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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/24/2016	.	
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Appropriations Subcommittee on General Government (Hays)
recommended the following:

1 **Senate Amendment to Amendment (451028) (with title**
2 **amendment)**

3
4 Delete lines 21 - 257
5 and insert:

6 (1) Until June 30, 2017, the office shall delay the
7 enforcement of the requirement under s. 663.04(4) relating to
8 licensure of an organization or entity in this state providing
9 services to an international trust entity that engages in the
10 activities described in s. 663.0625. This delay applies to any



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11 person who manages or controls or is employed by such
12 organization or entity that:

13 (a) Has been organized to conduct business in this state
14 before October 1, 2013;

15 (b) Has not been fined or sanctioned as a result of any
16 complaint to the office or to any other state or federal
17 regulatory agency;

18 (c) Has not been convicted of a felony or ordered to pay a
19 fine or penalty in any proceeding initiated by any federal,
20 state, foreign, or local law enforcement agency or international
21 agency within the 10 years before the effective date of this
22 section;

23 (d) Has not had any of its directors, executive officers,
24 principal shareholders, managers, or employees arrested for,
25 charged with, convicted of, or plead guilty or nolo contendere
26 to, regardless of adjudication, any offense that is punishable
27 by imprisonment for 1 year or more, or to any offense that
28 involves money laundering, currency transaction reporting, tax
29 evasion, facilitating or furthering terrorism, fraud, or that is
30 otherwise related to the operation of a financial institution,
31 within the 10 years before the effective date of this section;

32 (e) Does not provide services for any international trust
33 entity that is in bankruptcy, conservatorship, receivership,
34 liquidation, or a similar status under the laws of any country;

35 (f) Does not provide banking services or promote or sell
36 investments or accept custody of assets;

37 (g) Does not act as a fiduciary, which includes, but is not
38 limited to, accepting the fiduciary appointment, executing the
39 fiduciary documents that create the fiduciary relationship, or



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40 making discretionary decisions regarding the investment or
41 distribution of fiduciary accounts; and

42 (h) Conducts those activities permissible for an
43 international trust company representative office as described
44 in s. 663.0625.

45 (2) This moratorium does not prevent the office from
46 otherwise enforcing the financial institutions codes.

47 (3) An organization or entity that requests to qualify for
48 this moratorium shall notify the office in writing by letter on
49 official letterhead via United States Postal Service or
50 commercial mail delivery service by July 1, 2016, and shall
51 provide the following:

52 (a) Written proof that it has been organized to do business
53 in this state before October 1, 2013;

54 (b) The name or names under which it conducts business in
55 this state;

56 (c) The addresses of its locations from which it conducts
57 business;

58 (d) A detailed list and description of the activities being
59 conducted at the locations from which it conducts business. The
60 detailed description must include the types of consumers that
61 utilize those activities and an explanation of how those
62 activities serve the business purpose of an international trust
63 entity.

64 (e) As to each international trust entity the organization
65 or entity provides services for in this state, the following:

66 1. The name of the international trust entity;

67 2. A list of the current officers and directors of the
68 international trust entity;



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69 3. The country or countries where the international trust
70 entity is organized;

71 4. The supervisory or regulatory authority, or equivalent
72 or other similarly sanctioned body, organization, governmental
73 entity, or recognized authority that has licensing, chartering,
74 oversight, or similar responsibilities over the international
75 trust entity;

76 5. Proof that the international trust entity has been
77 authorized by a charter, license, or similar authorization by
78 operation of law in its home country jurisdiction to engage in
79 trust business;

80 6. Proof that the international trust entity lawfully
81 exists and is in good standing under the laws of the
82 jurisdiction where it is chartered, licensed, organized, or
83 lawfully existing. The organization or entity shall submit a
84 certificate of good standing or equivalent document issued by
85 the supervisory or regulatory authority, or equivalent or other
86 similarly sanctioned body, organization, governmental entity, or
87 recognized authority that has similar responsibilities, of the
88 country where the international trust entity is licensed,
89 chartered, or has similar authorization by operation of law and
90 is duly organized and lawfully exists;

91 7. A statement that the international trust entity is not
92 in bankruptcy, conservatorship, receivership, liquidation, or in
93 a similar status under the laws of any country; and

94 8. Proof that the international trust entity is not
95 operating under the direct control of the government,
96 regulatory, or supervisory authority of the jurisdiction of its
97 incorporation, through government intervention or any other



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98 extraordinary actions, and confirmation that it has not been in
99 such a status or under such control at any time within the 7
100 years before the date of notification to the office.

101 (f) A declaration under penalty of perjury signed by an
102 executive officer or managing member of the organization or
103 entity, declaring that the information provided to the office is
104 true and correct to the best of his or her knowledge.

105 (4) In processing the request to qualify for the
106 moratorium, the office shall confirm the following:

107 (a) That the international trust entity is adequately
108 supervised by the appropriate regulatory authority, or
109 equivalent or other similarly sanctioned body, organization,
110 governmental entity, or recognized authority that has similar
111 responsibilities in the foreign country where it is organized,
112 chartered, or licensed, or has similar authorization by
113 operation of law; and

114 (b) That the jurisdiction of the international trust entity
115 or its offices, subsidiaries, or any affiliates that are
116 directly involved in or facilitate the financial services
117 functions, banking, or fiduciary activities of the international
118 trust entity, is not listed on the Financial Action Task Force
119 Public Statement or on its list of jurisdictions with
120 deficiencies in anti-money laundering or counterterrorism.

121 (5) For purposes of establishing adequate supervision under
122 paragraph (4) (a):

123 (a) An international trust entity with foreign
124 establishments is considered adequately supervised if it is
125 subject to consolidated supervision. As used in this paragraph,
126 "consolidated supervision" means supervision that enables the



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127 appropriate regulatory authority, or equivalent or other
128 similarly sanctioned body, organization, governmental entity, or
129 recognized authority that has similar responsibilities of the
130 home country (home country supervisor) to evaluate:

131 1. The safety and soundness of the international trust
132 entity's operations located within the home country supervisor's
133 primary jurisdiction; and

134 2. The safety and soundness of the operations performed by
135 the international trust entity's offices, subsidiaries, or any
136 affiliates that are directly involved in or facilitate the
137 financial services functions, banking, or fiduciary activities
138 of the international trust entity, wherever located.

139 (b) An international trust entity with no foreign
140 establishments is considered adequately supervised if the home
141 country supervisor can evaluate the safety and soundness of the
142 international trust entity's operations through its offices or
143 subsidiaries located in the home country. For purposes of this
144 paragraph, the home country supervisor is deemed to be able to
145 evaluate the safety and soundness of the international trust
146 entity if the home country supervisor has the authority to
147 collect and maintain information on the following regulatory
148 components:

149 1. The technical competence and administrative ability of
150 the management of the international trust entity;

151 2. The adequacy of the operational, accounting, and
152 internal control systems of the international trust entity,
153 particularly the international trust entity's ability to monitor
154 and supervise the activities of its offices or subsidiaries
155 wherever located;



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156 3. The adequacy of asset management and asset
157 administration policies and procedures;

158 4. The capital adequacy of the international trust entity,
159 its offices or subsidiaries as specified by any capital adequacy
160 guidelines in the home country;

161 5. The earnings of the international trust entity; and

162 6. The external and internal auditors' reports as well as
163 any management comment letters or any documented corrective
164 action by management.

165 (c) As used in paragraphs (4) (a), (5) (a), and (5) (b),
166 adequate supervision does not require supervision of companies
167 that control the international trust entity or supervision of
168 companies under common control with the international trust
169 entity but that are not in the international trust entity's
170 chain of control. However, in cases where a holding company is
171 the only controlling element in a trust business group, holding
172 company supervision by a home country supervisor shall be
173 required when it is needed to ensure consolidated supervision of
174 all trust business entities in the group.

175 (d) If a holding company is not supervised, adequate
176 supervision is deemed to exist if the home country supervisor
177 regulates transactions between the international trust entity
178 and controlling persons or entities under common control.

179 (e) An international trust entity and its offices or
180 subsidiaries is deemed to be adequately supervised if it is
181 subject to comprehensive supervision. For purposes of this
182 paragraph, comprehensive supervision:

183 1. Means supervision that ensures that the supervisory
184 processes and procedures are designed to inform the home country



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185 supervisor about the international trust entity's financial
186 condition, including capital position; asset management and
187 asset administration; internal controls and audit; compliance
188 with existing laws and regulations; and capability of
189 management.

190 2. Does not require the home country supervisor to conduct
191 onsite examinations of the international trust entity or its
192 offices or subsidiaries. However, at a minimum, it requires that
193 the home country supervisor:

194 a. Is able to determine that the international trust entity
195 and its offices and subsidiaries have adequate procedures for
196 monitoring and controlling its domestic and foreign operations;

197 b. Is authorized to obtain information, by examination,
198 audits or by other means, on the domestic and foreign operations
199 of the international trust entity, including its offices and
200 subsidiaries, and the authority to demand financial reports
201 which permit analysis of the consolidated condition of the
202 international trust entity;

203 c. Is able to obtain information on the dealings and
204 relationships between the international trust entity and its
205 offices and subsidiaries, wherever located; and

206 d. Is authorized by the home country's laws to ensure the
207 safety and soundness of the international trust entity and its
208 offices and subsidiaries.

209 3. Includes the ability and willingness of the home country
210 supervisor to provide the office early notice of any weaknesses
211 being experienced by the international trust entities, including
212 its offices or subsidiaries wherever located.

213 4. Includes the ability of the home country supervisor to



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214 provide the office assurance of cooperation by both the
215 international trust entity and the home country supervisor.

216 (6) The office shall process requests made for inclusion
217 under the moratorium as follows:

218 (a) Upon receipt of any request, the office shall review
219 the information contained therein, and request any additional
220 information to complete the request to qualify for the
221 moratorium within 30 days after receipt. The organization or
222 entity shall provide the requested additional information within
223 45 days after the receipt of the notice from the office. If the
224 office does not make such request within 30 days after receipt,
225 the request to qualify for the moratorium is deemed complete as
226 of the date it was received.

227 (b) Within 20 days after receipt of any additional
228 information requested, the office shall deem the request to
229 qualify for the moratorium complete or provide notification to
230 the organization or entity that the information provided does
231 not satisfy the office's request or requests.

232 (c) Within 90 days after receipt of a completed request to
233 qualify for the moratorium, the office shall confirm with the
234 organization or entity that they are or are not a party to the
235 moratorium.

236 1. If the office determines that an organization or entity
237 is not a party to the moratorium, the office shall issue a
238 notice of denial informing the organization or entity of its
239 determination. An organization or entity receiving a notice of
240 denial may request a hearing under chapter 120 to contest the
241 denial.

242 2. If the office fails to notify the organization or entity



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243 within such time whether or not the organization or entity is a
244 party to the moratorium, then the organization or entity is
245 considered a party to the moratorium by operation of law.

246 (d) During the period of the moratorium, the office may
247 conduct an onsite visitation of an organization or entity to
248 confirm information provided to the office in deeming the
249 organization or entity qualified for the moratorium. If the
250 office finds that the organization or entity made a material
251 false statement in its request to qualify for the moratorium,
252 the office shall issue an immediate final order suspending the
253 organization's or entity's qualification and disqualifying the
254 organization or entity from participating in the moratorium. A
255 material false statement made in the request to qualify for the
256 moratorium constitutes an immediate and serious danger to the
257 public health, safety, and welfare.

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

260 And the title is amended as follows:

261 Delete lines 276 - 291

262 and insert:

263 to apply the moratorium to specified persons of the
264 organization or entity; providing for construction;
265 specifying requirements for a letter to the office to
266 request qualification as a party to the moratorium;
267 requiring the office to confirm specified findings
268 when processing a request; specifying circumstances
269 for establishing adequate supervision; providing
270 procedures and timeframes for the office's processing
271 of requests and the office's requests for additional



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272 information; providing timeframes for the office to
273 confirm with the organization or entity whether it has
274 been confirmed as a party to the moratorium; requiring
275 the office to issue a notice of denial if it
276 determines that an organization or entity is not a
277 party to the moratorium; providing that a denied
278 organization or entity may request a certain hearing
279 to contest the denial; providing for construction if
280 certain timeframes are not met; authorizing the office
281 to conduct an onsite visitation of an organization or
282 entity for a specified purpose until a specified time;
283 requiring the office to issue an immediate final order
284 disqualifying an organization or entity if it finds
285 that such organization or entity made a material false
286 statement in its request; providing for construction;
287 providing for future repeal;