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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:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsections (10) and (11) of section  
663.01, Florida Statutes, are renumbered as subsections (11) and  
(12), respectively, and a new subsection (10) is added to that  
section, to read:

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

(10) "International trust entity" means an international



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11 trust company, an international business, an international  
12 business organization, or an affiliated or subsidiary entity  
13 that is licensed, chartered, or similarly permitted to conduct  
14 trust business in a foreign country or countries under the laws  
15 of which it is organized and supervised.

16 Section 2. Section 663.041, Florida Statutes, is created to  
17 read:

18 663.041 Moratorium on the office's enforcement of licensing  
19 requirements for an international trust entity or related  
20 entities.—

21 (1) The office shall delay the enforcement of the  
22 requirement under s. 663.04(4) relating to licensure of an  
23 organization or entity in this state providing services to an  
24 international trust entity that engages in the activities  
25 described in s. 663.0625. This delay extends to any person who  
26 manages or controls or is employed by such organization or  
27 entity that:

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

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

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

38 (d) Has not had any of its directors, executive officers,  
39 principal shareholders, managers, or employees arrested for,



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40 charged with, convicted of, or pled guilty or nolo contendere  
41 to, regardless of adjudication, any offense that is punishable  
42 by imprisonment for 1 year or more, or to any offense that  
43 involves money laundering, currency transaction reporting, tax  
44 evasion, facilitating or furthering terrorism, fraud, or that is  
45 otherwise related to the operation of a financial institution,  
46 within the 10 years before the effective date of this section;

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

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

52 (g) Does not act as a fiduciary, which includes, but is not  
53 limited to, accepting the fiduciary appointment, executing the  
54 fiduciary documents that create the fiduciary relationship, or  
55 making discretionary decisions regarding the investment or  
56 distribution of fiduciary accounts; and

57 (h) Conducts those activities permissible for an  
58 international trust company representative office as described  
59 in s. 663.0625.

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

62 (3) An organization or entity that seeks consideration for  
63 this moratorium shall notify the office in writing by letter on  
64 official letterhead via United States Postal Service or  
65 commercial mail delivery service by July 1, 2016, and shall  
66 provide the following:

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



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

71       (c) The addresses of its locations from which it conducts  
72 business;

73       (d) A detailed list and description of the activities being  
74 conducted at the locations from which it conducts business. The  
75 detailed description must include the types of consumers that  
76 utilize those activities and an explanation of how those  
77 activities serve the business purpose of an international trust  
78 entity.

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

81       1. The name of the international trust entity;

82       2. A list of the current officers and directors of the  
83 international trust entity;

84       3. The country or countries where the international trust  
85 entity is organized;

86       4. The supervisory or regulatory authority, or equivalent  
87 or other similarly sanctioned body, organization, governmental  
88 entity, or recognized authority that has licensing, chartering,  
89 oversight, or similar responsibilities over the international  
90 trust entity;

91       5. Proof that the international trust entity has been  
92 authorized by a charter, license, or similar authorization by  
93 operation of law in its home country jurisdiction to engage in  
94 trust business;

95       6. Proof that the international trust entity lawfully  
96 exists and is in good standing under the laws of the  
97 jurisdiction where it is chartered, licensed, organized, or



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98 lawfully existing. The organization or entity shall submit a  
99 certificate of good standing or equivalent document issued by  
100 the supervisory or regulatory authority, or equivalent or other  
101 similarly sanctioned body, organization, governmental entity, or  
102 recognized authority that has similar responsibilities, of the  
103 country where the international trust entity is licensed,  
104 chartered, or has similar authorization by operation of law and  
105 is duly organized and lawfully exists;

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

109 8. Proof that the international trust entity is not  
110 operating under the direct control of the government,  
111 regulatory, or supervisory authority of the jurisdiction of its  
112 incorporation, through government intervention or any other  
113 extraordinary actions, and confirmation that it has not been in  
114 such a status or under such control at any time within the 7  
115 years before the date of notification to the office.

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

120 (4) In processing the notification and request to qualify  
121 for moratorium, the office shall confirm the following:

122 (a) That the international trust entity is adequately  
123 supervised by the appropriate regulatory authority, or  
124 equivalent or other similarly sanctioned body, organization,  
125 governmental entity, or recognized authority that has similar  
126 responsibilities in the foreign country where it is organized,



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127 chartered, or licensed, or has similar authorization by  
128 operation of law; and

129 (b) That the jurisdiction of the international trust entity  
130 or its offices, subsidiaries, or any affiliates that are  
131 directly involved in or facilitate the financial services  
132 functions, banking, or fiduciary activities of the international  
133 trust entity, is not listed on the Financial Action Task Force  
134 Public Statement or on its list of jurisdictions with  
135 deficiencies in anti-money laundering or counterterrorism.

136 (5) For purposes of establishing adequate supervision under  
137 paragraph (4) (a):

138 (a) An international trust entity with foreign  
139 establishments is considered adequately supervised if it is  
140 subject to consolidated supervision. As used in this paragraph,  
141 "consolidated supervision" means supervision that enables the  
142 appropriate regulatory authority, or equivalent or other  
143 similarly sanctioned body, organization, governmental entity, or  
144 recognized authority that has similar responsibilities of the  
145 home country (home country supervisor) to evaluate:

146 1. The safety and soundness of the international trust  
147 entity's operations located within the home country supervisor's  
148 primary jurisdiction; and

149 2. The safety and soundness of the operations performed by  
150 the international trust entity's offices, subsidiaries, or any  
151 affiliates that are directly involved in or facilitate the  
152 financial services functions, banking, or fiduciary activities  
153 of the international trust entity, wherever located.

154 (b) An international trust entity with no foreign  
155 establishments is considered adequately supervised if the home



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156 country supervisor can evaluate the safety and soundness of the  
157 international trust entity's operations through its offices or  
158 subsidiaries located in the home country. For purposes of this  
159 paragraph, the home country supervisor is deemed to be able to  
160 evaluate the safety and soundness of the international trust  
161 entity if the home country supervisor has the authority to  
162 collect and maintain information on the following regulatory  
163 components:

164 1. The technical competence and administrative ability of  
165 the management of the international trust entity;

166 2. The adequacy of the operational, accounting, and  
167 internal control systems of the international trust entity,  
168 particularly the international trust entity's ability to monitor  
169 and supervise the activities of its offices or subsidiaries  
170 wherever located;

171 3. The adequacy of asset management and asset  
172 administration policies and procedures;

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

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

177 6. The external and internal auditors' reports as well as  
178 any management comment letters or any documented corrective  
179 action by management.

180 (c) As used in paragraphs (4) (a), (5) (a), and (5) (b),  
181 adequate supervision does not necessarily require supervision of  
182 companies that control the international trust entity or  
183 supervision of companies under common control with the  
184 international trust entity but that are not in the international



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185 trust entity's chain of control. However, in cases where a  
186 holding company is the only controlling element in a trust  
187 business group, holding company supervision by a home country  
188 supervisor shall be required when it is needed to ensure  
189 consolidated supervision of all trust business entities in the  
190 group.

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

195 (e) An international trust entity and its offices or  
196 subsidiaries is deemed to be adequately supervised if it is  
197 subject to comprehensive supervision. For purposes of this  
198 paragraph, comprehensive supervision:

199 1. Means supervision that ensures that the supervisory  
200 processes and procedures are designed to inform the home country  
201 supervisor about the international trust entity's financial  
202 condition, including capital position; asset management and  
203 asset administration; internal controls and audit; compliance  
204 with existing laws and regulations; and capability of  
205 management.

206 2. Does not require the home country supervisor to conduct  
207 onsite examinations of the international trust entity or its  
208 offices or subsidiaries. However, at a minimum, it requires that  
209 the home country supervisor:

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

213 b. Is authorized to obtain information, by examination,





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214 audits or by other means, on the domestic and foreign operations  
215 of the international trust entity, including its offices and  
216 subsidiaries, and the authority to demand financial reports  
217 which permit analysis of the consolidated condition of the  
218 international trust entity;

219 c. Is able to obtain information on the dealings and  
220 relationships between the international trust entity and its  
221 offices and subsidiaries, wherever located; and

222 d. Is authorized by the home country's laws to ensure the  
223 safety and soundness of the international trust entity and its  
224 offices and subsidiaries.

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

229 4. Includes the ability of the home country supervisor to  
230 provide the office assurance of cooperation by both the  
231 international trust entity and the home country supervisor.

232 (6) The office shall process requests made by notification  
233 for inclusion under the moratorium as follows:

234 (a) Upon receipt of any request, the office shall review  
235 the information contained therein, and request any additional  
236 information to complete the notification within 30 days after  
237 receipt. The organization or entity shall provide the requested  
238 additional information within 45 days after the receipt of the  
239 notice from the office. If the office does not make such request  
240 within 30 days after receipt, the notification is deemed  
241 complete as of the date it was received.

242 (b) Within 20 days after receipt of any additional



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243 information requested, the office shall deem the notification  
244 complete or provide notification to the organization or entity  
245 that the information provided does not satisfy the office's  
246 request or requests.

247 (c) Within 90 days after receipt of a completed  
248 notification, the office shall confirm with the organization or  
249 entity that they are or are not a party to the moratorium. If  
250 the office fails to notify the organization or entity within  
251 such time whether or not the organization or entity is a party  
252 to the moratorium, then the organization or entity is considered  
253 a party to the moratorium by operation of law.

254 (g) During the period of the moratorium, the office may  
255 conduct an onsite visitation of an organization or entity to  
256 confirm information provided to the office in deeming the  
257 organization or entity qualified for the moratorium.

258 Section 3. Section 663.041, Florida Statutes, and the  
259 amendments to section 663.01, Florida Statutes, made by this  
260 act, are repealed on July 1, 2017.

261 Section 4. This act shall take effect upon becoming a law.

262  
263 ===== T I T L E A M E N D M E N T =====

264 And the title is amended as follows:

265 Delete everything before the enacting clause  
266 and insert:

267 A bill to be entitled  
268 An act relating to international trust entities;  
269 amending s. 663.01, F.S.; defining the term  
270 "international trust entity"; creating s. 663.041,  
271 F.S.; providing for a moratorium for a specified



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272           timeframe on enforcement by the Office of Financial  
273           Regulation of certain licensure requirements for  
274           certain organizations and entities providing services  
275           to international trust companies; providing conditions  
276           to extend the moratorium to specified persons of the  
277           organization or entity; providing for construction;  
278           specifying requirements for a letter to the office to  
279           qualify as a party to the moratorium; requiring the  
280           office to confirm specified findings when processing a  
281           request; specifying circumstances for establishing  
282           adequate supervision; providing procedures and  
283           timeframes for the office's processing of requests and  
284           the office's requests for additional information;  
285           providing timeframes for the office to confirm with  
286           the organization or entity whether it has been  
287           confirmed as a party to the moratorium; providing for  
288           construction if certain timeframes are not met;  
289           authorizing the office to conduct an onsite visitation  
290           of an organization or entity for a specified purpose  
291           until a specified time; providing for future repeal;  
292           providing an effective date.