

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 613 Financial Institutions  
**SPONSOR(S):** Bernard and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 792

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Barnum	Cooper
2) Economic Affairs Committee			

### SUMMARY ANALYSIS

On July 1, 2010, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) was signed into law. Under the law, the Secretary of the Treasury may impose strict conditions on or prohibit the opening or maintaining of U.S. correspondent accounts or payable-through accounts for a foreign financial institution that is found to knowingly engage in specific sanctioned activities. Violators are subject to civil penalties up to \$250,000 or twice the transaction value, and criminal penalties for willful violations of up to \$1 million and 20 years in prison.

A provision of CISADA directs the Secretary of the Treasury to require U.S. banks maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to do one or more of the following:

- Perform an audit of activities that may be carried out by the foreign financial institution.
- Report to the Department of the Treasury regarding transactions provided with any sanctioned activity.
- Certify that the foreign financial institution is not knowingly engaging in any such sanctioned activity.
- Establish due diligence policies designed to detect whether the Secretary of the Treasury has found the foreign financial institution to knowingly engage in sanctioned activity.

Under the current process, the US Department of Treasury's Financial Crimes Enforcement Network (FinCEN) sends a written request to a focused sub-group of U.S. banks to inquire regarding a specific foreign bank for which they maintain a correspondent account. FinCEN estimates that approximately 350 banks maintain correspondent accounts for foreign banks and that the number of U.S. banks receiving any one request to be approximately 5% or 18 banks.

All Florida-chartered financial institutions must comply with U.S. Department of the Treasury's Office of Foreign Assets Control and FinCEN regulations, and the promulgated federal Iranian sanctions. The types of activities targeted by CISADA would already be scrutinized as required by federal law and pursuant to state law based upon safety and soundness grounds, or under the Florida Control of Money Laundering in Financial Institutions Act.

HB 613 requires the Financial Services Commission to establish rules regarding minimum due diligence policies, procedures and controls to be followed by Florida-chartered financial institutions in complying with existing federal requirements.

The bill creates an annual reporting requirement for all Florida-chartered financial institutions whereby each certifies that it has adopted and substantially complies with the new rules. Furthermore, each certifies that it is not knowingly in violation of federal requirements stemming from the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. It creates a civil penalty, not to exceed \$100,000 per occurrence, for failure to submit the annual certification.

The bill directs the Office of Financial Regulation to compile an annual report containing the rules and the status of the certifications of compliance. The report is to be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and made available on the Chief Financial Officer's website.

There is no fiscal impact on state or local governments, nor economic impact on the private sector.

The bill provides for an effective date of upon becoming law.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0613.INBS

**DATE:** 1/23/2012

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background:**

Countries that are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions. The four countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Cuba, Iran, Sudan, and Syria, with Iran being so designated on January 19, 1984.<sup>1</sup>

In 1987, President Reagan imposed an import embargo on goods and services of Iranian origin.<sup>2</sup> In 1995, President Clinton imposed prohibitions on U.S. involvement with any petroleum development in Iran,<sup>3</sup> and in 1997 prohibited most trade and investment activities by U.S. Citizens.<sup>4</sup>

On July 1, 2010, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) was signed into law.<sup>5</sup> Under the law, the Secretary of the Treasury may impose strict conditions on or prohibit the opening or maintaining of U.S. correspondent accounts<sup>6</sup> or payable-through accounts<sup>7</sup> for a foreign financial institution that is found to knowingly engage in the following sanctioned activities:

- Facilitating the efforts of the Government of Iran (GOI) to acquire or develop weapons of mass destruction (WMD) or delivery systems for WMD or to provide support for terrorist organizations or acts of international terrorism.
- Facilitating the activities of a person subject to financial sanctions pursuant to United Nations Security Council Resolutions 1737, 1747, 1803, or 1929, or any other Security Council Resolution that imposes sanctions with respect to Iran.
- Engaging in money laundering, or facilitating efforts by the Central Bank of Iran or any other Iranian financial institution, to carry out either of the above.
- Facilitating a significant transaction or transactions or providing significant financial services for Iran's Islamic Revolutionary Guard Corps (IRGC) or any of its agents or affiliates whose property or interests in property are blocked pursuant to the International Emergency Economic Powers Act (IEEPA) or a financial institution whose property or interests in property are blocked pursuant to IEEPA in connection with the GOI's proliferation of WMD or support for international terrorism.

Violators are subject to civil penalties up to \$250,000 or twice the transaction value, and criminal penalties for willful violations of up to \$1 million and 20 years in prison.<sup>8</sup>

A provision of CISADA directs the Secretary of the Treasury to require U.S. banks maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to do one or more of the following:

- Perform an audit of activities that may be carried out by the foreign financial institution.
- Report to the Department of the Treasury regarding transactions provided with any sanctioned activity.
- Certify that the foreign financial institution is not knowingly engaging in any such sanctioned activity.

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<sup>1</sup> <http://www.state.gov/g/ct/c14151.htm> (Last visited on January 22, 2012).

<sup>2</sup> Executive Order 12613, October 29, 1987.

<sup>3</sup> Executive Order 12957, March 16, 1995.

<sup>4</sup> Executive Order 13059, August 19, 1997.

<sup>5</sup> Pub. L. 111-195.

<sup>6</sup> An account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transaction related to such foreign bank.

<sup>7</sup> A correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usually in connection with the business of banking in the United States.

<sup>8</sup> <http://www.treasury.gov/press-center/press-releases/Pages/tg829.aspx> (Last visited on January 22, 2012).

- Establish due diligence policies designed to detect whether the Secretary of the Treasury has found the foreign financial institution to knowingly engage in sanctioned activity.<sup>9,10</sup>

The US Department of Treasury's Financial Crimes Enforcement Network's (FinCEN) mission is to enhance U.S. national security, deter and detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems. Under the current process, FinCEN sends a written request to a focused sub-group of U.S. banks to inquire regarding a specific foreign bank for which they maintain a correspondent account. FinCEN estimates that approximately 350 banks maintain correspondent accounts for foreign banks and that the number of U.S. banks receiving any one request to be approximately 5% or 18 banks.<sup>11</sup> The request is specific regarding the data being requested, and a "negative report" is required of U.S. banks which receive a request but do not maintain correspondent accounts with the subject foreign bank.

The names of foreign financial institutions that are found by the Secretary of the Treasury to knowingly engage in sanctionable activities, and for which U.S. financial institutions may not open or maintain correspondent accounts or payable-through accounts in the United States, will be published in the Federal Register and listed in Appendix A to the Iranian Financial Sanctions Regulations found at: <http://www.treasury.gov/resource-center/sanctions/Programs/pages/iran.aspx>. These listings are part of the List of Specially Designated Nationals and Blocked Persons, which is updated as names are added or removed. One can subscribe to receive e-mail updates when the information changes.<sup>12</sup>

### **Current Situation:**

All Florida-chartered financial institutions must comply with U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and Financial Crimes Enforcement Network (FinCEN) regulations, and the promulgated federal Iranian sanctions. There exist information sharing agreements between state and federal banking regulators and both OFAC and FinCEN.

The bank examination processes, by both state and federal examiners, includes procedures for examining and assessing a financial institution's policies, procedures, and processes for ensuring compliance with federal regulatory requirements and sanctions. For Florida-chartered banks, the types of activities being targeted by CISADA would already be scrutinized as required by federal law and pursuant to state law based upon safety and soundness grounds, or under the Florida Control of Money Laundering in Financial Institutions Act.<sup>13</sup>

### **Effect of the Bill:**

HB 613 requires the Financial Services Commission to establish rules regarding minimum due diligence policies, procedures and controls to be followed by Florida-chartered financial institutions in complying with existing federal requirements.

The bill creates an annual reporting requirement for all Florida-chartered financial institutions whereby each certifies that it has adopted and substantially complies with the new rules established by the Financial Services Commission. Furthermore, each certifies that it is not knowingly in violation of

<sup>9</sup> Bank is defined in 31 CFR 1010.100(d) to include:

- A commercial bank or trust company organized under the laws of any State or of the United States.
- A private bank.
- A savings and loan association or a building and loan association organized under the laws of any State or of the United States.
- An insured institution as defined in section 401 of the National Housing Act.
- A savings bank, industrial bank or other thrift institution.
- A credit union organized under the law of any State or of the United States.
- Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State.

<sup>10</sup> Due diligence policies, procedures, and controls are specified in section 5318(i) of Title 31, United States Code.

<sup>11</sup> "Department of the Treasury, Financial Crimes Enforcement Network, 31 CFR Part 1060, Comprehensive Iran Sanctions, Accountability, and Divestment Reporting Requirements, Final rule," 76 Federal Register 196 (11 October 2011), 62621.

<sup>12</sup> <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> (Last visited on January 22, 2012).

<sup>13</sup> s. 655.50, F.S.

federal requirements stemming from the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. It creates a civil penalty, not to exceed \$100,000 per occurrence, for failure to submit the annual certification.

The bill directs the Office of Financial Regulation (OFR) to compile an annual report containing the rules and the status of the certifications of compliance. The report is to be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and made available on the Chief Financial Officer's website.

**B. SECTION DIRECTORY:**

Section 1: Creates new law relating to financial institutions; transactions relating to Iran or terrorism.

Section 2: Provides an effective date of upon becoming law.

**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:**

None. According to a Florida Bankers Association representative, the bill will not have a financial impact on its members.<sup>14</sup>

**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.

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<sup>14</sup> Conversation with Insurance & Banking Subcommittee staff on January 17, 2012.

2. Other:

The bill adopts Federal laws and regulations that change frequently. Any future changes to the federal requirements after the bill were to become law would have to be readdressed by the legislature.

B. RULE-MAKING AUTHORITY:

The Financial Services Commission will be required to promulgate rules regarding minimum due diligence policies, procedures and controls to be followed by Florida-chartered financial institutions in order to comply with existing federal requirements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- Federally-chartered financial institutions and financial institutions chartered by a state other than Florida will not be subject to compliance with the bill, the new rules, or the certification requirement, with its accompanying potential civil penalty for non-compliance.
- As noted by the OFR,<sup>15</sup> an administrative penalty or fine, rather than a civil penalty for non-compliance with certification submission, would be more consistent with other actions taken by the OFR.
- Because the OFR, which regulates financial institutions, will be receiving the compliance certifications, and will be producing and delivering the annual report, the posting of the report on the OFR's website may be more appropriate.<sup>16</sup>
- Should the federal government modify certain language or requirements in its rules and regulations, a change to the Florida Statutes and Florida Administrative Code may be necessary. Otherwise, as applied to Florida-chartered financial institutions, Florida law may be inconsistent with, or more restrictive than, federal requirements.
- Lines 94 and 103 specify that the OFR shall adopt rules. The Financial Services Commission is the only entity under current law authorized to adopt rules for the OFR. An amendment has been drafted to correct this scrivener's error.
- On line 113, the reference should be to subsection (3), rather than (2). An amendment has been drafted to correct this scrivener's error.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>15</sup> Office of Financial Regulation HB 613 Bill Analysis dated December 5, 2011, on file with the Insurance & Banking Subcommittee.

<sup>16</sup> *Id.*