

<b>Tab 1</b>	<b>SB 430 by Bean (CO-INTRODUCERS) Flores;</b> (Identical to H 00577) Discount Plan Organizations						
144836	D	S	RCS	BI, Bean	Delete everything after	03/06	06:15 PM

<b>Tab 2</b>	<b>SB 454 by Brandes;</b> (Similar to H 00359) Regulation of Insurance Companies						
293744	A	S	RCS	BI, Brandes	btw L.178 - 179:	03/06	06:15 PM
128686	A	S	RCS	BI, Brandes	Delete L.287 - 296.	03/06	06:15 PM
976826	A	S	L WD	BI, Brandes	btw L.178 - 179:	03/06	06:15 PM

<b>Tab 3</b>	<b>SB 536 by Brandes;</b> (Similar to H 00681) Unclaimed Funds Held by the Clerks of Court						
933696	A	S	RCS	BI, Brandes	Delete L.36 - 129:	03/06	06:15 PM

<b>Tab 4</b>	<b>SB 660 by Passidomo;</b> (Similar to CS/H 00471) Foreclosure Proceedings						
450290	D	S	RCS	BI, Passidomo	Delete everything after	03/06	06:15 PM

<b>Tab 5</b>	<b>SB 670 by Bean (CO-INTRODUCERS) Lee, Mayfield;</b> (Similar to H 00625) Managed Care Plans' Provider Networks						
229060	A	S	L RCS	BI, Bean	Delete L.129 - 133:	03/06	06:15 PM
895576	A	S	L UNFAV	BI, Garcia	Delete L.27 - 132:	03/06	06:15 PM
390442	A	S	L UNFAV	BI, Garcia	Delete L.27 - 132:	03/06	06:15 PM
230802	A	S	L UNFAV	BI, Garcia	Delete L.27 - 132:	03/06	06:15 PM

<b>Tab 6</b>	<b>SB 730 by Passidomo;</b> (Identical to H 00837) Insurer Insolvency						
592904	A	S	RS	BI, Passidomo	Delete L.302 - 362:	03/06	06:15 PM
865748	SA	S	RCS	BI, Farmer	Delete L.302 - 362:	03/06	06:15 PM
<del>332784</del>	A	S	WD	BI, Farmer	Delete L.311 - 317.	03/06	06:15 PM
<del>682696</del>	A	S	WD	BI, Farmer	Delete L.338 - 358:	03/06	06:15 PM
<del>464120</del>	A	S	WD	BI, Farmer	Delete L.356 - 358.	03/06	06:15 PM
374774	A	S	RCS	BI, Passidomo	btw L.466 - 467:	03/06	06:15 PM

<b>Tab 7</b>	<b>SB 736 by Mayfield (CO-INTRODUCERS) Steube;</b> (Similar to H 00435) International Financial Institutions						
875382	A	S	RCS	BI, Mayfield	Delete L.1674 - 2015:	03/06	06:15 PM

<b>Tab 8</b>	<b>SB 738 by Mayfield (CO-INTRODUCERS) Steube;</b> (Similar to H 00437) Public Records/International Financial Institutions						
906604	A	S	RCS	BI, Mayfield	Delete L.31:	03/06	06:15 PM

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

**BANKING AND INSURANCE**  
**Senator Flores, Chair**  
**Senator Steube, Vice Chair**

**MEETING DATE:** Monday, March 6, 2017  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** *Toni Jennings Committee Room, 110 Senate Office Building*

**MEMBERS:** Senator Flores, Chair; Senator Steube, Vice Chair; Senators Bracy, Braynon, Farmer, Gainer, Garcia, Mayfield, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 430</b> Bean (Identical H 577)	Discount Plan Organizations; Requiring a provider to be licensed as a discount plan organization if the provider charges patients fees, dues, charges, or other consideration to receive discounted medical services; revising a specified condition for a member to receive a reimbursement of certain charges after cancelling a membership in a discount plan organization; specifying what a first page is for the purpose of a disclosure requirement on certain materials relating to a discount plan, etc.  BI      03/06/2017 Fav/CS AHS AP	Fav/CS Yeas 9 Nays 0
2	<b>SB 454</b> Brandes (Similar H 359)	Regulation of Insurance Companies; Deleting a future repeal of an exemption of medical malpractice insurance premiums from certain emergency assessments by the State Board of Administration relating to the Florida Hurricane Catastrophe Fund; revising a definition of "assets" of an insurer to include certain assessments levied by the Office of Insurance Regulation, etc.  BI      03/06/2017 Fav/CS AGG AP RC	Fav/CS Yeas 7 Nays 2
3	<b>SB 536</b> Brandes (Similar H 681)	Unclaimed Funds Held by the Clerks of Court; Repealing provisions relating to the deposit of unclaimed funds with the Chief Financial Officer to the credit of the State School Fund; requiring the clerk to report as unclaimed property a surplus under certain circumstances; repealing provisions relating to qualifications and appointment of a surplus trustee in foreclosure actions, etc.  BI      03/06/2017 Fav/CS AED AP	Fav/CS Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Monday, March 6, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 660</b> Passidomo (Similar CS/H 471)	Foreclosure Proceedings; Authorizing a lienholder to submit specified documents in a foreclosure proceeding as evidence of an admission by a defendant; authorizing the lienholder to request that the court take judicial notice of a final order entered in a bankruptcy case; providing that the submission of certain documents creates specified rebuttable presumptions under certain circumstances, etc.  BI 03/06/2017 Fav/CS JU RC	Fav/CS Yeas 8 Nays 0
5	<b>SB 670</b> Bean (Similar H 625)	Managed Care Plans' Provider Networks; Prohibiting a managed care plan from excluding a pharmacy that meets the credentialing requirements and standards established by the Agency for Health Care Administration and that accepts the terms of the plan; requiring a managed care plan to offer the same rate of reimbursement to all pharmacies in the plan's network, etc.  BI 03/06/2017 Fav/CS AHS AP	Fav/CS Yeas 7 Nays 1
6	<b>SB 730</b> Passidomo (Identical 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, etc.  BI 03/06/2017 Fav/CS AGG AP RC	Fav/CS Yeas 9 Nays 0
7	<b>SB 736</b> Mayfield (Similar H 435, Compare H 437, H 769, H 771, S 1078, S 1080, Linked 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 AP RC	Fav/CS Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Banking and Insurance

Monday, March 6, 2017, 4:00—6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 738</b> Mayfield (Similar H 437, Compare H 435, H 769, H 771, S 1078, S 1080, Linked 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 that certain exemptions from public records requirements for information relating to investigations; providing a statement of public necessity, etc.  BI      03/06/2017 Fav/CS GO AP RC	Fav/CS Yeas 8 Nays 0

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Other Related Meeting Documents

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

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

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

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BILL: CS/SB 430

INTRODUCER: Banking and Insurance Committee and Senators Bean and Flores

SUBJECT: Discount Plan Organizations

DATE: March 6, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	FAV/CS
2.			AHS	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 430 amends part II of ch. 636, F.S., relating to Discount Medical Plan Organization. The bill:

- Changes the term “discount medical plan” to “discount plan,” changes the term “discount medical plan organization” to “discount plan organization, and allows old terms to be used until June 30, 2018;
- Exempts from licensure plans that do not charge a fee to plan members;
- Requires third party providers that assist medical providers in offering discounts to their own patients in exchange for consideration to be licensed as a discount plan organization;
- Requires a member to receive a reimbursement of charges if the member cancels a plan in compliance with the rules of an open enrollment period or at any time within 30 days of written notice;
- Allows for an alternate method of providing disclosures and provides disclosure requirements when initial contact is made by telephone;
- Removes requirements that all discount plan charges must be submitted to the Office of Insurance Regulation (OIR), and that charges greater than \$30 per month and \$360 per year may only be charged if approved by OIR;
- Removes a standard that charges bear a reasonable relation to the benefits received;
- Removes the requirement that forms must be submitted to the OIR for approval;
- Adds a 5 year retention of member records requirement and subjects such records to inspection by the OIR at any time;

- Allows a discount plan organization to delegate functions to its marketers;
- Allows a marketer or discount plan organization to commingle medical services and other services on a single page of forms, advertisements, marketing materials or brochures;
- Specifies that the OIR's approval of forms only pertains to the medical services regulated by part II of ch. 636, F.S.;
- Removes the requirement that the fees for the discount medical plan must be provided in writing to the member when a marketer or discount plan organization sells a discount medical plan together with any other product and the fees exceed \$30.

The bill is effective upon becoming a law.

## II. Present Situation:

Discount medical plans are agreements where membership fees are charged in exchange for the right of the member to receive discounts on certain medical services. Such plans are regulated under part II of ch. 636, F.S., and are not considered insurance. A medical provider who provides discount medical services to his or her own patients is exempt, regardless if a fee is charged.

Under part II, all forms used must first be filed and approved by the OIR.<sup>1</sup> Any amendments to a previously approved form constitute a new form that is subject to OIR approval.<sup>2</sup> Disclosures are required to be made on the first page of advertisements, marketing materials, or brochures.<sup>3</sup> When the initial contract with a prospective member is by telephone, the disclosures are required to be made orally and provided in the initial written materials that describe the benefits under the plan provided to the prospective or new member.<sup>4</sup>

All charges to members are required to be filed with the Office of Insurance Regulation (OIR), any charges greater than \$30 per month or \$360 per year must be approved by the OIR before the charges can be used.<sup>5</sup> Plan members are guaranteed a refund of periodic charges if cancellation occurs within the first 30 days after the effective date of enrollment.<sup>6</sup> An annual report is required to be filed with the OIR within 3 months after the end of each organization's fiscal year.<sup>7</sup> Each discount medical plan organization is required to maintain a net worth of at least \$150,000 to become or remain eligible for licensure.<sup>8</sup>

## III. Effect of Proposed Changes:

CS/SB 430 substantially revises part II of ch. 636, F.S., governing discount medical plans

**Section 3** changes the terms "discount medical plan" to "discount plan" and "discount medical plan organization" to "discount plan organization" within ch. 636, F.S. The bill allows the old

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<sup>1</sup> s. 636.216(3), F.S.

<sup>2</sup> s. 636.216(4), F.S.

<sup>3</sup> s. 636.212, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> s. 636.216(1), F.S.

<sup>6</sup> s. 636.208(2), F.S.

<sup>7</sup> s. 636.218, F.S.

<sup>8</sup> s. 636.220, F.S.

terms to be used until June 30, 2018, for the purpose of allowing time to transition to the new terminology. Furthermore, discount plans that do not charge a fee will be exempt from part II of ch. 636, F.S. Each section of the bill incorporates the new terms.

**Sections 1 and 2** make conforming changes relating to the revised terms in section 3, revising the title to ch. 636, F.S., and the title to part II of ch. 636, F.S.

**Section 4** requires a third party provider that assists medical providers in establishing discounts for medical services to their own patients in exchange for consideration to obtain licensure as a discount plan organization. Providers who provide their patients discounts without a third party remain exempt.

**Section 5** requires discount plan organizations to maintain member records for the duration of the agreement and 5 years thereafter, subject to inspection by the OIR at any time. Records required to be retained include an accurate record of each member, the membership materials provided to each member, the discount plan issued to the members, and the charges billed and paid by the members.

**Section 6** revises when members can receive reimbursement for canceling a discount plan. Currently, a member may cancel a discount medical plan within the first 30 days of enrollment, and upon returning the discount card, is reimbursed all period charges. The bill requires the reimbursement if the cancellation is consistent with the open enrollment rules established for such plans and also allows for cancellation in writing at any time within 30 days of notice by the member.

**Section 7** establishes disclosure requirements for written materials, online materials and solicitations over the phone. For written materials the disclosures must be printed in 12 point font on all advertisements, marketing materials, or brochures relating to the discount plan. For online materials the disclosures must be printed in a readable size and font on all advertisements, marketing materials, or brochures relating to the discount plan. For telephone solicitations the disclosure must be given over the phone and must also be sent in writing with any membership or signup materials.

**Section 8** clarifies that the agreement between a discount plan organization and a provider must contain a statement that the provider will not charge members more than the discounted rate.

**Section 9** removes the requirements that all charges for a discount plan be submitted to the OIR and that charges above \$30 per month or \$360 per year be approved by the OIR. Also, removes the requirement that OIR approve all forms and advertisements. Additionally, this section removes a requirement that Discount Plan Organizations have the burden of proof that the charges bear a reasonable relation to the benefits received by a member.

**Section 10** allows a discount plan organization to delegate functions to a marketer, but binds it for any acts of its marketers, within the scope of the delegation.

**Sections 11** allows a marketer or discount plan organization to commingle medical services and other services on a single page of forms, advertisements, marketing materials, or brochures.

Further, the section specifies that the OIR's approval of forms only pertains to the medical services regulated by part II of ch. 636, F.S. The section removes the requirement that the fees for the Discount Medical Plan must be provided in writing to the member if the Discount Medical Plan is bundled together with any other product and the fees exceed \$30.

**Sections 12** makes a technical change conforming to a change in section 9 and removes the OIR's need to develop rules for form regulation and approval.

**Sections 13 – 30** makes conforming changes relating to the revised terms in section 1.

**Section 31** provides the effective date of the bill as 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:

Third party vendors that charge a fee and assist medical practitioners with establishing discount plans for their patients will need to be licensed as a discount plan organization.

C. Government Sector Impact:

The fees charged and the forms used by a discount plan organization will no longer be subject to OIR approval. OIR can inspect records at any time.

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

None.

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

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 636.202, 636.204, 636.206, 636.208, 636.212, 636.214, 636.216, 636.228, 636.230, 636.232, 408.9091, 408.910, 627.64731, 636.003, 636.205, 636.207, 636.210, 636.218, 636.220, 636.222, 636.223, 636.224, 636.226, 636.234, 636.236, 636.238, 636.240 and 636.244.

**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 clarifies that when a provider pays a third party vendor to provide discounts to their own patients, the third party vendor must be licensed as a discount plan organization. Discount plan organizations must maintain records for 5 years and such records are subject to examination by the OIR at any time. The CS allows discount plan cancelations outside of an open enrollment plan to occur at any time within 30 days' of written notice. The CS also clarifies how disclosures must be given depending on the type of solicitation.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Chapter 636, Florida Statutes, entitled "Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations," is retitled "Prepaid Limited Health Service Organizations and Discount Plan Organizations."

Section 2. Part II of chapter 636, Florida Statutes, entitled "Discount Medical Plan Organizations," is retitled



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11 "Discount Plan Organizations."

12 Section 3. Section 636.202, Florida Statutes, is amended to  
13 read:

14 636.202 Definitions.—As used in this part, the term:

15 (1) "Discount ~~medical~~ plan" means a business arrangement or  
16 contract in which a person, in exchange for fees, dues, charges,  
17 or other consideration, provides access for plan members to  
18 providers of medical services and the right to receive medical  
19 services from those providers at a discount. The term "discount  
20 medical plan" does not include any product regulated under  
21 chapter 627, chapter 641, or part I of this chapter; ~~or~~ any  
22 medical services provided through a telecommunications medium  
23 that does not offer a discount to the plan member for those  
24 medical services; or any plan that does not charge a fee to plan  
25 members. Until June 30, 2018, a discount plan may also be  
26 referred to as a discount medical plan.

27 (2) "Discount ~~medical~~ plan organization" means an entity  
28 that which, in exchange for fees, dues, charges, or other  
29 consideration, provides access for plan members to providers of  
30 medical services and the right to receive medical services from  
31 those providers at a discount. Until June 30, 2018, a discount  
32 plan organization may also be referred to as a discount medical  
33 plan organization.

34 (3) "Marketer" means a person or entity that which markets,  
35 promotes, sells, or distributes a discount ~~medical~~ plan,  
36 including a private label entity that which places its name on  
37 and markets or distributes a discount ~~medical~~ plan but does not  
38 operate a discount ~~medical~~ plan.

39 (4) "Medical services" means any care, service, or



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40 treatment of illness or dysfunction of, or injury to, the human  
41 body, including, but not limited to, physician care, inpatient  
42 care, hospital surgical services, emergency services, ambulance  
43 services, dental care services, vision care services, mental  
44 health services, substance abuse services, chiropractic  
45 services, podiatric care services, laboratory services, and  
46 medical equipment and supplies. The term does not include  
47 pharmaceutical supplies or prescriptions.

48 (5) "Member" means any person who pays fees, dues, charges,  
49 or other consideration for the right to receive the purported  
50 benefits of a discount ~~medical~~ plan.

51 (6) "Provider" means any person or institution that ~~which~~  
52 is contracted, directly or indirectly, with a discount ~~medical~~  
53 plan organization to provide medical services to members.

54 (7) "Provider network" means an entity that ~~which~~  
55 negotiates on behalf of more than one provider with a discount  
56 ~~medical~~ plan organization to provide medical services to  
57 members.

58 Section 4. Subsections (1), (2), (4), and (6) of section  
59 636.204, Florida Statutes, are amended to read:

60 636.204 License required.—

61 (1) Before doing business in this state as a discount  
62 ~~medical~~ plan organization, an entity must be a corporation, a  
63 limited liability company, or a limited partnership,  
64 incorporated, organized, formed, or registered under the laws of  
65 this state or authorized to transact business in this state in  
66 accordance with chapter 605, part I of chapter 607, chapter 617,  
67 chapter 620, or chapter 865, and must be licensed by the office  
68 as a discount ~~medical~~ plan organization or be licensed by the





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69 office pursuant to chapter 624, part I of this chapter, or  
70 chapter 641.

71 (2) An application for a license to operate as a discount  
72 ~~medical~~ plan organization must be filed with the office on a  
73 form prescribed by the commission. Such application must be  
74 sworn to by an officer or authorized representative of the  
75 applicant and be accompanied by the following, if applicable:

76 (a) A copy of the applicant's articles of incorporation or  
77 other organizing documents, including all amendments.

78 (b) A copy of the applicant's bylaws.

79 (c) A list of the names, addresses, official positions, and  
80 biographical information of the individuals who are responsible  
81 for conducting the applicant's affairs, including, but not  
82 limited to, all members of the board of directors, board of  
83 trustees, executive committee, or other governing board or  
84 committee, the officers, contracted management company  
85 personnel, and any person or entity owning or having the right  
86 to acquire 10 percent or more of the voting securities of the  
87 applicant. Such listing must fully disclose the extent and  
88 nature of any contracts or arrangements between any individual  
89 who is responsible for conducting the applicant's affairs and  
90 the discount ~~medical~~ plan organization, including any possible  
91 conflicts of interest.

92 (d) A complete biographical statement, on forms prescribed  
93 by the commission, an independent investigation report, and a  
94 set of fingerprints, as provided in chapter 624, with respect to  
95 each individual identified under paragraph (c).

96 (e) A statement generally describing the applicant, its  
97 facilities and personnel, and the medical services to be



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98 offered.

99 (f) A copy of the form of all contracts made or to be made  
100 between the applicant and any providers or provider networks  
101 regarding the provision of medical services to members.

102 (g) A copy of the form of any contract made or arrangement  
103 to be made between the applicant and any person listed in  
104 paragraph (c).

105 (h) A copy of the form of any contract made or to be made  
106 between the applicant and any person, corporation, partnership,  
107 or other entity for the performance on the applicant's behalf of  
108 any function, including, but not limited to, marketing,  
109 administration, enrollment, investment management, and  
110 subcontracting for the provision of health services to members.

111 (i) A copy of the applicant's most recent financial  
112 statements audited by an independent certified public  
113 accountant. An applicant that is a subsidiary of a parent entity  
114 that is publicly traded and that prepares audited financial  
115 statements reflecting the consolidated operations of the parent  
116 entity and the subsidiary may petition the office to accept, in  
117 lieu of the audited financial statement of the applicant, the  
118 audited financial statement of the parent entity and a written  
119 guaranty by the parent entity that the minimum capital  
120 requirements of the applicant required by this part will be met  
121 by the parent entity.

122 (j) A description of the proposed method of marketing.

123 (k) A description of the subscriber complaint procedures to  
124 be established and maintained.

125 (l) The fee for issuance of a license.

126 (m) Such other information as the commission or office may



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127 reasonably require to make the determinations required by this  
128 part.

129 (4) Before ~~Prior to~~ licensure by the office, each discount  
130 ~~medical~~ plan organization must establish an Internet website so  
131 as to conform to the requirements of s. 636.226.

132 (6) This part does not require ~~Nothing in this part~~  
133 ~~requires~~ a provider who provides discounts to his or her own  
134 patients to obtain and maintain a license as a discount ~~medical~~  
135 plan organization. If a provider contracts with a third-party  
136 entity to administer or provide a platform for a discount plan,  
137 the third-party entity must be licensed as a discount plan  
138 organization.

139 Section 5. Section 636.206, Florida Statutes, is amended to  
140 read:

141 636.206 Examinations and investigations.—

142 (1) The office may examine or investigate the business and  
143 affairs of any discount ~~medical~~ plan organization. The office  
144 may order any discount ~~medical~~ plan organization or applicant to  
145 produce any records, books, files, advertising and solicitation  
146 materials, or other information and may take statements under  
147 oath to determine whether the discount ~~medical~~ plan organization  
148 or applicant is in violation of the law or is acting contrary to  
149 the public interest. The expenses incurred in conducting any  
150 examination or investigation must be paid by the discount  
151 ~~medical~~ plan organization or applicant. Examinations and  
152 investigations must be conducted as provided in chapter 624. For  
153 the duration of the agreement and for 5 years thereafter, every  
154 discount plan organization shall maintain, in a form accessible  
155 to the office during an examination or investigation, an



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156 accurate record of each member, the membership materials  
157 provided to the member, the discount plan issued to the member,  
158 and the charges billed and paid by the member.

159 (2) Failure by the discount ~~medical~~ plan organization to  
160 pay the expenses incurred under subsection (1) is grounds for  
161 denial or revocation.

162 Section 6. Section 636.208, Florida Statutes, is amended to  
163 read:

164 636.208 Fees; charges; reimbursement.—

165 (1) A discount ~~medical~~ plan organization may charge a  
166 periodic charge as well as a reasonable one-time processing fee  
167 for a discount ~~medical~~ plan.

168 (2) (a) If the member cancels his or her membership in the  
169 discount ~~medical~~ plan organization within the first 30 days  
170 after the effective date of enrollment in the plan, the member  
171 shall receive a reimbursement of all periodic charges upon  
172 return of the discount card to the discount ~~medical~~ plan  
173 organization.

174 (b) If the member cancels his or her membership in the  
175 discount plan organization consistent with the open enrollment  
176 rules established by an employer or association for a plan  
177 having an open enrollment period, the member shall receive a pro  
178 rata reimbursement of all periodic charges upon return of the  
179 discount card to the discount plan organization.

180 (c) Except for plans enrolled under paragraph (b), if the  
181 member requests in writing the cancellation of his or her  
182 membership in the discount plan organization after the first 30  
183 days allowed in paragraph (a), the discount plan organization:

184 1. Must make the cancellation effective no later than 30



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185 days after receiving the member's cancellation request;

186 2. May not make future charges to the member after the  
187 cancellation has taken effect; and

188 3. Must provide the member a pro rata reimbursement of  
189 periodic charges for all months after the effective date of the  
190 cancellation.

191 (3) If the discount ~~medical~~ plan organization cancels a  
192 membership for any reason other than nonpayment of fees by the  
193 member, the discount ~~medical~~ plan organization must ~~shall~~ make a  
194 pro rata reimbursement of all periodic charges to the member.

195 (4) In addition to the reimbursement of periodic charges  
196 for the reasons stated in subsections (2) and (3), a discount  
197 ~~medical~~ plan organization shall also reimburse the member for  
198 any portion of a one-time processing fee that exceeds \$30 per  
199 year.

200 Section 7. Section 636.212, Florida Statutes, is amended to  
201 read:

202 636.212 Disclosures.—A discount plan organization or  
203 marketer shall provide disclosures to a prospective member  
204 before his or her enrollment. A discount plan organization or  
205 marketer may make disclosures in addition to those described in  
206 this part. Before enrollment, a prospective member must  
207 acknowledge he or she has accepted the disclosures ~~The following~~  
208 ~~disclosures must be made in writing to any prospective member~~  
209 ~~and must be on the first page of any advertisements, marketing~~  
210 ~~materials, or brochures relating to a discount medical plan. The~~  
211 ~~disclosures must be printed in not less than 12-point type:~~

212 (1) The disclosures must include:

213 (a) That the plan is not insurance.



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214        ~~(b)(2)~~ That the plan provides discounts at certain health  
215 care providers for medical services.

216        ~~(c)(3)~~ That the plan does not make payments directly to the  
217 providers of medical services.

218        ~~(d)(4)~~ That the plan member is obligated to pay for all  
219 health care services but will receive a discount from those  
220 health care providers who have contracted with the discount plan  
221 organization.

222        ~~(e)(5)~~ The name and address of the licensed discount  
223 ~~medical~~ plan organization.

224        (2) Written disclosures must include the disclosures in  
225 subsection (1) on the first page of any advertisement, marketing  
226 material, or brochure relating to a discount plan. The first  
227 page is the page that first includes the information describing  
228 benefits. The disclosures must be printed in not less than 12-  
229 point type.

230        (3) Disclosures provided by electronic means must include  
231 the disclosures in subsection (1) on any advertisement,  
232 marketing material, or brochure relating to a discount plan. The  
233 disclosures must be viewable in a readable font size and color.

234        (4) Disclosures made by telephone must include the  
235 disclosures in subsection (1), and a written disclosure in  
236 accordance with subsection (2) must also be provided with the  
237 initial materials sent to the prospective or new member.

238  
239 ~~If the initial contract is made by telephone, the disclosures~~  
240 ~~required by this section shall be made orally and provided in~~  
241 ~~the initial written materials that describe the benefits under~~  
242 ~~the discount medical plan provided to the prospective or new~~



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243 ~~member.~~

244 Section 8. Section 636.214, Florida Statutes, is amended to  
245 read:

246 636.214 Provider agreements.—

247 (1) All providers offering medical services to members  
248 under a discount ~~medical~~ plan must provide such services  
249 pursuant to a written agreement. The agreement may be entered  
250 into directly by the provider or by a provider network to which  
251 the provider belongs.

252 (2) A provider agreement between a discount ~~medical~~ plan  
253 organization and a provider must provide the following:

254 (a) A list of the services and products to be provided at a  
255 discount.

256 (b) The amount or amounts of the discounts or,  
257 alternatively, a fee schedule which reflects the provider's  
258 discounted rates.

259 (c) A statement that the provider will not charge members  
260 more than the discounted rates.

261 (3) A provider agreement between a discount ~~medical~~ plan  
262 organization and a provider network must ~~shall~~ require that the  
263 provider network have written agreements with its providers  
264 which:

265 (a) Contain the terms described in subsection (2).

266 (b) Authorize the provider network to contract with the  
267 discount ~~medical~~ plan organization on behalf of the provider.

268 (c) Require the network to maintain an up-to-date list of  
269 its contracted providers and to provide that list on a monthly  
270 basis to the discount ~~medical~~ plan organization.

271 (4) The discount ~~medical~~ plan organization shall maintain a



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272 copy of each active provider agreement into which it has  
273 entered.

274 Section 9. Section 636.216, Florida Statutes, is amended to  
275 read:

276 636.216 Written agreement ~~Charge or form filings.~~-

277 ~~(1) All charges to members must be filed with the office  
278 and any charge to members greater than \$30 per month or \$360 per  
279 year must be approved by the office before the charges can be  
280 used. The discount medical plan organization has the burden of  
281 proof that the charges bear a reasonable relation to the  
282 benefits received by the member.~~

283 ~~(2) There must be a written agreement between the discount  
284 medical plan organization and the member specifying the benefits  
285 under the discount medical plan and complying with the  
286 disclosure requirements of this part.~~

287 ~~(3) All forms used, including the written agreement  
288 pursuant to subsection (2), must first be filed with and  
289 approved by the office. Every form filed shall be identified by  
290 a unique form number placed in the lower left corner of each  
291 form.~~

292 ~~(4) A charge or form is considered approved on the 60th day  
293 after its date of filing unless it has been previously  
294 disapproved by the office. The office shall disapprove any form  
295 that does not meet the requirements of this part or that is  
296 unreasonable, discriminatory, misleading, or unfair. If such  
297 filings are disapproved, the office shall notify the discount  
298 medical plan organization and shall specify in the notice the  
299 reasons for disapproval.~~

300 Section 10. Section 636.228, Florida Statutes, is amended





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301 to read:

302 636.228 Marketing of discount ~~medical~~ plans.—

303 (1) All advertisements, marketing materials, brochures, and  
304 discount cards used by marketers must be approved in writing ~~for~~  
305 ~~such use~~ by the discount ~~medical~~ plan organization.

306 (2) The discount ~~medical~~ plan organization must ~~shall~~ have  
307 an executed written agreement with a marketer before ~~prior to~~  
308 the marketer's marketing, promoting, selling, or distributing  
309 the discount ~~medical~~ plan. Such agreement must ~~shall~~ prohibit  
310 the marketer from using marketing materials, brochures, and  
311 discount cards without the approval in writing by the discount  
312 ~~medical~~ plan organization. The discount ~~medical~~ plan  
313 organization may delegate functions to its marketers but shall  
314 be bound by any acts of its marketers, within the scope of the  
315 delegation, which ~~marketers' agency, that~~ do not comply with the  
316 ~~provisions of~~ this part.

317 Section 11. Section 636.230, Florida Statutes, is amended  
318 to read:

319 636.230 Bundling discount ~~medical~~ plans with other  
320 products.—A marketer or discount plan organization selling a  
321 discount plan with medical services and other services may  
322 commingle those products on a single page of forms,  
323 advertisements, marketing materials, or brochures ~~When a~~  
324 ~~marketer or discount medical plan organization sells a discount~~  
325 ~~medical plan together with any other product, the fees for the~~  
326 ~~discount medical plan must be provided in writing to the member~~  
327 ~~if the fees exceed \$30.~~

328 Section 12. Section 636.232, Florida Statutes, is amended  
329 to read:



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330           636.232 Rules.—The commission may adopt rules to administer  
331 this part, including rules for the licensing of discount ~~medical~~  
332 plan organizations, ~~establishing standards for evaluating~~  
333 ~~forms, advertisements, marketing materials, brochures, and~~  
334 ~~discount cards~~; providing for the collection of data, ~~relating~~  
335 to disclosures to plan members, ~~and~~ defining terms used in this  
336 part.

337           Section 13. Paragraph (b) of subsection (5) of section  
338 408.9091, Florida Statutes, is amended to read:

339           408.9091 Cover Florida Health Care Access Program.—

340           (5) PLAN PROPOSALS.—The agency and the office shall  
341 announce, no later than July 1, 2008, an invitation to negotiate  
342 for Cover Florida plan entities to design a Cover Florida plan  
343 proposal in which benefits and premiums are specified.

344           (b) The agency and the office may announce an invitation to  
345 negotiate for the design of Cover Florida Plus products to  
346 companies that offer supplemental insurance, discount ~~medical~~  
347 plan organizations licensed under part II of chapter 636, or  
348 prepaid health clinics licensed under part II of chapter 641.

349           Section 14. Paragraph (d) of subsection (2) and paragraph  
350 (d) of subsection (4) of section 408.910, Florida Statutes, are  
351 amended to read:

352           408.910 Florida Health Choices Program.—

353           (2) DEFINITIONS.—As used in this section, the term:

354           (d) "Insurer" means an entity licensed under chapter 624  
355 which offers an individual health insurance policy or a group  
356 health insurance policy, a preferred provider organization as  
357 defined in s. 627.6471, an exclusive provider organization as  
358 defined in s. 627.6472, ~~or~~ a health maintenance organization



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359 licensed under part I of chapter 641, or a prepaid limited  
360 health service organization or discount ~~medical~~ plan  
361 organization licensed under chapter 636.

362 (4) ELIGIBILITY AND PARTICIPATION.—Participation in the  
363 program is voluntary and shall be available to employers,  
364 individuals, vendors, and health insurance agents as specified  
365 in this subsection.

366 (d) All eligible vendors who choose to participate and the  
367 products and services that the vendors are permitted to sell are  
368 as follows:

369 1. Insurers licensed under chapter 624 may sell health  
370 insurance policies, limited benefit policies, other risk-bearing  
371 coverage, and other products or services.

372 2. Health maintenance organizations licensed under part I  
373 of chapter 641 may sell health maintenance contracts, limited  
374 benefit policies, other risk-bearing products, and other  
375 products or services.

376 3. Prepaid limited health service organizations may sell  
377 products and services as authorized under part I of chapter 636,  
378 and discount ~~medical~~ plan organizations may sell products and  
379 services as authorized under part II of chapter 636.

380 4. Prepaid health clinic service providers licensed under  
381 part II of chapter 641 may sell prepaid service contracts and  
382 other arrangements for a specified amount and type of health  
383 services or treatments.

384 5. Health care providers, including hospitals and other  
385 licensed health facilities, health care clinics, licensed health  
386 professionals, pharmacies, and other licensed health care  
387 providers, may sell service contracts and arrangements for a



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388 specified amount and type of health services or treatments.

389         6. Provider organizations, including service networks,  
390 group practices, professional associations, and other  
391 incorporated organizations of providers, may sell service  
392 contracts and arrangements for a specified amount and type of  
393 health services or treatments.

394         7. Corporate entities providing specific health services in  
395 accordance with applicable state law may sell service contracts  
396 and arrangements for a specified amount and type of health  
397 services or treatments.

398  
399 A vendor described in subparagraphs 3.-7. may not sell products  
400 that provide risk-bearing coverage unless that vendor is  
401 authorized under a certificate of authority issued by the Office  
402 of Insurance Regulation and is authorized to provide coverage in  
403 the relevant geographic area. Otherwise eligible vendors may be  
404 excluded from participating in the program for deceptive or  
405 predatory practices, financial insolvency, or failure to comply  
406 with the terms of the participation agreement or other standards  
407 set by the corporation.

408         Section 15. Subsection (11) of section 627.64731, Florida  
409 Statutes, is amended to read:

410             627.64731 Leasing, renting, or granting access to a  
411 participating provider.—

412             (11) This section does not apply to a contract between a  
413 contracting entity and a discount ~~medical~~ plan organization  
414 licensed or exempt under part II of chapter 636.

415         Section 16. Paragraph (c) of subsection (7) of section  
416 636.003, Florida Statutes, is amended to read:



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417 636.003 Definitions.—As used in this act, the term:

418 (7) "Prepaid limited health service organization" means any  
419 person, corporation, partnership, or any other entity which, in  
420 return for a prepayment, undertakes to provide or arrange for,  
421 or provide access to, the provision of a limited health service  
422 to enrollees through an exclusive panel of providers. Prepaid  
423 limited health service organization does not include:

424 (c) Any person who is licensed pursuant to part II as a  
425 discount ~~medical~~ plan organization.

426 Section 17. Paragraphs (c) and (d) of subsection (1) of  
427 section 636.205, Florida Statutes, are amended to read:

428 636.205 Issuance of license; denial.—

429 (1) Following receipt of an application filed pursuant to  
430 s. 636.204, the office shall review the application and notify  
431 the applicant of any deficiencies contained therein. The office  
432 shall issue a license to an applicant who has filed a completed  
433 application pursuant to s. 636.204 upon payment of the fees  
434 specified in s. 636.204 and upon the office being satisfied that  
435 the following conditions are met:

436 (c) The ownership, control, and management of the entity  
437 are competent and trustworthy and possess managerial experience  
438 that would make the proposed operation beneficial to the  
439 subscribers. The office may ~~shall~~ not grant or continue to grant  
440 authority to transact the business of a discount ~~medical~~ plan  
441 organization in this state at any time during which the office  
442 has good reason to believe that the ownership, control, or  
443 management of the organization includes any person whose  
444 business operations are or have been marked by business  
445 practices or conduct that is detrimental to the public,



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446 stockholders, investors, or creditors.

447 (d) The discount ~~medical~~ plan organization has a complaint  
448 procedure that will facilitate the resolution of subscriber  
449 grievances and that includes both formal and informal steps  
450 available within the organization.

451 Section 18. Section 636.207, Florida Statutes, is amended  
452 to read:

453 636.207 Applicability of part.—Except as otherwise provided  
454 in this part, discount ~~medical~~ plan organizations are governed  
455 by ~~the provisions of~~ this part and are exempt from the Florida  
456 Insurance Code unless specifically referenced.

457 Section 19. Section 636.210, Florida Statutes, is amended  
458 to read:

459 636.210 Prohibited activities of a discount ~~medical~~ plan  
460 organization.—

461 (1) A discount ~~medical~~ plan organization may not:

462 (a) Use in its advertisements, marketing material,  
463 brochures, and discount cards the term "insurance" except as  
464 otherwise provided in this part or as a disclaimer of any  
465 relationship between discount ~~medical~~ plan organization benefits  
466 and insurance;

467 (b) Use in its advertisements, marketing material,  
468 brochures, and discount cards the terms "health plan,"  
469 "coverage," "copay," "copayments," "preexisting conditions,"  
470 "guaranteed issue," "premium," "PPO," "preferred provider  
471 organization," or other terms in a manner that could reasonably  
472 mislead a person into believing the discount ~~medical~~ plan was  
473 health insurance;

474 (c) Have restrictions on free access to plan providers,



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475 including, but not limited to, waiting periods and notification  
476 periods; or

477 (d) Pay providers any fees for medical services.

478 (2) A discount ~~medical~~ plan organization may not collect or  
479 accept money from a member for payment to a provider for  
480 specific medical services furnished or to be furnished to the  
481 member unless the organization has an active certificate of  
482 authority from the office to act as an administrator.

483 Section 20. Subsection (1), paragraphs (b), (c), and (d) of  
484 subsection (2), and subsection (3) of section 636.218, Florida  
485 Statutes, are amended to read:

486 636.218 Annual reports.—

487 (1) Each discount ~~medical~~ plan organization shall ~~must~~ file  
488 with the office, within 3 months after the end of each fiscal  
489 year, an annual report.

490 (2) Such reports must be on forms prescribed by the  
491 commission and must include:

492 (b) If different from the initial application or the last  
493 annual report, a list of the names and residence addresses of  
494 all persons responsible for the conduct of the organization's  
495 affairs, together with a disclosure of the extent and nature of  
496 any contracts or arrangements between such persons and the  
497 discount ~~medical~~ plan organization, including any possible  
498 conflicts of interest.

499 (c) The number of discount ~~medical~~ plan members in the  
500 state.

501 (d) Such other information relating to the performance of  
502 the discount ~~medical~~ plan organization as is reasonably required  
503 by the commission or office.



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504           (3) Every discount ~~medical~~ plan organization that ~~which~~  
505 fails to file an annual report in the form and within the time  
506 required by this section shall forfeit up to \$500 for each day  
507 for the first 10 days during which the neglect continues and  
508 shall forfeit up to \$1,000 for each day after the first 10 days  
509 during which the neglect continues; and, upon notice by the  
510 office to that effect, the organization's authority to enroll  
511 new members or to do business in this state ceases while such  
512 default continues. The office shall deposit all sums collected  
513 by the office under this section to the credit of the Insurance  
514 Regulatory Trust Fund. The office may not collect more than  
515 \$50,000 for each report.

516           Section 21. Section 636.220, Florida Statutes, is amended  
517 to read:

518           636.220 Minimum capital requirements.—

519           (1) Each discount ~~medical~~ plan organization shall ~~must~~ at  
520 all times maintain a net worth of at least \$150,000.

521           (2) The office may not issue a license unless the discount  
522 ~~medical~~ plan organization has a net worth of at least \$150,000.

523           Section 22. Section 636.222, Florida Statutes, is amended  
524 to read:

525           636.222 Suspension or revocation of license; suspension of  
526 enrollment of new members; terms of suspension.—

527           (1) The office may suspend the authority of a discount  
528 ~~medical~~ plan organization to enroll new members, revoke any  
529 license issued to a discount ~~medical~~ plan organization, or order  
530 compliance if the office finds that any of the following  
531 conditions exist:

532           (a) The organization is not operating in compliance with





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533 this part.

534 (b) The organization does not have the minimum net worth as  
535 required by this part.

536 (c) The organization has advertised, merchandised, or  
537 attempted to merchandise its services in such a manner as to  
538 misrepresent its services or capacity for service or has engaged  
539 in deceptive, misleading, or unfair practices with respect to  
540 advertising or merchandising.

541 (d) The organization is not fulfilling its obligations as a  
542 ~~medical~~ discount ~~medical~~ plan organization.

543 (e) The continued operation of the organization would be  
544 hazardous to its members.

545 (2) If the office has cause to believe that grounds for the  
546 suspension or revocation of a license exist, the office must  
547 ~~shall~~ notify the discount ~~medical~~ plan organization in writing  
548 specifically stating the grounds for suspension or revocation  
549 and shall pursue a hearing on the matter in accordance with ~~the~~  
550 ~~provisions of~~ chapter 120.

551 (3) When the license of a discount ~~medical~~ plan  
552 organization is surrendered or revoked, such organization must  
553 proceed, immediately following the effective date of the order  
554 of revocation, to wind up its affairs transacted under the  
555 license. The organization may not engage in any further  
556 advertising, solicitation, collecting of fees, or renewal of  
557 contracts.

558 (4) The office shall, in its order suspending the authority  
559 of a discount ~~medical~~ plan organization to enroll new members,  
560 specify the period during which the suspension is to be in  
561 effect and the conditions, if any, which must be met by the



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562 discount ~~medical~~ plan organization before ~~prior to~~ reinstatement  
563 of its license to enroll new members. The order of suspension is  
564 subject to rescission or modification by further order of the  
565 office before ~~prior to~~ the expiration of the suspension period.  
566 Reinstatement may not be made unless requested by the discount  
567 ~~medical~~ plan organization; however, the office may not grant  
568 reinstatement if it finds that the circumstances for which the  
569 suspension occurred still exist or are likely to recur.

570 Section 23. Section 636.223, Florida Statutes, is amended  
571 to read:

572 636.223 Administrative penalty.—In lieu of suspending or  
573 revoking a certificate of authority whenever any discount  
574 ~~medical~~ plan organization has been found to have violated any  
575 provision of this part, the office may:

576 (1) Issue and cause to be served upon the organization  
577 charged with the violation a copy of such findings and an order  
578 requiring such organization to cease and desist from engaging in  
579 the act or practice that constitutes the violation.

580 (2) Impose a monetary penalty of not less than \$100 for  
581 each violation, but not to exceed an aggregate penalty of  
582 \$75,000.

583 Section 24. Section 636.224, Florida Statutes, is amended  
584 to read:

585 636.224 Notice of change of name or address of discount  
586 ~~medical~~ plan organization.—Each discount ~~medical~~ plan  
587 organization must provide the office at least 30 days' advance  
588 notice of any change in the discount ~~medical~~ plan organization's  
589 name, address, principal business address, or mailing address.

590 Section 25. Section 636.226, Florida Statutes, is amended



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591 to read:

592           636.226 Provider name listing.—Each discount ~~medical~~ plan  
593 organization must maintain on an Internet website an up-to-date  
594 list of the names and addresses of the providers with which it  
595 has contracted, ~~on an Internet website page~~, the address of  
596 which must ~~shall~~ be prominently displayed on all its  
597 advertisements, marketing materials, brochures, and discount  
598 cards. This section applies to those providers with whom the  
599 discount ~~medical~~ plan organization has contracted directly, as  
600 well as those who are members of a provider network with which  
601 the discount ~~medical~~ plan organization has contracted.

602           Section 26. Section 636.234, Florida Statutes, is amended  
603 to read:

604           636.234 Service of process on a discount ~~medical~~ plan  
605 organization.—Sections 624.422 and 624.423 apply to a discount  
606 ~~medical~~ plan organization as if the discount ~~medical~~ plan  
607 organization were an insurer.

608           Section 27. Section 636.236, Florida Statutes, is amended  
609 to read:

610           636.236 Surety bond or security deposit.—

611           (1) Each discount ~~medical~~ plan organization licensed  
612 pursuant to ~~the provisions of this part~~ shall ~~must~~ maintain in  
613 force a surety bond in its own name in an amount not less than  
614 \$35,000 to be used at the discretion of the office to protect  
615 the financial interests of members who may be adversely affected  
616 by the insolvency of a discount ~~medical~~ plan organization. The  
617 bond must be issued by an insurance company that is licensed to  
618 do business in this state.

619           (2) In lieu of the bond specified in subsection (1), a



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620 licensed discount ~~medical~~ plan organization may deposit and  
621 maintain deposited in trust with the department securities  
622 eligible for deposit under s. 625.52 having at all times a value  
623 of not less than \$35,000. If a licensed discount ~~medical~~ plan  
624 organization substitutes its deposited securities under this  
625 subsection with a surety bond authorized in subsection (1), such  
626 deposited securities must ~~shall~~ be returned to the discount  
627 ~~medical~~ plan organization no later than 45 days following the  
628 effective date of the surety bond.

629 (3) A ~~No~~ judgment creditor or other claimant of a discount  
630 ~~medical~~ plan organization, other than the office or department,  
631 does not ~~shall~~ have the right to levy upon any of the assets or  
632 securities held in this state as a deposit under subsections (1)  
633 and (2).

634 Section 28. Subsections (2) and (3) of section 636.238,  
635 Florida Statutes, are amended to read:

636 636.238 Penalties for violation of this part.—

637 (2) A person who operates as or willfully aids and abets  
638 another operating as a discount ~~medical~~ plan organization in  
639 violation of s. 636.204(1) commits a felony punishable as  
640 provided for in s. 624.401(4) (b), as if the unlicensed discount  
641 ~~medical~~ plan organization were an unauthorized insurer, and the  
642 fees, dues, charges, or other consideration collected from the  
643 members by the unlicensed discount ~~medical~~ plan organization or  
644 marketer were insurance premium.

645 (3) A person who collects fees for purported membership in  
646 a discount ~~medical~~ plan but purposefully fails to provide the  
647 promised benefits commits a theft, punishable as provided in s.  
648 812.014.



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649 Section 29. Subsection (1) of section 636.240, Florida  
650 Statutes, is amended to read:

651 636.240 Injunctions.—

652 (1) In addition to the penalties and other enforcement  
653 provisions of this part, the office may seek both temporary and  
654 permanent injunctive relief when:

655 (a) A discount ~~medical~~ plan is being operated by any person  
656 or entity that is not licensed pursuant to this part.

657 (b) Any person, entity, or discount ~~medical~~ plan  
658 organization has engaged in any activity prohibited by this part  
659 or any rule adopted pursuant to this part.

660 Section 30. Section 636.244, Florida Statutes, is amended  
661 to read:

662 636.244 Unlicensed discount ~~medical~~ plan organizations.—  
663 Sections ~~The provisions of ss.~~ 626.901-626.912 apply to the  
664 activities of an unlicensed discount ~~medical~~ plan organization  
665 as if the unlicensed discount ~~medical~~ plan organization were an  
666 unauthorized insurer.

667 Section 31. This act shall take effect upon becoming a law.

668  
669 ===== T I T L E A M E N D M E N T =====

670 And the title is amended as follows:

671 Delete everything before the enacting clause  
672 and insert:

673 A bill to be entitled  
674 An act relating to discount plan organizations;  
675 revising the titles of ch. 636, F.S., and part II of  
676 ch. 636, F.S.; amending s. 636.202, F.S.; revising  
677 definitions; amending s. 636.204, F.S.; conforming



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678 provisions to changes made by the act; requiring  
679 third-party entities that contract with providers to  
680 administer or provide platforms for discount plans to  
681 be licensed as discount plan organizations; amending  
682 s. 636.206, F.S.; conforming provisions to changes  
683 made by the act; requiring discount plan organizations  
684 to maintain, for a specified timeframe, certain  
685 records in a form accessible to the Office of  
686 Insurance Regulation during an examination or  
687 investigation; amending s. 636.208, F.S.; conforming  
688 provisions to changes made by the act; specifying  
689 periodic charge reimbursement and other requirements  
690 for discount plan organizations following membership  
691 cancellation requests; amending s. 636.212, F.S.;  
692 requiring discount plan organizations and marketers to  
693 provide specified disclosures to prospective members  
694 before enrollment; authorizing discount plan  
695 organizations and marketers to make other disclosures;  
696 requiring prospective members to acknowledge  
697 acceptance of disclosures before enrollment;  
698 specifying requirements for disclosures made in  
699 writing or by electronic means; revising requirements  
700 for disclosures made by telephone; amending s.  
701 636.214, F.S.; making a technical change; conforming  
702 provisions to changes made by the act; amending s.  
703 636.216, F.S.; deleting provisions relating to charge  
704 and form filings; conforming a provision to changes  
705 made by the act; amending s. 636.228, F.S.; conforming  
706 provisions to changes made by the act; authorizing a



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707 discount plan organization to delegate functions to  
708 its marketers; providing that the discount plan  
709 organization is bound by acts of its marketers within  
710 the scope of the delegation; amending s. 636.230,  
711 F.S.; conforming provisions to changes made by the  
712 act; authorizing a marketer or discount plan  
713 organization to commingle certain products on a single  
714 page of certain documents; deleting a requirement for  
715 discount medical plan fees to be provided in writing  
716 under certain circumstances; amending s. 636.232,  
717 F.S.; conforming a provision to changes made by the  
718 act; deleting rulemaking authority of the Financial  
719 Services Commission as to the establishment of certain  
720 standards; amending ss. 408.9091, 408.910, 627.64731,  
721 636.003, 636.205, 636.207, 636.210, 636.218, 636.220,  
722 636.222, 636.223, 636.224, 636.226, 636.234, 636.236,  
723 636.238, 636.240, and 636.244, F.S.; conforming  
724 provisions to changes made by the act; providing an  
725 effective date.

By Senator Bean

4-00513A-17

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A bill to be entitled

An act relating to discount plan organizations; revising the titles of ch. 636, F.S., and part II of ch. 636, F.S.; amending s. 636.202, F.S.; revising definitions; amending s. 636.204, F.S.; conforming provisions to changes made by the act; requiring a provider to be licensed as a discount plan organization if the provider charges patients fees, dues, charges, or other consideration to receive discounted medical services; amending s. 636.208, F.S.; conforming provisions to changes made by the act; revising a specified condition for a member to receive a reimbursement of certain charges after cancelling a membership in a discount plan organization; amending s. 636.212, F.S.; conforming provisions to changes made by the act; specifying what a first page is for the purpose of a disclosure requirement on certain materials relating to a discount plan; providing for construction; deleting certain requirements that apply if the initial contract is made by telephone; amending s. 636.214, F.S.; making a technical change; conforming provisions to changes made by the act; amending s. 636.216, F.S.; deleting a provision that requires filing charges to members with the Office of Insurance Regulation, that requires approval of the office for specified charges, and that provides for the burden of proving the reasonable relation of charges to benefits received by the members; conforming provisions to changes made by the act; specifying certain forms that must be filed and approved by the office; providing an exception from approval by the office; specifying what is not

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

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included in a material change; amending s. 636.228, F.S.; conforming provisions to changes made by the act; authorizing a discount plan organization to delegate functions to its marketers; providing that the discount plan organization is bound to acts of its marketers within the scope of delegation; amending s. 636.230, F.S.; conforming provisions to changes made by the act; authorizing a marketer or discount plan organization to commingle certain products on a single page of certain documents; providing for applicability; deleting a requirement for discount medical plan fees to be provided in writing under certain circumstances; amending ss. 408.9091, 408.910, 627.64731, 636.003, 636.205, 636.206, 636.207, 636.210, 636.218, 636.220, 636.222, 636.223, 636.224, 636.226, 636.232, 636.234, 636.236, 636.238, 636.240, and 636.244, 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. Chapter 636, Florida Statutes, entitled "Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations," is retitled "Prepaid Limited Health Service Organizations and Discount Plan Organizations."

Section 2. Part II of chapter 636, Florida Statutes, entitled "Discount Medical Plan Organizations," is retitled "Discount Plan Organizations."

Section 3. Section 636.202, Florida Statutes, is amended to

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read:

636.202 Definitions.—As used in this part, the term:

(1) "Discount ~~medical~~ plan" means a business arrangement or contract in which a person, in exchange for fees, dues, charges, or other consideration, provides access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. The term ~~"discount medical plan"~~ does not include any product regulated under chapter 627, chapter 641, or part I of this chapter; ~~or~~ any medical services provided through a telecommunications medium that does not offer a discount to the plan member for those medical services; or any plan that does not charge a fee to plan members. Until June 30, 2018, a discount plan may also be referred to as a discount medical plan.

(2) "Discount ~~medical~~ plan organization" means an entity that which, in exchange for fees, dues, charges, or other consideration, provides access for plan members to providers of medical services and the right to receive medical services from those providers at a discount. Until June 30, 2018, a discount plan organization may also be referred to as a discount medical plan organization.

(3) "Marketer" means a person or entity that which markets, promotes, sells, or distributes a discount ~~medical~~ plan, including a private label entity that which places its name on and markets or distributes a discount ~~medical~~ plan but does not operate a discount ~~medical~~ plan.

(4) "Medical services" means any care, service, or treatment of illness or dysfunction of, or injury to, the human body, including, but not limited to, physician care, inpatient

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care, hospital surgical services, emergency services, ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, laboratory services, and medical equipment and supplies. The term does not include pharmaceutical supplies or prescriptions.

(5) "Member" means any person who pays fees, dues, charges, or other consideration for the right to receive the purported benefits of a discount ~~medical~~ plan.

(6) "Provider" means any person or institution that which is contracted, directly or indirectly, with a discount ~~medical~~ plan organization to provide medical services to members.

(7) "Provider network" means an entity that which negotiates on behalf of more than one provider with a discount ~~medical~~ plan organization to provide medical services to members.

Section 4. Subsections (1), (2), (4), and (6) of section 636.204, Florida Statutes, are amended to read:

636.204 License required.—

(1) Before doing business in this state as a discount ~~medical~~ plan organization, an entity must be a corporation, a limited liability company, or a limited partnership, incorporated, organized, formed, or registered under the laws of this state or authorized to transact business in this state in accordance with chapter 605, part I of chapter 607, chapter 617, chapter 620, or chapter 865, and must be licensed by the office as a discount ~~medical~~ plan organization or be licensed by the office pursuant to chapter 624, part I of this chapter, or chapter 641.

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- 120 (2) An application for a license to operate as a discount  
 121 ~~medical~~ plan organization must be filed with the office on a  
 122 form prescribed by the commission. Such application must be  
 123 sworn to by an officer or authorized representative of the  
 124 applicant and be accompanied by the following, if applicable:
- 125 (a) A copy of the applicant's articles of incorporation or  
 126 other organizing documents, including all amendments.
- 127 (b) A copy of the applicant's bylaws.
- 128 (c) A list of the names, addresses, official positions, and  
 129 biographical information of the individuals who are responsible  
 130 for conducting the applicant's affairs, including, but not  
 131 limited to, all members of the board of directors, board of  
 132 trustees, executive committee, or other governing board or  
 133 committee, the officers, contracted management company  
 134 personnel, and any person or entity owning or having the right  
 135 to acquire 10 percent or more of the voting securities of the  
 136 applicant. Such listing must fully disclose the extent and  
 137 nature of any contracts or arrangements between any individual  
 138 who is responsible for conducting the applicant's affairs and  
 139 the discount ~~medical~~ plan organization, including any possible  
 140 conflicts of interest.
- 141 (d) A complete biographical statement, ~~on forms prescribed~~  
 142 by the commission, an independent investigation report, and a  
 143 set of fingerprints, as provided in chapter 624, with respect to  
 144 each individual identified under paragraph (c).
- 145 (e) A statement generally describing the applicant, its  
 146 facilities and personnel, and the medical services to be  
 147 offered.
- 148 (f) A copy of the form of all contracts made or to be made

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- 149 between the applicant and any providers or provider networks  
 150 regarding the provision of medical services to members.
- 151 (g) A copy of the form of any contract made or arrangement  
 152 to be made between the applicant and any person listed in  
 153 paragraph (c).
- 154 (h) A copy of the form of any contract made or to be made  
 155 between the applicant and any person, corporation, partnership,  
 156 or other entity for the performance on the applicant's behalf of  
 157 any function, including, but not limited to, marketing,  
 158 administration, enrollment, investment management, and  
 159 subcontracting for the provision of health services to members.
- 160 (i) A copy of the applicant's most recent financial  
 161 statements audited by an independent certified public  
 162 accountant. An applicant that is a subsidiary of a parent entity  
 163 that is publicly traded and that prepares audited financial  
 164 statements reflecting the consolidated operations of the parent  
 165 entity and the subsidiary may petition the office to accept, in  
 166 lieu of the audited financial statement of the applicant, the  
 167 audited financial statement of the parent entity and a written  
 168 guaranty by the parent entity that the minimum capital  
 169 requirements of the applicant required by this part will be met  
 170 by the parent entity.
- 171 (j) A description of the proposed method of marketing.
- 172 (k) A description of the subscriber complaint procedures to  
 173 be established and maintained.
- 174 (l) The fee for issuance of a license.
- 175 (m) Such other information as the commission or office may  
 176 reasonably require to make the determinations required by this  
 177 part.

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178 (4) ~~Before~~ ~~Prior~~ to licensure by the office, each discount  
179 ~~medical~~ plan organization must establish an Internet website so  
180 as to conform to the requirements of s. 636.226.

181 (6) ~~This part does not require~~ ~~Nothing in this part~~  
182 ~~requires~~ a provider who provides discounts to his or her own  
183 patients to obtain and maintain a license as a discount ~~medical~~  
184 plan organization unless the provider charges patients fees,  
185 dues, charges, or other consideration to receive medical  
186 services from the provider at a discount.

187 Section 5. Section 636.208, Florida Statutes, is amended to  
188 read:

189 636.208 Fees; charges; reimbursement.—

190 (1) A discount ~~medical~~ plan organization may charge a  
191 periodic charge as well as a reasonable one-time processing fee  
192 for a discount ~~medical~~ plan.

193 (2) If the member cancels his or her membership in the  
194 discount ~~medical~~ plan organization within the first 30 days  
195 after the effective date of enrollment in the plan or cancels  
196 his or her membership consistent with the open enrollment rules  
197 established by an employer or association for a plan having an  
198 open enrollment period, the member shall receive a reimbursement  
199 of all periodic charges upon return of the discount card to the  
200 discount ~~medical~~ plan organization.

201 (3) If the discount ~~medical~~ plan organization cancels a  
202 membership for any reason other than nonpayment of fees by the  
203 member, the discount ~~medical~~ plan organization must ~~shall~~ make a  
204 pro rata reimbursement of all periodic charges to the member.

205 (4) In addition to the reimbursement of periodic charges  
206 for the reasons stated in subsections (2) and (3), a discount

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207 ~~medical~~ plan organization shall also reimburse the member for  
208 any portion of a one-time processing fee that exceeds \$30 per  
209 year.

210 Section 6. Section 636.212, Florida Statutes, is amended to  
211 read:

212 636.212 Disclosures.—The following disclosures must be made  
213 in writing to any prospective member and must be on the first  
214 page of any advertisements, marketing materials, or brochures  
215 relating to a discount ~~medical~~ plan. The first page is the page  
216 that first includes the information describing benefits. The  
217 disclosures must be printed in not less than 12-point type:

218 (1) That the plan is not insurance.

219 (2) That the plan provides discounts at certain health care  
220 providers for medical services.

221 (3) That the plan does not make payments directly to the  
222 providers of medical services.

223 (4) That the plan member is obligated to pay for all health  
224 care services but will receive a discount from those health care  
225 providers who have contracted with the discount plan  
226 organization.

227 (5) The name and address of the licensed discount ~~medical~~  
228 plan organization.

229  
230 The requirements of this section are met if the prospective  
231 member cannot enroll without being presented with the required  
232 disclosures and if the prospective member must acknowledge  
233 acceptance of the plan terms and conditions before enrollment.  
234 This section does not prohibit the discount plan organization  
235 from making additional disclosures to a prospective member ¶¶

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236 ~~the initial contract is made by telephone, the disclosures~~  
 237 ~~required by this section shall be made orally and provided in~~  
 238 ~~the initial written materials that describe the benefits under~~  
 239 ~~the discount medical plan provided to the prospective or new~~  
 240 ~~member.~~

241 Section 7. Section 636.214, Florida Statutes, is amended to  
 242 read:

243 636.214 Provider agreements.—

244 (1) All providers offering medical services to members  
 245 under a discount medical plan must provide such services  
 246 pursuant to a written agreement. The agreement may be entered  
 247 into directly by the provider or by a provider network to which  
 248 the provider belongs.

249 (2) A provider agreement between a discount medical plan  
 250 organization and a provider must provide the following:

251 (a) A list of the services and products to be provided at a  
 252 discount.

253 (b) The amount or amounts of the discounts or,  
 254 alternatively, a fee schedule which reflects the provider's  
 255 discounted rates.

256 (c) A statement that the provider will not charge members  
 257 more than the discounted rates.

258 (3) A provider agreement between a discount medical plan  
 259 organization and a provider network must shall require that the  
 260 provider network have written agreements with its providers  
 261 which:

262 (a) Contain the terms described in subsection (2).

263 (b) Authorize the provider network to contract with the  
 264 discount medical plan organization on behalf of the provider.

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265 (c) Require the network to maintain an up-to-date list of  
 266 its contracted providers and to provide that list on a monthly  
 267 basis to the discount medical plan organization.

268 (4) The discount medical plan organization shall maintain a  
 269 copy of each active provider agreement into which it has  
 270 entered.

271 Section 8. Section 636.216, Florida Statutes, is amended to  
 272 read:

273 636.216 ~~Charge or~~ Form filings.—

274 (1) ~~All charges to members must be filed with the office~~  
 275 ~~and any charge to members greater than \$30 per month or \$360 per~~  
 276 ~~year must be approved by the office before the charges can be~~  
 277 ~~used. The discount medical plan organization has the burden of~~  
 278 ~~proof that the charges bear a reasonable relation to the~~  
 279 ~~benefits received by the member.~~

280 ~~(2)~~ There must be a written agreement between the discount  
 281 medical plan organization and the member specifying the benefits  
 282 under the discount medical plan and complying with the  
 283 disclosure requirements of this part.

284 (2)(3) All forms used, including The written agreement  
 285 pursuant to subsection (1) ~~(2)~~, membership applications, and  
 286 fulfillment materials that describe medical services as defined  
 287 in this part must first be filed with and approved by the  
 288 office. Every form filed shall be identified by a unique form  
 289 number placed in the lower left corner of each form. A form  
 290 previously approved by the office is not required to be approved  
 291 unless the form is materially changed. For purposes of this  
 292 subsection, a material change does not include a change in  
 293 charges, a change to the name of the marketer or entity

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294 distributing the plan, the deletion of benefits, or the addition  
 295 of benefits that are not medical services as defined in this  
 296 part.

297 ~~(3)(4)~~ A ~~charge or~~ form is considered approved on the 60th  
 298 day after its date of filing unless it has been previously  
 299 disapproved by the office. The office shall disapprove any form  
 300 that does not meet the requirements of this part or that is  
 301 unreasonable, discriminatory, misleading, or unfair. If such  
 302 filings are disapproved, the office must ~~shall~~ notify the  
 303 discount ~~medical~~ plan organization and must ~~shall~~ specify in the  
 304 notice the reasons for disapproval.

305 Section 9. Section 636.228, Florida Statutes, is amended to  
 306 read:

307 636.228 Marketing of discount ~~medical~~ plans.—

308 (1) All advertisements, marketing materials, brochures, and  
 309 discount cards used by marketers must be approved in writing for  
 310 such use by the discount ~~medical~~ plan organization.

311 (2) The discount ~~medical~~ plan organization must ~~shall~~ have  
 312 an executed written agreement with a marketer before ~~prior to~~  
 313 the marketer's marketing, promoting, selling, or distributing  
 314 the discount ~~medical~~ plan. Such agreement must ~~shall~~ prohibit  
 315 the marketer from using marketing materials, brochures, and  
 316 discount cards without the approval in writing by the discount  
 317 ~~medical~~ plan organization. The discount ~~medical~~ plan  
 318 organization may delegate functions to its marketers but shall  
 319 be bound by any acts of its marketers, within the scope of the  
 320 delegation, which marketers' agency, that do not comply with the  
 321 ~~provisions of~~ this part.

322 Section 10. Section 636.230, Florida Statutes, is amended

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323 to read:

324 636.230 Bundling discount ~~medical~~ plans with other  
 325 products.—A marketer or discount plan organization selling a  
 326 discount plan with medical services and other services may  
 327 commingle those products on a single page of forms,  
 328 advertisements, marketing materials, or brochures. The office's  
 329 approval of forms only pertains to the medical services  
 330 regulated by this part ~~When a marketer or discount medical plan~~  
 331 ~~organization sells a discount medical plan together with any~~  
 332 ~~other product, the fees for the discount medical plan must be~~  
 333 ~~provided in writing to the member if the fees exceed \$30.~~

334 Section 11. Paragraph (b) of subsection (5) of section  
 335 408.9091, Florida Statutes, is amended to read:

336 408.9091 Cover Florida Health Care Access Program.—

337 (5) PLAN PROPOSALS.—The agency and the office shall  
 338 announce, no later than July 1, 2008, an invitation to negotiate  
 339 for Cover Florida plan entities to design a Cover Florida plan  
 340 proposal in which benefits and premiums are specified.

341 (b) The agency and the office may announce an invitation to  
 342 negotiate for the design of Cover Florida Plus products to  
 343 companies that offer supplemental insurance, discount ~~medical~~  
 344 plan organizations licensed under part II of chapter 636, or  
 345 prepaid health clinics licensed under part II of chapter 641.

346 Section 12. Paragraph (d) of subsection (2) and paragraph  
 347 (d) of subsection (4) of section 408.910, Florida Statutes, are  
 348 amended to read:

349 408.910 Florida Health Choices Program.—

350 (2) DEFINITIONS.—As used in this section, the term:

351 (d) "Insurer" means an entity licensed under chapter 624

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352 which offers an individual health insurance policy or a group  
 353 health insurance policy, a preferred provider organization as  
 354 defined in s. 627.6471, an exclusive provider organization as  
 355 defined in s. 627.6472, ~~or~~ a health maintenance organization  
 356 licensed under part I of chapter 641, or a prepaid limited  
 357 health service organization or discount ~~medical~~ plan  
 358 organization licensed under chapter 636.

359 (4) ELIGIBILITY AND PARTICIPATION.—Participation in the  
 360 program is voluntary and shall be available to employers,  
 361 individuals, vendors, and health insurance agents as specified  
 362 in this subsection.

363 (d) All eligible vendors who choose to participate and the  
 364 products and services that the vendors are permitted to sell are  
 365 as follows:

366 1. Insurers licensed under chapter 624 may sell health  
 367 insurance policies, limited benefit policies, other risk-bearing  
 368 coverage, and other products or services.

369 2. Health maintenance organizations licensed under part I  
 370 of chapter 641 may sell health maintenance contracts, limited  
 371 benefit policies, other risk-bearing products, and other  
 372 products or services.

373 3. Prepaid limited health service organizations may sell  
 374 products and services as authorized under part I of chapter 636,  
 375 and discount ~~medical~~ plan organizations may sell products and  
 376 services as authorized under part II of chapter 636.

377 4. Prepaid health clinic service providers licensed under  
 378 part II of chapter 641 may sell prepaid service contracts and  
 379 other arrangements for a specified amount and type of health  
 380 services or treatments.

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381 5. Health care providers, including hospitals and other  
 382 licensed health facilities, health care clinics, licensed health  
 383 professionals, pharmacies, and other licensed health care  
 384 providers, may sell service contracts and arrangements for a  
 385 specified amount and type of health services or treatments.

386 6. Provider organizations, including service networks,  
 387 group practices, professional associations, and other  
 388 incorporated organizations of providers, may sell service  
 389 contracts and arrangements for a specified amount and type of  
 390 health services or treatments.

391 7. Corporate entities providing specific health services in  
 392 accordance with applicable state law may sell service contracts  
 393 and arrangements for a specified amount and type of health  
 394 services or treatments.

395  
 396 A vendor described in subparagraphs 3.-7. may not sell products  
 397 that provide risk-bearing coverage unless that vendor is  
 398 authorized under a certificate of authority issued by the Office  
 399 of Insurance Regulation and is authorized to provide coverage in  
 400 the relevant geographic area. Otherwise eligible vendors may be  
 401 excluded from participating in the program for deceptive or  
 402 predatory practices, financial insolvency, or failure to comply  
 403 with the terms of the participation agreement or other standards  
 404 set by the corporation.

405 Section 13. Subsection (11) of section 627.64731, Florida  
 406 Statutes, is amended to read:

407 627.64731 Leasing, renting, or granting access to a  
 408 participating provider.—

409 (11) This section does not apply to a contract between a

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410 contracting entity and a discount ~~medical~~ plan organization  
 411 licensed or exempt under part II of chapter 636.

412 Section 14. Paragraph (c) of subsection (7) of section  
 413 636.003, Florida Statutes, is amended to read:

414 636.003 Definitions.—As used in this act, the term:

415 (7) "Prepaid limited health service organization" means any  
 416 person, corporation, partnership, or any other entity which, in  
 417 return for a prepayment, undertakes to provide or arrange for,  
 418 or provide access to, the provision of a limited health service  
 419 to enrollees through an exclusive panel of providers. Prepaid  
 420 limited health service organization does not include:

421 (c) Any person who is licensed pursuant to part II as a  
 422 discount ~~medical~~ plan organization.

423 Section 15. Paragraphs (c) and (d) of subsection (1) of  
 424 section 636.205, Florida Statutes, are amended to read:

425 636.205 Issuance of license; denial.—

426 (1) Following receipt of an application filed pursuant to  
 427 s. 636.204, the office shall review the application and notify  
 428 the applicant of any deficiencies contained therein. The office  
 429 shall issue a license to an applicant who has filed a completed  
 430 application pursuant to s. 636.204 upon payment of the fees  
 431 specified in s. 636.204 and upon the office being satisfied that  
 432 the following conditions are met:

433 (c) The ownership, control, and management of the entity  
 434 are competent and trustworthy and possess managerial experience  
 435 that would make the proposed operation beneficial to the  
 436 subscribers. The office ~~may shall~~ not grant or continue to grant  
 437 authority to transact the business of a discount ~~medical~~ plan  
 438 organization in this state at any time during which the office

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439 has good reason to believe that the ownership, control, or  
 440 management of the organization includes any person whose  
 441 business operations are or have been marked by business  
 442 practices or conduct that is detrimental to the public,  
 443 stockholders, investors, or creditors.

444 (d) The discount ~~medical~~ plan organization has a complaint  
 445 procedure that will facilitate the resolution of subscriber  
 446 grievances and that includes both formal and informal steps  
 447 available within the organization.

448 Section 16. Section 636.206, Florida Statutes, is amended  
 449 to read:

450 636.206 Examinations and investigations.—

451 (1) The office may examine or investigate the business and  
 452 affairs of any discount ~~medical~~ plan organization. The office  
 453 may order any discount ~~medical~~ plan organization or applicant to  
 454 produce any records, books, files, advertising and solicitation  
 455 materials, or other information and may take statements under  
 456 oath to determine whether the discount ~~medical~~ plan organization  
 457 or applicant is in violation of the law or is acting contrary to  
 458 the public interest. The expenses incurred in conducting any  
 459 examination or investigation must be paid by the discount  
 460 ~~medical~~ plan organization or applicant. Examinations and  
 461 investigations must be conducted as provided in chapter 624.

462 (2) Failure by the discount ~~medical~~ plan organization to  
 463 pay the expenses incurred under subsection (1) is grounds for  
 464 denial or revocation.

465 Section 17. Section 636.207, Florida Statutes, is amended  
 466 to read:

467 636.207 Applicability of part.—Except as otherwise provided

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468 in this part, discount ~~medical~~ plan organizations are governed  
469 by ~~the provisions of~~ this part and are exempt from the Florida  
470 Insurance Code unless specifically referenced.

471 Section 18. Section 636.210, Florida Statutes, is amended  
472 to read:

473 636.210 Prohibited activities of a discount ~~medical~~ plan  
474 organization.—

475 (1) A discount ~~medical~~ plan organization may not:

476 (a) Use in its advertisements, marketing material,  
477 brochures, and discount cards the term "insurance" except as  
478 otherwise provided in this part or as a disclaimer of any  
479 relationship between discount ~~medical~~ plan organization benefits  
480 and insurance;

481 (b) Use in its advertisements, marketing material,  
482 brochures, and discount cards the terms "health plan,"  
483 "coverage," "copay," "copayments," "preexisting conditions,"  
484 "guaranteed issue," "premium," "PPO," "preferred provider  
485 organization," or other terms in a manner that could reasonably  
486 mislead a person into believing the discount ~~medical~~ plan was  
487 health insurance;

488 (c) Have restrictions on free access to plan providers,  
489 including, but not limited to, waiting periods and notification  
490 periods; or

491 (d) Pay providers any fees for medical services.

492 (2) A discount ~~medical~~ plan organization may not collect or  
493 accept money from a member for payment to a provider for  
494 specific medical services furnished or to be furnished to the  
495 member unless the organization has an active certificate of  
496 authority from the office to act as an administrator.

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497 Section 19. Subsection (1), paragraphs (b), (c), and (d) of  
498 subsection (2), and subsection (3) of section 636.218, Florida  
499 Statutes, are amended to read:

500 636.218 Annual reports.—

501 (1) Each discount ~~medical~~ plan organization shall ~~must~~ file  
502 with the office, within 3 months after the end of each fiscal  
503 year, an annual report.

504 (2) Such reports must be on forms prescribed by the  
505 commission and must include:

506 (b) If different from the initial application or the last  
507 annual report, a list of the names and residence addresses of  
508 all persons responsible for the conduct of the organization's  
509 affairs, together with a disclosure of the extent and nature of  
510 any contracts or arrangements between such persons and the  
511 discount ~~medical~~ plan organization, including any possible  
512 conflicts of interest.

513 (c) The number of discount ~~medical~~ plan members in the  
514 state.

515 (d) Such other information relating to the performance of  
516 the discount ~~medical~~ plan organization as is reasonably required  
517 by the commission or office.

518 (3) Every discount ~~medical~~ plan organization that ~~which~~  
519 fails to file an annual report in the form and within the time  
520 required by this section shall forfeit up to \$500 for each day  
521 for the first 10 days during which the neglect continues and  
522 shall forfeit up to \$1,000 for each day after the first 10 days  
523 during which the neglect continues; and, upon notice by the  
524 office to that effect, the organization's authority to enroll  
525 new members or to do business in this state ceases while such



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526 default continues. The office shall deposit all sums collected  
 527 by the office under this section to the credit of the Insurance  
 528 Regulatory Trust Fund. The office may not collect more than  
 529 \$50,000 for each report.

530 Section 20. Section 636.220, Florida Statutes, is amended  
 531 to read:

532 636.220 Minimum capital requirements.—

533 (1) Each discount ~~medical~~ plan organization shall ~~must~~ at  
 534 all times maintain a net worth of at least \$150,000.

535 (2) The office may not issue a license unless the discount  
 536 ~~medical~~ plan organization has a net worth of at least \$150,000.

537 Section 21. Section 636.222, Florida Statutes, is amended  
 538 to read:

539 636.222 Suspension or revocation of license; suspension of  
 540 enrollment of new members; terms of suspension.—

541 (1) The office may suspend the authority of a discount  
 542 ~~medical~~ plan organization to enroll new members, revoke any  
 543 license issued to a discount ~~medical~~ plan organization, or order  
 544 compliance if the office finds that any of the following  
 545 conditions exist:

546 (a) The organization is not operating in compliance with  
 547 this part.

548 (b) The organization does not have the minimum net worth as  
 549 required by this part.

550 (c) The organization has advertised, merchandised, or  
 551 attempted to merchandise its services in such a manner as to  
 552 misrepresent its services or capacity for service or has engaged  
 553 in deceptive, misleading, or unfair practices with respect to  
 554 advertising or merchandising.

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555 (d) The organization is not fulfilling its obligations as a  
 556 ~~medical~~ discount ~~medical~~ plan organization.

557 (e) The continued operation of the organization would be  
 558 hazardous to its members.

559 (2) If the office has cause to believe that grounds for the  
 560 suspension or revocation of a license exist, the office must  
 561 ~~shall~~ notify the discount ~~medical~~ plan organization in writing  
 562 specifically stating the grounds for suspension or revocation  
 563 and shall pursue a hearing on the matter in accordance with ~~the~~  
 564 ~~provisions of~~ chapter 120.

565 (3) When the license of a discount ~~medical~~ plan  
 566 organization is surrendered or revoked, such organization must  
 567 proceed, immediately following the effective date of the order  
 568 of revocation, to wind up its affairs transacted under the  
 569 license. The organization may not engage in any further  
 570 advertising, solicitation, collecting of fees, or renewal of  
 571 contracts.

572 (4) The office shall, in its order suspending the authority  
 573 of a discount ~~medical~~ plan organization to enroll new members,  
 574 specify the period during which the suspension is to be in  
 575 effect and the conditions, if any, which must be met by the  
 576 discount ~~medical~~ plan organization before ~~prior to~~ reinstatement  
 577 of its license to enroll new members. The order of suspension is  
 578 subject to rescission or modification by further order of the  
 579 office before ~~prior to~~ the expiration of the suspension period.  
 580 Reinstatement may not be made unless requested by the discount  
 581 ~~medical~~ plan organization; however, the office may not grant  
 582 reinstatement if it finds that the circumstances for which the  
 583 suspension occurred still exist or are likely to recur.

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584 Section 22. Section 636.223, Florida Statutes, is amended  
585 to read:

586 636.223 Administrative penalty.—In lieu of suspending or  
587 revoking a certificate of authority whenever any discount  
588 ~~medical~~ plan organization has been found to have violated any  
589 provision of this part, the office may:

590 (1) Issue and cause to be served upon the organization  
591 charged with the violation a copy of such findings and an order  
592 requiring such organization to cease and desist from engaging in  
593 the act or practice that constitutes the violation.

594 (2) Impose a monetary penalty of not less than \$100 for  
595 each violation, but not to exceed an aggregate penalty of  
596 \$75,000.

597 Section 23. Section 636.224, Florida Statutes, is amended  
598 to read:

599 636.224 Notice of change of name or address of discount  
600 ~~medical~~ plan organization.—Each discount ~~medical~~ plan  
601 organization must provide the office at least 30 days' advance  
602 notice of any change in the discount ~~medical~~ plan organization's  
603 name, address, principal business address, or mailing address.

604 Section 24. Section 636.226, Florida Statutes, is amended  
605 to read:

606 636.226 Provider name listing.—Each discount ~~medical~~ plan  
607 organization must maintain on an Internet website an up-to-date  
608 list of the names and addresses of the providers with which it  
609 has contracted, ~~on an Internet website page~~, the address of  
610 which must ~~shall~~ be prominently displayed on all its  
611 advertisements, marketing materials, brochures, and discount  
612 cards. This section applies to those providers with whom the

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2017430\_\_

613 discount ~~medical~~ plan organization has contracted directly, as  
614 well as those who are members of a provider network with which  
615 the discount ~~medical~~ plan organization has contracted.

616 Section 25. Section 636.232, Florida Statutes, is amended  
617 to read:

618 636.232 Rules.—The commission may adopt rules to administer  
619 this part, including rules for the licensing of discount ~~medical~~  
620 plan organizations; establishing standards for evaluating forms,  
621 advertisements, marketing materials, brochures, and discount  
622 cards; providing for the collection of data; relating to  
623 disclosures to plan members; and defining terms used in this  
624 part.

625 Section 26. Section 636.234, Florida Statutes, is amended  
626 to read:

627 636.234 Service of process on a discount ~~medical~~ plan  
628 organization.—Sections 624.422 and 624.423 apply to a discount  
629 ~~medical~~ plan organization as if the discount ~~medical~~ plan  
630 organization were an insurer.

631 Section 27. Section 636.236, Florida Statutes, is amended  
632 to read:

633 636.236 Surety bond or security deposit.—

634 (1) Each discount ~~medical~~ plan organization licensed  
635 pursuant to ~~the provisions of this part~~ shall ~~must~~ maintain in  
636 force a surety bond in its own name in an amount not less than  
637 \$35,000 to be used at the discretion of the office to protect  
638 the financial interests of members who may be adversely affected  
639 by the insolvency of a discount ~~medical~~ plan organization. The  
640 bond must be issued by an insurance company that is licensed to  
641 do business in this state.

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2017430\_\_

642 (2) In lieu of the bond specified in subsection (1), a  
 643 licensed discount ~~medical~~ plan organization may deposit and  
 644 maintain deposited in trust with the department securities  
 645 eligible for deposit under s. 625.52 having at all times a value  
 646 of not less than \$35,000. If a licensed discount ~~medical~~ plan  
 647 organization substitutes its deposited securities under this  
 648 subsection with a surety bond authorized in subsection (1), such  
 649 deposited securities must ~~shall~~ be returned to the discount  
 650 ~~medical~~ plan organization no later than 45 days following the  
 651 effective date of the surety bond.

652 (3) A ~~No~~ judgment creditor or other claimant of a discount  
 653 ~~medical~~ plan organization, other than the office or department,  
 654 does not ~~shall~~ have the right to levy upon any of the assets or  
 655 securities held in this state as a deposit under subsections (1)  
 656 and (2).

657 Section 28. Subsections (2) and (3) of section 636.238,  
 658 Florida Statutes, are amended to read:

659 636.238 Penalties for violation of this part.—

660 (2) A person who operates as or willfully aids and abets  
 661 another operating as a discount ~~medical~~ plan organization in  
 662 violation of s. 636.204(1) commits a felony punishable as  
 663 provided for in s. 624.401(4)(b), as if the unlicensed discount  
 664 ~~medical~~ plan organization were an unauthorized insurer, and the  
 665 fees, dues, charges, or other consideration collected from the  
 666 members by the unlicensed discount ~~medical~~ plan organization or  
 667 marketer were insurance premium.

668 (3) A person who collects fees for purported membership in  
 669 a discount ~~medical~~ plan but purposefully fails to provide the  
 670 promised benefits commits a theft, punishable as provided in s.

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671 812.014.

672 Section 29. Subsection (1) of section 636.240, Florida  
 673 Statutes, is amended to read:

674 636.240 Injunctions.—

675 (1) In addition to the penalties and other enforcement  
 676 provisions of this part, the office may seek both temporary and  
 677 permanent injunctive relief when:

678 (a) A discount ~~medical~~ plan is being operated by any person  
 679 or entity that is not licensed pursuant to this part.

680 (b) Any person, entity, or discount ~~medical~~ plan  
 681 organization has engaged in any activity prohibited by this part  
 682 or any rule adopted pursuant to this part.

683 Section 30. Section 636.244, Florida Statutes, is amended  
 684 to read:

685 636.244 Unlicensed discount ~~medical~~ plan organizations.—  
 686 Sections ~~The provisions of ss.~~ 626.901-626.912 apply to the  
 687 activities of an unlicensed discount ~~medical~~ plan organization  
 688 as if the unlicensed discount ~~medical~~ plan organization were an  
 689 unauthorized insurer.

690 Section 31. This act shall take effect upon becoming a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/6/17

Meeting Date

430

Bill Number (if applicable)

144836

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name PAUL LAMBERT

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

Address 263 Rosehill DR N

Street

Tallahassee FL 32312

City

State

Zip

Phone 850 597-2696

Email PLAMBERT@PAULLAMBERTLAW.COM

Speaking:  For  Against  Information

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

Representing Florida CHIROPRACTIC ASSO

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)

3/6/17  
Meeting Date

430  
Bill Number (if applicable)

~~1512300~~  
Amendment Barcode (if applicable)

Topic Discount Plan Organizations

Name Chris Schoonover

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

Address 101 E. College Ave  
Street

Phone 850-264-7588

Tallahassee FL 32308  
City State Zip

Email CSchoonover@capcityconsult.com

Speaking:  For  Against  Information

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

Representing Consumer Health 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

APPEARANCE RECORD

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

3/6/17

Meeting Date

430

Bill Number (if applicable)

Topic DISCOUNT ORGANIZATIONS

Amendment Barcode (if applicable)

Name PAUL LAMBERT

Job Title

Address 263 Rosehill DR. N.

Phone 850 597-2696

Street

TALLAHASSEE

FL

32312

Email plambert@paul Lambert Law.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 Florida Chiropractic Assn.

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.

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

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

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

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

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BILL: CS/SB 454

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Regulation of Insurance Companies

DATE: March 7, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	<b>FAV/CS</b>
2.			AGG	
3.			AP	
4.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 454 makes several changes relating to the regulation of insurance companies.

The bill:

- Deletes the future repeal of the exemption of medical malpractice insurance from the Florida Hurricane Catastrophe Fund assessments. Under current law, the exemption will be repealed May 31, 2019.
- Allows Florida Workers' Compensation Insurance Guaranty Association surcharges to be counted as insurer assets.
- Allows insurers writing certain lines of medical malpractice insurance the option to certify their rates with the Office of Insurance Regulation (OIR).
- Allows electronic checks and drafts as acceptable methods of payment for specified lines of insurance and allows insurers to charge a \$15 insufficient funds fee.
- Specifies display requirements for the electronic delivery of documents.

The changes in the bill take effect upon becoming law.

## **II. Present Situation:**

### **The Florida Hurricane Catastrophe Fund**

The Florida Hurricane Catastrophe Fund (Cat Fund) is a tax-exempt fund created in 1993 after Hurricane Andrew as a form of mandatory reinsurance for residential property insurers. The Cat Fund is administered by the State Board of Administration and is a tax-exempt source of reimbursement to property insurers for a selected percentage of hurricane losses above the insurer's retention. Admitted property insurers in the state are required to purchase \$17 billion in coverage from the Cat Fund. Each insurer's mandatory amount purchased is based upon the insurer's share of the actual premium paid for the contract year, multiplied by the claims paying capacity of the fund. The Cat Fund must charge insurers the actuarially indicated premium for the coverage provided, based on hurricane loss projection models found acceptable by the Florida Commission on Hurricane Loss Projection Methodology.

### **Cat Fund Assessments**

Reimbursements to insurers for losses above the current moneys in the Cat Fund are financed through bonding. When the moneys in the Cat Fund are insufficient to cover losses, the law authorizes the Cat Fund to issue revenue bonds funded by emergency assessments on property and casualty policyholders. Bonds would be funded by an emergency assessment of up to 6 percent of premium on most lines of property and casualty insurance for funding losses from a single year, and up to 10 percent of premium for funding losses from multiple years. All lines of property and casualty insurance, including surplus lines insurance, are subject to emergency assessment except for workers' compensation and medical malpractice liability insurance. The exemption for medical malpractice insurance being subject to Cat Fund assessments is to sunset on May 31, 2019.

### **Florida Insurance Guaranty Association (FIGA)**

When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders who have paid premiums for insurance are not left with valid yet unpaid claims. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

### **FIGA Assessments**

In order to pay claims and to maintain the operations of an insolvent insurer, FIGA has several potential funding sources. FIGA's primary funding source is from the liquidation of assets of insolvent insurance companies domiciled in Florida. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida. In the event the insolvent insurer's assets are insufficient to pay all claims, FIGA can issue two types of post-insolvency assessments against property and casualty insurance companies to raise funds to pay claims. FIGA's assessments are computed and billed based on FIGA's immediate needs to pay claims. Currently, assessments may not exceed 2 percent of net direct-written premium in 1 year for regular assessments, and an additional emergency assessment of 2 percent of direct-written premium for hurricane-related insolvencies.



## **Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)**

As a condition of their authority to offer workers' compensation insurance coverage in Florida, all insurers and self-insurance funds are required to be members of the Florida Workers' Compensation Insurance Guaranty Association, Inc. (FWCIGA).<sup>1</sup> The FWCIGA is a not-for-profit corporation established pursuant to part V of ch. 631, F.S., adjunct to the Department of Financial Services (DFS). The FWCIGA assists in the detection and prevention of insurer insolvencies and provides for the payment of workers' compensation covered claims.<sup>2</sup> The FWCIGA evaluates workers' compensation claims made by insureds against insolvent member companies or funds, and determines if such claims are covered claims subject to payment by FWCIGA. The FWCIGA is funded by distributions from the estates of insolvent insurers, investment income, and assessments of member insurers.<sup>3</sup>

### **FWCIGA Assessments**

The FWCIGA determines whether an assessment against member insurers is necessary to pay covered claims of an insolvent insurer or to reimburse the FWCIGA for expenses associated with administering its statutory functions. The assessments are levied by the Department of Financial Services on each insurer based upon the proportion of the insurer's net direct written premium in Florida to the total of all such insurers writing workers' compensation coverages in Florida for the preceding calendar year. The maximum assessment rate is 2 percent for insurers and 1.5 percent for self-insurance funds. If these assessments are insufficient to satisfy claims and administration costs, an additional assessment of 1.5 percent can be levied.<sup>4</sup>

### **Insurer Assets**

When determining the financial condition of an insurer, statutory accounting principles allow insurers to include as an asset, assessment surcharges that have yet to be collected from policyholders. Under current law assessments levied by the Florida Insurance Guaranty Association, resulting in surcharges to policyholders yet to be collected by insurers, can be counted as assets if there is a reasonable expectation by the insurer that such surcharges will be paid.<sup>5</sup>

### **Medical Malpractice Insurance**

Medical malpractice insurance is a professional liability coverage obtained by health care providers to indemnify them from damages arising out of an act of medical negligence. Florida requires licensed physicians and licensed osteopathic physicians to meet financial responsibility requirements as a condition of obtaining and maintaining state licensure to practice medicine.

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<sup>1</sup> s. 631.911, F.S. Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. In Florida, the Division of Rehabilitation and Liquidation in the Department of Financial Services is responsible for rehabilitating or liquidating insurance companies.

<sup>2</sup> s. 631.902, F.S. The term "covered claim" is defined in s. 631.904(2), F.S.

<sup>3</sup> See FWCIGA, *Frequently Asked Questions*, available at <http://fwciga.org/faq> (last visited March 7, 2017).

<sup>4</sup> s. 631.914, F.S.

<sup>5</sup> s. 625.012(15)(a), F.S.

Insurers that issue medical malpractice insurance are required to complete a full rate filing with the OIR once every calendar year.<sup>6</sup>

### **Insufficient Funds Fee**

Current law allows up to a \$15 insufficient funds fee to be charged to a policyholder of a motor vehicle insurance contract when the policyholders payment by debit card, credit card, electronic funds transfer, or electronic check is returned or declined.<sup>7</sup>

### **Delivery of Insurance Policies**

Part II of s. 627, F.S., generally applies to most lines of insurance written in this state.<sup>8</sup> Under this part, every insurance policy must be mailed, delivered or electronically transmitted to the policyholder within 60 days after the insurance takes effect. An insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy for commercial risks constitutes delivery to the insured or to the person entitled to delivery, unless the insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.<sup>9</sup>

### **Effect of Proposed Changes:**

**Section 1** deletes the sunset date for the exemption from the Florida Hurricane Catastrophe Fund assessments for medical malpractice insurance. The exemption is due to sunset on June 1, 2019.<sup>10</sup>

**Section 2** allows expected surcharges, which are the result of assessments levied by the Florida Workers' Compensation Insurance Guaranty Association, to be counted as assets when determining the financial condition of an insurer. This is currently allowed for expected surcharges which are the result of assessments levied by the Florida Insurance Guaranty Association.

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<sup>6</sup> s. 627.062(7)(e), F.S.

<sup>7</sup> s. 627.7295(9), F.S.

<sup>8</sup> s. 627.401, F.S.

<sup>9</sup> s. 627.421(1), F.S.

<sup>10</sup> s. 215.555(6)(b)10., F.S.

**Sections 3 and 4** allows insurers when filing rates on certain lines<sup>11</sup> of medical malpractice insurance the option of making a full rate filing or, when no rate change is needed, certifying to the OIR that their rates are actuarially sound and not inadequate.

**Section 5** allows the use of electronic checks and drafts as acceptable methods of payment for most insurance policies.<sup>12</sup> It also allows insurers to charge a \$15 insufficient funds fee should an electronic check or funds transfer be declined. These changes are currently allowed for automobile insurance policies and is being expanded.

**Section 6** specifies that with regards to any font, size, color, spacing, or other formatting requirement for printed documents, an electronically delivered document satisfies these requirements if it has reasonably similar proportions or emphasis of the characters relative to the rest of the electronic document, or is otherwise displayed in a reasonably conspicuous manner.

**Section 7** makes technical changes to conform to the changes made in Section 5.

**Section 8** provides the changes in the bill take effect upon becoming law.

### III. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

### IV. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

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<sup>11</sup> The bill allows insurers to certify rates for medical malpractice insurance policies that are subject to “file and use” or “use and file” rate review under s. 627.062(2)(a) and (f), F.S. Medical malpractice insurance is subject to these requirements if it covers a facility that is not a hospital licensed under chapter 395 F.S., a nursing home licensed under part II of chapter 400 F.S., or an assisted living facility licensed under part I of chapter 429 F.S., a health care practitioner who is not a dentist licensed under chapter 466 F.S., a physician licensed under chapter 458 F.S., an osteopathic physician licensed under chapter 459 F.S., chiropractic physician licensed under chapter 460 F.S., a podiatric physician licensed under chapter 461 F.S., a pharmacist licensed under chapter 465 F.S., or a pharmacy technician registered under chapter 465 F.S. Accordingly, it is these types of medical malpractice insurance that are affected by the bill. Medical malpractice insurance covering other entities or practitioners are not subject to paragraphs (a) and (f) of s. 627.062(2), F.S., pursuant to sub-subparagraphs o. and p. of s. 627.062(3)(d)1, F.S., and thus are not affected by the bill.

<sup>12</sup> s. 627.401, F.S.

**B. Private Sector Impact:**

Medical malpractice insurance will no longer be subject to Cat Fund Assessments. Such policies are currently exempt from assessment until June 1, 2019.

Insurers will be allowed to count as assets expected surcharges due to assessments from the Florida Workers' Compensation Insurance Guaranty Association. Insurers will have the option of certifying their rates on certain lines of medical malpractice insurance.

Policyholders on most lines of insurance can use electronic checks and drafts as acceptable methods of payment, but will be subject to a \$15 insufficient funds fee.

**C. Government Sector Impact:**

The OIR staff will save time not having to complete a full rate review, when insurers certify their rates on certain lines of medical malpractice insurance.<sup>13</sup>

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

None.

**VII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 215.555, 625.012, 627.062, 627.0645, 627.4035, 627.421, and 627.7295

**VIII. 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 made a technical change clarifying monthly installments on surcharges from the Florida Workers' Compensation Insurance Guaranty Association assessments can be included in the calculation on an insurers assets. The CS also removed the section of the bill pertaining to excluded named driver.

**B. Amendments:**

None.

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

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<sup>13</sup> See footnote 11.



293744

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
	.	
	.	
	.	

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

**Senate Amendment (with directory and title amendments)**

Between lines 178 and 179

insert:

(b) Assessments levied as monthly installments pursuant to s. 631.57(3)(e)3. or s. 631.914 which ~~that~~ are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the Florida Insurance Guaranty Association or the Florida Workers' Compensation Insurance Guaranty Association, Incorporated.



293744

11  
12 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

13 And the directory clause is amended as follows:

14 Delete line 159

15 and insert:

16 Section 2. Subsection (15) of section

17  
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 lines 8 - 10

21 and insert:

22 625.012, F.S.; revising the allowable assets of  
23 insurers relating to specified levied assessments;  
24 amending s. 627.062,



128686

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 287 - 296.

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

And the title is amended as follows:

Delete lines 25 - 30

and insert:

provisions to changes made by the act; providing an effective date.



976826

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/06/2017	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Between lines 178 and 179

insert:

Section 1. Subsection (4) of section 626.916, Florida Statutes, is amended to read:

626.916 Eligibility for export.—

(4) A reasonable per-policy fee, ~~not to exceed \$35,~~ may be charged by the filing surplus lines agent for each policy certified for export. The per-policy fee must be itemized





976826

11 separately for the customer before purchase and must be  
12 enumerated in the policy.

13

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

15 And the title is amended as follows:

16       Delete line 10

17 and insert:

18       Office of Insurance Regulation; amending s. 626.916,  
19       F.S.; deleting the limit of a per-policy fee that may  
20       be charged by filing surplus lines agents for policies  
21       certified for export; providing requirements for the  
22       fee; amending s. 627.062,

By Senator Brandes

24-00600A-17

2017454\_\_

1                                   A bill to be entitled  
 2       An act relating to the regulation of insurance  
 3       companies; amending s. 215.555, F.S.; deleting a  
 4       future repeal of an exemption of medical malpractice  
 5       insurance premiums from certain emergency assessments  
 6       by the State Board of Administration relating to the  
 7       Florida Hurricane Catastrophe Fund; amending s.  
 8       625.012, F.S.; revising a definition of "assets" of an  
 9       insurer to include certain assessments levied by the  
 10      Office of Insurance Regulation; amending s. 627.062,  
 11      F.S.; revising requirements for certain rate filings  
 12      by medical malpractice insurers; amending s. 627.0645,  
 13      F.S.; adding certain medical malpractice insurance to  
 14      casualty insurance excluded from an annual base rate  
 15      filing requirement for rating organizations; amending  
 16      s. 627.4035, F.S.; revising the methods of paying  
 17      premiums for insurance contracts; authorizing an  
 18      insurer to impose a specified insufficient funds fee  
 19      if certain premium payment methods are returned,  
 20      declined, or cannot be processed; amending s. 627.421,  
 21      F.S.; providing that an electronically delivered  
 22      document in an insurance policy meets formatting  
 23      requirements for printed documents under certain  
 24      conditions; amending s. 627.7295, F.S.; conforming  
 25      provisions to changes made by the act; creating s.  
 26      627.747, F.S.; providing that certain provisions do  
 27      not prohibit an insurer from excluding all coverage  
 28      under a certain motor vehicle insurance policy for an  
 29      identified household member under certain  
 30      circumstances; providing an effective date.  
 31  
 32    Be It Enacted by the Legislature of the State of Florida:

Page 1 of 11

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

24-00600A-17

2017454\_\_

33  
 34                                   Section 1. Paragraph (b) of subsection (6) of section  
 35       215.555, Florida Statutes, is amended to read:  
 36       215.555 Florida Hurricane Catastrophe Fund.—  
 37       (6) REVENUE BONDS.—  
 38       (b) *Emergency assessments*.—  
 39       1. If the board determines that the amount of revenue  
 40       produced under subsection (5) is insufficient to fund the  
 41       obligations, costs, and expenses of the fund and the  
 42       corporation, including repayment of revenue bonds and that  
 43       portion of the debt service coverage not met by reimbursement  
 44       premiums, the board shall direct the Office of Insurance  
 45       Regulation to levy, by order, an emergency assessment on direct  
 46       premiums for all property and casualty lines of business in this  
 47       state, including property and casualty business of surplus lines  
 48       insurers regulated under part VIII of chapter 626, but not  
 49       including any workers' compensation premiums or medical  
 50       malpractice premiums. As used in this subsection, the term  
 51       "property and casualty business" includes all lines of business  
 52       identified on Form 2, Exhibit of Premiums and Losses, in the  
 53       annual statement required of authorized insurers by s. 624.424  
 54       and any rule adopted under this section, except for those lines  
 55       identified as accident and health insurance and except for  
 56       policies written under the National Flood Insurance Program. The  
 57       assessment shall be specified as a percentage of direct written  
 58       premium and is subject to annual adjustments by the board in  
 59       order to meet debt obligations. The same percentage applies to  
 60       all policies in lines of business subject to the assessment  
 61       issued or renewed during the 12-month period beginning on the

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62 effective date of the assessment.

63 2. A premium is not subject to an annual assessment under  
64 this paragraph in excess of 6 percent of premium with respect to  
65 obligations arising out of losses attributable to any one  
66 contract year, and a premium is not subject to an aggregate  
67 annual assessment under this paragraph in excess of 10 percent  
68 of premium. An annual assessment under this paragraph continues  
69 as long as the revenue bonds issued with respect to which the  
70 assessment was imposed are outstanding, including any bonds the  
71 proceeds of which were used to refund the revenue bonds, unless  
72 adequate provision has been made for the payment of the bonds  
73 under the documents authorizing issuance of the bonds.

74 3. Emergency assessments shall be collected from  
75 policyholders. Emergency assessments shall be remitted by  
76 insurers as a percentage of direct written premium for the  
77 preceding calendar quarter as specified in the order from the  
78 Office of Insurance Regulation. The office shall verify the  
79 accurate and timely collection and remittance of emergency  
80 assessments and shall report the information to the board in a  
81 form and at a time specified by the board. Each insurer  
82 collecting assessments shall provide the information with  
83 respect to premiums and collections as may be required by the  
84 office to enable the office to monitor and verify compliance  
85 with this paragraph.

86 4. With respect to assessments of surplus lines premiums,  
87 each surplus lines agent shall collect the assessment at the  
88 same time as the agent collects the surplus lines tax required  
89 by s. 626.932, and the surplus lines agent shall remit the  
90 assessment to the Florida Surplus Lines Service Office created

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91 by s. 626.921 at the same time as the agent remits the surplus  
92 lines tax to the Florida Surplus Lines Service Office. The  
93 emergency assessment on each insured procuring coverage and  
94 filing under s. 626.938 shall be remitted by the insured to the  
95 Florida Surplus Lines Service Office at the time the insured  
96 pays the surplus lines tax to the Florida Surplus Lines Service  
97 Office. The Florida Surplus Lines Service Office shall remit the  
98 collected assessments to the fund or corporation as provided in  
99 the order levied by the Office of Insurance Regulation. The  
100 Florida Surplus Lines Service Office shall verify the proper  
101 application of such emergency assessments and shall assist the  
102 board in ensuring the accurate and timely collection and  
103 remittance of assessments as required by the board. The Florida  
104 Surplus Lines Service Office shall annually calculate the  
105 aggregate written premium on property and casualty business,  
106 other than workers' compensation and medical malpractice,  
107 procured through surplus lines agents and insureds procuring  
108 coverage and filing under s. 626.938 and shall report the  
109 information to the board in a form and at a time specified by  
110 the board.

111 5. Any assessment authority not used for a particular  
112 contract year may be used for a subsequent contract year. If,  
113 for a subsequent contract year, the board determines that the  
114 amount of revenue produced under subsection (5) is insufficient  
115 to fund the obligations, costs, and expenses of the fund and the  
116 corporation, including repayment of revenue bonds and that  
117 portion of the debt service coverage not met by reimbursement  
118 premiums, the board shall direct the Office of Insurance  
119 Regulation to levy an emergency assessment up to an amount not

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120 exceeding the amount of unused assessment authority from a  
 121 previous contract year or years, plus an additional 4 percent  
 122 provided that the assessments in the aggregate do not exceed the  
 123 limits specified in subparagraph 2.

124 6. The assessments otherwise payable to the corporation  
 125 under this paragraph shall be paid to the fund unless the Office  
 126 of Insurance Regulation and the Florida Surplus Lines Service  
 127 Office received a notice from the corporation and the fund,  
 128 which shall be conclusive and upon which they may rely without  
 129 further inquiry, that the corporation has issued bonds and the  
 130 fund has no agreements in effect with local governments under  
 131 paragraph (c). On or after the date of the notice and until the  
 132 date the corporation has no bonds outstanding, the fund shall  
 133 have no right, title, or interest in or to the assessments,  
 134 except as provided in the fund's agreement with the corporation.

135 7. Emergency assessments are not premium and are not  
 136 subject to the premium tax, to the surplus lines tax, to any  
 137 fees, or to any commissions. An insurer is liable for all  
 138 assessments that it collects and must treat the failure of an  
 139 insured to pay an assessment as a failure to pay the premium. An  
 140 insurer is not liable for uncollectible assessments.

141 8. If an insurer is required to return an unearned premium,  
 142 it shall also return any collected assessment attributable to  
 143 the unearned premium. A credit adjustment to the collected  
 144 assessment may be made by the insurer with regard to future  
 145 remittances that are payable to the fund or corporation, but the  
 146 insurer is not entitled to a refund.

147 9. If a surplus lines insured or an insured who has  
 148 procured coverage and filed under s. 626.938 is entitled to the

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149 return of an unearned premium, the Florida Surplus Lines Service  
 150 Office shall provide a credit or refund to the agent or such  
 151 insured for the collected assessment attributable to the  
 152 unearned premium before remitting the emergency assessment  
 153 collected to the fund or corporation.

154 ~~10. The exemption of medical malpractice insurance premiums~~  
 155 ~~from emergency assessments under this paragraph is repealed May~~  
 156 ~~31, 2019, and medical malpractice insurance premiums shall be~~  
 157 ~~subject to emergency assessments attributable to loss events~~  
 158 ~~occurring in the contract years commencing on June 1, 2019.~~

159 Section 2. Paragraph (a) of subsection (15) of section  
 160 625.012, Florida Statutes, is amended to read:

161 625.012 "Assets" defined.—In any determination of the  
 162 financial condition of an insurer, there shall be allowed as  
 163 "assets" only such assets as are owned by the insurer and which  
 164 consist of:

165 (15) (a) Assessments levied pursuant to s. 631.57(3) (a) and  
 166 (e) or s. 631.914 which ~~that~~ are paid before policy surcharges  
 167 are collected and result in a receivable for policy surcharges  
 168 to be collected in the future. This amount, to the extent it is  
 169 likely that it will be realized, meets the definition of an  
 170 admissible asset as specified in the National Association of  
 171 Insurance Commissioners' Statement of Statutory Accounting  
 172 Principles No. 4. The asset shall be established and recorded  
 173 separately from the liability regardless of whether it is based  
 174 on a retrospective or prospective premium-based assessment. If  
 175 an insurer is unable to fully recoup the amount of the  
 176 assessment because of a reduction in writings or withdrawal from  
 177 the market, the amount recorded as an asset shall be reduced to

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178 the amount reasonably expected to be recouped.

179 Section 3. Paragraph (e) of subsection (7) of section  
180 627.062, Florida Statutes, is amended to read:

181 627.062 Rate standards.—

182 (7) The provisions of this subsection apply only to rates  
183 for medical malpractice insurance and control to the extent of  
184 any conflict with other provisions of this section.

185 (e) For medical malpractice rates subject to paragraph  
186 (2) (a), the medical malpractice insurer shall make an annual  
187 base a rate filing in accordance with s. 627.0645 ~~under this~~  
188 ~~section~~, sworn to by at least two executive officers of the  
189 insurer, ~~at least once each calendar year.~~

190 Section 4. Subsection (1) of section 627.0645, Florida  
191 Statutes, is amended to read:

192 627.0645 Annual filings.—

193 (1) Each rating organization filing rates for, and each  
194 insurer writing, any line of property or casualty insurance to  
195 which this part applies, except:

196 (a) Workers' compensation and employer's liability  
197 insurance;

198 (b) Insurance as defined in ss. 624.604 and 624.605,  
199 limited to coverage of commercial risks other than commercial  
200 residential multiperil and medical malpractice insurance that is  
201 subject to s. 627.062(2)(a) and (f); or

202 (c) Travel insurance, if issued as a master group policy  
203 with a situs in another state where each certificateholder pays  
204 less than \$30 in premium for each covered trip and where the  
205 insurer has written less than \$1 million in annual written  
206 premiums in the travel insurance product in this state during

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207 the most recent calendar year,

208  
209 shall make an annual base rate filing for each such line with  
210 the office no later than 12 months after its previous base rate  
211 filing, demonstrating that its rates are not inadequate.

212 Section 5. Section 627.4035, Florida Statutes, is amended  
213 to read:

214 627.4035 ~~Cash~~ Payment of premiums; claims.—

215 (1) ~~(a)~~ The premiums for insurance contracts issued in this  
216 state or covering risk located in this state must ~~shall~~ be paid  
217 in cash consisting of coins, currency, checks, electronic  
218 checks, drafts, or money orders or by using a debit card, credit  
219 card, automatic electronic funds transfer, or payroll deduction  
220 plan. ~~By July 1, 2007,~~ Insurers issuing personal lines  
221 residential and commercial property policies shall provide a  
222 premium payment plan option to their policyholders which allows  
223 for a minimum of quarterly and semiannual payment of premiums.  
224 Insurers may, but are not required to, offer monthly payment  
225 plans. Insurers issuing such policies must submit their premium  
226 payment plan option to the office for approval before use.

227 (b) If, due to insufficient funds, a payment of premium  
228 under this subsection by debit card, credit card, electronic  
229 funds transfer, or electronic check is returned, is declined, or  
230 cannot be processed, the insurer may impose an insufficient  
231 funds fee of up to \$15 per occurrence pursuant to the policy  
232 terms.

233 (2) Subsection (1) is not applicable to:

234 (a) Reinsurance agreements;

235 (b) Pension plans;

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236 (c) Premium loans, whether or not subject to an automatic  
 237 provision;

238 (d) Dividends, whether to purchase additional paid-up  
 239 insurance or to shorten the dividend payment period;

240 (e) Salary deduction plans;

241 (f) Preauthorized check plans;

242 (g) Waivers of premiums on disability;

243 (h) Nonforfeiture provisions affording benefits under  
 244 supplementary contracts; or

245 (i) Such other methods of paying for life insurance as may  
 246 be permitted by the commission pursuant to rule or regulation.

247 (3) All payments of claims made in this state under any  
 248 contract of insurance shall be paid:

249 (a) In cash consisting of coins, currency, checks, drafts,  
 250 or money orders and, if by check or draft, shall be in such form  
 251 as will comply with the standards for cash items adopted by the  
 252 Federal Reserve System to facilitate the sorting, routing, and  
 253 mechanized processing of such items; or

254 (b) If authorized in writing by the recipient or the  
 255 recipient's representative, by debit card or any other form of  
 256 electronic transfer. Any fees or costs to be charged against the  
 257 recipient must be disclosed in writing to the recipient or the  
 258 recipient's representative at the time of written authorization.  
 259 However, the written authorization requirement may be waived by  
 260 the recipient or the recipient's representative if the insurer  
 261 verifies the identity of the insured or the insured's recipient  
 262 and does not charge a fee for the transaction. If the funds are  
 263 misdirected, the insurer remains liable for the payment of the  
 264 claim.

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265 Section 6. Subsection (5) is added to section 627.421,  
 266 Florida Statutes, to read:

267 627.421 Delivery of policy.—

268 (5) An electronically delivered document satisfies any  
 269 font, size, color, spacing, or other formatting requirement for  
 270 printed documents if the format in the electronically delivered  
 271 document has reasonably similar proportions or emphasis of the  
 272 characters relative to the rest of the electronic document or is  
 273 otherwise displayed in a reasonably conspicuous manner.

274 Section 7. Subsection (9) of section 627.7295, Florida  
 275 Statutes, is amended to read:

276 627.7295 Motor vehicle insurance contracts.—

277 ~~(9)(a) In addition to the methods provided in s.~~  
 278 ~~627.4035(1), premium for motor vehicle insurance contracts~~  
 279 ~~issued in this state or covering risk located in this state may~~  
 280 ~~be paid in cash in the form of a draft or drafts.~~

281 ~~(b) If, due to insufficient funds, payment of premium under~~  
 282 ~~this subsection by debit card, credit card, electronic funds~~  
 283 ~~transfer, or electronic check is returned, is declined, or~~  
 284 ~~cannot be processed, the insurer may impose an insufficient~~  
 285 ~~funds fee of up to \$15 per occurrence pursuant to the policy~~  
 286 ~~terms.~~

287 Section 8. Section 627.747, Florida Statutes, is created to  
 288 read:

289 627.747 Named driver exclusion.—If the insurer identifies a  
 290 household member by name and the named insured consents in  
 291 writing, ss. 320.02, 324.022, and 627.727 do not prohibit an  
 292 insurer that issues an insurance policy on a private passenger  
 293 motor vehicle from excluding all coverage under the policy for

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294 the identified member of the household, unless the excluded  
295 household member is injured while he or she is not operating the  
296 motor vehicle.

297 Section 9. This act shall take effect upon becoming a law.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

03/06/17  
Meeting Date

454  
Bill Number (if applicable)

Topic Reg of Ins Companies

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title Assistant Gen. Counsel

Address ~~10700~~ ~~Hermita~~ 1430 Piedmont Dr E Phone 850 224 6496

Street

TLH  
City

FL  
State

32308  
Zip

Email MThomas@flmedical.org

Speaking:  For  Against  Information

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

Representing Florida 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)

March 6, 2017

*Meeting Date*

454

*Bill Number (if applicable)*

Topic Regulation of Ins. Companies

*Amendment Barcode (if applicable)*

Name Michael Carlson

Job Title President

Address 215 S. Monroe St. Ste. 835

Phone 8505449576

*Street*

Tallahassee

FL

32301

Email michael.carlson@piff.net

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Personal Insurance Federation 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.*

***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)

3/6

Meeting Date

454

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Mark Delegal

Job Title Counsel

Address 315 S. Calhoun St #600

Phone 508-7779

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 Doctors Company/State Farm

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

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BILL: CS/SB 536

INTRODUCER: Banking and Insurance Committee and Senator Brandes

SUBJECT: Unclaimed Funds Held by the Clerks of Court

DATE: March 6, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			AED	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 536 repeals statutes relating to surplus trustees. A surplus trustee is an entity that holds and administers surplus proceeds from a foreclosure sale. The primary duty of a surplus trustee is to locate the owner of record and return the surplus funds to the owner. The bill repeals the surplus trustee statute and requires unclaimed surplus funds to be remitted to the Department of Financial Services (DFS) after 1 year and be distributed pursuant to the Florida Disposition of Unclaimed Property Act. Under the Act, the owner obtains the money by filing a claim with the DFS. If the DFS denies the claim, the owner is entitled to a hearing and an appeal to contest the denial.

The bill repeals s. 43.19, F.S., relating to money held in the court registry. The statute provides that in cases where the right to withdraw money from the court registry is not in dispute and has remained with the court for 5 years, the court shall direct the money be deposited with the DFS. The repeal of s. 43.19, F.S., means that the court will remit the unclaimed money to the DFS after 1 year, instead of 5 years, for disposition pursuant to the Florida Disposition of Unclaimed Property Act.

## II. Present Situation:

### Unclaimed Property Pursuant to Chapter 717, F.S., and Section 43.19, F.S.

Section 43.19, F.S., provides for the disposition of unclaimed money paid into the court registry. Section 43.19(1), F.S., provides that in a case in which the right to withdraw money in the court registry is not in dispute and the money has remained in the registry for 5 years or more, the court shall direct that the money be deposited with the Chief Financial Officer (CFO) to the credit of the State School Fund. A person entitled to any of the money may obtain an order directing the payment of the money to the claimant by petitioning the court and providing written notice to the state attorney and proof of entitlement to the money.<sup>1</sup> A court has noted that the state attorney is not required to appear at the proceeding so there could be a case where no representative of the state is party to the proceeding.<sup>2</sup>

Chapter 717, F.S., is the Florida Disposition of Unclaimed Property Act.<sup>3</sup> It provides that intangible property held for the owner by a court that has not been claimed by the owner for more than 1 year after it became payable is presumed unclaimed.<sup>4</sup> Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.<sup>5</sup> Section 717.118, F.S., requires the DFS to attempt to locate owners of unclaimed property if the value is more than \$250. The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.<sup>6</sup> The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the DFS must deliver or pay to the claimant the property or the amount the DFS actually received or the proceeds, if it has been sold by the DFS.<sup>7</sup> Any person aggrieved by a decision of the DFS may petition for a hearing pursuant to ss. 120.569 and 120.570, F.S.<sup>8</sup>

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.<sup>9</sup> The DFS is allowed to retain up to \$15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Florida Disposition of Unclaimed Property Act. All remaining funds received are deposited into the State School Fund.<sup>10</sup>

Section 43.19, F.S., provides that if the right to withdraw money in the court registry is not in dispute and the money has remained in the registry for 5 years or more, the court shall direct that the money be deposited with the CFO. Section 717.113, F.S., provides that money held by a

---

<sup>1</sup> s. 43.19(3), F.S.

<sup>2</sup> *Crescenzo v. Atwater*, 136 So.3d 1248, 1256 (Fla. 2d DCA 2014).

<sup>3</sup> s. 717.001, F.S.

<sup>4</sup> s. 717.113, F.S. One court has called the legal effect of the presumption that the property is unclaimed “unclear.” See *Crescenzo v. Atwater*, 136 So.3d 1248, 1255 (Fla. 2d DCA 2014).

<sup>5</sup> s. 717.1201, F.S.

<sup>6</sup> ss. 717.117 and 717.124, F.S.

<sup>7</sup> s. 717.124, F.S.

<sup>8</sup> s. 717.126, F.S.

<sup>9</sup> s. 717.123, F.S.

<sup>10</sup> s. 717.123, F.S.

court for more than 1 year after it becomes payable is presumed unclaimed. A court has described the legal effect of the presumption as “unclear.”<sup>11</sup>

Claims under s. 43.19, F.S., may be assigned in accordance with contract law. In *Crescenzo v. Atwater*, an entity called Interest Recovery, Inc., obtained an assignment of the right to \$13,857.69 placed in the registry of the court for \$10.<sup>12</sup> Section 717.135, F.S., requires certain disclosures or a fee limitation before a claimant’s representative can obtain unclaimed property from the DFS on a claimant’s behalf.

### **Judicial Sales of Real Property**

Foreclosure is the legal process for enforcement of a security interest in real property. In most foreclosures, the property is sold and the proceeds of the sale are applied against the debt. In some cases, the property is sold for more than the debt. The difference is known as the surplus. Section 45.032, F.S., governs the disbursement of surplus funds after a judicial sale.

Section 45.031(1), F.S., requires a final judgment in a foreclosure action to contain:

- A notice of potential surplus;
- A statement indicating that a subordinate lienholder must file a claim for surplus funds no later than 60 days after the sale;
- A statement indicating that the property owner does not need to assign his or her rights in the property to claim surplus funds; and
- A statement indicating that the owner does not need any type of representation to claim such funds.

The clerk of the court conducts the sale, files a certificate of sale, files a certificate of title, and disburses the proceeds pursuant to the final judgment.<sup>13</sup> If there are funds remaining after the disbursement, the clerk holds the surplus funds for 60 days pending a court order.<sup>14</sup> If the owner of record claims the surplus during the 60-day period and there is no subordinate lienholder, the court orders the clerk to deduct applicable service charges<sup>15</sup> and pay the remainder to the owner of record.<sup>16</sup> If any person other than the owner of record claims an interest in the surplus, the court holds a hearing to determine who is entitled to the surplus.<sup>17</sup> If no one claims the surplus, the clerk appoints a surplus trustee to find the owner of record.<sup>18</sup> The DFS has a rotation system for assignment of cases to all qualified surplus trustees.<sup>19</sup>

In *Saulnier v. Bank of America*,<sup>20</sup> the court held that a subordinate lienholder was not entitled to the surplus because the subordinate lienholder did not make a claim within the 60-day statutory

---

<sup>11</sup> *Crescenzo v Atwater*, 136 So.3d 1248, 1255 (Fla. 2d DCA 2014).

<sup>12</sup> *Crescenzo v. Atwater*, 136 So.3d 1248, 1251-1252 (Fla. 2d DCA 2014).

<sup>13</sup> s. 45.031(3)-(7), F.S.

<sup>14</sup> s. 45.032(3), F.S.

<sup>15</sup> s. 45.035, F.S., provides that the clerk may charge specified service charges relating to judicial sales.

<sup>16</sup> s. 45.032(3)(a), F.S.

<sup>17</sup> s. 45.032(3)(b), F.S.

<sup>18</sup> s. 45.032(c), F.S.

<sup>19</sup> s. 45.034(5), F.S.

<sup>20</sup> 187 So.3d 854 (Fla. 4<sup>th</sup> DCA 2015).

time limit. The court rejected the subordinate lienholder's claim that it should be excused from missing the time limit because it did not receive actual notice. The court stated that the statutes do not contain provisions excusing a lienholder for lack of actual notice. Even assuming there was not actual notice, the court said notice by publication is sufficient.

### Surplus Trustees

A surplus trustee is an entity that holds and administers surplus proceeds from a foreclosure.<sup>21</sup> The primary duty of a surplus trustee is to locate the owner of record within 1 year after appointment. When the surplus trustee locates the owner of record, it files a petition with the court seeking disbursement of the surplus funds.<sup>22</sup> A surplus trustee is entitled to the following service charges and fees:

- Upon obtaining a court order, a cost advance of 2 percent of the surplus; and
- Upon obtaining a court order disbursing the surplus to the owner of record, a service charge of 10 percent of the surplus.<sup>23</sup>

If the surplus trustee is unable to locate the owner of record within 1 year of appointment, the clerk notifies the surplus trustee that the appointment is terminated. The clerk treats the remaining funds as unclaimed property to be deposited with the CFO pursuant to ch. 717, F.S.<sup>24</sup>

Surplus trustees are certified by the DFS.<sup>25</sup> Persons wishing to be certified must submit an application and a \$25 fee to the DFS by June 1. The DFS must approve or deny the application by June 30. Certifications are effective from July 1 until June 30. The DFS renews a certification upon receipt of a \$25 fee and sworn statement certifying the surplus trustee continues to meet the statutory qualifications.<sup>26</sup>

The surplus trustee program began in 2007. Since that time, surplus trustees have been appointed in 10,033 cases.<sup>27</sup> The total value of those cases is \$85,032,758 (6,970 cases involved a surplus of less than \$5,000 and 3,063 cases involved a surplus greater than \$5,000).<sup>28</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill repeals s. 43.19, F.S. Once s. 43.19, F.S., is repealed, money in the court registry that has not been claimed after 1 year is presumed unclaimed.<sup>29</sup> Once the property is unclaimed, the clerk will report the property to DFS pursuant to s. 717.117, F.S. Claimants, or their representatives, can claim the money by filing a claim with the DFS.<sup>30</sup>

**Section 2** of the bill amends procedures relating to the disbursement of surplus funds after a judicial sale. The bill provides that if no claim is filed during the 60-day period after the clerk

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<sup>21</sup> s. 45.034(2), F.S.

<sup>22</sup> s. 45.034(6), F.S.

<sup>23</sup> s. 45.034(7), F.S.

<sup>24</sup> s. 45.032(4), F.S.

<sup>25</sup> s. 45.034(3), F.S.

<sup>26</sup> s. 45.034(4), F.S.

<sup>27</sup> Department of Financial Services, *Analysis of SB 536* (February 19, 2017) at p. 5.

<sup>28</sup> *Id.*

<sup>29</sup> s. 717.113, F.S.

<sup>30</sup> s. 717.124, F.S.

issues a certificate of disbursement or if any surplus funds remain after payment to a subordinate lienholder, the clerk shall report and remit the surplus to DFS pursuant to ss. 717.117 and 717.119, F.S. The clerk will report and remit the surplus after 1 year as provided in s. 717.113, F.S.

This bill provides that for purposes of establishing entitlement to the property, only the owner of record reported by the clerk, or the estate or beneficiary of a deceased owner of record reported by the clerk, is entitled to the surplus. Any surplus of less than \$10 escheats to the clerk.

**Section 4** of the bill repeals s. 45.034, F.S., creating the surplus trustee in Florida law.

**Section 5** of the bill amends s. 45.035, F.S., to remove service charges the clerk can collect for:

- Notifying a surplus trustee of his or her appointment;
- Furnishing the surplus trustee with a copy of the final judgment;
- Furnishing the surplus trustee with the certificate of disbursements; and
- Disbursing the surplus trustee's cost advance.

According to the DFS, there are 79 surplus trustee entities. Some people own more than one surplus trustee entities.<sup>31</sup> Representatives of surplus trustees believe that surplus trustees help discover and correct errors, such as when the owner of record is incorrect or when a surplus trustee is erroneously appointed after a subordinate lienholder has timely filed a claim.<sup>32</sup>

**Sections 3, 6, 7, and 8** remove references to ss. 43.19 and 45.034, F.S., from other statutes.

The bill takes effect July 1, 2017.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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<sup>31</sup> Department of Financial Services, *Analysis of SB 536* (February 19, 2017) at p. 2. A list of the surplus trustees can be found at <http://www.myfloridacfo.com/aadir/SurplusTrustees/SurplusTrusteeEntities2016-2017.pdf> (last accessed February 28, 2017).

<sup>32</sup> White Paper by the Citizens for Judicial Process (on file with the Committee on Banking and Insurance).

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

None.

**B. Private Sector Impact:**

There will be an indeterminate fiscal impact on current surplus trustees.

**C. Government Sector Impact:**

The DFS anticipates a negligible decrease in recurring revenues. The DFS has received \$8,400 in application and renewal fees since the implementation of the surplus trustee law in 2007.<sup>33</sup>

The Florida Clerk of Courts Operations Corporation anticipates a negligible indeterminate fiscal impact due to the elimination of the fee for notification and appointment of the surplus trustees.<sup>34</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 45.032, 45.033, 45.035, 717.124, 717.138, and 717.1401.

This bill repeals the following sections of the Florida Statutes: 43.19 and 45.034.

**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 provides that clerks of court should report unclaimed surplus funds pursuant to the Disposition of Unclaimed Property Act. The effect of this change is to require the clerks to hold the unclaimed money for 1 year instead of 60 days

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<sup>33</sup> Department of Financial Services, *Analysis of SB 536* (February 19, 2017) at p. 3.

<sup>34</sup> Clerk of the Courts Operations Corporation, *Analysis of SB 536* (February 14, 2017) at p. 3.



B. Amendments:

None.

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

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933696

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Brandes) recommended the following:

**Senate Amendment (with directory amendment)**

Delete lines 36 - 129  
and insert:  
court order.

(c) If the remainder of the surplus has not been paid to the owner of record or any subordinate lienholder, it is subject to s. 717.113 and shall be reported and remitted to the Department of Financial Services in accordance with ss. 717.117 and 717.119. For purposes of establishing entitlement to the



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11 property, only the owner of record reported by the clerk, or the  
12 estate or beneficiary as defined in s. 731.201 of a deceased  
13 owner of record reported by the clerk, is entitled to the  
14 surplus. Any surplus of less than \$10 escheats to no claim is  
15 filed during the 60-day period, the clerk shall

16  
17 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

18 And the directory clause is amended as follows:

19 Delete lines 26 - 27

20 and insert:

21 Section 2. Paragraph (d) of subsection (1), paragraph (c)  
22 of subsection (3), and subsection (4) of section 45.032, Florida  
23 Statutes, are amended,

24  
25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete lines 8 - 10

28 and insert:

29 surplus under certain circumstances;

By Senator Brandes

24-00464A-17

2017536\_\_

1 A bill to be entitled  
 2 An act relating to unclaimed funds held by the clerks  
 3 of court; repealing s. 43.19, F.S., relating to the  
 4 deposit of unclaimed funds with the Chief Financial  
 5 Officer to the credit of the State School Fund;  
 6 amending s. 45.032, F.S.; deleting a definition;  
 7 requiring the clerk to report as unclaimed property a  
 8 surplus under certain circumstances; providing  
 9 reporting requirements; requiring the Department of  
 10 Financial Services to prescribe a form by rule;  
 11 specifying who is entitled to a surplus under certain  
 12 circumstances; conforming provisions to changes made  
 13 by the act; amending s. 45.033, F.S.; conforming a  
 14 provision to changes made by the act; repealing s.  
 15 45.034, F.S., relating to qualifications and  
 16 appointment of a surplus trustee in foreclosure  
 17 actions; amending s. 45.035, F.S.; revising service  
 18 charges that a clerk may receive and deduct from  
 19 surplus; amending ss. 717.124, 717.138, and 717.1401,  
 20 F.S.; conforming cross-references; providing an  
 21 effective date.

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

23 Section 1. Section 43.19, Florida Statutes, is repealed.  
 24 Section 2. Paragraph (d) of subsection (1) and subsections  
 25 (3) and (4) of section 45.032, Florida Statutes, are amended,  
 26 and subsection (5) of that section is redesignated as subsection  
 27 (4), to read:  
 28 45.032 Disbursement of surplus funds after judicial sale.—  
 29 (1) For purposes of ss. 45.031-45.035, the term:  
 30 (d) ~~“Surplus trustee” means a person qualifying as a~~

24-00464A-17

2017536\_\_

33 ~~surplus trustee pursuant to s. 45.034.~~

34 (3) During the 60 days after the clerk issues a certificate  
 35 of disbursements, the clerk shall hold the surplus pending a  
 36 court order or expiration of the 60 days. Upon expiration of the  
 37 60 days, the clerk shall report the surplus as provided in  
 38 paragraph (c).

39 (a) If the owner of record claims the surplus during the  
 40 60-day period and there is no subordinate lienholder, the court  
 41 shall order the clerk to deduct any applicable service charges  
 42 from the surplus and pay the remainder to the owner of record.  
 43 The clerk may establish a reasonable requirement that the owner  
 44 of record prove his or her identity before receiving the  
 45 disbursement. The clerk may assist an owner of record in making  
 46 a claim. An owner of record may use the following form in making  
 47 a claim:

48 (Caption of Action)

51 OWNER'S CLAIM FOR  
 52 MORTGAGE FORECLOSURE SURPLUS

53 State of ....  
 54 County of ....

55 Under penalty of perjury, I (we) hereby certify that:  
 56 1. I was (we were) the owner of the following described  
 57 real property in .... County, Florida, prior to the foreclosure  
 58 sale and as of the date of the filing of the lis pendens:  
 59 ... (Legal description of real property)...

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2. I (we) do not owe any money on any mortgage on the property that was foreclosed other than the one that was paid off by the foreclosure.

3. I (we) do not owe any money that is the subject of an unpaid judgment, tax warrant, condominium lien, cooperative lien, or homeowners' association.

4. I am (we are) not currently in bankruptcy.

5. I (we) have not sold or assigned my (our) right to the mortgage surplus.

6. My (our) new address is: .....

7. If there is more than one owner entitled to the surplus, we have agreed that the surplus should be paid .... jointly, or to: ....., at the following address: .....

8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY MONEY TO WHICH I (WE) MAY BE ENTITLED.

9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE PROSECUTED CRIMINALLY FOR PERJURY.

...(Signatures)...

Sworn to (or affirmed) and subscribed before me this .... day of ....., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary

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Public)...

Personally Known .... OR Produced Identification ....  
Type of Identification Produced.....

(b) If any person other than the owner of record claims an interest in the proceeds during the 60-day period or if the owner of record files a claim for the surplus but acknowledges that one or more other persons may be entitled to part or all of the surplus, the court shall set an evidentiary hearing to determine entitlement to the surplus. At the evidentiary hearing, an equity assignee has the burden of proving that he or she is entitled to some or all of the surplus funds. The court may grant summary judgment to a subordinate lienholder prior to or at the evidentiary hearing. The court shall consider the factors in s. 45.033 when hearing a claim that any person other than a subordinate lienholder or the owner of record is entitled to the surplus funds.

(c) If no claim is filed during the 60-day period, or if surplus funds remain after payment to any subordinate lienholder that filed a claim within the 60-day period, the clerk shall immediately report as unclaimed property any surplus in an amount of \$10 or more to the Department of Financial Services on such forms as the department shall prescribe by rule pursuant to s. 717.138. In reporting the unclaimed property, the clerk shall include his or her name, address, county, and judicial circuit number; the case number; the name of each owner of record as defined in paragraph (1) (a); the owner's last known address at which service of the final judgment, pursuant to s.

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 120 45.031(1)(a), was made; the surplus amount; and at least one of  
 121 the following: the street name and number, city, state, and zip  
 122 code of the real property sold at the judicial sale; the parcel  
 123 identification of the real property sold at the judicial sale;  
 124 or the real estate number of the real property sold at the  
 125 judicial sale. For purposes of establishing entitlement to the  
 126 property, only the owner of record reported by the clerk, or the  
 127 estate or beneficiary as defined in s. 731.201 of a deceased  
 128 owner of record reported by the clerk, is entitled to the  
 129 surplus. Any surplus of less than \$10 escheats to the clerk  
 130 appoint a surplus trustee from a list of qualified surplus  
 131 trustees as authorized in s. 45.034. Upon such appointment, the  
 132 clerk shall prepare a notice of appointment of surplus trustee  
 133 and shall furnish a copy to the surplus trustee. The form of the  
 134 notice may be as follows:

135  
 136 ~~(Caption of Action)~~

137  
 138 NOTICE OF APPOINTMENT  
 139 OF SURPLUS TRUSTEE

140  
 141 ~~The undersigned clerk of the court certifies that he or she~~  
 142 ~~disbursed the proceeds received from the sale of the property as~~  
 143 ~~provided in the order or final judgment to the persons named in~~  
 144 ~~the certificate of disbursements, and that surplus funds of~~  
 145 ~~\$. . . . remain and are subject to disbursement to the owner of~~  
 146 ~~record. You have been appointed as surplus trustee for the~~  
 147 ~~purpose of finding the owner of record in order for the clerk to~~  
 148 ~~disburse the surplus, after deducting costs, to the owner of~~

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

24-00464A-17 2017536\_\_  
 149 ~~record.~~  
 150 ~~WITNESS my hand and the seal of the court on . . . , . . . (year) . . .~~  
 151 ~~. . . (Clerk) . . .~~  
 152 ~~By . . . (Deputy Clerk) . . .~~

153  
 154 ~~(4) If the surplus trustee is unable to locate the owner of~~  
 155 ~~record entitled to the surplus within 1 year after appointment,~~  
 156 ~~the appointment shall terminate and the clerk shall notify the~~  
 157 ~~surplus trustee that his or her appointment was terminated.~~  
 158 ~~Thirty days after termination of the appointment of the surplus~~  
 159 ~~trustee, the clerk shall treat the remaining funds as unclaimed~~  
 160 ~~property to be deposited with the Chief Financial Officer~~  
 161 ~~pursuant to chapter 717.~~

162 Section 3. Paragraph (d) of subsection (3) of section  
 163 45.033, Florida Statutes, is amended, and paragraph (e) of that  
 164 subsection is redesignated as paragraph (d), to read:

165 45.033 Sale or assignment of rights to surplus funds in a  
 166 property subject to foreclosure.—

167 (3) A voluntary transfer or assignment shall be a transfer  
 168 or assignment qualified under this subsection, thereby entitling  
 169 the transferee or assignee to the surplus funds or a portion or  
 170 percentage of the surplus funds, if:

171 ~~(d) The transferor or assignee is qualified as a surplus~~  
 172 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~  
 173 ~~45.034.~~

174 Section 4. Section 45.034, Florida Statutes, is repealed.

175 Section 5. Paragraphs (b) and (d) of subsection (2) of  
 176 section 45.035, Florida Statutes, are amended, and paragraph (c)  
 177 of that subsection is redesignated as paragraph (b), to read:

Page 6 of 8

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

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178 45.035 Clerk's fees.—In addition to other fees or service  
 179 charges authorized by law, the clerk shall receive service  
 180 charges related to the judicial sales procedure set forth in ss.  
 181 45.031-45.034 and this section:

182 (2) If there is a surplus resulting from the sale, the  
 183 clerk may receive the following service charges, which shall be  
 184 deducted from the surplus:

185 ~~(b) The clerk is entitled to a service charge of \$15 for~~  
 186 ~~notifying a surplus trustee of his or her appointment.~~

187 ~~(d) The clerk is entitled to a service charge of \$15 for~~  
 188 ~~appointing a surplus trustee, furnishing the surplus trustee~~  
 189 ~~with a copy of the final judgment and the certificate of~~  
 190 ~~disbursements, and disbursing to the surplus trustee the~~  
 191 ~~trustee's cost advance.~~

192 Section 6. Subsection (8) of section 717.124, Florida  
 193 Statutes, is amended to read:

194 717.124 Unclaimed property claims.—

195 (8) This section applies to all unclaimed property reported  
 196 and remitted to the Chief Financial Officer, including, but not  
 197 limited to, property reported pursuant to ss. ~~43.19~~, 45.032,  
 198 732.107, 733.816, and 744.534.

199 Section 7. Section 717.138, Florida Statutes, is amended to  
 200 read:

201 717.138 Rulemaking authority.—The department shall  
 202 administer and provide for the enforcement of this chapter. The  
 203 department has authority to adopt rules pursuant to ss.  
 204 120.536(1) and 120.54 to implement the provisions of this  
 205 chapter. The department may adopt rules to allow for electronic  
 206 filing of fees, forms, and reports required by this chapter. The

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207 authority to adopt rules pursuant to this chapter applies to all  
 208 unclaimed property reported and remitted to the Chief Financial  
 209 Officer, including, but not limited to, property reported and  
 210 remitted pursuant to ss. ~~43.19~~, 45.032, 732.107, 733.816, and  
 211 744.534.

212 Section 8. Section 717.1401, Florida Statutes, is amended  
 213 to read:

214 717.1401 Repeal.—This chapter shall not repeal, but shall  
 215 be additional and supplemental to the existing provisions of ss.  
 216 43.18, ~~43.19~~, and 402.17 and chapter 716.

217 Section 9. 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)

3-6-17

Meeting Date

536

Bill Number (if applicable)

Topic Unclaimed Property

Amendment Barcode (if applicable)

Name Justin Moorefield

Job Title Attorney / Surplus Trustee

Address 618 E. South St., Ste. 500

Phone 407-446-7284

Street

Orlando

City

FL

State

32801

Zip

Email j.moorefield@alumni.duke.edu

Speaking:  For  Against  Information

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

Representing self

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)

3-6

Meeting Date

SB-536

Bill Number (if applicable)

Topic SB-UNEMPLOYED FUNDS

Amendment Barcode (if applicable)

Name MICHAEL PELUSO

Job Title President / owner

Address 300 E OAKLAND PARK BLVD #342 Phone 754-214-2332

Street

FT LIMA

FL

33337

Email MPeluso600@aol.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing NATIONAL EQUITY RECOVERY SERVICES

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)

3/6/17

Meeting Date

SB 536

Bill Number (if applicable)

Topic Unclaimed Property

Amendment Barcode (if applicable)

Name BG Murphy

Job Title DFS - Dep. Legislative Affairs Director

Address 400 N. Monroe St

Phone 850-413-2890

Street

Tallahassee

City

FL

State

32399

Zip

Email BG.Murphy@myfloridacfo.com

Speaking:  For  Against  Information

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

Representing Department of Financial Services

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.)

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

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BILL: CS/SB 660

INTRODUCER: Banking and Insurance Committee and Senator Passidomo

SUBJECT: Foreclosure Proceedings

DATE: March 6, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			JU	
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 660 allows for the use of certain documents filed in a bankruptcy case in a mortgage foreclosure proceeding. A mortgage foreclosure is an action by a lender against a debtor to force the sale of the real property that secures the loan as a means of enforcing the debt. Often, a debtor subject to foreclosure will file for bankruptcy as a means of obtaining an automatic stay of the foreclosure action plus a discharge of the mortgage debt.

In bankruptcy, a debtor must file a statement under penalty of perjury stating his or her intent to retain, redeem, or surrender any property securing a debt. The debtor is supposed to act on that decision as a condition of obtaining a discharge of his or her debts. In some cases, debtors have stated an intention to surrender real property in bankruptcy proceedings but then later have actively contested the completion of foreclosure proceedings in state court.

This bill provides that a lender in a mortgage foreclosure case may use any document filed under penalty of perjury in bankruptcy court as an admission by the defendant. The bill provides that a document evidencing surrender in the bankruptcy case creates a rebuttable presumption that the debtor has agreed to surrender the real property and that the debtor has waived all defenses to the foreclosure action.

The bill also allows the court to take judicial notice of the final order in a bankruptcy case. The bill further provides that a debtor who has agreed to surrender the property may still use a

defense based on actions of the lienholder that occurred subsequent to the debtor's filing of the statement of intention to surrender the mortgaged property.

## II. Present Situation:

### Mortgage Foreclosure

The Florida Rules of Civil Procedure and a statutory process govern mortgage foreclosure. Foreclosure is initiated by the lender or servicer, known as the mortgagee, when the borrower, or mortgagor, fails to perform the terms of his or her mortgage, usually by defaulting on payments. Most mortgages contain an "acceleration clause," which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction. The following is a general outline of the judicial foreclosure process:

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint;<sup>1</sup>
- Service of process must be made on defendants within 120 days after the filing of the initial pleadings;<sup>2</sup>
- If a defendant has not filed an answer or another paper indicating an intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant;<sup>3</sup>
- If an answer is filed, the plaintiff may then file for a motion of summary judgment or proceed to trial, however the vast majority of plaintiffs file a motion for summary judgment;<sup>4</sup>
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and renders a final judgment if he or she finds in the favor of the plaintiff;<sup>5</sup>
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury;<sup>6</sup>
- If the plaintiff prevails, the court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment;<sup>7</sup>
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least 5 days prior to the sale;<sup>8</sup>
- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale;<sup>9</sup>
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure;<sup>10</sup>
- After the 10 days has expired with no objection, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed, and the court may, in

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<sup>1</sup> Fla.R.Civ.P. Form 1.944.

<sup>2</sup> Fla.R.Civ.P. 1.070(j).

<sup>3</sup> Fla.R.Civ.P. 1.500.

<sup>4</sup> Fla.R.Civ.P. 1.510(a).

<sup>5</sup> Section 45.031, F.S.

<sup>6</sup> Section 702.01, F.S.

<sup>7</sup> Section 45.031(1)(a), F.S.

<sup>8</sup> Section 45.031(2), F.S.

<sup>9</sup> Section 45.031(8), F.S.

<sup>10</sup> Section 45.031(8), F.S.

its discretion, enter a deficiency decree for the difference between the fair market value of the security received and the amount of the debt;<sup>11</sup> and

- The clerk may issue a writ of possession giving possession of the real property to the purchaser and directing the sheriff to assist that purchaser with obtaining possession. Up to the point that a writ of possession is served on the property, the debtor who was foreclosed has the legal right to stay in possession of the real property.

### **Bankruptcy Proceedings**

In general, the two purposes of bankruptcy are to convert the estate of the debtor into cash and distribute it among creditors, and to give the debtor a fresh start with such exemptions and rights as the bankruptcy statute leaves untouched.<sup>12</sup> The filing of a bankruptcy petition operates as an automatic stay on most legal actions against a debtor, including foreclosure.<sup>13</sup> The automatic stay is in effect from the time the petition is filed until discharge of the debtor, unless sooner lifted by the bankruptcy court.

For individuals, there are two primary forms of bankruptcy. A petition filed pursuant to Chapter 7 of the bankruptcy code is used when the rehabilitative chapters of the code would not be applicable, such as when there is no nonexempt property to protect.<sup>14</sup> A Chapter 13 petition allows the debtor to stay creditor actions and propose a plan to pay creditors, rehabilitating the debtor financially.<sup>15</sup>

In a Chapter 7 bankruptcy, the debtor must express his or her intent regarding secured property. A debtor has four options:

- Declare the secured property is exempt;
- Surrender the property and be discharged of the debt;
- Reaffirm the debt, meaning the debtor keeps the property but is liable for the debt in the future (the debt is not discharged by bankruptcy); or
- Redeem the property by paying cash to pay off the security interest.<sup>16</sup>

The statement of intent must be made under penalty of perjury. The debtor must file the statement of intent within 30 days of the filing of the Chapter 7 petition or on or before the date of the meeting of the creditors to appoint a trustee for the estate, whichever date is earlier.<sup>17</sup> Within 30 days after the first set date for the meeting of the creditors, the debtor must perform his intention with respect to each piece of secured property.<sup>18</sup>

In Chapter 13 filings, the debtor must create a plan to restructure and repay his debt.<sup>19</sup> For this plan to be confirmed by the court, it must describe how the debtor is responding to each secured

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<sup>11</sup> Section 702.06, F.S.

<sup>12</sup> 9 Am Jur 2d Bankruptcy Section 5.

<sup>13</sup> 11 U.S.C. 362(a)(4).

<sup>14</sup> 9 Am Jur 2d Bankruptcy Section 68.

<sup>15</sup> 9 Am Jur 2d Bankruptcy Section 72.

<sup>16</sup> *In re Failla*, 838 F.3d 1170 (11<sup>th</sup> Cir. 2016).

<sup>17</sup> 9 AmJur 2d Bankruptcy Section 72.

<sup>18</sup> 11 U.S.C. 521.

<sup>19</sup> 11 U.S.C. 1321 and 1322.

claim.<sup>20</sup> The debtor must make a plan for the secured property that the holder of the claim accepts or the debtor surrenders the property securing the claim to the claim holder.<sup>21</sup>

After the debtor has fulfilled his or her duties to the bankruptcy estate, the debtor may receive a discharge.<sup>22</sup> This discharge voids any dischargeable debt of the debtor, including a deficiency judgment that might otherwise be obtained after surrender of secured property to a creditor.

### **Florida Evidence Code**

The Florida Evidence Code governs what evidence may be used in court actions in the state courts.<sup>23</sup> Sections 90.201 and 90.202, F.S., provide that a court may take judicial notice of certain facts. Judicial notice is the authority of a judge to accept as facts certain matters which are of common knowledge from sources which guarantee accuracy or are a matter of official record, without the need for evidence establishing the fact.<sup>24</sup> A court may take judicial notice of records of any court of this state or any court of record of the United States.<sup>25</sup>

The Florida Evidence Code generally prohibits hearsay testimony.<sup>26</sup> An exception to the hearsay prohibition is a written admission of an opposing party.<sup>27</sup>

### **Recent Cases Regarding Surrender of Real Property in Bankruptcy**

There have been cases where a debtor has agreed to surrender the property in a federal bankruptcy proceeding but have continued to fight the foreclosure proceeding in state court.<sup>28</sup> In *In re Failla*,<sup>29</sup> the debtors filed for bankruptcy in 2011. They admitted that they owned the home, that the home was collateral for the mortgage, and that the mortgage was valid. They filed a statement of their intention to surrender the home in the bankruptcy proceedings. After the filing of their intention to surrender, the debtors continued to live in the home and defend against the creditor's ongoing foreclosure action in state court. The debtors argued that the effect of the surrender was simply to lift the automatic stay and allow the creditor to proceed with a foreclosure action in state court.<sup>30</sup> The court held that stating an intention to surrender in bankruptcy court meant that the debtors could not contest the foreclosure action in state court.<sup>31</sup>

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

The bill allows a lienholder in a foreclosure action to submit as an admission by the defendant any document the defendant filed under penalty of perjury in a bankruptcy case. The bill creates

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<sup>20</sup> 11 U.S.C. 1325(a)(5).

<sup>21</sup> 11 U.S.C. 1325(a)(5).

<sup>22</sup> 11 U.S.C. 727.

<sup>23</sup> Section 90.103, F.S.

<sup>24</sup> See <http://dictionary.law.com/Default.aspx?selected=1065> (last accessed February 23, 2017).

<sup>25</sup> Section 90.202(6), F.S.

<sup>26</sup> Section 90.802, F.S.

<sup>27</sup> Section 90.803(18), F.S.

<sup>28</sup> See, e.g., *Green Tree Servicing v. Hardmon*, Case No. 162012-CA-13629-FC-E (Fla. 4<sup>th</sup> Judicial Circuit November 13, 2015); *In re Guerra*, 544 B.R. 707 (Bankr. M.D. Fla. 2016); *In re Metzler*, 530 B.R. 894 (Bankr. M.D. Fla. 2015).

<sup>29</sup> *In re Failla*, 838 F.3d 1170 (11<sup>th</sup> Cir. 2016).

<sup>30</sup> *In re Failla*, 838 F.3d at 1173-1175.

<sup>31</sup> *In re Failla*, 838 F.3d at 1178.

a rebuttable presumption in favor of the lienholder that the defendant has surrendered his or her interest in the mortgaged property to the lienholder and waived any defense to the foreclosure. The presumption is achieved by submitting a document that evidences the defendant's intention to surrender the foreclosed property and a final order entered in the bankruptcy case that discharged the defendant's debt or confirms the defendant's repayment plan.

The bill also allows the lienholder to request that the court in the foreclosure action take judicial notice of any final order entered in a bankruptcy case.

The bill provides that a debtor who has agreed to surrender the property may still use a defense based on actions of the lienholder that occurred subsequent to the debtor's filing of the statement of intention to surrender the mortgaged property.

The bill takes effect on October 1, 2017, and applies to foreclosure actions filed on or after that date.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may expedite some foreclosure cases.

C. Government Sector Impact:

None.

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

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 702.12 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Banking and Insurance on March 6, 2017:**  
The CS makes stylistic changes to improve clarity.

- B. **Amendments:**

None.





450290

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Passidomo) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 702.12, Florida Statutes, is created to  
read:

702.12 Actions in foreclosure.—

(1) (a) A lienholder, in an action to foreclose a mortgage,  
may submit any document the defendant filed in the defendant's  
bankruptcy case under penalty of perjury for use as an admission



450290

11 by the defendant.

12 (b) The lienholder's entry of a document the defendant  
13 filed in the defendant's bankruptcy case which evidences  
14 intention to surrender to the lienholder the property that is  
15 the subject of the foreclosure, which document has not been  
16 withdrawn by the defendant, together with the submission of a  
17 final order entered in the bankruptcy case which discharges the  
18 defendant's debts or confirms the defendant's repayment plan  
19 which intention is contained therein, creates a rebuttable  
20 presumption that the defendant has waived any defenses to the  
21 foreclosure.

22 (2) In addition to a request set forth in s. 90.203, the  
23 lienholder may request that the court take judicial notice of  
24 any final order entered in a bankruptcy case.

25 (3) This section does not preclude the defendant in a  
26 foreclosure action from raising a defense based upon the  
27 lienholder's action or inaction subsequent to the filing of the  
28 document filed in the bankruptcy case which evidenced the  
29 defendant's intention to surrender the mortgaged property to the  
30 lienholder.

31 (4) This section applies to any foreclosure action filed on  
32 or after October 1, 2017.

33 Section 2. This act shall take effect October 1, 2017.

34  
35 ===== T I T L E A M E N D M E N T =====

36 And the title is amended as follows:

37 Delete everything before the enacting clause  
38 and insert:

39 A bill to be entitled



450290

40 An act relating to bankruptcy matters in foreclosure  
41 proceedings; creating s. 702.12, F.S.; authorizing  
42 lienholders to use certain documents as an admission  
43 in an action to foreclose a mortgage; providing that  
44 submission of certain documents in a foreclosure  
45 action creates a rebuttable presumption; authorizing  
46 lienholders to make a request for judicial notice of  
47 final orders entered in bankruptcy cases; providing  
48 construction; providing applicability; providing an  
49 effective date.

By Senator Passidomo

28-00637-17

2017660\_\_

A bill to be entitled

An act relating to foreclosure proceedings; creating s. 702.12, F.S.; authorizing a lienholder to submit specified documents in a foreclosure proceeding as evidence of an admission by a defendant; authorizing the lienholder to request that the court take judicial notice of a final order entered in a bankruptcy case; providing that the submission of certain documents creates specified rebuttable presumptions under certain circumstances; specifying that certain defenses are not precluded by this act; providing an effective date.

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

Section 1. Section 702.12, Florida Statutes, is created to read:

702.12 Evidence concerning foreclosure proceedings.-

(1) A lienholder in an action to foreclose its mortgage may use as an admission by the defendant in the foreclosure proceeding any document that the defendant filed under penalty of perjury in a bankruptcy proceeding. In addition to the matters identified in s. 90.202, the lienholder may also request that the court take judicial notice of any final order entered in the bankruptcy proceeding.

(2) The lienholder's submission in such foreclosure proceeding of any document that the defendant filed in the bankruptcy proceeding which evidences an intention to surrender to the lienholder the property that is the subject of the foreclosure proceeding and which document has not been withdrawn by the defendant, together with a final order entered in the bankruptcy proceeding either discharging the defendant's debts

Page 1 of 2

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

28-00637-17

2017660\_\_

or confirming the defendant's repayment plan in which such intention is contained, creates a rebuttable presumption that the defendant has:

(a) Surrendered to the lienholder the defendant's interest in the mortgaged property that is the subject of such foreclosure proceeding; and

(b) Has waived any defenses to the foreclosure of the mortgage or lien that is the subject of the foreclosure proceeding and which was the subject of the document filed in the bankruptcy proceeding evidencing the defendant's intention to surrender the mortgaged property to the lienholder.

(3) This section does not preclude a defendant in a foreclosure proceeding from raising a defense based upon the lienholder's conduct subsequent to the filing of the document in the bankruptcy proceeding which evidenced the defendant's intention to surrender the mortgaged property to the lienholder.

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/6/17

Meeting Date

SB 660

Bill Number (if applicable)

Topic Foreclosure Proceedings

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Relations

Address 1001 Thomasville Rd. Ste 201

Phone 850-224-2265

Street

Tallahassee

City

FL

State

32301

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.

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

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

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

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**BILL:** CS/SB 670

**INTRODUCER:** Banking and Insurance Committee and Senator Bean and others

**SUBJECT:** Managed Care Plans' Provider Networks

**DATE:** March 7, 2017      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			AHS	
3.			AP	

I.

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

**III. COMMITTEE SUBSTITUTE - Substantial Changes**

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**IV. Summary:**

CS/SB 670 prohibits a Medicaid managed care plan from excluding any pharmacy from its provider network if the pharmacy meets the credentialing requirements, complies with the Agency for Health Care Administration (agency) standards, and accepts the terms of the plan. The bill requires the managed care plan to offer the same rate of reimbursement to all pharmacies in the plan's network. The bill also authorizes the agency to adopt rules necessary to administer the provisions of the bill, including rules establishing credentialing requirements and quality standards for pharmacies. This bill will allow Medicaid enrollees to access additional pharmacies.

According to the agency, the bill will have an indeterminate fiscal impact on Medicaid.

**V. Present Situation:**

Many public and private employers and health plans contract with a pharmacy benefit manager (PBM) to help control drug costs. The PBM may provide the employer or plan with access to a nationwide network of pharmacies that will provide services and drugs at a discounted contracted price. The PBMs may negotiate drug prices with retail pharmacies and drug manufacturers on behalf of health plans or employers and, in addition to other administrative, clinical, and cost containment services, process drug claims for the plans.

Historically, independent pharmacies were anchors in the business community and their pharmacists had long-term relationships with their patients.<sup>1</sup> However, many independent pharmacies have closed in recent years because of the competition resulting from the proliferation of big box and chain retail pharmacies<sup>2</sup> that can negotiate with PBMs at deeply discounted reimbursement levels based on large volume sales. While the big-box and chain retail pharmacies may be able to offset lower prescription reimbursements with other retail sales, it can be difficult for a local independent pharmacy to compete since they derive 90 percent or more of their revenue from prescription sales.<sup>3</sup>

### **Florida's Statewide Medicaid Managed Care Program**

The Florida Medicaid program is a partnership between the federal and state governments. In Florida, the Agency for Health Care Administration (agency) oversees the Medicaid program.<sup>4</sup> The Statewide Medicaid Managed Care (SMMC) program is comprised of the Managed Medical Assistance (MMA) program and the Long-term Care (LTC) program. The agency contracts with managed care plans to provide services to eligible recipients.

### **Accreditation of Medicaid Managed Care Plans**

A managed care plan that is eligible to provide services under the SMMC program must have a contract with the agency to provide services under the Medicaid program. The plan must be a health insurer, an exclusive provider organization, a health maintenance organization (HMO), a provider service network, or an accountable care organization.<sup>5</sup>

Additionally, Medicaid managed care plans are required to be accredited by a nationally recognized accreditation organization or have initiated the accreditation process within 1 year after contract execution.<sup>6</sup> Accreditation is a process of review that healthcare organizations participate in to demonstrate the ability to meet predetermined standards.

Currently, all Florida Medicaid managed care plans are certified by one of three accreditation bodies,<sup>7</sup> which has its own credentialing standards. Each managed care plan must comply with these standards in order to maintain their accreditation. These standards address areas such as quality management and improvement, utilization management, and credentialing. Therefore, in addition to the agency's enrollment and contractually required credentialing requirements, managed care plans are responsible for credentialing their providers in accordance with their

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<sup>1</sup> Independent pharmacies are a type of retail pharmacy with a store-based location—often in rural and underserved areas—that dispense medications to consumers, including both prescription and over-the-counter drugs. See <http://www.gao.gov/assets/660/651631.pdf> (last viewed Mar. 1, 2017).

<sup>2</sup> Such as Walmart, CVS, Walgreens, Publix or Kroger.

<sup>3</sup> Modern Medicine, *The PBM Squeeze* (Apr. 15, 2013) available at <http://drugtopics.modernmedicine.com/drug-topics/news/tags/mac/pbm-squeeze> (last viewed Mar. 1, 2017).

<sup>4</sup> Part III of ch. 409, F.S., governs the Medicaid program.

<sup>5</sup> Section 409.962, F.S.

<sup>6</sup> Section 409.967(2)(f)3., F.S.

<sup>7</sup> National Committee for Quality Assurance (NCQA), Joint Commission (JCAHO), or the Accreditation Association for Ambulatory Health Care, Inc. (AAAHC).

accreditation standards. A Medicaid managed care plan that fails to attain and maintain accreditation may be subject to liquidated damages for each day of noncompliance.<sup>8</sup>

### **Provider Credentialing Requirements**

Medicaid managed care plans are required by the SMMC contract to conduct credentialing activities of health care providers in accordance with their accreditation requirements to verify a provider's professional qualifications. The process of verifying the credentials of health care providers and facilities helps protect consumers from fraud and poor quality health care by ensuring that providers and facilities have the proper qualifications and licensure to deliver health care services. Most accrediting bodies require health plans to re-credential providers at least every 3 years. Many stakeholders share responsibility for credentialing, and most states and the federal government have laws that affect how credentialing is performed. For example, plans verify with a state or designated certification body that a provider is licensed to practice medicine. Plans also verify a practitioner's Drug Enforcement Agency or Controlled Dangerous Substances certificate, education, and training (including board certification), work history and history of professional liability claims.

### **Minimum Medicaid Enrollment Requirements**

Section 409.912, F.S., authorizes the agency to limit the entities it contracts with or enrolls as Medicaid providers by developing a provider network through provider credentialing. The statute also states that providers are not entitled to enroll in the Medicaid provider network. The agency may limit its provider network based on the following factors:

- Assessment of beneficiary access to care,
- Provider availability,
- Provider quality standards,
- Time and distance standards for access to care,
- The cultural competence of the provider network,
- Demographic characteristics of Medicaid beneficiaries,
- Practice and provider-to-beneficiary standards,
- Appointment wait times,
- Beneficiary use of services,
- Provider turnover,
- Provider profiling,
- Provider licensure history,
- Previous program integrity investigations and findings,
- Peer review,
- Provider Medicaid policy and billing compliance records, and
- Clinical and medical record audits, and other factors.

To receive Medicaid reimbursement, a provider must be enrolled in Medicaid, meet the provider qualifications at the time the service is rendered, and be in compliance with all applicable, local,

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<sup>8</sup> See [http://www.fdhc.state.fl.us/medicaid/statewide\\_mc/plans.shtml](http://www.fdhc.state.fl.us/medicaid/statewide_mc/plans.shtml) for Florida Medicaid contract provisions (last viewed Mar. 1, 2017).



state, and federal laws, rules, regulations, Medicaid bulletins, manuals, handbooks, and statements of policy.<sup>9</sup> Providers rendering services to enrollees through managed care plan contracts currently have several enrollment options including registration only, limited provider enrollment, and full provider enrollment. The registration and limited provider enrollment options do not entitle the provider to serve recipients in the fee-for-service delivery system, but they do meet the federal and state screening standards and allow the issuance of a Medicaid provider identification number. Full provider enrollment allows a provider to serve recipients in the Medicaid fee-for-service delivery system or enrollees in a Medicaid managed care plan, if authorized by the managed care plan of the enrollee. Further, providers seeking limited provider enrollment or full enrollment must execute an agreement with the agency upon successful conclusion of the background screening requirements.<sup>10</sup>

### **Medicaid Prescription Drug Benefit**

The agency maintains coverage policies for most Florida Medicaid services, which are incorporated by reference into ch. 59G-4, F.A.C. Medicaid managed care plans cannot be more restrictive than these policies or the Florida Medicaid State Plan (which is approved by the federal Centers for Medicare and Medicaid Services) in providing services to their enrollees. In addition to prescribing coverage requirements, the coverage policies also set minimum provider qualifications for who may render services to Medicaid recipients.

Florida Medicaid managed care plans serving MMA enrollees are required to provide all prescription drugs listed on the agency's Preferred Drug List (PDL) for at least the first year of operation. At this time, Medicaid managed care plans have not implemented their own plan-specific formulary or PDL. The prior authorization criteria and protocols related to prescription drugs of a Medicaid managed care plan must not be more restrictive than the criteria established by the agency.

The Medicaid fee-for-service system reimburses all Florida Medicaid pharmacy providers at the same rate. Florida Medicaid contracts with a pharmacy benefits manager (PBM) entity to pay for prescription claims. Managed care plans also have a PBM to process their pharmacy claims for all the pharmacies in their networks. For Medicaid managed care plans, the reimbursement of prescribed drugs is based upon negotiated prices between the managed care plan and the pharmacy provider.

### **Pharmacy Provider Networks in Medicaid Managed Care**

Medicaid beneficiaries generally have the right to obtain medical services from any willing provider.<sup>11</sup> However, there is an exception for beneficiaries enrolled in certain managed care

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<sup>9</sup> See Rules 59G-5.010 Provider Enrollment and 59G-5.020, F.A.C.

<sup>10</sup> For both limited provider enrollment and full provider enrollment, the agency conducts several basic credentialing functions, including licensure verification, background screening history, criminal history, and federal exclusion database checks. In the case of registered-only providers, the managed care plan is responsible for conducting all credential verifications and background checks.

<sup>11</sup> See CMS Guidance to State Medicaid Directors (Apr. 19, 2016) (on file with Banking and Insurance Committee).

plans (to permit such plans to restrict beneficiaries to providers in the managed care plan networks) except that such plans cannot restrict the choice of family planning providers.<sup>12</sup>

Pursuant to s. 409.975(1), F.S., Medicaid managed care plans must develop and maintain provider networks that meet the medical needs of their enrollees in accordance with standards established pursuant to s. 409.967(2)(c), F.S., Managed care plans may limit the providers in their networks based on credentials, quality indicators and price, except as specified in the law, and may negotiate rates with pharmacy providers.

Managed care plans must maintain a region-wide network of pharmacy providers in sufficient numbers to meet the access standards for pharmacy and 24-hour pharmacy services for all recipients enrolled in the plan.<sup>13</sup> At a minimum, managed care plans must have pharmacy providers available to enrollees within 30 minutes and 20 miles and 24-hour pharmacy providers available within 60 minutes and 45 miles, regardless of whether in an urban or rural area.<sup>14</sup> At this time, the agency is further amending contracts to revise pharmacy network standards to require managed care plans to have pharmacy providers available to the managed care plan's enrollees within 15 minutes and 10 miles, regardless of whether in an urban or rural area. The agency anticipates that this new network standard will be effective upon execution of the June 2017 plan contract amendment.<sup>15</sup>

Managed care plans may assign an enrollee to a specialty pharmacy for specialty medications; however, managed care plans must ensure that members have a choice of available providers in the network of the managed care plan, and members must be notified of this provision.<sup>16</sup> Prior to assigning an enrollee to a specialty pharmacy, the managed care plan must notify the enrollee how to change specialty pharmacies and "opt out" of the assignment, notify the enrollee of their freedom of choice among network providers, and notify the enrollee of rights and protections.<sup>17</sup>

If only one pharmacy distributes a specific product and the provider is not in the plan's network, the managed care plan must take necessary action to provide all medically necessary covered services to enrollees with reasonable promptness, including but not limited to the following:

- Utilizing out-of-network providers; and
- Using financial incentives to induce network or out-of-network providers to accept an enrollee as a patient/client and provide all medically necessary covered services with reasonable promptness to the enrollee.<sup>18</sup>

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<sup>12</sup> See s. 1902(a)(23)(B) of the Social Security Act, 42 C.F.R. s. 431.51(b)(1) and 42 C.F.R. Part 438.

<sup>13</sup> Section 409.967(2)(c)1., F.S.

<sup>14</sup> Pursuant to s. 409.967(2)(c)1., F.S., the managed care plan may use mail-order pharmacies; however, mail-order pharmacies do not count towards the plan's pharmacy network access standards.

<sup>15</sup> Agency for Health Care Administration, 2017 Agency Legislative Bill Analysis of SB 670 (Feb. 6, 2017) (on file with Senate Banking and Insurance Committee).

<sup>16</sup> 42 C.F.R. s. 438.10(f).

<sup>17</sup> 42 C.F.R. s. 438.100.

<sup>18</sup> 42 C.F.R. s. 438.206(b)(4).

## Medicare Part D Any Willing Pharmacy Requirements

Federal regulations require a Part D prescription drug plan or sponsor to contract with any willing pharmacy that meets the particular plan's standard terms and conditions.<sup>19</sup> Federal guidance on this requirement provides that the plans standard terms and conditions establish a floor of minimum requirements that all similarly situated pharmacies must abide by while sponsors may modify some of their standard terms and conditions to encourage participation by particular pharmacies. Therefore, plans may negotiate varying payment rates to attract the network participation of certain pharmacies.<sup>20</sup>

## Survey of other States

Based on a limited staff survey, approximately 24 states have enacted legislation requiring any willing pharmacy or pharmacist provisions. It is unclear whether these provisions apply to Medicaid or commercial plans or both. In 2015, the State of Maryland issued a report relating to access to Medicaid pharmacy services.<sup>21</sup> In the report, the state contends that encouraging managed care plans to limit their pharmacy networks is an effective strategy for achieving substantial savings without jeopardizing access to prescription drugs. The report cited studies that concluded that allowing insurers to work with PBMs to limit or restrict their pharmacy networks would result in savings<sup>22</sup> while implementing AWP laws may increase pharmacy drugs.<sup>23</sup>

## VI. Effect of Proposed Changes:

**Section 1** amends s. 409.975, F.S., to prohibit a Medicaid managed care plan from excluding any pharmacy from its provider network if the pharmacy meets the credentialing requirements, complies with the agency standards, and accepts the terms of the plan. The managed care plan must offer the same rate of reimbursement to all pharmacies in the plan's network.

The bill authorizes the agency to adopt rules necessary to administer the provisions of this bill, which includes rules establishing credentialing requirements and quality standards for pharmacies.

**Section 2** provides the act will take effect October 1, 2017.

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<sup>19</sup> 42 C.F.R. s. 423.120(a)(8)(i).

<sup>20</sup> Centers for Medicare and Medicaid Services, *Compliance with Any Willing Pharmacy (AWP) Requirements* (Aug. 13, 2015) (on file with Senate Banking and Insurance Committee).

<sup>21</sup> Maryland Department of Health and Mental Hygiene, *Ensuring Maryland Medical Assistance Program Recipients Enrolled in Managed Care Organizations Have Reasonable Access to Pharmacy Services* (Dec. 2015), available at <https://mmcp.dhmh.maryland.gov/Documents/JCRs/MCPharmacynetworksJCRfinal12-15.pdf> (last viewed Mar. 1, 2017).

<sup>22</sup> Joanna Shepard, *Selective Contracting in Prescription Drugs: The Benefits for Pharmacy Networks*, 15 MINN. J.L. SCI. & TECH. 1027 (2014) available at <http://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1031&context=mjlst> (last viewed Mar. 1, 2017).

<sup>23</sup> Jonathon Klick and Joshua D. Wright, *The Effect of any Willing Provider and Freedom of Choice Laws on Prescription Drug Expenditures*, 17 AM. LAW ECON. REV. 192-213 (Spring 2015), available at [http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1437&context=faculty\\_scholarship](http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1437&context=faculty_scholarship) (last viewed Mar. 1, 2017).

**VII. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**VIII. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Requiring Medicaid managed care plans to contract with “any willing pharmacy” that meets certain requirements for participation in Medicaid managed care plans may offer patients greater choice and convenience in the selection of pharmacies.

According to advocates of this bill, the bill would increase competition amongst pharmacies. The bill may increase the customer base and revenues of pharmacies that currently do not participate in Medicaid.

Absent the promise of exclusivity of network providers, the bargaining power of the larger Medicaid managed care plans could be weakened. Providers may have less incentive to offer substantial discounts to plans, possibly resulting in higher costs to the plans, which may be passed through to the capitation rate setting process.

## C. Government Sector Impact:

**Impacts on the Credentialing Process<sup>24</sup>**

The bill will have an operational and fiscal impact on the Medicaid program, in particular the operations of managed care plans contracted to provide services through the SMMC program.

Medicaid managed care plans will need to determine if existing pharmacy providers meet and maintain the new credentialing and quality standards. Because this change could result in larger provider networks, the plans may need to deploy additional strategies to

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<sup>24</sup> Agency for Health Care Administration, *2017 Agency Legislative Bill Analysis* (Feb. 6, 2017) (on file with Senate Banking and Insurance Committee)

monitor against fraud, waste, and abuse. This could also have a fiscal impact on the managed care plans. It is indeterminate the fiscal impact that the proposed changes will have on managed care plans, but if significant, the administrative costs will need to be passed through to the capitation rate setting process.

### **Impacts on Payment Strategies**

The bill further requires managed care plans to offer the same rate of reimbursement to all pharmacies in the plan's network. The bill reduces the ability of the plans to negotiate rates for services with pharmacy providers. The bill would limit the ability of the plans to control the size of provider networks through cost effective purchasing strategies, which also has the potential to reduce savings opportunities. Currently, managed care plans have the ability to achieve savings by contracting with pharmacies at reduced prices in exchange for volume purchasing. The bill could reduce the managed care plans' bargaining power, leading to increased costs to the Medicaid program through adjustments that would need to be made in the capitation rates.

### **IX. Technical Deficiencies:**

None.

### **X. Related Issues:**

According to the agency, the bill creates challenges for plans that want to implement value based purchasing or alternative payment methodologies that are tied to certain plan-specific quality improvement strategies.

### **XI. Statutes Affected:**

This bill substantially amends section 409.975 of the Florida Statutes.

### **XII. 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 clarifies rulemaking authority and changes the effective date from July 1 to October 1, 2017.

B. Amendments:

None.

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

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229060

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 129 - 133

and insert:

(g)The agency may adopt rules necessary to administer this section, including rules establishing credentialing requirements and quality standards for pharmacies.

Section 2. This act shall take effect October 1, 2017.

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



229060

11 And the title is amended as follows:  
12       Delete line 10  
13 and insert:  
14       network; authorizing rulemaking; providing an





895576

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 27 - 132

and insert:

(a) A managed care plan may not exclude a pharmacy or a hospital that meets the credentialing requirements of, complies with agency standards for, and accepts the terms of the plan. The managed care plan must offer the same rate of reimbursement to all pharmacies and hospitals in the plan's network.



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10           (b) Plans must include all providers in the region which  
11 ~~that~~ are classified by the agency as essential Medicaid  
12 providers, unless the agency approves, in writing, an  
13 alternative arrangement for securing the types of services  
14 offered by the essential providers. Providers are essential for  
15 serving Medicaid enrollees if they offer services that are not  
16 available from any other provider within a reasonable access  
17 standard, or if they provided a substantial share of the total  
18 units of a particular service used by Medicaid patients within  
19 the region during the last 3 years and the combined capacity of  
20 other service providers in the region is insufficient to meet  
21 the total needs of the Medicaid patients. The agency may not  
22 classify physicians and other practitioners as essential  
23 providers. The agency, at a minimum, shall determine which  
24 providers in the following categories are essential Medicaid  
25 providers:

- 26           1. Federally qualified health centers.
- 27           2. Statutory teaching hospitals as defined in s.  
28 408.07(45).
- 29           3. Hospitals that are trauma centers as defined in s.  
30 395.4001(14).
- 31           4. Hospitals located at least 25 miles from any other  
32 hospital with similar services.

33  
34 Managed care plans that have not contracted with all essential  
35 providers in the region as of the first date of recipient  
36 enrollment, or with whom an essential provider has terminated  
37 its contract, must negotiate in good faith with such essential  
38 providers for 1 year or until an agreement is reached, whichever



895576

39 is first. Payments for services rendered by a nonparticipating  
40 essential provider shall be made at the applicable Medicaid rate  
41 as of the first day of the contract between the agency and the  
42 plan. A rate schedule for all essential providers shall be  
43 attached to the contract between the agency and the plan. After  
44 1 year, managed care plans that are unable to contract with  
45 essential providers shall notify the agency and propose an  
46 alternative arrangement for securing the essential services for  
47 Medicaid enrollees. The arrangement must rely on contracts with  
48 other participating providers, regardless of whether those  
49 providers are located within the same region as the  
50 nonparticipating essential service provider. If the alternative  
51 arrangement is approved by the agency, payments to  
52 nonparticipating essential providers after the date of the  
53 agency's approval shall equal 90 percent of the applicable  
54 Medicaid rate. Except for payment for emergency services, if the  
55 alternative arrangement is not approved by the agency, payment  
56 to nonparticipating essential providers shall equal 110 percent  
57 of the applicable Medicaid rate.

58 (c) ~~(b)~~ Certain providers are statewide resources and  
59 essential providers for all managed care plans in all regions.  
60 All managed care plans must include these essential providers in  
61 their networks. Statewide essential providers include:

- 62 1. Faculty plans of Florida medical schools.
- 63 2. Regional perinatal intensive care centers as defined in  
64 s. 383.16(2).
- 65 3. Hospitals licensed as specialty children's hospitals as  
66 defined in s. 395.002(28).
- 67 4. Accredited and integrated systems serving medically



895576

68 complex children which comprise separately licensed, but  
69 commonly owned, health care providers delivering at least the  
70 following services: medical group home, in-home and outpatient  
71 nursing care and therapies, pharmacy services, durable medical  
72 equipment, and Prescribed Pediatric Extended Care.

73

74 Managed care plans that have not contracted with all statewide  
75 essential providers in all regions as of the first date of  
76 recipient enrollment must continue to negotiate in good faith.  
77 Payments to physicians on the faculty of nonparticipating  
78 Florida medical schools shall be made at the applicable Medicaid  
79 rate. Payments for services rendered by regional perinatal  
80 intensive care centers shall be made at the applicable Medicaid  
81 rate as of the first day of the contract between the agency and  
82 the plan. Except for payments for emergency services, payments  
83 to nonparticipating specialty children's hospitals shall equal  
84 the highest rate established by contract between that provider  
85 and any other Medicaid managed care plan.

86 (d) ~~(e)~~ After 12 months of active participation in a plan's  
87 network, the plan may exclude any essential provider from the  
88 network for failure to meet quality or performance criteria. If  
89 the plan excludes an essential provider from the plan, the plan  
90 must provide written notice to all recipients who have chosen  
91 that provider for care. The notice shall be provided at least 30  
92 days before the effective date of the exclusion. For purposes of  
93 this paragraph, the term "essential provider" includes providers  
94 determined by the agency to be essential Medicaid providers  
95 under paragraph (b) ~~(a)~~ and the statewide essential providers  
96 specified in paragraph (c) ~~(b)~~.



97           ~~(e)~~ (d) The applicable Medicaid rates for emergency services  
98 paid by a plan under this section to a provider with which the  
99 plan does not have an active contract shall be determined  
100 according to s. 409.967(2)(b).

101           ~~(f)~~ (e) Each managed care plan must offer a network contract  
102 to each home medical equipment and supplies provider in the  
103 region which meets quality and fraud prevention and detection  
104 standards established by the plan and which agrees to accept the  
105 lowest price previously negotiated between the plan and another  
106 such provider.

107           (g) The agency shall adopt rules necessary to implement and  
108 administer this subsection, including rules establishing  
109 credentialing requirements and quality standards for the  
110 providers specified in paragraph (a).

111  
112 ===== T I T L E   A M E N D M E N T =====

113 And the title is amended as follows:

114           Delete lines 4 - 10

115 and insert:

116           managed care plan from excluding specified providers  
117           that meet the credentialing requirements and standards  
118           established by the Agency for Health Care  
119           Administration and that accept the terms of the plan;  
120           requiring a managed care plan to offer the same rate  
121           of reimbursement to providers of the same type in the  
122           plan's network; providing rulemaking authority;  
123           providing an



390442

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/06/2017	.	
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	.	
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The Committee on Banking and Insurance (Garcia) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 27 - 132

and insert:

(a) 1. A managed care plan may not exclude any of the following providers that meet the credentialing requirements of, comply with agency standards for, and accept the terms of the plan:

a. A pharmacy.

b. An assisted living facility.



390442

11           c. A home health agency.  
12           d. A vision care provider.  
13           e. A transportation provider.  
14           2. The managed care plan must offer the same rate of  
15 reimbursement in the plan's network to all providers that are of  
16 the same type as any of those listed in subparagraph 1.

17           (b) Plans must include all providers in the region which  
18 ~~that~~ are classified by the agency as essential Medicaid  
19 providers, unless the agency approves, in writing, an  
20 alternative arrangement for securing the types of services  
21 offered by the essential providers. Providers are essential for  
22 serving Medicaid enrollees if they offer services that are not  
23 available from any other provider within a reasonable access  
24 standard, or if they provided a substantial share of the total  
25 units of a particular service used by Medicaid patients within  
26 the region during the last 3 years and the combined capacity of  
27 other service providers in the region is insufficient to meet  
28 the total needs of the Medicaid patients. The agency may not  
29 classify physicians and other practitioners as essential  
30 providers. The agency, at a minimum, shall determine which  
31 providers in the following categories are essential Medicaid  
32 providers:

- 33           1. Federally qualified health centers.  
34           2. Statutory teaching hospitals as defined in s.  
35 408.07(45).  
36           3. Hospitals that are trauma centers as defined in s.  
37 395.4001(14).  
38           4. Hospitals located at least 25 miles from any other  
39 hospital with similar services.



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40  
41 Managed care plans that have not contracted with all essential  
42 providers in the region as of the first date of recipient  
43 enrollment, or with whom an essential provider has terminated  
44 its contract, must negotiate in good faith with such essential  
45 providers for 1 year or until an agreement is reached, whichever  
46 is first. Payments for services rendered by a nonparticipating  
47 essential provider shall be made at the applicable Medicaid rate  
48 as of the first day of the contract between the agency and the  
49 plan. A rate schedule for all essential providers shall be  
50 attached to the contract between the agency and the plan. After  
51 1 year, managed care plans that are unable to contract with  
52 essential providers shall notify the agency and propose an  
53 alternative arrangement for securing the essential services for  
54 Medicaid enrollees. The arrangement must rely on contracts with  
55 other participating providers, regardless of whether those  
56 providers are located within the same region as the  
57 nonparticipating essential service provider. If the alternative  
58 arrangement is approved by the agency, payments to  
59 nonparticipating essential providers after the date of the  
60 agency's approval shall equal 90 percent of the applicable  
61 Medicaid rate. Except for payment for emergency services, if the  
62 alternative arrangement is not approved by the agency, payment  
63 to nonparticipating essential providers shall equal 110 percent  
64 of the applicable Medicaid rate.

65       (c) ~~(b)~~ Certain providers are statewide resources and  
66 essential providers for all managed care plans in all regions.  
67 All managed care plans must include these essential providers in  
68 their networks. Statewide essential providers include:





390442

69           1. Faculty plans of Florida medical schools.  
70           2. Regional perinatal intensive care centers as defined in  
71 s. 383.16(2).  
72           3. Hospitals licensed as specialty children's hospitals as  
73 defined in s. 395.002(28).  
74           4. Accredited and integrated systems serving medically  
75 complex children which comprise separately licensed, but  
76 commonly owned, health care providers delivering at least the  
77 following services: medical group home, in-home and outpatient  
78 nursing care and therapies, pharmacy services, durable medical  
79 equipment, and Prescribed Pediatric Extended Care.  
80  
81 Managed care plans that have not contracted with all statewide  
82 essential providers in all regions as of the first date of  
83 recipient enrollment must continue to negotiate in good faith.  
84 Payments to physicians on the faculty of nonparticipating  
85 Florida medical schools shall be made at the applicable Medicaid  
86 rate. Payments for services rendered by regional perinatal  
87 intensive care centers shall be made at the applicable Medicaid  
88 rate as of the first day of the contract between the agency and  
89 the plan. Except for payments for emergency services, payments  
90 to nonparticipating specialty children's hospitals shall equal  
91 the highest rate established by contract between that provider  
92 and any other Medicaid managed care plan.  
93           (d) ~~(e)~~ After 12 months of active participation in a plan's  
94 network, the plan may exclude any essential provider from the  
95 network for failure to meet quality or performance criteria. If  
96 the plan excludes an essential provider from the plan, the plan  
97 must provide written notice to all recipients who have chosen



390442

98 that provider for care. The notice shall be provided at least 30  
99 days before the effective date of the exclusion. For purposes of  
100 this paragraph, the term "essential provider" includes providers  
101 determined by the agency to be essential Medicaid providers  
102 under paragraph (b) ~~(a)~~ and the statewide essential providers  
103 specified in paragraph (c) ~~(b)~~.

104 (e) ~~(d)~~ The applicable Medicaid rates for emergency services  
105 paid by a plan under this section to a provider with which the  
106 plan does not have an active contract shall be determined  
107 according to s. 409.967(2)(b).

108 (f) ~~(e)~~ Each managed care plan must offer a network contract  
109 to each home medical equipment and supplies provider in the  
110 region which meets quality and fraud prevention and detection  
111 standards established by the plan and which agrees to accept the  
112 lowest price previously negotiated between the plan and another  
113 such provider.

114 (g) The agency shall adopt rules necessary to implement and  
115 administer this subsection, including rules establishing  
116 credentialing requirements and quality standards for the  
117 providers specified in paragraph (a).

118  
119 ===== T I T L E A M E N D M E N T =====

120 And the title is amended as follows:

121 Delete lines 4 - 10

122 and insert:

123 managed care plan from excluding specified providers  
124 that meet the credentialing requirements and standards  
125 established by the Agency for Health Care  
126 Administration and that accept the terms of the plan;



390442

127        requiring a managed care plan to offer the same rate  
128        of reimbursement to providers of the same type in the  
129        plan's network; providing rulemaking authority;  
130        providing an



230802

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/06/2017	.	
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	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete lines 27 - 132

and insert:

(a) 1. A managed care plan may not exclude any of the following providers that meet the credentialing requirements of, comply with agency standards for, and accept the terms of the plan:

a. A pharmacy.

b. A primary care physician.



230802

11 c. A specialty physician.

12 d. A physical or occupational therapist or an infusion  
13 therapy provider.

14 e. A chiropractor.

15 2. The managed care plan must offer the same rate of  
16 reimbursement in the plan's network to all providers that are of  
17 the same type as any of those listed in subparagraph 1.

18 (b) Plans must include all providers in the region which  
19 ~~that~~ are classified by the agency as essential Medicaid  
20 providers, unless the agency approves, in writing, an  
21 alternative arrangement for securing the types of services  
22 offered by the essential providers. Providers are essential for  
23 serving Medicaid enrollees if they offer services that are not  
24 available from any other provider within a reasonable access  
25 standard, or if they provided a substantial share of the total  
26 units of a particular service used by Medicaid patients within  
27 the region during the last 3 years and the combined capacity of  
28 other service providers in the region is insufficient to meet  
29 the total needs of the Medicaid patients. The agency may not  
30 classify physicians and other practitioners as essential  
31 providers. The agency, at a minimum, shall determine which  
32 providers in the following categories are essential Medicaid  
33 providers:

34 1. Federally qualified health centers.

35 2. Statutory teaching hospitals as defined in s.  
36 408.07(45).

37 3. Hospitals that are trauma centers as defined in s.  
38 395.4001(14).

39 4. Hospitals located at least 25 miles from any other



230802

40 hospital with similar services.

41

42 Managed care plans that have not contracted with all essential  
43 providers in the region as of the first date of recipient  
44 enrollment, or with whom an essential provider has terminated  
45 its contract, must negotiate in good faith with such essential  
46 providers for 1 year or until an agreement is reached, whichever  
47 is first. Payments for services rendered by a nonparticipating  
48 essential provider shall be made at the applicable Medicaid rate  
49 as of the first day of the contract between the agency and the  
50 plan. A rate schedule for all essential providers shall be  
51 attached to the contract between the agency and the plan. After  
52 1 year, managed care plans that are unable to contract with  
53 essential providers shall notify the agency and propose an  
54 alternative arrangement for securing the essential services for  
55 Medicaid enrollees. The arrangement must rely on contracts with  
56 other participating providers, regardless of whether those  
57 providers are located within the same region as the  
58 nonparticipating essential service provider. If the alternative  
59 arrangement is approved by the agency, payments to  
60 nonparticipating essential providers after the date of the  
61 agency's approval shall equal 90 percent of the applicable  
62 Medicaid rate. Except for payment for emergency services, if the  
63 alternative arrangement is not approved by the agency, payment  
64 to nonparticipating essential providers shall equal 110 percent  
65 of the applicable Medicaid rate.

66 (c) ~~(b)~~ Certain providers are statewide resources and  
67 essential providers for all managed care plans in all regions.  
68 All managed care plans must include these essential providers in



230802

69 their networks. Statewide essential providers include:

70 1. Faculty plans of Florida medical schools.

71 2. Regional perinatal intensive care centers as defined in  
72 s. 383.16(2).

73 3. Hospitals licensed as specialty children's hospitals as  
74 defined in s. 395.002(28).

75 4. Accredited and integrated systems serving medically  
76 complex children which comprise separately licensed, but  
77 commonly owned, health care providers delivering at least the  
78 following services: medical group home, in-home and outpatient  
79 nursing care and therapies, pharmacy services, durable medical  
80 equipment, and Prescribed Pediatric Extended Care.

81  
82 Managed care plans that have not contracted with all statewide  
83 essential providers in all regions as of the first date of  
84 recipient enrollment must continue to negotiate in good faith.  
85 Payments to physicians on the faculty of nonparticipating  
86 Florida medical schools shall be made at the applicable Medicaid  
87 rate. Payments for services rendered by regional perinatal  
88 intensive care centers shall be made at the applicable Medicaid  
89 rate as of the first day of the contract between the agency and  
90 the plan. Except for payments for emergency services, payments  
91 to nonparticipating specialty children's hospitals shall equal  
92 the highest rate established by contract between that provider  
93 and any other Medicaid managed care plan.

94 (d) ~~(e)~~ After 12 months of active participation in a plan's  
95 network, the plan may exclude any essential provider from the  
96 network for failure to meet quality or performance criteria. If  
97 the plan excludes an essential provider from the plan, the plan



230802

98 must provide written notice to all recipients who have chosen  
99 that provider for care. The notice shall be provided at least 30  
100 days before the effective date of the exclusion. For purposes of  
101 this paragraph, the term "essential provider" includes providers  
102 determined by the agency to be essential Medicaid providers  
103 under paragraph (b) ~~(a)~~ and the statewide essential providers  
104 specified in paragraph (c) ~~(b)~~.

105 (e) ~~(d)~~ The applicable Medicaid rates for emergency services  
106 paid by a plan under this section to a provider with which the  
107 plan does not have an active contract shall be determined  
108 according to s. 409.967(2)(b).

109 (f) ~~(e)~~ Each managed care plan must offer a network contract  
110 to each home medical equipment and supplies provider in the  
111 region which meets quality and fraud prevention and detection  
112 standards established by the plan and which agrees to accept the  
113 lowest price previously negotiated between the plan and another  
114 such provider.

115 (g) The agency shall adopt rules necessary to implement and  
116 administer this subsection, including rules establishing  
117 credentialing requirements and quality standards for the  
118 providers specified in paragraph (a).

119  
120 ===== T I T L E A M E N D M E N T =====

121 And the title is amended as follows:

122 Delete lines 4 - 10

123 and insert:

124 managed care plan from excluding specified providers  
125 that meet the credentialing requirements and standards  
126 established by the Agency for Health Care





230802

127 Administration and that accept the terms of the plan;  
128 requiring a managed care plan to offer the same rate  
129 of reimbursement to providers of the same type in the  
130 plan's network; providing rulemaking authority;  
131 providing an

By Senator Bean

4-00726-17

2017670\_\_

1                   A bill to be entitled  
2           An act relating to managed care plans' provider  
3           networks; amending s. 409.975, F.S.; prohibiting a  
4           managed care plan from excluding a pharmacy that meets  
5           the credentialing requirements and standards  
6           established by the Agency for Health Care  
7           Administration and that accepts the terms of the plan;  
8           requiring a managed care plan to offer the same rate  
9           of reimbursement to all pharmacies in the plan's  
10           network; requiring expedited rulemaking; providing an  
11           effective date.

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

15           Section 1. Subsection (1) of section 409.975, Florida  
16 Statutes, is amended to read:

17           409.975 Managed care plan accountability.—In addition to  
18 the requirements of s. 409.967, plans and providers  
19 participating in the managed medical assistance program shall  
20 comply with the requirements of this section.

21           (1) PROVIDER NETWORKS.—Managed care plans must develop and  
22 maintain provider networks that meet the medical needs of their  
23 enrollees in accordance with standards established pursuant to  
24 s. 409.967(2)(c). Except as provided in this section, managed  
25 care plans may limit the providers in their networks based on  
26 credentials, quality indicators, and price.

27           (a) A managed care plan may not exclude any pharmacy that  
28 meets the credentialing requirements, complies with agency  
29 standards, and accepts the terms of the plan. The managed care  
30 plan must offer the same rate of reimbursement to all pharmacies  
31 in the plan's network.

32           (b) Plans must include all providers in the region which

Page 1 of 5

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

4-00726-17

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33 ~~that~~ are classified by the agency as essential Medicaid  
34 providers, unless the agency approves, in writing, an  
35 alternative arrangement for securing the types of services  
36 offered by the essential providers. Providers are essential for  
37 serving Medicaid enrollees if they offer services that are not  
38 available from any other provider within a reasonable access  
39 standard, or if they provided a substantial share of the total  
40 units of a particular service used by Medicaid patients within  
41 the region during the last 3 years and the combined capacity of  
42 other service providers in the region is insufficient to meet  
43 the total needs of the Medicaid patients. The agency may not  
44 classify physicians and other practitioners as essential  
45 providers. The agency, at a minimum, shall determine which  
46 providers in the following categories are essential Medicaid  
47 providers:  
48           1. Federally qualified health centers.  
49           2. Statutory teaching hospitals as defined in s.  
50 408.07(45).  
51           3. Hospitals that are trauma centers as defined in s.  
52 395.4001(14).  
53           4. Hospitals located at least 25 miles from any other  
54 hospital with similar services.

55  
56 Managed care plans that have not contracted with all essential  
57 providers in the region as of the first date of recipient  
58 enrollment, or with whom an essential provider has terminated  
59 its contract, must negotiate in good faith with such essential  
60 providers for 1 year or until an agreement is reached, whichever  
61 is first. Payments for services rendered by a nonparticipating

Page 2 of 5

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

4-00726-17

2017670\_\_

62 essential provider shall be made at the applicable Medicaid rate  
 63 as of the first day of the contract between the agency and the  
 64 plan. A rate schedule for all essential providers shall be  
 65 attached to the contract between the agency and the plan. After  
 66 1 year, managed care plans that are unable to contract with  
 67 essential providers shall notify the agency and propose an  
 68 alternative arrangement for securing the essential services for  
 69 Medicaid enrollees. The arrangement must rely on contracts with  
 70 other participating providers, regardless of whether those  
 71 providers are located within the same region as the  
 72 nonparticipating essential service provider. If the alternative  
 73 arrangement is approved by the agency, payments to  
 74 nonparticipating essential providers after the date of the  
 75 agency's approval shall equal 90 percent of the applicable  
 76 Medicaid rate. Except for payment for emergency services, if the  
 77 alternative arrangement is not approved by the agency, payment  
 78 to nonparticipating essential providers shall equal 110 percent  
 79 of the applicable Medicaid rate.

80 (c) ~~(b)~~ Certain providers are statewide resources and  
 81 essential providers for all managed care plans in all regions.  
 82 All managed care plans must include these essential providers in  
 83 their networks. Statewide essential providers include:

- 84 1. Faculty plans of Florida medical schools.
- 85 2. Regional perinatal intensive care centers as defined in  
 86 s. 383.16(2).
- 87 3. Hospitals licensed as specialty children's hospitals as  
 88 defined in s. 395.002(28).
- 89 4. Accredited and integrated systems serving medically  
 90 complex children which comprise separately licensed, but

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91 commonly owned, health care providers delivering at least the  
 92 following services: medical group home, in-home and outpatient  
 93 nursing care and therapies, pharmacy services, durable medical  
 94 equipment, and Prescribed Pediatric Extended Care.

95  
 96 Managed care plans that have not contracted with all statewide  
 97 essential providers in all regions as of the first date of  
 98 recipient enrollment must continue to negotiate in good faith.  
 99 Payments to physicians on the faculty of nonparticipating  
 100 Florida medical schools shall be made at the applicable Medicaid  
 101 rate. Payments for services rendered by regional perinatal  
 102 intensive care centers shall be made at the applicable Medicaid  
 103 rate as of the first day of the contract between the agency and  
 104 the plan. Except for payments for emergency services, payments  
 105 to nonparticipating specialty children's hospitals shall equal  
 106 the highest rate established by contract between that provider  
 107 and any other Medicaid managed care plan.

108 (d) ~~(e)~~ After 12 months of active participation in a plan's  
 109 network, the plan may exclude any essential provider from the  
 110 network for failure to meet quality or performance criteria. If  
 111 the plan excludes an essential provider from the plan, the plan  
 112 must provide written notice to all recipients who have chosen  
 113 that provider for care. The notice shall be provided at least 30  
 114 days before the effective date of the exclusion. For purposes of  
 115 this paragraph, the term "essential provider" includes providers  
 116 determined by the agency to be essential Medicaid providers  
 117 under paragraph (b) ~~(a)~~ and the statewide essential providers  
 118 specified in paragraph (c) ~~(b)~~.

119 (e) ~~(d)~~ The applicable Medicaid rates for emergency services

4-00726-17

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120 paid by a plan under this section to a provider with which the  
121 plan does not have an active contract shall be determined  
122 according to s. 409.967(2) (b).

123 ~~(f)-(e)~~ Each managed care plan must offer a network contract  
124 to each home medical equipment and supplies provider in the  
125 region which meets quality and fraud prevention and detection  
126 standards established by the plan and which agrees to accept the  
127 lowest price previously negotiated between the plan and another  
128 such provider.

129 (g) The agency shall expedite the adoption of rules  
130 necessary to administer this subsection, including rules  
131 establishing credentialing requirements and quality standards  
132 for pharmacies.

133 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)

6 MARCH 2017  
Meeting Date

SB670  
Bill Number (if applicable)

Topic MANAGED CARE PLANNED PROVIDER

Amendment Barcode (if applicable)

Name MARIANNE GLORIUS

Job Title PHARMACIST / OWNER

Address 11386 E HWY 316  
Street

Phone 352-236-0407

FT MCLOY FL 32134  
City State Zip

Email grandmascountrypharmacy@yahoo.com

Speaking:  For  Against  Information

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

Representing GRANDMA'S COUNTRY PHARMACY, 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**

3-6-2017

Meeting Date

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

SB670

Bill Number (if applicable)

Topic Managed Care Planned Provider

Amendment Barcode (if applicable)

Name Mysti Maddox

Job Title Client

Address 15150 NE 11th Ct

Phone 334-306-4363

Street

Fort McCoy FL

32134

Email mimi.sotired@gmail.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Grandma's Country Pharmacy, 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)

6 MARCH 2017  
Meeting Date

SB670  
Bill Number (if applicable)

Topic MANAGED CARE PLANNED PROVIDER

Amendment Barcode (if applicable)

Name LAURA HICKS

Job Title CLIENT

Address 11069 NE 151 ST  
Street

Phone 352-236-0341

FT MCCOY FL 32134  
City State Zip

Email N/A

Speaking:  For  Against  Information

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

Representing GRANDMA'S COUNTRY PHARMACY, 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)

3-6-2017

Meeting Date

SB 670

Bill Number (if applicable)

Topic Medicaid Managed Care

Amendment Barcode (if applicable)

Name Shane Abbott

Job Title Co-owner Prescription Place (Pharmacist)

Address 1061 South 2nd Street

Phone 850-333-0747

Defuniak Springs FL 32433

Email UFRX98@aol.com

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

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

Representing Independant Pharmacy / Small Business Pharmacy

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

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-6-17  
Meeting Date

SB 670  
Bill Number (if applicable)

Topic SB 670

Amendment Barcode (if applicable)

Name Audrey Brown

Job Title President & CEO

Address 200 W. College Ave.  
Street

Phone (850) 386-2904

Tallahassee, FL 32301  
City State Zip

Email Audrey@fahp.net

Speaking:  For  Against  Information

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

Representing Florida Association of Health Plans

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-5-17

670

Meeting Date

Bill Number (if applicable)

Topic Pharmacy Provider Networks

Amendment Barcode (if applicable)

Name MIKE FISCHER

Job Title

Address PO Box 1197

Phone 222-6344

Street TLH FL 32305

Email Mike@redfishconsult.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 FLORIDA INDEPENDENT PHARMACISTS

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

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-6-2017

Meeting Date

SB 670

Bill Number (if applicable)

Topic Medicaid Pharmacy Networks

Amendment Barcode (if applicable)

Name Bill Mincy

Job Title VP

Address 3375 Capital Circle NE, Suite I

Phone 850-553-3595

Street

Tallahassee, FL

State

32308

Zip

Email bill.mincy@ppsonline.com

Speaking:  For  Against  Information

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

Representing PPSC and 1,300 independent, small business pharmacies

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/17  
Meeting Date

676  
Bill Number (if applicable)

Topic Managed Medicaid Restricted Networks

Amendment Barcode (if applicable)

Name James Wright

Job Title Pharmacist / Pharmacy owner

321-806-3951  
~~352-256-0273~~  
Phone

Address 1108 Lake Dr.

Street

Cocoa, FL 32922

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/17

Meeting Date

SB 670

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name John Sloan

Job Title Pharmacist

Address 9351 Vandivere Dr.

Phone (256) 677-1050

Street

Navarre FL 32566

City

State

Zip

Email jshofrx@gmail.com

Speaking:  For  Against  Information

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

Representing Rx Express Pharmacy of Navarre

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-6-17  
Meeting Date

SRG 70  
Bill Number (if applicable)

Topic Managed Care Networks

Amendment Barcode (if applicable)

Name Joy Ryan

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

Address 325 W. College  
Street

Phone 425-4000

Tally  
City State Zip

Email joy@moenanlawfirm.com

Speaking:  For  Against  Information

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

Representing America's Health Insurance Plans

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

March 6, 2017

*Meeting Date*

SB670

*Bill Number (if applicable)*

Topic Managed Care Plan Provider

*Amendment Barcode (if applicable)*

Name Michael Jackson

Job Title Executive Vice President and CEO

Address 610 North Adams Street

*Street*

Phone (850) 222-2400

Tallahassee

*City*

Florida

*State*

32301

*Zip*

Email mjackson@pharmview.com

Speaking:  For  Against  Information

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

Representing Florida Pharmacy 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)

3-6-17

Meeting Date

670

Bill Number (if applicable)

Topic Managed Care Plans Provider Networks Amendment Barcode (if applicable)

Name Chris Hansen

Job Title Ballard Partners

Address 403 E. Park Ave

Phone 577-0444

Tallahassee FL 32312  
City State Zip

Email Chansen@ballardfl.com

Speaking:  For  Against  Information

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

Representing Walgreens

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.)

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

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BILL: CS/SB 730

INTRODUCER: Banking and Insurance Committee and Senator Passidomo

SUBJECT: Insurer Insolvency

DATE: March 6, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			AGG	
3.			AP	
4.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**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, whether or not such assets or property are located outside of Florida;
- Creates deadlines for written responses from an insurer subject to an order to show cause pursuant to ch. 631, F.S., 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.

## 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 receiver<sup>1</sup> 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 insurer<sup>2</sup> while the primary goal of liquidation is to secure and maximize the assets of the insolvent company for the benefit of its policyholders.<sup>3</sup> Over the years, the National Association of Insurance Commissioners (NAIC) has drafted various model laws to govern insurer insolvency.<sup>4</sup> The NAIC adopted the Insurer Receivership Model Act in 2005.<sup>5</sup>

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).

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<sup>1</sup> The DFS Division of Rehabilitation and Liquidation acts as receiver when the DFS is appointed. *See* <http://www.myfloridacfo.com/Division/Receiver/>.

<sup>2</sup> *See* <http://www.myfloridacfo.com/Division/Receiver/SummaryofRehabilitationunderChapter631PartIFloridaStatutes.htm> (last accessed February 28, 2017).

<sup>3</sup> *See* <http://www.myfloridacfo.com/Division/Receiver/LiquidationSummary.htm> (last accessed February 28, 2017).

<sup>4</sup> 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).

<sup>5</sup> *See* <http://www.naic.org/store/free/MDL-555.pdf> (last accessed February 28, 2017).

## Delinquency Proceedings

A delinquency proceeding is a proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving the insurer.<sup>6</sup> The circuit court in Leon County has jurisdiction over delinquency proceedings.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

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.<sup>10</sup>

## 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 on the shoes of the

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<sup>6</sup> s. 631.011(6), F.S.

<sup>7</sup> s. 631.021(1)-(3), F.S.

<sup>8</sup> Department of Financial Services, *Analysis of SB 730* (February 19, 2017).

<sup>9</sup> s. 631.041(1), F.S.

<sup>10</sup> Department of Financial Services, *Analysis of SB 730* (February 19, 2017).

insurer, cannot prevail because the misdeeds of the insurer's management should be imputed to the liquidator.<sup>11</sup> Section 112 of the Model Act prohibits such defenses.

### **Workers' Compensation Large Deductible Policies and Insured Collateral**

Some employers use what is referred to 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.<sup>12</sup>

### **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.<sup>13</sup>

In general, loss claims under health insurance are Class 2 claims.<sup>14</sup> The DFS considers medical provider claims in HMO receiverships to be Class 6 claims.<sup>15</sup>

Current law does not specify which class claims against insurers in excess of policy limits, such as bad faith or punitive damage claims belong.<sup>16</sup> Courts have issued different rulings in different cases with one court holding a bad faith claim is a Class 2 claim and another holding it is a Class 6 claim.<sup>17</sup>

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

The bill makes various changes to ch. 631, F.S., relating to insurer insolvency, rehabilitation, and liquidation. **Section 1** provides that Florida will provide reciprocity in the treatment of policyholders in receivership with states that enact the NAIC Insurer Model Receivership Act.

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<sup>11</sup> *Thaubalt v. Chait*, 541 F.3d 512, 528 (3<sup>rd</sup> Cir. 2008); *Schacht v. Brown*, 711 F.2d 1343 (7<sup>th</sup> Cir. 1982).

<sup>12</sup> NAIC 2016 Workers' Compensation Large Deductible Study ([http://www.naic.org/documents/committees\\_c\\_wctf\\_naic\\_iaiaabc\\_exposure\\_wc\\_study\\_combined.pdf](http://www.naic.org/documents/committees_c_wctf_naic_iaiaabc_exposure_wc_study_combined.pdf)).

<sup>13</sup> 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.

<sup>14</sup> s. 631.271(1)(b), F.S.

<sup>15</sup> Department of Financial Services, *Bill Analysis of SB 730* (February 10, 2017) at p. 3-4.

<sup>16</sup> Department of Financial Services, *Bill Analysis of SB 730* (February 19, 2017) at p. 3.

<sup>17</sup> Department of Financial Services, *Bill Analysis of SB 730* (February 19, 2017) at p. 3.

## **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 Plan<sup>18</sup> 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.<sup>19</sup> The bill also provides that ch. 631, F.S., constitutes the state's receivership laws, which prevail in any conflict with any other law.<sup>20</sup>

**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.

**Section 4** amends the automatic stay provision of 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. They 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 bill 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.

**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., which creates section 112 of the Model Act in Florida law. It provides that 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.

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<sup>18</sup> 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.

<sup>19</sup> The language in the bill is from section 105 of the Model Act.

<sup>20</sup> Section 102 of the Model Act.

The bill 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. The bill 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. This bill will make it easier, for example, for the DFS to bring claims of professional negligence against accountants or auditors that should have discovered the insurer's insolvency earlier.

The bill 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.<sup>21</sup>

**Section 8** creates s. 631.1552, F.S., based on section 113 of the Model Act. It will require 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
- If required by statutory accounting practices and procedures, such events were reported on the insurer's official financial statements filed with the OIR.

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.

### **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** allows the court to allow alternative procedures and requirements for claim filing and proof of claims. This is consistent with section 701 of the Model Act.

Current law does not have specific authority for the court to set a deadline for the filing of claims. **Section 9** allows the DFS to petition the court to set a claim filing deadline.

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<sup>21</sup> Such an argument was made, and rejected, in *Wooley v. Lucksinger*, 61 So.3d 507 (La. 2011).

## 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 amendments apply to delinquency proceedings that commence on or after July 1, 2015. 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 (1) pay directly the initial portion of any claim up to a specified dollar amount or the expenses related to any claim or (2) reimburse the insurer for its payment of any claim up to the specified dollar amount of the deductible.

The bill creates a procedure for dealing with large deductible claims of an insolvent insurer. It provides that a large deductible 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.

The bill 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 bill provides that the DFS may collect reimbursements owed for deductible claims. It 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 bill 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 bill 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 bill 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 bill 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** provides 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** provides 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** eliminates 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.<sup>22</sup>

**Section 16** provides a July 1, 2015, effective date.

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<sup>22</sup> Department of Financial Services, *Bill Analysis of SB 730* at p. 6-7.



**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:

None.

## C. Government Sector Impact:

The DFS does not anticipate a fiscal impact.<sup>23</sup>

**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.

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<sup>23</sup> Department of Financial Services, *Bill Analysis of SB 730* (February 19, 2017) at p. 7.

**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.



592904

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Passidomo) recommended the following:

**Senate Amendment**

Delete lines 302 - 362  
and insert:

(4) The receiver may petition the receivership court to set a date certain before which all contingent or unliquidated claims are final. In addition to the notice requirements in this section, the receiver shall give notice of filing the petition to all claimants with claims that remain contingent or unliquidated under this section.



592904

11           (5) Notwithstanding any other provision of this chapter,  
12 the receiver may petition the receivership court to set a date  
13 certain after which no further claims may be filed.

14           Section 10. Subsections (5) and (6) are added to section  
15 631.192, Florida Statutes, to read:

16           631.192 Allowance of certain claims.—

17           (5) A claim under a policy of insurance may not be allowed  
18 for an amount in excess of the applicable policy limits.

19           (6) A claim may not be allowed for postjudgment interest  
20 accrued after the date of liquidation.

21           Section 11. Paragraphs (a), (b), (f), and (j) of subsection  
22 (1) of section 631.271, Florida Statutes, are amended to read:

23           631.271 Priority of claims.—

24           (1) The priority of distribution of claims from the  
25 insurer's estate shall be in accordance with the order in which  
26 each class of claims is set forth in this subsection. Every  
27 claim in each class shall be paid in full or adequate funds  
28 shall be retained for such payment before the members of the  
29 next class may receive any payment. No subclasses may be  
30 established within any class. The order of distribution of  
31 claims shall be:

32           (a) *Class 1.*—

33           1. All of the receiver's costs and expenses of  
34 administration.

35           2. All of the expenses of a guaranty association or foreign  
36 guaranty association in handling claims.

37           3. All of the deputy supervisor's costs and expenses of  
38 administration incurred as a result of administrative  
39 supervision under part VI of chapter 624.



592904

40           (b) *Class 2.*—All claims under policies for losses incurred,  
41 including third-party claims, all claims against the insurer for  
42 liability for bodily injury or for injury to or destruction of  
43 tangible property which claims are not under policies, ~~and~~ all  
44 claims of a guaranty association or foreign guaranty  
45 association, all claims related to a patient's healthcare  
46 coverage by physicians, hospitals, and other providers of a  
47 health insurer or health maintenance organization. All claims  
48 under life insurance and annuity policies, whether for death  
49 proceeds, annuity proceeds, or investment values, shall be  
50 treated as loss claims. That portion of any loss,  
51 indemnification for which is provided by other benefits or  
52 advantages recovered by the claimant, may not be included in  
53 this class, other than benefits or advantages recovered or  
54 recoverable in discharge of familial obligations of support or  
55 by way of succession at death or as proceeds of life insurance,  
56 or as gratuities. No payment by an employer to her or his  
57 employee may be treated as a gratuity.

58           (f) *Class 6.*—Claims of general and other unsecured  
59 creditors, including claims against the insurer for punitive  
60 damages, bad faith, or wrongful settlement practices.

61           (j) *Class 10.*—Interest on allowed claims of Classes 1  
62 through 9. The rate of interest payable on an allowed claim must  
63 accrue from the date of liquidation until such time as the  
64 receivership court approves the distribution. The interest rate  
65 must be calculated in accordance



865748

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Farmer) recommended the following:

1           **Senate Substitute for Amendment (592904) (with title**  
2 **amendment)**

3  
4           Delete lines 302 - 362  
5 and insert:

6           (4) The receiver may petition the receivership court to set  
7 a date certain before which all contingent or unliquidated  
8 claims are final. In addition to the notice requirements in this  
9 section, the receiver shall give notice of filing the petition  
10 to all claimants with claims that remain contingent or



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11 unliquidated under this section.

12 (5) Notwithstanding any other provision of this chapter,  
13 the receiver may petition the receivership court to set a date  
14 certain after which no further claims may be filed.

15 Section 10. Subsection (5) is added to section 631.192,  
16 Florida Statutes, to read:

17 631.192 Allowance of certain claims.—

18 (5) A claim may not be allowed for postjudgment interest  
19 accrued after the date of liquidation.

20 Section 11. Paragraphs (a), (b), and (j) of subsection (1)  
21 of section 631.271, Florida Statutes, are amended to read:

22 631.271 Priority of claims.—

23 (1) The priority of distribution of claims from the  
24 insurer's estate shall be in accordance with the order in which  
25 each class of claims is set forth in this subsection. Every  
26 claim in each class shall be paid in full or adequate funds  
27 shall be retained for such payment before the members of the  
28 next class may receive any payment. No subclasses may be  
29 established within any class. The order of distribution of  
30 claims shall be:

31 (a) *Class 1.*—

32 1. All of the receiver's costs and expenses of  
33 administration.

34 2. All of the expenses of a guaranty association or foreign  
35 guaranty association in handling claims.

36 3. All of the deputy supervisor's costs and expenses of  
37 administration incurred as a result of administrative  
38 supervision under part VI of chapter 624.

39 (b) *Class 2.*—All claims under policies for losses incurred,



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40 including third-party claims, all claims against the insurer for  
41 liability for bodily injury or for injury to or destruction of  
42 tangible property which claims are not under policies, ~~and~~ all  
43 claims of a guaranty association or foreign guaranty  
44 association, and all claims related to a patient's healthcare  
45 coverage by physicians, hospitals, and other providers of a  
46 health insurer or health maintenance organization. All claims  
47 under life insurance and annuity policies, whether for death  
48 proceeds, annuity proceeds, or investment values, shall be  
49 treated as loss claims. That portion of any loss,  
50 indemnification for which is provided by other benefits or  
51 advantages recovered by the claimant, may not be included in  
52 this class, other than benefits or advantages recovered or  
53 recoverable in discharge of familial obligations of support or  
54 by way of succession at death or as proceeds of life insurance,  
55 or as gratuities. No payment by an employer to her or his  
56 employee may be treated as a gratuity.

57 (j) *Class 10.*—Interest on allowed claims of Classes 1  
58 through 9. The rate of interest payable on an allowed claim must  
59 accrue from the date of liquidation until such time as the  
60 receivership court approves the distribution. The interest rate  
61 must be calculated in accordance

62  
63 ===== T I T L E A M E N D M E N T =====

64 And the title is amended as follows:

65 Delete line 56

66 and insert:

67 F.S.; prohibiting claims for postjudgment interest  
68 accrued after the date of liquidation; amending s.





332784

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Farmer) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 311 - 317.

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

And the title is amended as follows:

Delete lines 55 - 56

and insert:

petition to certain claimants; amending s.



682696

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Farmer) recommended the following:

**Senate Amendment (with directory amendment)**

Delete lines 338 - 358

and insert:

including third-party claims;and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which claims are not under policies;and all claims of a guaranty association or foreign guaranty association;all claims related to a patient's healthcare coverage by physicians, hospitals, and other providers of a



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11 health insurer or health maintenance organization; all claims of  
12 residents arising out of a continuing care contract under  
13 chapter 651; and all claims against the insurer for punitive  
14 damages, bad faith, wrongful settlement practices, or excess  
15 claims. All claims under life insurance and annuity policies,  
16 whether for death proceeds, annuity proceeds, or investment  
17 values, shall be treated as loss claims. That portion of any  
18 loss, indemnification for which is provided by other benefits or  
19 advantages recovered by the claimant, may not be included in  
20 this class, other than benefits or advantages recovered or  
21 recoverable in discharge of familial obligations of support or  
22 by way of succession at death or as proceeds of life insurance,  
23 or as gratuities. No payment by an employer to her or his  
24 employee may be treated as a gratuity.

25

26 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

27 And the directory clause is amended as follows:

28       Delete line 318

29 and insert:

30       Section 11. Paragraphs (a), (b), and (j) of subsection



464120

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Farmer) recommended the following:

**Senate Amendment (with directory amendment)**

Delete lines 356 - 358.

===== **D I R E C T O R Y C L A U S E A M E N D M E N T**=====

And the directory clause is amended as follows:

Delete line 318

and insert:

Section 11. Paragraphs (a), (b), and (j) of subsection



374774

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Passidomo) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 466 and 467

insert:

Section 15. Section 631.191, Florida Statutes, is amended to read:

631.191 Special deposit claims; ~~and~~ secured claims; administration of workers' compensation large deductible policies and insured collateral.—

(1) SPECIAL DEPOSIT CLAIMS.—The owners of special deposit



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11 claims against an insurer against which a liquidation order has  
12 been entered in this or any other state shall be given priority  
13 against their several special deposits in accordance with the  
14 provisions of the statutes governing the creation and  
15 maintenance of such deposits. If there is a deficiency in any  
16 such deposit so that the claims secured thereby are not fully  
17 discharged therefrom, the claimants may share in the general  
18 assets, but such sharing shall be deferred until general  
19 creditors, and also claimants against other special deposits who  
20 have received smaller percentages from their respective special  
21 deposits, have been paid percentages of their claims equal to  
22 the percentage paid from the special deposit.

23 (2) SECURED CLAIMS.—

24 (a) The owner of a secured claim against an insurer against  
25 which a liquidation order has been entered in this or any other  
26 state may surrender her or his security and file her or his  
27 claim as a general creditor, or the claim may be discharged by  
28 resort to the security, in which case the deficiency, if any,  
29 shall be treated as a claim against the general assets of the  
30 insurer on the same basis as claims of unsecured creditors. If  
31 the amount of the deficiency has been adjudicated in ancillary  
32 proceedings as provided in this chapter, or if it has been  
33 adjudicated by a court of competent jurisdiction in a proceeding  
34 in which the domiciliary receiver has had notice and an  
35 opportunity to be heard, such amount shall be conclusive;  
36 otherwise the amount shall be determined in the delinquency  
37 proceeding in the domiciliary state.

38 (b) The value of any security held by a secured creditor  
39 shall be determined under supervision of the court by:



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40 1. Converting the same into money according to the terms of  
41 the agreement pursuant to which the security was delivered to  
42 such creditor; or

43 2. If no such agreement exists, the court shall determine  
44 the value in the event the creditor and the receiver cannot  
45 agree upon same.

46 (3) ADMINISTRATION OF WORKERS' COMPENSATION LARGE  
47 DEDUCTIBLE POLICIES AND INSURED COLLATERAL.—

48 (a) Definitions.—As used in this subsection, the term:

49 1. "Collateral" means cash, a letter of credit, a surety  
50 bond, or any other form of security posted by the insured, or by  
51 a captive insurer or reinsurer, to secure the insured's  
52 obligation under a large deductible policy to pay deductible  
53 claims or to reimburse the insurer for deductible claim  
54 payments. "Collateral" may also secure an insured's obligation  
55 to reimburse or pay the insurer as may be required for other  
56 secured obligations.

57 2. "Deductible claim" means any claim that is within the  
58 deductible under a large deductible policy, including a claim  
59 for loss and defense and cost containment expense, unless such  
60 expense is excluded by the terms of the policy.

61 3.a. "Large deductible policy" means a combination of one  
62 or more workers' compensation policies and endorsements issued  
63 to an insured, and contracts or security agreements entered into  
64 between an insured and the insurer, in which the insured has  
65 agreed with the insurer to:

66 (I) Pay directly the initial portion of any claim under the  
67 policy up to a specified dollar amount or the expenses related  
68 to any claim; or



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69 (II) Reimburse the insurer for its payment of any claim or  
70 related expenses under the policy up to the specified dollar  
71 amount of the deductible.

72 b. The term also includes policies that contain an  
73 aggregate limit on the insured's liability for all deductible  
74 claims in addition to a per-claim deductible limit. A policy  
75 must meet the current guidelines for large deductible workers'  
76 compensation filings as defined by the office, including the  
77 eligibility standards regarding the minimum standard premium and  
78 the minimum deductible to be deemed a large deductible policy.

79 c. The term does not include policies, endorsements, or  
80 agreements providing that the initial portion of any covered  
81 claim must be self-insured and that the insurer has no payment  
82 obligation within the self-insured retention.

83 d. The term does not include policies that provide for  
84 retrospectively rated premium payments by the insured or  
85 reinsurance arrangements or agreements, except to the extent  
86 such arrangements or agreements assume, secure, or pay the  
87 policyholder's large deductible obligations.

88 4. "Other secured obligations" means obligations of an  
89 insured to an insurer other than those under a large deductible  
90 policy, such as those under a reinsurance agreement or other  
91 agreement involving retrospective premium obligations, the  
92 performance of which is secured by collateral that also secures  
93 an insured's obligations under a large deductible policy.

94 (b) Applicability.—

95 1. This subsection applies to workers' compensation large  
96 deductible policies issued by an insurer that is subject to  
97 delinquency proceedings under this chapter. This subsection does





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98 not apply to first-party claims, or to covered claims funded by  
99 a guaranty association above the deductible unless paragraph (c)  
100 applies. Large deductible policies must be administered in  
101 accordance with the terms of the policy, except to the extent  
102 such terms conflict with this subsection.

103 2. This subsection applies to all delinquency proceedings  
104 that commence on or after July 1, 2017.

105 (c) Handling of large deductible claims.—Unless otherwise  
106 agreed to by the responsible guaranty association, all large  
107 deductible claims that are also covered claims as defined by an  
108 applicable guaranty association law, including those that may  
109 have been funded by an insured before liquidation, must be  
110 turned over to the guaranty association for handling. To the  
111 extent the insured funds or pays the deductible claim pursuant  
112 to an agreement by the guaranty fund or otherwise, the insured's  
113 funding or payment of a deductible claim extinguishes the  
114 obligations, if any, of the receiver and any guaranty  
115 association to pay such claim. A charge may not be made against  
116 the receiver or a guaranty association on the basis of an  
117 insured's funding or payment of a deductible claim.

118 (d) Deductible claims paid by a guaranty association.—

119 1. To the extent a guaranty association pays any deductible  
120 claim for which an insurer would have been entitled to  
121 reimbursement from an insured, a guaranty association is  
122 entitled to the amount of reimbursements received or collateral  
123 available, subject to paragraph (g). Reimbursements paid to the  
124 guaranty association pursuant to this paragraph may not be  
125 treated as distributions under s. 631.271 or as early access  
126 payments under s. 631.397(1).



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127           2. To the extent that a guaranty association pays a  
128 deductible claim that is not reimbursed from collateral or by  
129 insured payments, or the guaranty association incurred expenses  
130 in connection with large deductible policies that are not  
131 reimbursed under this subsection, the guaranty association is  
132 entitled to assert a claim for those amounts in the delinquency  
133 proceeding.

134           3. This paragraph does not limit any right of the receiver  
135 or a guaranty association which may otherwise exist under  
136 applicable law to obtain reimbursement from insureds for claims  
137 payments made by the guaranty association under policies of the  
138 insurer or for the guaranty association's related expenses.

139           (e) Collections.-

140           1. The receiver may collect reimbursements owed for  
141 deductible claims as provided in this paragraph, and must use  
142 reasonable efforts to collect such reimbursements from the  
143 insured or the party that is obligated to pay the deductible as  
144 specified in the large deductible policy or other agreement. The  
145 receiver may bill insureds and others for reimbursement of  
146 deductible claims that are:

147           a. Paid by the insurer before the commencement of  
148 delinquency proceedings;

149           b. Paid by a guaranty association upon receipt by the  
150 receiver of notice from a guaranty association of reimbursable  
151 payments; or

152           c. Paid or allowed by the receiver.

153           2. If the insured or other party does not make payment  
154 within the time specified in the large deductible policy, or, if  
155 no time is specified, within a reasonable time after the date of



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156 billing, the receiver must take reasonable steps to collect any  
157 reimbursements owed.

158 3. The insolvency of the insurer or its inability to  
159 perform any of its obligations under the large deductible policy  
160 may not be a defense to the insured's reimbursement obligation  
161 under the large deductible policy.

162 4. An allegation of improper handling or payment of a  
163 deductible claim by the insurer, the receiver, or a guaranty  
164 association may not be a defense to the insured's reimbursement  
165 obligations under the large deductible policy.

166 (f) Collateral.-

167 1. Subject to this paragraph, the receiver shall use  
168 collateral, when available, to secure the insured's obligation  
169 to fund or reimburse deductible claims or other secured  
170 obligations or payment obligations. A guaranty association is  
171 entitled to collateral as provided for in this paragraph to the  
172 extent needed to reimburse a guaranty association for the  
173 payment of a deductible claim. Any distributions made to a  
174 guaranty association pursuant to this paragraph may not be  
175 treated as distributions under s. 631.271 or as early access  
176 payments under s. 631.397(1).

177 2. The receiver shall draw down collateral to the extent  
178 necessary in the event the insured fails to:

179 a. Perform its funding or payment obligations under any  
180 large deductible policy;

181 b. Pay deductible claim reimbursements within the time  
182 specified in the large deductible policy, or, if no time is  
183 specified, within 60 days after the date of the billing;

184 c. Pay amounts due to the estate for preliquidation



374774

185 obligations;

186 d. Timely fund any other secured obligation; or

187 e. Timely pay expenses.

188 3. Claims that are validly asserted against the collateral  
189 must be satisfied in the order in which such claims are received  
190 by the receiver. However, if more than one creditor has a valid  
191 claim against the same collateral and the available collateral,  
192 along with billing collection efforts and to the extent that the  
193 collateral is subject to other known secured obligations, are  
194 together insufficient to pay each creditor in full, the receiver  
195 must prorate payments to each creditor based upon the  
196 relationship the amount of claims each creditor has paid bears  
197 to the total of all claims paid by all such creditors.

198 4. Excess collateral may be returned to the insured, as  
199 determined by the receiver, after a periodic review of claims  
200 paid, outstanding case reserves, and a factor for claims that  
201 were incurred but not reported.

202 (g) Receiver's expenses.—The receiver is entitled to deduct  
203 from the collateral or from the deductible reimbursements  
204 reasonable and actual expenses incurred in connection with the  
205 collection of the collateral and deductible reimbursements as  
206 provided pursuant to s. 631.271.

207 (h) Construction.—This subsection does not limit or  
208 adversely affect any rights or powers a guaranty association may  
209 have under applicable state law to obtain reimbursement from  
210 certain classes of policyholders for claims payments made by the  
211 guaranty association under policies of the insolvent insurer, or  
212 for related expenses the guaranty association incurs.

213



374774

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

215 And the title is amended as follows:

216 Delete line 55

217 and insert:

218 petition to certain claimants; amending s. 631.191,  
219 F.S.; defining terms; providing applicability;  
220 requiring that specified large deductible claims under  
221 certain workers' compensation policies must be turned  
222 over to the applicable responsible guaranty  
223 association for handling; providing for construction  
224 relating to payment of deductible claims; authorizing  
225 receivers to collect reimbursements owed for certain  
226 deductible claims; providing requirements for such  
227 collections; providing for construction relating to  
228 such collections; requiring receivers to use  
229 collateral, when available, to secure certain  
230 obligations; providing that a guaranty association is  
231 entitled to collateral for a certain purpose;  
232 providing for construction relating to certain  
233 distributions; requiring receivers to draw down  
234 collateral under certain circumstances; providing a  
235 procedure for payment of claims; authorizing the  
236 return of excess collateral under certain  
237 circumstances; providing that a receiver is entitled  
238 to deduct certain expenses from the collateral or  
239 deductible reimbursements; providing for construction;  
240 amending s. 631.192,

By Senator Passidomo

28-00632B-17

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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  
 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

Page 1 of 16

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

28-00632B-17

2017730\_\_

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. 631.192,  
 56           F.S.; prohibiting specified claims; amending s.  
 57           631.271, F.S.; adding and revising claims to a list  
 58           that establishes the priority of distribution of  
 59           claims from an insurer's estate; specifying when  
 60           interest on claims accrue and the interest rate  
 61           calculation; amending s. 631.391, F.S.; specifying

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62 that certain persons in relation to an insurer who  
 63 must cooperate with the department or office in  
 64 certain proceedings or investigations include present  
 65 or former roles; defining the term "person"; amending  
 66 s. 631.395, F.S.; requiring an order of liquidation to  
 67 authorize the release of certain claims files,  
 68 records, documents, or claims, rather than only copies  
 69 of the claims files, records, documents, or claims;  
 70 amending s. 631.397, F.S.; authorizing the department  
 71 as receiver to apply to the court for approval of a  
 72 specified proposal, rather than requiring the  
 73 department to make such application within a specified  
 74 timeframe; deleting a specified notice requirement of  
 75 the department; deleting a provision authorizing the  
 76 court to take action on the application under certain  
 77 circumstances; providing an effective date.

78  
 79 Be It Enacted by the Legislature of the State of Florida:

80  
 81 Section 1. Section 631.015, Florida Statutes, is amended to  
 82 read:

83 631.015 Reciprocity; treatment of policyholders.—  
 84 Reciprocity in the treatment of policyholders in receivership is  
 85 extended to those states which, in substance and effect, enact  
 86 the National Association of Insurance Commissioners  
 87 Rehabilitation and Liquidation Model Act, ~~or~~ the Uniform  
 88 Insurers Liquidation Act, or the Insurer Receivership Model Act.

89 Section 2. Section 631.021, Florida Statutes, is amended to  
 90 read:

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91 631.021 Jurisdiction of delinquency proceeding; venue;  
 92 change of venue; exclusiveness of remedy; appeal; construction.—

93 (1) The circuit court shall have original jurisdiction of  
 94 any delinquency proceeding under this chapter, and any court  
 95 with jurisdiction is authorized to make all necessary or proper  
 96 orders to carry out the purposes of this chapter. Any  
 97 delinquency proceeding in this chapter is in equity.

98 (2) The venue of a delinquency proceeding or summary  
 99 proceeding against a domestic, foreign, or alien insurer shall  
 100 be in the Circuit Court of Leon County.

101 (3) A delinquency proceeding pursuant to this chapter  
 102 constitutes the sole and exclusive method of liquidating,  
 103 rehabilitating, reorganizing, or conserving an insurer. A ~~No~~  
 104 court may not ~~shall~~ entertain a petition for the commencement of  
 105 such a proceeding unless the petition has been filed in the name  
 106 of the state on the relation of the department. The Florida  
 107 Insurance Guaranty Association, Incorporated, the Florida  
 108 Workers' Compensation Insurance Guaranty Association,  
 109 Incorporated, the Florida Health Maintenance Organization  
 110 Consumer Assistance Plan, and the Florida Life and Health  
 111 Guaranty Association, Incorporated, shall be given reasonable  
 112 written notice by the department of all hearings ~~that which~~  
 113 pertain to an adjudication of insolvency of a member insurer.

114 (4) An appeal shall lie to the District Court of Appeal,  
 115 First District, from an order granting or refusing  
 116 rehabilitation, liquidation, or conservation and from every  
 117 order in a delinquency proceeding having the character of a  
 118 final order as to the particular portion of the proceeding  
 119 embraced therein.

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120 (5) No service of process against the department in its  
 121 capacity as receiver shall be effective unless served upon a  
 122 person designated by the receiver and filed with the circuit  
 123 court having jurisdiction over the delinquency proceeding. The  
 124 designated person shall refuse to accept service if acceptance  
 125 would violate a stay against legal proceedings involving an  
 126 insurer that is the subject of delinquency proceedings or would  
 127 violate any orders of the circuit court governing a delinquency  
 128 proceeding. The person denied service may petition the circuit  
 129 court having jurisdiction over the delinquency proceeding for  
 130 relief from the receiver's refusal to accept service. This  
 131 subsection shall be strictly construed, and any purported  
 132 service on the receiver or the department that is not in  
 133 accordance with this subsection shall be null and void.

134 (6) The domiciliary court acquiring jurisdiction over  
 135 persons subject to this chapter may exercise exclusive  
 136 jurisdiction to the exclusion of all other courts, except as  
 137 limited by the provisions of this chapter. Upon the issuance of  
 138 an order of conservation, rehabilitation, or liquidation, the  
 139 Circuit Court of Leon County ~~has shall have~~ exclusive  
 140 jurisdiction over all with respect to assets or property of the  
 141 any insurer, wherever located, including property located  
 142 outside the territorial limits of the state subject to such  
 143 proceedings and claims against said insurer's assets or  
 144 property.

145 (7) This chapter constitutes this state's insurer  
 146 receivership laws, and these laws must be construed as  
 147 consistent with each other. If there is a conflict between this  
 148 chapter and any other law, this chapter prevails.

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149 Section 3. Subsections (3) and (4) are added to section  
 150 631.031, Florida Statutes, to read:

151 631.031 Initiation and commencement of delinquency  
 152 proceeding.-

153 (3) An insurer subject to an order to show cause entered  
 154 pursuant to this chapter must file its written response to the  
 155 order, together with any defenses it may have to the  
 156 department's allegations, no later than 20 days after service of  
 157 the order to show cause, but no less than 15 days before the  
 158 date of the hearing set by the order to show cause.

159 (4) A hearing held pursuant to this chapter to determine  
 160 whether cause exists for the department to be appointed receiver  
 161 must be commenced within 60 days after an order directing an  
 162 insurer to show cause.

163 Section 4. Subsection (1) of section 631.041, Florida  
 164 Statutes, is amended to read:

165 631.041 Automatic stay; relief from stay; injunctions.-

166 (1) An application or petition under s. 631.031 operates as  
 167 a matter of law as an automatic stay applicable to all persons  
 168 and entities, other than the receiver and the office, which  
 169 shall be permanent and survive the entry of an order of  
 170 conservation, rehabilitation, or liquidation, and which shall  
 171 prohibit:

172 (a) The commencement or continuation of judicial,  
 173 administrative, or other action or proceeding against the  
 174 insurer or against its assets or any part thereof;

175 (b) The enforcement of a judgment against the insurer or an  
 176 affiliate obtained either before or after the commencement of  
 177 the delinquency proceeding;

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178 (c) Any act to obtain possession of property of the  
179 insurer;

180 (d) Any act to create, perfect, or enforce a lien against  
181 property of the insurer, except that a secured claim as defined  
182 in s. 631.011(21) may proceed under s. 631.191 after the order  
183 of liquidation is entered;

184 (e) Any act to collect, assess, or recover a claim against  
185 the insurer, except claims as provided for under this chapter;  
186 and

187 (f) The setoff or offset of any debt owing to the insurer,  
188 except offsets as provided in s. 631.281.

189 Section 5. Present subsections (3) through (5) and (6)  
190 through (10) of section 631.141, Florida Statutes, are  
191 redesignated as subsections (4) through (6) and (8) through  
192 (12), respectively, new subsections (3) and (7) are added to  
193 that section, and present subsection (8) is amended, to read:

194 631.141 Conduct of delinquency proceeding; domestic and  
195 alien insurers.—

196 (3) The receiver may assume or reject any executory  
197 contract or unexpired lease of the insurer.

198 (7) The department as domiciliary receiver may pay any  
199 expenses under contracts, leases, employment agreements, or  
200 other arrangements entered into by the insurer before  
201 receivership as the department deems necessary for the purposes  
202 of this chapter. The department is not required to pay any such  
203 expenses that it determines are not necessary and may reject any  
204 contract pursuant to subsection (3).

205 (10)(8) The department as domiciliary receiver may take  
206 such action as it deems necessary or appropriate to reform and

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207 revitalize the insurer. The department shall have all the powers  
208 of the directors, officers, and managers, whose authority shall  
209 be suspended, except as they are redelegated by the receiver.  
210 The receiver shall have full power to direct and manage the  
211 affairs of the insurer, to hire and discharge employees, and to  
212 deal with the property and business of the insurer. In the event  
213 of the liquidation of an insurer domiciled in this state, and  
214 notwithstanding any provision of chapter 605, chapter 607,  
215 chapter 617, chapter 620, or chapter 621, all officers,  
216 directors, and managers of the insurer are permanently  
217 discharged and have no further authority of any kind over the  
218 affairs or assets of the insurer, except as may be redelegated  
219 by the department.

220 Section 6. Subsection (4) of section 631.152, Florida  
221 Statutes, is amended to read:

222 631.152 Conduct of delinquency proceeding; foreign  
223 insurers.—

224 (4) Paragraph 631.141(9)(b) Section 631.141(7)(b) applies  
225 to ancillary delinquency proceedings opened for the purpose of  
226 obtaining records necessary to adjudicate the covered claims of  
227 Florida policyholders.

228 Section 7. Section 631.1521, Florida Statutes, is created  
229 to read:

230 631.1521 Actions by and against the receiver.—

231 (1) An allegation by the receiver of improper or fraudulent  
232 conduct against any person may not be the basis of a defense by  
233 a third party to the enforcement of a contractual obligation  
234 owed to the insurer. This section does not bar a third party  
235 from the right to raise a defense that the conduct was

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236 materially and substantially related to the contractual  
 237 obligation for which enforcement is sought.

238 (2) A prior wrongful or negligent action of any present or  
 239 former officer, manager, director, trustee, owner, employee, or  
 240 agent of the insurer may not be asserted as a defense to a claim  
 241 by the receiver under a theory of estoppel, comparative fault,  
 242 intervening cause, proximate cause, reliance, mitigation of  
 243 damages, or otherwise. However, the affirmative defense of fraud  
 244 in the inducement may be asserted against the receiver in a  
 245 claim based on a contract; and a principal under a surety bond  
 246 or a surety undertaking is entitled to credit for the value of  
 247 any property pledged to secure the reimbursement obligation  
 248 against any reimbursement obligation to the receiver, to the  
 249 extent that the receiver has possession or control of the  
 250 property, or that the insurer or its agents misappropriated such  
 251 property, which includes, but is not limited to, the comingling  
 252 of such property. Evidence of fraud in the inducement is  
 253 admissible only if it is contained in the records of the  
 254 insurer.

255 (3) An action or inaction by an insurance regulatory  
 256 authority may not be asserted as a defense to a claim by the  
 257 department.

258 Section 8. Section 631.1522, Florida Statutes, is created  
 259 to read:

260 631.1522 Unrecorded obligations and defenses and claims of  
 261 affiliates.—

262 (1) In any proceeding or claim by the receiver, an  
 263 affiliate, a controlled or controlling person, or a present or  
 264 former officer, manager, director, trustee, or shareholder of

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265 the insurer may not assert any defense unless:

266 (a) Evidence of the defense was recorded in the books and  
 267 records of the insurer at or about the time the events giving  
 268 rise to the defense occurred; and

269 (b) If required by statutory accounting practices and  
 270 procedures, such events were timely reported on the insurer's  
 271 official financial statements filed with the office.

272 (2) An affiliate, a controlled or controlling person, or a  
 273 present or former officer, manager, director, trustee, or  
 274 shareholder of the insurer may not assert any claim unless:

275 (a) The obligations were recorded in the books and records  
 276 of the insurer at or about the time the obligations were  
 277 incurred; and

278 (b) If required by statutory accounting practices and  
 279 procedures, the obligations were timely reported on the  
 280 insurer's official financial statements filed with the office.

281 (3) This section does not bar claims based on unrecorded or  
 282 unreported transactions by the receiver against any affiliate,  
 283 controlled or controlling person, or present or former officer,  
 284 manager, director, trustee, or shareholder of the insurer.

285 Section 9. Paragraph (g) of subsection (2) and subsections  
 286 (4) and (5) are added to section 631.181, Florida Statutes, to  
 287 read:

288 631.181 Filing and proof of claim.—

289 (2)

290 (g) Upon application of the receiver:

291 1. The receivership court may allow alternative procedures  
 292 and requirements for the filing of proofs of claim or for  
 293 allowing or proving claims.

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294 2. If the receivership court waives the requirements of  
 295 filing a proof of claim for a person, class, or group of  
 296 persons, a timely proof of claim by such person, class, or group  
 297 is deemed to be filed for all purposes. However, the  
 298 receivership court may not waive guaranty association or  
 299 coverage determination proof of claim filing requirements, to  
 300 the extent that the guaranty fund statute or filing requirements  
 301 are inconsistent with the receivership court's waiver of proof.

302 (4) Notwithstanding any other provision of this chapter,  
 303 the receiver may petition the receivership court to set a date  
 304 certain after which no further claims may be filed.

305 (5) The receiver may petition the receivership court to set  
 306 a date certain before which all contingent or unliquidated  
 307 claims are final. In addition to the notice requirements in this  
 308 section, the receiver shall give notice of filing the petition  
 309 to all claimants with claims that remain contingent or  
 310 unliquidated under this section.

311 Section 10. Subsections (5) and (6) are added to section  
 312 631.192, Florida Statutes, to read:

313 631.192 Allowance of certain claims.—

314 (5) A claim under a policy of insurance may not be allowed  
 315 for an amount in excess of the applicable policy limits.

316 (6) A claim may not be allowed for postjudgment interest  
 317 accrued after the date of liquidation.

318 Section 11. Paragraphs (a), (b), (f), and (j) of subsection  
 319 (1) of section 631.271, Florida Statutes, are amended to read:

320 631.271 Priority of claims.—

321 (1) The priority of distribution of claims from the  
 322 insurer's estate shall be in accordance with the order in which

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323 each class of claims is set forth in this subsection. Every  
 324 claim in each class shall be paid in full or adequate funds  
 325 shall be retained for such payment before the members of the  
 326 next class may receive any payment. No subclasses may be  
 327 established within any class. The order of distribution of  
 328 claims shall be:

329 (a) Class 1.—

330 1. All of the receiver's costs and expenses of  
 331 administration.

332 2. All of the expenses of a guaranty association or foreign  
 333 guaranty association in handling claims.

334 3. All of the deputy supervisor's costs and expenses of  
 335 administration incurred as a result of administrative  
 336 supervision under part VI of chapter 624.

337 (b) Class 2.—All claims under policies for losses incurred,  
 338 including third-party claims, all claims against the insurer for  
 339 liability for bodily injury or for injury to or destruction of  
 340 tangible property which claims are not under policies, ~~and~~ all  
 341 claims of a guaranty association or foreign guaranty  
 342 association, all claims related to a patient's healthcare  
 343 coverage by physicians, hospitals, and other providers of a  
 344 health insurer or health maintenance organization, and all  
 345 claims of residents arising out of a continuing care contract  
 346 under chapter 651. All claims under life insurance and annuity  
 347 policies, whether for death proceeds, annuity proceeds, or  
 348 investment values, shall be treated as loss claims. That portion  
 349 of any loss, indemnification for which is provided by other  
 350 benefits or advantages recovered by the claimant, may not be  
 351 included in this class, other than benefits or advantages

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352 recovered or recoverable in discharge of familial obligations of  
353 support or by way of succession at death or as proceeds of life  
354 insurance, or as gratuities. No payment by an employer to her or  
355 his employee may be treated as a gratuity.

356 (f) Class 6.—Claims of general and other unsecured  
357 creditors, including claims against the insurer for punitive  
358 damages, bad faith, or wrongful settlement practices.

359 (j) Class 10.—Interest on allowed claims of Classes 1  
360 through 9. The rate of interest payable on an allowed claim must  
361 accrue from the date of liquidation until such claims are  
362 adjudicated. The interest rate must be calculated in accordance  
363 with s. 55.03, according to the terms of a plan to pay interest  
364 on allowed claims proposed by the liquidator and approved by the  
365 receivership court.

366 Section 12. Section 631.391, Florida Statutes, is amended  
367 to read:

368 631.391 Cooperation of officers and employees.—

369 (1) Any present or former officer, director, manager,  
370 trustee, agent, adjuster, employee, or independent contractor of  
371 any insurer or affiliate and any other person who possesses any  
372 executive authority over, or who exercises any control over, any  
373 segment of the affairs of the insurer or affiliate shall fully  
374 cooperate with the department and office in any proceeding under  
375 this chapter or any investigation preliminary or incidental to  
376 the proceeding. An order of rehabilitation or liquidation which  
377 results in the discharge or suspension of any of the persons  
378 listed above does not operate to release such person from the  
379 duty to cooperate with the department and office as set out  
380 herein. As used in this section, the term "person" includes any

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381 person who directly or indirectly exercises control over  
382 activities of the insurer through any holding company or other  
383 affiliate of the insurer. The term ~~to~~ "cooperate" includes, but  
384 is not limited to, the following:

385 (a) To reply promptly in writing to any inquiry from the  
386 department or office requesting such a reply;

387 (b) Promptly to make available and deliver to the  
388 department or office any books, accounts, documents, other  
389 records, information, data processing software, or property of  
390 or pertaining to the insurer and in her or his possession,  
391 custody, or control; or

392 (c) Promptly to provide access to all data processing  
393 records in hard copy and in electronic form and to data  
394 processing facilities and services.

395 (2) No person shall obstruct or interfere with the  
396 department or office in the conduct of any delinquency  
397 proceeding or any investigation preliminary or incidental  
398 thereto.

399 (3) This section does not prohibit any person from seeking  
400 legal relief from a court when aggrieved by the petition for  
401 liquidation or other delinquency proceeding or by other orders.

402 (4) Any person referred to in subsection (1) who fails to  
403 cooperate with the department or office, or any other person who  
404 obstructs or interferes with the department or office, in the  
405 conduct of any delinquency proceeding or any investigation  
406 preliminary or incidental thereto, is guilty of a misdemeanor of  
407 the first degree, punishable as provided in s. 775.082 or by  
408 fine of not more than \$10,000.

409 (5) Refusal by any person referred to in subsection (1) to

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410 provide records upon the request of the department or office is  
 411 grounds for revocation of any insurance-related license,  
 412 including, but not limited to, agent and third-party  
 413 administrator licenses.

414 (6) Any person referred to in subsection (1) who refuses to  
 415 cooperate in providing records upon the request of the  
 416 department or office is liable for any penalties, fines, or  
 417 other costs assessed against the guaranty association or the  
 418 receiver that result from the refusal or delay to provide  
 419 records.

420 Section 13. Section 631.395, Florida Statutes, is amended  
 421 to read:

422 631.395 Guaranty fund; orders of court.—Any order of  
 423 liquidation issued pursuant to s. 631.111 or s. 631.131 must  
 424 ~~shall~~ authorize and direct the department as receiver to  
 425 coordinate the operation of the receivership with the operation  
 426 of any insurance guaranty fund authorized to operate in this  
 427 state and may authorize the department to provide data  
 428 processing services for any appropriate guaranty fund. Such  
 429 authorization must shall include, but not be limited to, release  
 430 ~~of copies~~ of any of the following:

431 (1) Claims files, records, or documents pertaining to  
 432 claims on file with the insolvent insurer; and

433 (2) Insurance claims filed with the receiver.

434 Section 14. Subsections (1), (4), and (5) of section  
 435 631.397, Florida Statutes, are amended to read:

436 631.397 Use of certain marshaled assets.—

437 (1) ~~Within 120 days of a final determination of insolvency~~  
 438 ~~of an insurer by a court of competent jurisdiction of this~~

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439 ~~state,~~ The department, as receiver, may shall apply to the court  
 440 for approval of a proposal to disburse assets out of such  
 441 insurer's marshaled assets, as such assets become available, to  
 442 each association entitled thereto or, if there are no assets  
 443 available for such disbursement, then for approval of such  
 444 proposal as the receiver deems appropriate. For the purposes of  
 445 this section, the term "association" includes the Florida  
 446 Insurance Guaranty Association, Incorporated, the Florida  
 447 Workers' Compensation Insurance Guaranty Association, and any  
 448 entity or person performing a function in another state similar  
 449 to that performed in this state by the Florida Insurance  
 450 Guaranty Association, Incorporated, or the Florida Workers'  
 451 Compensation Insurance Guaranty Association, provided the  
 452 Florida Insurance Guaranty Association, Incorporated, or the  
 453 Florida Workers' Compensation Insurance Guaranty Association, is  
 454 entitled to like payment under the laws of the association's  
 455 state of domicile in respect to insolvent companies doing  
 456 business in that state.

457 ~~(4) Notice of such application shall be given by the~~  
 458 ~~department to the associations in, and to the commissioners of~~  
 459 ~~insurance of, each of the states to which disbursement may be~~  
 460 ~~made. Such notice shall be made by certified mail, first-class~~  
 461 ~~postage prepaid, at least 15 days prior to submission of such~~  
 462 ~~application to the court. Such notice shall be deemed to have~~  
 463 ~~been made when deposited in the mail.~~

464 ~~(5) Action on the application may be taken by the court if~~  
 465 ~~notice has been given pursuant to subsection (4) and the~~  
 466 ~~department's proposal complies with subsection (2).~~

467 Section 15. This act shall take effect July 1, 2017.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/5/17  
Meeting Date

730  
Bill Number (if applicable)  
374774  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Robert Reyes

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

Address 325 W. College Av  
Street

Phone 850 509 1802

DA 11 3230  
City State Zip

Email RReyes@capitolgrp.com

Speaking:  For  Against  Information

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

Representing FL Workers Compensation Insurance Guaranty 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.

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-6-17

Meeting Date

SB 730

Bill Number (if applicable)

Topic Insurer Insolvency

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Director, Legislative Affairs

Address 400 N Monroe St  
Street

Phone 850 413-2829

Tallahassee FL 32399  
City State Zip

Email elizabeth.boyd@myflorida.com

Speaking:  For  Against  Information

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

Representing CFG Attwater

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)

3/5/17  
Meeting Date

730  
Bill Number (if applicable)  
374774  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Robert Reyes

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

Address 325 W. College Av  
Street

Phone 850-509-1802

TA 11 3230  
City State Zip

Email Rreyes@capitolgrp.com

Speaking:  For  Against  Information

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

Representing FL Workers Compensation Insurance Guaranty 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.

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



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

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

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

---

BILL: CS/SB 736

INTRODUCER: Banking and Insurance Committee and Senators Mayfield and Steube

SUBJECT: International Financial Institutions

DATE: March 6, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			AGG	
3.			AP	
4.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

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 ch. 663, F.S.

## 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.<sup>1</sup> 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).<sup>2</sup>

#### *International Banking Corporations*

The OFR licenses and regulates international banking corporations<sup>3</sup> that transact business in Florida.<sup>4</sup> 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.<sup>5</sup> 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"<sup>6</sup> 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

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<sup>1</sup> See [http://bus.miami.edu/magazine/fall2014/features/miami\\_the\\_global\\_hub.html](http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html) (Fall 2014) (last viewed Feb. 27, 2017).

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Sections 663.04 and 663.05, F.S.

<sup>5</sup> Section 663.06(1), F.S.

<sup>6</sup> Section 655.005(i), F.S.

administrative offices, nine international bank agencies, six international representative offices, and six international bank branches were licensed with the OFR.<sup>7</sup> 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.<sup>8</sup>

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;<sup>9</sup>
- 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.<sup>10</sup> 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

<sup>7</sup> Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited February 25, 2017).

<sup>8</sup> 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).

<sup>9</sup> 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*.

<sup>10</sup> 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.

and commercial paper.<sup>11</sup> An international branch has the same rights and privileges as a federally licensed international branch.<sup>12</sup>

***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.<sup>13</sup> 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.<sup>14</sup>

***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.<sup>15</sup> 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.<sup>16</sup> 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).<sup>17</sup>

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

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<sup>11</sup> Section 663.061, F.S.

<sup>12</sup> Section 663.064, F.S.

<sup>13</sup> Section 663.062, F.S.

<sup>14</sup> Section 663.063, F.S.

<sup>15</sup> 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.

<sup>16</sup> Section 663.01(9), F.S.

<sup>17</sup> Section 663.0625, F.S.

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 - 19** amend ss. 655.005 and 655.059, F.S., and provisions relating to the regulation of international banking corporations in part I of ch. 663, F.S., respectively. In addition, technical conforming changes are made to transfer provisions relating to the regulation of offices of international trust entities and ITCROs to the newly created part III of ch. 663, F.S., and to create the regulation of limited service affiliates in the newly created part IV of ch. 663, F.S. Other technical changes are provided. 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. The definition of the term, “financial institution,” is expanded to include an international trust entity and a limited service affiliate, which are located in the newly created parts III and IV. The definition of the term “international banking corporation” is revised 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 2** allows 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-country supervisor,” fulfill a similar function to the 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 7** reduces the time that an international institution must wait to qualify for licensure after experiencing certain changes in status or control (ex.: bankruptcy or government intervention such as bailouts) from 7 to 3 years. The section further provides the OFR with the discretion to allow 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. 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** 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. Technical, conforming changes are provided.

**Section 9** 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. Currently, the 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 11** authorizes the OFR to implement an after-the-fact licensure process in the event of the acquisition, merger, or consolidation of international banking corporations.<sup>18</sup> 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

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<sup>18</sup> This provision is modeled after federal regulations [12 C.F.R. s. 211.24(6)].

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** 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.

**Sections 13-15** clarify the permissible activities of offices of an IBC. Section 13 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 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 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** 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 to be translated into English at the expense of the international banking corporation.

**Section 17** would 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 (ex.: bankruptcy or government intervention such as bailouts). This change may allow continuity of operations as operations in the home country institution are being resolved.

### **Regulation of International Trust Entities and ITCROs**

**Sections 20 - 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 22** 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** 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** 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** 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 (ex.: bankruptcy or government intervention such as bailouts). Currently, the license of an ITCRO is terminated if the home country institution experiences one of these events. This change will ensure continuity of operations as issues in the home country institution are resolved.

**Section 26** 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** 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 provides the OFR with the discretion to allow an ITCRO to remain open and in operation while the international trust entity is experiencing certain types of status or control. Currently, if an international banking corporation, the definition of which encompasses an ITCRO, 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 that entity may no longer transact any banking or trust business or maintain any office in Florida to carry on such business. This provision would provide continuity of operations as issues in the home country institution are addressed. The bill provides similar flexibility for international banking corporations (Section 7). The section maintains parity between international trust company representative offices and the Florida offices of an international banking corporation.



**Section 28** authorizes the OFR to adopt a risk-based approach for capital requirements of international trust entities rather than the same minimum amount for all entities. Currently, ITCROs are addressed in s. 663.055, F.S., of part I, which requires the home country institution to meet a minimum a \$20 million capital requirement in order to establish a representative office.

**Section 29** 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** 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 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** 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** 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** authorizes the commission to adopt for the administration of part III. This section also provides an exemption to the applicability of ss. 120.54(3)(b) and 120.541, F.S., requiring 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 - 48** create part IV of ch. 663 (ss. 663.530 - 663.540, F.S.) to establish the regulatory framework for limited service affiliates 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 definitions for part IV. The term, “limited service affiliate,” is defined 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** specifies the permissible activities of a limited service affiliate. Permissible activities include marketing and liaison activities, advertising and marketing at trade events, and transmitting documents between affiliated international trust entities and their clients. Descriptions of impermissible activities are provided and include acting as a fiduciary, advertising to the public, and otherwise engaging in banking or trust business. Guidance for permissible website usage and mandatory disclosure are prescribed. The OFR is authorized to enforce the chapter through the remedies and penalties available to it through the financial institutions codes.

**Section 41** requires 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 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 LSA or issue a denial with notice of ch. 120, F.S., rights for denied applicants. The OFR is authorized 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 must apply for registration as LSA on or before March 31, 2018, or cease doing business in Florida. An entity that previously qualified under the moratorium in s. 663.041, F.S., must register as a LSA or cease doing business in Florida.

**Sections 42 and 46** provide applicability of the financial institutions codes. This provision 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.

The OFR is authorized 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. The commission is authorized to adopt rules to define the procedure for payment of the examination fees. All fees must be deposited into the Financial Institutions’ Regulatory Trust Fund for administering part IV.

**Section 43** requires registrants to report any changes in the information provided to the OFR during registration.

**Section 44** 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. 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 thus further deters impermissible activities and puts the consumer on notice of which activities are impermissible.

**Section 45** 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 47** 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 48** requires renewal of registrations every 2 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 49** provides that a LSA is not required to produce certain books and records pertaining to a customer of an affiliated 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 is not in the possession or control of the affiliated LSA with exceptions. Parts I and III have the same provision applicable to international banking corporations and ITCROs, respectively.

**Section 50** reenacts subsection (4) of section 663.16, F.S., to incorporate an amendment to s. 663.01, F.S.

**Section 51** 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 OFR states that it can maintain regulatory oversight with current staffing levels.<sup>19</sup> The bill creates regulatory fees and fines.

**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.

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<sup>19</sup> Office of Financial Regulation, *2017 Legislative Bill Analysis of SB 736* (on file with Senate Committee on Banking and Insurance).

**IX. Additional Information:**

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

**CS by Banking and Insurance on March 6, 2017:**

The CS clarifies the registration process for limited service affiliates (LSAs) and the OFR'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 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.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Mayfield) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 1674 - 2015

and insert:

otherwise related to the operation of a financial institution and caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the financial institution;

(i) A declaration under penalty of perjury, signed by the executive officer or managing member of the proposed registrant,



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11 that, to the best of his or her knowledge:

12 1. No financial institution-affiliated party of the  
13 proposed registrant or financial institution-affiliated party of  
14 any affiliated international trust entity:

15 a. Has been fined or sanctioned as a result of a complaint  
16 to the office or any other state or federal regulatory agency;

17 b. Has been convicted of a felony; or

18 c. Has been ordered to pay a fine or penalty within the  
19 prior 10 years in a proceeding initiated by a federal, state,  
20 foreign, or local law enforcement agency or an international  
21 agency which is related to money laundering, currency  
22 transaction reporting, tax evasion, facilitating or furthering  
23 terrorism, fraud, theft, larceny, embezzlement, fraudulent  
24 conversion, misappropriation of property, dishonesty, breach of  
25 trust, breach of fiduciary duty, moral turpitude, or which is  
26 otherwise related to the operation of a financial institution  
27 and is related to any offense that caused or is likely to cause  
28 more than a minimal financial loss to, or a significant adverse  
29 effect on, the financial institution.

30 2. No financial institution-affiliated party of the  
31 proposed registrant:

32 a. Provides, or will provide, banking services; promotes or  
33 sells, or will promote or sell, investments; or accepts, or will  
34 accept, custody of assets; and

35 b. Acts, or will act, as a fiduciary in this state, which  
36 includes, but is not limited to, accepting the fiduciary  
37 appointment, executing the fiduciary documents that create the  
38 fiduciary relationship, or making discretionary decisions  
39 regarding the investment or distribution of fiduciary accounts.



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40           3. The jurisdiction of the international trust entity or  
41 its offices, subsidiaries, or any affiliates that are directly  
42 involved in or facilitate the financial services functions,  
43 banking, or fiduciary activities of the international trust  
44 entity is not listed on the Financial Action Task Force Public  
45 Statement or on its list of jurisdictions with deficiencies in  
46 anti-money laundering or counterterrorism;

47           (j) For each international trust entity that the proposed  
48 registrant will provide services for in this state, the  
49 following:

50           1. The name of the international trust entity;

51           2. A list of the current officers and directors of the  
52 international trust entity;

53           3. Any country where the international trust entity is  
54 organized or authorized to do business;

55           4. The name of the home-country regulator;

56           5. Proof that the international trust entity has been  
57 authorized by charter, license, or similar authorization by its  
58 home-country regulator to engage in trust business;

59           6. Proof that the international trust entity lawfully  
60 exists and is in good standing under the laws of the  
61 jurisdiction where it is chartered, licensed, or organized;

62           7. A statement that the international trust entity is not  
63 in bankruptcy, conservatorship, receivership, liquidation, or a  
64 similar status under the laws of any country;

65           8. Proof that the international trust entity is not  
66 operating under the direct control of the government or the  
67 regulatory or supervisory authority of the jurisdiction of its  
68 incorporation, through government intervention or any other





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69 extraordinary actions, and confirmation that it has not been in  
70 such a status or under such control at any time within the prior  
71 3 years;

72 9. Proof and confirmation that the proposed registrant is  
73 affiliated with the international trust entities provided in the  
74 notice; and

75 10. Proof that the jurisdictions where the international  
76 trust entity or its offices, subsidiaries, or any affiliates  
77 that are directly involved in or that facilitate the financial  
78 services functions, banking, or fiduciary activities of the  
79 international trust entity are not listed on the Financial  
80 Action Task Force Public Statement or on its list of  
81 jurisdictions with deficiencies in anti-money laundering or  
82 counterterrorism; and

83 (k) A declaration under penalty of perjury, signed by an  
84 executive officer or managing member of each affiliated  
85 international trust entity, declaring that the information  
86 provided to the office is true and correct to the best of his or  
87 her knowledge.

88  
89 The proposed registrant may provide additional information in  
90 the form of exhibits when attempting to satisfy any of the  
91 registration requirements. All information that the proposed  
92 registrant desires to present to support the written notice must  
93 be submitted with the notice.

94 (2) The office may request additional information as the  
95 office reasonably requires. Any request for additional  
96 information must be made by the office within 30 days after  
97 initial receipt of the written notice and the full amount of the



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98 fee specified in subsection (1). Additional information must be  
99 submitted within 60 days after a request has been made by the  
100 office. Failure to respond to such request within 60 days after  
101 the date of the request is a ground for denial of the  
102 registration. A notice is not deemed complete until all  
103 requested information has been submitted to the office. Upon  
104 deeming the notice complete, the office has 120 days to register  
105 the limited service affiliate or issue a denial. An order  
106 denying a registration must contain notice of opportunity for a  
107 hearing pursuant to ss. 120.569 and 120.57.

108 (3) A registration under this part must be summarily  
109 suspended by the office if the limited service affiliate made a  
110 material false statement in the written notice. The summary  
111 suspension must remain in effect until a final order is entered  
112 by the office. For purposes of s. 120.60(6), a material false  
113 statement made in the limited service affiliate's written notice  
114 constitutes an immediate and serious danger to the public  
115 health, safety, and welfare. If a limited service affiliate made  
116 a material false statement in the written notice, the office  
117 must enter a final order revoking the registration and may  
118 impose a fine as prescribed by s. 655.041 or issue an order of  
119 suspension, removal, or prohibition under s. 655.037 to a  
120 financial institution-affiliated party of the limited service  
121 affiliate.

122 (4) Any instance in which a director, executive officer,  
123 principal shareholder, manager, or the equivalent has ever been  
124 arrested for, charged with, convicted of, or pled guilty or nolo  
125 contendere to, regardless of adjudication, any offense that  
126 involves money laundering, currency transaction reporting, tax



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127 evasion, facilitating or furthering terrorism, fraud, theft,  
128 larceny, embezzlement, fraudulent conversion, misappropriation  
129 of property, dishonesty, breach of trust, breach of fiduciary  
130 duty, or moral turpitude, or that is otherwise related to the  
131 operation of a financial institution and caused or is likely to  
132 cause more than a minimal financial loss to, or a significant  
133 adverse effect on, the financial institution, is a ground for  
134 denial of the registration.

135 (5) The existence of any previous violation, fine, or  
136 penalty of a financial institution-affiliated party of a limited  
137 service affiliate or the affiliated international trust entity  
138 does not necessarily disqualify a registrant under this part.  
139 When evaluating a registration, the office may consider factors  
140 reasonably related to the violation, fine, or penalty, such as  
141 mitigating factors, a history of multiple violations, the  
142 severity of the offense, and a showing of rehabilitation.

143 (6) A registration is not transferable or assignable.

144 (7) Fees collected under this section must be submitted in  
145 the manner prescribed by the commission and must be deposited  
146 into the Financial Institutions' Regulatory Trust Fund pursuant  
147 to s. 655.049 for the purpose of administering this part.

148 (8) A person or entity in operation as of January 1, 2018,  
149 which meets the definition of a limited service affiliate under  
150 s. 663.530 must, on or before March 31, 2018, apply for  
151 registration as a limited service affiliate or cease doing  
152 business in this state.

153 (9) No later than March 31, 2018, a person or entity that  
154 previously qualified under the moratorium in s. 663.041 must  
155 register under this part or cease doing business in this state.



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156 A person or entity that previously qualified under the  
157 moratorium in s. 663.041 may remain open and in operation until  
158 March 31, 2018, without registering under this part, but shall  
159 refrain from engaging in new lines of business in this state  
160 until the disposition of registration under this part.

161 Section 42. Section 663.533, Florida Statutes, is created  
162 to read:

163 663.533 Applicability of the financial institutions codes.—

164 A limited service affiliate is subject to the financial  
165 institutions codes. Without limiting the foregoing, the  
166 following provisions are applicable to a limited service  
167 affiliate:

168 (1) Section 655.012, relating to general supervisory powers  
169 of the office.

170 (2) Section 655.031, relating to administrative enforcement  
171 guidelines.

172 (3) Section 655.032, relating to investigations, subpoenas,  
173 hearings, and witnesses.

174 (4) Section 655.0321, relating to restricted access to  
175 certain hearings, proceedings, and related documents.

176 (5) Section 655.033, relating to cease and desist orders.

177 (6) Section 655.034, relating to injunctions.

178 (7) Section 655.037, relating to removal of a financial  
179 institution-affiliated party by the office.

180 (8) Section 655.041, relating to administrative fines and  
181 enforcement.

182 (9) Section 655.057, relating to restrictions on access to  
183 public records.

184 (10) Section 655.059, relating to access to books and



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185 records.

186 (11) Section 655.0591, relating to trade secret documents.

187 (12) Section 655.91, relating to records of institutions  
188 and copies thereof; retention and destruction.

189 (13) Section 655.968, relating to financial institutions;  
190 transactions relating to Iran or terrorism.

191

192 This section does not prohibit the office from investigating or  
193 examining an entity to ensure that it is not in violation of  
194 this chapter or applicable provisions of the financial  
195 institutions codes.

196 Section 43. Section 663.534, Florida Statutes, is created  
197 to read:

198 663.534 Events that require notice to be provided to the  
199 office.—A registrant must report to the office, within 15 days  
200 of its knowledge of the occurrence, any changes to the  
201 information previously relied upon by the office when  
202 registering or renewing a registration under this part.

203 Section 44. Section 663.535, Florida Statutes, is created  
204 to read:

205 663.535 Notice to customers.—All marketing documents and  
206 advertisements and any display at the location of the limited  
207 service affiliate or at any trade or marketing event must  
208 contain the following statement in a contrasting color in at  
209 least 10-point type: "The Florida Office of Financial Regulation  
210 DOES NOT provide safety and soundness oversight of this company,  
211 does not provide any opinion as to any affiliated companies or  
212 products, and does not provide the oversight of this company's  
213 affiliated international trust entities or the jurisdictions



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214 within which they operate. This company may not act as a  
215 fiduciary and may not accept the fiduciary appointment, execute  
216 or transmit fiduciary documents, take possession of any assets,  
217 create a fiduciary relationship, make discretionary decisions  
218 regarding the investment or distribution of fiduciary accounts,  
219 provide banking services, or promote or sell investments."

220 Section 45. Section 663.536, Florida Statutes, is created  
221 to read:

222 663.536 Recordkeeping requirements for trade, industry, or  
223 professional events.—A registrant registered only under this  
224 part who participates in a trade, industry, or professional  
225 event pursuant to s. 663.531 must keep a record of its  
226 participation in the event. The record must be maintained for at  
227 least 2 years following the event and must contain the following  
228 information:

229 (1) The date, time, and location of the event;

230 (2) To the extent known or available, a list of  
231 participants in the event, including other vendors, presenters,  
232 attendees, and targeted attendees;

233 (3) The nature and purpose of the event;

234 (4) The registrant's purpose for participating in the  
235 event; and

236 (5) Samples of materials or, when samples are unavailable,  
237 descriptions of materials provided by the registrant to  
238 attendees and other participants.

239 Section 46. Section 663.537, Florida Statutes, is created  
240 to read:

241 663.537 Examination or investigation of a limited service  
242 affiliate.—



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243       (1) The office may conduct an examination or investigation  
244 of a limited service affiliate at any time that it deems  
245 necessary to determine whether the limited service affiliate or  
246 financial institution-affiliated party thereof has violated, or  
247 is about to violate, any provision of this chapter, any  
248 applicable provision of the financial institutions codes, or any  
249 rule adopted by the commission pursuant to this chapter or the  
250 financial institutions codes. The office shall conduct an  
251 examination of each limited service affiliate at least once  
252 every 18 months to assess compliance with this part and the  
253 financial institutions codes. The office may conduct an  
254 examination, before or after registration, of any person or  
255 entity that submits a notice for registration to confirm  
256 information provided in the registration filing and to confirm  
257 the activities of the person or entity seeking registration.

258       (2) For each examination of a limited service affiliate  
259 authorized under this part, the limited service affiliate shall  
260 pay a fee for the costs of the examination by the office. As  
261 used in this section, the term "costs" means the salary and  
262 travel expenses of fieldstaff which are directly attributable  
263 to the examination of the registrant and the travel expenses of  
264 any supervisory and support staff required as a result of  
265 examination findings. The costs of examination must be  
266 determined as follows:

267       (a) The office shall charge each limited service affiliate  
268 in this state an examination fee equal to the actual cost of  
269 each examiner's participation during each examination of such  
270 limited service affiliate. The examination fee must equal the  
271 actual cost of the examination, but such fees, inclusive of



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272 travel expenses and other incidental expenses, may not be less  
273 than \$200 per day for each examiner participating in the  
274 examination.

275 (b) As used in this section, the term "actual cost" means  
276 the direct salary, excluding employee benefits; travel expenses;  
277 and other incidental expenses required as a result of the  
278 examination staff's onsite and offsite examination of the  
279 limited service affiliate. In addition, the term includes the  
280 travel expenses of any supervisory staff required as a result of  
281 examination findings.

282 (3) All examination fee payments must be received within 30  
283 days after receipt of an invoice from the office and must be  
284 submitted in a manner prescribed by the commission. The office  
285 may levy a late fee of up to \$100 per day that a payment is  
286 overdue, unless waived by the office for good cause. However, if  
287 the late payment of costs is intentional, the office may levy an  
288 administrative fine of up to \$1,000 per day for each day the  
289 payment is overdue.

290 (4) All fees collected under this section must be submitted  
291 in the manner prescribed by the commission and must be deposited  
292 into the Financial Institutions' Regulatory Trust Fund pursuant  
293 to s. 655.049 for the purpose of administering this part.

294 Section 47. Section 663.538, Florida Statutes, is created  
295 to read:

296 663.538 Suspension, revocation, or voluntary surrender of  
297 registration.—

298 (1) A registrant that proposes to terminate operations in  
299 this state shall surrender its registration to the office and  
300 comply with such procedures as required by rule of the





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301 commission.

302 (2) A registrant that fails to renew its registration may  
303 be subject to a fine and penalty; however, such registrant may  
304 renew its registration within 30 days after expiration or may  
305 surrender the registration in accordance with procedures  
306 prescribed by commission rule.

307 (3) The registration of a limited service affiliate in this  
308 state may be suspended or revoked by the office, with or without  
309 examination, upon the office's determination that the registrant  
310 does not meet all requirements for original or renewal  
311 registration.

312 (4) If a registrant surrenders its registration or its  
313 registration is suspended or revoked by the office, all rights  
314 and privileges afforded by this part to the registered limited  
315 service affiliate cease.

316 (5) At least 60 days before a proposed date of voluntary  
317 termination of a registration, a registrant must provide to the  
318 office written notice by letter of its intention to surrender  
319 its registration and terminate operations. The notice must  
320 include the proposed date of termination and the name of the  
321 officer in charge of the termination procedures.

322 (6) The office may conduct an examination of the books and  
323 records of a limited service affiliate at any time after receipt  
324 of the notice of surrender of registration to confirm the  
325 winding down of operations.

326 (7) Operations of a registrant are deemed terminated  
327 effective upon the later of the expiration of 60 days from the  
328 date of the filing of the notice of voluntary surrender or upon  
329 the date provided in the notice of voluntary surrender, unless



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330 the office provides written notice specifying the grounds for  
331 denial of such proposed termination. The office may not deny a  
332 request to terminate unless it learns of the existence of any  
333 outstanding claim or claims against the registrant, it finds  
334 that the requirements to terminate operations have not been  
335 satisfied, or there is an immediate and serious danger to the  
336 public health, safety, and welfare if the termination occurred.

337 Section 48. Section 663.539, Florida Statutes, is created  
338 to read:

339 663.539 Biennial registration renewal.—A registration must  
340 be renewed every 2 years. A registration must be renewed by  
341 furnishing such information as the commission requires, together  
342 with payment of a \$500 nonrefundable renewal fee. All fees  
343 received by the office pursuant to this section must be  
344 submitted in the manner prescribed by the commission and must be  
345 deposited into the Financial Institutions' Regulatory Trust Fund  
346 pursuant to s. 655.049 for the purpose of administering this  
347 part. A complete biennial renewal of registration must include a  
348 declaration under penalty of perjury, signed by the executive  
349 officer or managing member of the registrant, declaring that the  
350 information submitted for the purposes of renewal is true and  
351 correct to the best of his or her knowledge, and confirming or  
352 providing all of the following:

353 (1) That the registrant is in compliance with this part.

354 (2) The physical location of the principal place of  
355 business of the registrant.

356 (3) The telephone number of the registrant.

357 (4) A list of current financial institution-affiliated  
358 parties operating under the registration to be renewed.



359       (5) Any updates or changes in information which were not  
360 previously provided either in the initial registration or in  
361 subsequent registration renewals or which were not previously  
362 disclosed to the office.

363       Section 49. Section 663.5395, Florida Statutes, is created  
364 to read:

365       663.5395 Civil action subpoena enforcement.-

366       (1) Notwithstanding s. 655.059, a limited service affiliate  
367 established under this chapter is not required to produce a book  
368 or record pertaining to a customer of an affiliated  
369 international trust entity that is located outside the United  
370 States or its territories in response to a subpoena if the book  
371 or record is maintained outside the United States or its  
372 territories and is not in the possession, custody, or control of  
373 the affiliated limited service affiliate established in this  
374 state.

375       (2) This section applies only to a subpoena issued pursuant  
376 to the Florida Rules of Civil Procedure, the Federal Rules of  
377 Civil Procedure, or other similar law or rule of civil procedure  
378 in another state or territory of the United States. This section  
379 does not apply to a subpoena issued by or on behalf of a  
380 federal, state, or local government law enforcement agency,  
381 administrative or regulatory agency, legislative body, or grand  
382 jury and does not limit the power of the office to access all  
383 books and records in the exercise of the office's regulatory and  
384 supervisory powers under the financial institutions codes.

385  
386 ===== T I T L E   A M E N D M E N T =====

387 And the title is amended as follows:



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388 Delete lines 167 - 208  
389 and insert:  
390 registration; providing that violations, fines, or  
391 penalties of certain entities do not necessarily  
392 disqualify registrants from registration; authorizing  
393 the office to consider certain factors in evaluating  
394 registrations; providing that registrations are not  
395 transferable or assignable; providing for deposit of  
396 fees into a specified trust fund; requiring the  
397 commission to adopt rules; requiring certain persons  
398 or entities to be registered as limited service  
399 affiliates by a specified date; creating s. 663.533,  
400 F.S.; providing applicability of the financial  
401 institutions codes as to limited service affiliates;  
402 providing construction; creating s. 663.534, F.S.;  
403 requiring a registrant to report changes of certain  
404 information to the office within a specified  
405 timeframe; creating s. 663.535, F.S.; requiring a  
406 specified notice to customers in marketing documents,  
407 advertisements, and displays at the limited service  
408 affiliate's location or at certain events; creating s.  
409 663.536, F.S.; specifying recordkeeping requirements  
410 relating to certain events that a registered limited  
411 service affiliate participates in; creating s.  
412 663.537, F.S.; authorizing the office to conduct  
413 examinations or investigations of limited service  
414 affiliates for certain purposes; specifying a minimum  
415 interval of examinations to assess compliance;  
416 authorizing the office to examine a person or entity



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417 submitting a notice of registration for certain  
418 purposes; requiring limited service affiliates to pay  
419 specified costs of examination within a specified  
420 time; defining the terms "costs" and "actual cost";  
421 providing penalties; specifying the trust fund where  
422 examination fees must be deposited; requiring the  
423 commission to adopt rules; creating s. 663.538, F.S.;  
424 providing requirements and procedures relating to the  
425 suspension, revocation, or voluntary surrender of a  
426 limited service affiliate's registration; providing a  
427 penalty; authorizing the office to conduct  
428 examinations under certain circumstances; prohibiting  
429 the office from denying a request to terminate  
430 operations except under certain circumstances;  
431 providing construction; creating s. 663.539, F.S.;  
432 requiring a limited service affiliate to renew its  
433 registration biennially; specifying the renewal fee  
434 and the trust fund where such fee must be deposited;  
435 specifying requirements for the renewal registration;  
436 creating s. 663.5395, F.S.; providing that limited  
437 service affiliates are not required to produce certain  
438 books and records under certain circumstances;  
439 providing applicability;

By Senator Mayfield

17-00475A-17

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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  
 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

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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  
 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

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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  
 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

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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.  
 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

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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  
 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

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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 registrations are not  
 168 transferable or assignable; providing for deposit of  
 169 fees into a specified trust fund; requiring the  
 170 commission to adopt rules; requiring certain persons  
 171 or entities to be registered as limited service  
 172 affiliates by a specified date; creating s. 663.533,  
 173 F.S.; providing applicability of the financial  
 174 institutions codes as to limited service affiliates;  
 175 providing construction; creating s. 663.534, F.S.;  
 176 requiring a registrant to report changes of certain  
 177 information to the office within a specified

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178 timeframe; creating s. 663.535, F.S.; requiring a  
 179 specified notice to customers in marketing documents,  
 180 advertisements, and displays at the limited service  
 181 affiliate's location or at certain events; creating s.  
 182 663.536, F.S.; specifying recordkeeping requirements  
 183 relating to certain events that a registered limited  
 184 service affiliate participates in; creating s.  
 185 663.537, F.S.; authorizing the office to conduct  
 186 examinations or investigations of limited service  
 187 affiliates for certain purposes; specifying a minimum  
 188 interval of examinations to assess compliance;  
 189 authorizing the office to examine a person or entity  
 190 submitting a notice of registration for certain  
 191 purposes; requiring limited service affiliates to pay  
 192 specified costs of examination within a specified  
 193 time; defining the terms "costs" and "actual cost";  
 194 providing penalties; specifying the trust fund where  
 195 examination fees must be deposited; requiring the  
 196 commission to adopt rules; creating s. 663.538, F.S.;  
 197 providing requirements and procedures relating to the  
 198 suspension, revocation, or voluntary surrender of a  
 199 limited service affiliate's registration; providing a  
 200 penalty; authorizing the office to conduct  
 201 examinations under certain circumstances; prohibiting  
 202 the office from denying a request to terminate  
 203 operations except under certain circumstances;  
 204 providing construction; creating s. 663.539, F.S.;  
 205 requiring a limited service affiliate to renew its  
 206 registration biennially; specifying the renewal fee

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207 and the trust fund where such fee must be deposited;  
 208 specifying requirements for the renewal registration;  
 209 reenacting s. 663.16(4), F.S., relating to  
 210 definitions, to incorporate the amendment made to s.  
 211 663.01, F.S., in a reference thereto; providing an  
 212 effective date.

213  
 214 Be It Enacted by the Legislature of the State of Florida:

215  
 216 Section 1. Paragraph (i) of subsection (1) of section  
 217 655.005, Florida Statutes, is amended to read:

218 655.005 Definitions.—

219 (1) As used in the financial institutions codes, unless the  
 220 context otherwise requires, the term:

221 (i) "Financial institution" means a state or federal  
 222 savings or thrift association, bank, savings bank, trust  
 223 company, international bank agency, international banking  
 224 corporation, international branch, international representative  
 225 office, international administrative office, international trust  
 226 entity, international trust company representative office,  
 227 limited service affiliate, credit union, or an agreement  
 228 corporation operating pursuant to s. 25 of the Federal Reserve  
 229 Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized  
 230 pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss.  
 231 611 et seq.

232 Section 2. Subsection (1) and paragraph (b) of subsection  
 233 (2) of section 655.059, Florida Statutes, are amended to read:

234 655.059 Access to books and records; confidentiality;  
 235 penalty for disclosure.—

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236 (1) The books and records of a financial institution are  
 237 confidential and shall be made available for inspection and  
 238 examination only:

239 (a) To the office or its duly authorized representative;

240 (b) To any person duly authorized to act for the financial  
 241 institution;

242 (c) To any federal or state instrumentality or agency  
 243 authorized to inspect or examine the books and records of an  
 244 insured financial institution;

245 (d) With respect to an international banking corporation or  
 246 international trust entity, to the home-country supervisor of  
 247 the international banking corporation or international trust  
 248 entity, provided:

249 1. The home-country supervisor provides advance notice to  
 250 the office that the home-country supervisor intends to examine  
 251 the Florida office of the international banking corporation or  
 252 international trust entity. Such examination may be conducted  
 253 onsite or offsite and may include ongoing reporting by the  
 254 Florida office of the international banking corporation or  
 255 international trust entity to the home-country supervisor.

256 2. The home-country supervisor confirms to the office that  
 257 the purpose of the examination is to ensure the safety and  
 258 soundness of the international banking corporation or  
 259 international trust entity.

260 3. The books and records pertaining to customer deposit,  
 261 investment, ~~and~~ custodial, and trust accounts are not disclosed  
 262 to the home-country supervisor.

263 4. At any time during the conduct of the examination, the  
 264 office reserves the right to have an examiner present, ~~or~~ to

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265 participate jointly in the examination, or to receive copies of  
 266 all information provided to the home-country supervisor.

267  
 268 ~~As used in For purposes of~~ this paragraph, the term "home-  
 269 country supervisor" means the governmental entity in the  
 270 international banking corporation's or international trust  
 271 entity's home country with responsibility for the supervision  
 272 and regulation of the safety and soundness of the international  
 273 banking corporation or international trust entity;

274 (e) As compelled by a court of competent jurisdiction,  
 275 pursuant to a subpoena issued pursuant to the Florida Rules of  
 276 Civil Procedure, the Florida Rules of Criminal Procedure, or the  
 277 Federal Rules of Civil Procedure, or pursuant to a subpoena  
 278 issued in accordance with state or federal law. ~~Before~~ ~~Prior to~~  
 279 the production of the books and records of a financial  
 280 institution, the party seeking production must reimburse the  
 281 financial institution for the reasonable costs and fees incurred  
 282 in compliance with the production. If the parties disagree  
 283 regarding the amount of reimbursement, the party seeking the  
 284 records may request the court or agency having jurisdiction to  
 285 set the amount of reimbursement;

286 (f) As compelled by legislative subpoena as provided by  
 287 law, in which case the provisions of s. 655.057 apply;

288 (g) Pursuant to a subpoena, to any federal or state law  
 289 enforcement or prosecutorial instrumentality authorized to  
 290 investigate suspected criminal activity;

291 (h) As authorized by the board of directors of the  
 292 financial institution; or

293 (i) As provided in subsection (2).

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294 (2)

295 (b) The books and records pertaining to trust accounts and

296 the deposit accounts and loans of depositors, borrowers,

297 members, and stockholders of any financial institution shall be

298 kept confidential by the financial institution and its

299 directors, officers, and employees and ~~may shall~~ not be released

300 except upon express authorization of the account holder as to

301 her or his own accounts, loans, or voting rights. However,

302 information relating to any loan made by a financial institution

303 may be released without the borrower's authorization in a manner

304 prescribed by the board of directors for the purpose of meeting

305 the needs of commerce and for fair and accurate credit

306 information. Information may also be released, without the

307 authorization of a member or depositor but in a manner

308 prescribed by the board of directors, to verify or corroborate

309 the existence or amount of a customer's or member's account when

310 such information is reasonably provided to meet the needs of

311 commerce and to ensure accurate credit information. In addition,

312 a financial institution, affiliate, and its subsidiaries, and

313 any holding company of the financial institution or subsidiary

314 of such holding company, may furnish to one another information

315 relating to their customers or members, subject to the

316 requirement that each corporation receiving information that is

317 confidential maintain the confidentiality of such information

318 and not provide or disclose such information to any unaffiliated

319 person or entity. Notwithstanding this paragraph, ~~nothing in~~

320 this subsection does not prohibit; ~~shall prohibit~~

321 1. A financial institution from disclosing financial

322 information as referenced in this subsection as authorized

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323 ~~permitted~~ by Pub. L. No. 106-102 (1999), as set forth in 15

324 U.S.C.A. s. 6802, as amended.

325 2. The Florida office of the international banking

326 corporation or international trust entity from sharing books and

327 records under this subsection with the home-country supervisor

328 in accordance with subsection (1).

329 Section 3. Section 663.001, Florida Statutes, is created in

330 part I of chapter 663, Florida Statutes, to read:

331 663.001 Purpose.—The purpose of this part is to establish a

332 legal and regulatory framework for the conduct by international

333 banking corporations of financial services business in this

334 state. This part is intended to:

335 (1) Support the Florida operations of international banking

336 corporations and promote the growth of international financial

337 services to benefit the economy and consumers in this state.

338 (2) Provide for appropriate supervision and regulatory

339 oversight to ensure that financial services activities of

340 international banking corporations in this state are conducted

341 responsibly and in a safe and sound manner.

342 Section 4. Subsections (6) and (9) and paragraph (b) of

343 subsection (11) of section 663.01, Florida Statutes, are amended

344 to read:

345 663.01 Definitions.—As used in this part, the term:

346 (6) "International banking corporation" means a banking

347 corporation organized and licensed under the laws of a foreign

348 country. The term ~~"international banking corporation"~~ includes,

349 without limitation, a foreign commercial bank, foreign merchant

350 bank, or other foreign institution that engages in banking

351 activities usual in connection with the business of banking in

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352 the country where such foreign institution is organized or  
 353 operating, including a corporation: the sole shareholders of  
 354 which are one or more international banking corporations or  
 355 holding companies which own or control one or more international  
 356 banking corporations which are authorized to carry on a banking  
 357 business, or a central bank or government agency of a foreign  
 358 country and any affiliate or division thereof; which has the  
 359 power to receive deposits from the general public in the country  
 360 where it is chartered and organized; and which is under the  
 361 supervision of the central bank or other bank regulatory  
 362 authority of such country. The term also includes ~~foreign trust~~  
 363 ~~companies, or any similar business entities, including, but not~~  
 364 ~~limited to,~~ foreign banks with fiduciary powers which, that  
 365 conduct trust business as defined in the financial institutions  
 366 codes.

367 ~~(9) "International trust company representative office"~~  
 368 ~~means an office of an international banking corporation or trust~~  
 369 ~~company organized and licensed under the laws of a foreign~~  
 370 ~~country which office is established or maintained in this state~~  
 371 ~~for the purpose of engaging in nonfiduciary activities described~~  
 372 ~~in s. 663.0625, or any affiliate, subsidiary, or other person~~  
 373 ~~that engages in such activities on behalf of such international~~  
 374 ~~banking corporation or trust company from an office located in~~  
 375 ~~this state.~~

376 ~~(10)(11)~~ "Nonresident" means:

377 (b) A person, other than an individual, whose principal  
 378 place of business or domicile is outside the United States and  
 379 includes a person who conducts a majority of its business  
 380 activities in a foreign country and any foreign government and

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381 its subdivision, agencies, and instrumentalities. Any person who  
 382 conducts business in the United States is considered to have its  
 383 principal place of business outside the United States if any one  
 384 of the following requirements is satisfied for its most recent  
 385 fiscal year:

- 386 1. Its assets located outside the United States exceed its
- 387 assets located within the United States;
- 388 2. Its gross revenues generated outside the United States
- 389 exceed its gross revenues generated within the United States; or
- 390 3. Its payroll expenses incurred outside the United States
- 391 exceed its payroll expenses incurred within the United States.

392 Section 5. Section 663.02, Florida Statutes, is amended to  
 393 read:

394 663.02 Applicability of the financial institutions codes  
 395 ~~state banking laws.~~

396 (1) International banking corporations having offices in  
 397 this state are subject to all the provisions of the financial  
 398 institutions codes and ~~chapter 655~~ as though such corporations  
 399 were state banks ~~or trust companies~~, except where it may appear,  
 400 from the context or otherwise, that such provisions are clearly  
 401 applicable only to banks ~~or trust companies~~ organized under the  
 402 laws of this state or the United States. Without limiting the  
 403 foregoing general provisions, it is the intent of the  
 404 Legislature that the following provisions are applicable to such  
 405 banks or trust companies: s. 655.031, relating to administrative  
 406 enforcement guidelines; s. 655.032, relating to investigations,  
 407 subpoenas, hearings, and witnesses; s. 655.0321, relating to  
 408 hearings, proceedings, and related documents and restricted  
 409 access thereto; s. 655.033, relating to cease and desist orders;

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410 s. 655.037, relating to removal by the office of an officer,  
 411 director, committee member, employee, or other person; s.  
 412 655.041, relating to administrative fines and enforcement; s.  
 413 655.50, relating to the control of money laundering and  
 414 terrorist financing; and any law for which the penalty is  
 415 increased under s. 775.31 for facilitating or furthering  
 416 terrorism. International banking corporations do not have the  
 417 powers conferred on domestic banks by s. 658.60, relating to  
 418 deposits of public funds. Chapter 687, relating to interest and  
 419 usury, applies to all bank loans.

420 (2) Neither an international bank agency nor an  
 421 international branch shall have any greater right under, or by  
 422 virtue of, this section than is granted to banks organized under  
 423 the laws of this state. Legal and financial terms used herein  
 424 shall be deemed to refer to equivalent terms used by the country  
 425 in which the international banking corporation is organized.  
 426 This chapter and the financial institutions codes may not be  
 427 construed to authorize any international banking corporation ~~or~~  
 428 ~~trust company~~ to conduct trust business, as defined in s.  
 429 658.12, from an office in this state except for those activities  
 430 specifically authorized by s. 663.061(5) ~~ss. 663.061(5) and~~  
 431 ~~663.0625~~.

432 Section 6. Subsection (1) of section 663.021, Florida  
 433 Statutes, is amended to read:

434 663.021 Civil action subpoena enforcement.—

435 (1) Notwithstanding s. 655.059, an international  
 436 representative office, international bank agency, international  
 437 branch, ~~international trust company representative office~~, or  
 438 international administrative office established under this

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439 chapter is not required to produce a book or record pertaining  
 440 to a deposit account, investment account, or loan of a customer  
 441 of the international banking corporation's offices that are  
 442 located outside the United States or its territories in response  
 443 to a subpoena if the book or record is maintained outside the  
 444 United States or its territories and is not in the possession,  
 445 custody, or control of the international banking corporation's  
 446 office, agency, or branch established in this state.

447 Section 7. Section 663.04, Florida Statutes, is amended to  
 448 read:

449 663.04 Requirements for carrying on financial institution  
 450 business.—An international banking corporation ~~or trust company~~,  
 451 or any affiliate, subsidiary, or other person or business entity  
 452 acting as an agent for, on behalf of, or for the benefit of such  
 453 international banking corporation ~~or trust company~~ who engages  
 454 in such activities from an office located in this state, may not  
 455 transact a banking or trust business, or maintain in this state  
 456 any office for carrying on such business, or any part thereof,  
 457 unless such corporation, ~~trust company~~, affiliate, subsidiary,  
 458 person, or business entity:

459 (1) Has been authorized by its charter to carry on a  
 460 banking or trust business and has complied with the laws of the  
 461 jurisdiction in which it is chartered.

462 (2) Has furnished to the office such proof as to the nature  
 463 and character of its business and as to its financial condition  
 464 as the commission or office requires.

465 (3) Has filed with the office a certified copy of that  
 466 information required to be supplied to the Department of State  
 467 by those provisions of part I of chapter 607 which are

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468 applicable to foreign corporations.

469 (4) Has received a license duly issued to it by the office.

470 (5) Has sufficient capital in accordance with the  
 471 requirements of capital accounts no less than the minimums  
 472 required per s. 663.055 and the rules adopted thereunder and is  
 473 not imminently insolvent or insolvent, as those terms are  
 474 defined in per s. 655.005(1).

475 (6) (a) Is not in bankruptcy, conservatorship, receivership,  
 476 liquidation, or similar status under the laws of any country.

477 (b) Is not operating under the direct control of the  
 478 government, regulatory, or supervisory authority of the  
 479 jurisdiction of its incorporation through government  
 480 intervention or any other extraordinary actions.

481 (c) Has not been in such status or control at any time  
 482 within the 3 7 years preceding the date of application for a  
 483 license.

484  
 485 Notwithstanding subsection (6), the office may, in its  
 486 discretion, permit an international branch, international bank  
 487 agency, international administrative office, or international  
 488 representative office to remain open and in operation under such  
 489 conditions as the office deems appropriate if the office  
 490 determines that it is in the public's interest and that it  
 491 furtheres international supervisory cooperation to allow the  
 492 international branch, international bank agency, international  
 493 administrative office, or international representative office to  
 494 remain open and in operation.

495 Section 8. Present subsections (4) through (8) of section  
 496 663.05, Florida Statutes, are redesignated as subsections (5)

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497 through (9), respectively, a new subsection (4) is added to that  
 498 section, and present subsections (4), (5), and (6), paragraph  
 499 (c) of present subsection (7), and present subsection (8) are  
 500 amended, to read:

501 663.05 Application for license; approval or disapproval.—

502 (4) Notwithstanding subsection (1), an international  
 503 banking corporation that has operated an international branch,  
 504 international bank agency, international administrative office,  
 505 or international representative office in this state for a  
 506 minimum of 3 years in a safe and sound manner, as defined by  
 507 commission rule, and that is otherwise eligible to establish an  
 508 additional office may establish one or more additional  
 509 international branches, international bank agencies,  
 510 international administrative offices, or international  
 511 representative offices by providing an abbreviated application  
 512 and paying the appropriate license fee pursuant to s. 663.12.  
 513 This subsection does not permit an international banking  
 514 corporation to file an abbreviated application for any license  
 515 type whose permissible activities are broader than those in  
 516 which the international banking corporation is currently  
 517 authorized to engage.

518 (5)(4) An application filed pursuant to this section must  
 519 ~~shall~~ be made on a form prescribed by the commission office and  
 520 ~~must shall~~ contain such information as the commission or office  
 521 requires.

522 (6)(5) The office may, in its discretion, approve or  
 523 disapprove the application, but it may shall not approve the  
 524 application unless, in its opinion, the applicant meets each and  
 525 every requirement of this part and any other applicable

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526 provision of the financial institutions codes. The office shall  
 527 approve the application only if it has determined that the  
 528 directors, executive officers, and principal shareholders of the  
 529 international banking corporation are qualified by reason of  
 530 their financial ability, reputation, and integrity and have  
 531 sufficient banking and other business experience to indicate  
 532 that they will manage and direct the affairs of the  
 533 international banking corporation in a safe, sound, and lawful  
 534 manner. In the processing of an application filed pursuant to  
 535 this section applications, the time limitations under the  
 536 Administrative Procedure Act ~~do shall~~ not apply as to approval  
 537 or disapproval of the application. For applications filed on or  
 538 after January 1, 2018, the time limitations for approval or  
 539 disapproval of an application must be prescribed by rule of the  
 540 commission.

541 ~~(7)(6)~~ The office may not issue a license to an  
 542 international banking corporation unless:

543 (a) It is chartered in a jurisdiction in which any  
 544 financial institution licensed or chartered by any state or any  
 545 federal bank regulatory agency in the United States ~~bank or~~  
 546 ~~trust company having its principal place of business in this~~  
 547 ~~state~~ may establish similar facilities or exercise similar  
 548 powers; or

549 (b) Federal law permits the appropriate federal regulatory  
 550 authority to issue a comparable license to the international  
 551 banking corporation.

552 ~~(8)(7)~~ The office may not issue a license to an  
 553 international banking corporation for the purpose of operating:

554 ~~(c) A trust representative office in this state unless the~~

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555 ~~corporation:~~

556 1. ~~Holds an unrestricted license to conduct trust business~~  
 557 ~~in the foreign country under the laws of which it is organized~~  
 558 ~~and chartered.~~

559 2. ~~Has been authorized by the foreign country's trust~~  
 560 ~~business regulatory authority to establish the proposed~~  
 561 ~~international trust representative office.~~

562 3. ~~Is adequately supervised by the central bank or trust~~  
 563 ~~regulatory agency in the foreign country in which it is~~  
 564 ~~organized and chartered.~~

565 4. ~~Meets all requirements under the financial institutions~~  
 566 ~~codes for the operation of a trust company or trust department~~  
 567 ~~as if it were a state chartered trust company or bank authorized~~  
 568 ~~to exercise fiduciary powers.~~

569 ~~(9)(8)~~ The commission shall establish, by rule, the general  
 570 principles which shall determine the adequacy of supervision of  
 571 an international banking corporation's foreign establishments.  
 572 These principles shall be based upon the need for cooperative  
 573 supervisory efforts and consistent regulatory guidelines and  
 574 shall address, at a minimum, the capital adequacy, asset  
 575 quality, management, earnings, liquidity, internal controls,  
 576 audits, and foreign exchange operations and positions of the  
 577 international banking corporation. This subsection ~~does shall~~  
 578 not require examination by the home-country regulatory  
 579 authorities of any office of an international banking  
 580 corporation in this state. The commission may also establish, by  
 581 rule, other standards for approval of an application for a  
 582 license as considered necessary to ensure the safe and sound  
 583 operations of the international banking corporation ~~bank or~~

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584 ~~trust representative office~~ in this state.

585 Section 9. Section 663.055, Florida Statutes, is amended to  
586 read:

587 663.055 Capital requirements.—

588 (1) To qualify for a license under ~~the provisions of~~ this  
589 part, the proposed capitalization of the international banking  
590 corporation must be in such amount as the office determines is  
591 necessary, taking into consideration the risk profile of the  
592 international banking corporation and the ability of the  
593 international banking corporation to operate a licensed office  
594 in a safe and sound manner. In making this determination, the  
595 office must consider the financial resources of the  
596 international banking corporation, including an international  
597 banking corporation must have net capital accounts, calculated  
598 according to United States generally accepted accounting  
599 principles and practices, of at least:

600 (a) The international banking corporation's current and  
601 projected capital position, profitability, level of  
602 indebtedness, and business and strategic plans Forty million  
603 dollars for the establishment of an international bank agency,  
604 an international branch, or an international administrative  
605 office; or

606 (b) The financial condition of any of the international  
607 banking corporation's existing offices located in the United  
608 States; Twenty million dollars for the establishment of an  
609 international representative office or international trust  
610 representative office.

611 (c) The minimum capital requirements of the international  
612 banking corporation's home-country jurisdiction; and

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613 (d) The capital ratio standards used in the United States  
614 and in the international banking corporation's home-country  
615 jurisdiction.

616 (2) The proposed capitalization of the international  
617 banking corporation must be in such amount as the office deems  
618 adequate, but in no case may the total capital accounts of the  
619 international banking corporation be less than the minimum  
620 required under s. 658.21(2) to establish a state bank  
621 ~~Notwithstanding the provisions of paragraph (1)(a), the office~~  
622 ~~may approve an application for a license to establish an~~  
623 ~~international bank agency, an international branch, or an~~  
624 ~~international administrative office if:~~

625 ~~(a) The international banking corporation is licensed to~~  
626 ~~receive deposits from the general public in the country where it~~  
627 ~~is organized and licensed and to engage in such other activities~~  
628 ~~as are usual in connection with the business of banking in such~~  
629 ~~country;~~

630 ~~(b) The office receives a certificate that is issued by the~~  
631 ~~banking or supervisory authority of the country in which the~~  
632 ~~international banking corporation is organized and licensed and~~  
633 ~~states that the international banking corporation is duly~~  
634 ~~organized and licensed and lawfully existing in good standing,~~  
635 ~~and is empowered to conduct a banking business; and~~

636 ~~(c) The international banking corporation has been in the~~  
637 ~~business of banking for at least 10 years and is ranked by the~~  
638 ~~banking or supervisory authority of the country in which it is~~  
639 ~~organized and licensed as one of the five largest banks in that~~  
640 ~~country in terms of domestic deposits, as of the date of its~~  
641 ~~most recent statement of financial condition. However, in no~~



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642 ~~event shall the office approve an application under this~~  
 643 ~~subsection for any international banking corporation with~~  
 644 ~~capital accounts of less than \$20 million.~~

645 (3) The office may specify such other conditions as it  
 646 determines are appropriate, considering the public interest and  
 647 the need to maintain a safe, sound, and competitive banking  
 648 system in this state, ~~and the preservation of an environment~~  
 649 ~~conducive to the conduct of an international banking business in~~  
 650 ~~this state. In translating the capital accounts of an~~  
 651 ~~international banking corporation, the office may consider~~  
 652 ~~monetary corrections accounts that reflect results consistent~~  
 653 ~~with the requirements of generally accepted accounting~~  
 654 ~~principles in the United States.~~

655 (4) For the purpose of this part, the capital accounts of  
 656 and capital ratio standards for an international banking  
 657 corporation must shall be determined in accordance with rules  
 658 adopted by the commission. In adopting such rules, the  
 659 commission shall consider similar rules adopted by bank  
 660 regulatory agencies in the United States and the need to provide  
 661 reasonably consistent regulatory requirements for international  
 662 banking corporations ~~which will maintain the safe and sound~~  
 663 ~~condition of international banking corporations doing business~~  
 664 in this state, as well as capital adequacy standards of an  
 665 international banking corporation's home-country jurisdiction.

666 Section 10. Subsections (1) and (3) of section 663.06,  
 667 Florida Statutes, are amended to read:

668 663.06 Licenses; permissible activities.—

669 (1) (a) An international banking corporation licensed to  
 670 operate an office in this state may engage in the business

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671 authorized by this part at the office specified in such license  
 672 for an indefinite period.

673 (b) An international banking corporation may operate more  
 674 than one licensed office, each at a different place of business,  
 675 provided that each office ~~is shall be~~ separately licensed.

676 (c) ~~A~~ ~~No~~ license is not transferable or assignable.  
 677 However, the location of a licensed office may be changed after  
 678 notification of the office.

679 (d) Every such license must shall be, at all times,  
 680 conspicuously displayed in the place of business specified  
 681 therein.

682 (3) The license for any international banking corporation  
 683 office in this state may be suspended or revoked by the office,  
 684 with or without examination, upon its determination that the  
 685 international banking corporation or the licensed office does  
 686 not meet all requirements for original licensing. Additionally,  
 687 the office shall revoke the license of any licensed office that  
 688 the office determines has been inactive for 6 months or longer.  
 689 The commission may by rule prescribe additional conditions or  
 690 standards under which the license of an international bank  
 691 agency, international branch, international representative  
 692 office, ~~international trust company representative office,~~ or  
 693 international administrative office may be suspended or revoked.

694 Section 11. Section 663.0601, Florida Statutes, is created  
 695 to read:

696 663.0601 After-the-fact licensure process in the event of  
 697 the acquisition, merger, or consolidation of international  
 698 banking corporations.—If an international banking corporation  
 699 proposes to acquire, merge, or consolidate with an international

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700 banking corporation that presently operates an international  
 701 branch, international bank agency, international administrative  
 702 office, or international representative office licensed in this  
 703 state, the office may authorize the currently licensed  
 704 international branch, international bank agency, international  
 705 administrative office, or international representative office to  
 706 remain open and in operation after consummation of the proposed  
 707 acquisition, merger, or consolidation, if the acquiring  
 708 international banking corporation files an after-the-fact  
 709 application and all of the following conditions are met:

710 (1) The international banking corporation or corporations  
 711 resulting from the acquisition, merger, or consolidation will  
 712 not directly or indirectly own or control more than 5 percent of  
 713 any class of the voting securities of, or control, a United  
 714 States bank.

715 (2) Before consummation of the acquisition, merger, or  
 716 consolidation, the international banking corporation currently  
 717 licensed to operate an international branch, international bank  
 718 agency, international administrative office, or international  
 719 representative office in this state must provide the office at  
 720 least 30 days' advance written notice, as prescribed by rules  
 721 adopted by the commission, of the proposed acquisition, merger,  
 722 or consolidation.

723 (3) Before consummation of the acquisition, merger, or  
 724 consolidation, each international banking corporation commits in  
 725 writing that it will either:

726 (a) Comply with the conditions in subsections (1) and (2)  
 727 and file an after-the-fact application for a license under s.  
 728 663.05(1) within 60 days after consummation of the proposed

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729 acquisition, merger, or consolidation; and refrain from engaging  
 730 in new lines of business and from otherwise expanding the  
 731 activities of such establishment in this state until the  
 732 disposition of the after-the-fact license application, in  
 733 accordance with chapter 120; or

734 (b) Promptly wind down and close any international branch,  
 735 international bank agency, international administrative office,  
 736 or international representative office in this state if the  
 737 international banking corporations that are party to the  
 738 acquisition, merger, or consolidation elect not to file an  
 739 application for a license in accordance with paragraph (a); and,  
 740 before such wind-down and closure, refrain from engaging in new  
 741 lines of business or otherwise expanding the activities of such  
 742 establishment in this state.

743 Section 12. Subsection (1) of section 663.061, Florida  
 744 Statutes, is amended to read:  
 745 663.061 International bank agencies; permissible  
 746 activities.—

747 (1) An international bank agency licensed under this part  
 748 may make any loan, extension of credit, or investment which it  
 749 could make if incorporated and operating as a bank organized  
 750 under the laws of this state. An international bank agency may  
 751 act as custodian and may furnish investment management, and  
 752 investment advisory services authorized under rules adopted by  
 753 the commission, to nonresident entities or persons whose  
 754 principal places of business or domicile are outside the United  
 755 States and to resident entities or persons with respect to  
 756 international, ~~or~~ foreign, or domestic investments. An  
 757 international banking corporation ~~that which~~ has an

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758 international bank agency licensed under the terms of this part  
 759 ~~is shall be~~ exempt from the registration requirements of s.  
 760 517.12. An international bank agency licensed by the office may  
 761 engage in any activity permissible for an international  
 762 administrative office or international representative office.

763 Section 13. Section 663.062, Florida Statutes, is amended  
 764 to read:

765 663.062 International representative offices; permissible  
 766 activities.—An international representative office may promote  
 767 or assist the deposit-taking, lending, or other financial or  
 768 banking activities of an international banking corporation. An  
 769 international representative office may serve as a liaison in  
 770 Florida between an international banking corporation and its  
 771 existing and potential customers. Representatives and employees  
 772 based at such office may solicit business for the international  
 773 banking corporation and its subsidiaries and affiliates, provide  
 774 information to customers concerning their accounts, answer  
 775 questions, receive applications for extensions of credit and  
 776 other banking services, transmit documents on behalf of  
 777 customers, and make arrangements for customers to transact  
 778 business on their accounts, but a representative office may not  
 779 conduct any banking or trust business in this state. An  
 780 international representative office of an international banking  
 781 corporation that has fiduciary powers may engage in the  
 782 international trust representative office activities enumerated  
 783 in s. 663.409.

784 Section 14. Subsection (2) of section 663.063, Florida  
 785 Statutes, is amended to read:

786 663.063 International administrative offices.—

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787 (2) An office established pursuant to ~~the provisions of~~  
 788 this section may ~~not~~ engage only in ~~any activity except~~ those  
 789 activities set forth in subsection (1) and the activities  
 790 permissible for an international representative office pursuant  
 791 to s. 663.062.

792 Section 15. Section 663.064, Florida Statutes, is amended  
 793 to read:

794 663.064 International branches; permissible activities;  
 795 requirements.—

796 (1) An international banking corporation that meets the  
 797 requirements of ss. 658.26, 663.04, and 663.05 may, with the  
 798 approval of the office, establish one or more branches in this  
 799 state. An international branch shall have the same rights and  
 800 privileges as a federally licensed international branch. The  
 801 operations of an international branch shall be conducted  
 802 pursuant to requirements determined by the office as necessary  
 803 to ensure compliance with the provisions of the financial  
 804 institutions codes, including requirements for the maintenance  
 805 of accounts and records separate from those of the international  
 806 banking corporation of which it is a branch.

807 (2) An international branch has the same rights and  
 808 privileges as a federally licensed international branch. The  
 809 permissible deposits of an international branch must be  
 810 determined in accordance with rules adopted by the commission.  
 811 In adopting such rules, the commission shall consider the  
 812 similar deposit-taking authority of a federally licensed  
 813 international branch and the need to provide reasonably  
 814 consistent regulatory requirements for international banking  
 815 corporations doing business in this state.

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816 (3) An international branch licensed by the office may  
 817 engage in any activity permissible for an international bank  
 818 agency, international administrative office, or international  
 819 representative office.

820 Section 16. Subsection (3) of section 663.09, Florida  
 821 Statutes, is amended, and subsection (5) is added to that  
 822 section, to read:

823 663.09 Reports; records.—

824 (3) Each international banking corporation ~~that which~~  
 825 operates an office licensed under this part shall cause to be  
 826 kept, at a location accepted by the office:

827 (a) Correct and complete books and records of account of  
 828 the business operations transacted by such office. All policies  
 829 and procedures relating specifically to governing the operations  
 830 of such office, as well as any existing general ledger or  
 831 subsidiary accounts, ~~must shall~~ be maintained in the English  
 832 language. Any policies and procedures of the international  
 833 banking corporation which are not specific to the operations of  
 834 such office may be maintained in a language other than English  
 835 ~~The office may require that any other document not written in~~  
 836 ~~the English language which the office deems necessary for the~~  
 837 ~~purposes of its regulatory and supervisory functions be~~  
 838 ~~translated into English at the expense of the international~~  
 839 ~~banking corporation.~~

840 (b) Current copies of the charter and bylaws of the  
 841 international banking corporation, relative to the operations of  
 842 the office, and minutes of the proceedings of its directors,  
 843 officers, or committees relative to the business of the office.  
 844 Such records may be maintained in a language other than English

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845 ~~and must shall~~ be kept pursuant to s. 655.91 and ~~shall be~~ made  
 846 available to the office, upon request, at any time during  
 847 regular business hours of the office. Any failure to keep such  
 848 records as aforesaid or any refusal to produce such records upon  
 849 request by the office ~~is shall be~~ grounds for suspension or  
 850 revocation of any license issued under this part.

851 (5) The office may require at any time that any document  
 852 not written in the English language which the office deems  
 853 necessary for the purposes of its regulatory and supervisory  
 854 functions be translated into English at the expense of the  
 855 international banking corporation.

856 Section 17. Section 663.11, Florida Statutes, is amended to  
 857 read:

858 663.11 Termination of international banking corporation's  
 859 charter or authority.—

860 (1) (a) An international banking corporation that is  
 861 licensed to maintain an office in this state may not continue to  
 862 conduct its licensed business in this state if the international  
 863 banking corporation:

864 1. Is dissolved, or its authority or existence is otherwise  
 865 terminated or canceled in the jurisdiction of its  
 866 incorporation;r

867 2. Is in bankruptcy, conservatorship, receivership,  
 868 liquidation, or similar status under the laws of any country;r  
 869 or

870 3. Is operating under the direct control of the government  
 871 or the regulatory or supervisory authority of the jurisdiction  
 872 of its incorporation through government intervention or any  
 873 other extraordinary actions.

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874 (b) Notwithstanding subparagraphs (a)2. and 3., the office  
 875 may, in its discretion, permit an international branch,  
 876 international bank agency, international administrative office,  
 877 or international representative office to remain open and in  
 878 operation under such conditions as the office deems appropriate,  
 879 if the office determines that it is in the public's interest and  
 880 that it furthers international supervisory cooperation to allow  
 881 the international branch, international bank agency,  
 882 international administrative office, or international  
 883 representative office to remain open and in operation.

884 ~~(2) A certificate of the official who is responsible for~~  
 885 ~~records of banking corporations of the jurisdiction of~~  
 886 ~~incorporation of such international banking corporation,~~  
 887 ~~attesting to the occurrence of any such event, or a certified~~  
 888 ~~copy of an order or decree of a court of such jurisdiction,~~  
 889 ~~directing the dissolution of such international banking~~  
 890 ~~corporation, the termination of its existence, or the~~  
 891 ~~cancellation of its authority, or declaring its status in~~  
 892 ~~bankruptcy, conservatorship, receivership, liquidation, or~~  
 893 ~~similar proceedings, or other reliable documentation that the~~  
 894 ~~international banking corporation is operating under the direct~~  
 895 ~~control of its government or a regulatory or supervisory~~  
 896 ~~authority, shall be delivered by~~ The international banking  
 897 corporation or its surviving officers and directors shall  
 898 deliver to the office:-

899 (a) A certificate of the official who is responsible for  
 900 records of banking corporations of the jurisdiction of  
 901 incorporation of such international banking corporation,  
 902 attesting to the occurrence of any event described in paragraph

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903 (1) (a);

904 (b) A certified copy of an order or decree of a court of  
 905 such jurisdiction, directing the dissolution of such  
 906 international banking corporation, the termination of its  
 907 existence, or the cancellation of its authority or declaring its  
 908 status in bankruptcy, conservatorship, receivership,  
 909 liquidation, or similar proceedings; or

910 (c) Other reliable documentation evidencing that the  
 911 international banking corporation is operating under the direct  
 912 control of its government or a regulatory or supervisory  
 913 authority.

914 (3) The filing of the certificate, order, documentation, or  
 915 decree ~~has~~ shall have the same effect as the revocation of the  
 916 license of such international banking corporation as provided in  
 917 s. 663.06, unless the office has permitted the international  
 918 branch, international bank agency, international administrative  
 919 office, or international representative office to remain open  
 920 and in operation pursuant to paragraph (1) (b).

921 Section 18. Subsection (1) of section 663.12, Florida  
 922 Statutes, is amended to read:

923 663.12 Fees; assessments; fines.-

924 (1) Each application for a license under ~~the provisions of~~  
 925 this part must ~~shall~~ be accompanied by a nonrefundable filing  
 926 fee payable to the office in the following amount:

927 (a) Ten thousand dollars for establishing a state-chartered  
 928 investment company.

929 (b) Ten thousand dollars for establishing an international  
 930 bank agency or branch.

931 (c) Five thousand dollars for establishing an international

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932 administrative office.

933 (d) Five thousand dollars for establishing an international  
934 representative office.

935 ~~(e) Five thousand dollars for establishing an international  
936 trust company representative office.~~

937 ~~(e)-(f)~~ An amount equal to the initial filing fee for an  
938 application to convert from one type of license to another. The  
939 commission may increase the filing fee for any type of license  
940 to an amount established by rule and calculated in a manner so  
941 as to cover the direct and indirect cost of processing such  
942 applications.

943 Section 19. Subsection (11) of section 663.17, Florida  
944 Statutes, is amended to read:

945 663.17 Liquidation; possession of business and property;  
946 inventory of assets; wages; depositing collected assets;  
947 appointing agents; appointment of judges.—

948 (11) The compensation of agents and any other employees  
949 appointed by the office to assist in the liquidation of an  
950 international banking corporation, or any of the corporation's  
951 licensed offices located in this state, the distribution of its  
952 assets, or the expenses of supervision, ~~must shall~~ be paid out  
953 of the assets of the corporation in the ~~possession hands~~ of the  
954 office. Expenses of liquidation and approved claims for fees and  
955 assessments due the office ~~must shall~~ be given first priority  
956 among unsecured creditors.

957 Section 20. The Division of Law Revision and Information is  
958 directed to create part III of chapter 663, Florida Statutes,  
959 consisting of ss. 663.4001-663.416, Florida Statutes, to be  
960 entitled "International Trust Company Representative Offices."

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961 Section 21. Section 663.4001, Florida Statutes, is created  
962 to read:

963 663.4001 Purpose.—The purpose of this part is to establish  
964 a legal and regulatory framework for the conduct by  
965 international trust entities of financial services business in  
966 this state. This part is intended to:

967 (1) Support the Florida operations of international trust  
968 entities and promote the growth of international financial  
969 services to benefit the economy and consumers in this state.

970 (2) Provide for appropriate supervision and regulatory  
971 oversight to ensure that financial services activities of  
972 international trust entities in this state are conducted  
973 responsibly and in a safe and sound manner.

974 Section 22. Section 663.401, Florida Statutes, is created  
975 to read:

976 663.401 Definitions.—

977 (1) "Affiliate" means a person or business or a group of  
978 persons or businesses acting in concert which controls, is  
979 controlled by, or is under common control of an international  
980 trust entity.

981 (2) "International trust company representative office"  
982 means an office of an international trust entity which is  
983 established or maintained in this state for the purpose of  
984 engaging in nonfiduciary activities described in s. 663.409, or  
985 any affiliate, subsidiary, or other person that engages in such  
986 activities on behalf of such international trust entity from an  
987 office located in this state.

988 (3) "International trust entity" means an international  
989 trust company or organization, or any similar business entity;

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990 or an affiliated or subsidiary entity that is licensed,  
 991 chartered, or similarly permitted to conduct trust business in a  
 992 foreign country or countries under the laws where such entity is  
 993 organized and supervised.

994 Section 23. Section 663.402, Florida Statutes, is created  
 995 to read:

996 663.402 Applicability of the financial institutions codes.-  
 997 (1) An international trust entity that operates an office  
 998 licensed under this part is subject to all the financial  
 999 institutions codes as though such international trust entity  
 1000 were a state trust company, except when it appears, from the  
 1001 context or otherwise, that such provisions are clearly  
 1002 applicable only to trust companies organized under the laws of  
 1003 this state or the United States. Without limiting the foregoing  
 1004 general provisions, it is the intent of the Legislature that the  
 1005 following provisions are applicable to such international trust  
 1006 entities having offices in this state: s. 655.031, relating to  
 1007 administrative enforcement guidelines; s. 655.032, relating to  
 1008 investigations, subpoenas, hearings, and witnesses; s. 655.0321,  
 1009 relating to restricted access hearings, proceedings, and related  
 1010 documents; s. 655.033, relating to cease and desist orders; s.  
 1011 655.037, relating to removal of a financial institution-related  
 1012 party by the office; s. 655.041, relating to administrative  
 1013 finances and enforcement; s. 655.50, the Florida Control of Money  
 1014 Laundering and Terrorist Financing in Financial Institutions  
 1015 Act; and any law for which the penalty is increased under s.  
 1016 775.31 for facilitating or furthering terrorism.

1017 (2) An international trust entity does not have any greater  
 1018 right under, or by virtue of, this section than is granted to

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1019 trust companies organized under the laws of this state. Legal  
 1020 and financial terms used in this chapter are deemed to refer to  
 1021 equivalent terms used by the country in which the international  
 1022 trust entity is organized. This chapter and the financial  
 1023 institutions codes may not be construed to authorize any  
 1024 international trust entity to conduct trust business, as defined  
 1025 in s. 658.12, from an office in this state.

1026 Section 24. Section 663.403, Florida Statutes, is created  
 1027 to read:

1028 663.403 Applicability of the Florida Business Corporation  
 1029 Act.—Notwithstanding s. 607.01401(12), the provisions of part I  
 1030 of chapter 607 which are not in conflict with the financial  
 1031 institutions codes and which relate to foreign corporations  
 1032 apply to all international trust entities and their offices  
 1033 doing business in this state.

1034 Section 25. Section 663.404, Florida Statutes, is created  
 1035 to read:

1036 663.404 Requirements for conducting financial institution  
 1037 business.—An international trust entity, or any affiliated,  
 1038 subsidiary, or other person or business entity acting as an  
 1039 agent for, on behalf of, or for the benefit of such  
 1040 international trust entity, who engages in such activities from  
 1041 an office located in this state, may not transact a trust  
 1042 business, or maintain in this state any office for carrying on  
 1043 such business, or any part thereof, unless such international  
 1044 trust entity, affiliate, subsidiary, person, or business entity:

1045 (1) Has been authorized by charter, license, or similar  
 1046 authorization by operation of law to carry on trust business and  
 1047 has complied with the laws of each jurisdiction in which it is

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1048 chartered, licensed, or otherwise authorized and created under  
 1049 operation of law.

1050 (2) Has furnished to the office such proof as to the nature  
 1051 and character of its business and as to its financial condition  
 1052 as the commission or office requires.

1053 (3) Has filed with the office a certified copy of that  
 1054 information required to be supplied to the Department of State  
 1055 by those provisions of part I of chapter 607 which are  
 1056 applicable to foreign corporations.

1057 (4) Has received a license duly issued to it by the office.

1058 (5) Has sufficient capital in accordance with the  
 1059 requirements of s. 663.407 and the rules adopted thereunder and  
 1060 is not imminently insolvent or insolvent, as those terms are  
 1061 defined under s. 655.005(1).

1062 (6) (a) Is not in bankruptcy, conservatorship, receivership,  
 1063 liquidation, or similar status under the laws of any country.

1064 (b) Is not operating under the direct control of the  
 1065 government or the regulatory or supervisory authority of the  
 1066 home jurisdiction in which it has been chartered, licensed, or  
 1067 otherwise authorized and created under operation of law, through  
 1068 government intervention or any other extraordinary actions.

1069 (c) Has not been in such status or control at any time  
 1070 within the 3 years preceding the date of application for a  
 1071 license.

1072

1073 Notwithstanding subsection (6), the office may, in its  
 1074 discretion, permit an international trust company representative  
 1075 office to remain open and in operation under such conditions as  
 1076 the office deems appropriate if the office determines that it is

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1077 in the public's interest and that it furthers international  
 1078 supervisory cooperation to allow the international trust company  
 1079 representative office to remain open and in operation.

1080 Section 26. Section 663.405, Florida Statutes, is created  
 1081 to read:

1082 663.405 Civil action subpoena enforcement.—

1083 (1) Notwithstanding s. 655.059, an international trust  
 1084 company representative office established under this chapter is  
 1085 not required to produce a book or record pertaining to a deposit  
 1086 account, investment account, trust account, or loan of a  
 1087 customer of the international trust entity's offices that are  
 1088 located outside the United States or its territories in response  
 1089 to a subpoena, if the book or record is maintained outside the  
 1090 United States or its territories and is not in the possession,  
 1091 custody, or control of the international trust entity's  
 1092 representative office established in this state.

1093 (2) This section applies only to a subpoena issued pursuant  
 1094 to the Florida Rules of Civil Procedure, the Federal Rules of  
 1095 Civil Procedure, or other similar law or rule of civil procedure  
 1096 in another state. This section does not apply to a subpoena  
 1097 issued by or on behalf of a federal, state, or local government  
 1098 law enforcement agency, administrative or regulatory agency,  
 1099 legislative body, or grand jury and does not limit the power of  
 1100 the office to access all books and records in the exercise of  
 1101 the office's regulatory and supervisory powers under the  
 1102 financial institutions codes.

1103 Section 27. Section 663.406, Florida Statutes, is created  
 1104 to read:

1105 663.406 Application for license; approval or disapproval.—



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1106 (1) An international trust entity, before being licensed by  
 1107 the office to maintain any office in this state, must subscribe  
 1108 and acknowledge, and submit to the office, an application that  
 1109 contains all of the following:

1110 (a) The name of the international trust entity.

1111 (b) The proposed location, by street and post office  
 1112 address and county, where its business is to be transacted in  
 1113 this state and the name of the person who will be in charge of  
 1114 the business and affairs of the office.

1115 (c) The location where its initial registered office will  
 1116 be located in this state.

1117 (d) The total amount of the capital accounts of the  
 1118 international trust entity.

1119 (e) A complete and detailed statement of its financial  
 1120 condition as of a date within 180 days before the date of such  
 1121 application, except that the office in its discretion may, when  
 1122 necessary or expedient, accept such statement of financial  
 1123 condition as of a date within 240 days before the date of such  
 1124 application. The office in its discretion may, when necessary or  
 1125 expedient, require an independent opinion audit or the  
 1126 equivalent satisfactory to the office.

1127 (f) A listing of any occasion within the 10 year period  
 1128 before the application on which either the international trust  
 1129 entity or any of its directors, executive officers, or principal  
 1130 shareholders have been arrested for, charged with, convicted of,  
 1131 or pled guilty or nolo contendere to, regardless of  
 1132 adjudication, any offense with respect to which the penalties  
 1133 include the possibility of imprisonment for 1 year or more, or  
 1134 to any offense involving money laundering, currency transaction

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1135 reporting, facilitating or furthering terrorism, or fraud, or  
 1136 otherwise related to the operation of a financial institution.

1137 (2) The office shall disallow any illegally obtained  
 1138 currency, monetary instruments, funds, or other financial  
 1139 resources from the capitalization requirements of this section,  
 1140 and the existence of such illegally obtained resources is  
 1141 grounds for denial of the application for license.

1142 (3) An international trust entity that submits an  
 1143 application to the office shall concurrently submit a  
 1144 certificate issued by the supervisory authority of the country  
 1145 in which the international trust entity is chartered or  
 1146 organized which states that the international trust entity is  
 1147 duly organized and licensed, or otherwise authorized by  
 1148 operation of law to transact business as a trust entity, and  
 1149 lawfully existing in good standing.

1150 (4) An international trust entity that has operated an  
 1151 international trust company representative office in this state  
 1152 for at least 3 years in a safe and sound manner, as defined by  
 1153 commission rule, and that is otherwise eligible to establish an  
 1154 additional office may establish one or more international trust  
 1155 company representative offices by providing an abbreviated  
 1156 application, and paying the appropriate license fee pursuant to  
 1157 s. 663.413.

1158 (5) An application filed pursuant to this section must be  
 1159 made on a form prescribed by the commission and must contain  
 1160 such information as the commission or office requires.

1161 (6) The office may, in its discretion, approve or  
 1162 disapprove the application, but it may not approve the  
 1163 application unless, in its opinion, the applicant meets each and

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1164 every requirement of this part and any other applicable  
 1165 provision of the financial institutions codes. The office may  
 1166 approve the application only if it has determined that the  
 1167 directors, executive officers, and principal shareholders of the  
 1168 international trust entity are qualified by reason of their  
 1169 financial ability, reputation, and integrity and have sufficient  
 1170 trust company and other business experience to indicate that  
 1171 they will manage and direct the affairs of the international  
 1172 trust entity in a safe, sound, and lawful manner. In the  
 1173 processing of any application filed pursuant to this section,  
 1174 the time limitations under the Administrative Procedure Act do  
 1175 not apply as to approval or disapproval of the application. For  
 1176 applications filed on or after January 1, 2018, the time  
 1177 limitations for approval or disapproval of an application must  
 1178 be prescribed by rule of the commission.

1179 (7) The office may not issue a license to an international  
 1180 trust entity unless it is chartered, licensed, or similarly  
 1181 authorized by operation of law in a jurisdiction in which any  
 1182 financial institution licensed or chartered by any state or  
 1183 federal regulatory agency in the United States may establish  
 1184 similar facilities or exercise similar powers.

1185 (8) The office may not issue a license to an international  
 1186 trust entity for the purpose of operating an international trust  
 1187 company representative office in this state unless the trust  
 1188 entity:

1189 (a) Holds an unrestricted license to conduct trust business  
 1190 in the foreign country under whose laws it is organized and  
 1191 chartered;

1192 (b) Has been authorized by the foreign country's

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1193 appropriate regulatory authority to establish the proposed  
 1194 international trust company representative office; and  
 1195 (c) Is adequately supervised by the appropriate regulatory  
 1196 agency in the foreign country in which it is organized and  
 1197 chartered.

1198 (9) The commission shall establish, by rule, the general  
 1199 principles that determine the adequacy of supervision of an  
 1200 international trust entity's foreign establishments. These  
 1201 principles must be based upon the need for cooperative  
 1202 supervisory efforts and consistent regulatory guidelines and  
 1203 must address, at a minimum, the capital adequacy, asset quality,  
 1204 management, earnings, liquidity, internal controls, audits, and  
 1205 foreign exchange operations and positions of the international  
 1206 trust entity. This subsection does not require examination by  
 1207 the home-country regulatory authorities of any office of an  
 1208 international trust entity in this state. The commission may  
 1209 also establish, by rule, other standards for approval of an  
 1210 application for a license as considered necessary to ensure the  
 1211 safe and sound operations of the international trust entity in  
 1212 this state.

1213 Section 28. Section 663.407, Florida Statutes, is created  
 1214 to read:

1215 663.407 Capital requirements.—

1216 (1) For an international trust entity to qualify for a  
 1217 license under this part, the proposed capitalization of the  
 1218 international trust entity must be in such amount as the office  
 1219 determines is necessary, taking into consideration the risk  
 1220 profile of the international trust entity and the ability of the  
 1221 international trust entity to operate a licensed office in a

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1222 safe and sound manner. In making this determination, the office  
 1223 shall consider the financial resources of the international  
 1224 trust entity, including:

1225 (a) The international trust entity's current and projected  
 1226 capital position, profitability, level of indebtedness, business  
 1227 and strategic plans, and off-balance sheet asset management and  
 1228 administration activities;

1229 (b) The financial condition of any of the international  
 1230 trust entity's existing offices located in the United States;

1231 (c) The minimum capital requirements of the international  
 1232 trust entity's home-country jurisdiction; and

1233 (d) The capital ratio standards used in the United States  
 1234 and in the international trust entity's home-country  
 1235 jurisdiction.

1236 (2) The proposed capitalization of the international trust  
 1237 entity must be in such amount as the office deems adequate, but  
 1238 in no case may the total capital accounts of the international  
 1239 trust entity be less than \$1 million.

1240 (3) The office may specify such other conditions as it  
 1241 determines are appropriate, considering the public interest and  
 1242 the need to maintain a safe, sound, and competitive financial  
 1243 marketplace in this state.

1244 (4) For purposes of this part, the capital accounts of and  
 1245 capital ratio standards for an international trust entity must  
 1246 be determined in accordance with rules adopted by the  
 1247 commission. In adopting such rules, the commission shall  
 1248 consider similar rules adopted by regulatory agencies in the  
 1249 United States and the need to provide reasonably consistent  
 1250 regulatory requirements for international trust entities doing

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1251 business in this state, as well as capital adequacy standards of  
 1252 an international trust entity's home-country jurisdiction.

1253 Section 29. Section 663.408, Florida Statutes, is created  
 1254 to read:

1255 663.408 Licenses; permissible activities of licensees.—  
 1256 (1) (a) An international trust entity licensed to operate an  
 1257 office in this state may engage in the business authorized by  
 1258 this part at the office specified in such license for an  
 1259 indefinite period.

1260 (b) An international trust entity may operate more than one  
 1261 licensed office, each at a different place of business, provided  
 1262 that each office is separately licensed.

1263 (c) A license is not transferable or assignable. However,  
 1264 the location of a licensed office may be changed after  
 1265 notification to the office.

1266 (d) A license must at all times be conspicuously displayed  
 1267 in the place of business specified therein.

1268 (2) An international trust entity that proposes to  
 1269 terminate the operations of a licensed office in this state must  
 1270 surrender its license to the office and comply with such  
 1271 procedures as the commission may prescribe by rule.

1272 (3) The license for an international trust company  
 1273 representative office in this state may be suspended or revoked  
 1274 by the office, with or without examination, upon its  
 1275 determination that the international trust entity or the  
 1276 licensed office does not meet all requirements for original  
 1277 licensing. Additionally, the office shall revoke the license of  
 1278 any licensed office that the office determines has been inactive  
 1279 for 6 months or longer. The commission may by rule prescribe

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 1280 additional conditions or standards under which the license of an  
 1281 international trust company representative office may be  
 1282 suspended or revoked.

1283 (4) If any such license is surrendered by the international  
 1284 trust entity or is suspended or revoked by the office, all  
 1285 rights and privileges of the international trust entity to  
 1286 transact the business under the license cease. The commission  
 1287 shall prescribe by rule procedures for the surrender of a  
 1288 license and for the orderly cessation of business by an  
 1289 international trust entity in a manner that is not harmful to  
 1290 the interests of its customers or of the public.

1291 Section 30. Section 663.4081, Florida Statutes, is created  
 1292 to read:

1293 663.4081 After-the-fact licensure process in the event of  
 1294 the acquisition, merger, or consolidation of international trust  
 1295 entities.—If an international trust entity proposes to acquire,  
 1296 merge, or consolidate with an international trust entity that  
 1297 presently operates an international trust company representative  
 1298 office licensed in this state, the office may allow the  
 1299 currently licensed international trust company representative  
 1300 office to remain open and in operation after consummation of the  
 1301 proposed acquisition, merger, or consolidation, subject to the  
 1302 filing with the office of an after-the-fact license application  
 1303 in accordance with all of the following conditions:

1304 (1) The international trust entity or entities resulting  
 1305 from the acquisition, merger, or consolidation will not directly  
 1306 or indirectly own or control more than 5 percent of any class of  
 1307 the voting securities of, or control, a United States bank.

1308 (2) Before consummation of the acquisition, merger, or

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 1309 consolidation, the international trust entity currently licensed  
 1310 to operate an international trust company representative office  
 1311 in this state must provide the office at least 30 days' advance  
 1312 written notice, as prescribed by rules adopted by the  
 1313 commission, of the proposed acquisition, merger, or  
 1314 consolidation.

1315 (3) Before consummation of the acquisition, merger, or  
 1316 consolidation, each international trust entity commits in  
 1317 writing that it will:

1318 (a) Comply with the conditions in subsections (1) and (2)  
 1319 and file an after-the-fact application for a license under s.  
 1320 663.406(1) within 60 days after consummation of the proposed  
 1321 acquisition, merger, or consolidation and refrain from engaging  
 1322 in new lines of business and from otherwise expanding the  
 1323 activities of such establishment in this state until the  
 1324 disposition of the after-the-fact license application, in  
 1325 accordance with chapter 120; or

1326 (b) Promptly wind down and close any international trust  
 1327 company representative office in this state if the international  
 1328 trust entities that are party to the acquisition, merger, or  
 1329 consolidation elect not to file an application for a license in  
 1330 accordance with paragraph (a) and, before such wind-down and  
 1331 closure, refrain from engaging in new lines of business or  
 1332 otherwise expanding the activities of such establishment in this  
 1333 state.

1334 Section 31. Section 663.0625, Florida Statutes, is  
 1335 transferred, renumbered as section 663.409, Florida Statutes,  
 1336 and amended to read:

1337 663.409 ~~663.0625~~ International trust company representative

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1338 offices; permissible activities; requirements.-

1339 (1) An international trust company representative office  
 1340 may conduct any nonfiduciary activities that are ancillary to  
 1341 the fiduciary business of its international trust entity banking  
 1342 ~~corporation or trust company~~, but may not act as a fiduciary.  
 1343 Permissible activities include advertising, marketing, and  
 1344 soliciting for fiduciary business on behalf of an international  
 1345 trust entity banking corporation or trust company; contacting  
 1346 existing or potential customers, answering questions, and  
 1347 providing information about matters related to their accounts;  
 1348 serving as a liaison in this state between the international  
 1349 trust entity banking corporation or trust company and its  
 1350 existing or potential customers; and engaging in any other  
 1351 activities approved by the office or under rules of the  
 1352 commission.

1353 (2) Representatives and employees at such office may not  
 1354 act as a fiduciary, including, but not limited to, accepting the  
 1355 fiduciary appointment, executing the fiduciary documents that  
 1356 create the fiduciary relationship, ~~or~~ making discretionary  
 1357 decisions regarding the investment or distribution of fiduciary  
 1358 accounts, or accepting custody of any trust property or any  
 1359 other good, asset, or thing of value on behalf of the affiliated  
 1360 international trust entity, its subsidiaries or affiliates, or  
 1361 subsidiaries and affiliates of the international trust company  
 1362 representative office.

1363 (3) An international trust company representative office  
 1364 licensed by the office may engage in any activities permissible  
 1365 for a limited service affiliate under part IV of this chapter.

1366 Section 32. Section 663.410, Florida Statutes, is created

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1367 to read:

1368 663.410 Certification of capital accounts.-Before opening  
 1369 an office in this state, and annually thereafter so long as an  
 1370 international trust company representative office is maintained  
 1371 in this state, an international trust entity licensed pursuant  
 1372 to this part must certify to the office the amount of its  
 1373 capital accounts, expressed in the currency of the home  
 1374 jurisdiction where it has been authorized by charter, license,  
 1375 or similar authorization by operation of law to carry on trust  
 1376 business. The dollar equivalent of these amounts, as determined  
 1377 by the office, is deemed to be the amount of its capital  
 1378 accounts. The annual certification of capital accounts must be  
 1379 received by the office on or before June 30 of each year.

1380 Section 33. Section 663.411, Florida Statutes, is created  
 1381 to read:

1382 663.411 Reports; records.-

1383 (1) An international trust entity that operates an office  
 1384 licensed under this part shall, at such times and in such form  
 1385 as the commission prescribes, make written reports in the  
 1386 English language to the office, under the oath of one of its  
 1387 officers, managers, or agents transacting business in this  
 1388 state, showing the amount of its assets and liabilities and  
 1389 containing such other matters as the commission or office  
 1390 requires. An international trust entity that maintains two or  
 1391 more representative offices may consolidate such information in  
 1392 one report unless the office requires otherwise for purposes of  
 1393 its supervision of the condition and operations of each such  
 1394 office. The late filing of such reports is subject to an  
 1395 administrative fine as prescribed under s. 655.045(2). If the

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1396 international trust entity fails to make such report as directed  
 1397 by the office or if such report contains a false statement  
 1398 knowingly made, the same are grounds for revocation of the  
 1399 license of the international trust entity.

1400 (2) An international trust entity that operates an office  
 1401 licensed under this part shall cause to be kept, at a location  
 1402 accepted by the office:

1403 (a) Correct and complete books and records of account of  
 1404 the business operations transacted by such office. All policies  
 1405 and procedures relating specifically to the operations of such  
 1406 office, as well as any existing general ledger or subsidiary  
 1407 accounts, must be maintained in the English language; however,  
 1408 any policies and procedures of the international trust entity  
 1409 which are not specific to the operations of such office may be  
 1410 maintained in a language other than English.

1411 (b) Current copies of the charter or statement of operation  
 1412 and bylaws of the international trust entity, relative to the  
 1413 operations of the international trust company representative  
 1414 office, and minutes of the proceedings of its directors,  
 1415 officers, or committees relative to the business of the  
 1416 international trust company representative office. Such records  
 1417 may be maintained in a language other than English and must be  
 1418 kept pursuant to s. 655.91 and be made available to the office,  
 1419 upon request, at any time during regular business hours of the  
 1420 international trust company representative office.

1421 (3) Any failure to keep such records as required in  
 1422 subsection (2) or any refusal to produce such records upon  
 1423 request by the office is grounds for suspension or revocation of  
 1424 any license issued under this part.

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1425 (4) The office may require at any time that any document  
 1426 not written in the English language which the office deems  
 1427 necessary for the purposes of its regulatory and supervisory  
 1428 functions be translated into English at the expense of the  
 1429 international trust entity.

1430 Section 34. Section 663.412, Florida Statutes, is created  
 1431 to read:

1432 663.412 Termination of international trust entity's charter  
 1433 or authority.—

1434 (1) (a) An international trust entity that is licensed to  
 1435 maintain an office in this state may not continue to conduct its  
 1436 licensed business in this state if the international trust  
 1437 entity:

1438 1. Is dissolved, or its authority or existence is otherwise  
 1439 terminated or canceled in the home jurisdiction where it has  
 1440 been authorized by charter, license, or similar authorization by  
 1441 operation of law to carry on trust business;

1442 2. Is in bankruptcy, conservatorship, receivership,  
 1443 liquidation, or similar status under the laws of any country; or  
 1444 3. Is operating under the direct control of the government  
 1445 or the regulatory or supervisory authority of the jurisdiction  
 1446 where it has been authorized by charter, license, or similar  
 1447 authorization by operation of law to carry on trust business  
 1448 through government intervention or any other extraordinary  
 1449 actions.

1450 (b) Notwithstanding subparagraphs (a)2. and 3., the office  
 1451 may, in its discretion, permit an international trust company  
 1452 representative office to remain open and in operation under such  
 1453 conditions as the office deems appropriate, if the office

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1454 determines that it is in the public's interest and that it  
 1455 further international supervisory cooperation to allow the  
 1456 international trust company representative office to remain open  
 1457 and in operation.

1458 (2) The international trust entity or its surviving  
 1459 officers and directors shall deliver to the office:

1460 (a) A certificate of the official who is responsible for  
 1461 records of trust companies in the jurisdiction where the  
 1462 international trust entity has been authorized by charter,  
 1463 license, or similar authorization by operation of law to carry  
 1464 on trust business of the international trust entity, attesting  
 1465 to the occurrence of any event described in paragraph (1) (a);

1466 (b) A certified copy of an order or decree of a court of  
 1467 such jurisdiction, directing the dissolution of such  
 1468 international trust entity, the termination of its existence, or  
 1469 the cancellation of its authority, or declaring its status in  
 1470 bankruptcy, conservatorship, receivership, liquidation, or  
 1471 similar proceedings; or

1472 (c) Other reliable documentation evidencing that the  
 1473 international trust entity is operating under the direct control  
 1474 of its government or a regulatory or supervisory authority.

1475 (3) The filing of the certificate, order, documentation, or  
 1476 decree has the same effect as the revocation of the license of  
 1477 such international trust entity as provided in s. 663.408,  
 1478 unless the office has permitted the international trust company  
 1479 representative office to remain open and in operation pursuant  
 1480 to paragraph (1) (b).

1481 Section 35. Section 663.413, Florida Statutes, is created  
 1482 to read:

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1483 663.413 Application and examination fees.-

1484 (1) An application for a license to establish an  
 1485 international trust company representative office under this  
 1486 part must be accompanied by a nonrefundable \$5,000 filing fee,  
 1487 payable to the office.

1488 (2) An international trust entity that maintains an office  
 1489 licensed under this part must pay to the office examination fees  
 1490 that are determined by the commission by rule and that are  
 1491 calculated in a manner so as to be equal to the actual cost of  
 1492 each examiner's participation in the examination, as measured by  
 1493 the examiner's pay scale, plus any other expenses directly  
 1494 incurred in the examination. However, the examination fees may  
 1495 not be less than \$200 per day for each examiner participating in  
 1496 the examination.

1497 Section 36. Section 663.414, Florida Statutes, is created  
 1498 to read:

1499 663.414 Rules; exemption from statement of estimated  
 1500 regulatory costs requirements.-In addition to any other  
 1501 rulemaking authority it has under the financial institutions  
 1502 codes, the commission may adopt reasonable rules that it deems  
 1503 advisable for the administration of international trust  
 1504 companies under this part in the interest of protecting  
 1505 depositors, creditors, borrowers, or the public interest and in  
 1506 the interest of maintaining a sound banking and trust system in  
 1507 this state. Because of the difficulty in obtaining economic data  
 1508 with regard to such trusts, ss. 120.54(3) (b) and 120.541 do not  
 1509 apply to the adoption of rules pursuant to this section.

1510 Section 37. Section 663.415, Florida Statutes, is created  
 1511 to read:

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1512 663.415 Travel expenses.—If domestic or foreign travel is  
 1513 deemed necessary by the office to effectuate the purposes of  
 1514 this part, the office must be reimbursed for actual, reasonable,  
 1515 and necessary expenses incurred in such domestic or foreign  
 1516 travel by the international trust company representative office  
 1517 under examination.

1518 Section 38. The Division of Law Revision and Information is  
 1519 directed to create part IV of chapter 663, Florida Statutes,  
 1520 consisting of ss. 663.530-663.540, Florida Statutes, to be  
 1521 entitled "Limited Service Affiliates of International Trust  
 1522 Entities."

1523 Section 39. Section 663.530, Florida Statutes, is created  
 1524 to read:

1525 663.530 Definitions.—

1526 (1) As used in ss. 663.531-663.539, the term:

1527 (a) "Foreign country" means a country other than the United  
 1528 States and includes any colony, dependency, or possession of  
 1529 such country notwithstanding any definitions in chapter 658, and  
 1530 any territory of the United States, including Guam, American  
 1531 Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico.

1532 (b) "Home-country regulator" means the supervisory  
 1533 authority or equivalent or other similarly sanctioned body,  
 1534 organization, governmental entity, or recognized authority,  
 1535 which has similar responsibilities in a foreign country in which  
 1536 and by whom an international trust entity is licensed,  
 1537 chartered, or has similar authorization to organize and operate.

1538 (c) "International trust entity" means an international  
 1539 trust company or any international business, international  
 1540 business organization, or an affiliated or subsidiary entity

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1541 that is licensed, chartered, or similarly permitted to conduct  
 1542 trust business in a foreign country or countries under the laws  
 1543 of which it is organized and supervised.

1544 (d) "Limited service affiliate" means a marketing and  
 1545 liaison office that engages in the permissible activities  
 1546 enumerated in s. 663.531 for the benefit of an international  
 1547 trust entity.

1548 (e) "Nonresident" has the same meaning as in s. 663.01.

1549 (f) "Professional" means an accountant, attorney, or other  
 1550 financial services and wealth planning professional who is  
 1551 licensed by a governing body or affiliated with a licensed,  
 1552 chartered, or similarly authorized entity.

1553 (g) "Registrant" means a person or entity that is  
 1554 registered to perform the permissible activities outlined in s.  
 1555 663.531 related to or for the benefit of an affiliated  
 1556 international trust entity.

1557 (2) As used in ss. 663.531-663.539, the terms "affiliate,"  
 1558 "commission," "executive officer," "financial institution,"  
 1559 "financial institution-affiliated party," "financial  
 1560 institutions codes," "office," "officer," "state," and  
 1561 "subsidiary" have the same meaning as provided in s. 655.005.

1562 Section 40. Section 663.531, Florida Statutes, is created  
 1563 to read:

1564 663.531 Permissible activities; prohibited activities.—

1565 (1) Registration as a limited service affiliate under this  
 1566 part does not provide any exemption from licensure,  
 1567 registration, application, and requirements to conduct licensed  
 1568 business activities in this state. A limited service affiliate  
 1569 may engage in any of the following permissible activities, which



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1570 are not meant to be restrictive unless an activity is prohibited  
 1571 under subsection (2):

1572 (a) Marketing and liaison services related to or for the  
 1573 benefit of the affiliated international trust entities, directed  
 1574 exclusively at professionals and current or prospective  
 1575 nonresident clients of an affiliated international trust entity;

1576 (b) Advertising and marketing at trade, industry, or  
 1577 professional events;

1578 (c) Transmission of documents between the international  
 1579 trust entity and its current or prospective clients or a  
 1580 designee of such clients; and

1581 (d) Transmission of information about the trust or trust  
 1582 holdings of current clients between current clients or their  
 1583 designees and the international trust entity.

1584 (2) A limited service affiliate may not engage in any of  
 1585 the following activities:

1586 (a) Advertising and marketing related to or for the benefit  
 1587 of the international trust entity which are directed to the  
 1588 general public;

1589 (b) Acting as a fiduciary, including, but not limited to,  
 1590 accepting the fiduciary appointment, executing the fiduciary  
 1591 documents that create the fiduciary relationship, or making  
 1592 discretionary decisions regarding the investment or distribution  
 1593 of fiduciary accounts;

1594 (c) Accepting custody of any trust property or any other  
 1595 good, asset, or thing of value on behalf of the affiliated  
 1596 international trust entity, its subsidiaries or affiliates, or  
 1597 subsidiaries and affiliates of the international trust company  
 1598 representative office;

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1599 (d) Soliciting business within this state from the general  
 1600 public related to or for the benefit of an affiliated  
 1601 international trust entity;

1602 (e) Adding a financial institution-affiliated party to the  
 1603 limited service affiliate without prior written notification to  
 1604 the office;

1605 (f) Commencing services for an international trust entity  
 1606 without complying with the requirements of s. 663.532;

1607 (g) Providing services for any international trust entity  
 1608 that is in bankruptcy, conservatorship, receivership,  
 1609 liquidation, or a similar status under the laws of any country;  
 1610 or

1611 (h) Otherwise conducting banking or trust business.

1612 (3) The provisions of subsection (2) are not deemed to  
 1613 prevent the limited service affiliate's use of an international  
 1614 trust entity's website, or its own website, if the posted  
 1615 information or communication includes the following:

1616 (a) The following statement: "Certain described services  
 1617 are not offered to the general public in Florida, but are  
 1618 marketed by ... (insert name of limited service affiliate) ...  
 1619 exclusively to professionals and current or prospective non-U.S.  
 1620 resident clients of the affiliated international trust entity or  
 1621 entities."

1622 (b) The notice required by s. 663.535.

1623 (4) In addition to any other power conferred upon it to  
 1624 enforce and administer this chapter and the financial  
 1625 institutions codes, the office may impose any remedy or penalty  
 1626 pursuant to s. 655.033, relating to cease and desist orders; s.  
 1627 655.034, relating to injunctions; s. 655.037, relating to

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1628 removal of a financial institution-affiliated party by the  
 1629 office; or s. 655.041, relating to administrative fines and  
 1630 enforcement, if a limited service affiliate engages in any of  
 1631 the impermissible activities in subsection (2).  
 1632 Section 41. Section 663.532, Florida Statutes, is created  
 1633 to read:  
 1634 663.532 Registration.—  
 1635 (1) To register as a limited service affiliate, a proposed  
 1636 registrant must file a written notice with the office, in the  
 1637 manner and on a form prescribed by the commission, together with  
 1638 a nonrefundable \$2,500 registration fee. Such written notice  
 1639 must include:  
 1640 (a) The name under which the proposed registrant will  
 1641 conduct business in this state;  
 1642 (b) A copy of the articles of incorporation or articles of  
 1643 organization, or the equivalent, of the proposed registrant;  
 1644 (c) The physical address where the proposed registrant will  
 1645 conduct business;  
 1646 (d) The mailing address of the proposed registrant;  
 1647 (e) The name and biographical information of the executive  
 1648 officer or managing member of the proposed registrant, to be  
 1649 submitted on a form prescribed by the commission;  
 1650 (f) The number of officers and employees of the proposed  
 1651 registrant;  
 1652 (g) A detailed list and description of the activities to be  
 1653 conducted by the proposed registrant. The detailed list and  
 1654 description must include:  
 1655 1. The services and activities of the proposed registrant;  
 1656 2. An explanation of how the services and activities of the

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1657 proposed registrant serve the business purpose of each  
 1658 international trust entity; and  
 1659 3. An explanation of how the services and activities of the  
 1660 proposed registrant are distinguishable from those of the  
 1661 permissible activities of an international trust company  
 1662 representative office described under s. 663.409;  
 1663 (h) Disclosure of any instance occurring within the prior  
 1664 10 years of a director, executive officer, principal  
 1665 shareholder, manager, or the equivalent who was arrested for,  
 1666 charged with, or convicted of, or who pled guilty or nolo  
 1667 contendere to, regardless of adjudication, any offense that is  
 1668 punishable by imprisonment for a term exceeding 1 year, or to  
 1669 any offense that involves money laundering, currency transaction  
 1670 reporting, tax evasion, facilitating or furthering terrorism,  
 1671 fraud, theft, larceny, embezzlement, fraudulent conversion,  
 1672 misappropriation of property, dishonesty, breach of trust,  
 1673 breach of fiduciary duty, or moral turpitude, or that is  
 1674 otherwise related to the operation of a financial institution;  
 1675 (i) A declaration under penalty of perjury, signed by the  
 1676 executive officer or managing member of the proposed registrant,  
 1677 that, to the best of his or her knowledge:  
 1678 1. No financial institution-affiliated party of the  
 1679 proposed registrant or financial institution-affiliated party of  
 1680 any affiliated international trust entity:  
 1681 a. Has been fined or sanctioned as a result of a complaint  
 1682 to the office or any other state or federal regulatory agency;  
 1683 b. Has been convicted of a felony; or  
 1684 c. Has been ordered to pay a fine or penalty within the  
 1685 prior 10 years in a proceeding initiated by a federal, state,

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1686 foreign, or local law enforcement agency or an international  
 1687 agency related to money laundering, currency transaction  
 1688 reporting, tax evasion, facilitating or furthering terrorism,  
 1689 fraud, theft, larceny, embezzlement, fraudulent conversion,  
 1690 misappropriation of property, dishonesty, breach of trust,  
 1691 breach of fiduciary duty, moral turpitude, or that is otherwise  
 1692 related to the operation of a financial institution.  
 1693 2. No financial institution-affiliated party of the  
 1694 proposed registrant:  
 1695 a. Provides, or will provide, banking services; promotes or  
 1696 sells, or will promote or sell, investments; or accepts, or will  
 1697 accept, custody of assets; and  
 1698 b. Acts, or will act, as a fiduciary in this state, which  
 1699 includes, but is not limited to, accepting the fiduciary  
 1700 appointment, executing the fiduciary documents that create the  
 1701 fiduciary relationship, or making discretionary decisions  
 1702 regarding the investment or distribution of fiduciary accounts.  
 1703 3. The jurisdiction of the international trust entity or  
 1704 its offices, subsidiaries, or any affiliates that are directly  
 1705 involved in or facilitate the financial services functions,  
 1706 banking, or fiduciary activities of the international trust  
 1707 entity is not listed on the Financial Action Task Force Public  
 1708 Statement or on its list of jurisdictions with deficiencies in  
 1709 anti-money laundering or counterterrorism;  
 1710 (j) For each international trust entity that the proposed  
 1711 registrant will provide services for in this state, the  
 1712 following:  
 1713 1. The name of the international trust entity;  
 1714 2. A list of the current officers and directors of the

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1715 international trust entity;  
 1716 3. Any country where the international trust entity is  
 1717 organized or authorized to do business;  
 1718 4. The name of the home-country regulator;  
 1719 5. Proof that the international trust entity has been  
 1720 authorized by charter, license, or similar authorization by its  
 1721 home-country regulator to engage in trust business;  
 1722 6. Proof that the international trust entity lawfully  
 1723 exists and is in good standing under the laws of the  
 1724 jurisdiction where it is chartered, licensed, or organized;  
 1725 7. A statement that the international trust entity is not  
 1726 in bankruptcy, conservatorship, receivership, liquidation, or a  
 1727 similar status under the laws of any country;  
 1728 8. Proof that the international trust entity is not  
 1729 operating under the direct control of the government or the  
 1730 regulatory or supervisory authority of the jurisdiction of its  
 1731 incorporation, through government intervention or any other  
 1732 extraordinary actions, and confirmation that it has not been in  
 1733 such a status or under such control at any time within the prior  
 1734 3 years;  
 1735 9. Proof and confirmation that the proposed registrant is  
 1736 affiliated with the international trust entities provided in the  
 1737 notice; and  
 1738 10. Proof that the jurisdictions where the international  
 1739 trust entity or its offices, subsidiaries, or any affiliates  
 1740 that are directly involved in or that facilitate the financial  
 1741 services functions, banking, or fiduciary activities of the  
 1742 international trust entity are not listed on the Financial  
 1743 Action Task Force Public Statement or on its list of

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1744 jurisdictions with deficiencies in anti-money laundering or  
 1745 counterterrorism; and

1746 (k) A declaration under penalty of perjury, signed by an  
 1747 executive officer or managing member of each affiliated  
 1748 international trust entity, declaring that the information  
 1749 provided to the office is true and correct to the best of his or  
 1750 her knowledge.

1751  
 1752 The proposed registrant may provide additional information in  
 1753 the form of exhibits when attempting to satisfy any of the  
 1754 registration requirements. All information that the proposed  
 1755 registrant desires to present to support the written notice must  
 1756 be submitted with the notice.

1757 (2) The office may request additional information as the  
 1758 office reasonably requires. Any request for additional  
 1759 information must be made by the office within 30 days after  
 1760 initial receipt of the written notice and the full amount of the  
 1761 fee specified in subsection (1). Additional information must be  
 1762 submitted within 60 days after a request has been made by the  
 1763 office. Failure to respond to such request within 60 days after  
 1764 the date of the request is a ground for denial of the  
 1765 registration. A notice is not deemed complete until all  
 1766 requested information has been submitted to the office. Upon  
 1767 deeming the notice complete, the office has 120 days to register  
 1768 the limited service affiliate or issue a denial. An order  
 1769 denying a registration must contain notice of opportunity for a  
 1770 hearing pursuant to ss. 120.569 and 120.57.

1771 (3) A registration under this part must be summarily  
 1772 suspended by the office if the limited service affiliate made a

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1773 material false statement in the written notice. The summary  
 1774 suspension must remain in effect until a final order is entered  
 1775 by the office. For purposes of s. 120.60(6), a material false  
 1776 statement made in the limited service affiliate's written notice  
 1777 constitutes an immediate and serious danger to the public  
 1778 health, safety, and welfare. If a limited service affiliate made  
 1779 a material false statement in the written notice, the office  
 1780 must enter a final order revoking the registration and may  
 1781 impose a fine as prescribed by s. 655.041 or issue an order of  
 1782 suspension, removal, or prohibition under s. 655.037 to a  
 1783 financial institution-affiliated party of the limited service  
 1784 affiliate.

1785 (4) Any instance in which a director, executive officer,  
 1786 principal shareholder, manager, or the equivalent has ever been  
 1787 arrested for, charged with, convicted of, or pled guilty or nolo  
 1788 contendere to, regardless of adjudication, any offense that  
 1789 involves money laundering, currency transaction reporting, tax  
 1790 evasion, facilitating or furthering terrorism, fraud, theft,  
 1791 larceny, embezzlement, fraudulent conversion, misappropriation  
 1792 of property, dishonesty, breach of trust, breach of fiduciary  
 1793 duty, or moral turpitude, or that is otherwise related to the  
 1794 operation of a financial institution, is a ground for denial of  
 1795 the registration.

1796 (5) A registration is not transferable or assignable.

1797 (6) Fees collected under this section must be submitted in  
 1798 the manner prescribed by the commission and must be deposited  
 1799 into the Financial Institutions' Regulatory Trust Fund pursuant  
 1800 to s. 655.049 for the purpose of administering this part.

1801 (7) A person or entity in operation as of January 1, 2018,

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1802 which meets the definition of a limited service affiliate under  
 1803 s. 663.530 must, on or before March 31, 2018, apply for  
 1804 registration as a limited service affiliate or cease doing  
 1805 business in this state.

1806 (8) No later than March 31, 2018, a person or entity that  
 1807 previously qualified under the moratorium in s. 663.041 must  
 1808 register under this part or cease doing business in this state.  
 1809 A person or entity that previously qualified under the  
 1810 moratorium in s. 663.041 may remain open and in operation until  
 1811 March 31, 2018, without registering under this part, but shall  
 1812 refrain from engaging in new lines of business in this state  
 1813 until the disposition of registration under this part.

1814 Section 42. Section 663.533, Florida Statutes, is created  
 1815 to read:

1816 663.533 Applicability of the financial institutions codes.-  
 1817 A limited service affiliate is subject to the financial  
 1818 institutions codes. Without limiting the foregoing, the  
 1819 following provisions are applicable to a limited service  
 1820 affiliate:

1821 (1) Section 655.012, relating to general supervisory powers  
 1822 of the office.

1823 (2) Section 655.031, relating to administrative enforcement  
 1824 guidelines.

1825 (3) Section 655.032, relating to investigations, subpoenas,  
 1826 hearings, and witnesses.

1827 (4) Section 655.0321, relating to restricted access to  
 1828 certain hearings, proceedings, and related documents.

1829 (5) Section 655.033, relating to cease and desist orders.

1830 (6) Section 655.034, relating to injunctions.

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1831 (7) Section 655.037, relating to removal of a financial  
 1832 institution-affiliated party by the office.

1833 (8) Section 655.041, relating to administrative fines and  
 1834 enforcement.

1835 (9) Section 655.057, relating to restrictions on access to  
 1836 public records.

1837 (10) Section 655.059, relating to access to books and  
 1838 records.

1839 (11) Section 655.0591, relating to trade secret documents.

1840 (12) Section 655.91, relating to records of institutions  
 1841 and copies thereof; retention and destruction.

1842 (13) Section 655.968, relating to financial institutions;  
 1843 transactions relating to Iran or terrorism.

1844  
 1845 This section does not prohibit the office from investigating or  
 1846 examining an entity to ensure that it is not in violation of  
 1847 this chapter or applicable provisions of the financial  
 1848 institutions codes.

1849 Section 43. Section 663.534, Florida Statutes, is created  
 1850 to read:

1851 663.534 Events that require notice to be provided to the  
 1852 office.-A registrant must report to the office, within 15 days  
 1853 of its knowledge of the occurrence, any changes to the  
 1854 information previously relied upon by the office when  
 1855 registering or renewing a registration under this part.

1856 Section 44. Section 663.535, Florida Statutes, is created  
 1857 to read:

1858 663.535 Notice to customers.-All marketing documents and  
 1859 advertisements and any display at the location of the limited

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1860 service affiliate or at any trade or marketing event must  
 1861 contain the following statement in a contrasting color in at  
 1862 least 10-point type: "The Florida Office of Financial Regulation  
 1863 DOES NOT provide safety and soundness oversight of this company,  
 1864 does not provide any opinion as to any affiliated companies or  
 1865 products, and does not provide the oversight of this company's  
 1866 affiliated international trust entities or the jurisdictions  
 1867 within which they operate. This company may not act as a  
 1868 fiduciary and may not accept the fiduciary appointment, execute  
 1869 or transmit fiduciary documents, take possession of any assets,  
 1870 create a fiduciary relationship, make discretionary decisions  
 1871 regarding the investment or distribution of fiduciary accounts,  
 1872 provide banking services, or promote or sell investments."

1873 Section 45. Section 663.536, Florida Statutes, is created  
 1874 to read:

1875 663.536 Recordkeeping requirements for trade, industry, or  
 1876 professional events.—A registrant registered only under this  
 1877 part who participates in a trade, industry, or professional  
 1878 event pursuant to s. 663.531 must keep a record of its  
 1879 participation in the event. The record must be maintained for at  
 1880 least 2 years following the event and must contain the following  
 1881 information:

1882 (1) The date, time, and location of the event;

1883 (2) To the extent known or available, a list of  
 1884 participants in the event, including other vendors, presenters,  
 1885 attendees, and targeted attendees;

1886 (3) The nature and purpose of the event;

1887 (4) The registrant's purpose for participating in the  
 1888 event; and

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1889 (5) Samples of materials or, when samples are unavailable,  
 1890 descriptions of materials provided by the registrant to  
 1891 attendees and other participants.

1892 Section 46. Section 663.537, Florida Statutes, is created  
 1893 to read:

1894 663.537 Examination or investigation of a limited service  
 1895 affiliate.—

1896 (1) The office may conduct an examination or investigation  
 1897 of a limited service affiliate at any time that it deems  
 1898 necessary to determine whether the limited service affiliate or  
 1899 financial institution-affiliated party thereof has violated, or  
 1900 is about to violate, any provision of this chapter, any  
 1901 applicable provision of the financial institutions codes, or any  
 1902 rule adopted by the commission pursuant to this chapter or the  
 1903 financial institutions codes. The office shall conduct an  
 1904 examination of each limited service affiliate at least once  
 1905 every 18 months to assess compliance with this part and the  
 1906 financial institutions codes. The office may conduct an  
 1907 examination, before or after registration, of any person or  
 1908 entity that submits a notice for registration to confirm  
 1909 information provided in the registration filing and to confirm  
 1910 the activities of the person or entity seeking registration.

1911 (2) For each examination of a limited service affiliate  
 1912 authorized under this part, the limited service affiliate shall  
 1913 pay a fee for the costs of the examination by the office. As  
 1914 used in this section, the term "costs" means the salary and  
 1915 travel expenses of field staff which are directly attributable  
 1916 to the examination of the registrant and the travel expenses of  
 1917 any supervisory and support staff required as a result of

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1918 examination findings. The costs of examination must be  
 1919 determined as follows:

1920 (a) The office shall charge each limited service affiliate  
 1921 in this state an examination fee equal to the actual cost of  
 1922 each examiner's participation during each examination of such  
 1923 limited service affiliate. The examination fee must equal the  
 1924 actual cost of the examination, but such fees, inclusive of  
 1925 travel expenses and other incidental expenses, may not be less  
 1926 than \$200 per day for each examiner participating in the  
 1927 examination.

1928 (b) As used in this section, the term "actual cost" means  
 1929 the direct salary, excluding employee benefits; travel expenses;  
 1930 and other incidental expenses required as a result of the  
 1931 examination staff's onsite and offsite examination of the  
 1932 limited service affiliate. In addition, the term includes the  
 1933 travel expenses of any supervisory staff required as a result of  
 1934 examination findings.

1935 (3) All examination fee payments must be received within 30  
 1936 days after receipt of an invoice from the office and must be  
 1937 submitted in a manner prescribed by the commission. The office  
 1938 may levy a late fee of up to \$100 per day that a payment is  
 1939 overdue, unless waived by the office for good cause. However, if  
 1940 the late payment of costs is intentional, the office may levy an  
 1941 administrative fine of up to \$1,000 per day for each day the  
 1942 payment is overdue.

1943 (4) All fees collected under this section must be submitted  
 1944 in the manner prescribed by the commission and must be deposited  
 1945 into the Financial Institutions' Regulatory Trust Fund pursuant  
 1946 to s. 655.049 for the purpose of administering this part.

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1947 Section 47. Section 663.538, Florida Statutes, is created  
 1948 to read:

1949 663.538 Suspension, revocation, or voluntary surrender of  
 1950 registration.—

1951 (1) A registrant that proposes to terminate operations in  
 1952 this state shall surrender its registration to the office and  
 1953 comply with such procedures as required by rule of the  
 1954 commission.

1955 (2) A registrant that fails to renew its registration may  
 1956 be subject to a fine and penalty; however, such registrant may  
 1957 renew its registration within 30 days after expiration or may  
 1958 surrender the registration in accordance with procedures  
 1959 prescribed by commission rule.

1960 (3) The registration of a limited service affiliate in this  
 1961 state may be suspended or revoked by the office, with or without  
 1962 examination, upon the office's determination that the registrant  
 1963 does not meet all requirements for original or renewal  
 1964 registration.

1965 (4) If a registrant surrenders its registration or its  
 1966 registration is suspended or revoked by the office, all rights  
 1967 and privileges afforded by this part to the registered limited  
 1968 service affiliate cease.

1969 (5) At least 60 days before a proposed date of voluntary  
 1970 termination of a registration, a registrant must provide to the  
 1971 office written notice by letter of its intention to surrender  
 1972 its registration and terminate operations. The notice must  
 1973 include the proposed date of termination and the name of the  
 1974 officer in charge of the termination procedures.

1975 (6) The office may conduct an examination of the books and

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1976 records of a limited service affiliate at any time after receipt  
 1977 of the notice of surrender of registration to confirm the  
 1978 winding down of operations.

1979 (7) Operations of a registrant are deemed terminated  
 1980 effective upon the later of the expiration of 60 days from the  
 1981 date of the filing of the notice of voluntary surrender or upon  
 1982 the date provided in the notice of voluntary surrender, unless  
 1983 the office provides written notice specifying the grounds for  
 1984 denial of such proposed termination. The office may not deny a  
 1985 request to terminate unless it learns of the existence of any  
 1986 outstanding claim or claims against the registrant, it finds  
 1987 that the requirements to terminate operations have not been  
 1988 satisfied, or there is an immediate and serious danger to the  
 1989 public health, safety, and welfare if the termination occurred.

1990 Section 48. Section 663.539, Florida Statutes, is created  
 1991 to read:

1992 663.539 Biennial registration renewal.—A registration must  
 1993 be renewed every 2 years. A registration must be renewed by  
 1994 furnishing such information as the commission requires, together  
 1995 with payment of a \$500 nonrefundable renewal fee. All fees  
 1996 received by the office pursuant to this section must be  
 1997 submitted in the manner prescribed by the commission and must be  
 1998 deposited into the Financial Institutions' Regulatory Trust Fund  
 1999 pursuant to s. 655.049 for the purpose of administering this  
 2000 part. A complete biennial renewal of registration must include a  
 2001 declaration under penalty of perjury, signed by the executive  
 2002 officer or managing member of the registrant, declaring that the  
 2003 information submitted for the purposes of renewal is true and  
 2004 correct to the best of his or her knowledge, and confirming or

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2005 providing all of the following:  
 2006 (1) That the registrant is in compliance with this part.  
 2007 (2) The physical location of the principal place of  
 2008 business of the registrant.  
 2009 (3) The telephone number of the registrant.  
 2010 (4) A list of current financial institution-affiliated  
 2011 parties operating under the registration to be renewed.  
 2012 (5) Any updates or changes in information which were not  
 2013 previously provided either in the initial registration or in  
 2014 subsequent registration renewals or which were not previously  
 2015 disclosed to the office.

2016 Section 49. For the purpose of incorporating the amendment  
 2017 made by this act to section 663.01, Florida Statutes, in a  
 2018 reference thereto, subsection (4) of section 663.16, Florida  
 2019 Statutes, is reenacted to read:

2020 663.16 Definitions; ss. 663.17-663.181.—As used in ss.  
 2021 663.17-663.181, the term:

2022 (4) Except where the context otherwise requires,  
 2023 "international banking corporation" or "corporation" has the  
 2024 same meaning as that provided in s. 663.01 and includes any  
 2025 licensed office of an international banking corporation  
 2026 operating in this state.

2027 Section 50. This act shall take effect January 1, 2018.



736  
738

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

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

03/06/2017

*Meeting Date*

736 & 738

*Bill Number (if applicable)*

875382 & 906604

*Amendment Barcode (if applicable)*

Topic Waive in Support of Senate Bills 736 & 738

Name Ms. Jamie Mongiovi (pronounced Mon-joe-vee)

Job Title Director of Communications & Govt. Relations

Address Florida Office of Financial Regulation

Phone 850-559-7003

*Street*

Tallahassee

Florida

32399

Email jamie.mongiovi@flofr.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida 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)

3/6/17

Meeting Date

736/738

Bill Number (if applicable)

875382

Amendment Barcode (if applicable)

Topic International financial institutions

Name Raquel A. Rodriguez

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

Address 200 S. Biscayne Blvd. Suite 2600

Street

Phone 305 704 3990

Miami

City

FL

State

33131

Zip

Email rrodriguez@

mcdonzldhopkins.com

Speaking:  For  Against  Information

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

Representing FLA. INT'L Administrators Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

736  
738  
736/738

6 MARCH, 2017

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

Meeting Date

Bill Number (if applicable)

875382 906607

Amendment Barcode (if applicable)

Topic WAIVE AND SUPPORT OF SB 736 & 738

Name PETER COHEN

Job Title PRESIDENT, FLORIDA INTERNATIONAL ADMINISTRATORS ASSOC.

Address 200 SOUTH BISCAYNE BLVD, SUIT 2000

Phone \_\_\_\_\_

Street

MIAMI FL 33131

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLORIDA INTERNATIONAL ADMINISTRATORS ASSOC.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

736  
738

3/6/17

Meeting Date

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

736-738

Bill Number (if applicable)

875382 + 906604

Amendment Barcode (if applicable)

Topic ~~WAVE~~ WAVE + SUPPORT OF SB 736 + 738

Name FERNANDO CAPABLANCA

Job Title DIRECTOR - FLORIDA INT'L BANKERS ASSOC.

Address

Street

MIAMI

City

FL

State

3313

Zip

Phone

305 776 1514

Email

FCAPABLANCA@EMAIL.FL

Speaking:  For  Against  Information

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

Representing FIBA / OFR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/17  
Meeting Date

936/736  
Bill Number (if applicable)

Topic International Fin. Institutions

875382 (736)  
Amendment Barcode (if applicable)  
906604 (738)

Name Raquel A. Rodriguez

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

Address 200 S. Biscayne Blvd., Suite 2600 Phone 305 704 3990  
Street

MIAMI FL 33131 Email rrodriguez@  
City State Zip medunzldhopkins.com

Speaking:  For  Against  Information

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

Representing Florida International Administrators Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

736/738  
Bill Number (if applicable)

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

Topic INTERNATIONAL FINANCIAL INSTITUTIONS

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

Name SIATER BAYLISS

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

Address 204 S. MONROE ST

Phone \_\_\_\_\_

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 FLORIDA INTERNATIONAL ADMINISTRATORS ASSOC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/17

Meeting Date

736

Bill Number (if applicable)

Topic International Banking

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title EVP of Foot Affairs

Address 1001 Thomasville Rd

Phone 224-2265

Street

Jallaharsee FL

32303

City

State

Zip

Email admarco@flbankers.com

Speaking:  For  Against  Information

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

Representing FL 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.

**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 Banking and Insurance

---

BILL: CS/SB 738

INTRODUCER: Banking and Insurance Committee and Senators Mayfield and Steube

SUBJECT: Public Records/International Financial Institutions

DATE: March 6, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	<b>Fav/CS</b>
2.			GO	
3.			AP	
4.			RC	

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 738 creates public records exemptions for records related to international trust entities and limited service affiliates. The Office of Financial Regulation (OFR) must hold the following information confidential and exempt:

- Personal identifying information of the customer or prospective customers that appear in records relating to reports and working papers regarding examinations, the operations, or the condition of an international trust company representative office or limited services affiliate.
- The names of shareholders or members of an international trust company representative office or limited services 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.
- Reports of examinations, operations, or condition of a limited service affiliate, including working papers.

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 s. 24(a), Art. I of



the Florida Constitution. The revision is necessary because 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.

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.

The bill will be effective on the same date 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.<sup>1</sup> 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.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> 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.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> 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’ may be released at the discretion of the records custodian.<sup>14</sup>

### **Open Government Sunset Review Act**

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.<sup>15</sup> 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.<sup>16</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> FLA. CONST., art. I, s. 24(c).

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>13</sup> 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).

<sup>14</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

<sup>15</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So.3d 379 (Fla. 2013).

<sup>16</sup> Section 119.15(3), F.S.

## 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.<sup>17</sup> 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).<sup>18</sup>

### *International Banking Corporations*

The OFR licenses and regulates international banking corporations<sup>19</sup> that transact business in Florida.<sup>20</sup> 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.<sup>21</sup> 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"<sup>22</sup> 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.<sup>23</sup> In addition, the OFR qualified

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<sup>17</sup> See [http://bus.miami.edu/magazine/fall2014/features/miami\\_the\\_global\\_hub.html](http://bus.miami.edu/magazine/fall2014/features/miami_the_global_hub.html) (Fall 2014) (last viewed Feb. 27, 2017).

<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> Sections 663.04 and 663.05, F.S.

<sup>21</sup> Section 663.06(1), F.S.

<sup>22</sup> Section 655.005(i), F.S.

<sup>23</sup> Office of Financial Regulation, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (last visited February 25, 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.<sup>24</sup>

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;<sup>25</sup>
- 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.<sup>26</sup> 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.<sup>27</sup> An international branch has the same rights and privileges as a federally licensed international branch.<sup>28</sup>

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<sup>24</sup> 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).

<sup>25</sup> 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*.

<sup>26</sup> 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.

<sup>27</sup> Section 663.061, F.S.

<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

***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.<sup>31</sup> 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.<sup>32</sup> 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).<sup>33</sup>

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.

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<sup>29</sup> Section 663.062, F.S.

<sup>30</sup> Section 663.063, F.S.

<sup>31</sup> 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.

<sup>32</sup> Section 663.01(9), F.S.

<sup>33</sup> Section 663.0625, F.S.

**Senate Bill 736 (2017)**

SB 738 provides public records exemptions that accompany the classification of international trust entities and limited service affiliates as financial institutions in SB 736 (2017). The latter 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 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 a public records exemption that requires the Office of Financial Regulation (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 s. 24(a), Art. I 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 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 s. 775.082, F.S., 775.083, F.S., or s. 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.

The bill 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.

The bill 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.

### **Limited Service Affiliate Public Records Exemption Created in s. 633.540, F.S.**

**Section 3** creates a public records exemption that requires the Office of Financial Regulation (OFR) to hold confidential and exempt from disclosure specified information relating to 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:

- Reports of examinations, operations, or condition of a limited service affiliate, including working papers.
- 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 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 limited service affiliate under examination, if identified by resolution or written consent of the board of directors or managers of the limited service affiliate.
- A fidelity insurance company, upon written consent of the board of directors or managers of the limited service affiliate.
- An independent auditor, upon written consent of the board of directors or managers of the limited service affiliate.
- The liquidator, receiver, or conservator for the 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 s. 775.082, F.S., 775.083, F.S., or s. 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.

The bill justifies the public records exemption for reports and working papers of examinations, operations, or condition of a limited service affiliate as being necessary for the OFR to effectively and efficiently examine and investigate under ss. 655.012, F.S., 655.032, F.S., and 663.537, F.S. Examinations and investigations deter fraud, ensure the safety and soundness of the financial system, and allow for early detection and corrective action of violations. During



examinations and investigations, the OFR may receive sensitive personal and financial information that, if disclosed, could impair the OFR's ability to perform its statutory duties and impair the reputation of the limited services affiliate without warrant.

The bill justifies the public records exemption for personal identifying information of customers, prospective customers, shareholders, or members of a 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.

The bill 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 Section 655.057(1), (2), (5), and (15), F.S.**

**Section 5** specifies 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 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 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 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 Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of 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.

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

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906604

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Banking and Insurance (Mayfield) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 31

and insert:

as created by SB 736, 2017 Regular Session, to read:

Delete line 159

and insert:

as created by SB 736, 2017 Regular Session, to read:

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2  
3  
4  
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7  
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9  
10



906604

11           Delete line 451  
12 and insert:  
13 the term "financial institution" in s. 655.005(1)(i), Florida  
14 Statutes, in SB 736, 2017 Regular Session.  
15  
16           Delete line 491  
17 and insert:  
18 SB 736 or similar legislation takes effect, if such legislation  
19  
20 ===== T I T L E   A M E N D M E N T =====  
21 And the title is amended as follows:  
22           Delete line 23  
23 and insert:  
24           service affiliates, as made by SB 736, 2017 Regular

By Senator Mayfield

17-00791-17

2017738\_\_

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 SB \_\_\_\_\_, 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  
 30 and incorporated into part III of chapter 663, Florida Statutes,  
 31 as created by SB \_\_\_\_\_, 2017 Regular Session, to read:  
 32 663.416 Public records exemption.—

Page 1 of 17

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

17-00791-17

2017738\_\_

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 records relating to reports of  
 53 examinations, operations, or condition of an international trust  
 54 company representative office, including working papers.  
 55 (b) Any portion of a list of names of the shareholders or  
 56 members of an affiliated international trust entity.  
 57 (c) Information received by the office from a person from  
 58 another state or country or the Federal Government which is  
 59 otherwise confidential or exempt pursuant to the laws of that  
 60 state or country or pursuant to federal law.  
 61 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT

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62 INFORMATION.—Information made confidential and exempt under  
63 subsection (2) may be disclosed by the office:

64 (a) To the authorized representative or representatives of  
65 the international trust company representative office under  
66 examination. The authorized representative or representatives  
67 must be identified in a resolution or by written consent of the  
68 board of directors, or the equivalent, of the international  
69 trust entity.

70 (b) To a fidelity insurance company, upon written consent  
71 of the board of directors, or the equivalent, of the  
72 international trust entity.

73 (c) To an independent auditor, upon written consent of the  
74 board of directors, or the equivalent, of the international  
75 trust entity.

76 (d) To the liquidator, receiver, or conservator for the  
77 international trust entity, if a liquidator, receiver, or  
78 conservator is appointed. However, any portion of the  
79 information which discloses the identity of a customer or  
80 prospective customer of the international trust entity, or a  
81 shareholder or member of the international trust entity, must be  
82 redacted by the office before releasing such portion to the  
83 liquidator, receiver, or conservator.

84 (e) To a law enforcement agency in furtherance of the  
85 agency's official duties and responsibilities.

86 (f) To the appropriate law enforcement or prosecutorial  
87 agency for the purpose of reporting any suspected criminal  
88 activity.

89 (g) Pursuant to a legislative subpoena. A legislative body  
90 or committee that receives records or information pursuant to

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91 such a subpoena must maintain the confidential status of the  
92 records or information, except in a case involving the  
93 investigation of charges against a public official subject to  
94 impeachment or removal, in which case the records or information  
95 may be disclosed only to the extent necessary as determined by  
96 such legislative body or committee.

97 (4) PUBLICATION OF INFORMATION.—This section does not  
98 prevent or restrict the publication of a report required by  
99 federal law.

100 (5) PENALTY.—A person who willfully discloses information  
101 made confidential and exempt by this section commits a felony of  
102 the third degree, punishable as provided in s. 775.082, s.  
103 775.083, or s. 775.084.

104 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject  
105 to the Open Government Sunset Review Act in accordance with s.  
106 119.15 and is repealed on October 2, 2022, unless reviewed and  
107 saved from repeal through reenactment by the Legislature.

108 Section 2. The Legislature finds that it is a public  
109 necessity to make confidential and exempt from s. 119.07(1),  
110 Florida Statutes, and s. 24(a), Article I of the State  
111 Constitution personal identifying information of the customers  
112 or prospective customers of an affiliated international trust  
113 entity which appears in records that are held by the Office of  
114 Financial Regulation and that relate to reports of examinations,  
115 operations, or condition of an international trust company  
116 representative office, including working papers; any portion of  
117 a list of names of the shareholders or members of an affiliated  
118 international trust entity which is held by the office; and  
119 information received by the Office of Financial Regulation from

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120 a person from another state or country or the Federal Government  
 121 which is otherwise confidential or exempt pursuant to the laws  
 122 of that state or country or pursuant to federal law.

123 (1) An exemption from public records requirements is  
 124 necessary for such records and information because the Office of  
 125 Financial Regulation may receive sensitive personal and  
 126 financial information, including personal identifying  
 127 information relating to such entities, in the course of its  
 128 investigation and examination duties. Public disclosure of the  
 129 personal identifying information of existing customers,  
 130 prospective customers, shareholders, or members of the  
 131 affiliated international trust entity could defame or jeopardize  
 132 the personal and financial safety of those individuals and their  
 133 family members. The individuals served by the affiliated  
 134 international trust entity are often individuals of high net  
 135 worth. Individuals of high net worth and shareholders of  
 136 financial institutions are frequently the targets of criminal  
 137 predators seeking access to their assets. It is important that  
 138 the exposure of such individuals and their family members to  
 139 threats of extortion, kidnapping, and other crimes not be  
 140 increased. Placing the personal identifying information of these  
 141 individuals within the public domain would increase the security  
 142 risk that those individuals or their families could become the  
 143 target of criminal activity.

144 (2) Public disclosure of information received by the Office  
 145 of Financial Regulation from a person from another state or  
 146 country or the Federal Government which is otherwise  
 147 confidential or exempt pursuant to the laws of that state or  
 148 country or pursuant to federal law may deteriorate the office's

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149 relationships with other regulatory bodies. The office  
 150 frequently engages in joint examinations with federal  
 151 regulators. If such information were subject to disclosure to  
 152 the public, not only would such disclosure deter other  
 153 regulatory bodies from communicating vital information to the  
 154 office, but the office would violate existing information-  
 155 sharing agreements governing the sharing of confidential  
 156 supervisory information.

157 Section 3. Section 663.540, Florida Statutes, is created  
 158 and incorporated into part IV of chapter 663, Florida Statutes,  
 159 as created by SB \_\_\_\_, 2017 Regular Session, to read:

160 663.540 Public records exemption.—

161 (1) DEFINITIONS.—As used in this section, the term:

162 (a) "Reports of examinations, operations, or condition"  
 163 means records submitted to or prepared by the office as part of  
 164 the office's duties performed pursuant to s. 655.012 or s.  
 165 663.537.

166 (b) "Working papers" means the records of the procedure  
 167 followed, the tests performed, the information obtained, and the  
 168 conclusions reached in an investigation or examination performed  
 169 under s. 655.032 or s. 663.537. The term also includes books and  
 170 records. The term includes planning documentation, work  
 171 programs, analyses, memoranda, letters of confirmation and  
 172 representation, abstracts of the books and records of a  
 173 financial institution, as defined in s. 655.005, and schedules  
 174 or commentaries prepared or obtained in the course of such  
 175 investigation or examination.

176 (2) PUBLIC RECORDS EXEMPTION.—The following information  
 177 held by the office is confidential and exempt from s. 119.07(1)

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178 and s. 24(a), Art. I of the State Constitution:

179 (a) Reports of examinations, operations, or condition of a  
180 limited service affiliate, including working papers.

181 (b) Any personal identifying information of the customers  
182 or prospective customers of an affiliated international trust  
183 entity which appears in records relating to reports of  
184 examinations, operations, or condition of a limited service  
185 affiliate, including working papers.

186 (c) Any portion of a list of names of the shareholders or  
187 members of a limited service affiliate.

188 (d) Information received by the office from a person from  
189 another state or country or the Federal Government which is  
190 otherwise confidential or exempt pursuant to the laws of that  
191 state or country or pursuant to federal law.

192 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT  
193 INFORMATION.—Information made confidential and exempt under  
194 subsection (2) may be disclosed by the office:

195 (a) To the authorized representative or representatives of  
196 the limited service affiliate under examination. The authorized  
197 representative or representatives must be identified in a  
198 resolution or by written consent of the board of directors, if  
199 the limited service affiliate is a corporation, or of the  
200 managers, if the limited service affiliate is a limited  
201 liability company.

202 (b) To a fidelity insurance company, upon written consent  
203 of the limited service affiliate's board of directors, if the  
204 limited service affiliate is a corporation, or of the managers,  
205 if the limited service affiliate is a limited liability company.

206 (c) To an independent auditor, upon written consent of the

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207 limited service affiliate's board of directors, if the limited  
208 service affiliate is a corporation, or of the managers, if the  
209 limited service affiliate is a limited liability company.

210 (d) To the liquidator, receiver, or conservator for a  
211 limited service affiliate, if a liquidator, receiver, or  
212 conservator is appointed. However, any portion of the  
213 information which discloses the identity of a customer of the  
214 affiliated international trust entity, or a shareholder or  
215 member of the limited service affiliate, must be redacted by the  
216 office before releasing such portion to the liquidator,  
217 receiver, or conservator.

218 (e) To a law enforcement agency in furtherance of the  
219 agency's official duties and responsibilities.

220 (f) To the appropriate law enforcement or prosecutorial  
221 agency for the purpose of reporting any suspected criminal  
222 activity.

223 (g) Pursuant to a legislative subpoena. A legislative body  
224 or committee that receives records or information pursuant to  
225 such a subpoena must maintain the confidential status of the  
226 records or information, except in a case involving the  
227 investigation of charges against a public official subject to  
228 impeachment or removal, in which case the records or information  
229 may be disclosed only to the extent necessary as determined by  
230 such legislative body or committee.

231 (4) PUBLICATION OF INFORMATION.—This section does not  
232 prevent or restrict the publication of a report required by  
233 federal law.

234 (5) PENALTY.—A person who willfully discloses information  
235 made confidential and exempt by this section commits a felony of

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236 the third degree, punishable as provided in s. 775.082, s.  
 237 775.083, or s. 775.084.

238 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject  
 239 to the Open Government Sunset Review Act in accordance with s.  
 240 119.15 and is repealed on October 2, 2022, unless reviewed and  
 241 saved from repeal through reenactment by the Legislature.

242 Section 4. The Legislature finds that it is a public  
 243 necessity to make confidential and exempt from s. 119.07(1),  
 244 Florida Statutes, and s. 24(a), Article I of the State  
 245 Constitution reports of examinations, operations, or condition  
 246 of a limited service affiliate, including working papers, held  
 247 by the Office of Financial Regulation; personal identifying  
 248 information, held by the office, of the customers or prospective  
 249 customers of an affiliated international trust entity which  
 250 appears in records relating to reports of examinations,  
 251 operations, or condition of a limited service affiliate,  
 252 including working papers; any portion of a list of names of the  
 253 shareholders or members of a limited service affiliate which is  
 254 held by the office; and information received by the office from  
 255 a person from another state or country or the Federal Government  
 256 which is otherwise confidential or exempt pursuant to the laws  
 257 of that state or country or pursuant to federal law.

258 (1) An exemption from public records requirements is  
 259 necessary for reports of examinations, operations, or condition,  
 260 including working papers, relating to limited service affiliates  
 261 to ensure the Office of Financial Regulation's ability to  
 262 effectively and efficiently administer the examination and  
 263 investigation duties of the office under ss. 655.012, 655.032,  
 264 and 663.537, Florida Statutes. Examination and investigation are

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265 essential components of financial institutions regulation. These  
 266 processes deter fraud and ensure the safety and soundness of the  
 267 financial system. Examinations also provide a means of early  
 268 detection of violations, allowing for corrective action to be  
 269 taken before any harm can be done. In the course of these  
 270 duties, the office may receive sensitive personal and financial  
 271 information. Public disclosure of this information would  
 272 significantly impair the office's ability to perform these  
 273 duties and may also impair the reputation of the limited service  
 274 affiliate and the safety and soundness of the affiliated  
 275 international trust entity by exposing those institutions to  
 276 unwarranted reputational risk.

277 (2) An exemption from public records requirements is  
 278 necessary for personal identifying information of existing and  
 279 prospective customers of an affiliated international trust  
 280 entity or shareholders or members of a limited service  
 281 affiliate, because if such information is available for public  
 282 access, such access could defame or jeopardize the personal and  
 283 financial safety of those individuals. The individuals served by  
 284 the affiliated international trust entity are often individuals  
 285 of high net worth. Individuals of high net worth and  
 286 shareholders or members of financial institutions are frequently  
 287 the targets of criminal predators seeking access to their  
 288 assets. It is important that the exposure of such individuals  
 289 and their family members to threats of extortion, kidnapping,  
 290 and other crimes not be increased. Placing the personal  
 291 identifying information of these individuals within the public  
 292 domain would increase the security risk that those individuals  
 293 or their families could become the target of criminal activity.

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294 (3) An exemption from public records requirements is  
 295 necessary for information received by the Office of Financial  
 296 Regulation from a person from another state or country or the  
 297 Federal Government which is otherwise confidential or exempt  
 298 pursuant to the laws of that state or country or pursuant to  
 299 federal law, as public disclosure may deteriorate the office's  
 300 relationships with other regulatory bodies. The office  
 301 frequently engages in joint examinations with federal  
 302 regulators. If such information were subject to disclosure to  
 303 the public, not only would this disclosure deter other  
 304 regulatory bodies from communicating vital information to the  
 305 office, but the office would violate existing information-  
 306 sharing agreements governing the sharing of confidential  
 307 supervisory information.

308 Section 5. Subsections (1), (2), (5), and (9) of section  
 309 655.057, Florida Statutes, are amended, and subsection (15) is  
 310 added to that section, to read:

311 655.057 Records; limited restrictions upon public access.—

312 (1) Except as otherwise provided in this section and except  
 313 for such portions thereof which are otherwise public record, all  
 314 records and information relating to an investigation by the  
 315 office are confidential and exempt from s. 119.07(1) and s.  
 316 24(a), Art. I of the State Constitution until such investigation  
 317 is completed or ceases to be active. For purposes of this  
 318 subsection, an investigation is considered "active" while such  
 319 investigation is being conducted by the office with a  
 320 reasonable, good faith belief that it may lead to the filing of  
 321 administrative, civil, or criminal proceedings. An investigation  
 322 does not cease to be active if the office is proceeding with

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323 reasonable dispatch, and there is a good faith belief that  
 324 action may be initiated by the office or other administrative or  
 325 law enforcement agency. After an investigation is completed or  
 326 ceases to be active, portions of the records relating to the  
 327 investigation are confidential and exempt from s. 119.07(1) and  
 328 s. 24(a), Art. I of the State Constitution to the extent that  
 329 disclosure would:

330 (a) Jeopardize the integrity of another active  
 331 investigation;

332 (b) Impair the safety and soundness of the financial  
 333 institution;

334 (c) Reveal personal financial information;

335 (d) Reveal the identity of a confidential source;

336 (e) Defame or cause unwarranted damage to the good name or  
 337 reputation of an individual or jeopardize the safety of an  
 338 individual; or

339 (f) Reveal investigative techniques or procedures.

340 (2) Except as otherwise provided in this section and except  
 341 for such portions thereof which are public record, reports of  
 342 examinations, operations, or condition, including working  
 343 papers, or portions thereof, prepared by, or for the use of, the  
 344 office or any state or federal agency responsible for the  
 345 regulation or supervision of financial institutions in this  
 346 state are confidential and exempt from s. 119.07(1) and s.  
 347 24(a), Art. I of the State Constitution. However, such reports  
 348 or papers or portions thereof may be released to:

349 (a) The financial institution under examination;

350 (b) Any holding company of which the financial institution  
 351 is a subsidiary;

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352 (c) Proposed purchasers if necessary to protect the  
 353 continued financial viability of the financial institution, upon  
 354 prior approval by the board of directors of such institution;

355 (d) Persons proposing in good faith to acquire a  
 356 controlling interest in or to merge with the financial  
 357 institution, upon prior approval by the board of directors of  
 358 such financial institution;

359 (e) Any officer, director, committee member, employee,  
 360 attorney, auditor, or independent auditor officially connected  
 361 with the financial institution, holding company, proposed  
 362 purchaser, or person seeking to acquire a controlling interest  
 363 in or merge with the financial institution; or

364 (f) A fidelity insurance company, upon approval of the  
 365 financial institution's board of directors. However, a fidelity  
 366 insurance company may receive only that portion of an  
 367 examination report relating to a claim or investigation being  
 368 conducted by such fidelity insurance company.

369 (g) Examination, operation, or condition reports of a  
 370 financial institution shall be released by the office within 1  
 371 year after the appointment of a liquidator, receiver, or  
 372 conservator to the financial institution. However, any portion  
 373 of such reports which discloses the identities of depositors,  
 374 bondholders, members, borrowers, or stockholders, other than  
 375 directors, officers, or controlling stockholders of the  
 376 institution, shall remain confidential and exempt from s.  
 377 119.07(1) and s. 24(a), Art. I of the State Constitution.

378  
 379 Any confidential information or records obtained from the office  
 380 pursuant to this paragraph shall be maintained as confidential

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381 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 382 Constitution.

383 (5) This section does not prevent or restrict:

384 (a) Publishing reports that are required to be submitted to  
 385 the office pursuant to s. 655.045(2) or required by applicable  
 386 federal statutes or regulations to be published.

387 (b) Furnishing records or information to any other state,  
 388 federal, or foreign agency responsible for the regulation or  
 389 supervision of financial institutions.

390 (c) Disclosing or publishing summaries of the condition of  
 391 financial institutions and general economic and similar  
 392 statistics and data, provided that the identity of a particular  
 393 financial institution is not disclosed.

394 (d) Reporting any suspected criminal activity, with  
 395 supporting documents and information, to appropriate law  
 396 enforcement and prosecutorial agencies.

397 (e) Furnishing information upon request to the Chief  
 398 Financial Officer or the Division of Treasury of the Department  
 399 of Financial Services regarding the financial condition of any  
 400 financial institution that is, or has applied to be, designated  
 401 as a qualified public depository pursuant to chapter 280.

402 (f) Furnishing information to Federal Home Loan Banks  
 403 regarding its member institutions pursuant to an information  
 404 sharing agreement between the Federal Home Loan Banks and the  
 405 office.

406  
 407 Any confidential information or records obtained from the office  
 408 pursuant to this subsection shall be maintained as confidential  
 409 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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410 Constitution.

411 (9) Materials supplied to the office or to employees of any  
 412 financial institution by other state or federal governmental  
 413 agencies remain the property of the submitting agency or the  
 414 corporation, and any document request must be made to the  
 415 appropriate agency. Any confidential documents supplied to the  
 416 office or to employees of any financial institution by other  
 417 state or federal governmental agencies are confidential and  
 418 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 419 Constitution. Such information shall be made public only with  
 420 the consent of such agency or the corporation.

421 (15) Subsections (1), (2), (5), and (9) are subject to the  
 422 Open Government Sunset Review Act in accordance with s. 119.15  
 423 and are repealed on October 2, 2022, unless reviewed and saved  
 424 from repeal through reenactment by the Legislature.

425 Section 6. The Legislature finds that it is a public  
 426 necessity to make confidential and exempt from s. 119.07(1),  
 427 Florida Statutes, and s. 24(a), Article I of the State  
 428 Constitution records and information relating to an  
 429 investigation by the Office of Financial Regulation; portions of  
 430 records relating to a completed or inactive investigation by the  
 431 office which would jeopardize the integrity of another active  
 432 investigation, impair the safety and soundness of the financial  
 433 institution, reveal personal financial information, reveal the  
 434 identity of a confidential source, defame or cause unwarranted  
 435 damage to the good name or reputation of an individual or  
 436 jeopardize the safety of an individual, or reveal investigative  
 437 techniques or procedures; reports of examinations, operations,  
 438 or condition, including working papers, or portions thereof,

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439 prepared by, or for the use of, the office or any state or  
 440 federal agency responsible for the regulation or supervision of  
 441 financial institutions in this state; any portion of such  
 442 reports which discloses the identities of depositors,  
 443 bondholders, members, borrowers, or stockholders, other than  
 444 directors, officers, or controlling stockholders of the  
 445 institution; and materials supplied to the office or to  
 446 employees of any financial institution by other state or federal  
 447 governmental agencies. This exemption is necessary because:

448 (1) The terms "international trust entity" and "limited  
 449 service affiliate" referenced in newly created parts III and IV  
 450 of chapter 663, Florida Statutes, are added to the definition of  
 451 the term "financial institution" in s. 655.005(1)(i) in SB  
 452 The international trust company representative offices and  
 453 limited service affiliates servicing international trust  
 454 entities are thus subject to examination by the Office of  
 455 Financial Regulation. As a result, the office may receive  
 456 sensitive personal and financial information relating to such  
 457 entities in conjunction with its duties under chapters 655 and  
 458 663, Florida Statutes. An exemption from public records  
 459 requirements prevents gaps in the law by providing the same  
 460 protections to international trust entities and limited service  
 461 affiliates which are afforded to other financial institutions,  
 462 thereby preventing any disadvantage to these similarly regulated  
 463 entities in comparison to other entities currently defined as  
 464 "financial institutions." An exemption from public records  
 465 requirements for reports of examinations, operations, or  
 466 condition, including working papers, is necessary to ensure the  
 467 office's ability to effectively and efficiently administer its

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468 examination and investigation duties. Examination and  
469 investigation are essential components of financial institutions  
470 regulation. They deter fraud and ensure the safety and soundness  
471 of the financial system. Examinations also provide a means of  
472 early detection of violations, allowing for corrective action to  
473 be taken before any harm can be done.

474 (2) Public disclosure of records and information relating  
475 to an examination or investigation by the office could expose  
476 the subject financial institution to unwarranted damage to its  
477 good name or reputation and impair its safety and soundness, as  
478 well as the safety and soundness of the financial system in the  
479 state. Public disclosure of records and information relating to  
480 an investigation by the office which could jeopardize the  
481 integrity of another active investigation or reveal  
482 investigative techniques or procedures of the office would  
483 impair the office's ability to effectively and efficiently  
484 administer its duties under ss. 655.032 and 655.045, Florida  
485 Statutes. Any portion of a record or information relating to an  
486 investigation or examination which reveals personal financial  
487 information or the identity of a confidential source may defame,  
488 or cause unwarranted damage to the good name or reputation of,  
489 those individuals, or jeopardize their safety.

490 Section 7. This act shall take effect on the same date that  
491 SB \_\_\_\_ or similar legislation takes effect, if such legislation  
492 is adopted in the same legislative session or an extension  
493 thereof and becomes a law.

736  
738

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

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

03/06/2017

*Meeting Date*

736 & 738

*Bill Number (if applicable)*

875382 & 906604

*Amendment Barcode (if applicable)*

Topic Waive in Support of Senate Bills 736 & 738

Name Ms. Jamie Mongiovi (pronounced Mon-joe-vee)

Job Title Director of Communications & Govt. Relations

Address Florida Office of Financial Regulation

Phone 850-559-7003

*Street*

Tallahassee

Florida

32399

Email jamie.mongiovi@flofr.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida 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)

3/6/17

Meeting Date

736/738

Bill Number (if applicable)

875382

Amendment Barcode (if applicable)

Topic International financial institutions

Name Raquel A. Rodriguez

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

Address 200 S. Biscayne Blvd. Suite 2600

Street

Phone 305 704 3990

Miami

City

FL

State

33131

Zip

Email rrodriguez@

mcdonzldhopkins.com

Speaking:  For  Against  Information

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

Representing FLA. INT'L Administrators Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

736  
738  
736/738

6 MARCH, 2017

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

Meeting Date

Bill Number (if applicable)

875382 906607

Amendment Barcode (if applicable)

Topic WAIVE AND SUPPORT OF SB 736 & 738

Name PETER COHEN

Job Title PRESIDENT, FLORIDA INTERNATIONAL ADMINISTRATORS ASSOC.

Address 200 SOUTH BISCAYNE BLVD, SUIT 2000

Phone \_\_\_\_\_

Street

MIAMI FL 33131

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLORIDA INTERNATIONAL ADMINISTRATORS ASSOC.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

736  
738

3/6/17

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

736-738

Bill Number (if applicable)

875382 + 906604

Amendment Barcode (if applicable)

Topic ~~WAVE~~ WAVE + SUPPORT OF SB 736 + 738

Name FERNANDO CAPABLANCA

Job Title DIRECTOR - FLORIDA INT'L BANKERS ASSOC.

Address \_\_\_\_\_ Phone 305 776 1514

Street MIAMI FL 3313  
City State Zip

Email FCAPABLANCA@EMAIL.FL

Speaking:  For  Against  Information

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

Representing FIBA / OFR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/17  
Meeting Date

936/736  
Bill Number (if applicable)

Topic International Fin. Institutions

875382 (736)  
Amendment Barcode (if applicable)

Name Raquel A. Rodriguez

906604 (738)

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

Address 200 S. Biscayne Blvd., Suite 2600 Phone 305 704 3990  
Street

MIAMI FL 33131 Email rrodriguez@  
City State Zip medunzldhopkins.com

Speaking:  For  Against  Information

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

Representing Florida International Administrators Assoc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

736/738  
Bill Number (if applicable)

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

Topic INTERNATIONAL FINANCIAL INSTITUTIONS

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

Name SIATER BAYLISS

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

Address 204 S. MONROE ST

Phone \_\_\_\_\_

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 FLORIDA INTERNATIONAL ADMINISTRATORS ASSOC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/6/17

Meeting Date

736

Bill Number (if applicable)

Topic International Banking

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title EVP of Foot Affairs

Address 1001 Thomasville Rd

Phone 224-2265

Street

Jallaharsee FL

City

State

32303

Zip

Email admarco@flbankers.com

Speaking:  For  Against  Information

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

Representing FL 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.

# CourtSmart Tag Report

Room: EL 110 Case No.:  
Caption: Senate Banking and Insurance Committee

Type:  
Judge:

Started: 3/6/2017 4:06:11 PM  
Ends: 3/6/2017 5:51:51 PM Length: 01:45:41

4:06:18 PM Meeting called to order by Chair.  
4:06:24 PM Roll call-- Quorum present  
4:06:58 PM TAB 2 - Senator Brandes - Reg. of Insurance Companies  
4:07:11 PM Senator Brandes recognized to explain the bill  
4:07:49 PM Amd. 293744 by Sen. Brandes - fwo - adopted  
4:08:39 PM Amd. 128686 by Sen. Brandes - fwo/adopted  
4:09:43 PM Adm. 976826 - withdrawn  
4:10:32 PM On bill as amended  
4:10:46 PM Final vote on CS/SB 454 - Favorable  
4:11:16 PM TAB 3 - SB 536 - Sen. Brandes - Unclaimed Funds Held by Clerks of Court  
4:11:53 PM Senator Brandes recognized to present the bill  
4:12:28 PM Amd. 933696 - Sen. Brandes - fwo - adopted  
4:22:23 PM Justin Moorefield, Attorney, representing self  
4:23:22 PM Michael Poluso, National Equity Recovery Services  
4:34:01 PM BG Murphy, Department of Financial Services  
4:36:52 PM Vote on CS/SB 536 - Favorable  
4:37:21 PM TAB 4 - SB 660 by Sen. Passidomo, Foreclosure Proceedings  
4:37:53 PM Senator Passidomo recognized to present bill  
4:38:41 PM Delete all Amd. 450290 fwo/adopted  
4:39:28 PM Roll call on CS/SB 660 - Favorable  
4:40:30 PM TAB 6 - SB 730 by Sen. Passidomo - Insurer Insolvency  
4:40:52 PM Senator Passidomo recognized to explain the bill  
4:43:39 PM Amd. 592904 - explanation of amend. by Sen. Passidomo  
4:44:58 PM Substitute Amd. 965748 - Explanation of Amd. by Senator Farmer  
4:46:02 PM Sub. Amd. 865748 -FWO - ADOPTED  
4:46:58 PM Amd. 332784, 68269, 464120 - withdrawn  
4:47:40 PM Amd. 374774 - fwo - Adopted  
4:47:55 PM roll call on CS/SB 730 - Favorable  
4:48:47 PM TAB 1 - SB 430 Sen. Bean - Discount Plan Organizations  
4:49:17 PM Sen. Bean recognized to explain the bill  
4:50:21 PM Delete all amd. 144836 - fwo - Adopted  
4:51:22 PM roll call on CS/SB 430 - Favorable  
4:52:08 PM TAB 5 - SB 670 - Senator Bean - Managed Care Plans' Provider  
4:52:58 PM Senator Bean recognized to present the bill  
4:57:29 PM Amd. 229060 by Sen. Bean - fwo - adopted  
5:02:18 PM Amd. 230802 by Sen. Garcia (Late Filed) - voice vote - Fails  
5:03:54 PM Amd. 390442 Sen. Garcia (Late Filed) voice vote - fails  
5:05:16 PM Amd. 895576 - Sen. Garcia (Late Filed) voice vote - fails  
5:09:48 PM Marianne Glorius, Grandma's CountryPharmacy Inc.  
5:12:53 PM Mysti Maddox - Grandma's Country Pharmacy, Inc.  
5:13:53 PM Shane Abbott, Independ. Pharmacy/Small Business Pharmacy  
5:22:51 PM Audrey Brown, FL Assoc. of Health Plans  
5:27:39 PM James Wright, Pharmacy owner, Cocoa, FL  
5:28:41 PM John Sloan, Pharmacist, RX Express Pharmacy of Narvarra  
5:31:13 PM Michael Jackson, Executive VP and CEO - FL Pharmacy Association  
5:38:56 PM  
5:43:24 PM Senator Bean closes on bill  
5:44:24 PM roll call on CS/SB 670 - Favorable  
5:45:01 PM TAB 7 SB 736 Sen. Mayfield, International financial Institution  
5:45:33 PM Sen. Mayfield recognized to explain the bill.  
5:46:48 PM Sen. Mayfield recognized to explain the bill.  
5:46:49 PM Sen. Mayfield recognized to explain the bill.

**5:47:04 PM** Amd. 875382 - fwo - adopted  
**5:48:05 PM** roll call on CS/SB 736 - Favorable  
**5:49:06 PM** Amd. 906604 - fwo - adopted  
**5:50:08 PM** Roll call on CS/SB 738 - Favorable  
**5:51:13 PM** Meeting Adjourned