The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL:	CS/CS/SB 1612
INTRODUCER:	Fiscal Policy Committee; Banking and Insurance Committee; and Senator Grall
SUBJECT:	Financial Institutions
DATE:	April 21, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Knudson	BI	**Fav/CS**
2.	Sanders	Betta	AEG	**Favorable**
3.	Moody	Siples	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1612 makes amendments to the financial institutions code, including modifications to financial institutions' assessment payment dates, credit unions' reserve accounts and expense reimbursements for specified persons, applications for a proposed bank, and interest on trust account (IOTA) accounts used by lawyers and law firms. Further, the bill amends eligibility and other requirements of insurance coverage to be exported to (written by) a surplus lines insurer.

Financial Institutions Code

The bill provides various amendments to the financial institutions code. The bill:

- Amends the due dates by which time a financial institution must pay semiannual assessments and specifies the method and timing of when the semiannual assessments must be made.
- Authorizes the Office of Financial Regulation (OFR) to issue a certificate of acquisition to an acquiring financial institution after specified circumstances are met.
- Authorizes a credit union elected officer, director, or committee member to be reimbursed for certain necessary incidental expenses.
- Repeals the requirement for credit unions to maintain a regular reserve and modifies the definition of the term "equity" to remove reference to "regular reserve."
- Removes a timeframe for certain requirements by directors of a proposed new bank or trust company.
- Modifies the period in which a proposed bank or trust company must open and conduct a general commercial bank or trust company business.

- With respect to interest rates or dividends for IOTA, the bill creates s. 655.97, F.S., which:
  - Authorizes a financial institution to hold funds in an IOTA in which the interest or dividends are remitted to an entity for specified purposes, including providing free legal services to low-income individuals.
  - Requires financial institutions to pay the maximum interest rate or dividend of comparable specified accounts provided certain criteria are met.
  - Establishes a floor for the IOTA interest rate based on the Federal Funds Effective Rate.
  - Requires a financial institution that holds IOTA funds to submit certain documents to the Chief Financial Officer (CFO) by a specified date which, amongst other things, attests to complying with the interest rate or dividend requirements.
  - Requires the CFO to verify that the required documents have been received by the Department of Financial Services.
  - Provides s. 655.97, F.S., does not apply to certain interest rates.
  - Is effective upon becoming law.

Surplus Lines Insurers

The bill deletes requirements in current law regarding the eligibility of insurance coverage to be exported to (written by) a surplus lines insurer. The deleted requirements include that:

- Surplus lines agents must verify that a "diligent effort" has been made by requiring a properly documented statement of diligent effort from the retail or producing agent and by seeking coverage from and having been rejected by a specified number of authorized insurers currently writing this type of coverage and documenting these rejections;
- The surplus lines agent's reliance on the diligent effort must be reasonable in the circumstances which such reasonableness must be based on several specified factors;
- The full amount of the surplus lines insurance policy must not be procurable from an insurer authorized to transact and are actually writing that kind and class of insurance after the retail or producing agent's diligent effort; and
- The amount of insurance exported to a surplus lines policy must be only the excess over the amount procurable from authorized insurers.

The bill adds additional language to the required disclosure that an agent must give to an insured when exporting coverage to a surplus lines insurer, and establishes a presumption that the insured has been informed and knows that other insurance coverage may be available if the insured acknowledges such disclosure by signature.

The bill repeals rulemaking authority for the Financial Services Commission (FSC) to declare eligible for export generally to surplus lines any class or classes of insurance coverage or risk for which it finds that there is no reasonable or adequate market among authorized insurers, and the provisions for which such rulemaking authority does not apply.

Fiscal Impact

The bill has an insignificant negative fiscal impact on state revenues expenditures. See Section V., Fiscal Impact Statement.

The bill provides, except as otherwise expressly provided, an effective date of July 1, 2025.

II. Present Situation:

Financial Institutions

A financial institution must have a federal or state charter to accept deposits. Banks are chartered and regulated as national banks by the Office of the Comptroller of the Currency (OCC) within the U.S. Department of the Treasury or as state banks by a state regulator.[1]

The Florida Financial Institutions Codes apply to all state-authorized or state-chartered financial banks, trust companies, and related entities.[2] The OFR licenses and regulates 196 financial entities, including 57 state-chartered banks.[3] There are also 30 federally-chartered banks operating in Florida.[4]

Banks and Trusts

Creation and Opening of a New Bank of Trust Company – Federal Law

Federally-chartered banks, publicly or privately held, must comply with rigorous regulatory requirements to become chartered.[5] No person is allowed to offer any national bank issued security unless certain registration requirements are filed with the OCC,[6] unless an exemption applies, such as nonpublic offerings.[7] The OCC grants approval of a charter application in two phases: preliminary approval and final approval.[8] Preliminary approval expires if the proposed national bank:

- Fails to raise the required capital within 12 months from the date the OCC grants preliminary approval.
- Does not commence business within 18 months from the date of preliminary approval, unless the OCC grants an extension.[9]

A national bank is required to raise its capital before business commences. For the OCC to issue final approval, organizers must complete all key phases of organizing the bank. Final approval means a charter for the bank has been issued and the bank can begin conducting business.[10]

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[1] Congressional Research Service, *Introduction to Financial Services: Banking*, p. 1 (January 5, 2023; Updated January 13, 2025), Congress.gov, Library of Congress, https://crsreports.congress.gov/product/pdf/IF/IF10035 (last visited March 21, 2025).
[2] Section 655.005(1)(k), F.S., states that the Financial Institutions Codes includes: Ch. 655, financial institutions generally; Ch. 657, credit unions; Ch. 658, banks and trust companies; Ch. 660, trust business; Ch. 662, family trust companies; Ch. 663, international banking; Ch. 665, relating to associations; and Ch. 667, savings banks.
[3] The Office of Financial Regulation (OFR), *Fast Facts* (12th Ed., January 2025), https://flofr.gov/docs/default-source/documents/fast-facts.pdf (last visited March 21, 2025).
[4] The Office of the Comptroller of Currency (OCC), U.S. Department of Treasury, *National Banks Active As of 2/28/2025*, https://www.occ.gov/topics/charters-and-licensing/financial-institution-lists/national-by-state.pdf (March 21, 2025).
[5] *See* 12 CFR 16; Office of the Comptroller of the Currency, *Comptroller's Licensing Manual Charters*, p. 4 (December 2021), https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-charters.html (last visited March 21, 2025).
[6] 12 CFR 16.3
[7] 12 CFR 16.7
[8] The OCC, *Comptroller's Licensing Manual Charters*, p. 3 (December 2021), https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-charters.html (last visited March 21, 2025).
[9] 12 CFR 5.20(i)(6)(iv)
[10] The OCC, *Comptroller's Licensing Manual Charters*, p. 3 (December 2021), https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/licensing-booklet-charters.html (last visited March 21, 2025).

Creation and Opening of a New Bank of Trust Company – Florida Law

State laws specify requirements that a proposed new bank or trust company must comply with to be chartered. Directors are required to complete the stock offering and file with the OFR a list of subscribers of a proposed bank or trust company detailing specified information within six months of corporate existence and at least 30 days prior to opening for business.[11] The OFR reports "[t]he 6-month time requirement has been a problem for recent bank start-ups and is more restrictive than [the 12-month requirement] federally."[12] Directors must also provide the OFR with any additional information relating to finances, business, or biography as the commission or the OFR may reasonable require for certain subscribers of stock,[13] and the OFR must conduct an investigation of their character and certain financial criteria.[14]

Banks and trust companies are required to open and conduct a general commercial bank or trust company no later than 12 months after it commences its corporate existence.[15] The corporation must notify the OFR, within a specified time, of its intended opening date and confirm its compliance with any orders issued by the OFR.[16] The OFR must conduct a preopening examination and issue a certificate of authorization to transact a general commercial bank or trust business if certain requirements are met.[17]

Financial Institutions Assessments

Financial institutions are required to pay semiannual assessments based on the total assets as of the last business day of June and December of each year,[18] covering the six-month period following the first day of the month in which they are due. [19] The semiannual assessments must be calculated and sent to the OFR within a 30-day period. They must be received (if by mail) or transmitted (if by wire transfer, an automated clearinghouse, or other electronic means approved by the OFR) by January and July 31 of each year. The OFR may levy late penalties of up to $100 per day or any part of the day that a semiannual assessment is overdue unless the OFR excuses the overdue payment for good cause. The OFR may levy an administrative fine of up to $1,000 per day for an intentional late payment of a semiannual assessment.[20]

Certificate of Acquisition

Florida law allows a financial institution to acquire 50 percent or more of the assets, liabilities, or a combination of both of any financial institution subject to the OFR approval and other specified conditions. For instance, both financial institutions must adopt a plan for the

[11] Section 658.235(1), F.S.
[12] Office of Financial Regulation, *Senate Bill 1612 Legislative Bill Analysis* (March 10, 2025) (on file with the Senate Committee on Banking and Insurance).
[13] Section 658.235(2), F.S.
[14] *Id.*
[15] Section 658.25(1), F.S.
[16] Section 658.25(2), F.S.
[17] Section 658.25(3), F.S.
[18] Section 655.047(1), F.S.
[19] Section 655.047(3), F.S.
[20] Section 655.047(2), F.S.

acquisition, assumption, or sale which must contain specified information.[21] The OFR is required to approve or disapprove of the plan and, following adoption of the plan by the transferring financial institution, must certify in writing that the plan has been approved.[22] The transferring financial institution may abandon the transaction despite the members' or stockholders' approval and the OFR's certification of the plan.[23] Unlike the OFR's authority to issue a Certificate of Merger when two credit unions merge,[24] the OFR does not have authority to issue a Certificate of Acquisition when a financial institution purchases or wholly acquires another financial institution.[25]

Interest on Trust Accounts (IOTA) Program

The State Constitution grants exclusive jurisdiction to the Florida Supreme Court to regulate the admission of people to practice law in the state. The Court also has exclusive jurisdiction to discipline those people once they are admitted to practice law.[26] Florida is a mandatory bar state and all members who are admitted to practice in Florida must be members of The Florida Bar.[27]

The Florida Supreme Court has established the "authority and responsibilities of The Florida Bar" in the *Rules Regulating the Florida Bar*.[28] Chapter 5 contains the "Rules Regulating Trust Accounts," which all attorneys who maintain trust accounts must abide by. Funds that are placed in an attorney's trust account produce interest income exclusively for the IOTA program. The interest-producing program generates millions of dollars in interest each year. Once generated, the interest funds are swept by The Florida Bar directly into the Bar's foundation, Funding Florida Legal Aid.

The Florida Bar created the non-profit, tax-exempt corporation, The Florida Bar Foundation (Foundation), in 1956, and subsequently changed the name of the Foundation to Funding Florida Legal Aid in 2023. The Foundation functions to increase legal access for people with limited means by funding legal services, developing programs, and supporting legal aid providers selected by the foundation for grant awards. The Foundation's primary financial support comes from the IOTA program, but donations are also received from attorneys, law firms, corporations, foundations, and individuals.[29]

It is important to note that, while the IOTA program is *mandatory* for attorneys, it is technically *voluntary* for banks to participate in the program.

[21] Section 655.414(2), F.S.
[22] Section 655.414(4) and (5), F.S.
[23] *Id.*
[24] Section 657.065, F.S.
[25] Section 655.414(5), F.S.
[26] FLA. CONST. art. V, s. 15. The Court conducts these official functions through two separate entities: the Florida Board of Bar Examiners and The Florida Bar.
[27] The Florida Bar, *Frequently Asked Questions*, https://www.floridabar.org/about/faq/ (last visited March 7, 2025).
[28] The Florida Bar, *Rules Regulating the Florida Bar*, https://www-media.floridabar.org/uploads/2025/02/2025_06-DEC-RRTFB-12-30-2024.pdf. The Rules are divided into 21 chapters consisting of 807 pages.
[29] FFLA, Funding Florida Legal Aid, *Leadership and Funding for Justice in Florida*, *https://fundingfla.org/about-ffla/ffla-overview/* (last visited March 7, 2025).

IOTA Program and Funding Florida Legal Aid (FFLA)

Background on Attorney Trust Accounts

A trust account is a short-term account set up by an attorney in which he or she deposits funds on behalf of a client. The account generally contains funds that are combined such as a retainer payment, discovery or litigation costs paid in advance, filing fees, or a settlement award. The amount of money in the account changes often because deposits and withdrawals are made frequently. These fees may not be commingled with an attorney's operating account but must be kept separately.

A trust account has been described as an "unusual" creation that is significantly different from other accounts. Although an attorney opens the account and is responsible for managing the funds in the account, he or she is not the owner of the funds.[30] While an attorney is not the owner of the account, and therefore not entitled to interest generated by the account, neither is the client entitled to interest generated by the funds. The U.S. Court of Appeals for the Eleventh Circuit issued a decision in 1987 determining that a client was not entitled to the interest generated in a trust account.[31]

How the accounts may be regulated or restricted has presented a quandary for almost 200 years. The earliest attempt to regulate trust accounts can be traced to the Legislative Council of the Territory of Florida in 1828. In 1936, the Florida Supreme Court incorporated the regulation of trust accounts into the Court's rules. Additional measures were adopted over the years to ensure that attorneys, acting as "trustees" would not misuse their clients' funds or neglect to return them when requested to do so by the client.[32]

The Evolution of Interest Earned on Trust Accounts

Trust accounts have evolved from simple accounts that earned no interest and benefitted no one in particular to today's accounts in which The Florida Bar, with Florida Supreme Court approval, mandates participation by attorneys, establishes the interest rates, and requires that the interest be remitted to The Florida Bar's foundation, Funding Florida Legal Aid.

For many years, attorneys deposited their clients' funds in non-interest-bearing checking accounts because trying to apportion multiple clients' interest earnings on short-term deposits was too complex. However, in 1978 and in response to a petition by The Florida Bar,[33] the Florida Supreme Court amended the Bar rules and authorized attorneys to invest trust funds held for their clients to generate investment income that would, among other things, provide legal aid

[30] *In re* Amendments to the Rules Regulating the Florida Bar-Miscellaneous: The Florida Bar's Response to the Florida Bankers Association's Motion for Rehearing, Case No. SC22-1292 (April 14, 2023), https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/a8e413ea-a6d4-417f-a1b0-2536bb7c9292 (last visited Mar. 27, 2025).
[31] *Cone v. State Bar of Florida*, 819 F.2d 1002 (11th Cir. 1987).
[32] *A Petition of Florida Bar*, 356 So. 2d 799 (Mem), 800-801 (Fla. 1978). (The lengthier case style *is In re Interest on Trust Accounts, A Petition of The Florida Bar to Amend the Code of Professional Responsibility and the Rules Governing the Practice of Law*.)
[33] More specifically, the petition to amend the rules was brought by the Board of Governors of The Florida Bar with the concurrence of the Board of Directors of The Florida Bar Foundation.

to the poor and help provide student loans.[34] Participation in the program would be voluntary. The interest payments would be transmitted directly from the financial institutions to The Florida Bar Foundation. In implementing these changes, Florida became the first state in the nation to adopt an interest on trust accounts program, commonly called IOTA.[35] After several adjustments were made, the program became operational in 1981 and permitted *voluntary* participation by attorneys and their firms.[36] In 1989, the Rules were amended and participation in the program became *mandatory* for all attorneys.[37]

The next significant development occurred in 2001 when the trust account rules were amended to define financial institutions that are eligible to hold IOTA accounts. These eligible institutions were limited to the institutions that pay IOTA account depositors "the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance" or other eligibility requirements. In essence, The Florida Bar Foundation was asking that IOTA accounts be placed on an equal par with non-IOTA accounts in an institution.[38] Financial institutions may impose charges and fees on IOTA accounts, as described below.[39]

It is worth noting that these rules are not found in the Florida Statutes, but are rules adopted by The Florida Bar and approved by the Florida Supreme Court.

The following charges and fees have been defined as "reasonable" and are the only service charges or fees permitted to be deducted from interest earned on IOTA accounts. These service charges or fees may be deducted from IOTA account interest only at such rates and under such circumstances as is the financial institution's customary practice for all its interest-bearing checking account customers:

- Per check charge.
- Per deposit charge.
- Fee in lieu of minimum balance.
- Federal deposit insurance fee.

Financial institutions also may recoup special costs for their participation in IOTA through deduction of a reasonable IOTA handling or administrative fee.[40]

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[34] *In re* Interest on Trust Accounts, A Petition of The Florida Bar, 356 So. 2d 799 (Mem) (Fla. 1978).
[35] *Id.* at 800-801.
[36] It should be noted that the establishment of IOTA or IOLTA (Interest on Lawyers' Trust Accounts as they are called in other states) was possible only after Congress made changes to federal banking laws in 1980 that allowed certain checking accounts to pay interest. American Bar Association, *Interest on Lawyers' Trust Accounts*, https://www.americanbar.org/groups/interest_lawyers_trust_accounts/overview/ (last visited Mar. 27, 2025). See also *Matter of Interest on Trust Accounts*, 402 So. 2d 389 (Mem) (Fla. 1981).
[37] *Matter of Interest on Trust Accounts: Petition to Amend the Rules Regulating the Florida Bar*, 538 So. 2d 448, 449-450, (Fla. 1989).
[38] *Amendment to Rules Regulating the Florida Bar—Rule 5-1.1(e)--IOTA*, 797 So. 2d 551 (Fla. 2001).
[39] Funding Florida Legal Aid, Iota, for Lawyers and Law Firms, https://fundingfla.org/iota/attorneys-lawfirms/ (last visited Mar. 24, 2025).
[40] *Id.*

2023 Amendments to Interest on Trust Accounts Rule

Amendments adopted by the Florida Supreme Court in 2023 to the IOTA rule have resulted in a conflict between the Florida Bar and the Florida Bankers Association over the competing needs of The Florida Bar foundation to fund its legal aid programs against the ability of banking institutions to pay sufficient and sustainable interest rates that fund the foundation's legal aid programs. Both organizations estimate that between $9 and $10 billion is deposited annually into IOTA accounts at banking institutions.

The Florida Bar's Position

The Florida Bar petitioned the Court on October 3, 2022, to once again amend the IOTA rules. The stated goal of the proposed amendments was to "include all possible accounts that can be used as trust accounts" and "ensure the highest possible interest is available for IOTA accounts."[41] The net effect of these amendments would be to increase funding to the Bar's legal aid funding organization, Funding Florida Legal Aid.

On March 16, 2023, the Florida Supreme Court adopted amendments to *Rules Regulating The Florida Bar*, including provisions regulating trust fund accounts. The amendments:

- Expand the definition of an interest or dividend-bearing account to include a business or consumer deposit account, non-maturing deposit, an investment product, a daily financial institution repurchase agreement or a money market account.[42]
- Require eligible institutions to maintain IOTA accounts that pay the highest interest rate or dividend generally available from the institution to its non-IOTA business or consumer account customers when IOTA accounts meet or exceed the same minimum balance qualifications.[43]
- Mandate that eligible institutions tie minimum interest rates for IOTA accounts to the Wall Street Journal Prime Rate (indexed rate).[44]

The formula to determine interest rates and dividends based on the Wall Street Journal Prime Rate is described by the amendments as follows:

> When the Wall Street Journal Prime Rate ("indexed rate") is between 325 and 499 basis points (3.25% and 4.99%), the minimum interest rate paid net of all fees and service charges ("yield") must be no less than 300 basis points (3.00%) below the indexed rate in effect on the first business day of each month. When the indexed rate is 500 basis points (5.00%) or above, the yield must be no less than 40% of the indexed rate in effect on the first business day of each month.[45]

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[41] *In re* Amendments to the Rules Regulating the Florida Bar – Miscellaneous*:* Petition to Amend the Rules Regulating the Florida Bar, Case No. SC2022-1292 (10/03/2022), https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/60ddf5a7-6ae4-425a-a90b-2cebcc635bd0 (last visited Mar. 27, 2025).
[42] R. Regulating Fla. Bar Rule 5-1.1(g)(1)(E).
[43] R. Regulating Fla. Bar Rule 5-1.1(g)(5)(A).
[44] R. Regulating Fla. Bar Rule 5-1.1(g)(5)(B).
[45] *Id*.

The Wall Street Journal Prime Rate is a lending rate.[46] To establish this rate, the Wall Street Journal regularly surveys the 30 largest banks in the United States to determine what interest rate they are charging their customers with the highest-rated credit for short-term loans.[47] When 75 percent of the 30 banks change their prime rate, the Wall Street Journal changes its rate.[48] As of March 5, 2025, the Wall Street Journal Prime Rate is 7.5 percent.[49]

In a January 16, 2024, article published in the *Florida Bar News*, the amended rule was explained this way:

> For instance, under the amended rule, when prime rate is between 3.25% and 5%, then the trust account rate banks pay out is between .25% and 2%, a 3% gain. After that the gains get even better for banks. At a 7% interest rate, for example, banks will pay out 2.8%, a 4.2% gain.[50]

Another article explained the rule change in these terms:

> As a result of this change, for a financial institution to be eligible to participate in the program, it must pay a minimum interest rate of 3.00% when the Wall Street Journal Prime Rate (index rate) is between 3.25% and 4.99%. When the index rate is above 5.00%, to stay eligible, financial institutions are required to pay a minimum interest rate equal to 40% of the index rate.[51]

Florida Bankers Association's Opposition and Challenge to the 2023 Rule Amendments

One criticism of the amended rule is that the Wall Street Journal Prime Rate is a benchmark for *lending purposes* and is not used to set *deposit* account interest rates. As a result, the interest rate is significantly higher than interest rates paid for other deposits.

The Florida Bankers Association (FBA) filed a motion for rehearing on March 31, 2023, stating that it did not receive adequate or meaningful notice of the proposed IOTA amendments.[52] The FBA contended that the amended rules, while admirable, would "have a significant and negative impact on participating banks" and go far beyond its intended purpose. The FBA argued that basing the interest rate for IOTA accounts on the Wall Street Journal's Prime Rate would mean that the minimum interest paid on IOTA accounts would be significantly higher than any other interest rate offered by a bank on consumer or business accounts. The FBA also argued that the judicial branch had violated the separation of powers doctrine and encroached impermissibly on

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[46] Fulton Bank, *What Is Wall Street Journal Prime Rate and Why It Matters* https://www.fultonbank.com/Education-Center/Managing-Credit-and-Debt/Prime-rate-and-why-it-matters (last visited March 7, 2025).
[47] Bankrate, Wall Street Journal Prime rate (Mar. 18, 2025), Wall Street Prime Rate | WSJ Current Prime Rate Index (last visited Mar. 24, 2025).
[48] *Id.*
[49] The Wall Street Journal, *WSJ-Markets*, https://www.wsj.com/market-data/bonds (last visited March 5, 2025).
[50] Florida Bar News, *Measure Would Have Florida's CFO Set the Rate Paid on Iota Accounts* (Jan. 16, 2024) https://www.floridabar.org/the-florida-bar-news/measure-would-have-floridas-cfo-set-the-rate-paid-on-iota-accounts/ (last visited Mar. 27, 2025).
[51] The Bank of Tampa, *Invested in You*, https://www.bankoftampa.com/iota/ (last visited March 7, 2025).
[52] *In re*: Amendments to Rules Regulating the Florida Bar 5-1.1; Florida Bankers Association's Motion), Case No. SC22- 1292 (Mar. 31, 2023), 70f6bc15-9b6e-41b5-8c56-65db9b750a31 (flcourts.gov) (last visited Mar. 27, 2025).

the executive branch's power to regulate banks through the Office of Financial Regulation, the Department of Financial Services, and the Financial Services Commission (FSC).

The new rule became effective on May 15, 2023, and remains in effect. The Court allowed comments from interested parties until November 1, 2023, and directed The Florida Bar to file a report on the status of the implementation of the rules.

Negotiation Attempts Have Failed to Reach a Compromise

According to documents filed in the Florida Supreme Court, the Florida Bankers Association and The Florida Bar have attempted for months to reach a compromise rate that is agreeable to both parties. This has resulted in an impasse and no compromise has been reached.[53] On August 7, 2024, the Court denied the Florida Bankers Association's motion for rehearing.

IOTA Data for Funding Florida Legal Aid

Amounts Received by FFLA From the IOTA Program

Funding Florida Legal Aid supplied the information below on remittances from the IOTA accounts. The fiscal year begins July 1 and ends June 30 of the following year.

FY 2018-19	$12,711,423
FY 2019-20	$16,233,686
FY 2020-21	$7,749,737
FY 2021-22	$9,498,692
FY 2022-23	$45,547,390
FY 2023-24	$279,656,155

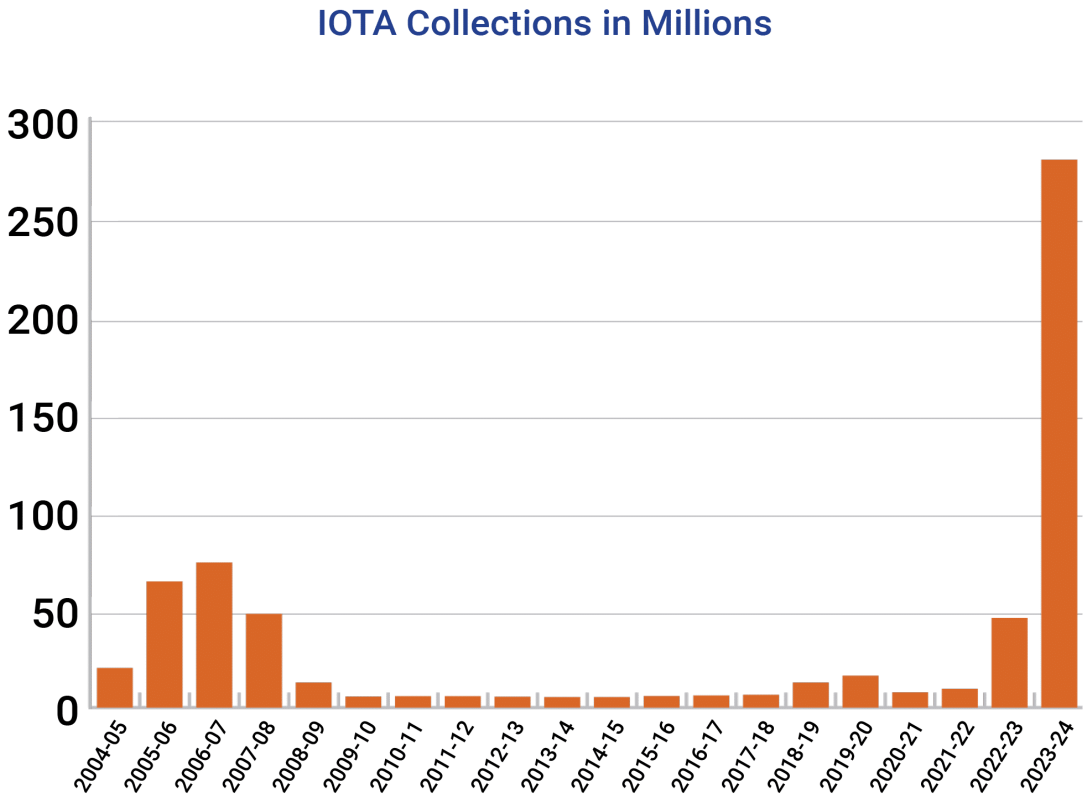
Information for FY 2024-25 is only partially complete. However, for remittances received from July 2024 through January 2025, FFLA reports total receipts of $155,378,419.[54] It is significant to note that the IOTA collections increased by $234,108,765 between fiscal year 2022-23 and fiscal year 2023-24. This is due to the newly implemented funding formula authorized by the Supreme Court in May 2023 for the benefit of the Foundation.[55]

[53] *In re* Amendments to the Rules Regulating the Florida Bar, The Florida Bankers Association's Comment to the Florida Bar's Report on Implementation Status, Case No: SC2022-1292, https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/f5381851-24da-4ff6-932d-487a9ca0b99c (last visited Mar. 27, 2025).

[54] Email from Amanda Fraser, Governmental Consultant on behalf of Funding Florida Legal Aid (Feb. 19, 2025) (on file with the Senate Committee on Banking and Insurance).

[55] *In re* Amendments to the Rules Regulating the Florida Bar – Miscellaneous*:* The Florida Bar's Report on Implementation Status (April 2, 2024) Case No: SC2022-1292, https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/e5b1ae2c-d317-4a98-8c2e-79231698b18d (last visited Mar. 27, 2025).

The FFLA shows with the chart below how the annual revenue collections through the IOTA program have changed over the years.[56]



Participating Banking Institutions and IOTA Program Accounts

The number of financial institutions participating in the IOTA program has not changed significantly since the interest formula was amended in May 2023.

April 2023	151[57]
December 2023	162[58]
December 2024	170[59]

According to the FFLA, the program has grown by a net of 16 banks since the IOTA interest formula was amended in 2023.[60] Four banks have withdrawn from the program since the

[56] Florida Funding Legal Aid, Financial Stewardship, https://fundingfla.org/about-ffla/ffla-finances/ (last visited March 10, 2025).
[57] Email from Amanda Fraser, Governmental Consultant on behalf of Funding Florida Legal Aid (Mar. 27, 2025) (on file with Senate Committee on Banking and Insurance).
[58] Email from Amanda Fraser, Governmental Consultant on behalf of Funding Florida Legal Aid, *SB 498 Fiscal Analysis from FFLA* (Feb. 19, 2025) (on file with the Senate Committee on Banking and Insurance).
[59] *Id.*
[60] *Id.*

adoption of the 2023 IOTA amendment.[61] The number of trust accounts in the FFLA system as of January 2025 is 33,823.[62]

Receipts and Disbursements by Funding Florida Legal Aid

Funding Florida Legal Aid received $279,656,155 in IOTA collections for the fiscal year ending June 30, 2024. The Court granted FFLA's request to distribute $94,832,278 to qualified organizations and place the remaining $142,875,455 in reserve for the benefit of present and future organizations. The Court found the proposed distribution and additional reserve amount was "reasonably prudent to promote stability in distribution of IOTA funds." According to the Court's administrative order, this represents a 145 percent increase over the previous year's distribution.[63]

Trust Account Programs in Other States

According to the American Bar Association (ABA), interest paid on trust account programs, sometimes called IOLTA, or Interest on Lawyers' Trust Accounts, are found in all 50 states, Washington, D.C., Puerto Rico, and the U.S. Virgin Islands. The ABA estimates that, since 1981, these programs have generated over $4 billion to fund legal services for people living in poverty, often through legal aid and pro bono programs.[64] According to the Foundation, most states that have a safe harbor rate, have rates that range from 50 - 55 percent of the Federal Funds Target Rate(FFR) up to one percent of the FFR.[65]

Chief Financial Officer

The State Constitution provides that the Chief Financial Officer (CFO) serves as the chief fiscal officer of the state. He or she is a member of the cabinet and is responsible for settling and approving accounts against the state and keeping all state funds and securities.[66] The CFO serves as the head of the Department of Financial Services (DFS).[67]

Additionally, the CFO is required by statute to set the rate of interest that will be payable on judgments or decrees for the calendar quarter beginning January 1 each year. The CFO must adjust the rate quarterly on April 1, July 1, and October 1, by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the average federal discount rate.[68] As of January 1, 2025, the annual interest rate is 9.38 percent.[69]

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[61] *Id.*
[62] *Id.*
[63] *In Re: FFLA-FY 2023-24 IOTA Collections, Request for Approval of Additional Reserve Amount*, No. AOSC24-70, (Oct. 4, 2024) https://supremecourt.flcourts.gov/content/download/2441648/file/AOSC24-70.pdf.
[64] American Bar Association, *Interest on Lawyers' Trust Accounts, Overview, The Impact of IOLTA*, https://www.americanbar.org/groups/interest_lawyers_trust_accounts/overview/.
[65] Email from Amanda Fraser, Governmental Consultant on behalf of Funding Florida Legal Aid, *SB 498 Fiscal Analysis from FFLA* (March 5, 2025) (on file with the Senate Committee on Banking and Insurance).
[66] FLA. CONST. art. IV, s. 4(c).
[67] Section 20.121(1), F.S.
[68] Section 55.03(1), F.S.
[69] My Florida CFO, *Current Judgment Interest Rates*, https://myfloridacfo.com/division/aa/audits-reports/judgment-interest-rates (last visited March 4, 2025).

Credit Unions

A credit union must have a federal or state charter to operate in Florida. Credit unions are chartered and regulated as a national credit union by the National Credit Union Association (NCUA).[70] Such membership is limited to a group or groups with a common bond of occupation or association within a defined community. Deposits into a federal credit union allow members to become owners of the credit union, run to become a credit union official, and vote on certain matters.[71]

The Florida Financial Institutions Codes apply to all state-chartered credit unions.[72] There are approximately 138 credit unions in Florida[73] with 67 of them being state-chartered.[74] Florida law provides that any person may be admitted to a credit union upon payment of any required fee, payment of shares, and compliance with the credit union bylaws.[75] State-chartered credit unions operate as financial institutions except for exercising certain incidental powers authorized by law.[76]

Compensation

A credit union's elected officer, director, or committee member, except for the chief executive officer, may not be compensated for his or her service.[77] Such individuals may not, directly or indirectly, participate in the deliberation or determination of any issues relating to his or her pecuniary interest or the pecuniary interest of any corporation, partnership, or association in which he or she or a member of his or her immediate family is directly or indirectly interested.[78]

Reserve Accounts

Florida law requires credit unions to maintain the following reserve accounts:
- Allowance for loan and lease losses;
- Regular reserve to meet losses which must not be decreased unless the OFR approves the decrease or as provided by rule of the commission;[79]
- Allowance for investment losses; and

[70] National Credit Union Administration (NCUA), *Overview of the Charter Application Process* (April 14, 2022), https://ncua.gov/regulation-supervision/manuals-guides/federal-credit-union-charter-application-guide/overview-charter-application-process (last visited March 21, 2025).
[71] National Credit Union Administration, *Overview of Federal Credit Unions* (April 14, 2022), https://ncua.gov/regulation-supervision/manuals-guides/federal-credit-union-charter-application-guide/overview-federal-credit-unions (last visited March 21, 2025).
[72] Section 655.005(1)(k), F.S., states that the Financial Institutions Codes includes ch. 657, credit unions.
[73] National Credit Union Service Organization, Credit Unions, *Florida Credit Unions*, https://ncuso.org/credit-union/fl/ (last visited March 21, 2025).
[74] The Office of Financial Regulation (OFR), *Fast Facts* (12th Ed., January 2025), p. 4, https://flofr.gov/docs/default-source/documents/fast-facts.pdf (last visited March 21, 2025).
[75] Section 657.023(1), F.S.
[76] Section 657.031(3), F.S.
[77] Section 657.028(2), F.S.
[78] Section 657.028(5), F.S.
[79] Section 657.043(2), F.S.

- Special reserves to protect members against losses from risk assets or extended credit when required by rule or other specified circumstances.[80]

In 2022, the NCUA amended federal regulations and removed the requirement for federal credit unions to maintain a regular reserve account.[81]

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) regulates specified insurance products, insurers and other risk bearing entities in Florida.[82] As part of their regulatory oversight, the OIR may suspend or revoke an insurer's certificate of authority under certain conditions.[83] The OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each insurer that holds a certificate of authority to transact insurance business in Florida.[84] As part of the examination process, all persons being examined must make available to the OIR the accounts, records, documents, files, information, assets, and matters in their possession or control that relate to the subject of the examination.[85] The OIR is also authorized to conduct market conduct examinations to determine compliance with applicable provisions of the Insurance Code.[86]

Insurance companies that transact insurance in Florida or that have offices located in the state are required to obtain a certificate of authority (COA) issued by the OIR pursuant to s. 624.401, F.S. These companies, referred to as authorized or admitted insurers,[87] are broadly regulated by the OIR under the Insurance Code as to reserves, surplus as to policyholders, solvency, rates and forms, market conduct, permissible investments, and affiliate relationships.[88] Authorized insurers are also required to participate in a variety of government mandated insurance programs and pay assessments levied by state guaranty funds in the event of insurer insolvencies.[89]

[80] Section 657.043, F.S.
[81] The NCUA, *Risk-Based Capital Frequently Asked Questions: Is Prompt Corrective Action (PCA) for Credit Unions Changing with the Revised Capital Adequacy Standards?* (April 14, 2022), https://ncua.gov/regulation-supervision/regulatory-compliance-resources/risk-based-capital-rule-resources/risk-based-capital-faqs (last visited March 21, 2025).
[82] Section 20.121(3)(a), F.S. The Financial Services Commission, composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, serves as agency head of the Office of Insurance Regulation for purposes of rulemaking. Further, the Financial Services Commission appoints the commissioner of the Office of Insurance Regulation.
[83] Section 624.418, F.S.
[84] Section 624.316(1)(a), F.S.
[85] Section 624.318(2), F.S.
[86] Section 624.3161, F.S.
[87] An "authorized" or "admitted" insurer is one duly authorized by a COA to transact insurance in this state.
[88] The Insurance Code consists of chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.
[89] For example, Florida licensed direct writers of property and casualty insurance must be members of the Florida Insurance Guaranty Association, which handles the claims of insolvent insurers under part II of ch. 631, F.S., and insurers offering workers' compensation coverage in Florida must be members of the Florida Workers' Compensation Insurance Guaranty Association, which provides payment of covered claims for insurers that are declared insolvent under part V of ch. 631, F.S.

Surplus Lines Insurance

Surplus lines insurance is the market of last resort for difficult to place commercial and personal lines risks in Florida.[90] Typically, surplus lines insurers write policies for unusual, high-risk situations that include hazardous materials transporters, commercial trucking enterprises, day care centers, older homes located in coastal areas, professional athletes, hospitals, expensive boats and cars, and medical malpractice. Surplus lines insurance is coverage provided by a company that is not licensed in Florida but is allowed to transact insurance in the state as an "eligible" insurer[91] under the surplus lines law (ss. 626.913-626.937, F.S.). Under this law, insurance may only be purchased from a surplus lines carrier if the necessary amount of coverage cannot be procured after a diligent effort to buy the coverage from authorized insurers.[92]

Rates charged by a surplus lines carrier must not be lower than the rate applicable and in use by the majority of the authorized insurers writing similar coverages on similar risks in Florida.[93] Likewise, a surplus lines policy contract form must not be more favorable to the insured as to the coverage or rate offered by the majority of authorized carriers.[94] Except as specifically stated as applicable, surplus lines insurers are not subject to regulation under ch. 627, F.S., of the Florida Insurance Code, which includes, in part, provisions related to ratings standard, contracts, and attorney fees for authorized insurers.[95]

The Florida Surplus Lines Service Office (FSLSO) is governed by a nine-person board of governors consisting of eight members appointed by the Department of Financial Services (DFS) with the insurance consumer advocate being the ninth member.[96] The FSLSO is required to perform its functions under a plan of operation[97] that is subject to the approval of the OIR.[98] The FSLSO is required to conduct the following activities:

- Receive, record and review all surplus lines insurance policies;
- Maintain records of the policies reported to the FSLSO and perform reports as required by the FSC;
- Prepare and deliver to each surplus lines agent quarterly reports of each agent's business;
- Collect and remit to the DFS the surplus lines tax as provided for in s. 626.932, F.S.;
- Reconcile the policies provided by non-admitted insurers with the policies reported to the service office by agents;
- Collect monthly from each surplus lines agent a service fee of up to .03 percent; and

[90] Surplus lines insurance is insurance coverage provided by an insurer that is not licensed in Florida but is allowed to do business in the state because the particular coverage offered is not available from Florida-licensed or authorized carriers. Surplus lines insurers are governed under the Surplus Lines Law (ss. 626.913-626.937, F.S.).
[91] An "eligible surplus lines insurer" as defined in s. 626.914(2), F.S., is an "unauthorized insurer" which has been made eligible by the Office of Insurance Regulation to issue insurance coverage under the surplus lines law.
[92] *See* s. 626.914(4), F.S. A "diligent effort" is defined as seeking coverage from and being rejected by at least three authorized insurers that write the type of coverage being sought. The rejections must be documented.
[93] Section 626.916(1)(b), F.S.
[94] Section 626.916(1)(c), F.S.
[95] Section 626.913(4), F.S.
[96] Section 626.921(4), F.S.
[97] Section 626.921(3), F.S.
[98] Section 626.921(5), F.S.

- Other activities as specified by statute.[99]

Diligent Effort

"To export" a policy means an insurance agent,[100] with the consent of the insurance applicant, placing a policy with an unauthorized insurer under the Surplus Lines Law through a surplus lines agent.[101] Unless an exception applies, in order to place business with a surplus lines insurer, the agent must make a "diligent effort" to place the policy with a Florida-authorized insurer, which is shown by having three written rejections of coverage from authorized insurers currently writing the type of insurance being sought.[102] However, if the cost to replace a residential dwelling is $700,000 or more, then diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market currently writing that type of coverage.[103]

Export requirements further specify that:

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- The policyholder must be advised in writing that coverage may be available and less expensive in the admitted market and persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.[104]

Only three states do not require that an agent make a diligent effort before exporting a policy to a surplus lines insurer.[105] Eighteen states require the agent to obtain at least three declinations from authorized insurers before exporting a policy to a surplus lines insurer.[106]

III. Effect of Proposed Changes:

This bill makes various revisions to the financial institutions codes and the Florida Insurance Code.

[99] Section 626.921(3), F.S.
[100] Typically, the applicant's usual insurance agent works with the surplus lines agent to arrange the placement, rather than the applicant working directly with the surplus lines agent.
[101] Section 626.914(3), F.S.
[102] Sections 626.914(4) and 626.916(1)(a), F.S.
[103] Section 626.914(4), F.S.
[104] Section 626.916(1), F.S.
[105] These states are Louisiana, Virgina, and Wisconsin. See Wholesale & Specialty Insurance Association Diligent Effort Compliance Chart, https://www.wsia.org/docs/Diligent%20effort%20chart%202-3-17.pdf (last visited March 25, 2025).
[106] *Id.* Ohio requires five declinations and New Mexico requires four declinations. South Carolina requires only one declination.

Financial Institutions Codes

Section 8 amends s. 655.047, F.S., relating to assessments; financial institutions. The bill modifies the deadlines for when financial institutions must pay semiannual assessments from January 31 and July 31 to March 31 and September 30 of each year. The bill removes the distinction of the method and time for which electronic payments must be transmitted, and provides that all payments whether sent by mail, wire transfer, or automated clearinghouse, or other electronic means approved by the OFR must be received by the due date. The bill also removes the provision that specifies the assessment covers a six-month period following the first day of the month in which they are due and instead provides that the payments are for the six-month periods beginning January 1 and July 1.

The OFR reports that financial institutions are often forced to make asset estimates when determining their semiannual assessment because of the short deadlines provided for under current law. The OFR and financial institutions must recalculate the semiannual assessments once the institutions' actual total assets are determined. The bill provides for two additional months to calculate and pay the assessment which should allow for more efficiency by reducing the need for subsequent adjustments and saving the OFR and financial institutions' staff time.[107]

Section 9 amends s. 655.414, F.S., relating to the acquisition of assets and assumption of liabilities, to authorize the OFR to issue a certificate of acquisition to an acquiring financial institution confirming that the acquisition, assumption, or sale transaction has been completed. The OFR suggests that issuing certificates of acquisition is "valuable to institutions for several reasons including filing with local municipalities as proof of a transaction."[108] Authorizing the OFR with this statutory authority would give the agency a similar power that it has with respect to issuing certificates of mergers for credit unions.

Section 10 establishes the interest rate that financial institutions must provide when paying interest or dividends on certain lawyer or law firm trust accounts in which the institution remitsthe interest or dividends to an entity established by the Florida Supreme Court that facilitates free legal services to low-income people or a program that is consistent with other court-authorized purposes.

A financial institution that holds one of these trust accounts must pay the highest interest rate or dividend that is generally available to its comparable business or consumer accounts or nonmaturing deposit accounts if the trust account meets or exceeds the same minimum balance or other account requirements. However, the interest rate must be at least 0.25 percent if the Federal Funds Effective Rate is less than 4 percent and must be at least 0.5 percent if the Federal Funds Effective Rate is 4 percent or greater. The Federal Funds Effective Rate "is the interest rate at which depository institutions trade federal funds (balances held at Federal Reserve Banks) with each other overnight."[109] Explained more simply, when one bank has an excess amount of cash, or liquidity, it will lend to another bank that quickly needs more cash. The interest rate that

[107] Office of Financial Regulation, *Senate Bill 1612 Legislative Bill Analysis* (March 10, 2025) (on file with the Senate Committee on Banking and Insurance).
[108] *Id.*
[109] *Federal Funds Effective Rate*, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/FEDFUNDS (updated April 1, 2025) (last visited April 8, 2025).

the borrowing bank pays to the lending bank is decided upon or negotiated between the banks. The weighted average interest rate for all of these types of transactions between banks is called the effective federal funds rate.[110]

The financial institution must submit a rate validation sheet and affidavit to the Chief Financial Officer by the tenth day of each quarter attesting that it will pay the required interest rates stated above. The affidavit must attest that the rate information submitted on the rate validation sheet is true and factual. The Chief Financial Officer must verify that the rate validation sheet and affidavit have been received by the Department of Financial Services.

The minimum interest rate or dividend required by the bill does not apply to interest rates that have been established by written contracts or obligations unrelated to the trust accounts described in this bill.

This section of the bill is effective upon becoming a law.

Section 11 amends s. 657.002, F.S., relating to definitions, to amend the definition of "equity" to remove reference to "regular reserve."

Section 12 amends s. 657.028, F.S., relating to activities of directors, officers, committee members, employees and agents, to authorize a credit union's elected officer, director, or committee member to be reimbursed for necessary expenses incidental to performing official credit union business.

Section 13 amends s. 657.043 F.S., relating to reserves, to repeal the provision requiring credit unions to maintain a regular reserve to meet losses and prohibiting such reserve from being decreased without the prior written approval of the OFR or as prescribed by rule. This amendment is consistent with the removal of the regular reserve requirement from federal regulation, and allows state credit unions to close their regular reserve into undivided earnings without prior OFR approval.[111] Given that credit unions must still comply with the requirement to have an allowance for loan losses reserve account and given OFR's ability to require a credit union to establish special reserves in certain circumstances, a regular reserve account has become unnecessary.[112] **Section 3** amends the definition of equity to remove reference to "regular reserve" since the requirement to maintain such reserve was repealed.

Section 14 amends s. 658.235, F.S., relating to subscriptions of stock and approval of major stakeholders. The bill removes directors' time requirement to complete a stock offering and file with the OFR a final list of subscribers with certain information within six months after commencement of corporate existence. Such offering and submission of the list must still be completed at least 30 days before the proposed bank or trust company opens. This allows more time for organizing groups to raise capital needed to start a new bank or trust company.[113]

[110] *Id*.
[111] *Id*.
[112] Office of Financial Regulation, *Senate Bill 1612 Legislative Bill Analysis* (March 10, 2025) (on file with the Senate Committee on Banking and Insurance) (hereinafter cited as "2025 OFR Agency Analysis for SB 1612").
[113] *Id*.

Section 15 amends s. 658.25, F.S., relating to opening for business, to modify the timeframe in which a new bank or trust company must open and conduct general commercial bank or trust business to within 18 months after the issuance of a final order of approval by the OFR, rather than no later than 12 months after the commencement of its corporate existence. This change "facilitates *de novo* bank and trust company start-ups and eliminates Florida's disadvantage compared to federal regulations."[114]

Florida Insurance Code

The bill eliminates the requirement that a retail or producing insurance agent must conduct a diligent effort to place insurance coverage with an authorized insurer before such coverage may be exported (written by) a surplus lines insurer.

Section 1 amends s. 626.914, F.S., to remove the definition of "diligent effort."

Section 2 amends s. 626.916, F.S., to delete current law requiring that when exporting insurance coverage to a surplus lines insurer:

- The full amount of surplus lines insurance required must not be procurable, after a diligent effort has been made by the producing agent to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance;
- The amount of insurance exported may only be the excess over the amount so procurable from authorized insurers; and
- Surplus lines agents must verify that a diligent effort has been made by requiring a properly documented statement of diligent effort from the retail or producing agent.

The bill maintains the requirement that the policyholder acknowledge the following disclosure, but adds the additional underlined statement:

> You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer. <u>Additionally, surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency.</u>

The bill provides that if the acknowledgment of the disclosure is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available. The bill deletes rulemaking authority for the FSC to declare eligible for export generally any class or classes of insurance coverage or risk for which it finds that there is no reasonable or adequate market among authorized insurers.

Section 7 amends s. 627.715, F.S., to remove reference to an exemption to the diligent effort requirement on surplus lines agents.

[114] *Id.*

Sections 3, 4, 5, and 6 amend ss. 626.918, 626.932, 626.9325, and 926.9541, F.S., to conform cross-references necessitated due to changes made by the bill.

Effective Date

Section 16 of the bill provides, except as otherwise expressly provided, which shall take effect upon becoming a law, for the effective date of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Separation of Powers

The State Constitution divides the powers of state government into three branches: the legislative, executive, and judicial branches. The Constitution prohibits a person in one branch from exercising any powers that belong to the other two branches of government unless it is expressly provided.[115]

The Florida Supreme Court, under s. 15 of Article V of the State Constitution, has the "exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." The Supreme Court exercises this responsibility through The Florida Bar and its rules. If the bill is determined to be a regulation of attorneys or the practice of law, it may be declared unconstitutional.

Federal Preemption/Regulation of Federally Chartered Financial Institutions

The bill creates s. 655.97, F.S., within the Financial Institutions Code (code).[116] The code generally applies to the regulation of state-chartered financial institutions by the Office of Financial Regulation. The provisions of the bill require any financial institution holding a

[115] FLA. CONST. art. II, s. 3.
[116] Chs. 655, 657, 658, 660,662,663, 665, and 667, F.S.

trust account of a lawyer or law firm to pay the interest rate prescribed in the bill and submit a rate validation sheet and affidavit each quarter to the Chief Financial Officer (CFO). Chapter 17, F.S, prescribes the duties of the CFO.

The National Banking Act was enacted by Congress to facilitate a national banking system.[117] The Office of the Comptroller of the Currency is the federal agency charged with regulating national banks and savings associations.[118] The National Credit Union Administration is an independent federal agency that insures deposits at federally insured credit unions, protects the members who own credit unions, and charters and regulates federal credit unions. It is unclear whether the regulation of rates of interest on trust accounts within the code would be applicable to federally chartered financial institutions, such as national banks, savings associations, or credit unions.

The U.S. Supreme Court has reviewed the federal constitutional foundations of the national banking system, and reaffirmed that national bank powers are not normally limited by state law.[119] The Court concluded that "where Congress has not expressly conditioned the grant of 'power' upon a grant of state permission, the Court has ordinarily found that no such condition applies."[120] Further, in another case, the Court concluded, "We find no indication that Congress intended to make this phase of national banking [deposit-taking] subject to local restrictions, as it has done by express language in several other instances."[121]

If the bill is determined to be a regulation of both state chartered and federally chartered financial institutions, The Florida Bar may be required to revise its rules governing the obligations of attorneys to establish IOTA accounts or the eligibility of financial institutions to participate in the IOTA program. However, federal law may preempt the application of the bill to the regulation of federally chartered financial institutions. The OFR does not have primary regulatory authority over nationally chartered institutions.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[117] *Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp.,* 439 U.S. 299, 315 (1978).
[118] 12 USC s. 1 *et seq.*
[119] *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 32 (1996) (The history of the legal concept of national bank powers "is one of interpreting grants of both enumerated and incidental "powers" to national banks as grants of authority not normally limited by, but rather ordinarily preempting, contrary state law.). See also *Franklin Nat'l Bank v. New York*, 347 U.S. 373 (1954).
[120] *Barnett*, 517 U.S. at 34.
[121] See also Franklin Nat'l Bank v. New York, 347 U.S. 373 (1954).

B. Private Sector Impact:

IOTA

The interest rates prescribed in the bill will result in the financial institution not providing an interest rate that meets the higher interest rate required by the Florida Bar Rules for attorneys. As a result, financial institutions participating in the program may see greater profits under this bill, be able to pay higher interest rates to other customers, or charge lower fees for services. In contrast, Funding Florida Legal Aid will likely see a significant reduction in the interest revenue it receives to fund its legal aid programs and other authorized programs.

Surplus Lines Insurance

Insurance agents exporting policies to surplus lines insurers will not have to meet the diligent effort requirements, including the requirement that each surplus lines agent file quarterly with the FSLSO an affidavit stating all the surplus lines insurance transacted by him or her during each calendar quarter has been submitted to the Office as required, including efforts made to place coverages with authorized insurers and the results thereof.

Surplus lines insurers, and those doing business with such insurers, will now have a single source of statutory law when researching relevant statutory provisions.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact.

With respect to the changes made to the financial institutions code, any expenses related to rulemaking can be absorbed within existing resources. The financial institution filings submitted to the CFO under this bill could be subject to OFR review during the normal course of a state-chartered financial institution examination. This would be similar to the current practice of OFR collecting and examining DFS pledge worksheets completed by institutions relating to public deposits.

With respect to surplus lines insurance, the bill is not expected to have a fiscal impact on state or local government.

VI. Technical Deficiencies:

Regulation of Financial Institutions

The bill requires the Chief Financial Officer to verify that the rate validation sheet and affidavit have been received by the DFS. It is unclear whether the Legislature can regulate federally chartered financial institutions, which are not subject to regulation by the OFR. Further, the CFO does not appear to have regulatory jurisdiction of state-chartered financial institutions, which is under the jurisdiction of the OFR.

It is unclear what the penalty is for a financial institution that does not timely file a rate validation sheet and affidavit.

The bill does not provide the Financial Services Commission with authority to adopt rules or forms to implement these reporting requirements. It is unclear whether the Department of Financial Services has the authority to adopt rules that apply to state-chartered financial institutions regulated under ch. 655, F.S.

VII. Related Issues:

Rules 69U-120.730, 69U-110.053, and 69U-140.020, F.A.C., need to be amended to update financial institutions' new deadlines for payment of semiannual assessments.[122]

It is possible that the effect of the bill may be to require the use of federally chartered financial institutions for IOTA accounts. The bill limits the interest that state-chartered financial institutions may offer on IOTA accounts. If such limitations are not in compliance with the requirements of the Rules Regulating the Florida Bar, then attorneys would need to maintain their accounts in federally chartered financial institutions, which generally are not subject to the requirements of ch. 655, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.914, 626.916, 626.918, 626.932, 626.9325, 626.9541, 627.715, 655.047, 655.414, 657.002, 657.043, 658.235, 658.25, and 657.028.

The bill creates section 655.97 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Fiscal Policy on April 17, 2025:

- Creates s. 655.97, F.S., which authorizes a financial institution to hold funds in an IOTA in which the interest or dividends are remitted to an entity for specified purposes.
- Requires financial institutions to pay the maximum interest rate or dividend of comparable specified accounts provided certain criteria are met.
- Establishes a floor for the IOTA interest rate based on the Federal Funds Effective Rate.
- Requires a financial institution that holds IOTA funds to submit certain documents to the CFO by a specified date which, amongst other things, attests to complying with the interest rate or dividend requirements.
- Requires the CFO to verify that the required documents have been received by the DFS.

[122] *Id*.

- Provides s. 655.97, F.S., does not apply to certain interest rates.
- Provides s. 655.97, F.S., is effective upon becoming law.
- Deletes requirements in current law regarding the eligibility of insurance coverage to be exported to (written by) a surplus lines insurer.
- Adds additional language to the required disclosure that an agent must give to an insured when exporting coverage to a surplus lines insurer.
- Establishes a presumption that the insured has been informed and knows that other insurance coverage may be available in certain circumstances.
- Repeals rulemaking authority for the FSC to declare eligible for export generally to surplus lines certain class or classes of insurance coverage or risk, and the provisions for which such rulemaking authority does not apply.
- Amends several sections to conform cross-references.

CS by Banking and Insurance on March 17, 2025:

- Reinstates current law that restricts credit unions from investing more than five percent of their capital in fixed assets; and
- Allows credit union elected officers, directors, or committee members to be reimbursed for certain necessary incidental expenses.

B. Amendments:

None.