM Matt Dunagan, Deputy Director, Florida Sheriffs Association
10:28:42 AM Sen. Grimsley
10:28:48 AM Georjean Polich VanDoren, Team Leader, Hillsborough Organization for Progress and Equality (waives in support)
10:28:52 AM Ann Bigg, Member, FAST (waives in support)
10:28:59 AM Minnie Smith, Board Member, ICARE (waives in support)
10:29:03 AM Jeanette Altma, Intern/Network Member, SURE (waives in support)
10:29:13 AM Honorable Carlos Martinez, Public Defender, 11th Circuit, Florida Public Defender Association, Inc. (waives in support)
10:29:20 AM Ryan McBride, Pastor, Sarasota United for Responsibility and Equity (waives in support)
10:29:33 AM Steve Kinsey, Under Sheriff, Broward Sheriffs Office
10:30:02 AM Sen. Grimsley
10:30:08 AM Sen. Brandes
10:30:33 AM S. Kinsey
10:30:57 AM Sen. Brandes
10:31:20 AM S. Kinsey
10:31:23 AM Sen. Grimsley
10:31:29 AM Angie Gallo, Legislation Chair, Florida Parent-Teacher Association (waives in support)
10:31:38 AM William Oberdick, Lee Interfaith for Empowerment (waives in support)
10:31:45 AM Sen. Simmons
10:32:16 AM Sen. Grimsley
10:32:19 AM Sen. Simmons
10:33:14 AM S. Kinsey
10:34:01 AM Sen. Simmons
10:35:01 AM S. Kinsey
10:35:33 AM Sen. Grimsley
10:35:48 AM Joseph Buczek, Hillsborough Organization for Progress and Equality (waives in support)
10:36:00 AM Amy Mercer, Executive Director, Florida Police Chiefs Association (waives in opposition)
10:36:11 AM Karen Woodall, Director, Florida Center for Fiscal and Economic Policy (waives in support)
10:36:15 AM Ingrid Delgado, Associate, Florida Conference of Catholic Bishops (waives in support)
10:36:18 AM Jorge Chamizo, Attorney, Florida Association of Criminal Defense Lawyers (waives in support)
10:36:22 AM Lisa Hurley, Florida Association of Counties (waives in support)
10:36:32 AM Sen. Gibson
10:39:11 AM Sen. Grimsley
10:39:13 AM Sen. Montford
10:40:35 AM Sen. Grimsley
10:40:37 AM Sen. Brandes
10:42:14 AM Sen. Grimsley
10:42:21 AM Sen. Simmons
10:44:10 AM Sen. Bradley
10:46:17 AM Sen. Grimsley
10:46:22 AM Sen. Flores
10:50:54 AM Sen. Grimsley
10:51:47 AM S 1124
10:51:55 AM Sen. Book

10:52:55 AM Am. 642038
10:53:01 AM Sen. Flores (Chair)
10:53:26 AM S 1124 (cont.)
10:53:44 AM George Fox, President, Phoenix Fox Foundation
10:56:44 AM Sen. Flores
10:56:52 AM Kelly Mauette, Everylife Foundation for Rare Diseases (waives in support)
10:56:56 AM Stephen Winn, Executive Director, Florida Osteopathic Medical Association (waives in support)
10:57:00 AM Rob Johnson, March of Dimes (waives in support)
10:57:08 AM Sen. Book
10:57:29 AM Sen. Flores
10:58:21 AM S 1156
10:58:25 AM Sen. Stargel
10:58:41 AM Sen. Flores
10:58:47 AM Am. 941158
10:58:54 AM Sen. Stargel
10:59:14 AM Sen. Flores
10:59:26 AM S 1156 (cont.)
11:00:14 AM S 1402
11:00:19 AM Sen. Latvala
11:01:53 AM Sen. Flores
11:01:57 AM Sen. Braynon
11:02:43 AM Sen. Latvala
11:02:52 AM Sen. Braynon
11:03:19 AM Sen. Latvala
11:03:52 AM Sen. Braynon
11:04:11 AM Sen. Latvala
11:04:39 AM Sen. Flores
11:04:43 AM Sen. Montford
11:05:36 AM Sen. Latvala
11:05:56 AM Sen. Montford
11:06:12 AM Sen. Latvala
11:06:43 AM Sen. Montford
11:07:12 AM Sen. Latvala
11:07:48 AM Sen. Braynon
11:08:13 AM Sen. Latvala
11:08:42 AM Sen. Flores
11:08:54 AM Sen. Braynon
11:11:16 AM Sen. Flores
11:11:20 AM Sen. Latvala
11:13:31 AM Sen. Flores
11:14:23 AM S 1582
11:14:25 AM Sen. Bradley
11:16:45 AM Sen. Flores
11:16:49 AM Am. 251016
11:17:02 AM Sen. Bradley
11:29:57 AM Sen. Flores
11:30:05 AM Sen. Brandes
11:30:16 AM Sen. Bradley
11:32:48 AM Sen. Brandes
11:32:52 AM Sen. Bradley
11:33:44 AM Sen. Brandes
11:34:05 AM Sen. Bradley
11:36:35 AM Sen. Flores
11:36:45 AM Sen. Gibson
11:37:21 AM Sen. Bradley
11:39:17 AM Sen. Flores
11:39:19 AM Sen. Powell
11:39:53 AM Sen. Bradley
11:40:59 AM Sen. Powell
11:41:08 AM Sen. Bradley
11:41:11 AM Sen. Powell
11:41:13 AM Sen. Bradley

11:41:16 AM Sen. Flores
11:41:24 AM Sen. Gainer
11:41:41 AM Sen. Bradley
11:42:04 AM Sen. Flores
11:42:10 AM Am. 259668
11:42:15 AM Sen. Latvala
11:43:00 AM Sen. Flores
11:43:16 AM Kraig Conn, Florida League of Cities
11:46:01 AM Sen. Flores
11:46:18 AM Rocco Salvatori, Firefighter, Florida Professional Firefighters
11:47:46 AM Sen. Flores
11:47:52 AM Sen. Brandes
11:48:56 AM Sen. Flores
11:49:01 AM Sen. Latvala
11:50:41 AM Sen. Flores
11:50:52 AM Am. 251016 (cont.)
11:51:06 AM Nancy Stephens, Manufacturers Association of Florida, Florida Building Materials Association, Florida Poultry Federation (waives in opposition)
11:51:17 AM Cam Fentriss, Lobbyist, Florida Refrigeration and AC Contractors Association (waives in opposition)
11:51:29 AM Cam Fentriss, Legislative Counsel, Florida Roofing and Sheet Metal Contractors Association (waives in opposition)
11:51:33 AM Richard Watson, Legislative Counsel, Associated Builders and Contractors (waives in opposition)
11:51:56 AM S 1582 (cont.)
11:52:07 AM Nancy Stephens, Manufacturers Association of Florida, Florida Building Materials Association, Florida Poultry Federation (waives in opposition)
11:52:10 AM Tim Nungesser, Legislative Director, National Federation of Independent Business (waives in opposition)
11:52:10 AM Samantha Padgett, Vice President and General Counsel, Florida Retail Federation (waives in opposition)
11:52:12 AM Carolyn Johnson, Policy Director, Florida Chamber of Commerce (waives in opposition)
11:52:16 AM Kim Fernandes, Florida Justice Reform Institute
11:55:14 AM Sen. Flores
11:55:20 AM Tom Stahl, Executive Director, Florida United Businesses Association (waives in opposition)
11:55:24 AM Jim McConaughay, Consultant, Associated Industries of Florida (waives in opposition)
11:55:30 AM Kraig Conn, Florida League of Cities (waives in opposition)
11:55:31 AM Lance Pierce, Assistant Director of State Legislative Affairs, Florida Farm Bureau (waives in opposition)
11:55:34 AM Howard Gene Adams, Attorney, Pennington Law Firm, Florida Sheriffs Risk Management Fund (waives in opposition)
11:55:39 AM Warren Husband, Florida Restaurant and Lodging Association (waives in opposition)
11:55:51 AM Sen. Flores
11:55:59 AM Am. 272582
11:56:08 AM S 1582 (cont.)
11:56:15 AM Sen. Brandes
11:56:58 AM Sen. Flores