HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 673 Financial Institutions
SPONSOR(S): Regulatory Affairs Committee; Government Operations Appropriations Subcommittee; Broxson
TIED BILLS: CS/CS/HB 675 **IDEN./SIM. BILLS:** CS/SB 1012

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 0 N	Bauer	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee	15 Y, 0 N, As CS	Bauer	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes ("Codes"), chapters 655 to 667, Florida Statutes. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness.

The bill makes a number of changes to the Codes:

- Amends the definition of "related interest" to exclude certain family and household members and to include specified individuals and entities engaging in a common business enterprise with a person,
- Expands the range of entities subject to the Codes' prohibited acts and practices,
- Enhances the OFR's enforcement authority (injunctions, administrative fines, and disapproval authority over proposed officers and directors) and clarifies the OFR's examination authority;
- Enhances provisions regarding money laundering and includes provisions regarding terrorist financing;
- Clarifies permissible activities for out-of-state financial institutions and parameters for trust business;
- Provides that privilege is not waived in a legal proceeding by providing documents to the OFR pursuant to an examination or investigation, and creates procedures for trade secret claims;
- Provides competitive equality to Florida-chartered credit unions by expanding allowances for branching, employee benefit plans, and specified insurance benefits plans for their officers and directors;
- Provides competitive equality to Florida-chartered banks by clarifying that the par value requirement only applies to the settlement of checks between institutions, and provides that institutions may charge fees to cash checks;
- Repeals the $50,000 small loan cap on which state banks may charge up to 18% simple interest;
- Eliminates the $2,000 annual assessment for certain international bank offices;
- Provides a general rule of preemption to the state for financial or lending activities, and requires financial institutions to report local investigations or proceedings to the OFR; and
- Provides that a financial institution is not civilly liable for the actions or operations of a borrower solely by virtue of extending a loan or a line of credit to such borrower.

The bill has an insignificant fiscal impact on revenues deposited into the Regulatory Trust Fund within the OFR. According to the OFR, the bill's elimination of the $2,000 annual assessment for each international representative office, international administrative office, and international trust company office will amount to a loss of $18,000 in revenue deposited into the Regulatory Trust Fund. The bill may have a positive fiscal impact on the private financial sector by allowing Florida-chartered financial institutions to charge check-cashing fees to non-customers, but may result in more fees for consumers if they are not customers of these banks.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Office of Financial Regulation (OFR)'s Division of Financial Institutions charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes) and the Florida Financial Institutions Rules.[1] The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Associations
- Chapter 667, F.S. – Savings Banks

As of October 2013, the Division of Financial Institutions licenses and regulates 249 state-chartered financial institutions:[2]

- 139 banks
- 71 credit unions
- 27 international bank offices
- 12 trust companies

The OFR does not regulate national banks and banks that are chartered and regulated in other states:

- *National banks* are chartered under federal law, i.e., the National Bank Act. Their primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury.
    - With the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Office of Thrift Supervision (formerly the primary federal regulator for savings banks and savings and loans associations), was merged into other federal banking agencies on July 21, 2011.[3] Since then, the Office of the Comptroller of the Currency has assumed primary federal regulatory responsibility over *savings banks and savings and loans associations*, in addition to nationally-chartered banks.
- *State-chartered banks* are chartered under the laws of the state in which the bank is headquartered.
    - The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB).
    - The primary federal regulator for non-member state banks is the Federal Deposit Insurance Corporation (FDIC).[4]
- *Federal credit unions* are chartered under the Federal Credit Union Act of 1934. Their primary federal regulator is the National Credit Union Administration (NCUA), which also operates and manages the National Credit Union Share Insurance Fund, which insures deposits for account holders in all federal credit unions and most state-chartered credit unions.[5]
- *International banking entities* enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions that are chartered and

[1] Chapters 69U-100 through 69U-150, Florida Administrative Code.
[2] OFR bill analysis of HB 673 (received February 4, 2014), on file with the Insurance & Banking Subcommittee staff.
[3] 12 U.S.C. §5412-5413.
[4] 12 U.S.C. §1813(q).
[5] NCUA Share Information Fund Information, Reports, and Statements: http://www.ncua.gov/DataApps/Pages/SI-FAQs.aspx (last accessed February 22, 2014).

regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida, which requires a Florida charter and compliance with the provisions of chapter 663 of the Codes. Chapter 663 of the Codes set forth a variety of business models, each of which must be separately licensed by the OFR and abide by the permissible activities accorded to each license type.

The OFR ensures all of these Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness. While the Codes do not specifically define "safety and soundness," the Codes define "unsafe and unsound practice" as:

> [A]ny practice or conduct found by the office to be contrary to generally accepted standards applicable to a financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.[6]

Background: Competitive Equality & Preemption
The U.S. dual regulatory system of financial institutions is premised on two related doctrines - the competitive equality doctrine and federal preemption. The competitive equality doctrine essentially states that national banks are subject to state laws with regards to their daily course of business, such as their acquisition and transfer of property, their right to collect their debts and their liability to be sued for debts, contracts, usury, and trust powers.[7]

However, while states are generally free to legislate on matters not controlled by federal regulation, the application of state laws to *national* banks is subject to the preemption doctrine. By operation of the U.S. Constitution's Supremacy Clause,[8] federal regulation of a particular subject preempts state regulation related to the same subject. In *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), for instance, the United States Supreme Court held that a federal statute granting small town banks the authority to sell insurance preempted a Florida statute which prohibited such sales. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 codified the test for "conflict preemption" articulated in the *Barnett Bank* decision. The conflict preemption test asks whether the state law prevents or significantly interferes with the exercise of the national bank's powers.[9]

It is noted that the Codes contain a unique provision that ensures competitive equality for *Florida-chartered* financial institutions. If a state law places a Florida financial institution at a competitive disadvantage with national banks, s. 655.061, F.S., authorizes the OFR to grant Florida financial institutions the authority to make any loan or investment or exercise any power which they could make or exercise as if they were federally chartered, and provides they are entitled to the same privileges and protections granted to their federally chartered counterparts. In addition, this provision states:

> In issuing an order or rule under this section, the office or commission shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.[10]

Lending limits and related interests
According to OCC regulations for national banks, lending limits ensure the safety and soundness of national banks by preventing excessive loans to one person or to related persons that are financially dependent. These limits promote diversification of loans and help ensure equitable access to banking services.[11]

---

[6] Section 655.005(1)(y), F.S.
[7] *National Bank v. Commonwealth*, 9 Wall. 353, 362, 19 L.Ed. 701(1870).
[8] U.S. Const., Art. VI, cl. 2.
[9] 12 U.S.C. §25b(b)(1).
[10] The OFR's orders of general application are publicly available on its agency website: https://real.flofr.com/ConsumerServices/SearchLegalDocuments/LDSearch.aspx (last accessed February 13, 2014).
[11] 12 C.F.R. § 32.1(b).

Florida-chartered banks are also subject to lending limits in the Codes:

- *General limitations*: a bank may extend unsecured credit to any person up to 15% of its capital accounts, and up to 25% of its capital accounts for secured credit. For the latter, the Codes specify that the 25% limitation must include the borrower's "related interests."[12]
  - If the bank's total extension of credit to any person (including his or her related interests) exceed 15% of the bank's capital accounts, a majority of the bank's board of directors must approve the loan in advance.
- *Loans to executive officers, directors, and related interests*: banks are prohibited from extending credit of more than $25,000 to any of its executive officers and directors (and their related interests), unless the majority of the board of directors have approved the loan in advance.

To the extent state lending limits are lower than those provided in Regulation O for state banks that are members of the Federal Reserve System, Regulation O provides that the state lending limits control.[13] Currently, s. 655.005(1)(t), F.S., defines "related interest" as:

> [W]ith respect to any person, *the person's spouse, partner, sibling, parent, child, or other individual residing in the same household as the person*. With respect to any person, the term means a company, partnership, corporation, or other business organization controlled by the person. A person has control if the person:
>
> 1. Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the organization;
> 2. Controls in any manner the election of a majority of the directors of the organization; or
> 3. Has the power to exercise a controlling influence over the management or policies of the organization (emphasis added).

In 2011, the Legislature enacted legislation amending the Codes.[14] Prior to 2011, "related interest" was defined within the context of credit unions' loan powers[15] and lending limits for state banks,[16] and was limited to only any partnership, corporation, or other business organization controlled by a person. As a result of the 2011 legislation, "related interest" was moved to s. 655.005(1)(t), F.S., as a general definition, and was amended to include specified family and household members of a person. The purpose of this change was to stop circumvention of lending limits by executives and stockholders, who used relatives to obtain loans and other financial benefits.

Regulation O contains a similar prohibition for loans to executive officers, directors, and principal shareholders of state and national banks that are members of the Federal Reserve System. Regulation O does state that a principal shareholder is a person with 10% or more of a bank's voting securities, and accounts for shares owned by that person's "immediate family." However, Regulation O only considers the person's spouse, minor children, and the person's children residing in the same household, while the Florida provision also includes partners, siblings, parents, or other individuals residing in the same household.

"Related interest" also appears in other provisions of the Codes:

- *Required notice for significant events*: The Codes require financial institutions to provide a written disclosure for certain significant events, including any credit extension to an institution's executive officer and his or her *related interests*, that when combined with all other extensions of credit to that officer, exceed 15% of the institution's capital accounts.[17]
- *Stock subscriptions*: Newly formed financial institutions must provide the OFR with a list of subscribers of the capital stock of a proposed bank or trust company, following the completion of a stock offering. The Codes require that the directors provide information to the OFR regarding

[12] Section 658.48(1)(a), F.S.
[13] 12 C.F.R. § 215.2(i), footnote 2.
[14] Ch. 2011-194, L.O.F.
[15] Section 657.038, F.S.
[16] Section 658.48, F.S.
[17] Section 658.945(2)(a)5., F.S.

persons subscribing to 10% or more of the voting stock or nonvoting convertible stock. This 10% threshold must include the person's *related interests*.[18]

- *Changes in capital*: The Codes require banks and trust companies to provide notice to the OFR upon specified changes in capital. In certain situations where capital accounts have been diminished below regulatory requirements and the bank or trust company cannot reasonably replenish its capital, the Codes permit special stock offering plans subject to OFR's approval. The Codes provide that the OFR shall disapprove a plan that provides unfair or disproportionate benefits to existing shareholders, directors, executive officers, or their *related interests*.[19]

The bill amends the definition of "related interest" in s. 655.005, F.S., to remove the person's partner, sibling, parent, or other individual residing in the same household as the person, but retains spouses and children and includes other dependents residing in the same household. The bill also provides that "related interest" applies to an individual, company, partnership, corporation, or other business organization that engages in a "common business enterprise" with a person, and sets forth criteria for finding that a "common business enterprise" exists.

Affiliates

Currently, the Codes prohibit certain acts and practices of any "financial institution-affiliated party," which is defined as:

1. A director, officer, employee, or controlling stockholder, other than a financial institution holding company, of, or agent for, a financial institution, subsidiary, or service corporation;
2. Any other person who has filed or is required to file a change-of-control notice with the appropriate state or federal regulatory agency;
3. A stockholder, other than a financial institution holding company, a joint venture partner, or any other person as determined by the office who participates in the affairs of a financial institution, subsidiary, or service corporation; or
4. An independent contractor, including an attorney, appraiser, consultant, or accountant, who knowingly or recklessly participates in:
    a. A violation of any law or regulation;
    b. A breach of fiduciary duty; or
    c. An unsafe and unsound practice,

    which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the financial institution, subsidiary, or service corporation.[20]

A violation of these prohibited acts and practices, which include various acts of fraud and self-dealing regarding a financial institution, constitute a third-degree felony.[21] In addition, the Codes set forth requirements for financial institution-affiliated parties regarding conflicts of interest, disclosure of personal interest, and restrictions on remuneration, participation in the assets and liabilities of a financial institution, and voting rights.[22] These provisions reinforce the fiduciary duty owed by financial institution-affiliated parties to their principals.

The bill amends s. 655.0322, F.S., to include "affiliates" and "related interest" within the scope of persons subject to the Codes' prohibited acts and practices. According to the OFR, this language is necessary to capture prohibited acts and practices that are committed by affiliates and related interests.[23]

The Codes define "affiliate" as "a holding company of a financial institution established pursuant to state or federal law, a subsidiary or service corporation of such holding company, or a subsidiary or a service corporation of a financial institution."[24] As discussed above, Section 1 of this bill amends the current definition of "related interest."

---

[18] Section 658.235(2), F.S.
[19] Section 658.36(3)(c), F.S.
[20] Section 655.005(1)(j), F.S.
[21] Section 655.0322, F.S.
[22] Section 655.0386, F.S.
[23] Priority Index of DFI Proposed 2014 Legislative Items (received September 16, 2013), on file with the Insurance & Banking Subcommittee staff.
[24] Section 655.005(1)(a), F.S.

OFR enforcement powers

Injunctions

Currently, s. 655.034, F.S., authorizes the OFR to pursue injunctive relief in circuit court whenever a "threatened and impending" violation of the Codes "will cause substantial injury to a state financial institution or its depositors, members, creditors, or stockholders."

The bill amends s. 655.034, F.S., to add language to this injunction authority to provide that a violation of a "formal enforcement action" will also allow the circuit court to have jurisdiction to hear the complaint. The bill defines a "formal enforcement action." Further, this bill removes language that required that the violation will cause substantial injury to members of the financial institution system, and adds language stating that the circuit court has jurisdiction to issue an injunction in order to protect the public's interest in the safety and soundness of the financial institution system.

Disapproval of directors and executive officers

Currently, s. 655.0385, F.S., requires financial institutions to notify the OFR of proposed changes to a board of directors or to the institution's executive officers, and authorize the OFR to issue a notice of disapproval if the proposed appointment or employment is "not in the best interests of the depositors, the members, or the public."[25]

The bill amends s. 655.0385, F.S., to prohibit a director or executive officer of a state financial institution or affiliate from concurrently serving as a director or officer in a nonaffiliated financial institution or affiliate in the same geographical area or the same major business market area, unless waived by the OFR. According to the OFR, this language is needed to clarify the nature of, and to prohibit, management interlocks between financial institutions (e.g., the same individual serving at different financial institutions in the same market).[26]

Administrative fines

Currently, s. 655.041, F.S., authorizes the OFR to impose administrative fines against any person found to have violated the Codes or any cease and desist order or any written agreement with the OFR. The amounts of the fines range from $2,500 a day to $50,000 a day depending on the egregiousness, intent, and level of harm resulting from the violation to financial institutions, subsidiaries, or service corporations.

The bill amends s. 655.041, F.S., to:

- Provide a violation of any rules adopted under the Code is also a ground for the OFR to seek administrative fines,
- Provide that a violation of any OFR order (and not just cease and desist orders) is a basis for administrative fines,
- Clarify that the loss resulting from a violation affects affiliates,
- Expand the persons that the OFR may seek fines against, and
- Add language to provide that where there is a violation of an office order or written agreement, fines begin accruing immediately upon the service of a complaint and will continue to do so until the violation is corrected.

Banking business by unauthorized persons

Currently, s. 655.922, F.S., prohibits any person, other than an authorized state or federal financial institution, from engaging in the business of soliciting or receiving funds for deposit, issuing certificates of deposit, or paying checks. A violation of this provision is a third-degree felony. In addition, only financial institutions are authorized to represent themselves to the public as a bank, credit union, trust company, and so on through business names and general advertising. The OFR is authorized to enjoin these violations.

The bill amends s. 655.922, F.S., to prohibit financial institutions from using a name that may mislead consumers or cause confusion as to the identification of the proper legal business entity. It further adds

[25] Section 655.0385, F.S.

[26] Priority Index of DFI Proposed 2014 Legislative Items (received September 16, 2013), on file with the Insurance & Banking Subcommittee staff.

language that says that the OFR may seek a circuit court order for the annulment or dissolution of a corporation found violating any provision of this section, and also issue and serve an emergency cease and desist order. It also adds that the OFR is not required to determine the consequences that a violation of this section may cause.

Examinations, records, and trade secret documents

Examinations
Currently, s. 655.045, F.S., requires the OFR to examine every state financial institution "during each 18-month period," although it may conduct more frequent examinations based on an institution's risk profile, examination history, or significant changes. The OFR is authorized to coordinate with their federal regulatory counterparts on examinations of state institutions, and may accept a federal regulator's examinations.

The bill amends s. 655.045, F.S., to clarify that the OFR must conduct examinations "at least every 18 months." Furthermore, the bill adds language that says, at least once during each 36 month period beginning July 1, 2014, the office shall conduct an examination of each state financial institution; allowing for a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained in the report. According to the OFR, this language is needed to coordinate and harmonize the scheduling of bank examinations with their federal regulatory counterparts,[27] including the ability to alternate examinations with the federal regulators and to retain control over the content of examination reports.

Records
Section 655.057, F.S., contains various public records exemptions for information held by the OFR relating to investigations and examinations. In addition, this provision contains recordkeeping requirements and provides for the protection of confidential information used in litigation.

The bill amends s. 655.057, F.S., to provide the following changes that do not involve exemptions from the Public Records Act (ch. 119, F.S.):

- It adds language that says that a person providing information to the OFR pursuant to an investigation, examination, or other supervisory activity is not considered a waiver of privilege or other legal rights in certain proceedings.[28]
- Further, it removes language that says that both credit unions and mutual associations keep full records of all their members in their principal office where there business is transacted, thereby allowing such information to be held elsewhere.
- It adds language that clarifies who has the right to copy membership or shareholder records.

Trade secret documents
Currently, the Codes do not contain a public records exemption for trade secret documents held by the OFR. However, CS/CS/CS/HB 675 (2014), the public records bill linked to this bill, creates a public records exemption for certain examination documents containing "proprietary business information that is a trade secret, as defined in s. 655.059(2), F.S."

The bill creates s. 655.0591, F.S., to establish a procedure for persons required to submit documents to the OFR who claim such documents contain trade secrets. The bill requires that a notice of trade secret be filed with the OFR or to the Department of Financial Services when submission of documents contains trade

[27] Priority Index of DFI Proposed 2014 Legislative Items (received September 16, 2013), on file with the Insurance & Banking Subcommittee staff.
[28] It is noted that s. 90.507, F.S., of the Florida Evidence Code provides that a privilege against the disclosure of a confidential matter or communication waives such privilege if the person *voluntarily* discloses or makes the communication when he or she does not have a reasonable expectation of privacy, or *consents* to disclosure of, any significant part of the matter or communications. In addition, federal financial regulators have consistently taken the view that because they can compel privileged information pursuant to their supervisory authority (including the use of subpoenas), submission of privilege information to a supervisory authority is not voluntary and therefore does not result in a privilege waiver. *See* Confidential Treatment of Privileged Information, 77 FR 39617, 39619 (Jul. 5, 2012) (codified at 12 C.F.R. part 1070, subpart D).

secrets, and that failure to file a notice is considered a waiver of any claim that the information is a trade secret. Moreover, the submitting party will have to include an affidavit certifying under oath to the truth of statements contained within this section. It further provides rules which state whether a document certified as a trade secret may or may not be disclosed.[29]

Florida Control of Money Laundering in Financial Institutions Act

Section 655.50, F.S., is the Florida Control of Money Laundering in Financial Institutions Act, which incorporates federal recordkeeping and reporting requirements for financial institutions, and sets forth administrative remedies, criminal sanctions, and civil money penalties for violations.

These requirements are enforced at the federal level by the Financial Crimes Enforcement Network (FinCEN), which is a bureau within the U.S. Department of the Treasury and whose mission is to "safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities."[30] FinCEN enforces the Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the "Bank Secrecy Act" or "BSA"), which requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. The BSA is sometimes referred to as an "anti-money laundering" law ("AML") or jointly as "BSA/AML."[31] The BSA was amended by Title III of the USA PATRIOT Act of 2001 to include additional measures to prevent, detect, and prosecute terrorist-related activities and international money laundering. The BSA requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding $10,000 (daily aggregate amount), and to file suspicious activity reports that might signify money laundering, tax evasion, or other criminal activities.

Additionally, the Office of Foreign Assets Control (OFAC), another bureau housed within the U.S. Treasury, administers and enforces economic sanctions and embargoes against targeted countries and groups of individuals engaging in terrorism, narcotics trafficking, and other threats to the national security, foreign policy or economic interests of the United States.[32] OFAC regulations prohibit financial institutions from doing businesses with individuals owned or controlled by, or acting for or on behalf of, targeted countries and groups that are Specially Designated Nationals.

The bill amends the Florida Control of Money Laundering in Financial Institutions Act to include BSA/AML provisions relating to terrorist financing which were enacted by the USA PATRIOT Act of 2001. It also adds language that says a financial institution must have a BSA/AML compliance officer that is responsible for the institution's policies and procedures relating to certain federal and state rules. Further, it adds that the board of directors of the financial institution is responsible for the efficacy of the BSA/AML program. It also creates a definition for the term "suspicious activity," adding that a suspicious activity report made under this section is entitled to the same confidentiality provided under the BSA/AML regulations.[33]

The bill conforms cross-references in ss. 655.037, 658.21, 658.235, 663.02, 663.306, 665.033, 665.034, 667.006, and 667.008, F.S., to reflect the bill's inclusion of terrorist financing provisions within s. 655.50, F.S.

Par Value & Settlement of Checks

Since 1992, s. 655.85, F.S., has required financial institutions to settle checks "at par," or at face value.[34] This means that if an individual presented a check made out to him for $300 to any financial institution in Florida, the financial institution is required to provide $300 in funds.

---

[29] It is noted that s. 624.4213, F.S., of the Insurance Code currently contains a nearly identical statute regarding trade secrets for information submitted to the Department of Financial Services or the Office of Insurance Regulation that the submitting person claims contains a trade secret.

[30] FinCEN, "What We Do," at http://www.fincen.gov/about_fincen/wwd/ (last accessed January 21, 2014).

[31] FinCEN, "FinCEN's Mandate from Congress / Bank Secrecy Act," at http://www.fincen.gov/statutes_regs/bsa/ (last accessed January 21, 2014).

[32] U.S. Department of the Treasury, About Office of Financial Assets Control: http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx (last accessed February 12, 2014).

[33] 31 C.F.R. § 1020.320 (reports by banks of suspicious transactions).

[34] Section 655.85, F.S. This provision was enacted in 1992. Section 52, ch. 92-303, L.O.F.

In the past several years, this provision has engendered significant litigation in both state and federal courts by consumers who were charged fees to have checks cashed at banks at which they were not account holders. These cases generally involved two main claims – 1) federal preemption and 2) whether the statute's limitations on fees apply to bank-to-bank transactions,[35] or to the cashing of personal checks.

- Vida Baptista ("Baptista"), sought to cash a check at a Florida branch of JPMorgan Chase, a national bank. While the check was written by a Chase account holder, Baptista was not a Chase account holder, and was accordingly charged a $6 fee by Chase to cash the check immediately. Baptista brought a class action lawsuit against Chase in federal court, asserting the fee violated s. 655.85, F.S. The federal court held that s. 655.85, F.S. applied to fees on personal checks presented by the payee in person. However, in applying the *Barnett Bank*/Dodd-Frank preemption test described above, the federal district and appellate courts ruled in favor of Chase, finding that s. 655.85, F.S., was preempted by the National Bank Act, which allows banks to exercise a range of incidental powers necessary to carry on the business of banking.[36]

  The OCC, empowered by the National Bank Act to adopt bank regulations, authorizes national banks to "charge its customers non-interest charges and fees."[37] The OCC has interpreted "customer" to include "any person who presents a check for payment."[38] In light of the OCC's interpretation, the federal court held that *national banks* are not bound by the Florida statute disallowing fees to cash checks in person.[39]

- Baptista also brought a separate class action lawsuit against PNC Bank, a North Carolina state-chartered bank, in a Florida state court, based on grounds similar to those raised in her lawsuit against Chase. Baptista did not hold an account at PNC and was charged a $5 check-cashing fee to cash a check at a Florida branch. The Fifth District Court of Appeal reached the opposite conclusion from the federal courts' decision in the *Baptista v. Chase* lawsuit, and found that a statute was not preempted. The court held that an out-of-state state-chartered bank was <u>not</u> permitted to charge check-cashing fees under the statute.[40] Finding that the statute was not ambiguous, the Fifth DCA found that the statute did not apply only to bank-to-bank transactions.

  Curiously, in an earlier decision, the Fifth DCA had ruled in favor of Bank of America (a national bank) by holding that s. 655.85, F.S., was preempted by federal law.[41] However, when presented with PNC Bank (North Carolina-chartered bank operating in Florida) in the *Baptista* case, the court did not discuss the applicability of the 1997 federal Riegle-Neal Amendments[42] to PNC Bank. This federal legislation gives out-of-state state-chartered banks that operate in multiple states the same benefits of federal preemption as national banks.

- On January 2, 2013, a federal district court in Florida ruled in favor of Regions Bank (an Alabama state-chartered bank) in a class action lawsuit similar to both *Baptista* cases.[43] Following the 11th Circuit Court of Appeal's decision in *Baptista v. JPMorgan Chase Bank*, the federal district court found that s. 655.85, F.S., was preempted, and thus inapplicable to *both* national banks and out-of-state state-chartered banks. The court declined to follow the Fifth DCA's opinion to the extent that the Fifth DCA held s. 655.85, F.S., was not preempted,[44] and applied the Riegle-Neal Amendments

[35] The Federal Reserve System operates a nationwide check-clearing system to facilitate the collection and settlement of checks between paying and collecting banks.
[36] 12 U.S.C. § 24 (Seventh).
[37] 12 C.F.R. § 7.4002(a).
[38] Cited in *Wells Fargo Bank of Texas, NA v. James*, 321 F.3d 488 (5th Cir.C.A 2003) (holding that Texas par value statute was preempted by the National Bank Act).
[39] *Vida Baptista v. JPMorgan Chase Bank*, 640 F.3d 1194 (11th Cir. C.A. 2011). The U.S. Supreme Court denied Baptista's petition for certiorari review of the federal appellate decision. *Baptista v. JPMorgan Chase Bank, N.A.*, 132 S.Ct. 253 (2011).
[40] *Vida Baptista v. PNC, N.A.*, 91 So.3d 230 (Fla. 5th DCA 2012) (per curiam), *cert. denied*, 133 S.Ct. 895 (2013).
[41] *Britt v. Bank of America, N.A.*, 52 So.3d 809 (Fla. 5th DCA 2011).
[42] 12 U.S.C. § 1831a(j)1.
[43] *Pereira v. Regions Bank*, 2013 WL 265314 (M.D.Fla. 2013).
[44] Id. at footnote 4. *See also Tafflin v. Levitt*, 493 U.S. 455, 465 (1990) (holding that federal courts are "not bound by state court interpretations" of federal law).

in favor of Regions Bank. However, the federal court did not address the issue of whether the statute applied only to bank-to-bank transactions or to the cashing of personal checks.

These decisions do not affect the statute's prohibition on *Florida-chartered* financial institutions to charge check-cashing fees, because financial institutions must follow the laws and regulations of their chartering authority.

Effect of the bill on the par value statute
The bill amends s. 655.86, F.S., to provide that financial institutions must settle checks at par, but overrides the Fifth DCA's decision in *Baptista* to provide that this requirement only applies to the settlement of checks between paying and remitting institutions, not between financial institutions and customers. The bill provides that financial institutions are not prohibited from charging fees to cash checks presented by payees in person, and thus provides consistency with the federal decisions discussed above. This will provide consistency with the federal laws permitting nationally chartered and out-of-state state-chartered financial institutions operating in Florida to charge check-cashing fees, and will also place Florida-chartered financial institutions on equal footing with national and other state-chartered institutions.

Section 12 of the bill provides a statement of legislative intent for this change, indicating that the amendment clarifies the relevant portions of the Codes, relating to the fees imposed by financial institutions.

Credit Unions

Authority to establish or relocate branch offices of a Florida credit union
Currently, s. 657.008, F.S., allows Florida credit unions to establish or relocate branch offices only if the credit union is operating in a safe and sound manner, if its board has determined that such branches is reasonably necessary to furnish service to its members, and if the credit union has provided 30 days' prior written notification to the OFR. Thus, Florida credit unions that do not meet these criteria cannot establish or relocate branch offices, even if the establishment or relocation of a branch would be in the best interests of the credit union and its members. This has placed Florida credit unions at a competitive disadvantage with their federally chartered counterparts, who are permitted under the Federal Credit Union Act and the National Credit Union Administration's regulations to establish or relocate branches simply if its directors determine that such action would be in the best interest of the federal credit union's members.

In 2008, the OFR issued an Order of General Application (OGA) to authorize Florida credit unions (that were ineligible for the written notification process) to apply to establish or relocate branch offices if their boards of directors determined such branches were reasonably necessary, was in the best interest of the credit union and its members, and was consistent with all business and regulatory compliance matters for safety and soundness considerations. The OGA also set forth required information for applications for authority to establish or relocate branch offices of a Florida credit union.[45]

The bill amends s. 657.008, F.S., to provide a statutory measure for what the OGA permitted for Florida credit union branching. It provides under what conditions a credit union may maintain branches without requiring prior OFR examination and approval. It adds language that provides requirements, and criteria for approval, for a credit union office examination and approval before establishing or relocating a branch.

Activities of directors, officers, committee members, employees, and agents of credit unions
Currently, the Codes grant the OFR with general authority to disapprove proposed directors or officers at any Florida financial institution "if the competence, experience, character, or integrity of the individual to be appointed or employed indicates that it is not in the best interests of the depositors, the members, or the public to permit the individual to be employed by or associated with the state financial institution."[46] Additionally, s. 657.028, F.S., sets forth specific grounds that disqualify proposed officers, directors, or committee members from serving at a Florida credit union, such as specified criminal convictions.

[45] OFR Order of General Application, *In Re: Applications for Authority to Establish or Relocate a Branch Office of a Florida State-Chartered Credit Union* (issued Aug. 21, 2008), on file with the Insurance & Banking Subcommittee staff.
[46] Section 655.0385(3), F.S.

The bill amends s. 657.028, F.S., to add a criterion relating to whether a person may serve in an official capacity with a credit union. The bill provides having defaulted on a debt or obligation to a financial institution which results in a material loss to the financial institution is a ground for disapproval. The bill also makes technical drafting changes to and conforms s. 657.028, F.S., to the bill's changes to the Money Laundering and Terrorist Financing Act.

Employee benefit plans for Florida credit unions

Currently, Florida credit unions are permitted to exercise the general powers granted to corporations, so long as those powers are not limited by the Codes.[47] Accordingly, to the extent not in conflict with the Codes, a Florida credit union could "pay pensions and establish pension plans…and benefit or incentive plans for any or all of its current or former directors, officers, [and] employees."[48] However, while the Codes specify for permissible investments that Florida credit unions may hold, the Codes currently do not have an exception for investments in credit union employee benefit plans and limits the insurance coverage that a Florida credit union may provide its directors, officers, and employees to "any liability arising out of such person's capacity or status with the credit union."[49] Additionally, the Codes prohibit elected officers and directors of Florida credit unions from receiving compensation for their services, but do not define "compensation" for these "voluntary" officials. In contrast, NCUA regulations permit federal credit unions to provide certain types of insurance and employee benefits (including retirement benefits) to their officials, and excludes certain types of insurance from the definition of "compensation" as applied to federal credit unions. This has placed Florida credit unions at a competitive disadvantage, particularly in terms of their ability to attract and retain experienced and qualified executive officials and employees due to the lack of a parallel allowance in the Codes.

In 2010, the OFR issued an OGA to authorize Florida credit unions to make investments for employee benefit plans and to fund premiums for health and long-term care insurance benefit plans, so long as these plans are reasonable in light of the credit union's size and financial condition and the employee's duties; do not create a unsafe or unsound condition for the credit union; comply with all applicable Florida and federal law; and are approved by the boards and by the OFR before the benefit plan is implemented.[50]

The bill amends s. 657.041, F.S., to codify the OGA's allowance to Florida credit unions to provide their officers and directors with employee benefit plans and specified insurance benefit plans. It adds language which permits, with prior approval of the credit union and the office, to pay health and accident insurance premiums and to fund employee benefit plans under certain circumstances. Such coverage will cease upon the insured person's leaving office without residual benefits other than from pending claims.

Miscellaneous

Permissible activities for out-of-state financial institutions

The bill amends s. 655.921, F.S., to provide that out-of-state financial institutions may file suit in any state court to collect a security interest in collateral without being subject to the Codes. According to the OFR, this provision is to clarify permissible activities for out-of-state trust companies and business trusts, since this statute is focused on general banking issues. Although the bill does not define "business trust," chapter 609, F.S. addresses common-law declarations of trust (which are also known as business trusts or Massachusetts trusts), which are often used to securitize mortgages for the secondary market and a financial institution is often designated as the trustee.[51] Section 609.05, F.S., requires an entity organized under ch. 609, F.S., to obtain a permit from the OFR before any person may offer to sell a unit or share of such trust. However, ch. 609, F.S., is generally written in the context of entities organized under Florida law, and does not address business trusts organized under the laws of other states.[52]

[47] Sections 607.0302 and 657.03(1), F.S.
[48] Section 607.0302(15), F.S.
[49] Section 657.041(2), F.S.
[50] OFR Order of General Application, *In Re: Credit Unions – Employee and Volunteer Officials Benefit Plans* (issued November 5, 2010), on file with the Insurance & Banking Subcommittee staff.
[51] E-mail from the OFR (received September 20, 2013), on file with the Insurance & Banking Subcommittee staff.
[52] *Id.*

The bill amends s. 655.921, F.S., to provide that out-of-state business trusts that own pools of mortgages and pursue foreclosure actions in Florida courts are not considered to be engaging in trust business in Florida.[53]

Trust business

The bill amends the definition of "trust business" in s. 658.12, F.S., to provide that trust business means acting as a fiduciary for compensation that the office does not consider to be "de minimis." The OFR has indicated that it has receive inquiries on behalf of individuals engaging in estate and trust planning activities whereby fiduciaries serve as trustees with only minimal compensation and expense reimbursement. In these situations, the OFR has opined that such individuals are not engaging in the trust business as professional fiduciaries, and the bill's language provides clarification to that effect.[54]

Bank loans not exceeding $50,000

The bill repeals s. 658.49, F.S., which currently authorizes banks to lend or to extend credit up to $50,000 in principal and on which banks may charge simple interest up to 18%, computed in accordance with the usury statute, and to collect specified charges and costs.[55] According to the Florida Bankers Association (FBA), national banks are not subject to the same lending limitation,[56] which raises a competitive equality issue for Florida-chartered banks. The bill also amends ss. 665.013 and 667.003, F.S., to conform cross-references to this provision.

Annual assessments for international bank offices

Currently, the Codes require international bank agencies to pay semiannual assessments in amounts determined by commission rule.[57] These semiannual assessments are calculated in a manner so as to the cover the OFR's costs incurred in connection with the supervision of international banking activities.[58] In addition, the Codes require each international representative office, international administrative office, or international trust company representative office to pay an annual assessment in the amount of $2,000, payable on or before January 31 of each year to the OFR.[59]

The bill removes the requirement in s. 663.12, F.S., for international representative office, international administrative office, or international trust company representative office to pay an annual assessment in the amount of $2,000, payable on or before January 31 of each year to the OFR. According to the OFR, the current semiannual assessments imposed on all international bank offices are sufficient and adequate to cover the OFR's supervision costs.[60]

Local governments and financial institutions

In 2002, the Florida Legislature enacted the Florida Fair Lending Act (part IV, ch. 494, F.S.) to impose similar or more stringent restrictions on high-cost home loans than those found in the federal Home Ownership and Equity Protection Act (HOEPA) at the time of enactment.[61] This act is administratively enforced by the OFR.[62] This act includes a general rule of preemption in s. 494.00797, F.S., which prohibits counties and municipalities from enacting and enforcing local laws regarding financial or lending activities upon certain persons or entities, such as those subject to the regulatory jurisdiction of the OFR or enumerated federal banking regulators, or are authorized by Congress to engage in secondary market

[53] Priority Index of DFI Proposed 2014 Legislative Items (received September 16, 2013), on file with the Insurance & Banking Subcommittee staff.
[54] *Id.*
[55] The last time this loan statute has been amended was in 1992. Chapter 92-303, L.O.F.
[56] FBA letter to the OFR (dated November 22, 2013), on file with the Insurance & Banking Subcommittee staff.
[57] Rule 69U-140.020, F.A.C. (regarding semiannual assessments for international banking agencies).
[58] Section 663.12(2), F.S.
[59] *Id.*
[60] Telephone conversation with the OFR (February 12, 2014).
[61] Ch. 2002-57, L.O.F.
[62] Section 494.00795, F.S.

mortgage transactions.[63] However, another bill currently pending in the Legislature (HB 631 and SB 666) is repealing the Florida Fair Lending Act, due to significant changes to HOEPA by Dodd-Frank. Although the general preemption rule itself is not affected by Dodd-Frank, HB 631 and SB 666 seek to repeal the Florida Fair Lending Act in its entirety.[64]

This bill creates s. 655.017, F.S., to provide a general rule of preemption. Subsection (1) is substantially similar to the general rule in the Florida Fair Lending Act, except for the following differences:

- The bill does not include the Office of Thrift Supervision (formerly the primary federal regulator for savings banks and savings and loans association) as a federal banking regulator, since it has been merged into other federal banking agencies in July 2011 by operation of Dodd-Frank;[65]
- The bill includes the Board of Governors of the Federal Reserve System as a federal banking regulator, and
- The bill does not include persons or entities created by the Florida Housing Finance Corporation.

Subsection (2) provides that counties and municipalities are not prevented from engaging in civil investigations or initiating civil or administrative proceedings to enforce any non-preempted state or local laws, rules, and ordinances. However, the bill provides that the OFR has sole exclusive jurisdiction to initiate appropriate proceedings, if the OFR determines a local investigation or proceeding is either based on a local law that is preempted, or "directly and specifically regulates the manner, content, or terms and conditions of any financial transaction or account related thereto, as may be authorized for financial institutions to engage in, or prevents, significantly interferes with, or alters the exercise of powers granted to a financial institution under the financial institutions codes or by any applicable federal law or regulation." This preemption standard is substantially similar to the *Barnett Bank* federal standard, as codified in Dodd-Frank, for preempting state consumer financial laws.[66]

Additionally, subsection (3) provides that this section does not limit or restrict the powers of the Department of Legal Affairs or law enforcement agencies in this state to commence criminal proceedings, or of the Department of Legal Affairs to bring a civil action. This preserves the police powers of these entities and reinforces the fact that the OFR does not have jurisdiction over criminal proceedings.

The bill also amends s. 655.948, F.S., the notice of significant events statute, to require financial institutions to notify the OFR within 30 days of any civil investigation or any civil or administrative proceeding initiated by counties or municipalities against the financial institution or its subsidiary or service corporation. The bill provides a safe harbor for reporting entities that make a good faith effort to fulfill this disclosure requirement.

Lender liability and third-party litigation against financial institutions

Lender liability law generally requires lenders to treat their borrowers fairly, and subjects lending institutions to civil liability for losses and injuries sustained as a result of the lender's actions. In addition, the express terms of contracts governed by the Uniform Commercial Code are subject to the obligation of good faith.[67] In some cases, courts may infer a fiduciary relationship between the lender and the borrower if the facts indicate a relationship of trust.[68] Lenders can be subject to a number of legal claims by borrowers, most commonly under contract and tort theories of breach of contract, bad faith, fraud or misrepresentation, negligence, and tortious interference. Other lender liability claims may include labor violations, environmental violations, wrongful foreclosures, or a variety of civil remedies under federal regulatory statutes such as the Truth in Lending Act.

---

[63] It appears that the general preemption rule was proposed in the 2002 Florida Fair Lending Act to provide lenders with some regulatory uniformity, due to the existence of varying local anti-predatory lending ordinances at the time. *See* Senate Staff Analysis of CS/SB 2262 (dated March 5, 2002).

[64] CS/CS/HB 631 and its Senate companion, SB 666, substantially amend ch. 494, F.S., relating to non-depository loan originators, mortgage brokers, and mortgage lenders. If enacted and signed into law, this bill would become effective July 1, 2014.

[65] 12 U.S.C. §§ 5412-5413. Since July 21, 2011, the Office of the Comptroller of the Currency has assumed primary federal responsibility over savings banks and savings and loans associations, in addition to nationally-chartered banks.

[66] 12 U.S.C. § 25b(b); *Barnett Bank*, 517 U.S. 25.

[67] Section 671.203, F.S.

[68] *Barnett Bank v. Hooper*, 498 So.2d 923 (Fla. 1986).

However, case law provides that lenders are generally not legally responsible for the operations and actions of its borrowers which cause harm to *third parties*.[69] Some exceptions include a joint venture between the borrower and lender or where a lender actively controls the borrower's business (especially as to the election of directors and the influence of day-to-day business affairs and decisions).[70]

In a number of recent medical negligence lawsuits filed against nursing homes in Florida courts, the plaintiffs have named large financial institutions as co-defendants, or have sought to collect a final money judgment against these banks when the plaintiffs were unable to collect from the nursing homes. The plaintiffs alleged that the lenders "colluded to pull money out of nursing home operations."[71] These lenders generally provided commercial loans to the nursing homes to finance a variety of operations, such as facility acquisitions. It is noted that the plaintiffs have variously alleged in the different cases that the lender was related to the nursing home as a private equity investor, controlling owner, or through involvement with the nursing facilities through the financial institution's clinical performance division.[72] In two cases resulting in multimillion dollar jury verdicts on behalf of nursing home patient's estates, the bank asserted that it did not have control over patient care and should not be held liable for the medical negligence claim.[73]

The bill creates a new section in the Codes, s. 655.955, F.S., to provide that a financial institution is not civilly liable to a third party for the actions or operations of a borrower, *solely by* virtue of extending a loan or a line of credit to such borrower.

The bill provides this limited immunity to "financial institutions," which the Codes define as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation or Edge Act corporation organized pursuant to the Federal Reserve Act.

To the extent third-party litigation is pending against financial institutions in this state at the time of the bill's effective date, legislation is presumed only to operate prospectively, especially when retroactive application would impair existing rights.[74]

B. SECTION DIRECTORY:

Section 1 amends s. 655.005, F.S., relating to definitions.

Section 2 creates s. 655.017, F.S., relating to general rule.

Section 3 amends s. 655.0322, F.S., relating to prohibited acts and practices; criminal penalties.

Section 4 amends s. 655.034, F.S., relating to injunctions.

Section 5 amends s. 655.037, F.S., relating to removal of a financial institution-affiliated party by the office.

Section 6 amends s. 655.0385, F.S., relating to disapproval of directors and executive officers.

---

[69] *Armetta v. Clevetrust Realty Inv.*, 359 So.2d 540, 543 (Fla. 4th DCA 1978) ("A lender owes no duty to others to supervise the construction and development of projects which it has financed."); *Napolitano v. Sec. First Fed. S&L Assoc.*, 533 So.2d 948 (Fla. 5th DCA 1988) ("Florida law is clear that a lender owes no duty to others to supervise construction which it has financed.").

[70] *Citibank, N.A. v Data Lease Fin. Corp.*, 828 F.2d 686 (11th Cir. 1987), cert. denied, 484. U.S. 1062 (1988).

[71] Stephen Nohlgren, "Tampa law firm wins another big verdict in nursing home lawsuit without a defense," *Tampa Bay Times* (February 8, 2012), at http://www.tampabay.com/news/courts/civil/tampa-law-firm-wins-another-big-verdict-in-nursing-home-lawsuit-without-a/1214647 (last accessed April 14, 2014).

[72] Nursing home litigation filings, received April 15, 2013 and March 31, 2014, on file with the Regulatory Affairs Committee staff.

[73] Stephen Nohlgren, "Who should pay the $200 million for nursing home death? It's complicated," *Tampa Bay Times* (February 4, 2012), at http://www.tampabay.com/news/courts/civil/who-should-pay-the-200-million-for-nursing-home-death-its-complicated/1214062 (last accessed April 14, 2014).

[74] Art. I, Sec. 10 ("No . . . Law impairing the obligation of contracts shall be passed."). *See also State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55 (Fla. 1995); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla. 1994).

Section 7 amends s. 655.041, F.S., relating to administrative fines; enforcement.

Section 8 amends s. 655.045, F.S., relating to examinations, reports, and internal audits; penalty.

Section 9 amends s. 655.057, F.S., relating to records; limited restrictions upon public access.

Section 10 creates s. 655.0591, F.S., relating to trade secret documents.

Section 11 amends s. 655.50, F.S., relating to the Florida Control of Money Laundering Act; reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties.

Section 12 amends s. 655.85, F.S., relating to settlement of checks.

Section 13 provides a statement of legislative intent for Section 11.

Section 14 amends s. 655.921, F.S., relating to transaction of business by out-of-state financial institutions; exempt transactions in the financial institutions codes.

Section 15 amends s. 655.922, F.S., relating to banking business by unauthorized persons; use of name.

Section 16 amends s. 655.948, F.S., relating to significant events; notice required.

Section 17 creates s. 655.955, F.S., relating to liability of financial institutions to third parties.

Section 18 amends s. 657.008, F.S., relating to place of doing business.

Section 19 amends s. 657.028, F.S., relating to activities of directors, officers, committee members, employees, and agents.

Section 20 amends s. 657.041, F.S., relating to insurance.

Section 21 amends s. 658.12, F.S., relating to definitions.

Section 22 amends s. 658.21, F.S., relating to approval of application; findings required.

Section 23 amends s. 658.235, F.S., relating to subscriptions for stock; approval of major shareholders.

Section 24 repeals s. 658.49, F.S., relating to loans by banks not exceeding $50,000.

Section 25 amends s. 663.02, F.S., relating to applicability of state banking laws.

Section 26 amends s. 663.09, F.S., relating to reports and records.

Section 27 amends s. 663.12, F.S., relating to fees; assessments; fines.

Section 28 amends s. 663.306, F.S., relating to decision by office.

Section 29 amends s. 663.013, F.S., relating to applicability of chapter 658.

Section 30 amends s. 665.033, F.S., relating to conversion of state or federal mutual association to capital stock association.

Section 31 amends s. 665.034, F.S., relating to acquisition of assets of or control over an association.

Section 32 amends s. 667.003, F.S., relating to applicability of chapter 658.

Section 33 amends s. 667.006, F.S., relating to conversion of state or federal mutual savings bank to capital stock savings bank.

Section 34 amends s. 667.008, F.S., relating to acquisition of assets of or control over a savings bank.

Section 35 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The OFR indicates that the loss of the $2,000 annual payment by each international representative office, international administrative office, and international trust company office will have an insignificant fiscal impact of $18,000 deposited into the Regulatory Trust Fund within OFR.[75]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private financial sector by allowing Florida-chartered banks to charge check-cashing fees to non-customers, but may result in more fees for consumers if they are not customers of these banks.

D. FISCAL COMMENTS:

According to the OFR, there are currently nine international offices (seven international representative offices and two international administrative offices) that would be affected by the bill's elimination of the $2,000 annual assessment on international offices. The loss of the $2,000 annual payment by these nine international offices represents a loss of $18,000 to the OFR's Regulatory Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

[75] Email correspondence with the Office of Financial Regulation (February 21, 2014), on file with the Government Operations Appropriations Subcommittee.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill. However, passage of the bill's provisions regarding credit union branching and the Florida Control of Money Laundering in Financial Institutions Act may require amendment of these administrative rules:

- 69U-110.008, F.A.C. (credit union branches)
- 69U-100.005, F.A.C. (Florida Control of Money Laundering in Financial Institutions).

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Bankers Association and the League of Southeastern Credit Unions & Affiliates are supportive of this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2014, the Government Operations Appropriations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments made various technical changes to the bill. Specifically, the amendments:

- Provided that at least once during each 36-month period beginning July 1, 2014, the OFR shall conduct an examination of each state financial institution, allowing for a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained in the report,
- Specified that a person providing documents, statements, books, records, and any other information to the office pursuant to an investigation, examination, or other supervisory activity by the office does not waive any privilege or other legal right in an administrative or legal proceeding in which the office is not a party, and
- Clarified the "department" is the Department of Financial Services.

On April 10, 2014, the Regulatory Affairs Committee considered and adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Provided a general rule of preemption to the state for financial or lending activities that is substantially similar to the general rule of preemption in s. 494.00797, F.S., which also:
    - Preserved the ability of counties and municipalities to conduct civil investigations or initiate civil proceedings to determine compliance or to enforce other laws, regulations, or ordinances that are not preempted,
    - Provided that the OFR has the sole and exclusive jurisdiction to initiate appropriate proceedings, if it determines that a local investigation or proceeding is either based on a preempted local law or prevents, significantly interferes with, or alters the exercise of a financial institution's powers that have been granted under the Financial Institutions Codes or by applicable federal law or regulation, and
    - Preserved the ability of the Attorney General's office to initiate civil or criminal proceedings, as well as the ability of law enforcement agencies of the state to initiate criminal proceedings,
- Required all financial institutions to notify the OFR within 30 days of any civil investigation or any civil or administrative proceeding initiated by counties or municipalities, and provided a safe harbor for financial institutions which make a good faith effort to fulfill this disclosure requirement, and
- Provided that a financial institution is not civilly liable to a third party for the actions or operations of a borrower solely by virtue of extending a loan or a line of credit of such borrower.

This analysis has been updated to reflect the committee substitute as passed by the Regulatory Affairs Committee.