Insurance & Banking Subcommittee

Tuesday, March 19, 2013
1:00 PM
404 HOB

Will Weatherford
Speaker

Bryan Nelson
Chair

The Florida House of Representatives

Regulatory Affairs Committee

Insurance & Banking Subcommittee

Will Weatherford
Speaker

Bryan Nelson
Chair

AGENDA
Tuesday, March 19, 2013
404 HOB
1:00 p.m. – 3:30 p.m.

I. Call to Order

II. Roll Call

III. CS/HB 301 by *Health Innovation Subcommittee, Rep. Mayfield and Nuñez*
Cancer Treatment

IV. CS/HB 405 by *Civil Justice Subcommittee, Rep. Spano and Grant*
Claims of Exemption from Garnishment

V. CS/HB 583 by *Civil Justice Subcommittee, Rep. Spano*
Estates

VI. HB 783 by *Rep. Eagle*
Registration of Branch Offices Conducting Securities Transactions

VII. PCS for HB 819
Florida Commission on Hurricane Loss Projection Methodology

VIII. PCS for HB 1091
Banking

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4873 Fax: (850) 413-0419

IX. PCS for HB 1191
Captive Insurance

X. PCB IBS 13-03
Public Records/Money Services Businesses

XI. Adjournment

A bill to be entitled

An act relating to cancer treatment; providing a short title; creating ss. 627.42391 and 641.313, F.S.; providing definitions; requiring that an individual or group insurance policy or contract or a health maintenance contract that provides coverage for cancer treatment medications provide coverage for orally administered cancer treatment medications; requiring that an individual or group insurance policy or contract or a health maintenance contract provide coverage for orally administered cancer treatment medications on a basis no less favorable than that required by the policy or contract for intravenously administered or injected cancer treatment medications; excluding grandfathered health plans from coverage and cost-sharing requirements; prohibiting insurers, health maintenance organizations, and certain other entities from engaging in specified actions to avoid compliance with this act; providing limits on certain cost-sharing requirements; providing a directive to the Division of Law Revision and Information; providing applicability; providing an effective date.

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

Section 1. This act may be cited as the "Cancer Treatment Fairness Act."

Section 2. Section 627.42391, Florida Statutes, is created

to read:

627.42391 Insurance policies; cancer treatment parity; orally administered cancer treatment medications.—

(1) As used in this section, the term:

(a) "Cancer treatment medication" means medication prescribed by a treating physician who determines that the medication is medically necessary to kill or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of practice.

(b) "Cost sharing" includes copayments, coinsurance, dollar limits, and deductibles imposed on the covered person.

(c) "Grandfathered health plan" has the same meaning as provided in 42 U.S.C. s. 18011 and is subject to the conditions for maintaining status as a grandfathered health plan as specified in 45 C.F.R. s. 147.140.

(2) An individual or group insurance policy delivered, issued for delivery, renewed, amended, or continued in this state that provides medical, major medical, or similar comprehensive coverage and includes coverage for cancer treatment medications must also cover prescribed, orally administered cancer treatment medications and may not apply cost-sharing requirements for orally administered cancer treatment medications that are less favorable to the covered person than cost-sharing requirements for intravenous or injected cancer treatment medications covered under the policy or contract.

(3) An insurer providing a policy or contract described in subsection (2) and any participating entity through which the

insurer offers health services may not:

(a) Vary the terms of the policy in effect on the effective date of this act to avoid compliance with this section.

(b) Provide any incentive, including, but not limited to, a monetary incentive, or impose treatment limitations to encourage a covered person to accept less than the minimum protections available under this section.

(c) Penalize a health care practitioner or reduce or limit the compensation of a health care practitioner for recommending or providing services or care to a covered person as required under this section.

(d) Provide any incentive, including, but not limited to, a monetary incentive, to induce a health care practitioner to provide care or services that do not comply with this section.

(e) Change the classification of any intravenous or injected cancer treatment medication or increase the amount of cost sharing applicable to any intravenous or injected cancer treatment medication in effect on the effective date of this section in order to achieve compliance with this section.

(4) This section does not apply to grandfathered health plans.

Notwithstanding this section, if the cost-sharing requirements for intravenous or injected cancer treatment medications under the policy or contract are less than $50 per month, then the cost-sharing requirements for orally administered cancer treatment medications may be up to $50 per month.

Section 3. Section 641.313, Florida Statutes, is created to read:

641.313 Health maintenance contracts; cancer treatment parity; orally administered cancer treatment medications.—

(1) As used in this section, the term:

(a) "Cancer treatment medication" means medication prescribed by a treating physician who determines that the medication is medically necessary to kill or slow the growth of cancerous cells in a manner consistent with nationally accepted standards of practice.

(b) "Cost sharing" includes copayments, coinsurance, dollar limits, and deductibles imposed on the covered person.

(c) "Grandfathered health plan" has the same meaning as provided in 42 U.S.C. s. 18011 and is subject to the conditions for maintaining status as a grandfathered health plan as specified in 45 C.F.R. s. 147.140.

(2) A health maintenance contract delivered, issued for delivery, renewed, amended, or continued in this state that provides medical, major medical, or similar comprehensive coverage and includes coverage for cancer treatment medications must also cover prescribed, orally administered cancer treatment medications and may not apply cost-sharing requirements for orally administered cancer treatment medications that are less favorable to the covered person than cost-sharing requirements for intravenous or injected cancer treatment medications covered under the contract.

(3) A health maintenance organization providing a contract described in subsection (2) and any participating entity through

which the health maintenance organization offers health services may not:

(a) Vary the terms of the policy in effect on the effective date of this act to avoid compliance with this section.

(b) Provide any incentive, including, but not limited to, a monetary incentive, or impose treatment limitations to encourage a covered person to accept less than the minimum protections available under this section.

(c) Penalize a health care practitioner or reduce or limit the compensation of a health care practitioner for recommending or providing services or care to a covered person as required under this section.

(d) Provide any incentive, including, but not limited to, a monetary incentive, to induce a health care practitioner to provide care or services that do not comply with this section.

(e) Change the classification of any intravenous or injected cancer treatment medication or increase the amount of cost sharing applicable to any intravenous or injected cancer treatment medication in effect on the effective date of this section in order to achieve compliance with this section.

(4) This section does not apply to grandfathered health plans.

Notwithstanding this section, if the cost-sharing requirements for intravenous or injected cancer treatment medications under the contract are less than $50 per month, then the cost-sharing requirements for orally administered cancer treatment

medications may be up to $50 per month.

Section 4. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" and "the effective date of this section" wherever it occurs in this act with the date this act takes effect.

Section 5. This act shall take effect January 1, 2015, and applies to policies and contracts issued or renewed on or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 301 Cancer Treatment
SPONSOR(S): Health Innovation Subcommittee; Mayfield and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N, As CS	Poche	Shaw
2) Insurance & Banking Subcommittee		Cooper	Cooper
3) Health Care Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

Cancer is a group of diseases which cause the growth of abnormal cells in the body, resulting in severe sickness and death. Cancer is the second leading cause of death in the U.S. In 2010, Florida had 173,791 total deaths, of which 41,467 were caused by cancer, accounting for nearly 24 percent of all deaths in the state.

The trend in the treatment of cancer has been towards the development of oral chemotherapy medications. Experts estimate that more than 25 percent of the 400 chemotherapy drugs in the development pipeline are planned as oral medications. Although Florida law does not require health plans and health maintenance organizations (HMOs) to cover intravenous, injectable, or oral cancer treatment medications, health plans and HMOs routinely cover these treatments.

CS for HB 301 requires health insurance policies and contracts and HMO contracts that provide cancer treatment medication coverage to also provide coverage for oral cancer treatment medications. Out-of-pocket costs to the insured or member are often higher for oral cancer treatment medications that for other forms of cancer treatment. The bill requires policies and contracts to apply cost-sharing requirements for oral cancer treatment medications that are no less favorable than the cost-sharing requirements for other cancer treatment medications, such as intravenous and injectable medications. Grandfathered health plans, as that term is defined by the Patient Protection and Affordable Care Act (PPACA) and detailed in applicable regulations, are exempted from the oral cancer treatment medications coverage and cost-sharing parity requirements.

The bill prohibits insurers, HMOs, and certain other entities from taking specific actions in an effort to avoid compliance with the coverage and cost-sharing parity requirements. Prohibited actions include, but are not limited to, varying the terms of the policy in effect on the effective date of the bill and penalizing a health care provider for recommending or providing services that comply with the provisions of the bill.

The bill may have an indeterminate negative fiscal impact on local government. The fiscal impact on state government is unknown. Cancer patients who currently have to rely on oral medications should experience cost savings. The overall impact of the bill's requirements to the cost of health insurance is unknown.

The bill provides an effective date of January 1, 2015, and applies to policies and contracts issued or renewed on or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

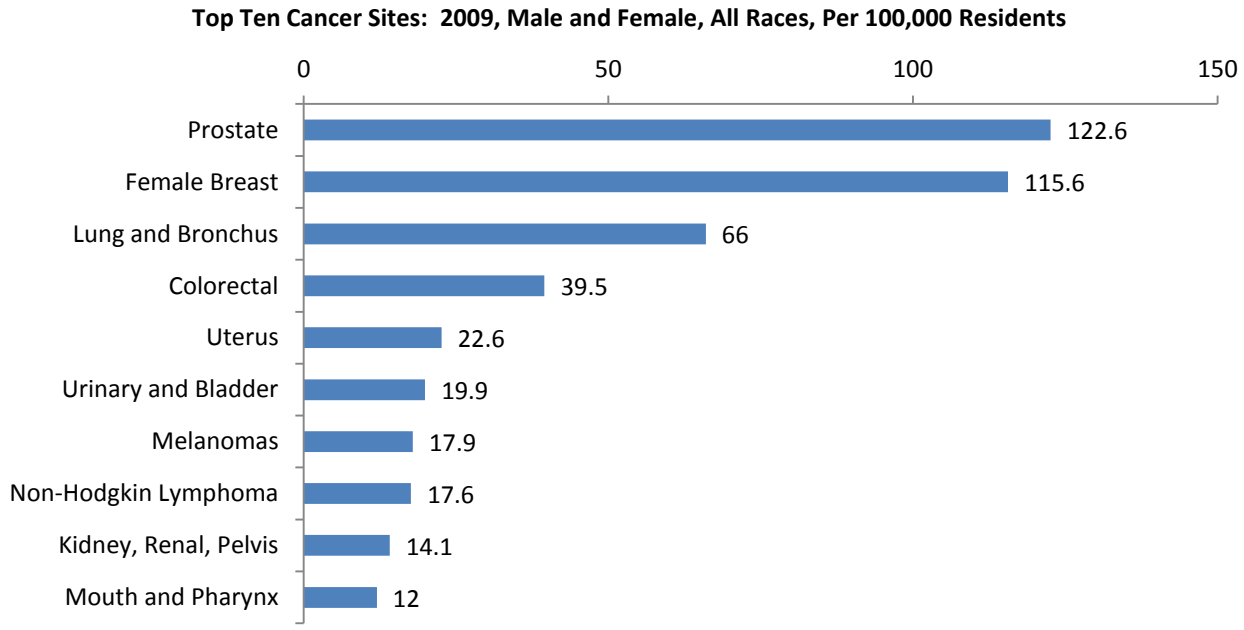
A. EFFECT OF PROPOSED CHANGES:

Background

Cancer

Cancer is a group of diseases which cause the growth of abnormal cells in the body, resulting in severe sickness and death. It can be caused by external factors, such as tobacco use and exposure to certain chemicals, and internal factors, like genetics, hormones, and immune conditions. These factors may work together or separately to promote the development of cancer. Common treatments for cancer include surgery, radiation, and chemotherapy.

Cancer is the second leading cause of death in the U.S., killing 573,313 people in 2011, a decrease of 2.4% over the number of deaths in 2010.[1] It is the leading cause of death of people between the ages of 45 and 64, accounting for 161,072 of the total cancer deaths in 2011.[2] In 2010, Florida had 173,791 total deaths, of which 41,467 were caused by cancer, accounting for nearly 24 percent of all deaths in the state.[3] The following chart shows the top ten cancer sites for men and women in Florida in 2009, the last year for which complete data is available[4]:



[1] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics Report, *Deaths: Preliminary Data for 2011*, page 4, Vol. 61, No. 6 (October 10, 2012) (available at www.cdc.gov/nchs/data/nvsr/nvsr61/nvsr61_06.pdf).
[2] Id. at page 30.
[3] U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, National Vital Statistics Report, *Deaths: Final Data for 2010*, page 112, Vol. 61, No. 4 (available at www.cdc.gov/nchs/data/dvs/deaths_2010_release.pdf).
[4] Chart created using information from U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Program of Cancer Registries, *United States Cancer Statistics-2009 Top Ten Cancers-Florida* (available at http://apps.nccd.cdc.gov/uscs/toptencancers.aspx) (last viewed March 11, 2013).

Approximately 1,660,290 new cases of cancer are expected to be diagnosed in the U.S. in 2013.[5] Of those new cases, 118,320 cases are expected to be diagnosed in Florida.[6] From 2005 to 2009, Florida averaged 101,744 incidences of cancer each year.[7]

Cancer care expenditures have been increasing nationwide. In 2008, the National Institutes of Health estimated the direct costs of cancer, including all health care expenditures, were $77.4 billion.[8] In 2010, total costs of cancer care were $124.6 billion[9] In 2020, estimates of cancer care costs in the U.S. range from $158 billion to $207 billion.[10] It should be noted that these are estimates of direct costs of care for the treatment of cancer and do not incorporate additional types of costs related to treatment.[11]

The National Cancer Institute estimates that there were 13.7 million cancer survivors alive in the U.S. on January 1, 2012.[12] By 2020, it is estimated that there will be 18.1 million cancer survivors in the U.S., an increase of 30% over 2010.[13]

Oral Cancer Treatment Medications

The trend in the treatment of cancer has been towards the development of oral chemotherapy medications. Experts estimate that more than 25 percent of the 400 chemotherapy drugs in the development pipeline are planned as oral medications.[14]

There are a more than two dozen oral cancer treatment medications that do not have an intravenous or injectable equivalent, including tamoxifen, used to treat breast cancer, Gleevec, used to treat chronic myeloid leukemia, and anastrozole, used to treat prostate cancer.

There is a significant cost disparity to the patient between intravenous or injectable cancer treatment medications and oral cancer treatment medications. In most cases, intravenous or injectable cancer treatment medications are covered in the medical benefits portion of a health insurance plan. Due to the nature of the delivery system of the medication, a patient is required to go to the hospital, a clinic, or her doctor's office in order to have an intravenous line inserted and the medication dose administered or to have the medication injected. Because this form of treatment is covered under the medical benefits portion of insurance, the out-of-pocket expenses to the patient are limited to the office co-payment amount, which is normally a very reasonable cost, or have a cap on annual or lifetime out-of-pocket payments.

Oral cancer treatment medications, however, are covered under the pharmacy benefits portion of health insurance coverage. Many pharmacy benefit designs assign medications into tiers based on cost. Each tier carries a co-payment amount, which significantly increases as the tier, and associated drug cost, increases. Also, pharmacy benefit designs may have unlimited out-of-pocket cost-sharing requirements, meaning can be required to pay significant co-payments for as long as the patient is required to take a certain medications. Oral cancer treatment medications can run into the thousands of dollars per month in out-of-pocket costs to the patient.

---

[5] American Cancer Society, *Cancer Facts & Figures 2013*, page 1.
[6] Id., *Estimated Number of New Cases for Selected Cancers by State, US, 2013*, page 5.
[7] U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, *State Cancer Profiles-Florida, Incidence Rate Tables, Incidence Rate Report for Florida by County-All Races (includes Hispanic), Both Sexes, All Cancer Sites, All Ages Sorted by Rate* (available at http://statecancerprofiles.cancer.gov/cgi-bin/quickprofiles/profile.pl?12&001).
[8] See supra, FN 4 at page 3.
[9] U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, *The Cost of Cancer*, table 1 (January 2011)(available at www.cancer.gov/aboutnci/servingpeople/cancer-statistics/costofcancer) (last viewed on March 11, 2013).
[10] Id.; $158 billion is estimated based on 2010 dollars; $173 billion is estimated assuming a 2% increase in costs over time; and $207 billion is estimated based on a 5% increase in costs over time;
[11] Id.
[12] See supra, FN 4.
[13] U.S. Department of Health and Human Service, National Institutes of Health, National Cancer Institute, *Cancer Prevalence and Cost of Care Projections- Key Facts* (available at http://costprojections.cancer.gov) (last viewed on March 11, 2013).
[14] Weingart, S.N., Bach, P.B., et al., *NCCN task force report: oral chemotherapy*, Journal of the National Comprehensive Cancer Network, 2008;6: S1-S17.

The following chart illustrates the cost of medications for serious illness, including oral oncology medications:[15]

Average Monthly Patient Out-of-Pocket Cost Per Prescription, 2011			
	Rheumatoid Arthritis	Multiple Sclerosis	Oral Oncology
Actual Out-of-Pocket (OOP) Cost	**$235**	**$227**	**$470**
Estimated OOP Cost (by Coinsurance Level)			
33% cost sharing	**$653**	**$1,100**	**$1,920**
25% cost sharing	**$495**	**$833**	**$1,454**
5% cost sharing	**$99**	**$167**	**$291**

Out-of-pocket costs for oral cancer medication treatments averaged $2,942 in 2009, which is a 17 percent increase over the costs in 2008.

Oral Cancer Treatment Parity

Between 2008 and January 2013, twenty-one states and the District of Columbia have enacted oral chemotherapy parity laws that require the same cost-sharing requirements for oral cancer treatment medications and intravenous or injectable cancer treatment medications.[16] It is anticipated that 16 states, including Florida, will have similar legislation introduced in 2013.[17]

In 2009, Milliman, Inc., in a study commissioned by GlaxoSmithKline, examined the average increase in insurance costs resulting from oral cancer treatment medication parity legislation. Such legislation requires state-regulated payers to cover oral cancer treatment medication with the same cost-sharing requirements as intravenous or injectable cancer treatment medications. Milliman found that, for most benefit plans, parity will increase plan costs less than $0.50 per member per month (PMPM).[18] Parity for some benefit plans that carry very high cost-sharing requirements for oral specialty drugs and low medical benefits may see a cost of $1.00 PMPM or more.[19] Other benefit plans that have a low cost-sharing requirement in general could see parity costs of $0.05 to $0.10 PMPM.[20]

Patient Protection and Affordable Care Act

In March 2010, the Congress passed and the President signed the Patient Protection and Affordable Care Act (PPACA).[21] Under PPACA, qualified health plans (QHP) would be available from the state or federal Exchange beginning January 1, 2014. PPACA required the Secretary of Health and Human Services to establish for those QHP's a minimum package of essential health benefits (EHB).[22] The EHB package must cover benefits across ten general categories, including, but not limited to preventive services, maternity care, hospital services and prescription drugs.[23]

Section 1311(d)(3)(B) of PPACA allows a state to require QHPs to cover additional benefits above those required under the EHB; however, the law also directs the state to offset the costs of those supplemental benefits to the enrollee.[24] Under the final rule released on February 25, 2013, a

---

[15] Pharmaceutical Executive, *Who Pays for Specialty Medicines?* (citing Healthcare Analytics 2011, Amundsen Group Analysis)(available at http://license.icopyright.net/user/viewFreeUse.act?fuid=MTY5MTg4MiA%3D).
[16] *Oral Chemotherapy Parity Legislative Landscape- January 2013* (on file with Health Innovation Subcommittee staff).
[17] Id.
[18] Milliman, Client Report, Fitch, K., Iwasaki, K., Pyenson, B., *Parity for Oral and Intravenous/Injected Cancer Drugs*, page 1 (December 15, 2009).
[19] Id.
[20] Id.
[21] Pub. Law No. 111-148, H.R. 3590, 111th Cong. (Mar. 23, 2010).
[22] Id.
[23] Center for Consumer Information and Insurance Oversight, *Essential Health Benefits Coverage Bulletin*, (1), Dec. 16, 2011, available at: http://cciio.cms.gov/resources/files/Files2/12162011/essential_health_benefits_bulletin.pdf (last viewed March 11, 2013).
[24] 78 Fed. Reg. 12,837, 12,837-12,838 (February 25, 2013).

distinction in the proposed rule's preamble is made between changes in benefits versus changes in cost sharing. The final rule limits the offset requirement only to "care, treatment and services," thereby excluding a state's obligations to defray costs relating to changes relating to provider types, cost-sharing or reimbursement.[25]

In addition to these provisions, certain plans under PPACA received "grandfather status." A grandfathered health plan is a plan that existed on March 23, 2010, the date that PPACA was enacted, and that at least one person had been continuously covered for one year.[26] Some consumer protection elements do not apply to grandfathered plans that were part of PPACA but others are applicable, regardless of the type of plan.[27]

Providing the essential health benefits are also not required of grandfathered health plans.[28] A grandfathered plan can lose its status if significant changes to benefits or cost sharing changes are made to the plan since attaining its grandfathered status.[29] Grandfathered plans are required to disclose their status to their enrollees every time plan materials are distributed and to identify the consumer protections that are not available as a grandfathered plan.[30] Even though exempt from the EHB, a grandfathered plan could still be required to meet a new a requirement under state law if otherwise required under state requirements.[31]

The PPACA's provisions include annual limitations on cost sharing in section 1302(c)(1) and an annual limitation on deductibles in section 1302(c)(2) of the Affordable Care Act effective January 1, 2014. The type of plan an individual is enrolled in and the level of benefits selected or "medal plan," will determine the amount of out of pocket costs that an individual may incur.

The federal law further prohibits the imposition of annual and lifetime benefit limits, except for certain grandfathered plans, effective January 1, 2014. These protections went into effect for children earlier, September 23, 2010, and apply to grandfathered group health insurance plans. These restrictions would impact any out of pocket costs applied to prescription drug coverage whether delivered as an oral or an injectable medication.

Health Insurance Mandates and Mandated Offerings

A health insurance mandate is a legal requirement that an insurance company or health plan cover services by particular health care providers, specific benefits, or specific patient groups. Mandated offerings, on the other hand, do not mandate that certain benefits be provided. Rather, a mandated offering law can require that insurers offer an option for coverage for a particular benefit or specific patient groups, which may require a higher premium and which the insured is free to accept or reject. A mandated offering law in the context of mental health can require that insurers offer an option of coverage for mental illness, which may require a higher premium and which the insured is free to accept or reject or require that, if insurers offer mental illness coverage, the benefits must be equivalent to other types of benefits.

---

[25] Id.

[26] Healthcare.gov, *Grandfathered Health Plans*, available at http://www.healthcare.gov/law/features/rights/grandfathered-plans/index.html (last viewed March 11, 2013).

[27] Healthcare.gov., *Factsheet*, available at http://www.healthcare.gov/news/factsheets/2012/11/ehb11202012a.html (last viewed March 11, 2013).

[28] Barr, S., *FAQ: Grandfathered Health Plans*, December 2012, available at http://www.kaiserhealthnews.org/stories/2012/december/17/grandfathered-plans-faq.aspx (last viewed March 11, 2013).

[29] Healthcare.gov, *Keeping the Health Plan You Have: The Affordable Care Act and "Grandfathered Health Plans*, June 14, 2010, available at http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html (last viewed March 11, 2013).

[30] Id.

[31] 75 Fed. Reg. 34, 538, 34,540 (June 17, 2010).

Florida currently has at least 59 mandates.[32] Higher costs resulting from mandates are most likely to be experienced in the small group market since these are the plans that are subject to state regulations. The national average cost of insurance for a family of four is $15,745.[33]

Health Insurance Mandate Report

Section 624.215, F.S., was enacted in 1987 to aid the Legislature in assessing the impact of health insurance mandates and mandated offerings on insurance policy premiums when considering proposed health insurance mandates. The statute requires that any proposal for legislation that mandates health benefit coverage or mandatorily offered health coverage must be submitted with a report to Agency for Health Care Administration and to the legislative committees having jurisdiction over the issue. The report must assess the social and financial impact of the proposed coverage to the extent information is available, and shall include:

- To what extent is the treatment or service generally used by a significant portion of the population.[34]
- To what extent is the insurance coverage generally available.[35]
- If the insurance coverage is not generally available, to what extent does the lack of coverage result in persons avoiding necessary health care treatment.[36]
- If the coverage is not generally available, to what extent does the lack of coverage result in unreasonable financial hardship.[37]
- The level of public demand for the treatment or service.[38]
- The level of public demand for insurance coverage of the treatment or service.[39]
- The level of interest of collective bargaining agents in negotiating for the inclusion of this coverage in group contracts.[40]
- To what extent will the coverage increase or decrease the cost of the treatment or service.[41]
- To what extent will the coverage increase the appropriate uses of the treatment or service.[42]
- To what extent will the mandated treatment or service be a substitute for a more expensive treatment or service.[43]
- To what extent will the coverage increase or decrease the administrative expenses of insurance companies and the premium and administrative expenses of policyholders.[44]
- The impact of this coverage on the total cost of health care.[45]

The International Myeloma Foundation (Foundation) delivered a report to the Senate Health Policy Committee on February 21, 2013, assessing SB 422 and HB 301 against the criteria of s. 624.215, F.S., while specifically not admitting that the bill's directives mandate any specific health coverage.[46]

---

[32] Florida House of Representatives, Health and Human Services Quality Subcommittee, *Meeting Packet for November 15, 2011*, pages 7-9; see also Council for Affordable Health Insurance , *Health Insurance Mandates in the States 2010- Table 1: Total Mandates by State*, page 3 (on file with Health Innovation Subcommittee staff).
[33] The Henry J. Kaiser Family Foundation, Employer Health Benefits 2012 Annual Survey- Summary of Findings, page 1 (available at http://ehbs.kff.org/pdf/2012/8345.pdf) (last viewed March 11, 2013).
[34] S. 624.215(2)(a), F.S.
[35] S. 624.215(2)(b), F.S.
[36] S. 624.215(2)(c), F.S.
[37] S. 624.215(2)(d), F.S.
[38] S. 624.215(2)(e), F.S.
[39] S. 624.215(2)(f), F.S.
[40] S. 624.215(2)(g), F.S.
[41] S. 624.215(2)(h), F.S.
[42] S. 624.215(2)(i), F.S.
[43] S. 624.215(2)(j), F.S.
[44] S. 624.215(2)(k), F.S.
[45] S. 624.215(2)(l), F.S.
[46] International Myeloma Foundation, *Health Insurance Mandate Report, Parity for Oral and Intravenous Cancer Medications*, page 1, February 2013 (on file with the Health Innovation Subcommittee).

According to the Foundation, insurance coverage of oral cancer medications is not the precise issue. The issue is the out of pocket cost differential to patients between intravenous or injectables and oral treatments as most insurance plans already cover the medication.[47]

Effect of Proposed Changes

The bill requires an individual or group insurance policy or contract or a health maintenance organization (HMO) contract that provides coverage for cancer treatment medications (intravenous or injectable cancer treatment medications) must also provide coverage for oral cancer treatment medications. In addition, the bill prohibits a policy or contract from applying cost-sharing requirements to coverage for oral cancer treatment medications that are less favorable than the cost-sharing requirements for intravenous or injectable cancer treatment medications. The bill requires that all cancer treatment medications be covered and be treated the same by health insurance policies and contracts. The bill exempts grandfathered health plans from the oral cancer treatment medication coverage and cost-sharing parity.

The bill permits a policy or contract with cost-sharing requirements for intravenous or injectable cancer medications less than $50 to apply cost-sharing requirements up to $50 to prescribed oral cancer treatment medications.

The bill prohibits the following actions by insurers, HMOs, and other specific entities designed to avoid the parity requirements of the bill:

- Varying the terms of the policy in effect on the effective date of the bill.
- Providing any incentive to a covered person to accept coverage that includes anything less than parity.
- Penalizing a provider for recommending or providing oral cancer treatment medications.
- Providing any incentive to a provider to not comply with the parity provisions.
- Changing cost-sharing requirements or classification of intravenous or injectable cancer treatment medications in effect on the effective date of the bill.

The bill provides an effective date of January 1, 2015, and applies to policies or contracts issued or renewed after that date.

B. SECTION DIRECTORY:

Section 1: Provides that the act maybe cited as the “Cancer Treatment Fairness Act.”

Section 2: Creates s. 627.42391, F.S., relating to insurance policies; cancer treatment parity; orally administered cancer treatment medications.

Section 3: Creates s. 641.313, F.S., relating to health maintenance contracts; cancer treatment parity; orally administered cancer treatment medications.

Section 4: Provides direction to the Division of Law Revision and Information.

Section 5: Provides an effective date of January 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[47] Id. at page 2.

1. Revenues:

   None.

2. Expenditures:

   The Department of Management Services has not provided a fiscal analysis on CS/HB 301.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Local governments may have a negative fiscal impact if health premiums increase as a result of the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health insurers and HMOs may raise premiums to address the impact of oral cancer medication treatment coverage and cost-sharing parity under the bill. As a result, policyholders and contract holders for health care coverage may see an increase in monthly premiums for the same coverage for policies and contracts issued or renewed after the effective date of the bill.

Also, patients receiving oral cancer treatment medications may realize less out-of-pocket expenses to obtain their medications.

D. FISCAL COMMENTS:

PPACA allows a state to require QHPs to cover additional benefits above those required under the EHB. The law also directs the state to offset the costs of those supplemental benefits to the enrollee. The bill creates a new coverage and parity requirement for oral cancer treatment medications. While PPACA requires the state to be responsible for offsetting the cost of this additional coverage and parity requirement, there are no guidelines addressing how the total cost will be determined, how it will be paid by the state, and to whom the payments will be made. As a result, the bill presents a potential indeterminate negative fiscal impact to the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable. Rule-making authority is not required by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to claims of exemption from garnishment; amending s. 77.041, F.S.; revising the contents of a notice to defendants of rights against garnishment of wages, money, and other property; requiring that a claim of exemption be under oath; increasing the period of time in which a plaintiff may file a claim answering a defendant's claim of exemption; repealing s. 222.12, F.S., relating to proceedings for claims of exemption from garnishment; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 77.041, Florida Statutes, are amended to read:

77.041 Notice to individual defendant for claim of exemption from garnishment; procedure for hearing.—

(1) Upon application for a writ of garnishment by a plaintiff, if the defendant is an individual, the clerk of the court shall attach to the writ the following "Notice to Defendant":

NOTICE TO DEFENDANT OF RIGHT AGAINST GARNISHMENT OF WAGES, MONEY, AND OTHER PROPERTY

The Writ of Garnishment delivered to you with this Notice means that wages, money, and other property belonging to you have been garnished to pay a court judgment against you.

HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES, MONEY, OR PROPERTY. READ THIS NOTICE CAREFULLY.

State and federal laws provide that certain wages, money, and property, even if deposited in a bank, savings and loan, or credit union, may not be taken to pay certain types of court judgments. Such wages, money, and property are exempt from garnishment. The major exemptions are listed below on the form for Claim of Exemption and Request for Hearing. This list does not include all possible exemptions. You should consult a lawyer for specific advice.

IF AN EXEMPTION FROM GARNISHMENT APPLIES TO YOU AND YOU WANT TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY FROM BEING GARNISHED, OR TO GET BACK ANYTHING ALREADY TAKEN, YOU MUST COMPLETE A FORM FOR CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS SET FORTH BELOW AND HAVE THE FORM NOTARIZED. IF YOU HAVE A VALID EXEMPTION, YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU MUST ALSO MAIL OR DELIVER A COPY OF THIS FORM TO THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY AND THE GARNISHEE OR THE GARNISHEE'S ATTORNEY AT THE ADDRESSES LISTED ON THE WRIT OF GARNISHMENT. NOTE THAT THE FORM REQUIRES YOU TO COMPLETE A CERTIFICATION THAT YOU MAILED OR DELIVERED COPIES TO THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY AND GARNISHEE OR THE GARNISHEE'S ATTORNEY.

If you request a hearing, it will be held as soon as possible after your request is received by the court. The plaintiff must file any objection within 8 ~~3~~ business days if you hand delivered to the plaintiff or the plaintiff's attorney

a copy of the form for Claim of Exemption and Request for Hearing or, alternatively, 14 ~~8~~ business days if you mailed a copy of the form for claim and request to the plaintiff or the plaintiff's attorney. If the plaintiff files an objection to your Claim of Exemption and Request for Hearing, the clerk will notify you and the other parties of the time and date of the hearing. You may attend the hearing with or without an attorney. If the plaintiff fails to file an objection, no hearing is required, the writ of garnishment will be dissolved, and your wages, money, or property will be released.

IF YOU HAVE A VALID EXEMPTION, YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR PROPERTY FROM BEING APPLIED TO THE COURT JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED LEGAL ASSISTANCE, YOU SHOULD SEE A LAWYER. IF YOU CANNOT AFFORD A PRIVATE LAWYER, LEGAL SERVICES MAY BE AVAILABLE. CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK THE CLERK'S OFFICE ABOUT ANY LEGAL SERVICES PROGRAM IN YOUR AREA.

CLAIM OF EXEMPTION AND
REQUEST FOR HEARING

I claim exemptions from garnishment under the following categories as checked:

.... 1. Head of family wages. (~~You must~~ Check either a. or b. below if applicable.)

.... a. I provide more than one-half of the support for a child or other dependent and

have net earnings of $750 or less per week.

.... b. I provide more than one-half of the support for a child or other dependent, have net earnings of more than $750 per week, but have not agreed in writing to have my wages garnished.

.... 2. Social Security benefits.

.... 3. Supplemental Security Income benefits.

.... 4. Public assistance (welfare).

.... 5. Workers' Compensation.

.... 6. Reemployment assistance or unemployment compensation.

.... 7. Veterans' benefits.

.... 8. Retirement or profit-sharing benefits or pension money.

.... 9. Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract.

.... 10. Disability income benefits.

.... 11. Prepaid College Trust Fund or Medical Savings Account.

.... 12. Other exemptions as provided by law. .....(explain)

I request a hearing to decide the validity of my claim. Notice of the hearing should be given to me at:

Address: .....

Telephone number:.....

I CERTIFY UNDER OATH AND PENALTY OF PERJURY that a copy of this CLAIM OF EXEMPTION AND REQUEST FOR HEARING has been furnished by hand delivery or U.S. Mail (circle one) on (insert date), to: (insert names and addresses of Plaintiff or Plaintiff's attorney and of Garnishee or Garnishee's attorney to whom this document was furnished).

I FURTHER CERTIFY UNDER OATH AND PENALTY OF PERJURY that the statements made in this request are true to the best of my knowledge and belief.

.....

Defendant's signature

Date.....

STATE OF FLORIDA

COUNTY OF

Sworn and subscribed to before me this ..... day of ...(month

and year)..., by ...(name of person making statement)...
Notary Public/Deputy Clerk
Personally Known .....OR Produced Identification....
Type of Identification Produced.....

(3) Upon the filing by a defendant of a sworn claim of exemption and request for hearing, a hearing will be held as soon as is practicable to determine the validity of the claimed exemptions. If the plaintiff does not file a sworn written statement that answers ~~contests~~ the defendant's claim of exemption within 8 ~~3~~ business days after hand delivering the claim and request or, alternatively, 14 ~~8~~ business days~~,~~ if the claim and request were served by mail, no hearing is required and the clerk must automatically dissolve the writ and notify the parties of the dissolution by mail.

Section 2. Section 222.12, Florida Statutes, is repealed.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 405 Claims of Exemption from Garnishment
SPONSOR(S): Civil Justice Subcommittee; Spano and Grant
TIED BILLS: None **IDEN./SIM. BILLS:** SB 592

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Insurance & Banking Subcommittee		Bauer	Cooper
3) Judiciary Committee			

SUMMARY ANALYSIS

Garnishment is a creditor's means to collect a monetary judgment through seizure of the debtor's property held by a third party. Current law provides that certain property is exempt from creditor claims.

If a debtor claims that garnished property is exempt and should not be transferred from the third party to the creditor, the creditor has 3 business days to respond if the claim of exemption is delivered by hand or 8 business days to respond if the claim of exemption is mailed. If there is no timely response, the garnishment fails and the debtor keeps the property. The bill increases the number of business days for a plaintiff to respond from 3 to 8 for a hand delivered claim and from 8 to 14 for a mailed claim of exemption.

Current law requires forms applicable to garnishment to be delivered directly to parties, which is contrary to normal legal practice. This bill allows for delivery to a party's attorney.

While current law requires the debtor to certify under oath and penalty of perjury to the facts underlying the claim of exemption, the statutory form does not include the oath. This bill corrects the statutory form for use by a debtor.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

When a litigant obtains a judgment against another litigant, it can sometimes be difficult to collect the judgment. Garnishment is a method to do so, created by statute and unknown to common law.[1] The party to whom the judgment is owed is known as the "creditor" or "judgment creditor," while the party against whom the judgment will be garnished is known as the "garnishee" or the "debtor".[2]

Garnishment is a statutory remedy, controlled by ch. 77, F.S., and ch. 222, F.S. Section 222.12, F.S., was originally passed into law in 1875,[3] while s. 77.041, F.S., was originally passed into law in 2000.[4] A writ of garnishment is generally filed after a judgment has been entered against the debtor.[5] However, there is a procedure for issuance of a garnishment prior to judgment[6] in cases other than a tort action.[7] For a debtor without assets to satisfy the judgment, the creditor may file a continuing writ of garnishment against salary or wages.[8] A garnishment may also be filed against any tangible or intangible personal property of the defendant.[9]

As in other forms of remedies available to a creditor, there are limits on collection. State constitutional and statutory law, as well as federal law (such as the Bankruptcy Code), provide that certain property of a debtor is exempt from creditor claims. Exemptions include, usually with qualification, but are not limited to:

- Homestead real property;[10]
- Personal property to the value of $1000;[11]
- Head of family wages;[12]
- Firefighters' pensions;[13]
- Medical savings account;[14]
- Motor vehicles;[15]
- Pension benefits;[16]
- Veterans' benefits;[17] and
- Workers' compensation payments.[18]

---

[1] *Robinson v. Robinson*, 18 So.2d 29, 31 (Fla. 1944).
[2] While it may be easier to think of the creditor as the plaintiff in the lawsuit and the debtor as the defendant, there are circumstances where the defendant wins the case and receives a judgment against the plaintiff. Accordingly, it is more accurate to refer to creditor and debtor.
[3] Section 2, ch. 2065, L.O.F. (1875).
[4] Section 22, ch. 2000-258, L.O.F.
[5] Section 77.03, F.S.
[6] Section 77.031, F.S.
[7] Section 77.02, F.S.
[8] Section 77.0305, F.S.
[9] Section 77.01, F.S.
[10] Fla. Const., Art. 10, Sec. 4.
[11] *Id.*
[12] Section 222.11, F.S.
[13] Section 175.241, F.S.
[14] Section 222.22, F.S.
[15] Section 222.25, F.S.
[16] Section 222.21, F.S.
[17] Section 744.626, F.S.
[18] Section 61.14, F.S.

Section 77.041, F.S., provides a form for the notice that the clerk of the court must furnish to an individual debtor upon the creditor's application for a writ of garnishment. The notice informs the debtor that he or she may have certain assets that are exempt from garnishment. The exemptions are not automatic and must be timely and affirmatively asserted by the debtor. If the debtor fails to timely claim an exemption, the creditor is entitled to a default judgment (and is entitled to the property garnished).[19]

The clerk is also required to furnish the debtor with a statutory form for a claim of exemption. The statutory form lists some common exemptions that the defendant may check, along with a request for a hearing and a signature line for the debtor.[20] While s. 222.12, F.S., requires that a claim of exemption be filed under oath, the statutory form as s. 77.041(1), F.S., does not contain the legal language necessary to effectuate a sworn statement.

Section 77.041(2), F.S., provides that, if a claim of exemption is timely filed by the debtor, the creditor has 3 business days to file an objection to the claim of exemption if the defendant hand delivers the form and 8 business days if the defendant mails the form. Section 222.12, F.S., however, provides that the creditor's objection must be filed within 2 business days. If the creditor does not timely respond to the claim of exemption, the clerk must automatically dissolve the writ of garnishment.[21]

Upon the filing by a debtor of a claim of exemption, and the timely filing of an objection by the creditor, a hearing will be held as soon as practicable to determine the validity of the exemptions claimed.[22]

It is unclear why there are conflicting statutes regarding claims of exemption. The passage of s. 77.041, F.S., may have been intended to replace s. 222.12, F.S., but the courts have not interpreted it that way.[23] A trial court decision dissolved a writ of garnishment because the plaintiff's answers to the defendant's claims of exemption were not sufficient under s. 77.041(3), F.S., to "contest" the claims because the plaintiff's answers were general denials, rather than specifically contesting each claim. The appellate court reversed, claiming that the trial court erred by narrowly focusing on the word "contest" in s. 77.041(3), F.S., and that the procedure in s. 77.041, F.S., supplements, rather than replaces s. 222.12, F.S.[24]

Effects of the Bill

This bill amends s. 77.041, F.S., to extend the time that a creditor has to file an objection to a defendant's exemption request to 8 business days for a hand-delivered form and 14 business days for a mailed form.

The bill allows delivery of documents to the plaintiff or defendant's attorney, rather than requiring delivery to the plaintiff or defendant himself or herself.

The bill also modifies the statutory form to include certification under oath and penalty of perjury that the debtor mailed the form on the date stated and that the statements made in the claim of exemption are true to the best of the debtor's knowledge and belief.

The bill provides for the requirement for a sworn claim of exemption in s. 77.041, F.S., and repeals s. 222.12, F.S., the 1875 statute relating to proceedings for exemption.

---

[19] Section 77.081, F.S.
[20] Section 77.041, F.S.
[21] *Id.*
[22] Section 77.041(3), F.S.
[23] *Cadle Co. v. Pegasus Ranch, Inc.*, 920 So.2d 1276 (Fla. 4th DCA 2006).
[24] *Id.*

B. SECTION DIRECTORY:

Section 1 amends s. 77.041, F.S., relating to notice to individual defendant for claim of exemption from garnishment and the procedures for a hearing.

Section 2 repeals s. 222.12, F.S., relating to proceedings for exemption.

Section 3 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2013, the Civil Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The first amendment provides for hand delivery in the form to apply for an exemption from garnishment. The second amendment provides a requirement that the defendant's claim for an exemption be sworn. The third amendment allows a plaintiff to "answer" a defendant's claim rather than to "contest" the claim. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to estates; amending s. 198.13, F.S.; deleting a provision that provides that certain information relating to a state death tax credit or a generation-skipping transfer credit is not applicable to estates of decedents dying after a specified date; amending s. 717.101, F.S.; providing a definition; amending s. 717.112, F.S.; providing an exception to property held by agents and fiduciaries; creating s. 717.1125, F.S.; providing that intangible property held by fiduciaries under trust instruments is presumed unclaimed under certain circumstances; amending s. 731.110, F.S.; specifying that a certain subsection does not require a caveator to be served with formal notice of its own petition for administration; amending s. 732.703, F.S.; revising language regarding instruments governed by the laws of a different state; creating s. 732.806, F.S.; providing provisions relating to gifts to lawyers and other disqualified persons; amending s. 732.901, F.S.; requiring the custodian of a will to supply the testator's date of death or the last four digits of the testator's social security number upon deposit; providing that an original will submitted with a pleading is considered to be deposited with the clerk; requiring the clerk to retain and preserve the original will in its original form for a certain period of time; amending s. 736.0103, F.S.; providing

definitions; amending s. 736.0202, F.S.; providing for in rem jurisdiction and personal jurisdiction over a trustee, beneficiary, or other person; deleting a provision referring to other methods of obtaining jurisdiction; creating s. 736.02025, F.S.; providing provisions for methods of service of process in actions involving trusts and trust beneficiaries; repealing s. 736.0205, F.S., relating to trust proceedings and the dismissal of matters relating to foreign trusts; repealing s. 736.0807(4), F.S., relating to delegation of powers by a trustee; amending s. 736.0813, F.S.; clarifying the duties of a trustee to provide a trust accounting; amending ss. 607.0802, 731.201, 733.212, 736.0802, 736.08125, and 738.104, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (4) of section 198.13, Florida Statutes, is amended to read:

198.13 Tax return to be made in certain cases; certificate of nonliability.—

(4) Notwithstanding any other provisions of this section and applicable to the estate of a decedent who dies after December 31, 2004, if, upon the death of the decedent, a state death tax credit or a generation-skipping transfer credit is not allowable pursuant to the Internal Revenue Code of 1986, as

amended:

(a) The personal representative of the estate is not required to file a return under subsection (1) in connection with the estate.

(b) The person who would otherwise be required to file a return reporting a generation-skipping transfer under subsection (3) is not required to file such a return in connection with the estate.

~~The provisions of this subsection do not apply to estates of decedents dying after December 31, 2012.~~

Section 2. Present subsections (22) and (23) of section 717.101, Florida Statutes, are redesignated as subsections (23) and (24), respectively, and a new subsection (22) is added to that section, to read:

717.101 Definitions.—As used in this chapter, unless the context otherwise requires:

(22) "Trust instrument" means a trust instrument as defined in s. 736.0103.

Section 3. Subsection (1) of section 717.112, Florida Statutes, is amended to read:

717.112 Property held by agents and fiduciaries.—

(1) Except as provided in ss. 717.1125 and 733.816, all intangible property and any income or increment thereon held in a fiduciary capacity for the benefit of another person is presumed unclaimed unless the owner has within 5 years after it has become payable or distributable increased or decreased the principal, accepted payment of principal or income, communicated

concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

Section 4. Section 717.1125, Florida Statutes, is created to read:

717.1125 Property held by fiduciaries under trust instruments.—All intangible property and any income or increment thereon held in a fiduciary capacity for the benefit of another person under a trust instrument is presumed unclaimed unless the owner has, within 2 years after it has become payable or distributable, increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

Section 5. Subsection (3) of section 731.110, Florida Statutes, is amended to read:

731.110 Caveat; proceedings.—

(3) If a caveat has been filed by an interested person other than a creditor, the court may not admit a will of the decedent to probate or appoint a personal representative until formal notice of the petition for administration has been served on the caveator or the caveator's designated agent and the caveator has had the opportunity to participate in proceedings on the petition, as provided by the Florida Probate Rules. This subsection does not require a caveator to be served with formal notice of its own petition for administration.

Section 6. Subsection (4) of section 732.703, Florida Statutes, is amended to read:

732.703 Effect of divorce, dissolution, or invalidity of marriage on disposition of certain assets at death.—

(4) Subsection (2) does not apply:

(a) To the extent that controlling federal law provides otherwise;

(b) If the governing instrument is signed by the decedent, or on behalf of the decedent, after the order of dissolution or order declaring the marriage invalid and such governing instrument expressly provides that benefits will be payable to the decedent's former spouse;

(c) To the extent a will or trust governs the disposition of the assets and s. 732.507(2) or s. 736.1105 ~~736.1005~~ applies;

(d) If the order of dissolution or order declaring the marriage invalid requires that the decedent acquire or maintain the asset for the benefit of a former spouse or children of the marriage, payable upon the death of the decedent either outright or in trust, only if other assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist upon the death of the decedent;

(e) If, under the terms of the order of dissolution or order declaring the marriage invalid, the decedent could not have unilaterally terminated or modified the ownership of the asset, or its disposition upon the death of the decedent;

(f) If the designation of the decedent's former spouse as a beneficiary is irrevocable under applicable law;

(g) If the governing instrument ~~directing the disposition of the asset at death~~ is governed by the laws of a state other

than this state;

(h) To an asset held in two or more names as to which the death of one coowner vests ownership of the asset in the surviving coowner or coowners;

(i) If the decedent remarries the person whose interest would otherwise have been revoked under this section and the decedent and that person are married to one another at the time of the decedent's death; or

(j) To state-administered retirement plans under chapter 121.

Section 7. Section 732.806, Florida Statutes, is created to read:

732.806 Gifts to lawyers and other disqualified persons.—

(1) Any part of a written instrument which makes a gift to a lawyer or a person related to the lawyer is void if the lawyer prepared or supervised the execution of the written instrument, or solicited the gift, unless the lawyer or other recipient of the gift is related to the person making the gift.

(2) This section is not applicable to a provision in a written instrument appointing a lawyer, or a person related to the lawyer, as a fiduciary.

(3) A provision in a written instrument purporting to waive the application of this section is unenforceable.

(4) If property distributed in kind, or a security interest in that property, is acquired by a purchaser or lender for value from a person who has received a gift in violation of this section, the purchaser or lender takes title free of any claims arising under this section and incurs no personal

liability by reason of this section, whether or not the gift is void under this section.

(5) In all actions brought under this section, the court must award taxable costs as in chancery actions, including attorney fees. When awarding taxable costs and attorney fees under this section, the court may direct payment from a party's interest in the estate or trust, or enter a judgment that may be satisfied from other property of the party, or both. Attorney fees and costs may not be awarded against a party who, in good faith, initiates an action under this section to declare a gift void.

(6) If a part of a written instrument is invalid by reason of this section, the invalid part is severable and may not affect any other part of the written instrument which can be given effect, including a term that makes an alternate or substitute gift. In the case of a power of appointment, this section does not affect the power to appoint in favor of persons other than the lawyer or a person related to the lawyer.

(7) For purposes of this section:

(a) A lawyer is deemed to have prepared, or supervised the execution of, a written instrument if the preparation, or supervision of the execution, of the written instrument was performed by an employee or lawyer employed by the same firm as the lawyer.

(b) A person is "related" to an individual if, at the time the lawyer prepared or supervised the execution of the written instrument or solicited the gift, the person is:

1. A spouse of the individual;

2. A lineal ascendant or descendant of the individual;

3. A sibling of the individual;

4. A relative of the individual or of the individual's spouse with whom the lawyer maintains a close, familial relationship;

5. A spouse of a person described in subparagraph 2., subparagraph 3., or subparagraph 4.; or

6. A person who cohabitates with the individual.

(c) The term "written instrument" includes, but is not limited to, a will, a trust, a deed, a document exercising a power of appointment, or a beneficiary designation under a life insurance contract or any other contractual arrangement that creates an ownership interest or permits the naming of a beneficiary.

(d) The term "gift" includes an inter vivos gift, a testamentary transfer of real or personal property or any interest therein, and the power to make such a transfer regardless of whether the gift is outright or in trust; regardless of when the transfer is to take effect; and regardless of whether the power is held in a fiduciary or nonfiduciary capacity.

(8) The rights and remedies granted in this section are in addition to any other rights or remedies a person may have at law or in equity.

Section 8. Section 732.901, Florida Statutes, is amended to read:

732.901 Production of wills.—

(1) The custodian of a will must deposit the will with the

clerk of the court having venue of the estate of the decedent within 10 days after receiving information that the testator is dead. The custodian must supply the testator's date of death or the last four digits of the testator's social security number to the clerk upon deposit.

(2) Upon petition and notice, the custodian of any will may be compelled to produce and deposit the will ~~as provided in subsection (1)~~. All costs, damages, and a reasonable attorney's fee shall be adjudged to petitioner against the delinquent custodian if the court finds that the custodian had no just or reasonable cause for failing to deposit the will.

(3) An original will submitted to the clerk with a petition or other pleading is deemed to have been deposited with the clerk.

(4) Upon receipt, the clerk shall retain and preserve the original will in its original form for at least 20 years. If the probate of a will is initiated, the original will may be maintained by the clerk with the other pleadings during the pendency of the proceedings, but the will must at all times be retained in its original form for the remainder of the 20-year period whether or not the will is admitted to probate or the proceedings are terminated. Transforming and storing a will on film, microfilm, magnetic, electronic, optical, or other substitute media or recording a will onto an electronic record-keeping system, whether or not in accordance with the standards adopted by the Supreme Court of Florida, or permanently recording a will does not eliminate the requirement to preserve the original will.

(5) For purposes of this section, the term "will" includes a separate writing as described in s. 732.515.

Section 9. Present subsections (6) through (11) of section 736.0103, Florida Statutes, are redesignated as subsections (7) through (12), respectively, present subsections (12) through (21) of that section are redesignated as subsections (14) through (23), respectively, and new subsections (6) and (13) are added to that section, to read:

736.0103 Definitions.—Unless the context otherwise requires, in this code:

(6) "Distributee" means a beneficiary who is currently entitled to receive a distribution.

(13) "Permissible distributee" means a beneficiary who is currently eligible to receive a distribution.

Section 10. Section 736.0202, Florida Statutes, is amended to read:

736.0202 Jurisdiction over trustee and beneficiary.—

(1) IN REM JURISDICTION.—Any beneficiary ~~By accepting the trusteeship~~ of a trust having its principal place of administration in this state is subject ~~or by moving the principal place of administration to this state, the trustee submits personally~~ to the jurisdiction of the courts of this state to the extent of the beneficiary's interest in ~~regarding any matter involving~~ the trust.

(2) PERSONAL JURISDICTION.—

(a) Any trustee, trust beneficiary, or other person, whether or not a citizen or resident of this state, who personally or through an agent does any of the following acts

related to a trust, submits to the jurisdiction of the courts of this state involving that trust: ~~With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the distribution.~~

1. Accepts trusteeship of a trust having its principal place of administration in this state at the time of acceptance.

2. Moves the principal place of administration of a trust to this state.

3. Serves as trustee of a trust created by a settlor who was a resident of this state at the time of creation of the trust or serves as trustee of a trust having its principal place of administration in this state.

4. Accepts or exercises a delegation of powers or duties from the trustee of a trust having its principal place of administration in this state.

5. Commits a breach of trust in this state, or commits a breach of trust with respect to a trust having its principal place of administration in this state at the time of the breach.

6. Accepts compensation from a trust having its principal place of administration in this state.

7. Performs any act or service for a trust having its principal place of administration in this state.

8. Accepts a distribution from a trust having its

principal place of administration in this state with respect to any matter involving the distribution.

(b) A court of this state may exercise personal jurisdiction over a trustee, trust beneficiary, or other person, whether found within or outside the state, to the maximum extent permitted by the State Constitution or the Federal Constitution.

~~(3) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.~~

Section 11. Section 736.02025, Florida Statutes, is created to read:

736.02025 Service of process.—

(1) Except as otherwise provided in this section, service of process upon any person may be made as provided in chapter 48.

(2) Where only in rem or quasi in rem relief is sought against a person in a matter involving a trust, service of process on that person may be made by sending a copy of the summons and complaint by any commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt. Service under this subsection shall be complete upon signing of a receipt by the addressee or by any person authorized to receive service of a summons on behalf of the addressee as provided in chapter 48. Proof of service shall be by verified statement of the person serving the summons, to which must be attached the signed receipt or other evidence satisfactory to the court that delivery was made to the addressee or other authorized person.

(3) Under any of the following circumstances, service of original process pursuant to subsection (2) may be made by first-class mail:

(a) If registered or certified mail service to the addressee is unavailable and if delivery by commercial delivery service is also unavailable.

(b) If delivery is attempted and is refused by the addressee.

(c) If delivery by mail requiring a signed receipt is unclaimed after notice to the addressee by the delivering entity.

(4) If service of process is obtained under subsection (3), proof of service shall be made by verified statement of the person serving the summons. The verified statement must state the basis for service by first-class mail, the date of mailing, and the address to which the mail was sent.

Section 12. Section 736.0205, Florida Statutes, is repealed.

Section 13. Subsection (4) of section 736.0807, Florida Statutes, is repealed.

Section 14. Paragraph (d) of subsection (1) of section 736.0813, Florida Statutes, is amended to read:

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(d) A trustee of an irrevocable trust shall provide a

trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee.

Paragraphs (a) and (b) do not apply to an irrevocable trust created before the effective date of this code, or to a revocable trust that becomes irrevocable before the effective date of this code. Paragraph (a) does not apply to a trustee who accepts a trusteeship before the effective date of this code.

Section 15. Subsection (2) of section 607.0802, Florida Statutes, is amended to read:

607.0802 Qualifications of directors.—

(2) In the event that the eligibility to serve as a member of the board of directors of a condominium association, cooperative association, homeowners' association, or mobile home owners' association is restricted to membership in such association and membership is appurtenant to ownership of a unit, parcel, or mobile home, a grantor of a trust described in s. 733.707(3), or a qualified beneficiary as defined in s. 736.0103~~(14)~~ of a trust which owns a unit, parcel, or mobile home shall be deemed a member of the association and eligible to serve as a director of the condominium association, cooperative association, homeowners' association, or mobile home owners' association, provided that said beneficiary occupies the unit, parcel, or mobile home.

Section 16. Subsections (2) and (11) of section 731.201,

Florida Statutes, are amended to read:

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(2) "Beneficiary" means heir at law in an intestate estate and devisee in a testate estate. The term "beneficiary" does not apply to an heir at law or a devisee after that person's interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, the trustee is a beneficiary of the estate. Except as otherwise provided in this subsection, the beneficiary of the trust is not a beneficiary of the estate of which that trust or the trustee of that trust is a beneficiary. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103~~(14)~~ shall be regarded as a beneficiary of the estate.

(11) "Devisee" means a person designated in a will or trust to receive a devise. Except as otherwise provided in this subsection, in the case of a devise to an existing trust or trustee, or to a trust or trustee of a trust described by will, the trust or trustee, rather than the beneficiaries of the trust, is the devisee. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103~~(14)~~ shall be regarded as a devisee.

Section 17. Subsection (1) of section 733.212, Florida

Statutes, is amended to read:

733.212 Notice of administration; filing of objections.—

(1) The personal representative shall promptly serve a copy of the notice of administration on the following persons who are known to the personal representative:

(a) The decedent's surviving spouse;

(b) Beneficiaries;

(c) The trustee of any trust described in s. 733.707(3) and each qualified beneficiary of the trust as defined in s. 736.0103~~(14)~~, if each trustee is also a personal representative of the estate; and

(d) Persons who may be entitled to exempt property

in the manner provided for service of formal notice, unless served under s. 733.2123. The personal representative may similarly serve a copy of the notice on any devisees under a known prior will or heirs or others who claim or may claim an interest in the estate.

Section 18. Paragraph (f) of subsection (5) of section 736.0802, Florida Statutes, is amended to read:

736.0802 Duty of loyalty.—

(5)

(f)1. The trustee of a trust as defined in s. 731.201 may request authority to invest in investment instruments described in this subsection other than a qualified investment instrument, by providing to all qualified beneficiaries a written request containing the following:

a. The name, telephone number, street address, and mailing

address of the trustee and of any individuals who may be contacted for further information.

b. A statement that the investment or investments cannot be made without the consent of a majority of each class of the qualified beneficiaries.

c. A statement that, if a majority of each class of qualified beneficiaries consent, the trustee will have the right to make investments in investment instruments, as defined in s. 660.25(6), which are owned or controlled by the trustee or its affiliate, or from which the trustee or its affiliate receives compensation for providing services in a capacity other than as trustee, that such investment instruments may include investment instruments sold primarily to trust accounts, and that the trustee or its affiliate may receive fees in addition to the trustee's compensation for administering the trust.

d. A statement that the consent may be withdrawn prospectively at any time by written notice given by a majority of any class of the qualified beneficiaries.

A statement by the trustee is not delivered if the statement is accompanied by another written communication other than a written communication by the trustee that refers only to the statement.

2. For purposes of paragraph (e) and this paragraph:

a. "Majority of the qualified beneficiaries" means:

(I) If at the time the determination is made there are one or more beneficiaries as described in s. 736.0103(16)(c) ~~736.0103(14)(c)~~, at least a majority in interest of the

beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, and at least a majority in interest of the beneficiaries described in s. 736.0103(16)(c) ~~736.0103(14)(c)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class; or

(II) If there is no beneficiary as described in s. 736.0103(16)(c) ~~736.0103(14)(c)~~, at least a majority in interest of the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and at least a majority in interest of the beneficiaries described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, a majority in number of each such class.

b. "Qualified investment instrument" means a mutual fund, common trust fund, or money market fund described in and governed by s. 736.0816(3).

c. An irrevocable trust is created upon execution of the trust instrument. If a trust that was revocable when created thereafter becomes irrevocable, the irrevocable trust is created when the right of revocation terminates.

Section 19. Paragraph (a) of subsection (2) of section 736.08125, Florida Statutes, is amended to read:

736.08125 Protection of successor trustees.—

(2) For the purposes of this section, the term:

(a) "Eligible beneficiaries" means:

1. At the time the determination is made, if there are one

or more beneficiaries as described in s. 736.0103(16)(c) ~~736.0103(14)(c)~~, the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (c); or

2. If there is no beneficiary as described in s. 736.0103(16)(c) ~~736.0103(14)(c)~~, the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (b).

Section 20. Paragraph (d) of subsection (9) of section 738.104, Florida Statutes, is amended to read:

738.104 Trustee's power to adjust.—

(9)

(d) For purposes of subsection (8) and this subsection, the term:

1. "Eligible beneficiaries" means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(16)(c) ~~736.0103(14)(c)~~, the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (c); or

b. If there is no beneficiary described in s. 736.0103(16)(c) ~~736.0103(14)(c)~~, the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (b).

2. "Super majority of the eligible beneficiaries" means:

a. If at the time the determination is made there are one or more beneficiaries described in s. 736.0103(16)(c) ~~736.0103(14)(c)~~, at least two-thirds in interest of the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ or two-thirds in interest of the beneficiaries described in s. 736.0103(16)(c) ~~736.0103(14)(c)~~, if the interests of the beneficiaries are reasonably ascertainable; otherwise, it means

two-thirds in number of either such class; or

b. If there is no beneficiary described in s. 736.0103(16)(c) ~~736.0103(14)(c)~~, at least two-thirds in interest of the beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ or two-thirds in interest of the beneficiaries described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, if the interests of the beneficiaries are reasonably ascertainable, otherwise, two-thirds in number of either such class.

Section 21. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 583 Estates
SPONSOR(S): Civil Justice Subcommittee; Spano
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Ward	Bond
2) Insurance & Banking Subcommittee		Bauer	Cooper
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

The administration of estates and trusts is governed by the Florida Probate Code (Chapters 731-735, Florida Statutes) and the Florida Trust Code (Chapter 736, Florida Statutes). The bill makes a number of changes to the Florida Unclaimed Property Act (ch. 717, F.S.), the Florida Probate Code (chs. 731 and 732), and the Florida Trust Code (ch. 736). The bill provides:

- A trustee may report and deliver unclaimed intangible property to the Department of Financial Services after two years, instead of five years.
- A caveator is not required to serve notice on him or herself when filing a petition for administration of the estate.
- Any gift received by a lawyer, or a relative of the lawyer, pursuant to a written instrument that the lawyer prepared is void.
- A clerk of court, upon receipt of a will, is required to keep the will in its original form for 20 years.
- The jurisdiction of Florida courts to adjudicate trust disputes is expanded by the creation of an applicable long arm statute.
- Notice to certain trust beneficiaries may be provided by mail requiring return receipt, in certain circumstances.
- A conflicting definition of "distributee" found in the statutes is reconciled.
- Conflict between a statute and the Florida Rules of Civil Procedure over *forum non conveniens* is reconciled by a repeal of the statute.
- A trustee may provide trust accountings more frequently than once per year.
- Federal estate tax returns for decedents dying after December 31, 2012, must be copied to the Department of Revenue.

This bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Unclaimed Property Held by a Trustee

Current Situation

Property is considered legally unclaimed after the holder of the property is unable to find the lawful owner. This may happen because the lawful owner has failed to make contact for a period of time, no lawful owner is known, or when the lawful owner refuses to accept the property. The "Florida Disposition of Unclaimed Property Act"[1] determines how long an unclaimed asset must be held, what reporting requirements must be observed by the holder, and how unclaimed property is determined, After delivery to the state, the property is managed and held by the Florida Department of Financial Services and may be claimed thereafter by the rightful owner.

Under current law, a trustee holding property for an unknown beneficiary[2] must retain the property for five years before the property is presumed unclaimed.[3] Funds held by a financial organization (including a trust company), an agent, or a fiduciary are presumed unclaimed after five years unless the owner has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary. After five years of inactivity, the trustee must report and deliver the unclaimed property to the Department of Financial Services.[4]

Corporate fiduciaries have procedures to continue management of unclaimed assets for the five year time frame. However, when individuals serve as trustees, they may not realize that they must manage assets which remain unclaimed. Failure to properly manage these assets is a breach of the fiduciary duty of the trustee. Further, the trustee administering a testamentary bequest has a much longer obligation to hold unclaimed property than the personal representative of an estate with the same duties of distribution.

While the Florida Probate Code[5] provides that a personal representative holding unclaimed property must petition the court to deposit unclaimed funds in the registry of the court, there is no analogous provision in the Florida Trust Code[6] for a trustee. The only provision is the general one for all holders of unclaimed property in ch. 717, F.S., which requires the five year wait to commence distribution of unclaimed assets. While a personal representative will usually dispose of unclaimed funds by court order within one year,[7] a trustee must wait and administer unclaimed assets for five years of inactivity.

Effect of Proposed Changes

Sections 2, 3, and 4 of the bill addresses unclaimed intangible[8] property held by trustees of trusts administered pursuant to ch. 736, F.S.,[9] putting trust administration more on a par with probate

---

[1] Section 717.001, et seq; F.S.
[2] This includes beneficiaries who cannot be located, who are undetermined heirs, or who refuse to accept distributions, among others.
[3] Section 717.112(1), F.S.
[4] Sections 717.117, 717.119, F.S.
[5] *See*, s. 733.816(1), F.S. The Florida Probate Code is found in chs. 731 -735, F.S.
[6] The Florida Trust Code is found in ch. 736, F.S.
[7] *See*, Fla. R. Pro. Proc. 5.400(c).
[8] Tangible personal property was specifically omitted by amendment adopted March 6, 2013.
[9] The bill amends ss. 717.112 and 717.101(24), F.S., and creates s. 717.1125, F.S.

administration by shortening the time that a trustee must hold unclaimed property from the current five years to two years. At the end of the two year period, the trustee would deliver the unclaimed property to the Florida Department of Financial Services in the same manner as under current law.

Petitions for Administration Filed by Caveators

Current Situation

Under current law, a 'caveat'[10] is filed with the clerk of court by a person who might have an interest in an estate administration, but who might not otherwise be entitled to notice of the proceeding. This might be a creditor or an heir. If a caveat "has been filed by an interested person other than a creditor, the court may not admit a will of the decedent to probate or appoint a personal representative until formal notice of the petition for administration has been served on the caveator. . ."[11]

Anecdotal evidence suggests that in some circuits the caveator is required to actually serve formal notice of the petition on him or herself, as caveator, before the petition for administration can be considered by the court. The caveator is placed in a position otherwise of being required to withdraw the caveat, thus opening a window to another party to file a competing petition for administration and secure appointment without consideration of the caveat.

Effect of Proposed Changes

Section 5 of the bill amends s. 731.110(3), F.S., to avoid the need for a caveator to serve formal notice of his or her own petition for administration on him or herself before the court may consider the petition. The change makes it unnecessary for the caveator to withdraw the caveat should the caveator fail to provide itself formal notice of its own petition for administration. The changes will eliminate an unnecessary delay in the issuance of Letters of Administration to an otherwise qualified personal representative.

Gifts to Lawyers

Current Situation

Chapter 4 of the Rules Regulating the Florida Bar contains the Rules of Professional Conduct for lawyers, and Rule 4-1.8 addresses conflicts of interest and prohibited transactions. Rule 4-1.8(c) provides in pertinent part, "A lawyer shall not solicit any substantial gift from a client, including a testamentary gift or prepare on behalf of a client an instrument giving the lawyer or person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to client."

A violation of this Rule, however, does not give rise to a civil cause of action or render the gift to the lawyer void as a matter of law. As a consequence, a lawyer may be entitled to retain a gift or bequest from a client even though the lawyer is subject to discipline. Further, even if the bequest or gift is ultimately set aside, costs of litigation are involved to achieve that result.

In the absence of a specific statutory prohibition, Florida courts have held that a violation of Rule 4-1.8 does not render a gift to the lawyer in violation of the Rule void. In *Agee v. Brown*, 73 So. 3d 882 (Fla. 4th DCA 2011), the 4th DCA reversed the trial court which had found that a gift to a drafting lawyer

---

[10] "Let him beware.[Lat.] A formal notice or warning given by a party interested to a court, judge, or ministerial officer against the performance of certain acts within his power and jurisdiction. This process may be used in the proper courts to prevent (temporarily or provisionally) the proving of a will or the grant of administration . . ." Black's Law Dictionary, 2d Ed., online edition http://thelawdictionary.org/caveat/. [Last accessed February 21, 2013].

[11] Section 731.110(3), F.S.

under a will was void as a matter of law because it violated Rule 4-1.8 and public policy. The *Agee* court held that the trial court had improperly "incorporated Rule 4–1.8(c) of the Rules Regulating The Florida Bar into the statutory framework of the probate code." *Id.* at 886. The court found that this interpretation was erroneous as "[i]t is a well-established tenet of statutory construction that courts are not at liberty to add words to the statute that were not placed there by the Legislature." *Id.* The court noted that the "best way to protect the public from unethical attorneys in the drafting of wills . . . is entirely within the province of the Florida Legislature." *Id.* at 887.

In the absence of a specific statute rendering a gift void, beneficiaries are left to challenge the instrument in court based upon standard allegations of fraud, undue influence, or duress.

Effect of Proposed Changes

Section 7 of the bill adds a new section to the Florida Probate Code[12] that would render any part of a written instrument which makes a gift to a lawyer or a person related to the lawyer void if the lawyer prepared or supervised the execution of the written instrument, or solicited the gift, unless the lawyer or other recipient of the gift is related to the person making the gift. It is noted that the provision makes the gift void rather than voidable,[13] avoiding proof requirements in the event of a contest.

The bill is comprehensive in its application. It provides that "any part of a written instrument which makes a gift to a lawyer or a person related to the lawyer is void if the lawyer prepared or supervised the execution of the written instrument, or solicited the gift, unless the lawyer or other recipient of the gift is related to the person making the gift." It further provides that this provision may not be waived.

There are safeguards in the bill for bona fide purchaser without notice. If a transfer is made, the lender or purchaser takes title free of any claims, whether or not the gift is void.

The bill does not prevent a lawyer from acting as a fiduciary (for example, as a personal representative or under a power of attorney). It does not prevent a lawyer from inheriting from a client. A client is free to draft a will or other instrument making a gift to the lawyer or the lawyer's family. The statute prevents the lawyer or persons related to the lawyer from preparing the document making the gift. In such circumstances, the client should be advised to go to an independent lawyer to have the instrument making the gift prepared. The bill makes an exception for the typical situation in which the lawyer prepares a document for a family member or other related person.

Production of Wills

Current Situation

The Florida Supreme Court has made changes to the Rules of Judicial Administration to implement electronic filing and record keeping for all circuit courts in the state of Florida.[14] There are two reasons that original wills and codicils require special attention in response to this system. First, the originals of these documents are required for evidentiary purposes, and second, the clerk of the court is used as the depository for these documents.

In probate proceedings, original wills and codicils and information regarding the identity of interested persons are often submitted ex parte. Some wills are simply deposited with the clerk without probate administration. If heirs are unknown, notice is not properly given, or in the event of fraud on the court, months or years might pass before interested parties learn of the administration. If proper notice was

[12] Section 732.806, F.S.
[13] A voidable event is arguable, and facts may be presented to challenge it. In contrast, a void event requires no proof of fact because it is a legal nullity. *See,* eg., *McMurrer v. Marion County*, 936 So.2d 19 (Fla. 5th DCA 2006).
[14] Fla. R. Jud. Admin. 2.525.

not provided, the interested person may be able to petition to reopen the estate even after a final order is issued.[15] If a forgery has occurred or a will has been altered in some way, the retention of the original document is crucial from an evidentiary standpoint to establish the true beneficiaries of an estate.

Because of the unique nature of the documents, s. 732.901, F.S., currently provides that original wills are "deposited," not filed with the clerk. Further, the Clerk's Schedule (GS-11)[16] for the General Records Schedules for all agencies, posted on the Department of State's Division of Library Services website, requires the clerk to retain an original will deposited for safekeeping for 20 years. In addition, Fla. R. Prob. Proc. 5.043 provides:

> Notwithstanding any rule to the contrary, and unless the court orders otherwise, any original executed will or codicil deposited with the court shall be retained by the clerk in its original form and may not be destroyed or disposed of by the clerk for 20 years after submission regardless of whether the will or codicil has been permanently recorded as defined by Rule 2.430, Florida Rules of Judicial Administration.

When a probate administration is opened, the original will is added to the court file. In the event of electronic storage and eventual destruction of the file, it is not clear under present law that the will is in the nature of original evidence which must be preserved.

With the deposit of the will, the custodian is required to provide the date of death and social security number of the decedent.[17]

Effect of Proposed Changes

Section 8 of the bill changes s. 732.901, F.S., to codify the probate rule and specify that all wills and codicils are "deposited" not filed. In addition, regardless of where the original is maintained by the clerk, the original will or codicil must be maintained in its original form for a period not less than 20 years. For record keeping purposes, the clerk may maintain the will or codicil as part of the probate file. However, the original will or codicil may not be scanned and destroyed during the 20 year period. The bill also provides for when an original will or codicil can be submitted.

Further, the bill provides that the term "will" also includes a separate writing as defined in s. 732.515, F.S. "Separate writings" referred to in a will[18] often contain devises of valuable tangible property and are subject to the same dangers of forgery or alteration as an original will or codicil.

Finally, the bill revises the statute to require only the last four digits of the decedent's social security number be supplied to the clerk upon deposit of the original document to comply with new confidentiality rules.[19]

Definitions for Distributee and Permissible Distributee

Current Situation

There are two definitions in use for the word, "distributee." In the Florida Trust Code, the word "distributee" is used to mean a person who is *entitled* to a distribution. Section 736.0103(14), F.S.,

---

[15] Fla. R. Civ. Pro. 1.540 provides for setting aside a final order, including orders of discharge, in the event of fraud on the court.

[16] The full document may be found at dlis.dos.state.fl.us/barm/genschedules/GS11-2010.doc (Last viewed February 19, 2013).

[17] *See,* s. 732.901(1), F.S.

[18] Section 732.515, F.S., allows a testator to devise personalty by separate writing without changing the entire will, as long as there is an intention expressed in the will to take advantage of that provision.

[19] Fla. R. Jud. Admin. 2.425.

defines the term "qualified beneficiary" as a living beneficiary who is a "distributee or a permissible distributee" on the date the qualification is being determined. In this statute the word "distributee" is used in its plain and ordinary meaning – a person who is entitled to a distribution.

In the Florida Probate Code, however, the term "distributee" means a person who has *already* received estate property from a personal representative or other fiduciary, per the definition in s. 731.201(12), F.S.

In s. 731.201(12), F.S., a person who has not yet received a distribution, but who is entitled to or eligible to receive a distribution, is not yet a "distributee." Comparatively, in ch. 736, F.S., a person who has not yet received a distribution but who is entitled to or eligible to receive a distribution should also be a "distributee." Further, a person who received a complete distribution is a "distributee" under s. 731.201(12), F.S.

Applying the s. 731.201, F.S., definition of "distributee" to ch. 736, F.S., creates an absurd result. For example, if qualified beneficiaries are limited to persons who are "distributees" as defined in s. 731.201(12), F.S., then only persons who have already received distributions could be qualified beneficiaries, and by implication, any beneficiary who has not yet received a distribution would not be a qualified beneficiary. This is not the logical or intended result. In ch. 736, F.S., a person who has received a complete distribution would no longer be a "beneficiary," as defined in s. 736.0103(4), F.S., and therefore would not be a "qualified beneficiary" as defined in s. 736.0103(14), F.S. In short, in the trust context, those persons who have received their complete distributions should no longer be qualified beneficiaries, and those persons yet to receive their distribution should be qualified beneficiaries. The definitional sections should not impede this result.

Even though s. 731.201, F.S., provides that the definitions apply to ch. 736, F.S., subject to additional definitions and unless the context requires otherwise, the usage of the word "distributee" in ch. 736, F.S., without a definition other than the one in s. 731.201, F.S., creates confusion.

Effect of Proposed Changes

Section 9 of the bill resolves the definition of "distributee" for purposes of the Florida Trust Code. The bill adds new definitions of "distributee" and "permissible distributee" that will apply for purposes of ch. 736, F.S., the Florida Trust Code, by adding two new paragraphs to s. 736.0103 to create new definitions for "distributee" and "permissible distributee."

"Distributee" means a beneficiary who is currently entitled to receive a distribution, thereby excluding those persons who have already received their distributions.

"Permissible distributee" means a beneficiary who is currently eligible to receive a distribution but who has not yet received a distribution.

Currently, the word "distributee" appears in s. 736.0103(14), F.S., (qualified beneficiary), s. 736.0110, F.S., (others treated as qualified beneficiaries), and the title of s. 736.1018, F.S., (liability of distributee). The new definition of "distributee" will not create an unintended result when applied to any of these sections.[20]

[20] Note that the word "distributee" as used in the title of s. 736.1018, F.S., is not inconsistent with the definition of the word "distributee" in s. 731.201(12), F.S., or the new definition in s. 736.0103, F.S.

In Rem Jurisdiction over Trustees and Beneficiaries

Current Situation

Section 736.0202(1), F.S. provides that a trustee, including a nonresident trustee, who accepts trusteeship of a trust having its principal place of administration in Florida, or who moves the principal place of administration of a trust to Florida, submits personally to the jurisdiction of the courts of Florida regarding any matter involving the trust. The acts of accepting trusteeship or moving a trust to Florida are hidden "long-arm" provisions, not contained in s. 48.193(1), F.S., designed to allow Florida courts to acquire personal jurisdiction over nonresidents who engage in those acts.

Under decisions of the United States Supreme Court, followed in the leading Florida case of *Venetian Salami Co. v. Parthenais*, 554 So.2d 499 (Fla. 1989), a Florida court may exercise jurisdiction over a defendant who cannot be served with process within the state (and who does not appear voluntarily) only if Florida law authorizes it, and then only if the defendant has sufficient minimum contacts with Florida such that maintaining the suit does not offend traditional notions of fair play and substantial justice. That, in turn, depends on whether the relationship among the defendant, the forum, and the litigation is such that the defendant should reasonably expect to be sued in Florida. This "minimum contacts" requirement always requires a factual analysis. So-called "long-arm" statutes are intended to specify factual situations that are likely to satisfy a minimum contacts test, but falling within the statute's parameters does not automatically satisfy that test.[21]

Many Florida trusts have trustees and beneficiaries who are not residents of the state, and it is reported among practitioners that it is difficult under current laws to acquire jurisdiction over all necessary parties in a case involving a trust. Florida's generic long-arm statute, s. 47.193(1), F.S., is reportedly too limited to include the necessary parties in most actions involving trusts, and the first step in acquiring jurisdiction over a nonresident is that Florida law must authorize it.

Effect of Proposed Changes

The bill creates s. 736.02023, F.S., a statutory means for Florida courts to acquire jurisdiction over nonresident trustees and trust beneficiaries in cases involving trusts administered in Florida through enactment of trust-related "long-arm" provisions. Such provisions specify the acts that will give a Florida court jurisdiction over nonresident trustees and trust beneficiaries who have sufficient contacts with Florida to be subject to jurisdiction of its courts consistent with constitutional due process principles, but which are not covered by the existing "long-arm" provisions in ch. 48, F.S.

Service of Process upon Trustees and Beneficiaries

Current Situation

The Florida Probate Code[22] provides for service upon beneficiaries and creditors by mail in respect to their interests in the property. There is no analogous provision allowing a trustee to provide service for matters involving the trust under administration by any less means than consent or formal service under s. 48, F.S.

Effect of Proposed Changes

Section 10 of the bill creates s. 736.02025, F.S., which provides for service of process as provided in ch. 48, F.S., the general statute on service of process. It also provides for service of process by mail or commercial delivery service when the case involves an interest in trust property but does not seek a

[21] *Id.* at 502.
[22] Chs. 731-735, F.S. *See,* also s. 731.301, F.S., and Fla. R. Pro. Proc. 5.040 for notice provisions.

personal judgment or an order compelling a trustee or trust beneficiary to take specific action.[23] Subsection (2) of the new section parallels existing service by mail provisions in s. 48.194, F.S. Subsection (3) of the new section, allowing service by first-class mail in certain circumstances, contains elements of s. 48.194(3), F.S. This makes service of process in trust administration more like service in an estate administration, when the matter to be heard or decided is limited to the beneficiary's interest in the trust.

Repeal of s. 736.0205, F.S.

Current Situation

Section 736.0205 is identical to former s. 737.203, F.S., which was enacted in 1974 before the Florida Supreme Court added Fla. R. Civ. Pro. 1.061, which adopted the federal doctrine of *forum non conveniens* in 1996.[24] Section 736.0205, F.S., on its face appears to provide a defendant in trust litigation an absolute right to object to allowing the trust litigation to proceed in Florida if the trust has its principal place of administration in another state (unless all interested parties could not be bound by litigation of the courts in the state where the trust is registered or has its principal place of administration).

However, the statute has not been construed that way. Florida courts have held that s. 736.0205, F.S., is not jurisdictional, but is rather a *forum non conveniens* statute which requires a court to determine the "most appropriate forum" in which the case should proceed.[25] Although s. 736.0205, F.S., has been labeled a statute of forum non conveniens, the wording of the statute suggests that courts have limited discretion in allowing litigation to proceed over the objection of a defendant. This has led to significant confusion and litigation over the standards and burdens of proof for Florida courts to apply in addressing objections raised under the statute. It has also been suggested that the statute shifts the burden to the plaintiff to prove that their choice of venue is appropriate.[26] This conflicts with Fla. R. Civ. Pro. 1.061, which provides specifically that the defendant has the burden of pleading and proving the facts necessary to obtain a change of venue, and provides for a balancing of interests before dismissing a lawsuit.

In addition to conflict with Rule 1.061, the statute is misleading to attorneys and their clients in providing for a seemingly automatic dismissal of a trust case in which the trust's principal place of administration is in another state. This is contrary to the long-arm jurisdictional principle that nonresidents should be accountable in Florida courts for tortious actions by them that have consequences or repercussions within Florida.[27]

Effect of Proposed Changes

Section 12 of the bill repeals s. 736.0205, F.S., and will thus require courts to conduct the four-part analysis contained in Fla. R. Civ. Pro. 1.061 in deciding a motion to dismiss a case on the basis of *forum non conveniens*. The repeal will also provide clarity in that existing law provides little guidance on the factors for a court to consider in deciding a motion to dismiss under the current statute.

---

[23] An action limited in scope to particular property that does not seek a personal judgment is called an *in rem* or *quasi in rem* action.

[24] "Forum non conveniens [a Latin phrase which translates as "inconvenient forum"] is a common law doctrine addressing the problem that arises when a local court technically has jurisdiction over a suit but the cause of action may be fairly and more conveniently litigated elsewhere. Forum non conveniens also serves as a brake on the tendency of some plaintiffs to shop for the "best" jurisdiction in which to bring suit." *See, Kinney System, Inc. v. Continental Insurance Co.*, 674 So.2d 86 at 87 (Fla. 1996).

[25] *See*, e.g., *Estate of McMillian*, 603 So. 2d 685 (Fla. 1st DCA 1992).

[26] *Id.* at 688.

[27] *See, Wendt v. Horowitz*, 822 So.2d 1252 (Fla. 2002); *Canale v. Rubin*, 20 So.3d 463 (Fla. 2d DCA 2009).

Section 13 of the bill also repeals 736.0807(4), F.S., which is unnecessary after the amendments to s. 736.0202, F.S., outlined above.

Trust accountings

Current Situation

Under current law, a trustee has a duty to provide an accounting. The current statutory provision concerning the duty to account by a trustee provides in F.S. 736.0813(1)(d), F.S: "A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee." The accounting must be in the format dictated by s. 736.08135, F.S.

There are no express provisions regarding what the resulting duties are if the trustee accounts on a period more often than annually. The statute implies, but does not make explicit, that a trustee who provides more frequent accountings to a qualified beneficiary satisfies its duty to account to qualified beneficiaries.

Corporate fiduciaries commonly provide monthly or quarterly accountings to qualified beneficiaries. Limited confusion has arisen at the trial court level about whether accountings provided more frequently than annually satisfy the trustee's duty to account.

Effect of Proposed Changes

Section 14 of the bill modifies s. 736.0813(1)(d), F.S., to provide that a trustee may provide accountings to qualified beneficiaries more frequently than annually and satisfy the duty to account, without providing a specific annual accounting. The bill provides that an accounting must cover the time period from the last accounting or, if there are no previous accountings, from the date the trustee first became accountable.

Estate Tax Returns

The provisions of the Internal Revenue Code eliminating the state death tax credit and state generation-skipping transfer tax credit had been scheduled to sunset on December 31, 2012. However, as a result of the passage of The American Taxpayer Relief Act of 2012,[28] the state death tax credit and state generation-skipping transfer tax credit were permanently eliminated and replaced with a federal estate tax deduction for state death taxes.

Accordingly, Section 1 of the bill eliminates the language of s. 198.13(4), F.S. that indicates that subsection (4) does not apply to estates of decedents dying after December 31, 2012.

Conforming Changes

Sections 15-20 of the bill amend ss. 607.0802, 731.201, 733.212, 736.0802, 736.08125, and 738.104, F.S., to conform cross-references to changes made by the bill.

Effective date

The bill provides for an effective date of October 1, 2013.

B. SECTION DIRECTORY:

Section 1 amends s. 717.101, F.S., regarding definitions.

[28] H.R. 8--112th Congress: American Taxpayer Relief Act of 2012. (2012). In www.GovTrack.us. Retrieved March 6, 2013, from http://www.govtrack.us/congress/bills/112/hr8

Section 2 amends s. 717.112, F.S., regarding property held by agents and fiduciaries.

Section 3 creates s. 717.1125, F.S., regarding property held by fiduciaries under trust instruments.

Section 4 amends s. 731.110, F.S., regarding caveats.

Section 5 amends s. 732.703, F.S., regarding effect of divorce, dissolution, or invalidity of marriage on disposition of certain assets at death.

Section 6 creates s. 732.806, F.S., regarding gifts to lawyers and other disqualified persons.

Section 7 amends s. 732.901, F.S., regarding production of wills.

Section 8 amends s. 736.0103, F.S., regarding definitions.

Section 9 amends s. 736.0202, F.S., regarding jurisdiction over trustee and beneficiary.

Section 10 creates s. 736.02025, F.S., regarding service of process.

Section 11 repeals s. 736.0205, F.S., regarding trust proceedings.

Section 12 amends s. 736.0807, F.S., regarding delegation by trustee.

Section 13 amends s. 736.0813, F.S., regarding duty to inform and account.

Section 14 amends s. 607.0802, F.S., regarding qualifications of directors.

Section 15 amends s. 731.201, F.S., regarding general definitions.

Section 16 amends s. 733.212, F.S., regarding notice of administration.

Section 17 amends s. 736.0802, F.S., regarding duty of loyalty.

Section 18 amends s. 736.08125, F.S., regarding protection of successor trustees.

Section 19 amends s. 738.104, F.S., regarding trustee's power to adjust.

Section 20 provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Changes to s. 732.806, F.S., indicate that gifts to lawyers under certain circumstances are void, yet attempts to protect transferees without notice in subsection (4). A void event is a nullity and cannot convey title.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2013, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments provide:

- Section 198.13(4), F.S., is amended to remove its application to estates of decedents dying after December 31, 2012; and

- Section 3 of the bill, which creates s. 717.1125, F.S., is amended to provide that only intangible property held by fiduciaries is presumed unclaimed after two years.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to the registration of branch offices conducting securities transactions; amending s. 517.12, F.S.; providing that the registration of such offices is effective upon the filing of a certain form with the Office of Financial Regulation; authorizing the office to request a written supplement under certain circumstances; providing an effective date.

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

Section 1. Subsections (5) and (6) of section 517.12, Florida Statutes, are amended to read:

517.12 Registration of dealers, associated persons, investment advisers, and branch offices.—

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is registered with the office pursuant to ~~the provisions of~~ this section. Registration is effective upon the filing of Securities and Exchange Commission Form BR, Uniform Branch Office Registration Form, with the office through the Central Registration Depository maintained by the Financial Industry Regulatory Authority. The office may request the filing of a written supplement if the office finds that the Form BR is incomplete or inaccurate. The form of the supplement shall be determined by the commission.

(6) In order to obtain registration, a dealer, associated person, or investment adviser~~, or branch office, in order to~~

~~obtain registration,~~ must file with the office a written application, on a form that ~~which~~ the commission may by rule prescribe. The commission may establish, by rule, procedures for depositing fees and filing documents by electronic means if ~~provided~~ such procedures provide the office with the information and data required by this section. Each dealer or investment adviser shall ~~must~~ also file an irrevocable written consent to service of civil process similar to that provided under ~~for in~~ s. 517.101. The application must ~~shall~~ contain such information as the commission or office may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant's form and place of organization; and, if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including the contingent liabilities of the applicant up to ~~as of a date not more than~~ 90 days before ~~prior to~~ the filing of the application.

(d) The names and addresses of all associated persons of the applicant to be employed in this state and the offices to which they will be assigned.

Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 783 Registration of Branch Offices Conducting Securities Transactions
SPONSOR(S): Eagle
TIED BILLS: **IDEN./SIM. BILLS:** SB 814

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Bauer JB	Cooper PC
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The securities industry is regulated on the federal level by the U.S. Securities and Exchange Commission. At the state level, the Florida Office of Financial Regulation ("OFR") regulates the sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms to compliance with the Florida Securities and Investor Protection Act, Chapter 517, Florida Statutes.

Florida currently uses a registration process for securities dealers, associated persons, investment advisers, and branch offices. The Act provides that no dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is registered with the OFR. A branch office is a location in Florida where associated persons of a securities dealer or investment adviser conducts the business of rendering investment advice or effectuates the purchase or sale of securities. Branch offices must ensure that the information contained in their registration applications are current and accurate, and must file a new registration if the information changes and must provide additional information requested by the OFR if the application is incomplete. Currently, the average processing time for a registration application is 5-6 days. Until the application for registration is approved, a branch office may not conduct business.

The bill provides that branch registration is automatically effective upon a "notice filing", meaning upon the filing of a registration form with the OFR. The bill provides that the OFR may request written supplemental information if the OFR finds that the form is incomplete or inaccurate.

The bill does not have a fiscal impact on state and local governments. The bill may have a positive impact on the private sector by eliminating the lapse in business operations while awaiting registration approval.

The bill provides for an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The securities industry is regulated by the following:

- The U.S. Securities and Exchange Commission (SEC), the federal agency with primary responsibility for regulating the securities industry and for enforcing federal securities laws.
- State securities regulators, such as the Florida Office of Financial Regulation (the OFR), which regulate and register entities and individuals in the securities industry.
    - The OFR's Division of Securities regulates the sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms to compliance with the Florida Securities and Investor Protection Act, Chapter 517, F.S. (the Act) and Chapter 69W, Florida Administrative Code.
        - Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.
- The Financial Industry Regulatory Authority, Inc. (FINRA), which is a private, self-regulatory organization for all securities firms doing business in the United States.[1] FINRA operates the Central Registration Depository and the Investment Adviser Registration Depository, which are central databases for registration, reporting, and disclosure information for the securities industry.

Registration is conceptually distinct from "notice filing," which the Act allows federal covered investment advisers (federal IAs) to use and transmit to all desired states through the Investment Advisor Registration Depository.[2] Notice filing for federal IAs consists of providing the OFR with copies of documents submitted to the SEC, a consent to service of process, and a filing fee. A notice filing is effective upon receipt.[3] The difference between state-registered IAs and federal covered IAs is that the latter have more than $100 million in assets under management and are required to be registered under the federal Investment Advisors Act of 1940.[4] In addition, branch offices of federal covered investment advisers are not required to register with the OFR.

Florida currently uses a registration process for securities dealers, associated persons, state-covered investment advisers, and branch offices. The Act provides that no dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is registered with the OFR.[5] "Branch office" means any location in this state of a dealer or investment adviser where one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce, the purchase or sale of any security, or any location that is held out as such.[6]

Branch offices must register with the OFR by filing a written application form prescribed by commission rule and paying an application fee.[7] The application form is FINRA's Uniform Branch Office Registration (Form BR). Once registered, branch offices are required to ensure that the information in the application remains accurate. If any information changes, such as changes in supervisory personnel, changes in any material

---

[1] About FINRA, http://www.finra.org/AboutFINRA/ (last accessed March 4, 2013).
[2] Section 517.12(4), F.S.
[3] Section 517.1201, F.S.
[4] Section 517.021(9), F.S. The federal investment Advisers Act of 1940 is codified at 15 U.S.C. §80b-1 *et seq.* Section 410 of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 raised the threshold from $25 million to $100 million.
[5] Section 517.12(5), F.S.
[6] Section 517.021(4), F.S. Branch offices of federal IAs are not required to register with the OFR.
[7] Rule 69W-600.004(3), F.A.C.

fact (such as a new location of a branch office) or method of business,[8] the branch office must resubmit an amended Form BR. Failure to amend the application is a violation of the Act, and can subject the branch office and associated person to denial, revocation, restriction, or suspension of a registration under s. 517.12, F.S.[9] In addition, the OFR has authority under current law to deny, revoke, restrict, or suspend registration if such applicant or registrant violates any provision of the Act or any rule or order made under the Act.[10]

Registration of a branch office enables the OFR to determine that dealers, associated persons, and investment advisers in Florida maintain proper and adequate supervision. The OFR verifies that the supervisor holds the required licenses and that the supervisor is within the geographical area to adequately manage the persons located at the branch office seeking registration. For example, the OFR would have a regulatory concern if a branch office registered in Ft. Lauderdale was actually being supervised by a person in New York City. Registration of branch offices also allows the OFR to minimize expansion if a firm has systemic supervisory issues or ongoing enforcement actions.[11]

Currently, the Act provides oversight authority over branch office registrants through the following provisions:

- Section 517.1205, F.S., regarding registration of associated persons specific as to a securities dealer, investment adviser, or federal covered adviser identified at the time of registration approval.
- Section 517.121(2), F.S., regarding books and records requirements for registrants and the OFR's examination authority.
- Section 517.161(1)(j), F.S., regarding the OFR's authority to revoke, deny, or suspend a registration if certain conditions exist.
- Section 517.1611(2)(b), F.S., regarding the commission's authority to adopt rules to disqualify applicants (including branch offices) from registration, based upon criminal backgrounds.
- Section 517.211(1), F.S., regarding investors' right to rescind the purchase of stock upon the occurrence of specified violations. This provision excludes a branch office's failure to renew its registration.[12]

Since July 1, 2012, the average timeframe for the OFR to process and approve broker-dealer branch office is 5 days and investment adviser branch office is 6 days. According to the OFR, historically about 15% of branch office registration applications contain deficiencies, which result in a delay of the approval date and operation of the branch location.[13]

The industry has noted that while the OFR has improved its registration processing time,[14] the current registration process can adversely impact registered advisors who must file a new registration form to reflect a change their firm affiliation, branch office location, and so forth, and suspend business while awaiting the OFR's approval.

House Bill 783

The bill amends s. 517.12, F.S., to provide that the registration of branch offices is effective upon the filing of the Securities and Exchange Commission Form BR, Uniform Branch Office Registration Form, with the

[8] Section 517.12(13), F.S. and Rule 69W-500.004(3)(c), F.A.C.
[9] Section 517.161(1)(a), F.S.
[10] Section 517.161(1)(a), F.S.
[11] Bill analysis from the OFR (received March 8, 2013), on file with the Insurance & Banking Subcommittee staff
[12] This exclusion for branch offices from the strict liability provision was enacted in 2000. *See* Ch. 2000-123, L.O.F.
[13] *Ibid.*
[14] Financial Services Institute Briefing Memo (January 2013), on file with the Insurance & Banking Subcommittee staff. This memo states that from June 2, 2010 to February 28, 2011, the average branch office application processing time by OFR was 11.5 days. From April 1, 2011 to August 21, 2011, the average branch office application was processed in 5.4 days.

OFR through the Central Registration Depository. The bill would automatically grant registration to the branch office upon filing notice to the OFR.

The bill also allows the OFR to request a written supplement if the form is incomplete or inaccurate, after the branch office has registered upon notice filing. This would essentially reverse the current process, in which OFR grants registration only after determining that an application is complete and meets the applicable statutory and rule criteria for registration. In addition, notice filing and registration are conceptually distinct. The bill converts the current branch office registration process to a notice filing process within s. 517.12, F.S., which deals solely with registration. However, the bill does not amend the Act's other references to branch office "registration" currently found in the Act, that are described above.

The bill states that branch office registration would become effective upon the filing of the "Securities and Exchange Commission Form BR" through the Central Registration Depository. However, while the Form BR has been approved by the SEC, it was technically developed by FINRA, the New York Stock Exchange, and the North American Securities Administrators Association to enable firms to register branch offices electronically.[15]

The bill appears to only apply when a Form BR is submitted to the OFR using the Central Registration Depository. However, not all registrations processed by the OFR are submitted through the Central Registration Depository system. Commission rule requires that issuer/dealers and non-FINRA dealers to file requests for branch office registration through the OFR's own online licensing and registration system, Regulatory Enforcement and Licensing System.[16]

The bill provides that the OFR may request a "written supplement" if the OFR finds that the Form BR is incomplete or inaccurate. However, current electronic filing systems do not allow for an applicant or registrant to supplement or attach to a Form BR filing.

B. SECTION DIRECTORY:

Section 1 amends s. 517.12, F.S., by providing that the registration of branch offices is effective upon the filing of SEC forms through the Central Registration Depository; authorizing the OFR to request a written supplement; and providing for clarifying changes.

Section 2 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. Implementation of this bill will require some computer programming changes to the OFR's online registration and licensing system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[15] *See* FINRA Branch Office Registration, at http://www.finra.org/Industry/Compliance/Registration/CRD/FilingGuidance/P014964 (last accessed March 13, 2013

[16] Rules 69W-600.004(3)(c) and 69W-301.002(2)(i-j), F.A.C. In contrast, subsection (2)(h) of this rule requires branch offices of investment advisers to seek registration through the CRD system.

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector by eliminating the lapse in branch operations while awaiting registration approval.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

If enacted, the bill would necessitate amendments to Rule 69W-300, F.A.C.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In order to better protect Florida's consumers, the OFR suggests a hybrid notice filing system. The proposed hybrid system would allow branch offices to become effective upon filing, but also permit the OFR to review the submission for proper information and supervision. The OFR suggests that if a notice filing is inaccurate or does not meet the requirements, the OFR have the authority to pursue and impose administrative remedies.

If enacted, the bill's changes to the branch registration system will require modifications to the OFR's online licensing and registration system. While these modifications will not result in added costs to the agency, the bill's effective date of July 1, 2013 may not provide enough time for the OFR to implement these programming changes and to amend its rules to reflect the statutory changes. The OFR has indicated that an effective date of October 1, 2013 would provide adequate time for implementation.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Florida Commission on Hurricane Loss Projection Methodology; providing legislative intent; amending s. 627.0628, F.S.; increasing the number of members on the commission; providing for appointment, qualifications, and attributes for an additional member; providing an effective date.

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

Section 1. The Legislature intends to enhance the expertise immediately available to the commission by increasing the membership of the Florida Commission on Hurricane Loss Projection Methodology and providing for the appointment of an additional member with special qualifications or attributes.

Section 2. Subsection (2) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(2) COMMISSION CREATED.—

(a) There is created the Florida Commission on Hurricane Loss Projection Methodology, which is assigned to the State Board of Administration. For the purposes of this section, the term "commission" means the Florida Commission on Hurricane Loss Projection Methodology. The commission shall be administratively housed within the State Board of Administration, but it shall independently exercise the powers and duties specified in this

section.

(b) The commission shall consist of the following 12 ~~11~~ members:

1. The insurance consumer advocate.

2. The senior employee of the State Board of Administration responsible for operations of the Florida Hurricane Catastrophe Fund.

3. The Executive Director of the Citizens Property Insurance Corporation.

4. The Director of the Division of Emergency Management.

5. The actuary member of the Florida Hurricane Catastrophe Fund Advisory Council.

6. An employee of the office who is an actuary responsible for property insurance rate filings and who is appointed by the director of the office.

7. Six ~~Five~~ members appointed by the Chief Financial Officer, as follows:

a. An actuary who is employed full time by a property and casualty insurer that was responsible for at least 1 percent of the aggregate statewide direct written premium for homeowner's insurance in the calendar year preceding the member's appointment to the commission.

b. An expert in insurance finance who is a full-time member of the faculty of the State University System and who has a background in actuarial science.

c. An expert in statistics who is a full-time member of the faculty of the State University System and who has a background in insurance.

d. An expert in computer system design who is a full-time member of the faculty of the State University System.

e. An expert in meteorology who is a full-time member of the faculty of the State University System and who specializes in hurricanes.

f. A licensed professional structural engineer with expertise in wind mitigation techniques.

(c) Members designated under subparagraphs (b)1.-5. shall serve on the commission as long as they maintain the respective offices designated in subparagraphs (b)1.-5. The member appointed by the director of the office under subparagraph (b)6. shall serve on the commission until the end of the term of office of the director who appointed him or her, unless removed earlier by the director for cause. Members appointed by the Chief Financial Officer under subparagraph (b)7. shall serve on the commission until the end of the term of office of the Chief Financial Officer who appointed them, unless earlier removed by the Chief Financial Officer for cause. Vacancies on the commission shall be filled in the same manner as the original appointment.

(d) The State Board of Administration shall annually appoint one of the members of the commission to serve as chair.

(e) Members of the commission shall serve without compensation, but shall be reimbursed for per diem and travel expenses pursuant to s. 112.061.

(f) The State Board of Administration shall, as a cost of administration of the Florida Hurricane Catastrophe Fund, provide for travel, expenses, and staff support for the

commission.

(g) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member of the commission, any member of the State Board of Administration, or any employee of the State Board of Administration for any action taken in the performance of their duties under this section. In addition, the commission may, in writing, waive any potential cause of action for negligence of a consultant, contractor, or contract employee engaged to assist the commission.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 819 Florida Commission on Hurricane Loss Projection Methodology
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Cooper	Cooper

SUMMARY ANALYSIS

In 1995 the Legislature established the Florida Commission on Hurricane Loss Projection Methodology (Commission) to serve as an independent body within the State Board of Administration. The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Individual insurers are required to use the Commission's findings in order to support or justify a rate filing.

The Commission is comprised of 11 members. Members of the Commission include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System and appointed by the Chief Financial Officer (CFO), an actuary member from the Florida Hurricane Catastrophe Fund's (FHCF) Advisory Council, an actuary employed with a property and casualty insurer appointed by the CFO, an actuary employed by the Office of Insurance Regulation, the Executive Director of Citizens Property Insurance Corporation, the senior employee responsible for FHCF operations, the Insurance Consumer Advocate, and the Director of Emergency Management. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards.

Only hurricane loss models or methods the Commission deems accurate or reliable can be used by insurers in rate filings to estimate hurricane losses used to set property insurance rates. Additionally, insurers have 60 days after the Commission finds a model accurate and reliable to use the model to predict the insurer's probable maximum loss levels in a rate filing.

The PCS adds another member to the Commission, who will be appointed by the CFO. The member is to be a licensed professional structural engineer with expertise in wind mitigation techniques.

Because of travel and per diem expenses for the additional member, the PCS will have a slight fiscal impact on the State Board of Administration. The PCS will not have a fiscal impact on the private sector.

The effective date of the PCS is July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In 1995 the Legislature established the Florida Commission on Hurricane Loss Projection Methodology (Commission) to serve as an independent body within the State Board of Administration.[1] The Commission adopts findings on the accuracy or reliability of the methods, standards, principles, models and other means used to project hurricane losses. Individual insurers are required to use the Commission's findings in order to support or justify a rate filing.

The Commission is comprised of 11 members. Members of the Commission include experts in insurance finance, statistics, computer system design, and meteorology who are full-time faculty members in the State University System and appointed by the CFO, an actuary member from the FHCF Advisory Council, an actuary employed with a property and casualty insurer appointed by the CFO, an actuary employed by OIR, the Executive Director of Citizens, the senior employee responsible for FHCF operations, the Insurance Consumer Advocate, and the Director of Emergency Management. The Commission sets standards for loss projection methodology and examines the methods employed in proprietary hurricane loss models used by private insurers in setting rates to determine whether they meet the Commission's standards.

Only hurricane loss models or methods the Commission deems accurate or reliable can be used by insurers in rate filings to estimate hurricane losses used to set property insurance rates. Additionally, insurers have 60 days after the Commission finds a model accurate and reliable to use the model to predict the insurer's probable maximum loss levels in a rate filing.

The PCS adds another member to the Commission, who will be appointed by the CFO. The member is to be a licensed professional structural engineer with expertise in wind mitigation techniques. Structural engineering is a branch of civil engineering dealing primarily with the design and construction of structures.[2] Engineers in Florida are licensed and regulated by the Board of Professional Engineers created within the Department of Business and Professional Regulation.[3] Wind mitigation specifically targets the structural and nonstructural aspects that prevent or lessen damage caused by high winds that occur with storms.[4]

B. SECTION DIRECTORY:

Section 1. Provides legislative intent.

Sections 2. Amends s. 627.0628(2)(b), F.S., relating to the membership of the Commission.

Section 3. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

---

[1] The Commission is created in s. 627.0628, F.S. This statute also provides the composition and duties of the Commission.
[2] http://www.merriam-webster.com/dictionary/structural%20engineering (last viewed on March 17, 2013).
[3] Chapter 471, F.S.
[4] Booklet entitled "Florida's Foundation, Make Mitigation Happen," Florida's Division of Emergency Management, p.2, available at www.floridadisaster.org/mitigation/.../Wind%20Mitigation%20Bookl (last viewed on March 17, 2013).

None.

2. Expenditures:

   Minimal impact on the State Board of Administration. See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The State Board of Administration is required to cover the operating expenses of the Commission as a cost of administration of the FHCF. Members of the Commission serve without compensation, but are reimbursed for per diem and travel expenses pursuant to s. 112.061, F.S. Thus, there will be an increase in those expenses to reimburse the additional member to the Commission.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The PCS does not grant nor require additional rule-making.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to banking; amending s. 655.005, F.S.; adding and revising definitions; amending s. 655.85, F.S.; clarifying that an institution may impose a fee for the settlement of a check under certain circumstances; providing legislative intent; amending s. 655.968, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present paragraphs (g) through (aa) of subsection (1) of section 655.005, Florida Statutes, are redesignated as paragraphs (h) through (bb), respectively, a new paragraph (g) is added to that subsection, and present paragraph (t) of that subsection is amended, to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(g) "Control of a company or bank" means that a person, directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company or bank; controls, in any manner, the election of a majority of the directors of the company or bank; or, has the power to exercise a controlling influence over the management or policies of the company or bank.

1. A person is presumed to have control, including the

power to exercise a controlling influence over the management or policies, of a company or bank, if:

a. The person:

(I) Is an executive officer or director of the company or bank; and

(II) Directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; or

b.(I) The person directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of the company or bank; and

(II) No other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

2. An individual is not considered to have control, including the power to exercise a controlling influence over the management or policies of a company or bank, solely by virtue of the individual's position as an officer or director of the company or bank.

(u) ~~(t)~~ "Related interest" means, with respect to any person, ~~the person's spouse, partner, sibling, parent, child, or other individual residing in the same household as the person. With respect to any person, the term means a~~ company, partnership, corporation, or other business organization controlled by the person. A person has control if the person:

1. Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the organization;

2. Controls in any manner the election of a majority of the directors of the organization; or

3. Has the power to exercise a controlling influence over the management or policies of the organization.

Section 2. Section 655.85, Florida Statutes, is amended to read:

655.85 Settlement of checks.—Whenever a ~~any~~ check is forwarded or presented to a financial ~~an~~ institution for payment, except when presented by the payee in person, the paying institution or remitting institution shall settle the amount of the check at par and may pay or remit the same, at its option, ~~either~~ in money or in exchange drawn on its reserve agent or agents in the City of New York or in any reserve city within the Sixth Federal Reserve District~~; however, an institution may not settle any check drawn on it otherwise than at par~~. The term "at par" applies only to the settlement of checks between collecting and paying or remitting institutions and does not apply to, or prohibit an institution from, deducting from the face amount of the check drawn on it a fee for paying the check if the check is presented to the institution by the payee in person. The provisions of this section do not apply with respect to the settlement of a check sent to such institution as a special collection item.

Section 3. It is the Legislature's intent that the amendment to s. 655.85, Florida Statutes, made by this act clarify the relevant portions of the financial institutions codes as defined in s. 655.005, Florida Statutes, relating to fees imposed by a financial institution for the payment of checks presented in person without requiring further amendment.

Section 4. Paragraph (b) of subsection (1) of section

655.968, Florida Statutes, is amended to read:

655.968 Financial institutions; transactions relating to Iran or terrorism.—

(1) As used in this section, the term:

(b) "Financial institution" has the same meaning as provided ~~defined~~ in s. 655.005(1)~~(i)~~.

Section 5. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1091 Banking
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Bauer	Cooper

SUMMARY ANALYSIS

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

This PCS amends the following provisions of the Codes:

- Creates a definition of "control of a company or bank."
- Amends the definition of "related interest" to remove the person's family and household members.
- Amends the par value statute to clarify that the par value requirement only applies to the settlement of checks between institutions, and provides that institutions may charge fees to cash checks.
- Provides a statement of legislative intent for amending the par value statute.
- Makes a technical change to the definition of "financial institution."

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

The PCS is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The U.S. Dual Banking System

The U.S. dual banking system allows commercial banks to become chartered and regulated under either federal or state law.

- *National banks* are chartered under federal law, i.e., the National Bank Act.[1] Their primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury.
- *State-chartered banks* are chartered under the laws of the headquarters' state.
    - The primary federal regulator for state banks that are members of the Federal Reserve is the Federal Reserve.
    - The primary federal regulator for non-members is the Federal Deposit Insurance Corporation.

The Florida Office of Financial Regulation (OFR) regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes) and the Florida Financial Institutions Rules.[2] The specific chapters under the Codes are:

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

The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness. The OFR does not regulate national banks and banks that are chartered and regulated in other states. In addition, the OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida.

Competitive Equality & Preemption

The U.S. dual banking system is premised on two related doctrines - the competitive equality doctrine and federal preemption. The competitive equality doctrine essentially states that national banks are subject to state laws with regards to their daily course of business, such as their acquisition and transfer of property, their right to collect their debts and their liability to be sued for debts, contracts, usury, and trust powers.[3]

However, while states are generally free to legislate on matters not controlled by federal regulation, the application of state laws to national banks is subject to the preemption doctrine. By operation of the U.S.

---

[1] The National Bank Act of 1964 (12 U.S.C. § 24 Seventh) gives enumerated powers and "all such incidental powers as shall be necessary to carry on the business of banking" to nationally chartered banks. To prevent inconsistent or intrusive state regulation from impairing the national system, Congress provided: "No national bank shall be subject to any visitorial powers except as authorized by Federal law." Id. at § 484(a).

[2] Chapter 69U-100 through 69U-150, F.A.C.

[3] *National Bank v. Commonwealth*, 9 Wall. 353, 362, 19 L.Ed. 701(1870).

Constitution's Supremacy Clause,[4] federal regulation of a particular subject preempts state regulation related to the same subject. In *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25 (1996), for instance, the United States Supreme Court held that a federal statute granting small town banks the authority to sell insurance, preempted a Florida statute which prohibited such sales. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 codified the test for "conflict preemption" articulated in the *Barnett Bank* decision. The conflict preemption test asks whether the state law prevents or significantly interferes with the exercise by the national bank's powers.[5]

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

> In issuing an order or rule under this section, the office or commission shall consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.[6]

Control

Current Situation

Currently, the Codes provide a presumption that a *business organization* has control over a bank or a business or over any business organization, if one of the following apply:

> (a) The business organization directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or other business organization;
> (b) The business organization controls in any manner the election of a majority of the directors, trustees, or other governing body of the bank or other business organization;
> (c) The business organization owns, controls, or has power to vote 10 percent or more of any class of voting securities of the bank or other business organization and exercises a controlling influence over the management or policies of the bank or other business organization; *or*
> (d) The office determines, after notice and opportunity for hearing, that the business organization directly or indirectly exercises a controlling influence over the management or policies of the bank or other business organization.[7]

A business organization is generally defined as "a corporation, association, partnership, or business trust and includes any similar organization," wherever created, but does not include any corporation with a majority of its shares owned by the United States or by the state of Florida.[8]

In addition, the Codes state that any "person or group of persons" that proposes to purchase or acquire a controlling interest in a state bank or state trust company are subject to the same standards, criteria, and exceptions for business organizations described above.[9] The Codes do not define person, but s. 1.01, F.S., provides that "[t]he word 'person' includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or

[4] U.S. Const., Art. VI, cl. 2.
[5] 12 U.S.C. §25b(b)(1).
[6] The OFR's orders of general application are publicly available on its agency website. https://real.flofr.com/ConsumerServices/SearchLegalDocuments/LDSearch.aspx (last accessed March 16, 2013).
[7] Section 658.27(2), F.S. The statute also provides exceptions to the presumption of ownership or control.
[8] Section 658.27(1)(b), F.S.
[9] Section 658.28(1), F.S.

combinations." Accordingly, the Codes' requirements for acquiring control apply to both natural persons and to business organizations. Pursuant to s. 658.28(2), the OFR is required to issue a certificate of authority after investigating and determining "that the proposed new owners of the interest are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company in a legal and proper manner and that the interests of the other stockholders, if any, the depositors and creditors of the bank or trust company, and the public generally will not be jeopardized by the proposed change in ownership, controlling interest, or management."[10] Persons who have been convicted or have pled to specified criminal offenses, such as money laundering in financial institutions, may not receive a certificate of approval.[11]

If a proposed purchase or acquisition of 10% or more of any class of voting securities would give rise to the presumption that the purchaser would own, control, or have power to vote 10% of any class of the bank's securities *and* exercises a controlling influence[12] over the bank's management or policies, the purchaser must first provide written notice of the proposal to the OFR. The statute permits such person to present facts to the OFR, either in writing in or in an informal conference with the OFR, to rebut the presumption that the person exercises a controlling influence over the bank. If the person cannot rebut the presumption, that person must file an application for a certificate of approval with the OFR.[13]

It is noted that a federal regulation exists for state and national banks that are members of the Federal Reserve System. Regulation O (12 C.F.R. 215), regarding extensions of credit to insiders and transactions with affiliates, states that "control of a company or bank" is presumed to exist if a person:

1) Is an executive officer or director of the company or bank, and owns, controls, or has the power to vote more than 10% of the voting securities of the company or bank, ***or***
2) Owns, controls, or has the power to vote more than 10% of the voting securities of the company or bank, and no other person has a greater percentage of that class of voting securities.[14]

Reg O also provides that a person does not control merely because he or she is an officer or director of a bank.[15]

Accordingly, Florida-chartered banks who are members of the Federal Reserve System are subject to two differing definitions of "control."

Effect of the PCS on control

Section 1 of the PCS creates a general definition of "control of a bank or company" that is identical to the Regulation O's instances of presumed control. The PCS also slightly modifies the presumption of control and specifies that an individual is not considered to have control, solely by virtue of the individual's position as an officer or director of the company or bank.

However, the PCS does not address the existing language regarding control in s. 658.27(2), F.S. Accordingly, there may be ambiguity as to which provision would apply to Florida-chartered banks.

[10] Section 658.28(1)(b), F.S.
[11] Section 658.28(1)(c), F.S.
[12] The Codes do not define "controlling influence."
[13] Section 658.28, F.S.; Rule 69U-105.102(1)(l), F.A.C.; Form OFR-U-11, http://flofr.com/PDFs/OFR-U-11.pdf.
[14] 12 C.F.R. 215.2(c)(2).
[15]

Lending limits and related interests

Current Situation

According to OCC regulations for national banks, lending limits ensure the safety and soundness of national banks by preventing excessive loans to one person or to related persons that are financially dependent. These limits promote diversification of loans and help ensure equitable access to banking services.[16]

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

- *General limitations*: a bank may extend unsecured credit to any person up to 15% of its capital accounts, and up to 25% of its capital accounts for secured credit. For the latter, the Codes specify that the 25% limitation must include the borrower's "related interests."[17]
    - If the bank's total extension of credit to any person (including his or her related interests) exceed 15% of the bank's capital accounts, a majority of the bank's board of directors must approve the loan in advance.
- *Loans to executive officers, directors, and related interests*: banks are prohibited from extending credit of more than $25,000 to any of its executive officers and directors (and their related interests), unless the majority of the board of directors have approved the loan in advance.

To the extent state lending limits are lower than those provided in Regulation O for state banks that are members of the Federal Reserve System, Reg O provides that the state lending limits control.[18]

Currently, s. 655.005(1)(t), F.S., defines "related interest" as:

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

In the 2011 Regular Session, the Legislature enacted CS/HB 1121, relating to financial institutions. The bill made numerous changes to the Banking Codes. Prior to 2011, this term was defined within the context of credit unions' loan powers[19] and lending limits for state banks,[20] and was limited to only any partnership, corporation, or other business organization controlled by a person. As a result of the 2011 legislation, "related interest" was moved to s. 655.005(1)(t), F.S. as a general definition and was amended to include specified family and household members of a person. The purpose of this change was to stop circumvention of lending limits by executives and stockholders, who used relatives to obtain loans and other financial benefits.[21]

Regulation O contains a similar prohibition for loans to executive officers, directors, and principal shareholders of state and national banks that are members of the Federal Reserve System. Regulation O does state that a principal shareholder is a person with 10% or more of a bank's voting securities, and accounts for shares owned by that person's "immediate family." However, Reg O only considers the

---

[16] 12 C.F.R. 32.1(b)
[17] Section 658.48(1)(a), F.S.
[18] 12 C.F.R. 215.2(i), footnote 2.
[19] Section 657.038, F.S.
[20] Section 658.48, F.S.
[21] *See* Senate Banking & Insurance staff analysis of SB 1332, the Senate companion to CS/HB 1121 (General Session 2011).

person's spouse, minor children, and the person's children residing in the same household, while the Florida provision also includes partners, siblings, parents, or other individuals residing in the same household.

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

- *Required notice for significant events*: The Codes require financial institutions to provide a written disclosure for certain significant events, including any credit extension to an institution's executive officer and his or her *related interests*, that when combined with all other extensions of credit to that officer, exceed 15% of the institution's capital accounts.[22]
- *Stock subscriptions*: Newly formed financial institutions must provide the OFR with a list of subscribers of the capital stock of a proposed bank or trust company, following the completion of a stock offering. The Codes require that the directors provide information to the OFR regarding persons subscribing to 10% or more of the voting stock or nonvoting convertible stock. This 10% threshold must include the person's *related interests*.[23]
- *Changes in capital*: The Codes require banks and trust companies to provide notice to the OFR upon specified changes in capital. In certain situations where capital accounts have been diminished below regulatory requirements and the bank or trust company cannot reasonably replenish its capital, the Codes permit special stock offering plans subject to OFR's approval. The Codes provide that the OFR shall disapprove a plan that provides unfair or disproportionate benefits to existing shareholders, directors, executive officers, or their *related interests*.[24]

Effect of the PCS on "related interest"

Section 1 of the PCS amends the definition of "related interest" by restoring it to pre-2011 language. By removing the person's spouse, partner, sibling, parent, child, or other individual residing in the same household as the person from the definition, the PCS defines "related interest" to include only *entities* controlled by the person.

The PCS may limit the OFR's ability to enforce lending limits against banks, particularly as the limits relate to executives and stockholders.

Check-cashing fees and "par value"

Current Situation

Since 1992, the Codes require banks to settle checks "at par," or at face value.[25] This means that if an individual presented a check made out to him for $300 to any bank in Florida, the bank is required to provide $300 in funds.

In the past several years, this provision has engendered significant litigation in both state and federal courts by consumers who were charged fees to have checks cashed at banks at which they were not account holders. These cases generally involved two main claims – 1) federal preemption and 2) whether the statute's limitations on fees apply to bank-to-bank transactions[26], or to the cashing of personal checks.

- Vida Baptista ("Baptista"), sought to cash a check at a Florida branch of JPMorgan Chase, a national bank. While the check was written by a Chase account holder, Baptista was not a Chase account holder, and was accordingly charged a $6 fee by Chase to cash the check immediately. Baptista brought a class action lawsuit against Chase in federal court, asserting the fee violated s.

[22] Section 658.945(2)(a)5., F.S.
[23] Section 658.235(2), F.S.
[24] Section 658.36(3)(c), F.S.
[25] Section 655.85, F.S. This provision was enacted in 1992. Section 52, ch. 92-303, L.O.F.
[26] The Federal Reserve System operates a nationwide check-clearing system to facilitate the collection and settlement of checks between paying and collecting banks.

655.85, F.S. The federal court held that s. 655.85, F.S. applied to fees on personal checks presented by the payee in person. However, in applying the *Barnett Bank*/Dodd-Frank preemption test described above, the federal district and appellate courts ruled in favor of Chase, finding that s. 655.85, F.S., was preempted by the National Bank Act, which allows banks to exercise a range of incidental powers necessary to carry on the business of banking.[27]

The OCC, empowered by the National Bank Act to adopt bank regulations, authorizes national banks to "charge its customers non-interest charges and fees."[28] The OCC has interpreted "customer" to include "any person who presents a check for payment."[29] In light of the OCC's interpretation, the federal court held that *national banks* are not bound by the Florida statute disallowing fees to cash checks in person.[30]

- Baptista also brought a separate class action lawsuit against PNC Bank, a North Carolina state-chartered bank, in a Florida state court, based on grounds similar to those raised in her lawsuit against Chase. Baptista did not hold an account at PNC and was charged a $5 check-cashing fee to cash a check at a Florida branch. The Fifth District Court of Appeal reached the opposite conclusion from the federal courts' decision in the *Baptista v. Chase* lawsuit, and found that a statute was not preempted. The court held that an out-of-state state-chartered bank was not permitted to charge check-cashing fees under the statute.[31] Finding that the statute was not ambiguous, the Fifth DCA found that the statute did not apply only to bank-to-bank transactions.

  Curiously, in an earlier decision, the Fifth DCA had ruled in favor of Bank of America (a national bank) by holding that s. 655.85, F.S. was preempted by federal law.[32] However, when presented with PNC Bank (North Carolina-chartered bank operating in Florida) in the *Baptista* case, the court did not discuss the applicability of the 1997 federal Riegle-Neal Amendments[33] to PNC Bank. This federal legislation gives out-of-state state-chartered banks that operate in multiple states to enjoy the same benefits of federal preemption as national banks.

- On January 2, 2013, a federal district court in Florida ruled in favor of Regions Bank (an Alabama state-chartered bank) in a class action lawsuit similar to both *Baptista* cases.[34] Following the 11th Circuit Court of Appeal's decision in *Baptista v. JPMorgan Chase Bank*, the federal district court found that s. 655.85, F.S., was preempted, and thus inapplicable to *both* national banks and out-of-state state-chartered banks. The court declined to follow the Fifth DCA's opinion to the extent that the Fifth DCA held s. 655.85, F.S. was not preempted,[35] and applied the Riegle-Neal Amendments in favor of Regions Bank. However, the federal court did not address the issue of whether the statute applied only to bank-to-bank transactions or to the cashing of personal checks.

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

---

[27] 12 U.S.C. § 24 (Seventh).
[28] 12 C.F.R. § 7.4002(a).
[29] Cited in *Wells Fargo Bank of Texas, NA v. James*, 321 F.3d 488 (5th Cir.C.A 2003) (holding that Texas par value statute was preempted by the National Bank Act).
[30] *Vida Baptista v. JPMorgan Chase Bank,* 640 F.3d 1194 (11th Cir. C.A. 2011). The U.S. Supreme Court denied Baptista's petition for certiorari review of the federal appellate decision. *Baptista v. JPMorgan Chase Bank, N.A.,* 132 S.Ct. 253 (2011).
[31] *Vida Baptista v. PNC, N.A.,* 91 So.3d 230 (Fla. 5th DCA 2012) (per curiam), *cert. denied*, 133 S.Ct. 895 (2013).
[32] *Britt v. Bank of America, N.A.*, 52 So.3d 809 (Fla. 5th DCA 2011).
[33] 12 U.S.C. § 1831a(j)1.
[34] *Pereira v. Regions Bank*, 2013 WL 265314 (M.D.Fla. 2013).
[35] Id. at footnote 4. *See also Tafflin v. Levitt*, 493 U.S. 455, 465 (1990) (holding that federal courts are "not bound by state court interpretations" of federal law).

Effect of the PCS on the par value statute

Section 3 of the PCS amends s. 655.86, F.S., to provide that financial institutions must settle checks at par, but overrides the Fifth DCA's decision in *Baptista* to provide that this requirement only applies to the settlement of checks between banks. The PCS provides that banks are not prohibited from charging fees to cash checks presented by payees in person, and thus provides consistency with the federal decisions discussed above. This will provide consistency with the federal laws permitting national banks and out-of-state state-chartered banks operating in Florida to charge check-cashing fees, and will also place Florida-chartered banks on equal footing with national and other state-chartered banks.

Section 4 of the PCS provides a statement of legislative intent for Section 3, indicating that the changes clarify the relevant portions of the Codes, relating to the fees imposed by financial institutions.

B. SECTION DIRECTORY:

Section 1. Amends s. 655.005, F.S. to add and revise definitions.

Section 2. Amends s. 655.85, F.S., to clarify that a financial institution may impose a fee for the settlement of a check under certain circumstances.

Section 3. Provides legislative intent for Section 3 of the PCS.

Section 4. Amends s. 655.968, F.S., to conform a cross-reference.

Section 5. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The PCS does not appear to have any impact on state revenues.

2. Expenditures:

   The PCS does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The PCS does not appear to have any impact on local government revenues.

2. Expenditures:

   The PCS does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS's clarification that all banks may charge check-cashing fees may provide additional revenue for Florida-chartered banks. However, this may also result in more fees for consumers who are not customers of Florida-chartered banks.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the PCS.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Section 1 of the PCS creates a definition of "control of a company or bank," but does not amend current language that already specifies when control may be presumed and how a person may rebut the presumption.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

PCS for HB 1191

A bill to be entitled

An act relating to captive insurance; amending s. 628.901, F.S.; revising definitions; amending s. 628.905, F.S.; revising terminology; prohibiting an industrial insured captive insurance company from insuring risks other than specified risks; authorizing the licensure of industrial insured captive insurance companies to provide workers compensation and employer's liability insurance in excess of a specified amount; requiring an industrial insured captive insurance company to maintain a certain amount of capital and surplus in order to continue to write such excess workers compensation; specifying certain duties or actions are the responsibility of the Office of Insurance Regulation; amending s. 628.907, F.S.; conforming a provision; amending s. 628.909, F.S.; providing applicability of specified provisions to captive insurance companies and industrial insured captive insurance companies; conforming provisions amending ss. 628.9142, 628.915, and 628.917, F.S.; conforming provisions; amending s. 628.919, F.S.; requiring a pure captive insurance company to submit certain standards relating to the risk management of controlled unaffiliated businesses to the Office of Insurance Regulation for approval; providing an effective date.

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

Section 1. Paragraph (d) of subsection (8) and subsections (9) and (13) of section 628.901, Florida Statutes, are amended to read:

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

(8) "Industrial insured" means an insured that:

(d) Pays annual premiums of at least $200,000 for each line of insurance purchased from the industrial insured captive insurance company ~~insurer~~ or at least $75,000 for any line of coverage in excess of at least $25 million in the annual aggregate. The purchase of umbrella or general liability coverage in excess of $25 million in the annual aggregate shall be deemed to be the purchase of a single line of insurance.

(9) "Industrial insured captive insurance company" means a ~~captive insurance~~ company that provides insurance only to the industrial insureds that are its stockholders or members, and affiliates thereof, or to the stockholders, and affiliates thereof, of its parent corporation. An industrial insured captive insurance company can also provide reinsurance to insurers only on risks written by such insurers for the industrial insureds that are the stockholders or members, and affiliates thereof, of the industrial insured captive insurance company ~~insurer~~, or the stockholders, and affiliates thereof, of the parent corporation of the industrial insured captive insurance company ~~insurer~~.

(13) "Qualifying reinsurer parent company" means a reinsurer that ~~which~~ currently holds a certificate of authority~~,~~ ~~letter of eligibility~~ or is an accredited reinsurer or trusteed

reinsurer under s. 624.610(3)(c) ~~a satisfactory non-approved reinsurer~~ in this state possessing a consolidated GAAP net worth of at least $500 million and a consolidated debt to total capital ratio of not greater than 0.50.

Section 2. Subsections (1) and (2), paragraph (b) of subsection (4), and subsection (5) of section 628.905, Florida Statutes, are amended to read:

628.905 Licensing; authority.—

(1) A captive insurance company ~~insurer~~, if permitted by its charter or articles of incorporation, may apply to the office for a license to do any and all insurance authorized under the insurance code, other than workers' compensation and employer's liability, life, health, personal motor vehicle, and personal residential property insurance, except that:

(a) A pure captive insurance company may not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.

(b) An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies, or its stockholders or members, and affiliates thereof, of the industrial insured captive, or the stockholders or affiliates of the parent corporation of the industrial insured captive insurance company.

(c) A special purpose captive insurance company may insure only the risks of its parent.

(d) A captive insurance company may not accept or cede reinsurance except as provided in this part.

(e) An industrial insured captive insurance company with unencumbered capital and surplus of at least $20 million may be licensed to provide workers' compensation and employer's liability insurance in excess of $25 million in the annual aggregate. An industrial insured captive insurance company must maintain unencumbered capital and surplus of at least $20 million to continue to write such excess workers' compensation insurance in Florida

(2) To conduct insurance business in this state, a captive insurance company ~~insurer~~ must:

(a) Obtain from the office a license authorizing it to conduct insurance business in this state;

(b) Hold at least one board of directors' meeting each year in this state;

(c) Maintain its principal place of business in this state; and

(d) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state. In the case of a captive insurance company formed as a corporation or a nonprofit corporation, if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Chief Financial Officer of this state must be an agent of the captive insurance company upon whom any process, notice, or demand may be served.

(4) A captive insurance company or captive reinsurance company must pay to the office a nonrefundable fee of $1,500 for processing its application for license.

(b) The office may charge a fee of $5 for any document

requiring certification of authenticity or the signature of a representative of the office ~~commissioner or his or her designee~~.

(5) If the office ~~commissioner~~ is satisfied that the documents and statements filed by the captive insurance company comply with this chapter, the office ~~commissioner~~ may grant a license authorizing the company to conduct insurance business in this state until the next succeeding March 1, at which time the license may be renewed.

Section 3. Subsection (1) of section 628.907, Florida Statutes, is amended to read:

628.907 Minimum capital and net assets requirements; restriction on payment of dividends.—

(1) A captive insurance company ~~insurer~~ may not be issued a license unless it possesses and thereafter maintains unimpaired paid-in capital of:

(a) In the case of a pure captive insurance company, at least $100,000; ~~.~~

(b) In the case of an industrial insured captive insurance company incorporated as a stock insurer, at least $200,000; and ~~.~~

(c) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.

Section 4. Section 628.909, Florida Statutes, is amended to read:

628.909 Applicability of other laws.—

(1) The Florida Insurance Code does not apply to captive insurance companies ~~insurers~~ or industrial insured captive insurance companies ~~insurers~~ except as provided in this part and subsections (2) and (3).

(2) The following provisions of the Florida Insurance Code apply to captive insurance companies ~~insurers~~ who are not industrial insured captive insurance companies ~~insurers~~ to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, and 624.426.

(b) Chapter 625, part II.

(c) Chapter 626, part IX.

(d) Sections 627.730-627.7405, when no-fault coverage is provided.

(e) Chapter 628.

(3) The following provisions of the Florida Insurance Code shall apply to industrial insured captive insurance companies ~~insurers~~ to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).

(b) Chapter 625, part II, if the industrial insured captive insurance company ~~insurer~~ is incorporated in this state.

(c) Chapter 626, part IX.

(d) Sections 627.730-627.7405 when no-fault coverage is provided.

(e) Chapter 628, except for ss. 628.341, 628.351, and

628.6018.

Section 5. Section 628.9142, Florida Statutes, is amended to read:

628.9142 Reinsurance; effect on reserves.—

(1) A captive insurance company may provide reinsurance, as authorized in this part, on risks ceded by any other insurer.

(2) A captive insurance company may take credit for reserves on risks or portions of risks ceded to authorized insurers or reinsurers and unauthorized insurers or reinsurers complying with s. 624.610. A captive insurance company ~~insurer~~ may not take credit for reserves on risks or portions of risks ceded to an unauthorized insurer or reinsurer if the insurer or reinsurer is not in compliance with s. 624.610.

Section 6. Section 628.915, Florida Statutes, is amended to read:

628.915 Exemption from compulsory association.—

(1) No captive insurance company ~~insurer~~ shall be permitted to join or contribute financially to any joint underwriting association or guaranty fund in this state; nor shall any captive insurance company ~~insurer~~, its insured, or its parent or any affiliated company receive any benefit from any such joint underwriting association or guaranty fund for claims arising out of the operations of such captive insurer.

(2) No industrial insured captive insurance company ~~insurer~~ shall be permitted to join or contribute financially to any joint underwriting association or guaranty fund in this state; nor shall any industrial insured captive insurance company ~~insurer~~, its industrial insured, or its parent or any

affiliated company receive any benefit from any such joint underwriting association or guaranty fund for claims arising out of the operations of such industrial insured captive insurance company ~~insurer~~.

Section 7. Section 628.917, Florida Statutes, is amended to read:

628.917 Insolvency and liquidation.—In the event that a captive insurance company ~~insurer~~ is insolvent as defined in chapter 631, the office shall liquidate the captive insurance company ~~insurer~~ pursuant to the provisions of part I of chapter 631; except that the office shall make no attempt to rehabilitate such insurance company ~~insurer~~.

Section 8. Section 628.919, Florida Statutes, is amended to read:

628.919 Standards to ensure risk management control by parent company.—A pure captive insurance company shall submit to the office for approval ~~The Financial Services Commission shall adopt rules establishing~~ standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company.

Section 9. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1191 Captive Insurance
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Vanlandingham JLV	Cooper JC

SUMMARY ANALYSIS

Captive insurance is a form of self-insurance whereby an insurer is created, owned, and controlled by one or more parent companies. Unlike traditional self-insurance, however, the parent owner does not retain specific underlying risks but instead transfers those risks to the wholly owned captive insurer in exchange for payment of premiums. Companies generally pursue this alternative risk transfer arrangement when commercial insurance becomes unavailable or reaches excessive costs.

In 2012, the Legislature passed and the Governor signed HB 1101, which made significant changes to Florida's captive insurance law. These changes were intended to modernize the statute and make Florida more attractive to companies seeking to domicile captive insurance companies in the state, which could help generate new jobs and revenues.

One provision of the law limited the extent to which captive insurers could insure risks relating to workers' compensation and excess employer liability. Following the law's enactment, it emerged that this provision negatively affected the ability of at least one Florida captive insurer to write new policies for workers' compensation and excess employer liability coverage. It appears this effect was unintended by the drafters of the legislation or by the Office of Insurance Regulation (OIR).

The Proposed Committee Substitute (PCS) makes several changes intended to remedy any unintended consequences that may have resulted from the 2012 law. OIR has not raised any objections to the changes proposed in the PCS. The PCS restores language from before the 2012 law that permits an industrial insured captive insurance company with unencumbered capital and surplus of at least $20 million to continue to write workers' compensation and employer's liability insurance in excess of $25 million in the annual aggregate.

Further, the PCS makes pure captive insurance companies responsible for adopting risk management standards for controlled unaffiliated business. The PCS requires such pure captive insurers to submit these standards to OIR for approval. This approach provides pure captive insurers with more flexibility than current law, which requires the Financial Services Commission to adopt such risk management standards by rule.

Finally, the PCS corrects an inconsistency in current insurance law by exempting captive insurance companies from deposit requirements that now exceed the surplus requirements to form a captive. The PCS also clarifies terms to conform to definitions.

The PCS has no fiscal impact to the state, but it may allow existing captive insurers to write new policies for workers' compensation and excess employer liability coverage.

The PCS has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on Captive Insurance

Captive insurance is a form of self-insurance whereby an insurer is created, owned, and controlled by one or more parent companies.[1] Unlike traditional self-insurance, however, the parent owner does not retain specific underlying risks but instead transfers those risks to the wholly owned captive insurer in exchange for payment of premiums.[2] Companies generally pursue this alternative risk transfer arrangement when commercial insurance becomes unavailable or reaches excessive costs.[3]

Captives may take many forms, which vary in allowable corporate structure, capital and surplus, underwriting risks, and ownership. Most captive insurance companies are formed as pure captives, which are wholly-owned subsidiaries of a parent company with the sole purpose of insuring the risk of the parent, its affiliates, or other subsidiaries.[4] Group captives, which are owned by and insure a group, include association captives, industrial captives, risk retention groups, and reciprocals.[5]

Other structures available for insuring risks include branch captives and rent-a-captives. A branch captive is essentially the extended arm of a pure captive from a separate domicile. Instead of forming a new pure captive, the branch captive remains within the same corporation.[6] Rent-a-captives allow companies unwilling or unable to establish a captive on their own to use an outside entity's capital, surplus, and administrative services for a rental fee.[7] Rent-a-captives today are commonly formed as segregated or protected cell captives, which organize legal barriers to protect its renters' assets.[8]

Forming a captive insurance company may provide a number of advantages including:

- *Tailored insurance policy.*[9] A captive insurer may offer coverage and policy provisions that are unique to the risk profile of the individual business being insured.
- *Reduced premiums.*[10] A captive insurer need not factor elements such as profit margin or overhead such as advertising and commissions into the premium it charges, which may allow it to offer lower premiums than commercial insurers.
- *Cohesion of interest.* Because the control of the insured and the insurer reside in a single entity, there is a lower risk of disputes regarding claim verification, investigation, and valuation.
- *Access to Reinsurance.* Captive insurance companies acquire direct access to wholesale reinsurance markets, thus evading extraneous costs commercial carriers may assess.[11]
- *Tax Deductions.* Premiums paid to a captive insurer may be deductable expenses for federal income tax purposes.[12] Income tax against the captive insurer will vary depending on the coverage and amount, though certain companies may qualify for a full exemption.[13]

---

[1] http://www2.iii.org/glossary/c/ (last viewed March 17, 2013).
[2] http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html (last viewed March 17, 2013).
[3] *Id.*
[4] Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9. Retrieved March 17, 2013.
[5] http://www.captive.utah.gov/rrg.html (last viewed March 17, 2013). See also: Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9.
[6] Theriault, Patrick. *Captive Insurance Companies* (2008). Page 9. Retrieved March 17, 2013.
[7] http://www.iii.org/issue_updates/captives-and-other-risk-financing-options.html (last viewed March 17, 2013).
[8] http://captive.com/newsstand/articles/GlosAlt.html (last viewed March 17, 2013).
[9] http://www.vermontcaptive.com/captive-basics/why-captive.html (last viewed March 17, 2013). See also: http://www.dccaptives.org/i4a/pages/index.cfm?pageid=3382; http://captive.insurance.ky.gov/CapHome.aspx; Captive Insurance Basics: http://www.sccia.org/displaycommon.cfm?an=3
[10] *Id.*
[11] *Id.*
[12] 26 U.S.C. 162(a)
[13] 26 U.S.C. 501(c)(15)

Some disadvantages to forming a captive insurance company may include:

- *Administrative Costs.*[14] Forming a captive may require extra personnel and management as well as time and attention that may distract from the core business of the parent company or companies. Administering a possible acquisition or merger may also become more complicated when a captive is involved. Regulatory compliance is an additional component that may impose added administrative costs.
- *Long-term Financial Risks.*[15] The formation of a captive insurer is a long-term investment whose benefits often are not realized immediately. Captives may also expose a company to elevated risk and exposure to volatile capital and reinsurance markets. This financial commitment to a captive insurer is far less flexible than the simple purchase of an annual policy through a commercial insurer.

2012 legislative changes to Florida's captive insurance law

In 2012, the Legislature passed and the Governor signed HB 1101 into law, which made significant changes to Florida's captive insurance statute. These changes were intended to modernize the statute and make Florida more attractive to companies seeking to domicile captive insurance companies in the state, which could help generate new jobs and revenues.

Among its numerous provisions, the law:

- Adopted new definitions for pure captive insurance companies, special purpose captive insurance companies, and industrial insured captive insurance companies;
- Made changes providing for the formation and incorporation of different varieties of captive insurance and reinsurance companies;
- Substantially reduced the capital and surplus requirements for industrial insured captives and pure captives;
- Established new procedures for licensure of captive insurers or reinsurers by the Office of Insurance Regulation (OIR);
- Fixed annual reporting requirements applicable to captive insurance companies;
- Provided net asset requirements for nonprofit captive insurance companies formed as pure captives and special purpose captives;
- Required the Financial Services Commission to set standards ensuring that a parent or affiliated company exercises risk management control of any unaffiliated business to be insured by a pure captive; and
- Made new provisions governing the allowable coverage a captive insurer or reinsurer may provide.

This final provision limited the extent to which captive insurers could insure risks relating to workers' compensation and excess employer liability. Following the law's enactment, it emerged that this provision negatively affected the ability of at least one currently existing captive insurer to write new policies for workers' compensation and excess employer liability coverage. It appears that this effect was unintended by the drafters of the legislation or by OIR.

Effect of the Proposed Committee Substitute (PCS)

The PCS makes several changes intended to remedy any unintended consequences that resulted from the 2012 changes to Florida's captive insurance statute. OIR has not raised any objections to the changes proposed in the PCS. Among its provisions, the PCS:

[14] http://www.captive.com/service/SCG/ProsAndCons.html (last viewed March 17, 2013).
[15] *Id.*

Remedies inadvertent negative effects the 2012 captive insurance reform had on existing Florida captive insurance companies. The PCS restores language from before the 2012 changes that permits an industrial insured captive insurance company meeting a certain unencumbered capital and surplus requirement to continue to write workers' compensation and employer's liability insurance in excess of $25 million in the annual aggregate. The PCS requires such firms to maintain unencumbered capital and surplus of at least $20 million in order to continue to write such excess workers' compensation insurance in Florida.

Exempts captive insurance companies from certain deposit requirements. The PCS corrects an inconsistency in current insurance law by exempting captive insurance companies from deposit requirements that now exceed the surplus requirements to form a captive. Because a deposit is merely a subset of the capital surplus required to form a captive insurance company, it would be incongruous if the required deposit was higher than the required surplus.

Revises the procedure for the adoption of risk management standards for pure captive insurers. The PCS removes the Financial Services Commission from responsibility for adopting rules establishing risk management standards regarding pure captive insurance companies' controlled unaffiliated business. A pure captive insurance company insures the risks of its parent, affiliated companies, or controlled unaffiliated businesses.[16] The PCS puts the responsibility on such pure captive insurers to adopt their own risk management standards, which they then must submit to OIR for approval. This change gives pure captive insurers the flexibility to tailor their own risk management strategies to fit the particular business risks against which they insure. This may be a more appropriate approach because pure captives are likely to be more familiar with the details of the business risks they insure than the Financial Services Commission is likely to be.

Clarifies terms to conform to definitions. To promote consistency, the PCS revises the term "captive insurer" to "captive insurance company," which is defined in s. 628.901, F.S. The PCS also revises s. 629.905, F.S., to make language regarding the risks that an industrial insured captive may insure consistent with the definition of an industrial insured captive insurance company under s. 628.901, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 628.901, F.S., revising definitions.

Section 2. Amends s. 628.905, F.S., revising terminology and authorizing the licensure of industrial insured captive insurance companies to provide workers compensation and employer's liability insurance in excess of a specified amount.

Section 3. Amends s. 628.907, F.S., conforming a provision.

Section 4: Amends s. 628.909, F.S., providing applicability of specified provisions to captive insurance companies and industrial insured captive insurance companies.

Section 5. Amends s. 628.9142, F.S., conforming a provision.

Section 6. Amends s. 628.915, F.S., conforming a provision.

Section 7. Amends s. 628.917, F.S., conforming a provision.

Section 8. Amends s. 628.919, F.S., requiring a pure captive insurance company to submit certain standards relating to the risk management of controlled unaffiliated businesses to the Office of Insurance Regulation for approval.

[16] Definition in s. 928.901(12), F.S.

Section 9. Establishes an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS remedies an inadvertent negative effect the 2012 captive insurance reform had on existing Florida captive insurance companies, and it may allow existing captive insurers to write new policies for workers' compensation and excess employer liability coverage.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; creating s. 560.312, F.S.; providing an exemption from public records requirements for payment instrument transaction information held by the Office of Financial Regulation; providing for specified access to such information; authorizing the office to enter into information-sharing agreements and provide access to information contained in the database to certain governmental agencies; requiring any department or agency that receives confidential information to maintain the confidentiality of the information, except as otherwise required by court order; providing for future review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 560.312, Florida Statutes, is created to read:

560.312 Database of payment instrument transactions; confidentiality.—

(1) Payment instrument transaction information held by the office pursuant to s. 560.310 which identifies a licensee, payor, payee, or conductor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2)(a) A licensee may access information that it submits

to the office for inclusion in the database.

(b) The office, to the extent permitted by state and federal law, may enter into information-sharing agreements with the department, law enforcement agencies, and other governmental agencies and, in accordance with such agreements, may provide the department, law enforcement agencies, and other governmental agencies with access to information contained in the database for use in detecting and deterring financial crimes and workers' compensation violations, pursuant to Chapter 440, F.S. Any department or agency that receives confidential information from the office under this paragraph must maintain the confidentiality of the information, unless, and only to the extent that, a court order compels production of this information to a specific party or parties.

(3) Subsection (1) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that payment instrument transaction information held by the Office of Financial Regulation pursuant to s. 560.310, Florida Statutes, which identifies a licensee, payor, payee, or conductor be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(1) Pursuant to s. 560.310, Florida Statutes, money services businesses that cash a payment instrument exceeding $1,000 must submit information about the transaction to the

Office of Financial Regulation in order to deter money laundering through these entities and in response to the findings of the Money Service Business Facilitated Workers' Compensation Fraud Work Group that these entities are being used to facilitate financial crimes, including fraud relating to workers' compensation. The report issued by the group found that this type of workers' compensation fraud could be costing the state upwards of $1 billion dollars annually in unreported payroll taxes, unreported premium taxes, and higher costs to insurance carriers who must process workers' compensation claims from uninsured workers. This type of fraud places tremendous pressure on law-abiding businesses to absorb these costs.

(a) Submission of this information to the office is intended to assist the office, the Department of Financial Services, law enforcement agencies, and other governmental agencies in detecting and deterring these financial crimes and related fraudulent activities.

(b) The availability of this information to these agencies will help to increase premium collection, lower costs to insurance carries, and alleviate premium avoidance, as well as reduce the cost of administering these public programs.

(2) However, the public availability of payment instrument transaction information would reveal sensitive, personal financial information about payees and conductors who use check-cashing programs, including paycheck amounts, salaries, and business activities, as well as information regarding the financial stability of these persons. Such information is traditionally private and sensitive. Protecting the

confidentiality of information that would identify these payees and conductors would provide adequate protection for these persons while still providing public oversight of the program.

(3) The public release of payment instrument transaction information would also identify licensees or payors and reveal private business transaction information that is traditionally private and could be used by competitors to harm other licensees or payors in the marketplace. If such information were publicly available, competitors could determine the amount of business conducted by other licensees or payors.

(4) Therefore, the Legislature finds that information that would identify the licensee, payor, payee, or conductor in payment instrument transaction information be made confidential and exempt from public records requirements.

Section 3. This act shall take effect on the same date that HB 217 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB IBS 13-03 Public Records/Money Services Businesses
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: HB 217 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Bauer GB	Cooper

SUMMARY ANALYSIS

The State of Florida has a long history of providing public access to governmental records and meetings. In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level. In addition to the State Constitution, the Public Records Act, which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency. Unless specifically exempted, all agency records are available for public inspection. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge. All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.

This bill creates section 560.312 of the Florida Statutes, a public records exemption for information contained in a payment instrument transaction database that will be created through the passage of House Bill 217, relating to money services businesses. HB 217 requires licensed check cashers to enter transactional information into a statewide database that will be used by regulators and law enforcement to detect and deter financial crimes and workers' compensation fraud. This exemption specifically provides that payment instrument transaction information held by the Office of Financial Regulation (OFR) pursuant to s. 560.310, F.S. which identifies a licensee, payor, payee, or conductor is confidential and exempt from public records disclosure. Protecting the identities of these persons will greatly diminish the ability to misuse personal financial information and sensitive business information contained in the database. The bill also provides for information-sharing agreements between the OFR, the Department of Financial Services, law enforcement agencies, and other governmental agencies, and provides that agencies receiving confidential information from the OFR must maintain the confidentiality of the information, subject to court orders compelling production.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. As this bill creates a new public records exemption, the bill also provides a statement of public necessity as required by the State Constitution.

The bill provides that the act shall take effect on the same date that if HB 217 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it appears to require a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Law

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24, of the State Constitution, provides that:

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1)(a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

---

[1] Section 1390, 1391 F.S. (Rev. 1892).
[2] Fla. Const. art. I, s. 24.
[3] Chapter 119, F.S.
[4] The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* fn. 3.
[5] Section 119.011(12), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[8] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[9]

Only the Legislature is authorized to create exemptions to open government requirements.[10] Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[11] A bill enacting an exemption[12] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[13]

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[14] provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.[15] An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual under this provision.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[16]

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act are only statutory, as opposed to constitutional. Accordingly, the standards do not limit the Legislature because one session of the Legislature cannot bind another.[17] The Legislature is only limited in its review process by constitutional requirements.

---

[8] Florida Attorney General Opinion 85-62.
[9] *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).
[10] *Supra* fn. 1.
[11] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).
[12] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[13] *Supra* fn. 1.
[14] Section 119.15, F.S.
[15] Section 119.15(6)(b),F.S.
[16] *Id.*
[17] *Straughn v. Camp,* 293 So. 2d 689, 694 (Fla. 1974).

Payment Instrument Transaction Database

Pending legislation[18] authorizes the Office of Financial Regulation (OFR) to implement a centralized statewide database to gather transactional data from check cashers for checks exceeding $1,000, corporate payment instruments, and third-party payment instruments.

Implementation of the database is aimed at targeting workers' compensation insurance fraud. In many scenarios, contractors and check cashiers have colluded on a scheme that allows contractors to hide their payroll and obtain workers' compensation coverage without purchasing such coverage. In addition to the workers' compensation fraud, these contractors are avoiding the payment of state and federal taxes. For their participation and risk, check cashers may receive a fee of 7 percent of the value of the check or more for cashing the checks – which exceeds the statutory limit check cashers are allowed to charge.[19]

The centralization of the data will allow regulators and law enforcement to effectively target individuals who are engaging in criminal activity. In addition, the centralization of the data will also allow information to be compared on a statewide basis. With the creation of a statewide database, the database would also include personal financial information of those utilizing check cashing services and private business transaction information that is traditionally private.

The bill provides that payment instrument transaction information held by the OFR pursuant to the check cashing requirements of s. 560.310, F.S., which identifies a licensee, payor, payee, or conductor is confidential and exempt from public records disclosure. The bill provides that a licensee may access information that it submits to the office for inclusion in the database. In addition, the bill authorizes the OFR to enter into agreements with the Department of Financial Services, law enforcement agencies, and other governmental agencies in order to share information contained in the database, for purposes of detecting and deterring financial crimes and workers' compensation violations. Such persons receiving confidential information from the OFR must maintain the confidentiality of that information, subject to any court order compelling production of the information.

As indicated in the bill's statement of public necessity, public disclosure of payment instrument transaction information would reveal personal financial information of payees and conductors, such as paycheck amounts. Public disclosure of this transactional information could also leave businesses (payors and licensees) competitively disadvantaged in the marketplace. Protecting the identities of these persons will greatly decrease the ability to misuse personal financial information and sensitive business information.

B. SECTION DIRECTORY:

Section 1 creates s. 560.312, F.S., creating a new public records exemption; providing that information contained in the payment instrument transaction database administered by the OFR is confidential and exempt from public records requirements; providing that a licensee may access information that it administers to OFR for inclusion in the database; providing that OFR may enter into information-sharing agreements with other governmental entities to deter financial crimes and workers' compensation violations; providing that shared information must remain confidential unless compelled by court order; providing future review and repeal pursuant to the Open Government Sunset Review Act.

Section 2 provides a statement of public necessity as required by the State Constitution.

Section 3 provides an effective contingent date.

[18] House Bill 217, 2013 Regular Session.

[19] *See* Bill Analysis for HB 217, Insurance and Banking Subcommittee, 2013 Regular Session.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may benefit the private sector. By making the identities of payees and customers confidential, personal financial information will be protected. Similarly, by making the identities of payors and licensees confidential, business information will be protected.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement and Public Necessity Statement for Public Records Bills

In order to pass a newly-created or expanded public records or public meetings exemption, Article I, s. 24 of the State Constitution requires 1) a two-thirds vote of each house of the legislature and 2) a public necessity statement. The bill contains a public necessity statement and will require a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Insurance & Banking Subcommittee

Tuesday, March 19, 2013
1:00 PM
404 HOB

Amendment Packet

Will Weatherford
Speaker

Bryan Nelson
Chair

INSURANCE & BANKING SUBCOMMITTEE

CS/HB 405 by Rep. Spano
Claims of Exemption from Garnishment

AMENDMENT SUMMARY
March 19, 2013

Amendment 1 by Rep. Spano (Lines 55-121): Retains all provisions of the CS, and conforms the CS to the Senate companion (CS/SB 592) by making the following change:

- Inserts "or the plaintiff's attorney" throughout the CS to clarify that a creditor's attorney may file an answer to a debtor's claim of exemption, on behalf of the creditor.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Spano offered the following:

Amendment (with title amendment)

Remove lines 55-121 and insert:

plaintiff or the plaintiff's attorney must file any objection within 8 ~~3~~ business days if you hand delivered to the plaintiff or the plaintiff's attorney a copy of the form for Claim of Exemption and Request for Hearing or, alternatively, 14 ~~8~~ business days if you mailed a copy of the form for claim and request to the plaintiff or the plaintiff's attorney. If the plaintiff or the plaintiff's attorney files an objection to your Claim of Exemption and Request for Hearing, the clerk will notify you and the other parties of the time and date of the hearing. You may attend the hearing with or without an attorney. If the plaintiff or the plaintiff's attorney fails to file an objection, no hearing is required, the writ of garnishment will

be dissolved and your wages, money, or property will be released.

IF YOU HAVE A VALID EXEMPTION, YOU SHOULD FILE THE FORM FOR CLAIM OF EXEMPTION IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR PROPERTY FROM BEING APPLIED TO THE COURT JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED LEGAL ASSISTANCE YOU SHOULD SEE A LAWYER. IF YOU CANNOT AFFORD A PRIVATE LAWYER, LEGAL SERVICES MAY BE AVAILABLE. CONTACT YOUR LOCAL BAR ASSOCIATION OR ASK THE CLERK'S OFFICE ABOUT ANY LEGAL SERVICES PROGRAM IN YOUR AREA.

CLAIM OF EXEMPTION AND
REQUEST FOR HEARING

I claim exemptions from garnishment under the following categories as checked:

.... 1. Head of family wages. (Check either ~~You must check~~ a. or b. below, if applicable.)

.... a. I provide more than one-half of the support for a child or other dependent and have net earnings of $750 or less per week.

.... b. I provide more than one-half of the support for a child or other dependent, have net earnings of more than $750 per week, but have not agreed in writing to have my wages garnished.

.... 2. Social Security benefits.

.... 3. Supplemental Security Income benefits.

.... 4. Public assistance (welfare).

.... 5. Workers' Compensation.

.... 6. Reemployment assistance or unemployment compensation.

.... 7. Veterans' benefits.

.... 8. Retirement or profit-sharing benefits or pension money.

.... 9. Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract.

.... 10. Disability income benefits.

.... 11. Prepaid College Trust Fund or Medical Savings Account.

.... 12. Other exemptions as provided by law.
.....(explain)

I request a hearing to decide the validity of my claim. Notice

of the hearing should be given to me at:

Address: .....

Telephone number:.....

I CERTIFY UNDER OATH AND PENALTY OF PERJURY that a copy of this CLAIM OF EXEMPTION AND REQUEST FOR HEARING has been furnished by (circle one) United States mail or hand delivery on ...(insert date)..., to: ...(insert names and addresses of Plaintiff or Plaintiff's attorney and of Garnishee or Garnishee's attorney to whom this document was furnished)....

I FURTHER CERTIFY UNDER OATH AND PENALTY OF PERJURY that the statements made in this request are true to the best of my knowledge and belief.

.....

Defendant's signature

Date.....

STATE OF FLORIDA

COUNTY OF

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

Notary Public/Deputy Clerk

Personally Known .....OR Produced Identification....

Type of Identification Produced.....

(3) Upon the filing by a defendant of a sworn claim of exemption and request for hearing, a hearing will be held as soon as is practicable to determine the validity of the claimed exemptions. If the plaintiff or the plaintiff's attorney does not file a sworn written

---

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to garnishment; amending s. 77.041, F.S.; revising "Notice to Defendant" provided by clerk of court in a garnishment proceeding; providing that a defendant in a garnishment proceeding may provide notice of a garnishment exemption and request for hearing to the plaintiff's or the garnishee's attorney; extending the time allowed for the plaintiff or the plaintiff's attorney to respond to the defendant's claim of exemption and request for hearing; providing response procedures of the clerk of court and the plaintiff's attorney when the plaintiff's attorney is served with a notice of garnishment exemption and request for hearing; requiring the defendant to certify under oath and penalty of perjury that he or she provided notice of the garnishment exemption claim and request for hearing to the plaintiff, the garnishee, or their respective attorneys in order to obtain a hearing; repealing s. 222.12, F.S., relating to proceedings for exemption; providing an effective date.

INSURANCE & BANKING SUBCOMMITTEE

CS/HB 583 by Rep. Spano
Estates

AMENDMENT SUMMARY
March 19, 2013

Amendment 1 by Rep. Spano (lines 48-49):

- Provides that section 1 of the bill applies retroactively to January 1, 2013, to avoid the need for some estates to file zero tax returns.

Amendment 2 by Rep. Spano (line 541):

- Retains the October 1, 2013 effective date of the CS, but conforms the CS to the previous amendment to provide an exception to the effective date.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Spano offered the following:

Amendment

Remove lines 48-49 and insert:

Section 1. Effective retroactively to January 1, 2013, subsection (4) of section 198.13, Florida Statutes, is amended to read:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 583 (2013)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION		
ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Spano offered the following:

Amendment

Remove line 541 and insert:

Section 21. Except as otherwise provided, this act shall take effect October 1, 2013.

INSURANCE & BANKING SUBCOMMITTEE

HB 783 by Rep. Eagle
Registration of Branch Offices Conducting Securities Transactions

AMENDMENT SUMMARY
March 19, 2013

Amendment 1 by Rep. Eagle (strike-all amendment): Makes the following changes:

- Creates a new section specifically for branch office notice filings.
- Amends various provisions of Chapter 517 to clarify the distinction between notice filing and registration, and conforms cross-references.
- Authorizes the OFR to take corrective action, including summary suspension, against a branch office that fails to comply with specified requirements
- Clarifies the notice filing requirements and form for branch offices.
- Provides an effective date of October 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Eagle offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (5), (6), (10), (11), (12), (14), and (15) of section 517.12, Florida Statutes, are amended to read:

517.12 Registration of dealers, associated persons, and investment advisers~~, and branch offices~~.—

(5) No dealer or investment adviser shall conduct business from a branch office within this state unless the branch office is notice filed with the office pursuant to s. 517.1202.~~registered with the office pursuant to the provisions of this section.~~

(6) A dealer, associated person, or investment adviser, ~~or branch office,~~ in order to obtain registration, must file with the office a written application, on a form which the commission may by rule prescribe. The commission may establish, by rule,

procedures for depositing fees and filing documents by electronic means provided such procedures provide the office with the information and data required by this section. Each dealer or investment adviser must also file an irrevocable written consent to service of civil process similar to that provided for in s. 517.101. The application shall contain such information as the commission or office may require concerning such matters as:

(a) The name of the applicant and the address of its principal office and each office in this state.

(b) The applicant's form and place of organization; and, if the applicant is a corporation, a copy of its articles of incorporation and amendments to the articles of incorporation or, if a partnership, a copy of the partnership agreement.

(c) The applicant's proposed method of doing business and financial condition and history, including a certified financial statement showing all assets and all liabilities, including contingent liabilities of the applicant as of a date not more than 90 days prior to the filing of the application.

(d) The names and addresses of all associated persons of the applicant to be employed in this state and the offices to which they will be assigned.

(10) An applicant for registration shall pay an assessment fee of $200, in the case of a dealer or investment adviser, or $50, in the case of an associated person. An associated person may be assessed an additional fee to cover the cost for the fingerprint cards to be processed by the office. Such fee shall be determined by rule of the commission. ~~Each dealer and each~~

~~investment adviser shall pay an assessment fee of $100 for each office in this state.~~ Such fees become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that registration is withdrawn or not granted.

(11) If the office finds that the applicant is of good repute and character and has complied with the provisions of this chapter and the rules made pursuant hereto, it shall register the applicant. The registration of each dealer, investment adviser, ~~branch office,~~ and associated person expires on December 31 of the year the registration became effective unless the registrant has renewed his or her registration on or before that date. ~~The commission may establish by rule procedures for renewing the registration of a branch office through the Central Registration Depository.~~ Registration may be renewed by furnishing such information as the commission may require, together with payment of the fee required in subsection (10) for dealers, investment advisers, or associated persons, ~~or branch offices~~ and the payment of any amount lawfully due and owing to the office pursuant to any order of the office or pursuant to any agreement with the office. Any dealer, investment adviser, or associated person~~, or branch office~~ registrant who has not renewed a registration by the time the current registration expires may request reinstatement of such registration by filing with the office, on or before January 31 of the year following the year of expiration, such information as may be required by the commission, together with payment of

the fee required in subsection (10) for dealers, investment advisers, or associated persons, ~~or branch office~~ and a late fee equal to the amount of such fee. Any reinstatement of registration granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(12)(a) The office may issue a license to a dealer, investment adviser, or associated person~~, or branch office~~ to evidence registration under this chapter. The office may require the return to the office of any license it may issue prior to issuing a new license.

(b) Every dealer, investment adviser, or federal covered adviser shall promptly file with the office, as prescribed by rules adopted by the commission, notice as to the termination of employment of any associated person registered for such dealer or investment adviser in this state and shall also furnish the reason or reasons for such termination.

(c) Each dealer or investment adviser shall designate in writing to, and register with, the office a manager for each office the dealer or investment adviser has in this state.

(14) Every dealer or~~,~~ investment adviser~~, or branch office~~ registered or required to be registered or branch office notice filed or required to be notice filed with the office shall keep records of all currency transactions in excess of $10,000 and shall file reports, as prescribed under the financial recordkeeping regulations in 31 C.F.R. part 103, with the office when transactions occur in or from this state. All reports required by this subsection to be filed with the office shall be confidential and exempt from s. 119.07(1) except that any law

enforcement agency or the Department of Revenue shall have access to, and shall be authorized to inspect and copy, such reports.

(15)(a) In order to facilitate uniformity and streamline procedures for persons who are subject to registration or notification in multiple jurisdictions, the commission may adopt by rule uniform forms that have been approved by the Securities and Exchange Commission, and any subsequent amendments to such forms, if the forms are substantially consistent with the provisions of this chapter. Uniform forms that the commission may adopt to administer this section include, but are not limited to:

1. Form BR, Uniform Branch Office Registration Form, adopted October 2005.

2. Form U4, Uniform Application for Securities Industry Registration or Transfer, adopted October 2005.

3. Form U5, Uniform Termination Notice for Securities Industry Registration, adopted October 2005.

4. Form ADV, Uniform Application for Investment Adviser Registration, adopted October 2003.

5. Form ADV-W, Notice of Withdrawal from Registration as an Investment Adviser, adopted October 2003.

6. Form BD, Uniform Application for Broker-Dealer Registration, adopted July 1999.

7. Form BDW, Uniform Request for Broker-Dealer Withdrawal, adopted August 1999.

(b) In lieu of filing with the office the applications specified in subsection (6), the fees required by subsection

(10), the renewals required by subsection (11), and the termination notices required by subsection (12), the commission may by rule establish procedures for the deposit of such fees and documents with the Central Registration Depository or the Investment Adviser Registration Depository of the Financial Industry Regulatory Authority, as developed under contract with the North American Securities Administrators Association, Inc.

Section 2. Section 517.1202, Florida Statutes, is created to read:

517.1202 Notice filing requirements for branch offices.-

(1) It is unlawful for a dealer or investment adviser to conduct business from a branch office in this state unless the dealer or investment adviser has made a branch office notice filing with this office. A notice filing under this section shall consist of a form which the commission may prescribe by rule. The commission may establish, by rule, procedures for the deposit of fees and filing of documents by electronic means if the procedures provide the office with the information and data required by this section.

(2) A notice filing shall be effective upon receipt by the office of the form and filing fee. Each dealer and each investment adviser shall pay a filing fee of $100 for each branch office in this state.

(3) A notice filing shall expire on December 31 of the year in which the filing became effective unless the dealer or investment adviser has renewed the filing on or before that date. A dealer or investment adviser may renew a branch office

notice filing by furnishing to the office such information as the commission or office may require, together with a renewal fee of $100 and the payment of any amount due and owing the office pursuant to any agreement with the office. Any dealer or investment adviser who has not renewed a branch office notice filing by the time a current notice filing expires may request reinstatement of such notice filing by filing with the office, on or before January 31 of the year following the year the notice filing expires, such information as the commission or office may require, together with the filing fee of $100 and a late fee equal to $100. Any reinstatement of a branch office notice filing granted by the office during the month of January shall be deemed effective retroactive to January 1 of that year.

(4) A branch office notice filing under this section shall be summarily suspended by the office if the notice filer fails to provide to the office, within 30 days after a written request by the office, all of the information required by this section and the rules adopted under this section. The summary suspension shall be in effect for the branch office until such time as the notice filer submits the requested information to the office, pays a fine as prescribed by s. 517.221(3), and the entry of a final order. At such time, the suspension will be lifted. For purposes of s. 120.60(6), failure to provide all information required by this section and the underlying rules constitutes immediate and serious danger to the public health, safety, and welfare. If the notice filer fails to provide all of the requested information within a period of 90 days, the notice filing will be revoked by the office.

(5) Notification under this section may be revoked by the office if the notice filer made payment to the office for a branch office notice filing with a check or electronic transmission of funds that is dishonored by the notice filer's financial institution.

(6) The commission may require, by rule, a dealer or investment adviser who has made a branch office notice filing pursuant to this section to file amendments with the office.

(7) A branch office notice filing may be terminated by filing notice of such termination with the office. Unless another date is specified by the dealer or investment adviser, such notice shall be effective upon its receipt by the office.

(8) All fees collected under this section become the revenue of the state, except for those assessments provided for under s. 517.131(1) until such time as the Securities Guaranty Fund satisfies the statutory limits, and are not returnable in the event that a branch office notice filing is withdrawn.

Section 3. Section 517.1205, Florida Statutes, is amended to read:

517.1205 Registration of associated persons specific as to securities dealer, investment adviser, or federal covered adviser identified at time of registration approval.—Inasmuch as this chapter is intended to protect investors in securities offerings and other investment transactions regulated by that chapter, its provisions are to be construed to require full and fair disclosure of all, but only, those matters material to the investor's evaluation of the offering or other transaction. It

should, furthermore, be construed to impose the standards provided by law on all those seeking to participate in the state's securities industry through registration as a securities dealer, investment adviser, or associated person. To this end, it is declared to be the intent of the Legislature that the registration of associated persons required by law is specific to the securities dealer, investment adviser, or federal covered adviser identified at the time such registration is approved. Notwithstanding any interpretation of law to the contrary, the historical practice of the Department of Banking and Finance, reflected in its rules, that requires a new application for registration from a previously registered associated person when that person seeks to be associated with a new securities dealer or investment adviser is hereby ratified and approved as consistent with legislative intent. It is, finally, declared to be the intent of the Legislature that while approval of an application for registration of a securities dealer, investment adviser, or associated person~~, or branch office~~ requires a finding of the applicant's good repute and character, such finding is precluded by a determination that the applicant may be denied registration on grounds provided by law.

Section 4. Subsections (2) and (3) of Section 517.121, Florida Statutes, are amended to read:

517.121 Books and records requirements; examinations.—

(2) The office shall, at intermittent periods, examine the affairs and books and records of each registered dealer, investment adviser, ~~branch office, or~~ associated person, or

branch office notice filed with the office, or require such records and reports to be submitted to it as required by rule of the commission, to determine compliance with this act.

(3) Registration under s. 517.12 or notification under s. 517.1202 may be summarily suspended by the office pursuant to s. 120.60(6) if the registrant or notice filed branch office fails to promptly provide to the office, after a written request, any of the records required by this section and the rules adopted under this section. The suspension may be rescinded if the registrant or notice filed branch office submits the requested records to the office. For purposes of s. 120.60(6), failure to provide substantially all of such records constitutes immediate and serious danger to the public health, safety, and welfare.

Section 5. Paragraphs (j) and (n) of subsection (1) of Section 517.161, Florida Statutes, are amended to read:

517.161 Revocation, denial, or suspension of registration of dealer, investment adviser, or associated person~~, or branch office~~.—

(1) Registration under s. 517.12 may be denied or any registration granted may be revoked, restricted, or suspended by the office if the office determines that such applicant or registrant; any member, principal, or director of the applicant or registrant or any person having a similar status or performing similar functions; or any person directly or indirectly controlling the applicant or registrant:

(j) Has been convicted of, or has entered a plea of guilty or nolo contendere to, regardless of whether adjudication was

withheld, a crime against the laws of this state or any other state or of the United States or of any other country or government which relates to registration as a dealer, investment adviser, issuer of securities, or associated person~~, or branch office~~; which relates to the application for such registration; or which involves moral turpitude or fraudulent or dishonest dealing;

(n) Made payment to the office for a registration ~~or notice filing~~ with a check or electronic transmission of funds that is dishonored by the applicant's or~~,~~ registrant's, ~~or notice filer's~~ financial institution.

Section 6. Paragraph (b) of subsection (2) of Section 517.1611, Florida Statutes, is amended to read:

517.1611. Guidelines.—

(2) The commission shall adopt by rule disqualifying periods pursuant to which an applicant will be disqualified from eligibility for registration based upon criminal convictions, pleas of nolo contendere, or pleas of guilt, regardless of whether adjudication was withheld, by the applicant; any partner, member, officer, or director of the applicant or any person having a similar status or performing similar functions; or any person directly or indirectly controlling the applicant.

(b) The disqualifying periods shall be related to crimes involving registration as a dealer, investment adviser, issuer of securities, or associated person~~, or branch office~~ or the application for such registration or involving moral turpitude or fraudulent or dishonest dealing.

Section 7. Subsection (1) of Section 517.211, Florida Statutes, is amended to read:

517.211 Remedies available in cases of unlawful sale.—

(1) Every sale made in violation of either s. 517.07 or s. 517.12(1), (4), (5), (9), (11), (13), (16), or (18) may be rescinded at the election of the purchaser, except a sale made in violation of the provisions of s. 517.1202(3) ~~517.12(11)~~ relating to a renewal of a branch office notification ~~registration~~ shall not be subject to this section, and a sale made in violation of the provisions of s. 517.12(13) relating to filing a change of address amendment shall not be subject to this section. Each person making the sale and every director, officer, partner, or agent of or for the seller, if the director, officer, partner, or agent has personally participated or aided in making the sale, is jointly and severally liable to the purchaser in an action for rescission, if the purchaser still owns the security, or for damages, if the purchaser has sold the security. No purchaser otherwise entitled will have the benefit of this subsection who has refused or failed, within 30 days of receipt, to accept an offer made in writing by the seller, if the purchaser has not sold the security, to take back the security in question and to refund the full amount paid by the purchaser or, if the purchaser has sold the security, to pay the purchaser an amount equal to the difference between the amount paid for the security and the amount received by the purchaser on the sale of the security, together, in either case, with interest on the full amount paid for the security by the purchaser at the legal rate, pursuant to s. 55.03, for the

period from the date of payment by the purchaser to the date of repayment, less the amount of any income received by the purchaser on the security.

Section 8. This act shall take effect October 1, 2013.

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

Remove lines 2-8 and insert:

An act relating to the registration of branch offices conducting securities transactions; amending s. 517.12, F.S.; providing requirements for registration of dealers, associated persons, and investment advisers; creating s. 517.1202, F.S; providing notice filing requirements and procedures for branch offices; authorizing the Office of Financial Regulation to request additional information related to a notice filing; amending s. 517.1205, F.S.; excluding branch offices from registration requirements for associated persons; amending s. 517.121, F.S.; providing that branch offices that have notice filed with the office are subject to books and records requirements; amending s. 517.161, F.S.; excluding branch offices from disciplinary proceedings over registered persons; amending s. 517.161, F.S.; excluding branch offices from the commission's authority to adopt rules regarding disqualifying periods for certain applicants for registration; amending s. 517.211, F.S.; to provide that purchasers may rescind sales for certain violations, except for violations relating to a renewal of a branch office notification; providing an effective date.

PCS for HB 1091

INSURANCE & BANKING SUBCOMMITTEE

PCS for HB 1091 by Rep. Mayfield
Banking

AMENDMENT SUMMARY
March 19, 2013

Amendment 1 by Rep. Mayfield (lines 12-47 and 84-90):

- Removes the definition of "control of a company or bank" from the PCS, and conforms cross-references.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing PCB: Insurance & Banking Subcommittee

Representative Mayfield offered the following:

Amendment (with title amendment)

Remove lines 12-47 and insert:

Section 1. Paragraph (t) of subsection (1) of section 655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(t) "Related interest" means, with respect to any

Remove lines 84-90

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

Remove line 3 and insert:

revising a definition; amending s. 655.85,

Amendment No. 1

Remove lines 6-7 and insert:

circumstances; providing legislative intent;