



Insurance & Banking Subcommittee

Wednesday, March 19, 2014

9:00 AM

Sumner Hall (404 HOB)

MEETING PACKET



The Florida House of Representatives

Regulatory Affairs Committee

Insurance & Banking Subcommittee

Will Weatherford
Speaker

Bryan Nelson
Chair

AGENDA

Wednesday, March 19, 2014

404 HOB

9:00 am – 11:00 am

- I. Call to Order
- II. Roll Call
- III. Consideration of the following bill(s):
 - a. CS/HB 331 Residential Tenant Insurance Policies by Civil Justice Subcommittee, Fullwood
 - b. HB 1267 Family Trust Companies by McBurney
 - c. HB 1269 Pub. Rec./Family Trust Companies/OFR by McBurney
 - d. HB 1271 Insurer Solvency by Ingram
 - e. HB 1273 Pub. Rec./Proprietary Business Information/OIR by Ingram
 - f. PCS for HB 1035 Insurance by Insurance & Banking Subcommittee
 - g. PCS for HB 1351 Workers' Compensation Fees by Insurance & Banking Subcommittee
- IV. Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Insurance & Banking Subcommittee

Start Date and Time: Wednesday, March 19, 2014 09:00 am
End Date and Time: Wednesday, March 19, 2014 11:00 am
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 331 Residential Tenant Insurance Policies by Civil Justice Subcommittee, Fullwood
HB 1267 Family Trust Companies by McBurney
HB 1269 Pub. Rec./Family Trust Companies/OFR by McBurney
HB 1271 Insurer Solvency by Ingram
HB 1273 Pub. Rec./Proprietary Business Information/OIR by Ingram

Consideration of the following proposed committee substitute(s):

PCS for HB 1035 -- Insurance
PCS for HB 1351 -- Workers' Compensation Fees

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Tuesday, March 18, 2014.

By request of the Chair, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, March 18, 2014.

NOTICE FINALIZED on 03/17/2014 16:24 by McCloskey.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 331 Residential Tenant Insurance Policies
SPONSOR(S): Civil Justice Subcommittee; Fullwood and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 422

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N, As CS	Cary	Bond
2) Insurance & Banking Subcommittee		Cooper <i>MC</i>	Cooper <i>MC</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

The "Florida Residential Landlord and Tenant Act," or "Act," governs the relationship between landlords and tenants under a residential rental agreement. The Act contains certain mandatory or conditional provisions and disclosures that a landlord must provide to a tenant or prospective tenant.

The bill mandates one of two provided provisions relating to renter's insurance that must be included in any written rental agreement for a residential tenancy.

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

The bill provides an effective date of January 1, 2015, and applies to any residential lease governed by the Act signed or renewed after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Part II of ch. 83, F.S., entitled the "Florida Residential Landlord and Tenant Act," or "Act," governs the relationship between landlords and tenants under a residential rental agreement. The Act contains certain mandatory or conditional provisions and disclosures that a landlord must provide to a tenant or prospective tenant. For example:

- If the landlord requires a security deposit, the Act requires a disclosure regarding the tenant's rights and responsibilities with respect to the security deposit.¹
- The landlord must disclose his or her address.²
- If there is a liquidated damages provision in the lease, the Act provides language that must be included in the lease.³
- If the rental agreement indemnifies the landlord for storage or disposition of personal property of the tenant after the tenant surrenders the dwelling, the Act requires language within the lease to notify the tenant to that effect.⁴

Effect of the Bill

The bill creates s. 83.491, F.S., to mandate one of two provided provisions in any written rental agreement for a residential tenancy. The notice must be in the same or larger type size as the majority of the rental agreement and must be separately initialed by the tenant.

If the rental agreement requires the purchase of a tenant's policy of insurance as a condition of the lease, the rental agreement must include a statement providing substantially the following language:

A landlord is generally not liable for loss or damage to your personal property. This rental agreement requires you to purchase and maintain a tenant's policy of insurance covering loss or damage to your personal property from a company of your choice with a minimum coverage amount of (insert coverage requirements here).

If the rental agreement does not require the purchase of a tenant's policy of insurance, the rental agreement must include a statement providing substantially the following language:

A landlord is generally not liable for loss or damage to your personal property. This rental agreement does not require you to purchase and maintain a tenant's policy of insurance. You should consider purchasing a tenant's policy of insurance covering loss or damage to your personal property from a company of your choice.

The bill provides that an unwritten agreement, or one that fails to provide the required notice, is presumed not to require the purchase of a tenant's insurance policy.

The bill also provides that a tenant does not have a cause of action against the landlord for the landlord's failure to enforce an insurance requirement. Essentially, if the tenant does not purchase a

¹ Section 83.49(2)(d), F.S.

² Section 83.50, F.S.

³ Section 83.595(4), F.S.

⁴ Section 83.67(5), F.S.

policy as required by the lease, the tenant cannot recover damages from the landlord for the tenant's violation of the lease agreement.

The bill also provides that no person will be deemed a third party beneficiary of a requirement to purchase tenant's insurance. Thus, a third party cannot sue a landlord for a landlord's failure to enforce a requirement to purchase insurance.

The bill provides an effective date of January 1, 2015, and applies to any residential lease governed by the Act and signed or renewed after that date.

B. SECTION DIRECTORY:

Section 1 creates s. 83.491, F.S., relating to an insurance requirement.

Section 2 provides an effective date of January 1, 2015, and an applicability statement.

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 creates a new requirement for standard lease forms. The Florida Bar develops, and the Florida Supreme Court approves, residential lease forms for use in the state.⁵ This PCS would likely require the promulgation of new lease forms.

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 requires landlords to update their lease forms. Because the requirement takes effect January 1, 2015, in most cases landlords can keep and timely develop a new standard lease form with minimal expense.

D. FISCAL COMMENTS:

None.

⁵ See *In re Revisions to Simplified Forms Pursuant to Rule 10-2.1(A) of Rules Regulating the Florida Bar*, 50 So.3d 503 (Fla. 2010).

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 19, 2014, the Civil Justice Subcommittee adopted two amendments to a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute passed by the subcommittee differs from the original bill by re-writing the disclosures, providing that the disclosures must be in the same or larger font, providing that a person may not be a third party beneficiary of a requirement to purchase insurance, and providing a statement that a rental agreement may require that the tenant purchase and maintain insurance other than a tenant's policy. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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A bill to be entitled
 An act relating to residential tenant insurance policies; creating s. 83.491, F.S.; requiring a written residential rental agreement to include a statement specifying whether insurance coverage is required; providing a form for such statement; providing that a rental agreement may require the tenant to purchase or maintain certain insurance; providing notice requirements; limiting the scope to written rental agreements; prohibiting a cause of action relating to a landlord's failure to enforce an insurance requirement; providing applicability; providing an effective date.

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

Section 1. Section 83.491, Florida Statutes, is created to read:

83.491 Insurance requirement.—

(1) As to every written residential rental agreement governed by this part that is entered into or renewed on or after January 1, 2015:

(a)1. If the rental agreement requires the tenant to obtain a tenant's policy of insurance, the rental agreement must include a statement in substantially the following form:

27 A landlord is generally not liable for loss or damage
 28 to your personal property. This rental agreement
 29 requires you to purchase and maintain a tenant's
 30 policy of insurance covering loss or damage to your
 31 personal property from a company of your choice with a
 32 minimum coverage amount of ... (insert coverage
 33 requirements here)....

34
 35 2. A rental agreement may require the tenant to purchase
 36 and maintain insurance other than a policy of insurance covering
 37 loss or damage to personal property.

38 (b) If the rental agreement does not require the tenant to
 39 obtain a tenant's policy of insurance, the rental agreement must
 40 include a statement in substantially the following form:

41
 42 A landlord is generally not liable for loss or damage
 43 to your personal property. This rental agreement does
 44 not require you to purchase or maintain a tenant's
 45 policy of insurance. However, you should consider
 46 purchasing a tenant's policy of insurance covering
 47 loss or damage to your personal property from a
 48 company of your choice.

49
 50 (2) The notice required by subsection (1) must be in a
 51 type size equal to or larger than the type in the majority of
 52 the agreement and must be separately initialed by the tenant.

53 (3) An unwritten agreement or an agreement that fails to
54 include the required notice is presumed not to require a
55 tenant's policy of insurance.

56 (4) A tenant does not have a cause of action against a
57 landlord as a result of a landlord's failure to enforce an
58 insurance requirement. A person is not deemed a third-party
59 beneficiary of a requirement to purchase tenant's insurance.

60 Section 2. This act applies to a residential lease
61 governed by part II of chapter 83, Florida Statutes, that is
62 entered into on or after the effective date of this act.

63 Section 3. This act shall take effect January 1, 2015.

INSURANCE & BANKING SUBCOMMITTEE

CS/HB 331 by Rep. Fullwood Residential Tenant Insurance Policies

AMENDMENT SUMMARY March 19, 2014

Amendment 1 (**strike-all amendment**) by Rep. Fullwood. The strike-all amendment makes technical changes, retains the provisions of the underlying bill, and makes the following changes:

- Eliminates the requirement for landlords to specify the minimum amount of insurance coverage required.
- Removes the provision allowing landlords to require tenants to purchase and maintain insurance other than a policy of insurance covering loss or damage to personal property.



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	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Fullwood offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 83.491, Florida Statutes, is created to
8 read:

9 83.491 Insurance requirement.-

10 (1) As to every written residential rental agreement
11 governed by this part that is entered into or renewed on or
12 after January 1, 2015:

13 (a) If the rental agreement requires the tenant to obtain
14 a tenant's policy of insurance covering loss or damage to
15 personal property, the rental agreement must include a statement
16 in substantially the following form:



Amendment No. 1

17 A landlord is generally not liable for loss or damage to
18 your personal property. This rental agreement requires you
19 to purchase and maintain a tenant's policy of insurance
20 covering loss or damage to your personal property from a
21 company of your choice.

22
23 (b) If the rental agreement does not require the tenant to
24 obtain a tenant's policy of insurance covering loss or damage to
25 personal property, the rental agreement must include a statement
26 in substantially the following form:



27
28 A landlord is generally not liable for loss or damage
29 to your personal property. This rental agreement does
30 not require you to purchase or maintain a tenant's
31 policy of insurance. However, you should consider
32 purchasing a tenant's policy of insurance covering
33 loss or damage to your personal property from a
34 company of your choice.

35
36 (2) The notice required by subsection (1) must be in a
37 type size equal to or larger than the type in the majority of
38 the agreement and must be separately initialed by the tenant.

39 (3) An unwritten agreement or an agreement that fails to
40 include the required notice is presumed not to require a
41 tenant's policy of insurance.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1267 Family Trust Companies
SPONSOR(S): McBurney
TIED BILLS: HB 1269 **IDEN./SIM. BILLS:** SB 1238

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

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) administers the Florida Financial Institutions Codes (chs. 655-667, F.S., "the Codes"), which includes the regulation of trust companies. Trust companies are for-profit business organizations that are authorized to engage in trust business and to act as a fiduciary for the general public.

A small number of states allow families to form and operate *private or family trust companies (FTCs)*, which provide trust services similar to those that can be provided by an individual trustee or a financial institution, but are owned exclusively by family members and may not provide fiduciary services to the public. These private, family trust companies are generally formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements, for a variety of personal, investment, regulatory, and tax reasons. Currently, there are no Florida statutes authorizing the formation of family trust companies, licensed trust companies, and foreign-licensed trust companies.

House Bill 1267 creates ch. 662, F.S., to authorize families to form and operate any of these three family trust companies in this state, subject to varying regulatory requirements, including a license or registration with the OFR, maintenance of minimum owners' equity for FTCs with a principal place of business in Florida, and certain reporting requirements. The bill prohibits all three FTC types from advertising and conducting trust business with the public. HB 1267 authorizes the OFR to investigate applications for licensure or registration, require annual certifications and other regulatory filings from licensees and registrants, and to conduct periodic examinations of all three family trust company types.

The bill does not appear to have a fiscal impact on local governments, and has an indeterminate impact on state revenues and expenditures, because it is unknown how many applications for license or registration will be filed with the OFR as a result of this bill. The bill may have a positive impact on the private sector.

The bill is effective October 1, 2014, if the linked public records bill (HB 1269) or similar legislation is adopted in the same legislative session.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Trusts

A trust is generally defined as, "a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it."¹

A trust must have three interest holders - a settlor (also called a "grantor"), a trustee, and a beneficiary. The settlor is the party creating the trust. The beneficiary has an equitable interest in property subject to trust, enjoying the benefit of the administration of the trust by a trustee.² The trustee holds legal title to the property held in trust for the benefit of the beneficiary.³ A trust company may offer its services to the general public to serve as trustee of private trusts.

Public/Commercial Trust Companies

The Florida Office of Financial Division (OFR)'s Division of Financial Institutions charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes). The OFR administers ch. 655 (Financial Institutions), ch. 657 (Credit Unions), ch. 658 (Banks and Trust Companies), ch. 660 (Trust Business), ch. 663 (International Banking), ch. 665 (Associations), and ch. 667 (Savings Banks), F.S. As of October 2013, the Division of Financial Institutions licenses and regulates a total of 249 state-chartered financial institutions: 139 banks, 71 credit unions, 27 international bank offices, and 12 trust companies.⁴

The Codes define "trust company" as:

[A]ny business organization, other than a bank or state or federal association, which is authorized by lawful authority to engage in *trust business*. A bank or state or federal association conducting business pursuant to lawful authority, which also by lawful authority has authority to engage in trust business, is the functional equivalent of a trust company with respect to performance of fiduciary services, and may assume fiduciary duties under appointive instruments that establish fiduciary relationships.⁵

"Trust business" is defined as:

[T]he business of acting as a fiduciary when such business is conducted by a bank, state or federal association, or a trust company, and also when conducted by any other business organization as its sole or principal business.⁶

OFR considers "trust business" to mean that a trust business is a "for profit" entity that is providing fiduciary services to the general public.

¹ 55A Fla.Jur.2d Trusts s.1; *see also* s. 731.201(38), F.S.

² *Id.*

³ 55A Fla.Jur.2d Trusts s.1.

⁴ OFR bill analysis of HB 673 (received February 4, 2014), on file with the Insurance & Banking Subcommittee staff.

⁵ Section 658.12(21), F.S.

⁶ Section 658.12(20), F.S. CS/HB 673 and CS/1012 (2014), which are currently pending in the Florida Legislature, amends the definition of "trust business" to clarify that the trust business is conducted for compensation *that the OFR does not consider to be de minimis*. The OFR has indicated that it has received inquiries on behalf of individuals engaging in estate and trust planning activities whereby fiduciaries serve as trustees with only minimal compensation and expense reimbursement. In these situations, the OFR has opined that such individuals are not engaging in the trust business as professional fiduciaries, and the bill provides clarification to that effect.

Family Trust Companies (FTCs)

Essentially, a FTC (also known as a private trust company) is a business entity, such as a corporation or a limited liability company, which provides trust services for a single family. By acting as a family-owned enterprise, a FTC combines attributes of both institutional and individual trustees, and offers fiduciary, investment advisory, wealth management, and administrative services. Unlike trust companies, however, FTCs cannot transact trust business with the general public, nor can they accept deposits.

As such, FTCs are generally subject to fewer state regulatory requirements such as reduced capital requirements and regulatory filings, and may enjoy federal tax benefits depending on the FTC's governance structure and the extent of family control.⁷ However, the initial formation and ongoing administration of FTCs can still entail significant expense. Thus, FTCs are generally be used by only larger, wealthier families for long-term, multigenerational trustees for the following reasons:⁸

- To handle specialized, often illiquid or volatile assets (such as agricultural properties, family-owned businesses, or alternative investments, including, but not limited to, private equity or venture capital investments) that commercial trustees may be less willing to oversee, due to regulatory or fiduciary restrictions surrounding investment discretion;⁹
- To provide self-governance and more flexibility for a family, including allowing the family to select separate investment managers for specific asset classes;
- To foster consolidation of investments and family office matters;
- To promote non-family financial objectives, including family succession planning and wealth education for younger generations;
- To provide an entrepreneurial mindset to the management of the family's investments.

Currently, a family wishing to use this wealth management vehicle could apply to OFR to be licensed as a "state trust company" under the Codes to conduct general trust business. However, the statutory and regulatory framework for forming and operating a "state trust company" may be viewed by some as unwieldy, overbroad and intrusive for almost all families who would like to set up a trust company that will limit its services to the family. For instance, a state trust company must: (a) maintain \$3 million of capital,¹⁰ (b) file quarterly financial reports with OFR,¹¹ (c) have an annual CPA audit and submit the audit report to OFR,¹² and (d) be examined by an OFR examination at least every 18 months.¹³

On a case-by-case basis, OFR exempts "family trust companies" from statutory licensing and supervision by way of the family entering into an agreement with OFR stating that they will not operate a "for profit" trust company and will limit the trust company's services to the family (and, conversely, will not offer these services to the general public). However, such an exemption may trigger another regulatory requirement – that is, under the federal Investment Adviser Act.

Federal Investment Advisers Act of 1940 and Family Offices

A family that is exempt from state trust company regulation may still need to register with the U.S. Securities and Exchange Commission (SEC) as an "investment adviser" under the federal Investment Advisers Act (IAA).¹⁴ An "investment adviser" is any person who, for compensation, engages in the

⁷ I.R.S. Notice 2008-63, 2008-31 I.R.B. 261. See also Alan V. Ytterberg and James P. Weller, *Managing Family Wealth Through a Private Trust Company*, 36 *Actec Law Journal* 501, 511-512 (2010).

⁸ Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Family Trust Companies Act, new Florida Statutes Chapter 659 and Legislative Position Request Form*, on file with the Insurance & Banking Subcommittee staff.

⁹ Iris J. Goodwin, *How the Rich Stay Rich: Using a Family Trust Company to Secure a Family Fortune*, 40 *Seton Hall L. Rev.* 467, 507 (2010).

¹⁰ Section 658.21, F.S.

¹¹ Rule 69U-120.0451, F.A.C.

¹² Section 655.045(3), F.S.

¹³ Section 655.045(1), F.S.

¹⁴ 15 U.S.C. §80b-2(a)(11)(G).

business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.¹⁵ SEC registration requirements and regulations may include: (1) filing a Form ADV with the SEC, which must be kept current with periodic updates; (2) annual filings with the SEC of an audited balance sheet; (3) undergoing an annual surprise examination by an independent public accountant to verify client assets; and (4) inspections and examinations by SEC staff.¹⁶ The extent to which a family's financial matters would be subject to public scrutiny as a result of SEC registration is uncertain at this time, but presumably such financial matters would be exposed.¹⁷

Historically, families have not been required to register with the SEC under the IAA because of an exemption provided to investment advisers with fewer than 15 clients.¹⁸ However, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub.L. 111-203, H.R. 4173; commonly referred to as the "Dodd-Frank Act") eliminated this exemption effective July 2011, so that the SEC can regulate hedge fund and other private fund advisers. To avoid forcing private family trust companies to register, the Dodd-Frank Act created a new exemption from registration under the IAA for any "family office" and directed the SEC to promulgate rules defining the term family office in a way that is consistent with previous exemptive orders issued by the SEC and recognizes the range of organizational, management, and employment structures employed by family offices.¹⁹ The SEC's "family office" rule, which became effective on August 29, 2011, somewhat restrictively defined "family office," and for many families this definition would exclude certain in-laws, aunts and uncles, and cousins.²⁰ Thus, a family office serving those individuals would typically fail the SEC's "family office" definition, subjecting it to burdensome SEC registration as an investment adviser.

The family may desire to avoid being subjected to supervision by the SEC, by instead subjecting its trust company to supervision by the state banking regulator. A FTC licensed under Florida law would not be required to register as "an investment adviser," nor would an unlicensed FTC if the unlicensed FTC delegated its investment functions to an investment agent.²¹ Thus, legislation creating a FTC regulatory structure could exempt Florida FTCs from burdensome federal registration and examination requirements typically reserved for financial institutions serving the public.

As noted above, Florida law does not expressly authorize FTCs. At least 14 other states have laws and regulations governing the organization and operation of FTCs.²²

Effect of the Bill

The bill creates the Florida Family Trust Company Act (ch. 622, F.S.; "the Act"), to address three different types of family trust companies with varying regulatory requirements, which discussed in further detail below. Except as otherwise provided in the Act, the provisions of the other chapters of the Financial Institutions Codes do not apply to FTCs.

¹⁵ 15 U.S.C. §80b-2(a)(11).

¹⁶ 15 U.S.C. §§80b-3 and 80b-4.

¹⁷ Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Family Trust Companies Act, new Florida Statutes Chapter 659 and Legislative Position Request Form*, on file with the Insurance & Banking Subcommittee staff.

¹⁸ "SEC Adopts Rule Under Dodd-Frank Act Defining 'Family Offices,'" at <http://www.sec.gov/news/press/2011/2011-134.htm> (last accessed March 11, 2014).

¹⁹ Section 409 of the Dodd-Frank Act amended 15 U.S.C. 80b-2(a)(11).

²⁰ To be codified at 17 C.F.R. pt. 275.

²¹ See 15 U.S.C. §80b-2(a)(11)(A)(banks are excluded from the definition of "investment adviser) and 15 U.S.C. §80b-2(a)(2)(C)(defines "bank" to mean a "trust company... a substantial portion of the business which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks...and which is supervised and examined by State or Federal authority having supervision over banks...and which is not operated for the purpose of evading the provision of this subchapter")(*emphasis added*).

²² State FTC regulatory schemes have been described as one of three categories: lightly regulated (Alaska, South Dakota, Delaware, and New Hampshire), non-regulated (Virginia, Colorado, and Wyoming), and hybrid (Massachusetts, Nevada, and Wyoming). See fn. 1, *supra*, at 21-22.

1) *(Unlicensed) Family trust company*

A FTC is a corporation or limited liability company exclusively owned by one or more family members, organized or qualified to do business in Florida, and acts as a fiduciary for one or more family members. A FTC may not serve as a fiduciary for a non-family member, except that it may provide such fiduciary services for up to 35 individuals who are not family members, but who are current or former employees of the FTC or of trusts, companies, or other entities that are family members.

2) *Foreign licensed family trust company*

A foreign licensed FTC has its principal place of business outside of Florida, and is licensed, operating, and supervised by a state other than Florida.

3) *Licensed family trust company*

A licensed FTC operates under a current (not revoked or suspended) license issued by the OFR.

Section 662.111, F.S., creates the following definitions for words and terms used throughout the Act: applicant, authorized representative, capital account, collateral kinship, commercial banking, controlling stockholder or member, designated relative, family affiliate, family member, family trust company, family trust company-affiliated party, financial institutions codes, foreign licensed family trust company, licensed family trust company, lineal kinship, office, officer, and qualified beneficiary.

Section 662.120, F.S., specifies the maximum allowable number of *designated relatives*, which is defined in s. 662.111, F.S., as the persons designated in the application for license, and are against whom degrees of kinship are measured for purposes of determining “*family members*” that comprise licensed and unlicensed FTCs; they can be living or deceased.

- The maximum number of designated relatives for licensed FTCs is two, while the maximum number for unlicensed FTCs is one.
 - This strict limitation on the number of *designated relatives* is to guard against any risk of a FTC being used to provide trust company services to the general public.
- The definition of *family member* is intended to include certain lineal and collateral relatives of the designated relative, certain spouses and former spouses of a family member and certain members of their lineal relatives, family affiliates, certain trusts if all of the qualified beneficiaries are themselves family members or charities, probate estates of family members and certain non-family members, and certain charitable organizations.
 - The definition is intended to include a reasonable number of persons and entities that are related to the designated relative, so as to prevent abuse of the FTC provisions.
 - Licensed FTCs include a larger number of persons in the definition of family member than unlicensed FTCs.

Section 662.112, F.S., describes the calculation for determining degrees of kinship. The degrees are counted by adding the number of steps from a designated relative to the family member.²³

- For example, if the designated relative is a grandparent and the family member is a grandchild, the degree of kinship between the individuals is two. This is *lineal kinship*.
- However, if the designated relative is an uncle and the family member is a nephew, the degree of kinship between the individuals is three. This is *collateral kinship*.

²³ A “Degrees of Kinship” chart is included in the Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Family Trust Companies Act, new Florida Statutes Chapter 659 and Legislative Position Request Form*, on file with the Insurance & Banking Subcommittee staff.

Common Requirements for all FTC Types

Section 662.115, F.S., describes the different applications of the Act to a licensed FTC, an unlicensed FTC, and a foreign licensed FTC. All sections of the chapter apply to licensed FTCs and unlicensed FTCs, unless otherwise stated in the sections. Only sections that expressly state that they apply to foreign licensed FTCs shall apply to such foreign licensed FTCs.

Under the bill, all 3 FTC types are subject to the following:

- Section 662.1225, F.S., which requires:
 - A principal office physically located in Florida, where all records and accounts of the FTC are available for the OFR's examination;²⁴
 - A registered agent with an office in Florida, and
 - All applicable state and local business licenses, charters, and permits.
- Section 662.128, F.S., which requires annual renewal with varying disclosures and renewal fees
 - The renewal fees are \$750 for a FTC, \$1,500 for a licensed FTC, and \$1,000 foreign licensed FTC.
- Section 662.131, F.S., contains a prohibition on all FTC types from engaging in "commercial banking," other than establishing accounts at other financial institutions for their own purposes or on behalf of family members to which it provides services, and from engaging in fiduciary services with the public, unless licensed under ch. 658, F.S., to do so.
- Sections 662.131(3) and (4), F.S., prohibit all FTC types from serving as either a personal representative of any probate estate administered in Florida or an attorney-in-fact or agent under a power of attorney pursuant to ch. 709, F.S.
- Section 662.132(9), F.S., provides that the duty of loyalty provisions in s. 736.0802, F.S., will apply to all FTC types that are serving as a trustee of a trust administered under ch. 736, F.S., only to the extent that such provisions are not inconsistent with Subsections 4 through 8 of this section.
- Section 662.134, F.S., prohibits all FTC types from advertising their services to the public.
- Section 662.141(1), F.S., allows OFR to examine the books and records of any FTC types at any time to the extent necessary to determine compliance with the Act, and requires OFR to conduct an examination at least every 18 months.
 - Section 662.141(2), F.S., allows OFR to accept an audit in lieu of an examination.
 - Subsection (3) requires the FTC being examined to pay examination fees, which shall be deposited into the Financial Institutions Regulatory Trust Fund. The fee for examination is limited to the costs incurred by OFR, including the salary and travel expenses directly attributable to any staff conducting the examination. The bill gives OFR authority to levy administrative fines for late payments of examination fees.
- Section 662.143, F.S., permits OFR to issue a cease and desist order to any FTC type found to be in violation of any applicable sections of this Act.
- Section 662.144, F.S., which subjects all 3 FTC types to administrative fines if reports and annual certifications required by this chapter or any rule are not timely filed with the OFR. The bill also provides that such trust company will automatically terminate and revoke if the annual certification is not provided within 60 days after the end of each calendar year.
- Section 662.146(1), F.S., provides that the books and records of any FTC type are confidential, and may only be examined (1) by OFR or its duly authorized representative; (2) by any authorized person of the FTC; (3) if compelled by a court or in accordance with state or federal laws, by the party seeking the examination; (4) if compelled by legislative subpoena as provided by law; (5) as authorized by the board of directors or the managers; (6) or as provided in subsection (2) discussed below.²⁵

²⁴ This section permits branch offices within or outside of Florida

²⁵ This provision is patterned after s. 655.059, F.S., which requires financial institutions to make their books and records confidential.

It should be noted that this merely creates a recordkeeping duty on a regulated private entity, and is not an exemption from public records law. Private organizations, such as financial institutions and family trust companies, generally are not subject to the Sunshine Law unless they have been created by a public entity, have been delegated the authority to perform some governmental function, or

- Section 662.146(2), F.S., provides that each customer, stockholder, or member has the right to inspect books and records that pertain to the person's accounts or determination of the person's voting rights. These records will be kept confidential and will only be released with the express authorization of the involved person. However, information may be released without authorization. Any person who willfully violates this section is guilty of a third degree felony.
 - Subsection (2) does not apply to foreign licensed FTCs, as the subsection provides that the law of the foreign licensed FTC's principal jurisdiction will apply to rights to inspection.
- Section 662.146(3), F.S., states that "books and records" includes, but is not limited to, the application and related documents, the initial registration documents of an unlicensed FTC or a foreign licensed FTC, the annual certification, and any documentation submitted to OFR related to a licensed FTC discontinuing its business.
- Section 662.147, F.S., sets forth requirements for records relating to the OFR's examination and places limited restrictions on public access.
 - Section 662.147(1), F.S., requires FTCs to keep records of the names and residences of all members.
 - Section 662.147(2), F.S., provides generally that reports of examinations, license applications, investigatory records, and other documentation submitted to OFR is retained by OFR for 10 years.
 - Section 662.147(3), F.S., provides that a copy of any document on file with OFR which is certified by OFR as being a true copy may be introduced in evidence as if it were the original.
- The bill amends existing s. 736.0802, F.S., regarding voidable transactions which violate a trustee's duty of loyalty. This section is amended to allow any FTC type to act a trustee to engage in certain transactions authorized by s. 662.132, F.S., without violating its duty of loyalty.

Licensed vs. Unlicensed Family Trust Companies

A family would likely choose to form a licensed FTC in the event they plan to provide trust or fiduciary services to a large family or two families, desired to avoid SEC regulation, or are of the opinion that a licensed FTC provides greater transfer tax "protection" to the patriarch or matriarch. Also, as the scope of its operations expands, a family with an unlicensed FTC may choose to convert it to a licensed FTC. Currently, families who reside in states which subject trusts to state income tax are forming and operating regulated FTCs in tax-friendly jurisdictions in order to avoid state income taxation. Using a licensed FTC provides a strong nexus to the state which regulates the FTC and should strengthen the case that the trust (and perpetuity) law of that state governs trust administration.

A family interested in forming an unlicensed FTC might be one who perhaps recently experienced an increase in liquidity (due to the sale of a family business or an initial public offering) and would like to establish a more formal framework for managing family wealth for current and succeeding generations. Traditional trustee options do not suit the family's circumstances. These families may consider it unnecessary to have their family trust affairs supervised by a state regulator. This may be more likely for a close knit family, serving a limited number of family members. In addition, an unlicensed FTC can delegate its investment functions to an investment agent, thereby avoiding having to register with the SEC as an investment adviser.

Section 662.130(1), F.S., lists the powers of a licensed FTC and an unlicensed FTC.

- Subsection 1(a) authorizes a licensed FTC or an unlicensed FTC to serve as a personal representative or curator for an estate administered outside of Florida. Subsection 1(b) authorizes a licensed FTC or an unlicensed FTC to serve as an attorney-in-fact or agent pursuant to a power of attorney, except when such instrument is governed by ch. 709, F.S. (relating to powers of attorney and similar instruments).

- Subsection 1(c) provides that a licensed FTC or the unlicensed FTC may act as an attorney in fact or agent under a power of attorney instrument, except when such instrument is governed by ch. 709, F.S.
- Subsection 1(d) provides that a licensed FTC or the unlicensed FTC may act as trustee, committee, guardian, custodian, conservator, or other personal representative of a person; registrar or transfer agent; investment advisor, receiver, trustee in bankruptcy, assignee for creditors, or holders of any similar representative position in any other position of trust.
- Subsection 1(e) provides the licensed FTC or the unlicensed FTC with the authority to exercise the powers of a corporation or limited liability company, as the case may be.
- Subsection 1(f) provides the licensed FTC or the unlicensed FTC with the ability to retain agents and to delegate duties and powers, specifically including the ability to retain a public trust company or bank trust department to assist the FTC in carrying out investment and administrative functions.
- Subsection 1(g) provides the licensed FTC or the unlicensed FTC with the power to perform any acts necessary or incidental to effectuate the provisions of this Act and any other Florida laws applicable to the operation of a licensed FTC or an unlicensed FTC.

Specific Requirements for Licensed FTCs

As stated above, s. 662.10, F.S., limits the number of designated relatives for licensed FTCs to two. If a licensed FTC chooses to have two designated relatives, such designated relatives may not have a common ancestor within five generations. According to the bill's proponents, the purposes for allowing two families to form one licensed FTC include:

- Many families own interests in closely-held businesses with other families. For instance, a Florida developer, agriculture business or biotech company may be privately owned by two families, with perhaps this ownership structure being in place for many decades. For the reasons identified above, these families may desire to extend their business arrangement into a licensed FTC to maintain continuity of business dealings through the provision of a shared fiduciary.
- It likely is more cost effective for two families to combine their resources to form and operate one licensed FTC.

Application for licensure and renewal

- Section 662.121, F.S., requires an application for license and a \$10,000 application fee, and sets forth required information to be disclosed in the application, including detailed information on each individual who owns or may vote at least 10% of the proposed licensed FTC and a sworn statement regarding the activities of the proposed FTC.
- Section 662.1215, F.S., describes the investigation process OFR undertakes when an application for a license is filed. The application must have included all the information required and any additional information requested by OFR during the investigation. The purpose of the investigation is to determine the character and good standing of the FTC's managers as they attested in their application. If the investigation confirms that the applicant meets the requirements, OFR will issue a license. If OFR denies the application, it shall serve notice of its intent to deny the application and the right to request a hearing pursuant to ch. 120, F.S. (the Administrative Procedures Act).
 - The bill amends s. 120.80, F.S., provides that in proceedings for a license, an application for a new licensed FTC must be approved or denied within 180 days after receipt of the original application or receipt of timely requested additional information.
- Section 662.128, F.S., requires a licensed FTC to file within 30 days following the last day of the calendar year, an annual renewal application with OFR, together with an annual certification fee of \$1,500. The renewal application for licensed FTCs shall set forth that the operations for the calendar year have been in compliance with ch. 896, F.S., and shall describe any changes in operations, management, designated relatives or principal place of business since the end of the preceding calendar year.

Organizational documents

Section 662.123, F.S., provides the information which must be contained within the organizational documents of a Florida-licensed FTC, including statements that the licensed FTC will not offer services to the general public and will not amend the organizational documents (to allow the company to offer its services to a non-family member) without prior written consent from OFR. This section also requires the licensed FTC to seek regulatory approval from the OFR before changing its articles of incorporation, articles of organization, bylaws, or operating agreement of a FTC, and provides that using the word "family trust" in a licensed FTC's name will not disqualify the name as a permissible corporate or limited liability company name.

Minimum owners' equity

Section 662.124(1), F.S., provides that the minimum owners' equity of a licensed FTC with one designated relative is \$250,000. The minimum owners' equity of a licensed FTC with two designated relatives in the application for a certificate of authority or in the annual certification is \$350,000. This section also specifies permissible asset groups in calculating the initial minimum owners' equity.

Section 662.132, F.S., discusses investments of licensed FTCs:

- Subsection 1(a) describes the type of assets which may be held to form the minimum capital of the Licensed FTC for all periods subsequent to its initial owners' equity contribution. Generally, the minimum capital must be retained in liquid investments. Subsection 1(b) states that the aggregate market value of these assets must be at least 100% of the company's required owners' equity. There is a five day 5 day curing period, in the event that the owners' equity falls below the required minimum.
- Section (2) authorizes a licensed FTC to purchase or rent real or personal property for use in the conduct of the business or other activities of the company.
- Section (3) authorizes a licensed FTC or an unlicensed FTC to invest its funds for its own account, other than the minimum owners' equity, in any type or character of equity securities, debt securities, or other assets.
- Subsections 4 through 7 set forth certain restrictions and requirements on a licensed FTC or an unlicensed FTC, to the extent it desires to purchase or invest as a fiduciary for a fiduciary estate in securities of which the licensed FTC or unlicensed FTC or a "family affiliate" has an interest.
 - The licensed FTC's or unlicensed FTC's interest in these securities includes: (i) issuance by the licensed FTC or unlicensed FTC; (ii) the underwriting or distribution of these securities by the licensed FTC or unlicensed FTC; and (iii) the licensed FTC or unlicensed FTC providing services to the investment company or investment trust which issued the securities and receiving compensation for these services.
- Subsection (8) lists certain actions a licensed FTC or an unlicensed FTC may perform which are not presumed to be affected by a conflict between the personal and fiduciary interests of the fiduciary. This subsection permits the FTC to interact with and invest in the family business without conflict of interest restrictions.

Management

Section 662.125, F.S., provides that the management of the FTC resides exclusively with the board of directors or managers and provides that there shall not be less than three such directors or managers, and that at least one of the directors or managers must be a resident of the State of Florida. This residency requirement is intended to ensure the FTC has an actual nexus to Florida. The FTC must notify OFR of a proposed appointment of a member to the board, or the appointment of an individual officer or manager or member acting in managerial capacity at least 60 days before the appointment or employment becomes effective.

Fidelity bonds, errors and omissions coverage, other insurance

- Sections 662.126(1) and (2), F.S., generally require a licensed FTC to obtain fidelity bonds totaling not less than \$1,000,000, in connection with the business to indemnify against loss.
- Section 662.126(3), F.S., allows a licensed FTC to increase its minimum equity by \$1,000,000 instead of obtaining the required fidelity bonds.

- Section 662.126(4), F.S., requires a licensed FTC to obtain errors and omissions insurance policies of not less than \$1,000,000.
- Section 662.126(5), F.S., authorizes licensed FTCs to obtain other insurance policies necessary or desirable in connection with the business of the FTC. These bond and coverage requirements are substantial. In addition, it is important to note that the cost of any loss, error, or omission not covered by a fidelity bond or errors and omissions insurance coverage will be borne solely by the family that owns and is served by the licensed FTC.

Books and records; segregation of assets

- Section 662.127(1), F.S., requires licensed FTCs to maintain their fiduciary books and records separate from other records and to segregate all assets held in any fiduciary capacity from any other assets.
- Section 662.127(2), F.S., provides that the assets received or held by the FTC in a fiduciary capacity are not liable for the debts or obligations of the FTC.

Discontinuation of licensed FTC business

If a licensed FTC desires to discontinue business, Section 662.129, F.S., requires it to furnish to OFR resolution of the board authorizing the action.

Oaths, affidavits, and acknowledgements

To the extent a licensed FTC is required to make an oath, affirmation, affidavit or acknowledgment, s. 662.133, F.S., identifies the representatives to perform such acts on behalf of the licensed FTC.

Service as a court-appointed fiduciary; bond requirements

Section 662.135, F.S., expressly provides that a licensed FTC is not required to provide or post bond or other surety to serve as a court appointed fiduciary in any Florida court proceeding. This section is silent as to unlicensed FTCs, and therefore allows a court's discretion to require that an unlicensed FTC post bond.

Grounds for revocation of license

Section 662.142, F.S., provides for grounds for revocation of the license of a Licensed FTC for violating certain sections of the Act, ch. 896, F.S., rules or orders of the commissions, or orders of OFR, breach of a written agreement with OFR, prohibited act under s. 662.131, F.S., a failure to provide information or documents to the office upon written request, or an act of the commission or omission or a practice that is a breach of trust or of fiduciary duty.

Removal of FTC-affiliated parties

Section 662.145, F.S., allows OFR to remove from his or her position any officer, director, manager, member, employee or agent of a FTC who knowingly or willfully neglects to perform any duty required by this Act or other applicable law, or fails to conform to any material requirement made by OFR.

Guardians and bonding requirements

Currently, s. 744.351, F.S., requires persons appointed as guardians of the property to file a bond. The bill amends this section to coincide with the authority granted under the Act for a licensed FTC to serve as a guardian of the property for family members, without filing a bond.

Specific Requirements for (Unlicensed) FTCs

In addition to the common requirements discussed above, some of the same requirements for licensed FTCs also apply to unlicensed FTCs with some minor differences:

- Section 662.120, F.S., which limits the maximum number of designated relatives to one.
- Section 662.122, F.S., provides that even if a FTC does not wish to be licensed, it must register with OFR before it begins its operations. The registration includes the name of the designated

relative, a statement that the FTC and its operations comply with specific sections of the Act, and a current

- Includes a \$5,000 registration fee, to be deposited in the Financial Institutions Regulatory Trust Fund.
- Section 662.123, F.S., which requires regulatory approval prior to any changes to organizational documents.
- Section 662.124, F.S., which requires owners' equity of at least \$250,000 and specifies allowable assets to constitute that equity.
- Section 662.125, F.S., which sets forth management requirements for unlicensed FTCs.
- Section 662.126, F.S., which does not require, but authorizes unlicensed FTCs to maintain fidelity bonds and errors and omissions coverage, as well as any other insurance policies necessary or desirable for the operation of the FTC.
- Section 662.127, F.S., which requires unlicensed FTCs to maintain certain books and records and to segregate their assets.
- Section 662.128, F.S., which requires FTCs to renew their registration with the OFR on an annual basis, along with an annual certification fee of \$750 and a completed renewal application.
- Section 662.132, F.S., which sets forth permissible investments for both licensed and unlicensed FTCs.
- Section 662.133, F.S., which sets forth provisions regarding oaths, affirmations, and acknowledgements.
- Section 662.135, F.S., expressly provides that a licensed FTC is not required to provide or post bond or other surety to serve as a court appointed fiduciary in any Florida court proceeding. This section is silent as to unlicensed FTCs, and therefore allows a court's discretion to require that an unlicensed FTC post bond.
- Section 662.141, F.S., which sets forth books and records and examination requirements by the OFR.
- Section 662.145, F.S., regarding removal of FTC-affiliated parties.

Foreign Licensed FTCs

Permitting foreign licensed FTCs will allow FTCs already established in other states to relocate part of their operations to Florida. In addition to the common requirements described above, foreign licensed FTCs must comply with the following specific requirements.

Registration and renewal with the OFR

Like unlicensed FTCs, foreign-licensed FTCs must register with the OFR before beginning operations in this state, pay a \$5,000 registration fee, and provide the applicable registration-related disclosures set forth in s. 662.122, F.S. A foreign licensed FTC also must state that its operations are in compliance with specific sections of the Act and that it is currently in compliance in its home jurisdiction. The foreign licensed FTC must also provide a current street address and telephone number of its registered agent, its physical office in its principal jurisdiction, its physical location of books and records in Florida, and any other offices located in Florida. The foreign licensed FTC must also submit a certificate of good standing, and satisfactory proof that the company is organized in a manner similar to a FTC under the Act.

Section 662.1225(2), F.S., lists the requirements for a foreign licensed FTC.

- Must maintain an office in Florida which maintains accessible original material business records and accounts of the foreign licensed FTC which pertain to its Florida operations for examination by OFR.
- Must maintain (i) a registered agent with an office at a street address in Florida, (ii) deposit account with a Florida branch or principal office of a state chartered or national financial institution, and (iii) all applicable state and local business licenses, charters and permits.

Section 662.128, F.S., requires a foreign licensed FTC to file, within 30 days following the last day of the calendar year, an annual renewal application with OFR, together with an annual certification fee of \$1,000

for a foreign licensed FTC. The renewal application for foreign licensed FTCs shall set forth that its operations were in compliance with certain sections of Chapter 662 and provide the current street address and telephone number of its registered agent, its physical office in its principal jurisdiction, its principal place of operations in Florida, and any other offices located in Florida.

Section 662.130(2), F.S., allows a foreign licensed FTC to exercise the powers and authorities granted to it under its principal jurisdiction, as well as remaining subject to any duties, restrictions, or limitations under its principal jurisdiction.

The name requirements of s. 662.123, F.S., do not apply to a foreign licensed FTC using a registered fictitious name.

Section 662.150, F.S., describes "domestication" as a foreign licensed FTC's application to become a Florida FTC. The foreign licensed FTC must be in good standing in its primary jurisdiction, and must (1) file with the Department of State a certificate of domestication and articles of incorporation if a corporation or a certificate of conversion and articles of organization if a limited liability company (under either ch. 605 or 608, F.S., as applicable); and (2) file an application for a certificate of authority to commence operations as a licensed FTC or register as an unlicensed FTC. The application or registration may be completed prior to filing with the Department of State; however both requirements must be met before operations are commenced.

Section 662.151, F.S., describes the application for a foreign licensed FTC to commence operations in Florida. This section differs from s. 662.150, F.S., in that it pertains only to foreign FTCs wanting to do business in both Florida and its principal jurisdiction (and perhaps others). Only foreign licensed FTCs are granted this privilege. The foreign licensed FTC must be in good standing in its primary jurisdiction and must (1) file with the Department of State a certificate of authority under chs. 607, 608, 605 or 620, F.S., or apply for a statement of qualification in accordance with ch. 620, F.S., to conduct business in Florida; and (2) file an initial registration to commence operations as a foreign licensed FTC under the requirements of this chapter.

Section 744.351, F.S., requires persons appointed as guardians of the property to file a bond. This section is amended to coincide with the authority granted under the Act for a foreign licensed FTC to serve as a guardian of the property for family members, without filing a bond.

B. SECTION DIRECTORY:

Section 1 of the bill creates ch. 662, F.S.

Section 2 creates s. 662.10, F.S., to provide a short title.

Section 3 creates s. 662.102, F.S., to provide the purpose of the act.

Section 4 creates s. 662.111, F.S., to define terms.

Section 5 creates s. 662.112, F.S., to provide for the calculation of kinship.

Section 6 creates s. 662.113, F.S., to provide for the applicability of the financial institutions codes.

Section 7 creates s. 662.114, F.S., to exempt a family trust company or foreign family trust company from licensure.

Section 8 creates s. 662.115, F.S., to provide for the applicability of the chapter to a family trust company or foreign licensed family trust company.

Section 9 creates s. 662.120, F.S., to specify the maximum number of designated relatives allowed for a family trust company and a licensed family trust company.

Section 10 creates s. 662.121, F.S., to provide procedures for applying for a family trust company license and to require a fee.

Section 11 creates s. 662.1215, F.S., to provide for investigations of applicants by the Office of Financial Regulation.

Section 12 creates s. 662.122, F.S., to provide procedures for the registration of a family trust company or a foreign licensed family trust company and to require a fee.

Section 13 creates s. 662.1225, F.S., to provide requirements for a family trust company, licensed family trust company, and foreign licensed family trust company.

Section 14 creates s. 662.123, F.S., to require organizational documents to include certain provisions and to authorize the use of the term "trust."

Section 15 creates s. 662.124, F.S., to require a minimum amount of owners' equity.

Section 16 creates s. 662.125, F.S., to vest exclusive authority to manage a family trust company or licensed family trust company in a board of directors or managers; to provide for appointment of directors and managers; to require certain notice to the office in specified circumstances; to require the office to issue a notice of disapproval of a proposed appointment in specified circumstances; to authorize the office to obtain criminal history information.

Section 17 creates s. 662.126, F.S., to require that licensed family trust companies procure and maintain fidelity bonds or specified minimum owners' equity and errors and omissions insurance; to authorize a family trust company that is not licensed to procure and maintain such coverage; to authorize licensed and unlicensed family trust companies to procure and maintain other insurance policies.

Section 18 creates s. 662.127, F.S., to require certain books and records to be segregated.

Section 19 creates s. 662.128, F.S., to require annual license and registration renewal and to require a fee.

Section 20 creates s. 662.129, F.S., to provide for the discontinuance of a licensed family trust company.

Section 21 creates s. 662.130, F.S., to authorize family trust companies to conduct certain activities.

Section 22 creates s. 662.131, F.S., to prohibit certain activities on the part of family trust companies.

Section 23 creates s. 662.132, F.S., to impose certain requirements on the assets that form the minimum capital of licensed family trust companies and family trust companies; to authorize such trust companies to purchase or rent real or personal property, invest funds, and, while acting as a fiduciary, make certain purchases; to impose a restriction on that authorization; to clarify the degree of prudence required of fiduciaries; to restrict the authority of a fiduciary to purchase certain bonds or securities; to specify additional authority of fiduciaries; to apply the duty of loyalty to family trust companies in certain cases.

Section 24 creates s. 662.133, F.S., to require certain officers, directors, or managers of a licensed family trust company or a family trust company to make an oath, affirmation, affidavit, or acknowledgment on behalf of the company in certain circumstances.

Section 25 creates s. 662.134, F.S., to prohibit a family trust company from advertising to the public.

Section 26 creates s. 662.135, F.S., to provide that a licensed family trust company is not required to post a bond to serve as a court-appointed fiduciary.

Section 27 creates s. 662.140, F.S., to authorize the office to adopt rules.

Section 28 creates s. 662.141, F.S., to authorize the office to conduct examinations and investigations; to require that family trust companies be examined at least once every 18 months; to authorize the office to accept an independent audit in lieu of conducting an examination; to require the office to examine the books and records of a family trust company or licensed family trust company; to authorize the office to rely on a certificate of trust, trust summary, or written statement in circumstances; to adopt rules relating to records and requirements; to authorize the office to examine the books and records of a foreign licensed family trust company; to require family trust companies to pay examination fees tied to actual costs incurred by the office; to provide a penalty for late payment and to authorize an administrative fine if late payment is intentional.

Section 29 creates s. 662.142, F.S., to provide for license revocation, to specify acts and conduct that constitute grounds for revocation and to authorize the office to suspend a license pending revocation.

Section 30 creates s. 662.143, F.S., to authorize the office to issue a cease and desist order and an emergency cease and desist order.

Section 31 creates s. 662.144, F.S., to authorize the office to collect fines for the failure to submit required reports.

Section 32 creates s. 662.145, F.S., to provide grounds for the removal of an officer, director, manager, employee, or agent of a licensed family trust company or a family trust company.

Section 33 creates s. 662.146, F.S., to provide for the confidentiality of certain family trust company books and records.

Section 34 creates s. 662.147, F.S., to provide requirements for books and records of family trust companies; to require the office to retain certain records for a certain time; to allow the introduction of certain copies into evidence; to require the office to establish a schedule of fees for such copies.

Section 35 creates s. 662.150, F.S., to provide for the domestication of a foreign family trust company.

Section 36 creates s. 662.151, F.S., to provide for the registration of a foreign licensed family trust company.

Section 37 amends s. 120.80, F.S., to add licensed family trust companies to the entities regulated by the office that are exempted from licensing timeframes under ch. 120, F.S.

Section 38 amends s. 736.0802, F.S., to provide circumstances under which certain trust transactions are not voidable by a beneficiary affected by a transaction; to provide circumstances under which certain transactions involving the investment or management of trust property are not presumed to be affected by conflicts of interest; to provide an exception.

Section 39 amends s. 744.351, F.S., to exempt a family trust company from certain bond requirements and to apply those requirements to licensed family trust companies and foreign licensed family trust companies.

Section 40 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires the following fees to be deposited into the Financial Institutions Regulatory Trust Fund:

- Initial application fees (\$5,000 for FTCs and foreign-licensed FTCs and \$10,000 for licensed FTCs);
- Annual renewal fees (\$750 for FTCs; \$1,500 for licensed FTCs; and \$1,000 for licensed FTCs); and
- Examination fees to be paid by licensees and registrants.

However, according to the OFR, the revenue impact is indeterminate since the number of applications for license or registration is unknown.²⁶

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill's proponents expect that as a result of this legislation, high net worth families who are not located in Florida may select Florida as the jurisdiction to establish FTCs, which may benefit the investment, accounting, legal and advisory support services for these FTCs and family businesses.²⁷

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.

²⁶ OFR bill analysis of HB 1267 (received March 12, 2014), on file with the Insurance & Banking Subcommittee staff.

²⁷ Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper on Proposed Family Trust Companies Act, new Florida Statutes Chapter 659 and Legislative Position Request Form*, on file with the Insurance & Banking Subcommittee staff.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides general rulemaking authority (section 27), specific rulemaking authority to establish required records to be maintained to demonstrate conformity as a FTC or licensed FTC, and specific rulemaking authority to address notification to affiliated parties regarding the rescission or modification of orders of suspension or prohibition.

Lines 1035, 1069, and 1082 refer to the "office" in terms of rulemaking, but should refer to the Financial Services Commission, which is the rulemaking body for the OFR.²⁸ This will be addressed in the anticipated strike-all amendment (see Drafting Issues or Other Comments).

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Estate and Trust Planning Committee of the Real Property, Probate, & Trust Law Section and the Tax Law Section of the Florida Bar support this bill.

A strike-all amendment is anticipated to address numerous technical issues in the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²⁸ Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the 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.

1 A bill to be entitled
 2 An act relating to family trust companies; creating
 3 chapter 662, F.S.; creating s. 662.10, F.S.; providing
 4 a short title; creating s. 662.102, F.S.; providing
 5 the purpose of the act; creating s. 662.111, F.S.;
 6 defining terms; creating s. 662.112, F.S.; providing
 7 for the calculation of kinship; creating s. 662.113,
 8 F.S.; providing for the applicability of financial
 9 institutions codes; creating s. 662.114, F.S.;
 10 exempting a family trust company or foreign licensed
 11 family trust company from licensure; creating s.
 12 662.115, F.S.; providing for the applicability of the
 13 chapter to a family trust company or foreign licensed
 14 family trust company; creating s. 662.120, F.S.;
 15 specifying the maximum number of designated relatives
 16 allowed for a family trust company and a licensed
 17 family trust company; creating s. 662.121, F.S.;
 18 providing procedures for applying for a family trust
 19 company license; requiring a fee; creating s.
 20 662.1215, F.S.; providing for investigations of
 21 applicants by the Office of Financial Regulation;
 22 creating s. 662.122, F.S.; providing procedures for
 23 the registration of a family trust company or a
 24 foreign licensed family trust company; requiring a
 25 fee; creating s. 662.1225, F.S.; providing
 26 requirements for a family trust company, licensed

27 family trust company, and foreign licensed family
 28 trust company; creating s. 662.123, F.S.; requiring
 29 organizational documents to include certain
 30 provisions; authorizing the use of the term "trust";
 31 creating s. 662.124, F.S.; requiring a minimum amount
 32 of owners' equity; creating s. 662.125, F.S.; vesting
 33 exclusive authority to manage a family trust company
 34 or licensed family trust company in a board of
 35 directors or managers; providing for appointment of
 36 directors and managers; requiring certain notice to
 37 the office in specified circumstances; requiring the
 38 office to issue a notice of disapproval of a proposed
 39 appointment in specified circumstances; authorizing
 40 the office to obtain criminal history information;
 41 creating s. 662.126, F.S.; requiring that licensed
 42 family trust companies procure and maintain fidelity
 43 bonds or specified minimum owners' equity and errors
 44 and omissions insurance; authorizing a family trust
 45 company that is not licensed to procure and maintain
 46 such coverage; authorizing licensed and unlicensed
 47 family trust companies to procure and maintain other
 48 insurance policies; creating s. 662.127, F.S.;
 49 requiring certain books and records to be segregated;
 50 creating s. 662.128, F.S.; requiring annual license
 51 and registration renewal; requiring a fee; creating s.
 52 662.129, F.S.; providing for the discontinuance of a

53 licensed family trust company; creating s. 662.130,
 54 F.S.; authorizing family trust companies to conduct
 55 certain activities; creating s. 662.131, F.S.;
 56 prohibiting certain activities on the part of family
 57 trust companies; creating s. 662.132, F.S.; imposing
 58 certain requirements on the assets that form the
 59 minimum capital of licensed family trust companies and
 60 family trust companies; authorizing such trust
 61 companies to purchase or rent real or personal
 62 property, invest funds, and, while acting as a
 63 fiduciary, make certain purchases; imposing a
 64 restriction on that authorization; clarifying the
 65 degree of prudence required of fiduciaries;
 66 restricting the authority of a fiduciary to purchase
 67 certain bonds or securities; specifying additional
 68 authority of fiduciaries; applying the duty of loyalty
 69 to family trust companies in certain cases; creating
 70 s. 662.133, F.S.; requiring certain officers,
 71 directors, or managers of a licensed family trust
 72 company or a family trust company to make an oath,
 73 affirmation, affidavit, or acknowledgment on behalf of
 74 the company in certain circumstances; creating s.
 75 662.134, F.S.; prohibiting a family trust company from
 76 advertising to the public; creating s. 662.135, F.S.;
 77 providing that a licensed family trust company is not
 78 required to post a bond to serve as a court-appointed

79 | fiduciary; creating s. 662.140, F.S.; authorizing the
 80 | office to adopt rules; creating s. 662.141, F.S.;
 81 | authorizing the office to conduct examinations and
 82 | investigations; requiring that family trust companies
 83 | be examined at least once every 18 months; authorizing
 84 | the office to accept an independent audit in lieu of
 85 | conducting an examination; requiring the office to
 86 | examine the books and records of a family trust
 87 | company or licensed family trust company; authorizing
 88 | the office to rely on a certificate of trust, trust
 89 | summary, or written statement in certain circumstances
 90 | and to adopt rules relating to records and
 91 | requirements; authorizing the office to examine the
 92 | books and records of a foreign licensed family trust
 93 | company; requiring family trust companies to pay
 94 | examination fees tied to actual costs incurred by the
 95 | office; providing a penalty for late payment and
 96 | authorizing an administrative fine if late payment is
 97 | intentional; creating s. 662.142, F.S.; providing for
 98 | license revocation; specifying acts and conduct that
 99 | constitute grounds for revocation; authorizing the
 100 | office to suspend a license pending revocation;
 101 | creating s. 662.143, F.S.; authorizing the office to
 102 | issue a cease and desist order and an emergency cease
 103 | and desist order; creating s. 662.144, F.S.;
 104 | authorizing the office to collect fines for the

105 failure to submit required reports; creating s.
 106 662.145, F.S.; providing grounds for the removal of an
 107 officer, director, manager, employee, or agent of a
 108 licensed family trust company or a family trust
 109 company; creating s. 662.146, F.S.; providing for the
 110 confidentiality of certain company books and records;
 111 creating s. 662.147, F.S.; providing requirements for
 112 books and records of family trust companies; requiring
 113 the office to retain certain records for a specified
 114 time; allowing the introduction of certain copies into
 115 evidence; requiring the office to establish a schedule
 116 of fees for such copies; creating s. 662.150, F.S.;
 117 providing for the domestication of a foreign family
 118 trust company; creating s. 662.151, F.S.; providing
 119 for the registration of a foreign licensed family
 120 trust company; amending s. 120.80, F.S.; adding
 121 licensed family trust companies to the entities
 122 regulated by the office that are exempted from
 123 licensing timeframes under ch. 120, F.S.; amending s.
 124 736.0802, F.S.; providing circumstances under which
 125 certain trust transactions are not voidable by a
 126 beneficiary affected by a transaction; providing
 127 circumstances under which certain transactions
 128 involving the investment or management of trust
 129 property are not presumed to be affected by conflicts
 130 of interest; providing an exception; amending s.

131 744.351, F.S.; exempting a family trust company from
 132 certain bond requirements and applying those
 133 requirements to licensed family trust companies and
 134 foreign licensed family trust companies; providing a
 135 contingent effective date.

136

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

138

139 Section 1. Chapter 662, Florida Statutes, consisting of
 140 ss. 662.10-662.151, Florida Statutes, to be entitled Family
 141 Trust Companies, is created.

142 Section 2. Section 662.10, Florida Statutes, is created to
 143 read:

144 662.10 Short Title.—This chapter may be cited as the
 145 "Florida Family Trust Company Act."

146 Section 3. Section 662.102, Florida Statutes, is created
 147 to read:

148 662.102 Purpose.—The purpose of the Family Trust Company
 149 Act is to establish requirements for licensing private trust
 150 companies, to provide regulation of those persons who provide
 151 fiduciary services to family members of no more than two
 152 families and their related interests as a private family trust
 153 company, and establish the degree of regulatory oversight
 154 required of the Office of Financial Regulation over such
 155 companies. Unlike trust companies formed under chapter 658,
 156 there is no public interest to be served outside of ensuring

157 that fiduciary activities performed by a family trust company
 158 are restricted to family members and their related interests and
 159 as otherwise provided for in this chapter. Therefore, family
 160 trust companies are not financial institutions within the
 161 meaning of the financial institutions codes and licensure of
 162 these companies pursuant to chapters 658 and 660 should not be
 163 required as it would not promote the purposes of the codes as
 164 set forth in s. 655.001. Consequently, the Office of Financial
 165 Regulation is not responsible for regulating family trust
 166 companies to ensure their safety and soundness, and the
 167 responsibility of the office is limited to ensuring that
 168 fiduciary services provided by such companies are restricted to
 169 family members and related interests and not to the general
 170 public.

171 Section 4. Section 662.111, Florida Statutes, is created
 172 to read:

173 662.111 Definitions.—As used in this chapter, the term:

174 (1) "Applicant" means the corporation or limited liability
 175 company on whose behalf an application for a license to operate
 176 as a licensed family trust company is submitted under s.
 177 662.121.

178 (2) "Authorized representative" means an officer or
 179 director of a family trust company, licensed family trust
 180 company, or foreign licensed family trust company, if organized
 181 as a corporation; or a manager, officer, or member of a family
 182 trust company, licensed family trust company, or foreign

183 licensed family trust company, if organized as a limited
 184 liability company.

185 (3) "Capital account" means the aggregate value of
 186 unimpaired capital stock based on the par value of the shares,
 187 plus any unimpaired surplus and undivided profits or retained
 188 earnings of a family trust company organized as a corporation;
 189 or the initial cash investment remitted for membership interests
 190 in a family trust company organized as a limited liability
 191 company, plus any undivided profits or retained earnings of the
 192 limited liability company. For the purposes of determining
 193 insolvency or imminent insolvency, the term does not include
 194 allowances for loan or lease loss reserves, intangible assets,
 195 subordinated debt, deferred tax assets, or similar assets.

196 (4) "Capital stock" means the shares of stock issued to
 197 create nonwithdrawable capital for a corporation, or membership
 198 interests issued to create nonwithdrawable capital for a limited
 199 liability company.

200 (5) "Collateral kinship" means a relationship that is not
 201 lineal but derives from a common ancestor.

202 (6) "Commercial banking" means the business of receiving
 203 demand and time deposits, paying checks, or lending money to the
 204 public.

205 (7) "Controlling stockholder or member" means an
 206 individual who owns or has the ability or power to directly or
 207 indirectly vote at least 10 percent or more of the outstanding
 208 shares, membership interest, or membership units of the family

209 trust company or licensed family trust company.

210 (8) "Designated relative" means a common ancestor of a
 211 family, who may be a living or deceased person, and who is so
 212 designated in the application for a license or annual license.

213 (9) "Family affiliate" means a company or other entity in
 214 which one or more family members own, control, or have the power
 215 to directly or indirectly vote more than 50 percent of a class
 216 of voting securities of that company or other entity.

217 (10) "Family member" means:

218 (a) A designated relative.

219 (b) A person within the fourth degree of lineal kinship to
 220 a designated relative of a family trust company, or a person
 221 within the sixth degree of lineal kinship to a designated
 222 relative of a licensed family trust company.

223 (c) A person within the seventh degree of collateral
 224 kinship to a designated relative of a family trust company, or a
 225 person within the ninth degree of collateral kinship to a
 226 designated relative of a licensed family trust company.

227 (d) The spouse or former spouse of an individual
 228 qualifying as a family member and an individual who is within
 229 the fifth degree of lineal kinship to that spouse or former
 230 spouse.

231 (e) A family affiliate.

232 (f) A trust established by a family member if the trust is
 233 funded exclusively by one or more family members. A trust to
 234 which property has been transferred as a result of a family

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235 member's exercise of a power of appointment shall be deemed
 236 established by that family member if all qualified beneficiaries
 237 of the appointee trust are family members.

238 (g) A trust established by an individual who is not a
 239 family member if all of the noncharitable qualified
 240 beneficiaries of the trust are family members, except that a
 241 trust composed exclusively of nonindividual qualified
 242 beneficiaries is considered to be a family member if all of the
 243 nonindividual qualified beneficiaries are charitable foundations
 244 or other charitable entities as described in paragraph (j).

245 (h) The probate estate of a family member.

246 (i) The probate estate of an individual who is not a
 247 family member if all of the noncharitable beneficiaries of the
 248 estate are family members, except that an estate composed
 249 exclusively of nonindividual beneficiaries is considered to be a
 250 family member if all of the nonindividual beneficiaries are
 251 charitable foundations or other charitable entities as described
 252 in paragraph (j).

253 (j) A charitable foundation or other charitable entity in
 254 which a majority of the governing body is composed of family
 255 members.

256 (11) "Family trust company" means a corporation or limited
 257 liability company that:

258 (a) Is exclusively owned by one or more family members.

259 (b) Is organized or qualified to do business in this
 260 state.

261 (c) Acts or proposes to act as a fiduciary to serve one or
 262 more family members.

263 (d) Does not serve as a fiduciary for a person, entity,
 264 trust, or estate that is not a family member, except that it may
 265 serve as a fiduciary for up to 35 individuals who are not family
 266 members if the individuals are current or former employees of
 267 the family trust company or one or more trusts, companies, or
 268 other entities that are family members.

269 (12) "Family trust company-affiliated party" means:

270 (a) A director, officer, manager, employee, or controlling
 271 stockholder or member of a family trust company, licensed family
 272 trust company, or foreign licensed family trust company; or

273 (b) A stockholder, member, or any other person as
 274 determined by the office who participates in the affairs of a
 275 family trust company, licensed family trust company, or foreign
 276 licensed family trust company.

277 (13) "Financial institutions codes" has the same meaning
 278 as provided in s. 655.005(1).

279 (14) "Foreign licensed family trust company" means a
 280 family trust company that:

281 (a) Is licensed by a state in the United States other than
 282 this state.

283 (b) Has its principal place of business in a jurisdiction
 284 in the United States other than this state.

285 (c) Is operated in accordance with family or private trust
 286 company laws of a jurisdiction other than this state.

287 (d) Is subject to statutory or regulatory mandated
 288 supervision by the jurisdiction in which the principal place of
 289 business is located.

290 (15) "Licensed family trust company" means a family trust
 291 company that operates in accordance with this chapter and has
 292 been issued a license that has not been revoked or suspended by
 293 the office.

294 (16) "Lineal kinship" means a family member who is in the
 295 direct line of ascent or descent from a designated relative.

296 (17) "Office" means the Office of Financial Regulation.

297 (18) "Officer" of a family trust company means an
 298 individual, regardless of whether the individual has an official
 299 title or receives a salary or other compensation, who may
 300 participate in the major policymaking functions of a family
 301 trust company, other than as a director. The term does not
 302 include an individual who may have an official title and
 303 exercise discretion in the performance of duties and functions,
 304 but who does not participate in determining the major policies
 305 of the family trust company and whose decisions are limited by
 306 policy standards established by other officers, regardless of
 307 whether the policy standards have been adopted by the board of
 308 directors. The chair of the board of directors, the president,
 309 the chief executive officer, the chief financial officer, and
 310 all executive vice presidents of a family trust company, and the
 311 senior trust officer of a family trust company, are presumed to
 312 be executive officers unless such officer is excluded, by

313 resolution of the board of directors or members or by the bylaws
 314 or operating agreement of the family trust company, other than
 315 in the capacity of a director, from participating in major
 316 policymaking functions of the family trust company, and the
 317 individual holding such office so excluded does not actually
 318 participate therein.

319 (19) "Qualified beneficiary" has the same meaning as
 320 provided in s. 736.0103.

321 Section 5. Section 662.112, Florida Statutes, is created
 322 to read:

323 662.112 Degrees of kinship.—Degrees of kinship shall be
 324 calculated by adding the number of steps from a designated
 325 relative through each person to the family member, directly in
 326 the case of lineal kinship, or through the common ancestor in
 327 the case of collateral kinship.

328 Section 6. Section 662.113, Florida Statutes, is created
 329 to read:

330 662.113 Applicability of the financial institutions
 331 codes.—Except as expressly provided in this chapter, other
 332 chapters of the financial institutions codes do not apply to a
 333 family trust company, licensed family trust company, or foreign
 334 licensed family trust company.

335 Section 7. Section 662.114, Florida Statutes, is created
 336 to read:

337 662.114 Family trust company and foreign licensed family
 338 trust company licensing not required.—A family trust company or

339 foreign licensed family trust company is not required to be a
 340 licensed family trust company.

341 Section 8. Section 662.115, Florida Statutes, is created
 342 to read:

343 662.115 Applicability of chapter to a family trust company
 344 or foreign licensed family trust company.-

345 (1) A family trust company that is not a licensed family
 346 trust company or a foreign licensed family trust company is
 347 subject to the provisions of this chapter unless the provisions
 348 are expressly limited in applicability to a licensed family
 349 trust company or foreign licensed family trust company.

350 (2) A licensed family trust company is subject to the
 351 provisions of this chapter that expressly refer to a licensed
 352 family trust company or that are not expressly limited to a
 353 family trust company that is not a licensed family trust company
 354 or to a foreign licensed family trust company.

355 (3) A foreign licensed family trust company is subject to
 356 the provisions of this chapter that expressly state that such
 357 provisions apply to a foreign licensed family trust company.

358 Section 9. Section 662.120, Florida Statutes, is created
 359 to read:

360 662.120 Maximum number of designated relatives.-

361 (1) A family trust company may not have more than one
 362 designated relative.

363 (2) A licensed family trust company may not have more than
 364 two designated relatives, and the designated relatives may not

365 have a common ancestor within five generations.

366 Section 10. Section 662.121, Florida Statutes, is created
367 to read:

368 662.121 Application for licensed family trust company;
369 fees.—An applicant seeking to operate as a licensed family trust
370 company must file an application with the office on forms
371 prescribed by the office, accompanied by a nonrefundable \$10,000
372 application fee to be deposited into the Financial Institutions'
373 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of
374 administering this chapter. The application must contain or be
375 accompanied by:

376 (1) The name of the proposed licensed family trust
377 company.

378 (2) A copy of the articles of incorporation or articles of
379 organization and the bylaws or operating agreement of the
380 proposed licensed family trust company.

381 (3) The physical address and mailing address of the
382 proposed licensed family trust company, which must be located in
383 this state.

384 (4) A statement describing in detail the services that
385 will be provided to family members by the proposed licensed
386 family trust company.

387 (5) The name and biographical information of each
388 individual who will initially serve as a director, officer,
389 manager, or member acting in a managerial capacity of the
390 proposed licensed family trust company.

391 (6) The name and biographical information of each
 392 individual who owns or has the ability or power to directly or
 393 indirectly vote at least 10 percent or more of the outstanding
 394 shares, membership interest, or membership units of the proposed
 395 licensed family trust company.

396 (7) The names of the designated relatives.

397 (8) The amount of the initial owners' equity of the
 398 proposed licensed family trust company and the form in which the
 399 capital was paid and will be maintained.

400 (9) The type and amount of bonds or insurance that will be
 401 procured and maintained on directors, officers, managers, or
 402 members acting in a managerial capacity or employees pursuant to
 403 s. 662.126.

404 (10) A statement signed by the applicant, or by the
 405 individual signing on behalf of the proposed licensed family
 406 trust company, under penalty of perjury, affirming that the
 407 following statements are true:

408 (a) The proposed licensed family trust company is not
 409 currently transacting business with the general public.

410 (b) No director, officer, manager, or member served as a
 411 director, officer, or manager, or acted in a managerial
 412 capacity, for a trust company or any other financial institution
 413 that had a license issued under the financial institutions codes
 414 or by the Federal Government or any other state, the District of
 415 Columbia, a territory of the United States, or a foreign country
 416 that was suspended or revoked within the 10 years preceding the

417 date of the application.

418 (c) No director, officer, manager, or member acting in a
 419 managerial capacity has been convicted of, or pled nolo
 420 contendere to a violation of the financial institutions codes,
 421 including s. 655.50, chapter 896, or similar state or federal
 422 law or related rule.

423 (d) No director, officer, manager, or member acting in a
 424 managerial capacity has had a professional license suspended or
 425 revoked within the 10 years preceding the date of the
 426 application.

427 (e) All information contained in the application is true
 428 and correct to the best knowledge of the individual signing the
 429 application on behalf of the proposed licensed family trust
 430 company.

431 (11) Any other additional information reasonably required
 432 by the office.

433 Section 11. Section 662.1215, Florida Statutes, is created
 434 to read:

435 662.1215 Investigation of license applicants.-

436 (1) For the purpose of this section, the application is
 437 not deemed to be filed until the applicant has provided the
 438 office with all information required to be included pursuant to
 439 s. 662.121.

440 (2) Upon filing an application for a license to operate as
 441 a licensed family trust company, the office shall conduct an
 442 investigation to confirm:

443 (a) That the persons who will serve as directors or
 444 officers of the corporation or, if the applicant is a limited
 445 liability company, managers or members acting in a managerial
 446 capacity, have not:

447 1. Been convicted of, or entered a plea of nolo contendere
 448 to, a crime involving fraud, misrepresentation, or moral
 449 turpitude;

450 2. Been convicted of, or pled nolo contendere to, a
 451 violation of the financial institutions codes, including s.
 452 655.50, chapter 896, or similar state or federal law;

453 3. Been directors or executive officers of a financial
 454 institution licensed or chartered under the financial
 455 institution's codes or by the Federal Government or any other
 456 state, the District of Columbia, a territory of the United
 457 States, or a foreign country, whose license or charter was
 458 suspended or revoked within the 10 years preceding the date of
 459 the application;

460 4. Had a professional license suspended or revoked within
 461 the 10 years preceding the date of the application; or

462 5. Made a false statement of material fact on the
 463 application.

464 (b) That the name of the proposed company complies with s.
 465 662.123.

466 (c) That capital accounts of the proposed company conform
 467 to s. 662.124 and that fidelity bonds and errors and omissions
 468 insurance coverage required under s. 662.126 are issued and

469 effective.

470 (d) That the articles of incorporation or articles of
 471 organization conform to s. 662.123(1).

472 (3) If the investigation required under this section
 473 confirms that the applicant has met the requirements of ss.
 474 662.123(1), 662.124, 662.126, and 662.1225, and that the persons
 475 who will serve as directors or officers of the corporation or
 476 the managers or members acting in a managerial capacity of the
 477 limited liability company, as applicable, satisfy the criteria
 478 set forth in subsection (2), the office shall issue a license
 479 authorizing the applicant to operate as a licensed family trust
 480 company.

481 (4) The office may obtain criminal history information
 482 from the National Crime Information Center or from the
 483 Department of Law Enforcement, as necessary, for conducting the
 484 investigation required under this section.

485 (5) If the office determines the criteria in subsection
 486 (2) have not been met, the office shall serve notice of its
 487 intent to deny the application and of the applicant's
 488 opportunity to request a hearing pursuant to ss. 120.569 and
 489 120.57.

490 Section 12. Section 662.122, Florida Statutes, is created
 491 to read:

492 662.122 Registration of a family trust company or a
 493 foreign licensed family trust company.-

494 (1) A family trust company that is not applying under s.

495 662.121 to become a licensed family trust company must register
 496 with the office before beginning operations in this state. The
 497 registration application must:

498 (a) Provide the name of the designated relative.

499 (b) State that the family trust company is a family trust
 500 company as defined under this chapter and that its operations
 501 will comply with ss. 662.1225, 662.131, and 662.134.

502 (c) Provide the current telephone number and street
 503 address of the physical location in this state of its principal
 504 place of operations where its books and records will be
 505 maintained.

506 (d) List the name and current street address in this state
 507 of its registered agent.

508 (2) A foreign licensed family trust company must register
 509 with the office before beginning operations in this state.

510 (a) The registration application must state that its
 511 operations will comply with ss. 662.1225, 662.131, and 662.134
 512 and that it is currently in compliance with the family trust
 513 company laws and regulations of its principal jurisdiction.

514 (b) The registration application must provide:

515 1. The current telephone number and street address of the
 516 physical location of its principal place of business in its
 517 principal jurisdiction.

518 2. The current telephone number and street address of the
 519 physical location in this state of its principal place of
 520 operations where its books and records pertaining to its

521 | operations in this state will be maintained.

522 | 3. The current telephone number and street address of the
 523 | physical location of any other offices located within this
 524 | state.

525 | 4. The name and current street address in this state of
 526 | its registered agent.

527 | (c) The registration must include a certified copy of a
 528 | certificate of good standing, or an equivalent document,
 529 | authenticated by the official having custody of records in the
 530 | jurisdiction where the foreign licensed family trust company is
 531 | organized, along with satisfactory proof that the company is
 532 | organized in a manner similar to a family trust company as
 533 | defined under this chapter.

534 | (3) The registration application required under this
 535 | section for a family trust company and a foreign licensed family
 536 | trust company must be accompanied by a registration fee of
 537 | \$5,000.

538 | (4) Registration applications required by this section
 539 | shall be submitted on a form prescribed by the office and be
 540 | signed, under penalty of perjury, by an officer or director if
 541 | the family trust company is organized as a corporation, or by a
 542 | manager, officer, or member if the family trust company is
 543 | organized as a limited liability company.

544 | (5) All fees received by the office pursuant to this
 545 | section shall be deposited into the Financial Institutions'
 546 | Regulatory Trust Fund pursuant to s. 655.049 for purposes of

547 administering this chapter.

548 Section 13. Section 662.1225, Florida Statutes, is created
549 to read:

550 662.1225 Requirements for a family trust company, licensed
551 family trust company, and foreign licensed family trust
552 company.-

553 (1) A family trust company and a licensed family trust
554 company shall maintain:

555 (a) A principal office physically located in this state
556 where original or true copies of all records and accounts of the
557 family trust company or licensed family trust company may be
558 accessed and made readily available for examination by the
559 office in accordance with this chapter. A family trust company
560 or licensed family trust company may also maintain one or more
561 branch offices within or outside of this state.

562 (b) A registered agent who has an office in this state at
563 the street address of the registered agent.

564 (c) All applicable state and local business licenses,
565 charters, and permits.

566 (d) A deposit account with a state-chartered or national
567 financial institution that has a principal or branch office in
568 this state.

569 (2) In order to operate in this state, a foreign licensed
570 family trust company must be in good standing in its principal
571 jurisdiction and maintain:

572 (a) An office physically located in this state where

573 original or true copies of all records and accounts of the
 574 foreign licensed family trust company pertaining to its
 575 operations in this state may be accessed and made readily
 576 available for examination by the office in accordance with this
 577 chapter.

578 (b) A registered agent who has an office in this state at
 579 the street address of the registered agent.

580 (c) All applicable state and local business licenses,
 581 charters, and permits.

582 (d) A deposit account with a state-chartered or national
 583 financial institution that has a principal or branch office in
 584 this state.

585 Section 14. Section 662.123, Florida Statutes, is created
 586 to read:

587 662.123 Organizational documents; use of term "family
 588 trust" in name.-

589 (1) The articles of incorporation, certificate of
 590 incorporation, or articles of organization of a family trust
 591 company or licensed family trust company must contain:

592 (a) The name adopted by the company, which must include
 593 the term "family trust" and which distinguishes it from any
 594 other trust company formed in this state or engaged in the
 595 business of a trust company, family trust company, or licensed
 596 family trust company in this state. This paragraph does not
 597 apply to a foreign licensed family trust company using a
 598 fictitious name, that is registered and maintained pursuant to

599 s. 865.09 and that distinguishes it.

600 (b) The purpose for which the company is formed, which
 601 must clearly identify the restricted activities permissible to a
 602 family trust company or licensed family trust company under this
 603 chapter.

604 (c) A statement that the company will not offer its
 605 services to the general public.

606 (d) A statement affirming that the articles of
 607 incorporation, certificate of incorporation, or articles of
 608 organization will not be amended without the prior written
 609 consent of the office.

610 (2) A proposed amendment to the articles of incorporation,
 611 articles of organization, bylaws, or operating agreement of a
 612 family trust company or licensed family trust company must be
 613 submitted to the office for review at least 30 days before it is
 614 filed or effective. An amendment is not considered filed or
 615 effective if the office issues a notice of disapproval with
 616 respect to the proposed amendment.

617 (3) The term "family trust" in the name adopted by a
 618 family trust company or licensed family trust company does not
 619 disqualify the name from being allowed under s. 605.0112, s.
 620 607.0401, or s. 608.406.

621 Section 15. Section 662.124, Florida Statutes, is created
 622 to read:

623 662.124 Minimum amount of owners' equity required.—

624 (1) A licensed family trust company that has one

625 designated relative may not be organized or operated with an
 626 owners' capital account of less than \$250,000. The minimum
 627 owners' equity shall be increased to \$350,000 if two designated
 628 relatives of the licensed family trust company are named in the
 629 application for a license or in the annual license renewal. A
 630 family trust company may not be organized or operated with
 631 owners' equity of less than \$250,000.

632 (2) The full amount of the initial minimum owners' equity
 633 of a family trust company or licensed family trust company must
 634 be composed of one or more of the asset groups described in s.
 635 662.132(1)(a), exclusive of all organization expenses.

636 Section 16. Section 662.125, Florida Statutes, is created
 637 to read:

638 662.125 Directors or managers.-

639 (1) Exclusive authority to manage a family trust company
 640 or licensed family trust company is vested in a board of
 641 directors, if a corporation, or a board of directors or
 642 managers, if a limited liability company.

643 (2) A family trust company or licensed family trust
 644 company shall have at least three directors, if a corporation,
 645 or three directors or managers, if a limited liability company.
 646 At least one director or manager of the company must be a
 647 resident of this state.

648 (3) The licensed family trust company shall notify the
 649 office of the proposed appointment of an individual to the board
 650 of directors or addition as a member, or the appointment or

651 employment of an individual as an officer or manager or member
 652 acting in a managerial capacity or equivalent position, at least
 653 60 days before such appointment or employment becomes effective,
 654 if the company:

655 (a) Has been licensed for less than 2 years.

656 (b) Has undergone a change in control within the preceding
 657 2 years.

658 (c) Is operating under a cease and desist order.

659

660 The notification must include the name and such biographical
 661 information as the office may reasonably require.

662 (4) A licensed family trust company may not appoint an
 663 individual to the board of directors, add a member, or appoint
 664 or employ an officer or manager or member acting in a managerial
 665 capacity or equivalent, if the office issues a notice of
 666 disapproval with respect to that person.

667 (5) The office shall issue a notice of disapproval if the
 668 office finds that the proposed appointment or employment of a
 669 person is not in the best interests of the members or
 670 shareholders, or beneficiaries of fiduciary accounts of the
 671 licensed family trust company, or beneficiaries of services
 672 rendered by a licensed family trust company.

673 (6) The office may obtain criminal history information
 674 from the National Crime Information Center or from the
 675 Department of Law Enforcement as necessary to fulfill its
 676 responsibilities under this section.

677 Section 17. Section 662.126, Florida Statutes, is created
 678 to read:

679 662.126 Fidelity bonds; insurance.-

680 (1) The directors or managers of a licensed family trust
 681 company shall procure and maintain fidelity bonds on all active
 682 officers, directors, managers, members acting in a managerial
 683 capacity, and employees of the company, regardless of whether
 684 they receive a salary or other compensation from the company, in
 685 order to indemnify the company against loss because of a
 686 dishonest, fraudulent, or criminal act or omission on their
 687 part, whether acting alone or in combination with other persons.

688 (2) Each fidelity bond shall be issued in an amount of at
 689 least \$1 million.

690 (3) In lieu of the fidelity bonds required under
 691 subsection (1), a licensed family trust company may increase its
 692 minimum owners' equity required under s. 662.124 by \$1 million
 693 so that if it has one designated relative it is organized or
 694 operated with an owners' equity of at least \$1.25 million, or if
 695 it has two designated relatives it is organized or operated with
 696 an owners' equity of at least \$1.35 million.

697 (4) The licensed family trust company shall also procure
 698 and maintain an errors and omissions insurance policy of at
 699 least \$1 million in which it is listed as the insured to cover
 700 the acts of officers, directors, managers, and members acting in
 701 a managerial capacity, regardless of whether the person receives
 702 a salary or other compensation from the company.

703 (5) A family trust company or licensed family trust
 704 company may also procure and maintain other insurance policies
 705 necessary or desirable in connection with the business of the
 706 company, including, but not limited to, one or more casualty
 707 insurance policies.

708 (6) A family trust company that is not a licensed family
 709 trust company may procure and maintain fidelity bonds as
 710 described in this section.

711 (7) A family trust company that is not a licensed family
 712 trust company may procure and maintain errors and omissions
 713 insurance coverage as described in this section.

714 Section 18. Section 662.127, Florida Statutes, is created
 715 to read:

716 662.127 Segregation of books, records, and assets;
 717 fiduciary assets not liable.-

718 (1) Each family trust company and licensed family trust
 719 company shall maintain its fiduciary books and records separate
 720 and distinct from other records of the company and shall
 721 segregate all assets held in any fiduciary capacity from other
 722 assets of the company.

723 (2) Assets received or held in a fiduciary capacity by a
 724 family trust company or licensed family trust company are not
 725 subject to the debts or obligations of the company.

726 Section 19. Section 662.128, Florida Statutes, is created
 727 to read:

728 662.128 Annual renewal.-

729 (1) Within 30 days after the end of each calendar year,
 730 family trust companies, licensed family trust companies, and
 731 foreign licensed family trust companies shall file their annual
 732 renewal application with the office.

733 (2) The license renewal application filed by a licensed
 734 family trust company must include a verified statement by an
 735 officer of the company that:

736 (a) The licensed family trust company operated in full
 737 compliance with this chapter, chapter 896, and related rules.
 738 The application must include proof acceptable to the office that
 739 the company is a family trust company as defined under this
 740 chapter.

741 (b) Describes any material changes to its operations,
 742 principal place of business, directors, officers, managers,
 743 members acting in a managerial capacity, and designated
 744 relatives since the end of the preceding calendar year.

745 (3) The registration renewal application filed by a family
 746 trust company must include a verified statement by an officer of
 747 the company that it is a family trust company as defined under
 748 this chapter and that its operations are in compliance with ss.
 749 662.1225, 662.131, 662.134, and related rules, and include the
 750 name of its designated relative or relatives, if applicable, and
 751 the street address for its principal place of business.

752 (4) The registration renewal application filed by a
 753 foreign licensed family trust company must include a verified
 754 statement by an officer of the company that its operations are

755 in compliance with ss. 662.1225, 662.131, and 662.134 and in
 756 compliance with the family trust company laws and regulations of
 757 its principal jurisdiction. It must also provide:

758 (a) The current telephone number and street address of the
 759 physical location of its principal place of business in its
 760 principal jurisdiction.

761 (b) The current telephone number and street address of the
 762 physical location in this state of its principal place of
 763 operations where its books and records pertaining to its
 764 operations in this state are maintained.

765 (c) The current telephone number and address of the
 766 physical location of any other offices located in this state.

767 (d) The name and current street address in this state of
 768 its registered agent.

769 (e) Documentation satisfactory to the office that the
 770 foreign licensed family trust company is in compliance with the
 771 family trust company laws and regulations of its principal
 772 jurisdiction.

773 (5) The annual renewal application shall be submitted on a
 774 form prescribed by the office and signed under penalty of
 775 perjury by an authorized representative.

776 (6) A fee of \$750 for a family trust company, \$1,500 for a
 777 licensed family trust company, and \$1,000 for a foreign licensed
 778 family trust company shall be submitted with the annual renewal
 779 application. All fees received by the office pursuant to this
 780 section shall be deposited into the Financial Institutions'

781 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of
 782 administering this chapter.

783 Section 20. Section 662.129, Florida Statutes, is created
 784 to read:

785 662.129 Discontinuing business.—If a licensed family trust
 786 company desires to discontinue business as a licensed family
 787 trust company, it must file with the office a certified copy of
 788 the resolution of the board of directors authorizing that
 789 action. Upon discharge from all fiduciary duties which it has
 790 undertaken, the company shall provide certification of such
 791 discharge and voluntarily relinquish its license to operate as a
 792 licensed family trust company to the office, whereupon it shall
 793 be released from any fidelity bonds that it maintained pursuant
 794 to s. 662.126(1).

795 Section 21. Section 662.130, Florida Statutes, is created
 796 to read:

797 662.130 Powers of family trust companies, licensed family
 798 trust companies, and foreign licensed family trust companies.—

799 (1) A family trust company and a licensed family trust
 800 company may:

801 (a) Act as a sole or copersonal representative, executor,
 802 or curator for probate estates being administered in a state or
 803 jurisdiction other than this state.

804 (b) Act as an attorney-in-fact or agent under a power of
 805 attorney, other than a power of attorney governed by chapter
 806 709.

807 (c) Act as an attorney in fact or agent under a power of
 808 attorney instrument, other than a power of attorney under
 809 chapter 709.

810 (d) In conformity with s. 660.41, act within or outside
 811 this state as a trustee; a committee, guardian, custodian,
 812 conservator, or other personal representative of a person,
 813 property, or estate; a registrar or transfer agent of or in
 814 connection with evidences of indebtedness and stocks, bonds, and
 815 other securities; fiscal or financial agent; an investment
 816 advisor; a receiver; a trustee in bankruptcy; an assignee for
 817 creditors; or a holder of any similar representative position in
 818 any other position of trust.

819 (e) Exercise the powers of a corporation or limited
 820 liability company incorporated or organized under the laws of
 821 this state, or qualified to transact business as a foreign
 822 corporation or limited liability company under the laws of this
 823 state, which are reasonably necessary to enable it to fully
 824 exercise, in accordance with commonly accepted customs and
 825 usages, a power conferred under this chapter.

826 (f) Delegate duties and powers, including investment
 827 functions under s. 518.112, in accordance with the powers
 828 granted to a trustee under chapter 736 or other applicable law,
 829 and retain agents, attorneys, accountants, investment advisers,
 830 or other individuals or entities to advise or assist the family
 831 trust company, licensed family trust company, or foreign
 832 licensed family trust company in the exercise of its powers and

833 duties under this chapter and chapter 736. Such exercise of
 834 power may include, but is not limited to, retaining a bank trust
 835 department, or a public trust company, other than another family
 836 trust company, licensed family trust company, or foreign
 837 licensed family trust company.

838 (g) Perform all acts necessary for exercising the powers
 839 enumerated in this section or authorized by this chapter and
 840 other applicable laws of this state.

841 (2) Except as otherwise provided in s. 662.131, a foreign
 842 licensed family trust company that is in good standing in its
 843 principal jurisdiction may exercise all the trust powers in this
 844 state that a Florida family trust company may exercise.

845 Section 22. Section 662.131, Florida Statutes, is created
 846 to read:

847 662.131 Prohibitions.—Notwithstanding any provision of
 848 this chapter, a family trust company, licensed family trust
 849 company, or foreign licensed family trust company may not:

850 (1) Engage in commercial banking; however, it may
 851 establish accounts at financial institutions for its own
 852 purposes or on behalf of family members to whom it provides
 853 services pursuant to this chapter.

854 (2) Engage in fiduciary services with the public unless
 855 licensed pursuant to chapter 658.

856 (3) Serve as a personal representative or a copersonal
 857 representative of a probate estate administered in this state.

858 (4) Serve as an attorney in fact or agent, including as a

859 co-attorney in fact or co-agent, under a power of attorney
 860 pursuant to chapter 709.

861 Section 23. Section 662.132, Florida Statutes, is created
 862 to read:

863 662.132 Investments.-

864 (1) The assets forming the minimum capital of a family
 865 trust company or licensed family trust company must:

866 (a) Consist of cash, United States Treasury obligations,
 867 or any combination thereof.

868 (b) Have an aggregate market value of at least 100 percent
 869 of the company's required owners' equity, as specified in s.
 870 662.124. If the aggregate market value of 100 percent of the
 871 company's required owners' equity is, at any time, less than the
 872 amount required under s. 662.124, the company has 5 business
 873 days to bring the owners' equity into compliance with s.
 874 662.124.

875 (2) A family trust company or licensed family trust
 876 company may purchase or rent real or personal property for use
 877 in the conduct of the business and other activities of the
 878 company.

879 (3) Notwithstanding any other provision of law, a family
 880 trust company or licensed family trust company may invest funds
 881 for its own account, other than those required or allowed under
 882 subsection (1) or subsection (2), in any type or character of
 883 equity securities, debt securities, or other assets.

884 (4) Notwithstanding any other law, a family trust company

885 or licensed family trust company may, while acting as a
 886 fiduciary, purchase directly from underwriters or distributors
 887 or in the secondary market:

888 (a) Bonds or other securities underwritten or distributed
 889 by:

890 1. The family trust company or licensed family trust
 891 company;

892 2. A family affiliate; or

893 3. A syndicate, including the family trust company,
 894 licensed family trust company, or family affiliate.

895 (b) Securities of an investment company, including a
 896 mutual fund, closed-end fund, or unit investment trust, as
 897 defined under the federal Investment Company Act of 1940, for
 898 which the family trust company or licensed family trust company
 899 acts as an advisor, custodian, distributor, manager, registrar,
 900 shareholder servicing agent, sponsor, or transfer agent.

901 (5) The authority granted in subsection (4) may be
 902 exercised only if:

903 (a) The investment is not expressly prohibited by the
 904 instrument, judgment, decree, or order establishing the
 905 fiduciary relationship.

906 (b) The family trust company or licensed family trust
 907 company procures in writing the consent of any cofiduciaries
 908 with discretionary investment powers to the investment.

909 (c) The family trust company or licensed family trust
 910 company discloses in writing to the person or persons to whom it

911 sends account statements its intent to exercise the authority
 912 granted in subsection (4) before the first exercise of that
 913 authority, and each such disclosure reflects:

914 1. The nature of any interest the family trust company or
 915 licensed family trust company has, or is reasonably expected to
 916 have, in the underwriting or distribution of bonds or securities
 917 purchased.

918 2. The nature and amount of any fee or other compensation
 919 received, or reasonably expected to be received, by the family
 920 trust company or licensed family trust company in connection
 921 with the transaction.

922 3. The nature of the relationship between the family trust
 923 company or licensed family trust company and an investment
 924 company described in paragraph (4) (b).

925 4. The nature and amount of any fee or other compensation
 926 received, or reasonably expected to be received, by the family
 927 trust company or licensed family trust company for providing
 928 services to an investment company described in paragraph (4) (b).

929 (6) Subsections (4) and (5) do not affect the degree of
 930 prudence required of fiduciaries under the laws of this state.
 931 However, a purchase of bonds or securities pursuant to
 932 subsections (4) and (5) is not presumed to be affected by a
 933 conflict between the fiduciary's personal and fiduciary
 934 interests if such purchase:

935 (a) Is negotiated at a fair price.

936 (b) Is in accordance with:

- 937 1. The interest of the qualified beneficiaries.
- 938 2. The purposes of the trusts.
- 939 (c) Otherwise complies with:
- 940 1. The prudent investor rule in s. 518.11, or other
 941 prudent investor or similar rule under other applicable law,
 942 unless such compliance is waived in accordance with s. 518.11 or
 943 other applicable law.
- 944 2. The terms of the instrument, judgment, decree, or order
 945 establishing the fiduciary relationship.
- 946 (7) Notwithstanding subsections (1)-(6), a family trust
 947 company or licensed family trust company may not, while acting
 948 as a fiduciary, purchase a bond or security issued by the
 949 company or an affiliate thereof unless:
- 950 (a) The family trust company or licensed family trust
 951 company is expressly authorized to do so by:
- 952 1. The terms of the instrument creating the trust;
- 953 2. A court order;
- 954 3. The written consent of the settlor of the trust for
 955 which the family trust company or licensed family trust company
 956 is serving as trustee; or
- 957 4. The written consent of every adult qualified
 958 beneficiary of the trust who, at the time of such purchase, is
 959 entitled to receive income under the trust or who would be
 960 entitled to receive a distribution of principal if the trust
 961 were terminated; and
- 962 (b) The purchase of the security is at a fair price and

963 complies with:

964 1. The prudent investor rule in s. 518.11, or other
 965 prudent investor or similar rule under other applicable law,
 966 unless such compliance is waived in accordance with s. 518.11 or
 967 other applicable law.

968 2. The terms of the instrument, judgment, decree, or order
 969 establishing the fiduciary relationship.

970 (8) Except as otherwise expressly limited by this section,
 971 a family trust company or licensed family trust company, while
 972 acting as a fiduciary, is also authorized, without limiting any
 973 powers otherwise conferred on fiduciaries by law, to do any of
 974 the following, which are not presumed to be affected by a
 975 conflict between the fiduciary's personal and fiduciary
 976 interests:

977 (a) Make an equity investment in a closely held entity
 978 that may or may not be marketable and that is directly or
 979 indirectly owned or controlled by one or more family members.

980 (b) Place a security transaction using a broker who is a
 981 family member.

982 (c) Enter into an agreement with a family member who is
 983 the settlor or a qualified beneficiary of a trust with respect
 984 to the appointment of the family trust company or licensed
 985 family trust company as a fiduciary of the trust, or with
 986 respect to the compensation of the family trust company and
 987 licensed family trust company for service as a fiduciary.

988 (d) Transact business with a family member.

989 (e) Transact business with or invest in any asset of
 990 another trust, estate, guardianship, or conservatorship for
 991 which the family trust company or licensed family trust company
 992 is a fiduciary or in which a family member has an interest.

993 (f) Deposit trust assets in a financial institution that
 994 is owned, controlled, or operated by one or more family members.

995 (g) Purchase, sell, hold, own, or invest in a security,
 996 bond, real or personal property, stock, or other asset of a
 997 family member.

998 (h) With or without adequate security, lend money to or
 999 borrow money from a family member or a trust, estate, or
 1000 guardianship for which the family trust company or licensed
 1001 family trust company serves as a fiduciary.

1002 (9) If not inconsistent with and subject to the terms of
 1003 subsections (4)-(8), the duty of loyalty under s. 736.0802
 1004 applies to family trust companies, licensed family trust
 1005 companies, and foreign licensed family trust companies when
 1006 serving as trustee of a trust whose administration is subject to
 1007 chapter 736.

1008 Section 24. Section 662.133, Florida Statutes, is created
 1009 to read:

1010 662.133 Oaths, affidavits, and acknowledgments.—If a
 1011 family trust company or licensed family trust company is
 1012 required to make an oath, affirmation, affidavit, or
 1013 acknowledgment regarding a fiduciary capacity in which it is
 1014 acting or is preparing to act, a director or officer or, if the

1015 company is a limited liability company, a manager or officer
 1016 expressly authorized by the family trust company or licensed
 1017 family trust company, shall make and, if required, subscribe to
 1018 such oath, affirmation, affidavit, or acknowledgment on behalf
 1019 of the company.

1020 Section 25. Section 662.134, Florida Statutes, is created
 1021 to read:

1022 662.134 Unlawful to advertise services.—A family trust
 1023 company, licensed family trust company, or foreign licensed
 1024 family trust company may not advertise its services to the
 1025 public.

1026 Section 26. Section 662.135, Florida Statutes, is created
 1027 to read:

1028 662.135 Service as court-appointed fiduciary; bond
 1029 requirement.—A licensed family trust company is not required to
 1030 provide or otherwise post a bond or other surety to serve as a
 1031 court-appointed fiduciary in a proceeding brought or conducted
 1032 in this state.

1033 Section 27. Section 662.140, Florida Statutes, is created
 1034 to read:

1035 662.140 Rules.—The office may adopt rules necessary to
 1036 carry out the purposes of this chapter.

1037 Section 28. Section 662.141, Florida Statutes, is created
 1038 to read:

1039 662.141 Examination, investigations, and fees.—The office
 1040 may conduct an examination or investigation of a family trust

1041 company, licensed family trust company, or foreign licensed
 1042 family trust company at any time it deems necessary to determine
 1043 whether a family trust company, licensed family trust company,
 1044 foreign licensed family trust company, or family trust company-
 1045 affiliated person has violated or is about to violate any
 1046 provision of the financial institution's codes or the rules
 1047 adopted by the commission pursuant to such codes.

1048 (1) The office shall conduct an examination of a licensed
 1049 family trust company, family trust company, and foreign licensed
 1050 family trust company at least once every 18 months.

1051 (2) In lieu of an examination by the office, the office
 1052 may accept an audit of a family trust company, licensed family
 1053 trust company, or foreign licensed family trust company by a
 1054 certified public accountant licensed to practice in this state
 1055 who is independent of the company, or other person or entity
 1056 acceptable to the office. If the office accepts an audit
 1057 pursuant to this subsection, the office shall conduct the next
 1058 required examination.

1059 (3) The office shall examine the books and records of a
 1060 family trust company or licensed family trust company as
 1061 necessary to determine whether it is a family trust company or
 1062 licensed family trust company as defined in this chapter, and is
 1063 operating in compliance with ss. 662.1225, 662.126, 662.131 and
 1064 662.134, as applicable. The office may rely upon a certificate
 1065 of trust, trust summary, or written statement from the trust
 1066 company identifying the qualified beneficiaries of any trust or

1067 estate for which the family trust company serves as a fiduciary
 1068 and the qualification of the qualified beneficiaries as
 1069 permissible recipients of company services. The office may
 1070 establish by rule the records to be maintained or requirements
 1071 necessary to demonstrate conformity with this chapter as a
 1072 family trust company or licensed family trust company.

1073 (4) The office shall examine the books and records of a
 1074 foreign licensed family trust company as necessary to determine
 1075 if it is a foreign licensed trust company as defined in this
 1076 chapter and is in compliance with ss. 662.130(2), 662.131, and
 1077 662.134. In connection with an examination of the books and
 1078 records of the company, the office may rely upon the most recent
 1079 examination report or review or certification letters or similar
 1080 documentation issued by the regulatory agency to which the
 1081 foreign licensed family trust company is subject to supervision.
 1082 The office may establish by rule the records to be maintained or
 1083 requirements necessary to demonstrate conformity with this
 1084 chapter as a foreign licensed family trust company. The office's
 1085 examination of the books and records of a foreign licensed
 1086 family trust company is, to the extent practicable, limited to
 1087 books and records of the operations in this state.

1088 (5) For each examination of the books and records of a
 1089 family trust company, licensed family trust company, or foreign
 1090 licensed family trust company as authorized under this chapter,
 1091 the trust company shall, within 30 days after an examination,
 1092 pay a fee for the costs of the examination by the office. As

1093 used in this section, the term "costs" means the salary and
 1094 travel expenses of field staff which are directly attributable
 1095 to the examination of the trust company and the travel expenses
 1096 of any supervisory or support staff required as a result of
 1097 examination findings. The mailing of payment for costs incurred
 1098 must be postmarked within 30 days after the receipt of a notice
 1099 stating that such costs are due. The office may levy a late
 1100 payment of up to \$100 per day or part thereof that a payment is
 1101 overdue, unless waived for good cause. However, if the late
 1102 payment of costs is intentional, the office may levy an
 1103 administrative fine of up to \$1,000 per day for each day the
 1104 payment is overdue.

1105 (6) All fees collected under this section must be
 1106 deposited into the Financial Institutions' Regulatory Trust Fund
 1107 pursuant to s. 655.049 for the purpose of administering this
 1108 chapter.

1109 Section 29. Section 662.142, Florida Statutes, is created
 1110 to read:

1111 662.142 Revocation of license.--

1112 (1) The following acts or conduct constitute grounds for
 1113 the revocation by the office of the license of a licensed family
 1114 trust company:

1115 (a) The company is not a family trust company as defined
 1116 in this chapter;

1117 (b) A violation of s. 662.1225, s. 662.123(1)(a), s.
 1118 662.126, s. 662.128, s. 662.130, s. 662.131, s. 662.134, or s.

1119 662.144;

1120 (c) A violation of chapter 896, relating to financial
 1121 transactions offenses, or any similar state or federal law;

1122 (d) A violation of any rule of the commission;

1123 (e) A violation of any order of the office;

1124 (f) A breach of any written agreement with the office;

1125 (g) A prohibited act or practice under s. 662.131;

1126 (h) A failure to provide information or documents to the
 1127 office upon written request; or

1128 (i) An act of commission or omission or a practice that is
 1129 a breach of trust or of fiduciary duty.

1130 (2) Upon a finding that a licensed family trust company
 1131 has committed any of the acts set forth in section (1), the
 1132 office may enter an order suspending the company's license and
 1133 provide notice of its intention to revoke the license and of the
 1134 opportunity for a hearing pursuant to ss. 120.569 and 120.57.
 1135 The licensed family trust company shall have 90 days to wind up
 1136 its affairs after license revocation. If after 90 days the
 1137 company is still in operation, the office may seek an order from
 1138 the circuit court for the annulment or dissolution of the
 1139 company.

1140 Section 30. Section 662.143, Florida Statutes, is created
 1141 to read:

1142 662.143 Cease and desist authority.-

1143 (1) The office may issue and serve upon a family trust
 1144 company, licensed family trust company, or foreign licensed

1145 family trust company, or upon a family trust company-affiliated
 1146 party, a complaint stating charges if the office has reason to
 1147 believe that such company, family trust company-affiliated
 1148 party, or individual named therein is engaging in or has engaged
 1149 in conduct that:

1150 (a) Indicates that the company is not a family trust
 1151 company or foreign licensed family trust company as defined in
 1152 this chapter;

1153 (b) Is a violation of s. 662.1225, s. 662.123(1)(a), s.
 1154 662.126, s. 662.127, s. 662.128, s. 662.130, or s. 662.134;

1155 (c) Is a violation of any rule of the commission;

1156 (d) Is a violation of any order of the office;

1157 (e) Is a breach of any written agreement with the office;

1158 (f) Is a prohibited act or practice pursuant to s.

1159 662.131;

1160 (g) Is a willful failure to provide information or
 1161 documents to the office upon written request; or

1162 (h) Is an act of commission or omission or a practice that
 1163 is a breach of trust or of fiduciary duty.

1164 (2) The complaint must contain the statement of facts and
 1165 a notice of opportunity for a hearing pursuant to ss. 120.569
 1166 and 120.57.

1167 (3) If no hearing is requested within the time allowed by
 1168 ss. 120.569 and 120.57, or if a hearing is held and the office
 1169 finds that any of the charges are true, the office may enter an
 1170 order directing the family trust company, licensed family trust

1171 company, or foreign licensed family trust company, or family
 1172 trust company-affiliated party, or the individual named therein
 1173 to cease and desist from engaging in the conduct complained of
 1174 and to take corrective action.

1175 (4) If the family trust company, licensed family trust
 1176 company, foreign licensed family trust company, or family trust
 1177 company-affiliated party, or the individual named in such order,
 1178 fails to respond to the complaint within the time allotted in
 1179 ss. 120.569 and 120.57, such failure constitutes a default and
 1180 justifies the entry of a cease and desist order.

1181 (5) A contested or default cease and desist order is
 1182 effective when reduced to writing and served upon the family
 1183 trust company, licensed family trust company, or foreign
 1184 licensed family trust company, or family trust company-
 1185 affiliated party, or the individual named therein. An
 1186 uncontested cease and desist order is effective as agreed.

1187 (6) If the office finds that conduct described in
 1188 subsection (1) is likely to cause substantial prejudice to
 1189 members, shareholders, or beneficiaries of fiduciary accounts of
 1190 the family trust company, licensed family trust company, or
 1191 foreign licensed family trust company, or to beneficiaries of
 1192 services rendered by such company, it may issue an emergency
 1193 cease and desist order requiring the family trust company,
 1194 licensed family trust company, or foreign licensed family trust
 1195 company, family trust company-affiliated party, or individual
 1196 named therein to immediately cease and desist from engaging in

1197 the conduct complained of and to take corrective action. The
 1198 emergency order is effective immediately upon service of a copy
 1199 of the order upon the family trust company, licensed family
 1200 trust company, or foreign licensed family trust company, or
 1201 family trust company-affiliated party and remains effective for
 1202 90 days. If the office begins nonemergency cease and desist
 1203 proceedings under subsection (1), the emergency order remains
 1204 effective until the conclusion of the proceedings under ss.
 1205 120.569 and 120.57. An emergency order entered under this
 1206 subsection is confidential and exempt from s. 119.07(1) until
 1207 the emergency order is made permanent, unless the office finds
 1208 that such confidentiality will result in substantial risk of
 1209 financial loss to the public.

1210 (7) A family trust company or foreign licensed family
 1211 trust company shall have 90 days to wind up its affairs after
 1212 entry of any order to cease and desist from operating as a
 1213 family trust company or foreign licensed family trust company.
 1214 If, after 90 days, a family trust company is still operating,
 1215 the office may seek an order from the circuit court for the
 1216 annulment or dissolution of the company. If after 90 days a
 1217 foreign licensed family trust company is still operating, the
 1218 office may seek an injunction from the circuit court restraining
 1219 the company from continuing to operate in this state.

1220 Section 31. Section 662.144, Florida Statutes, is created
 1221 to read:

1222 662.144 Failure to submit required report; fines.—If a

1223 family trust company, licensed family trust company, or foreign
 1224 licensed family trust company fails to submit within the
 1225 prescribed period its annual certification or any other report
 1226 required by this chapter or any rule, the office may impose a
 1227 fine of up to \$100 for each day that the annual certification or
 1228 report is overdue. Failure to provide the annual certification
 1229 within 60 days after the end of the calendar year shall
 1230 automatically result in termination of registration of a family
 1231 trust company or revocation of the license of a licensed family
 1232 trust company. The trust company shall thereafter have 90 days
 1233 to wind up its affairs.

1234 Section 32. Section 662.145, Florida Statutes, is created
 1235 to read:

1236 662.145 Grounds for removal.-

1237 (1) The office may issue and serve upon a licensed family
 1238 trust company or a family trust company and a family trust
 1239 company-affiliated party a complaint stating charges if the
 1240 office has reason to believe that the family trust company-
 1241 affiliated party is engaging or has engaged in conduct that:

1242 (a) Demonstrates that the company is not a family trust
 1243 company as defined in this chapter;

1244 (b) Is a prohibited act or practice under s. 662.131;

1245 (c) Is a violation of s. 662.1225, s. 662.123(1)(a), s.
 1246 662.126, s. 662.127, s. 662.128, s. 662.130, or s. 662.134;

1247 (d) Is a violation of any other law involving fraud or
 1248 moral turpitude which constitutes a felony;

1249 (e) Is a violation of chapter 896, relating to offenses
 1250 related to financial transactions, or similar state or federal
 1251 law;

1252 (f) Is a willful violation of a rule of the commission;

1253 (g) Is a willful violation of an order of the office;

1254 (h) Is a willful breach of a written agreement with the
 1255 office; or

1256 (i) Is an act of commission or omission or a practice that
 1257 is a breach of trust or fiduciary duty.

1258 (2) The complaint must contain a statement of facts and a
 1259 notice of opportunity for a hearing pursuant to ss. 120.569 and
 1260 120.57.

1261 (3) If no hearing is requested within the time allowed by
 1262 ss. 120.569 and 120.57, or if a hearing is held and the office
 1263 finds that any of the charges in the complaint is true, the
 1264 office may enter an order removing the family trust company-
 1265 affiliated party or restricting or prohibiting participation by
 1266 the family trust company-affiliated party in the affairs of the
 1267 family trust company, licensed family trust company, or other
 1268 state financial institution, subsidiary, or service corporation.

1269 (4) If the family trust company-affiliated party fails to
 1270 respond to the complaint within the time allowed in ss. 120.569
 1271 and 120.57, such failure constitutes a default and justifies the
 1272 entry of an order of removal.

1273 (5) A contested or default order of removal is effective
 1274 when reduced to writing and served on the family trust company

1275 or licensed family trust company and the family trust company-
 1276 affiliated party. An uncontested order of removal is effective
 1277 as agreed.

1278 (6) The chief executive officer, or the person holding the
 1279 equivalent office, of a family trust company or licensed family
 1280 trust company shall promptly notify the office if he or she has
 1281 actual knowledge that a family trust company-affiliated party is
 1282 charged with a felony in a state or federal court.

1283 (a) If a family trust company-affiliated party is charged
 1284 with a felony in a state or federal court, or in the courts of a
 1285 foreign country with which the United States maintains
 1286 diplomatic relations which involves a violation of law relating
 1287 to fraud, currency transaction reporting, money laundering,
 1288 theft, or moral turpitude and the charge is equivalent to a
 1289 felony charge under state or federal law, the office may enter
 1290 an emergency order suspending the family trust company-
 1291 affiliated party or restricting or prohibiting participation by
 1292 such company-affiliated party in the affairs of that particular
 1293 family trust company or licensed family trust company or any
 1294 other financial institution, subsidiary, or service corporation,
 1295 upon service of the order upon the company and the family trust
 1296 company-affiliated party so charged.

1297 (b) The order must contain notice of opportunity for a
 1298 hearing pursuant to ss. 120.569 and 120.57, at which the family
 1299 trust company-affiliated party may request a postsuspension
 1300 hearing to show that continued service to or participation in

1301 the affairs of the family trust company or licensed family trust
 1302 company does not pose a threat to the interests of the company.
 1303 In accordance with applicable commission rules, the office shall
 1304 notify the family trust company-affiliated party whether the
 1305 order suspending or prohibiting the company-affiliated party
 1306 from participating in the affairs of a licensed family trust
 1307 company or family trust company, or state financial institution,
 1308 subsidiary, or service corporation will be rescinded or
 1309 otherwise modified. The emergency order remains in effect,
 1310 unless otherwise modified by the office, until the criminal
 1311 charge is disposed of. The acquittal of the family trust
 1312 company-affiliated party charged, or the final, unappealed
 1313 dismissal of all charges against such person, dissolves the
 1314 emergency order, but does not prohibit the office from
 1315 instituting proceedings under subsection (1). If the family
 1316 trust company-affiliated party charged is convicted or pleads
 1317 nolo contendere regardless of adjudication, the emergency order
 1318 becomes final.

1319 (7) A family trust company-affiliated party removed from
 1320 office pursuant to this section is not eligible for reelection
 1321 to such position or to any official position in a family trust
 1322 company, licensed family trust company, or financial institution
 1323 in this state except with the written consent of the office. A
 1324 family trust company-affiliated party who is removed,
 1325 restricted, or prohibited from participation in the affairs of a
 1326 family trust company, licensed family trust company, or state

1327 financial institution pursuant to this section may petition the
 1328 office for modification or termination of such removal,
 1329 restriction, or prohibition.

1330 (8) The resignation, termination of employment or
 1331 participation, or separation from a family trust company or a
 1332 licensed family trust company of the family trust company-
 1333 affiliated party does not affect the jurisdiction and authority
 1334 of the office to issue a notice and proceed under this section
 1335 against the company-affiliated party if such notice is served
 1336 before the end of the 6-year period beginning on the date such
 1337 person ceases to be a family trust company-affiliated party with
 1338 respect to such company.

1339 Section 33. Section 662.146, Florida Statutes, is created
 1340 to read:

1341 662.146 Confidentiality of books and records.-

1342 (1) The books and records of a family trust company,
 1343 licensed family trust company, and foreign licensed family trust
 1344 company are confidential and shall be made available for
 1345 inspection and examination only:

- 1346 (a) To the office or its authorized representative;
- 1347 (b) To any person authorized to act for the company;
- 1348 (c) As compelled by a court, pursuant to a subpoena issued
 1349 pursuant to the Florida Rules of Civil Procedure, the Florida
 1350 Rules of Criminal Procedure, or the Federal Rules of Civil
 1351 Procedure or pursuant to a subpoena issued in accordance with
 1352 state or federal law. Before the production of the books and

1353 records of a family trust company, licensed family trust
 1354 company, or foreign licensed family trust company, the party
 1355 seeking production must reimburse the company for the reasonable
 1356 costs and fees incurred in compliance with the production. If
 1357 the parties disagree regarding the amount of reimbursement, the
 1358 party seeking the records may request the court having
 1359 jurisdiction to set the amount of reimbursement;

1360 (d) Pursuant to a subpoena, to any federal or state law
 1361 enforcement or prosecutorial instrumentality authorized to
 1362 investigate suspected criminal activity;

1363 (e) As authorized by the board of directors, if in
 1364 corporate form, or the managers, if in limited liability company
 1365 form; or

1366 (f) As provided in subsection (2).

1367 (2) (a) Each customer and stockholder, if a corporation, or
 1368 member, if a limited liability company, has the right to inspect
 1369 the books and records of a family trust company or licensed
 1370 family trust company as they pertain to his or her accounts or
 1371 the determination of his or her voting rights.

1372 (b) The books and records pertaining to customers,
 1373 members, and stockholders of a family trust company or licensed
 1374 family trust company shall be kept confidential by the company
 1375 and its directors, managers, officers, and employees. The books
 1376 and records of customers, members, and stockholders may not be
 1377 released except upon the express authorization of the customer
 1378 as to his or her own accounts or a stockholder or member

1379 regarding his or her voting rights. However, information may be
 1380 released, without the authorization of a customer, member, or
 1381 shareholder in a manner prescribed by the board of directors, if
 1382 a corporation, or managers, if a limited liability company, to
 1383 verify or corroborate the existence or amount of a customer's
 1384 account if that information is reasonably provided to meet the
 1385 needs of commerce and to ensure accurate credit information.
 1386 Notwithstanding this paragraph, this subsection does not
 1387 prohibit a family trust company or licensed family trust company
 1388 from disclosing financial information referenced in this
 1389 subsection as permitted under 15 U.S.C. s. 6802, as amended.

1390 (c) A person who willfully violates a provision of this
 1391 section which relates to unlawful disclosure of confidential
 1392 information commits a felony of the third degree, punishable as
 1393 provided in s. 775.082, s. 775.083, or s. 775.084.

1394 (d) This subsection does not apply to a foreign licensed
 1395 family trust company. The laws of the jurisdiction of its
 1396 principal place of business govern the rights of customers,
 1397 members, and stockholders to inspect its books and records.

1398 (3) For purposes of this section, the term "books and
 1399 records" includes, but is not limited to, an application for a
 1400 license and any documents connected with the application under
 1401 s. 662.121; the office's corresponding investigation under s.
 1402 662.1215 in granting or denying the issuance of the license; the
 1403 initial registration documents of a family trust company or
 1404 foreign licensed family trust company under s. 662.122; the

1405 annual certification made by a family trust company, licensed
 1406 family trust company, or foreign licensed family trust company
 1407 under s. 662.128; and the documentation submitted to the office
 1408 in connection with a licensed family trust company discontinuing
 1409 its business under s. 662.129.

1410 Section 34. Section 662.147, Florida Statutes, is created
 1411 to read:

1412 662.147 Records relating to the office examination;
 1413 limited restrictions on public access.-

1414 (1) A family trust company, licensed family trust company,
 1415 and foreign licensed family trust company shall keep at the
 1416 office it is required to maintain pursuant to s. 662.1225 full
 1417 and complete records of the names and residences of all the
 1418 shareholders or members of the trust company and the number of
 1419 shares or membership units held by each, as applicable, as well
 1420 as the ownership percentage of each shareholder or member, as
 1421 the case may be. The records are subject to the inspection of
 1422 all the shareholders or members of the trust company, and the
 1423 officers authorized to assess taxes under state authority,
 1424 during the normal business hours of the trust company. A current
 1425 list of shareholders or members shall be made available to the
 1426 office's examiners for their inspection and, upon the request of
 1427 the office, shall be submitted to the office.

1428 (2) The office shall retain for at least 10 years:

1429 (a) Examination reports.

1430 (b) Investigatory records.

1431 (c) The application for a license, any documents connected
 1432 with the application, and the office's corresponding
 1433 investigation in granting or denying the issuance of the
 1434 license.

1435 (d) The initial registration documents of a family trust
 1436 company or foreign licensed family trust company.

1437 (e) The annual certification made by a family trust
 1438 company, licensed family trust company, or foreign licensed
 1439 family trust company.

1440 (f) The documentation submitted to the office in
 1441 connection with a licensed family trust company discontinuing
 1442 its business and any related information compiled by the office,
 1443 or photographic copies thereof.

1444 (3) A copy of any document on file with the office which
 1445 is certified by the office as being a true copy may be
 1446 introduced in evidence as if it were the original. The office
 1447 shall establish a schedule of fees for preparing true copies of
 1448 documents.

1449 Section 35. Section 662.150, Florida Statutes, is created
 1450 to read:

1451 662.150 Domestication of a foreign family trust company.-

1452 (1) A foreign family trust company lawfully organized and
 1453 currently in good standing with the state regulatory agency in
 1454 the jurisdiction where it is organized may become domesticated
 1455 in this state by:

1456 (a) Filing with the Department of State a certificate of

1457 domestication and articles of incorporation in accordance with
 1458 and subject to s. 607.1801 or by filing articles of conversion
 1459 in accordance with s. 605.1045; and

1460 (b) Filing an application for a license to begin
 1461 operations as a licensed family trust company in accordance with
 1462 s. 662.121, which must first be approved by the office or by
 1463 filing the prescribed form with the office to register as a
 1464 family trust company to begin operations in accordance with s.
 1465 662.122.

1466 (2) A foreign family trust company may apply pursuant to
 1467 paragraph (1)(b) before satisfying the requirements of paragraph
 1468 (1)(a); however, upon receipt of a certificate of authority, the
 1469 company must satisfy the requirements of paragraph (1)(a) before
 1470 beginning operations.

1471 Section 36. Section 662.151, Florida Statutes, is created
 1472 to read:

1473 662.151 Registration of a foreign licensed family trust
 1474 company to operate in this state.—A foreign licensed family
 1475 trust company lawfully organized and currently in good standing
 1476 with the state regulatory agency in the jurisdiction under the
 1477 law of which it is organized may qualify to begin operations in
 1478 this state by:

1479 (1) Filing an application with the Department of State to
 1480 apply for a certificate of authority in accordance with and
 1481 subject to s. 605.0902, s. 607.1503, or s. 620.1902 or to apply
 1482 for a statement of foreign qualification in accordance with and

1483 subject to s. 620.9102 to transact business in this state.

1484 (2) Filing an initial registration to begin operations as
 1485 a foreign licensed family trust company in accordance with and
 1486 subject to s. 662.122 and subject to the sections of this
 1487 chapter which specifically state that they apply to a foreign
 1488 licensed family trust company.

1489 (3) A company in operation as of the effective date of
 1490 this law that meets the definition of a family trust company
 1491 shall have 60 days from the effective date of this act to apply
 1492 for licensure as a licensed family trust company, register as a
 1493 family trust company or foreign licensed family trust company,
 1494 or cease doing business in this state.

1495 Section 37. Paragraph (a) of subsection (3) of section
 1496 120.80, Florida Statutes, is amended to read:

1497 120.80 Exceptions and special requirements; agencies.—

1498 (3) OFFICE OF FINANCIAL REGULATION.—

1499 (a) Notwithstanding s. 120.60(1), in proceedings for the
 1500 issuance, denial, renewal, or amendment of a license or approval
 1501 of a merger pursuant to title XXXVIII:

1502 1.a. The Office of Financial Regulation of the Financial
 1503 Services Commission shall have published in the Florida
 1504 Administrative Register notice of the application within 21 days
 1505 after receipt.

1506 b. Within 21 days after publication of notice, any person
 1507 may request a hearing. Failure to request a hearing within 21
 1508 days after notice constitutes a waiver of any right to a

1509 hearing. The Office of Financial Regulation or an applicant may
 1510 request a hearing at any time prior to the issuance of a final
 1511 order. Hearings shall be conducted pursuant to ss. 120.569 and
 1512 120.57, except that the Financial Services Commission shall by
 1513 rule provide for participation by the general public.

1514 2. Should a hearing be requested as provided by sub-
 1515 subparagraph 1.b., the applicant or licensee shall publish at
 1516 its own cost a notice of the hearing in a newspaper of general
 1517 circulation in the area affected by the application. The
 1518 Financial Services Commission may by rule specify the format and
 1519 size of the notice.

1520 3. Notwithstanding s. 120.60(1), and except as provided in
 1521 subparagraph 4., an every application for license for a new
 1522 bank, new trust company, new credit union, ~~or~~ new savings and
 1523 loan association, or new licensed family trust company must
 1524 ~~shall~~ be approved or denied within 180 days after receipt of the
 1525 original application or receipt of the timely requested
 1526 additional information or correction of errors or omissions. An
 1527 ~~Any~~ application for such a license or for acquisition of such
 1528 control which is not approved or denied within the 180-day
 1529 period or within 30 days after conclusion of a public hearing on
 1530 the application, whichever is later, shall be deemed approved
 1531 subject to the satisfactory completion of conditions required by
 1532 statute as a prerequisite to license and approval of insurance
 1533 of accounts for a new bank, a new savings and loan association,
 1534 ~~or~~ a new credit union, or a new licensed family trust company by

1535 the appropriate insurer.

1536 4. In the case of an every application for license to
 1537 establish a new bank, trust company, or capital stock savings
 1538 association in which a foreign national proposes to own or
 1539 control 10 percent or more of any class of voting securities,
 1540 and in the case of an every application by a foreign national
 1541 for approval to acquire control of a bank, trust company, or
 1542 capital stock savings association, the Office of Financial
 1543 Regulation shall request that a public hearing be conducted
 1544 pursuant to ss. 120.569 and 120.57. Notice of such hearing shall
 1545 be published by the applicant as provided in subparagraph 2. The
 1546 failure of ~~any~~ such foreign national to appear personally at the
 1547 hearing shall be grounds for denial of the application.

1548 Notwithstanding ~~the provisions of~~ s. 120.60(1) and subparagraph
 1549 3., every application involving a foreign national shall be
 1550 approved or denied within 1 year after receipt of the original
 1551 application or any timely requested additional information or
 1552 the correction of any errors or omissions, or within 30 days
 1553 after the conclusion of the public hearing on the application,
 1554 whichever is later.

1555 Section 38. Subsections (2) and (3) of section 736.0802,
 1556 Florida Statutes, are amended, and paragraph (i) is added to
 1557 subsection (5) of that section, to read:

1558 736.0802 Duty of loyalty.—

1559 (2) Subject to the rights of persons dealing with or
 1560 assisting the trustee as provided in s. 736.1016, a sale,

1561 encumbrance, or other transaction involving the investment or
 1562 management of trust property entered into by the trustee for the
 1563 trustee's own personal account or which is otherwise affected by
 1564 a conflict between the trustee's fiduciary and personal
 1565 interests is voidable by a beneficiary affected by the
 1566 transaction unless:

1567 (a) The transaction was authorized by the terms of the
 1568 trust;

1569 (b) The transaction was approved by the court;

1570 (c) The beneficiary did not commence a judicial proceeding
 1571 within the time allowed by s. 736.1008;

1572 (d) The beneficiary consented to the trustee's conduct,
 1573 ratified the transaction, or released the trustee in compliance
 1574 with s. 736.1012;

1575 (e) The transaction involves a contract entered into or
 1576 claim acquired by the trustee when that person had not become or
 1577 contemplated becoming trustee;

1578 (f) The transaction was consented to in writing by a
 1579 settlor of the trust while the trust was revocable; ~~or~~

1580 (g) The transaction is one by a corporate trustee that
 1581 involves a money market mutual fund, mutual fund, or a common
 1582 trust fund described in s. 736.0816(3); or

1583 (h) With regard to a trust that is administered by a
 1584 family trust company, licensed family trust company, or foreign
 1585 licensed family trust company operating under chapter 662, the
 1586 transaction is authorized by s. 662.132(4)-(8).

1587 (3) (a) A sale, encumbrance, or other transaction involving
 1588 the investment or management of trust property is presumed to be
 1589 affected by a conflict between personal and fiduciary interests
 1590 if the sale, encumbrance, or other transaction is entered into
 1591 by the trustee with:

1592 ~~1.(a)~~ The trustee's spouse;

1593 ~~2.(b)~~ The trustee's descendants, siblings, parents, or
 1594 their spouses;

1595 ~~3.(c)~~ An officer, director, employee, agent, or attorney
 1596 of the trustee; or

1597 ~~4.(d)~~ A corporation or other person or enterprise in which
 1598 the trustee, or a person that owns a significant interest in the
 1599 trustee, has an interest that might affect the trustee's best
 1600 judgment.

1601 (b) This subsection does not apply to a trust being
 1602 administered by a family trust company, licensed family trust
 1603 company, or foreign licensed family trust company operating
 1604 under chapter 662 if the sale, encumbrance, or other transaction
 1605 is authorized by s. 662.132(4)-(8).

1606 (5)

1607 (i) This subsection does not apply to a trust administered
 1608 by a family trust company, licensed family trust company, or
 1609 foreign licensed family trust company operating under chapter
 1610 662.

1611 Section 39. Subsection (5) of section 744.351, Florida
 1612 Statutes, is amended to read:

1613 744.351 Bond of guardian.—

1614 (5) Financial institutions as defined in s. 744.309(4),
1615 other than a trust company operating under chapter 662 which is
1616 not a licensed family trust company or foreign licensed family
1617 trust company, and public guardians authorized by law to be
1618 guardians are ~~shall~~ not ~~be~~ required to file bonds.

1619 Section 40. This act shall take effect October 1, 2014, if
1620 HB 1269 or similar legislation is adopted in the same
1621 legislative session or an extension thereof and becomes law.

INSURANCE & BANKING SUBCOMMITTEE

HB 1267 by Rep. McBurney Family Trust Companies

AMENDMENT SUMMARY March 19, 2014

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

- Clarifies that the Act is to be included within the Financial Institutions Codes.
- Inserts language providing for the treatment of confidential records or information in judicial or administrative proceedings from the linked public records bill (HB 1269) into this bill,
- Clarifies the definition of “capital account” and ensures consistent use of the term throughout the Act,
- Clarifies the definition of “foreign licensed family trust company,”
- Clarifies the definition of “officer,”
- Provides clearer disqualification for management,
- Inserts cross-references for licensed family trust companies,
- Clarifies that registration fees are non-refundable,
- Clarifies the permissible use of “trust” in a family trust company’s name,
- Provides for proposed changes to a limited liability company’s operating documents,
- Clarifies the Office of Financial Regulation’s grounds for disapproving a proposed member or manger,
- Removes the authority of the Office of Financial Regulation to obtain criminal history information,
- Clarifies that licensees and registrants to certify compliance with other applicable state and federal laws and regulations,
- Clarifies that the powers of any family trust company type apply as to its eligible members and individuals,
- Provides parameters for trustee activities on behalf of a family trust company,
- Clarifies a ground for licensure revocation,
- Removes language providing for limited confidentiality of emergency orders by the OFR, which will be inserted in the linked public records bill (HB 1269),
- Substitutes “annual renewal” for “annual certification,” and
- Provides companies operating as a family trust company as of the bill’s effective date to seek licensure or registration within 90 days of the bill’s effective date.



Amendment No.

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		

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee

3 Representative McBurney offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (k) of subsection (1) of section
8 655.005, Florida Statutes, is amended to read:

9 655.005 Definitions.—

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

12 (k) "Financial institutions codes" means:

13 1. Chapter 655, relating to financial institutions
14 generally;

15 2. Chapter 657, relating to credit unions;

16 3. Chapter 658, relating to banks and trust companies;

17 4. Chapter 660, relating to trust business;

COMMITTEE/SUBCOMMITTEE AMENDMENT

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- 18 5. Chapter 662, relating to family trust companies;
19 6.5. Chapter 663, relating to international banking;
20 7.6. Chapter 665, relating to associations; and
21 8.7. Chapter 667, relating to savings banks.

22 Section 2. Chapter 662, Florida Statutes, consisting of
23 ss. 662.10-662.151, Florida Statutes, to be entitled Family
24 Trust Companies, is created.

25 Section 3. Section 662.10, Florida Statutes, is created to
26 read:

27 662.10 Short Title.—This chapter may be cited as the
28 "Florida Family Trust Company Act."

29 Section 4. Section 662.102, Florida Statutes, is created
30 to read:

31 662.102 Purpose.—The purpose of the Family Trust Company
32 Act is to establish requirements for licensing family trust
33 companies, to provide regulation of those persons who provide
34 fiduciary services to family members of no more than two
35 families and their related interests as a family trust company,
36 and establish the degree of regulatory oversight required of the
37 Office of Financial Regulation over such companies. Unlike trust
38 companies formed under chapter 658, there is no public interest
39 to be served outside of ensuring that fiduciary activities
40 performed by a family trust company are restricted to family
41 members and their related interests and as otherwise provided
42 for in this chapter. Therefore, family trust companies are not
43 financial institutions within the meaning of the financial

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1267 (2014)

Amendment No.

44 institutions codes and licensure of these companies pursuant to
45 chapters 658 and 660 should not be required as it would not
46 promote the purposes of the codes as set forth in s. 655.001.
47 Consequently, the Office of Financial Regulation is not
48 responsible for regulating family trust companies to ensure
49 their safety and soundness, and the responsibility of the office
50 is limited to ensuring that fiduciary services provided by such
51 companies are restricted to family members and related interests
52 and not to the general public.

53 Section 5. Section 662.111, Florida Statutes, is created
54 to read:

55 662.111 Definitions.—As used in this chapter, the term:

56 (1) "Applicant" means the corporation or limited liability
57 company on whose behalf an application for a license to operate
58 as a licensed family trust company is submitted under s.
59 662.121.

60 (2) "Authorized representative" means an officer or
61 director of a family trust company, licensed family trust
62 company, or foreign licensed family trust company, if organized
63 as a corporation; or a manager, officer, or member of a family
64 trust company, licensed family trust company, or foreign
65 licensed family trust company, if organized as a limited
66 liability company.

67 (3) "Capital account" means the aggregate value of
68 unimpaired capital stock based on the par value of the shares,
69 plus any unimpaired surplus and undivided profits or retained

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70 earnings of a family trust company organized as a corporation;
71 or the initial cash investment remitted for membership interests
72 in a family trust company organized as a limited liability
73 company, plus any undivided profits or retained earnings of the
74 limited liability company.

75 (4) "Capital stock" means the shares of stock issued to
76 create nonwithdrawable capital for a corporation, or membership
77 interests issued to create nonwithdrawable capital for a limited
78 liability company.

79 (5) "Collateral kinship" means a relationship that is not
80 lineal but derives from a common ancestor.

81 (6) "Commercial banking" means the business of receiving
82 demand and time deposits, paying checks, or lending money to the
83 public.

84 (7) "Controlling stockholder or member" means an
85 individual who owns or has the ability or power to directly or
86 indirectly vote at least 10 percent or more of the outstanding
87 shares, membership interest, or membership units of the family
88 trust company or licensed family trust company.

89 (8) "Designated relative" means a common ancestor of a
90 family, who may be a living or deceased person, and who is so
91 designated in the application for a license or annual license.

92 (9) "Family affiliate" means a company or other entity in
93 which one or more family members own, control, or have the power
94 to directly or indirectly vote more than 50 percent of a class
95 of voting securities of that company or other entity.

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96 (10) "Family member" means:

97 (a) A designated relative.

98 (b) A person within the fourth degree of lineal kinship to
99 a designated relative of a family trust company, or a person
100 within the sixth degree of lineal kinship to a designated
101 relative of a licensed family trust company.

102 (c) A person within the seventh degree of collateral
103 kinship to a designated relative of a family trust company, or a
104 person within the ninth degree of collateral kinship to a
105 designated relative of a licensed family trust company.

106 (d) The spouse or former spouse of an individual
107 qualifying as a family member and an individual who is within
108 the fifth degree of lineal kinship to that spouse or former
109 spouse.

110 (e) A family affiliate.

111 (f) A trust established by a family member if the trust is
112 funded exclusively by one or more family members. A trust to
113 which property has been transferred as a result of a family
114 member's exercise of a power of appointment shall be deemed
115 established by that family member if all qualified beneficiaries
116 of the appointee trust are family members.

117 (g) A trust established by an individual who is not a
118 family member if all of the noncharitable qualified
119 beneficiaries of the trust are family members, except that a
120 trust composed exclusively of nonindividual qualified
121 beneficiaries is considered to be a family member if all of the

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122 nonindividual qualified beneficiaries are charitable foundations
 123 or other charitable entities as described in paragraph (j).

124 (h) The probate estate of a family member.

125 (i) The probate estate of an individual who is not a
 126 family member if all of the noncharitable beneficiaries of the
 127 estate are family members, except that an estate composed
 128 exclusively of nonindividual beneficiaries is considered to be a
 129 family member if all of the nonindividual beneficiaries are
 130 charitable foundations or other charitable entities as described
 131 in paragraph (j).

132 (j) A charitable foundation or other charitable entity in
 133 which a majority of the governing body is composed of family
 134 members.

135 (11) "Family trust company" means a corporation or limited
 136 liability company that:

137 (a) Is exclusively owned by one or more family members.

138 (b) Is organized or qualified to do business in this
 139 state.

140 (c) Acts or proposes to act as a fiduciary to serve one or
 141 more family members.

142 (d) Does not serve as a fiduciary for a person, entity,
 143 trust, or estate that is not a family member, except that it may
 144 serve as a fiduciary for up to 35 individuals who are not family
 145 members if the individuals are current or former employees of
 146 the family trust company or one or more trusts, companies, or
 147 other entities that are family members.

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- 148 (12) "Family trust company-affiliated party" means:
149 (a) A director, officer, manager, employee, or controlling
150 stockholder or member of a family trust company, licensed family
151 trust company, or foreign licensed family trust company; or
152 (b) A stockholder, member, or any other person as
153 determined by the office who participates in the affairs of a
154 family trust company, licensed family trust company, or foreign
155 licensed family trust company.
- 156 (13) "Financial institutions codes" has the same meaning
157 as provided in s. 655.005(1).
- 158 (14) "Foreign licensed family trust company" means a
159 family trust company that:
- 160 (a) Is licensed by a state in the United States other than
161 this state or the District of Columbia.
- 162 (b) Has its principal place of business in a state in the
163 United States other than this state or the District of Columbia.
- 164 (c) Is operated in accordance with family or private trust
165 company laws of the state in which it is licensed or of the
166 District of Columbia.
- 167 (d) Is subject to statutory or regulatory mandated
168 supervision by the state in which the principal place of
169 business is located or by the District of Columbia.
- 170 (e) Is not owned by, or a subsidiary of, a corporation,
171 limited liability company, or other business entity that is
172 organized in or licensed by any foreign country as defined in s.
173 663.01(3).

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174 (15) "Licensed family trust company" means a family trust
175 company that operates in accordance with this chapter and has
176 been issued a license that has not been revoked or suspended by
177 the office.

178 (16) "Lineal kinship" means a family member who is in the
179 direct line of ascent or descent from a designated relative.

180 (17) "Office" means the Office of Financial Regulation.

181 (18) "Officer" of a family trust company means an
182 individual, regardless of whether the individual has an official
183 title or receives a salary or other compensation, who may
184 participate in the major policymaking functions of a family
185 trust company, other than as a director. The term does not
186 include an individual who may have an official title and
187 exercise discretion in the performance of duties and functions,
188 but who does not participate in determining the major policies
189 of the family trust company and whose decisions are limited by
190 policy standards established by other officers, regardless of
191 whether the policy standards have been adopted by the board of
192 directors. The chair of the board of directors, the president,
193 the chief officer, the chief financial officer, the senior trust
194 officer, and all executive vice presidents of a family trust
195 company, and all managers if organized as a limited liability
196 company, are presumed to be executive officers unless such
197 officer is excluded, by resolution of the board of directors or
198 members or by the bylaws or operating agreement of the family
199 trust company, other than in the capacity of a director, from

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200 participating in major policymaking functions of the family
201 trust company, and the individual holding such office so
202 excluded does not actually participate therein.

203 (19) "Qualified beneficiary" has the same meaning as
204 provided in s. 736.0103.

205 Section 6. Section 662.112, Florida Statutes, is created
206 to read:

207 662.112 Degrees of kinship.—Degrees of kinship shall be
208 calculated by adding the number of steps from a designated
209 relative through each person to the family member, directly in
210 the case of lineal kinship, or through the common ancestor in
211 the case of collateral kinship.

212 Section 7. Section 662.114, Florida Statutes, is created
213 to read:

214 662.114 Family trust company and foreign licensed family
215 trust company licensing not required.—A family trust company or
216 foreign licensed family trust company is not required to be a
217 licensed family trust company.

218 Section 8. Section 662.115, Florida Statutes, is created
219 to read:

220 662.115 Applicability of chapter to a family trust company
221 or foreign licensed family trust company.—

222 (1) A family trust company that is not a licensed family
223 trust company or a foreign licensed family trust company is
224 subject to the provisions of this chapter unless the provisions

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225 are expressly limited in applicability to a licensed family
226 trust company or foreign licensed family trust company.

227 (2) A licensed family trust company is subject to the
228 provisions of this chapter that expressly refer to a licensed
229 family trust company or that are not expressly limited to a
230 family trust company that is not a licensed family trust company
231 or to a foreign licensed family trust company.

232 (3) A foreign licensed family trust company is subject to
233 the provisions of this chapter that expressly state that such
234 provisions apply to a foreign licensed family trust company.

235 Section 9. Section 662.120, Florida Statutes, is created
236 to read:

237 662.120 Maximum number of designated relatives.—

238 (1) A family trust company may not have more than one
239 designated relative.

240 (2) A licensed family trust company may not have more than
241 two designated relatives, and the designated relatives may not
242 have a common ancestor within five generations.

243 Section 10. Section 662.121, Florida Statutes, is created
244 to read:

245 662.121 Application for licensed family trust company;
246 fees.—An applicant seeking to operate as a licensed family trust
247 company must file an application with the office on forms
248 prescribed by the office, accompanied by a nonrefundable \$10,000
249 application fee to be deposited into the Financial Institutions'
250 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of

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251 administering this chapter. The application must contain or be
252 accompanied by:

253 (1) The name of the proposed licensed family trust
254 company.

255 (2) A copy of the articles of incorporation or articles of
256 organization and the bylaws or operating agreement of the
257 proposed licensed family trust company.

258 (3) The physical address and mailing address of the
259 proposed licensed family trust company, which must be located in
260 this state.

261 (4) A statement describing in detail the services that
262 will be provided to family members by the proposed licensed
263 family trust company.

264 (5) The name and biographical information of each
265 individual who will initially serve as a director, officer,
266 manager, or member acting in a managerial capacity of the
267 proposed licensed family trust company.

268 (6) The name and biographical information of each
269 individual who owns or has the ability or power to directly or
270 indirectly vote at least 10 percent or more of the outstanding
271 shares, membership interest, or membership units of the proposed
272 licensed family trust company.

273 (7) The names of the designated relatives.

274 (8) The amount of the initial capital account of the
275 proposed licensed family trust company and the form in which the
276 capital was paid and will be maintained.

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277 (9) The type and amount of bonds or insurance that will be
278 procured and maintained on directors, officers, managers, or
279 members acting in a managerial capacity or employees pursuant to
280 s. 662.126.

281 (10) A statement signed by the applicant, or by the
282 individual signing on behalf of the proposed licensed family
283 trust company, under penalty of perjury, affirming that the
284 following statements are true:

285 (a) The proposed licensed family trust company is not
286 currently transacting business with the general public.

287 (b) No director, officer, manager, or member served as a
288 director, officer, or manager, or acted in a managerial
289 capacity, for a trust company or any other financial institution
290 that had a license issued under the financial institutions codes
291 or by the Federal Government or any other state, the District of
292 Columbia, a territory of the United States, or a foreign country
293 that was suspended or revoked within the 10 years preceding the
294 date of the application.

295 (c) No director, officer, manager, or member acting in a
296 managerial capacity has been convicted of, pled guilty or nolo
297 contendere, regardless of whether adjudication of guilt is
298 entered by the court, to a violation of the financial
299 institutions codes, including s. 655.50, chapter 896, or similar
300 state or federal law or related rule, or to a crime involving
301 fraud, misrepresentation, or moral turpitude.

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302 (d) No director, officer, manager, or member acting in a
303 managerial capacity has had a professional license suspended or
304 revoked within the 10 years preceding the date of the
305 application.

306 (e) All information contained in the application is true
307 and correct to the best knowledge of the individual signing the
308 application on behalf of the proposed licensed family trust
309 company.

310 (11) Any other additional information reasonably required
311 by the office.

312 Section 11. Section 662.1215, Florida Statutes, is created
313 to read:

314 662.1215 Investigation of license applicants.-

315 (1) For the purpose of this section, the application is
316 not deemed to be filed until the applicant has provided the
317 office with all information required to be included pursuant to
318 s. 662.121.

319 (2) Upon filing an application for a license to operate as
320 a licensed family trust company, the office shall conduct an
321 investigation to confirm:

322 (a) That the persons who will serve as directors or
323 officers of the corporation or, if the applicant is a limited
324 liability company, managers or members acting in a managerial
325 capacity, have not:

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326 1. Been convicted of, or entered a plea of nolo contendere
327 to, a crime involving fraud, misrepresentation, or moral
328 turpitude;

329 2. Been convicted of, or pled nolo contendere to, a
330 violation of the financial institutions codes, including s.
331 655.50, chapter 896, or similar state or federal law;

332 3. Been directors, officers, managers, or members of a
333 financial institution licensed or chartered under the financial
334 institution's codes or by the Federal Government or any other
335 state, the District of Columbia, a territory of the United
336 States, or a foreign country, whose license or charter was
337 suspended or revoked within the 10 years preceding the date of
338 the application;

339 4. Had a professional license suspended or revoked within
340 the 10 years preceding the date of the application; or

341 5. Made a false statement of material fact on the
342 application.

343 (b) That the name of the proposed company complies with s.
344 662.123.

345 (c) That capital accounts of the proposed company conform
346 to s. 662.124 and that fidelity bonds and errors and omissions
347 insurance coverage required under s. 662.126 are issued and
348 effective.

349 (d) That the articles of incorporation or articles of
350 organization conform to s. 662.123(1).

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351 (3) If the investigation required under this section
352 confirms that the applicant has met the requirements of ss.
353 662.1225, 662.123(1), 662.124, 662.125, and 662.126, and that
354 the persons who will serve as directors or officers of the
355 corporation or the managers or members acting in a managerial
356 capacity of the limited liability company, as applicable,
357 satisfy the criteria set forth in subsection (2), the office
358 shall issue a license authorizing the applicant to operate as a
359 licensed family trust company.

360 (4) If the office determines the criteria in subsection
361 (2) have not been met, the office shall serve notice of its
362 intent to deny the application and of the applicant's
363 opportunity to request a hearing pursuant to ss. 120.569 and
364 120.57.

365 Section 12. Section 662.122, Florida Statutes, is created
366 to read:

367 662.122 Registration of a family trust company or a
368 foreign licensed family trust company.-

369 (1) A family trust company that is not applying under s.
370 662.121 to become a licensed family trust company must register
371 with the office before beginning operations in this state. The
372 registration application must:

373 (a) Provide the name of the designated relative.

374 (b) State that the family trust company is a family trust
375 company as defined under this chapter and that its operations
376 will comply with ss. 662.1225, 662.125, 662.131, and 662.134.

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377 (c) Provide the current telephone number and street
378 address of the physical location in this state of its principal
379 place of operations where its books and records will be
380 maintained.

381 (d) List the name and current street address in this state
382 of its registered agent.

383 (2) A foreign licensed family trust company must register
384 with the office before beginning operations in this state.

385 (a) The registration application must state that its
386 operations will comply with ss. 662.1225, 662.125, 662.131, and
387 662.134 and that it is currently in compliance with the family
388 trust company laws and regulations of its principal
389 jurisdiction.

390 (b) The registration application must provide:

391 1. The current telephone number and street address of the
392 physical location of its principal place of business in its
393 principal jurisdiction.

394 2. The current telephone number and street address of the
395 physical location in this state of its principal place of
396 operations where its books and records pertaining to its
397 operations in this state will be maintained.

398 3. The current telephone number and street address of the
399 physical location of any other offices located within this
400 state.

401 4. The name and current street address in this state of
402 its registered agent.

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403 (c) The registration must include a certified copy of a
404 certificate of good standing, or an equivalent document,
405 authenticated by the official having custody of records in the
406 jurisdiction where the foreign licensed family trust company is
407 organized, along with satisfactory proof that the company is
408 organized in a manner similar to a family trust company as
409 defined under this chapter.

410 (3) The registration application required under this
411 section for a family trust company and a foreign licensed family
412 trust company must be accompanied by a nonrefundable
413 registration fee of \$5,000.

414 (4) Registration applications required by this section
415 shall be submitted on a form prescribed by the office and be
416 signed, under penalty of perjury, by an officer or director if
417 the family trust company is organized as a corporation, or by a
418 manager, officer, or member if the family trust company is
419 organized as a limited liability company.

420 (5) All fees received by the office pursuant to this
421 section shall be deposited into the Financial Institutions'
422 Regulatory Trust Fund pursuant to s. 655.049 for purposes of
423 administering this chapter.

424 Section 13. Section 662.1225, Florida Statutes, is created
425 to read:

426 662.1225 Requirements for a family trust company, licensed
427 family trust company, and foreign licensed family trust
428 company.—

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429 (1) A family trust company and a licensed family trust
430 company shall maintain:

431 (a) A principal office physically located in this state
432 where original or true copies of all records and accounts of the
433 family trust company or licensed family trust company may be
434 accessed and made readily available for examination by the
435 office in accordance with this chapter. A family trust company
436 or licensed family trust company may also maintain one or more
437 branch offices within or outside of this state.

438 (b) A registered agent who has an office in this state at
439 the street address of the registered agent.

440 (c) All applicable state and local business licenses,
441 charters, and permits.

442 (d) A deposit account with a state-chartered or national
443 financial institution that has a principal or branch office in
444 this state.

445 (2) In order to operate in this state, a foreign licensed
446 family trust company must be in good standing in its principal
447 jurisdiction and maintain:

448 (a) An office physically located in this state where
449 original or true copies of all records and accounts of the
450 foreign licensed family trust company pertaining to its
451 operations in this state may be accessed and made readily
452 available for examination by the office in accordance with this
453 chapter.

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454 (b) A registered agent who has an office in this state at
455 the street address of the registered agent.

456 (c) All applicable state and local business licenses,
457 charters, and permits.

458 (d) A deposit account with a state-chartered or national
459 financial institution that has a principal or branch office in
460 this state.

461 Section 14. Section 662.123, Florida Statutes, is created
462 to read:

463 662.123 Organizational documents; use of term "family
464 trust" in name.-

465 (1) The articles of incorporation, certificate of
466 incorporation, or articles of organization of a family trust
467 company or licensed family trust company must contain:

468 (a) The name adopted by the company, which must
469 distinguish the company from any other trust company formed in
470 this state or engaged in the business of a trust company, family
471 trust company, or licensed family trust company in this state.
472 If the term "trust" is included in the name adopted by a family
473 trust company, it must be immediately preceded by the term
474 "family" so as to distinguish the entity from a trust company
475 operating under chapter 658. This paragraph does not apply to a
476 foreign licensed family trust company using a fictitious name,
477 that is registered and maintained pursuant to s. 865.09 and that
478 distinguishes it.

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479 (b) The purpose for which the company is formed, which
480 must clearly identify the restricted activities permissible to a
481 family trust company or licensed family trust company under this
482 chapter.

483 (c) A statement that the company will not offer its
484 services to the general public.

485 (d) A statement affirming that the articles of
486 incorporation, certificate of incorporation, or articles of
487 organization will not be amended without prior written notice to
488 the office.

489 (2) A proposed amendment to the articles of incorporation,
490 articles of organization, bylaws, or operating documents of a
491 limited liability company, family trust company, or licensed
492 family trust company must be submitted to the office for review
493 at least 30 days before it is filed or effective. An amendment
494 is not considered filed or effective if the office issues a
495 notice of disapproval with respect to the proposed amendment.

496 (3) The term "family trust" in the name adopted by a
497 family trust company or licensed family trust company does not
498 disqualify the name from being allowed under s. 605.0112 or s.
499 607.0401.

500 Section 15. Section 662.124, Florida Statutes, is created
501 to read:

502 662.124 Minimum capital account required.-

503 (1) A licensed family trust company that has one
504 designated relative may not be organized or operated with an

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505 owners' capital account of less than \$250,000. The minimum
506 capital account shall be increased to \$350,000 if two designated
507 relatives of the licensed family trust company are named in the
508 application for a license or in the annual license renewal. A
509 family trust company may not be organized or operated with a
510 capital account of less than \$250,000.

511 (2) The full amount of the initial capital account of a
512 family trust company or licensed family trust company must be
513 composed of one or more of the asset groups described in s.
514 662.132(1)(a), exclusive of all organization expenses.

515 Section 16. Section 662.125, Florida Statutes, is created
516 to read:

517 662.125 Directors or managers.—

518 (1) Exclusive authority to manage a family trust company
519 or licensed family trust company is vested in a board of
520 directors, if a corporation, or a board of directors or
521 managers, if a limited liability company.

522 (2) A family trust company or licensed family trust
523 company shall have at least three directors, if a corporation,
524 or three directors or managers, if a limited liability company.
525 At least one director or manager of the company must be a
526 resident of this state.

527 (3) The licensed family trust company shall notify the
528 office of the proposed appointment of an individual to the board
529 of directors or addition as a member, or the appointment or
530 employment of an individual as an officer or manager or member

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531 acting in a managerial capacity or equivalent position, at least
532 60 days before such appointment or employment becomes effective,
533 if the company:

534 (a) Has been licensed for less than 2 years.

535 (b) Has undergone a change in control within the preceding
536 2 years.

537 (c) Is operating under a cease and desist order.

538

539 The notification must include the name and such biographical
540 information as the office may reasonably require.

541 (4) A licensed family trust company may not appoint an
542 individual to the board of directors, add a member, or appoint
543 or employ an officer or manager or member acting in a managerial
544 capacity or equivalent, if the office issues a notice of
545 disapproval with respect to that person.

546 (5) The office shall issue a notice of disapproval if the
547 office finds that the proposed appointment or employment of a
548 person would otherwise cause the licensed family trust company
549 to violate any of the requirements set forth in s.
550 662.121(10)(b)-(d) or s. 662.1215(2)(a).

551 Section 17. Section 662.126, Florida Statutes, is created
552 to read:

553 662.126 Fidelity bonds; insurance.—

554 (1) The directors or managers of a licensed family trust
555 company shall procure and maintain fidelity bonds on all active
556 officers, directors, managers, members acting in a managerial

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557 capacity, and employees of the company, regardless of whether
558 they receive a salary or other compensation from the company, in
559 order to indemnify the company against loss because of a
560 dishonest, fraudulent, or criminal act or omission on their
561 part, whether acting alone or in combination with other persons.

562 (2) Each fidelity bond shall be issued in an amount of at
563 least \$1 million.

564 (3) In lieu of the fidelity bonds required under
565 subsection (1), a licensed family trust company may increase its
566 capital account required under s. 662.124 by \$1 million so that
567 if it has one designated relative it is organized or operated
568 with a capital account of at least \$1.25 million, or if it has
569 two designated relatives it is organized or operated with a
570 capital account of at least \$1.35 million.

571 (4) The licensed family trust company shall also procure
572 and maintain an errors and omissions insurance policy of at
573 least \$1 million in which it is listed as the insured to cover
574 the acts and omissions of officers, directors, managers, and
575 members acting in a managerial capacity, regardless of whether
576 the person receives a salary or other compensation from the
577 company.

578 (5) A family trust company or licensed family trust
579 company may also procure and maintain other insurance policies
580 necessary or desirable in connection with the business of the
581 company, including, but not limited to, one or more casualty
582 insurance policies.

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583 (6) A family trust company that is not a licensed family
584 trust company may procure and maintain fidelity bonds as
585 described in this section.

586 (7) A family trust company that is not a licensed family
587 trust company may procure and maintain errors and omissions
588 insurance coverage as described in this section.

589 Section 18. Section 662.127, Florida Statutes, is created
590 to read:

591 662.127 Segregation of books, records, and assets;
592 fiduciary assets not liable.-

593 (1) Each family trust company and licensed family trust
594 company shall maintain its fiduciary books and records separate
595 and distinct from other records of the company and shall
596 segregate all assets held in any fiduciary capacity from other
597 assets of the company.

598 (2) Assets received or held in a fiduciary capacity by a
599 family trust company or licensed family trust company are not
600 subject to the debts or obligations of the company.

601 Section 19. Section 662.128, Florida Statutes, is created
602 to read:

603 662.128 Annual renewal.-

604 (1) Within 30 days after the end of each calendar year,
605 family trust companies, licensed family trust companies, and
606 foreign licensed family trust companies shall file their annual
607 renewal application with the office.

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608 (2) The license renewal application filed by a licensed
609 family trust company must include a verified statement that:

610 (a) The licensed family trust company operated in full
611 compliance with this chapter, chapter 896, or similar state or
612 federal law, or any related rule or regulation. The application
613 must include proof acceptable to the office that the company is
614 a family trust company as defined under this chapter.

615 (b) Describes any material changes to its operations,
616 principal place of business, directors, officers, managers,
617 members acting in a managerial capacity, and designated
618 relatives since the end of the preceding calendar year.

619 (3) The registration renewal application filed by a family
620 trust company must include a verified statement by an officer of
621 the company that it is a family trust company as defined under
622 this chapter and that its operations are in compliance with ss.
623 662.1225, 662.125, 662.131, and 662.134; chapter 896; or similar
624 state or federal law, or any related rule or regulation, and
625 include the name of its designated relative or relatives, if
626 applicable, and the street address for its principal place of
627 business.

628 (4) The registration renewal application filed by a
629 foreign licensed family trust company must include a verified
630 statement that its operations are in compliance with ss.
631 662.1225, 662.125, 662.131, and 662.134 and in compliance with
632 the family trust company laws and regulations of its principal
633 jurisdiction. It must also provide:

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634 (a) The current telephone number and street address of the
635 physical location of its principal place of business in its
636 principal jurisdiction.

637 (b) The current telephone number and street address of the
638 physical location in this state of its principal place of
639 operations where its books and records pertaining to its
640 operations in this state are maintained.

641 (c) The current telephone number and address of the
642 physical location of any other offices located in this state.

643 (d) The name and current street address in this state of
644 its registered agent.

645 (e) Documentation satisfactory to the office that the
646 foreign licensed family trust company is in compliance with the
647 family trust company laws and regulations of its principal
648 jurisdiction.

649 (5) The annual renewal application shall be submitted on a
650 form prescribed by the office and signed under penalty of
651 perjury by an authorized representative.

652 (6) A fee of \$750 for a family trust company, \$1,500 for a
653 licensed family trust company, and \$1,000 for a foreign licensed
654 family trust company shall be submitted with the annual renewal
655 application. All fees received by the office pursuant to this
656 section shall be deposited into the Financial Institutions'
657 Regulatory Trust Fund pursuant to s. 655.049 for the purpose of
658 administering this chapter.

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659 Section 20. Section 662.129, Florida Statutes, is created
660 to read:

661 662.129 Discontinuing business.-If a licensed family trust
662 company desires to discontinue business as a licensed family
663 trust company, it must file with the office a certified copy of
664 the resolution of the board of directors, or members, if a
665 limited liability company, authorizing that action. Upon
666 discharge from all fiduciary duties which it has undertaken, the
667 licensed family trust company shall provide certification of
668 such discharge and voluntarily relinquish its license to operate
669 as a licensed family trust company to the office, whereupon it
670 shall be released from any fidelity bonds that it maintained
671 pursuant to s. 662.126(1).

672 Section 21. Section 662.130, Florida Statutes, is created
673 to read:

674 662.130 Powers of family trust companies, licensed family
675 trust companies, and foreign licensed family trust companies.-

676 (1) A family trust company and a licensed family trust
677 company may, for its eligible members and individuals:

678 (a) Act as a sole or copersonal representative, executor,
679 or curator for probate estates being administered in a state or
680 jurisdiction other than this state.

681 (b) Act as an attorney-in-fact or agent under a power of
682 attorney, other than a power of attorney governed by chapter
683 709.

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684 (c) Except as provided in s. 662.131, act within or
685 outside this state as a sole fiduciary or cofiduciary, including
686 acting as a trustee, advisory agent, assignee, assignee for the
687 benefit of creditors, authenticating agent, bailee, bond or
688 indenture trustee, conservator, conversion agent, custodian,
689 escrow agent, fiscal or paying agent, financial advisor,
690 guardian, investment advisor or manager, managing agent,
691 purchase agent, receiver, registrar, safe keeping or
692 subscription agent, transfer agent, except for public companies,
693 warrant agent, or similar capacities generally performed by
694 corporate trustees, and in so acting possess, purchase, sell,
695 invest, reinvest, safe keep, or otherwise manage or administer
696 the real or personal property of eligible members and
697 individuals.

698 (d) Exercise the powers of a corporation or limited
699 liability company incorporated or organized under the laws of
700 this state, or qualified to transact business as a foreign
701 corporation or limited liability company under the laws of this
702 state, which are reasonably necessary to enable it to fully
703 exercise, in accordance with commonly accepted customs and
704 usages, a power conferred under this chapter.

705 (e) Delegate duties and powers, including investment
706 functions under s. 518.112, in accordance with the powers
707 granted to a trustee under chapter 736 or other applicable law,
708 and retain agents, attorneys, accountants, investment advisers,
709 or other individuals or entities to advise or assist the family

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710 trust company, licensed family trust company, or foreign
711 licensed family trust company in the exercise of its powers and
712 duties under this chapter and chapter 736. Such exercise of
713 power may include, but is not limited to, retaining a bank trust
714 department, or a public trust company, other than another family
715 trust company, licensed family trust company, or foreign
716 licensed family trust company.

717 (f) Perform all acts necessary for exercising the powers
718 enumerated in this section or authorized by this chapter and
719 other applicable laws of this state.

720 (2) Except as otherwise provided in s. 662.131, a foreign
721 licensed family trust company that is in good standing in its
722 principal jurisdiction may exercise all the trust powers in this
723 state that a Florida family trust company may exercise.

724 Section 22. Section 662.131, Florida Statutes, is created
725 to read:

726 662.131 Prohibitions.—Notwithstanding any provision of
727 this chapter, a family trust company, licensed family trust
728 company, or foreign licensed family trust company may not:

729 (1) Engage in commercial banking; however, it may
730 establish accounts at financial institutions for its own
731 purposes or on behalf of family members to whom it provides
732 services pursuant to this chapter.

733 (2) Engage in fiduciary services with the public unless
734 licensed pursuant to chapter 658.

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735 (3) Serve as a personal representative or a copersonal
736 representative of a probate estate administered in this state.

737 (4) Serve as an attorney in fact or agent, including as a
738 co-attorney in fact or co-agent, under a power of attorney
739 pursuant to chapter 709.

740 Section 23. Section 662.132, Florida Statutes, is created
741 to read:

742 662.132 Investments.—

743 (1) The assets forming the minimum capital account of a
744 family trust company or licensed family trust company must:

745 (a) Consist of cash, United States Treasury obligations,
746 or any combination thereof.

747 (b) Have an aggregate market value of at least 100 percent
748 of the company's required capital account, as specified in s.
749 662.124. If the aggregate market value of 100 percent of the
750 company's capital account is, at any time, less than the amount
751 required under s. 662.124, the company has 5 business days to
752 bring such capital account into compliance with s. 662.124.

753 (2) A family trust company or licensed family trust
754 company may purchase or rent real or personal property for use
755 in the conduct of the business and other activities of the
756 company.

757 (3) Notwithstanding any other provision of law, a family
758 trust company or licensed family trust company may invest funds
759 for its own account, other than those required or allowed under

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760 subsection (1) or subsection (2), in any type or character of
761 equity securities, debt securities, or other assets.

762 (4) Notwithstanding any other law, a family trust company
763 or licensed family trust company may, while acting as a
764 fiduciary, purchase directly from underwriters or distributors
765 or in the secondary market:

766 (a) Bonds or other securities underwritten or distributed
767 by:

768 1. The family trust company or licensed family trust
769 company;

770 2. A family affiliate; or

771 3. A syndicate, including the family trust company,
772 licensed family trust company, or family affiliate.

773 (b) Securities of an investment company, including a
774 mutual fund, closed-end fund, or unit investment trust, as
775 defined under the federal Investment Company Act of 1940, for
776 which the family trust company or licensed family trust company
777 acts as an advisor, custodian, distributor, manager, registrar,
778 shareholder servicing agent, sponsor, or transfer agent.

779 (5) The authority granted in subsection (4) may be
780 exercised only if:

781 (a) The investment is not expressly prohibited by the
782 instrument, judgment, decree, or order establishing the
783 fiduciary relationship.

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784 (b) The family trust company or licensed family trust
785 company procures in writing the consent of any cofiduciaries
786 with discretionary investment powers to the investment.

787 (c) The family trust company or licensed family trust
788 company discloses in writing to the person or persons to whom it
789 sends account statements its intent to exercise the authority
790 granted in subsection (4) before the first exercise of that
791 authority, and each such disclosure reflects:

792 1. The nature of any interest the family trust company or
793 licensed family trust company has, or is reasonably expected to
794 have, in the underwriting or distribution of bonds or securities
795 purchased.

796 2. The nature and amount of any fee or other compensation
797 received, or reasonably expected to be received, by the family
798 trust company or licensed family trust company in connection
799 with the transaction.

800 3. The nature of the relationship between the family trust
801 company or licensed family trust company and an investment
802 company described in paragraph (4) (b) .

803 4. The nature and amount of any fee or other compensation
804 received, or reasonably expected to be received, by the family
805 trust company or licensed family trust company for providing
806 services to an investment company described in paragraph (4) (b) .

807 (6) Subsections (4) and (5) do not affect the degree of
808 prudence required of fiduciaries under the laws of this state.
809 However, a purchase of bonds or securities pursuant to

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810 subsections (4) and (5) is not presumed to be affected by a
811 conflict between the fiduciary's personal and fiduciary
812 interests if such purchase:

813 (a) Is negotiated at a fair price.

814 (b) Is in accordance with:

815 1. The interest of the qualified beneficiaries.

816 2. The purposes of the trusts.

817 (c) Otherwise complies with:

818 1. The prudent investor rule in s. 518.11, or other
819 prudent investor or similar rule under other applicable law,
820 unless such compliance is waived in accordance with s. 518.11 or
821 other applicable law.

822 2. The terms of the instrument, judgment, decree, or order
823 establishing the fiduciary relationship.

824 (7) Notwithstanding subsections (1)-(6), a family trust
825 company or licensed family trust company may not, while acting
826 as a fiduciary, purchase a bond or security issued by the
827 company or an affiliate thereof unless:

828 (a) The family trust company or licensed family trust
829 company is expressly authorized to do so by:

830 1. The terms of the instrument creating the trust;

831 2. A court order;

832 3. The written consent of the settlor of the trust for
833 which the family trust company or licensed family trust company
834 is serving as trustee; or

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835 4. The written consent of every adult qualified
836 beneficiary of the trust who, at the time of such purchase, is
837 entitled to receive income under the trust or who would be
838 entitled to receive a distribution of principal if the trust
839 were terminated; and

840 (b) The purchase of the security is at a fair price and
841 complies with:

842 1. The prudent investor rule in s. 518.11, or other
843 prudent investor or similar rule under other applicable law,
844 unless such compliance is waived in accordance with s. 518.11 or
845 other applicable law.

846 2. The terms of the instrument, judgment, decree, or order
847 establishing the fiduciary relationship.

848 (8) Except as otherwise expressly limited by this section,
849 a family trust company or licensed family trust company, while
850 acting as a fiduciary, is also authorized, without limiting any
851 powers otherwise conferred on fiduciaries by law, to do any of
852 the following, which are not presumed to be affected by a
853 conflict between the fiduciary's personal and fiduciary
854 interests:

855 (a) Make an equity investment in a closely held entity
856 that may or may not be marketable and that is directly or
857 indirectly owned or controlled by one or more family members.

858 (b) Place a security transaction using a broker who is a
859 family member.

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860 (c) Enter into an agreement with a family member who is
861 the settlor or a qualified beneficiary of a trust with respect
862 to the appointment of the family trust company or licensed
863 family trust company as a fiduciary of the trust, or with
864 respect to the compensation of the family trust company and
865 licensed family trust company for service as a fiduciary.

866 (d) Transact business with a family member.

867 (e) Transact business with or invest in any asset of
868 another trust, estate, guardianship, or conservatorship for
869 which the family trust company or licensed family trust company
870 is a fiduciary or in which a family member has an interest.

871 (f) Deposit trust assets in a financial institution that
872 is owned, controlled, or operated by one or more family members.

873 (g) Purchase, sell, hold, own, or invest in a security,
874 bond, real or personal property, stock, or other asset of a
875 family member.

876 (h) With or without adequate security, lend money to or
877 borrow money from a family member or a trust, estate, or
878 guardianship for which the family trust company or licensed
879 family trust company serves as a fiduciary.

880 (9) If not inconsistent with and subject to the terms of
881 subsections (4)-(8), the duty of loyalty under s. 736.0802
882 applies to family trust companies, licensed family trust
883 companies, and foreign licensed family trust companies when
884 serving as trustee of a trust whose administration is subject to
885 chapter 736.

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886 Section 24. Section 662.133, Florida Statutes, is created
887 to read:

888 662.133 Oaths, affidavits, and acknowledgments.—If a
889 family trust company or licensed family trust company is
890 required to make an oath, affirmation, affidavit, or
891 acknowledgment regarding a fiduciary capacity in which it is
892 acting or is preparing to act, a director or officer or, if the
893 company is a limited liability company, a manager or officer
894 expressly authorized by the family trust company or licensed
895 family trust company, shall make and, if required, subscribe to
896 such oath, affirmation, affidavit, or acknowledgment on behalf
897 of the company.

898 Section 25. Section 662.134, Florida Statutes, is created
899 to read:

900 662.134 Unlawful to advertise services.—A family trust
901 company, licensed family trust company, or foreign licensed
902 family trust company may not advertise its services to the
903 public.

904 Section 26. Section 662.135, Florida Statutes, is created
905 to read:

906 662.135 Service as court-appointed fiduciary; bond
907 requirement.—A licensed family trust company is not required to
908 provide or otherwise post a bond or other surety to serve as a
909 court-appointed fiduciary in a proceeding brought or conducted
910 in this state.

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911 Section 27. Section 662.140, Florida Statutes, is created
912 to read:

913 662.140 Rules.—The commission may adopt rules necessary to
914 carry out the purposes of this chapter.

915 Section 28. Section 662.141, Florida Statutes, is created
916 to read:

917 662.141 Examination, investigations, and fees.—The office
918 may conduct an examination or investigation of a family trust
919 company, licensed family trust company, or foreign licensed
920 family trust company at any time it deems necessary to determine
921 whether a family trust company, licensed family trust company,
922 foreign licensed family trust company, or family trust company-
923 affiliated person has violated or is about to violate any
924 provision of the financial institution's codes or the rules
925 adopted by the commission pursuant to such codes.

926 (1) The office shall conduct an examination of a licensed
927 family trust company, family trust company, and foreign licensed
928 family trust company at least once every 18 months.

929 (2) In lieu of an examination by the office, the office
930 may accept an audit of a family trust company, licensed family
931 trust company, or foreign licensed family trust company by a
932 certified public accountant licensed to practice in this state
933 who is independent of the company, or other person or entity
934 acceptable to the office. If the office accepts an audit
935 pursuant to this subsection, the office shall conduct the next
936 required examination.

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937 (3) The office shall examine the books and records of a
938 family trust company or licensed family trust company as
939 necessary to determine whether it is a family trust company or
940 licensed family trust company as defined in this chapter, and is
941 operating in compliance with ss. 662.1225, 662.125, 662.126,
942 662.131 and 662.134, as applicable. The office may rely upon a
943 certificate of trust, trust summary, or written statement from
944 the trust company identifying the qualified beneficiaries of any
945 trust or estate for which the family trust company serves as a
946 fiduciary and the qualification of the qualified beneficiaries
947 as permissible recipients of company services. The commission
948 may establish by rule the records to be maintained or
949 requirements necessary to demonstrate conformity with this
950 chapter as a family trust company or licensed family trust
951 company.

952 (4) The office shall examine the books and records of a
953 foreign licensed family trust company as necessary to determine
954 if it is a foreign licensed trust company as defined in this
955 chapter and is in compliance with ss. 662.1225, 662.125,
956 662.130(2), 662.131, and 662.134. In connection with an
957 examination of the books and records of the company, the office
958 may rely upon the most recent examination report or review or
959 certification letters or similar documentation issued by the
960 regulatory agency to which the foreign licensed family trust
961 company is subject to supervision. The commission may establish
962 by rule the records to be maintained or requirements necessary

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963 to demonstrate conformity with this chapter as a foreign
964 licensed family trust company. The office's examination of the
965 books and records of a foreign licensed family trust company is,
966 to the extent practicable, limited to books and records of the
967 operations in this state.

968 (5) For each examination of the books and records of a
969 family trust company, licensed family trust company, or foreign
970 licensed family trust company as authorized under this chapter,
971 the trust company shall pay a fee for the costs of the
972 examination by the office. As used in this section, the term
973 "costs" means the salary and travel expenses of field staff
974 which are directly attributable to the examination of the trust
975 company and the travel expenses of any supervisory or support
976 staff required as a result of examination findings. The mailing
977 of payment for costs incurred must be postmarked within 30 days
978 after the receipt of a notice stating that such costs are due.
979 The office may levy a late payment of up to \$100 per day or part
980 thereof that a payment is overdue, unless waived for good cause.
981 However, if the late payment of costs is intentional, the office
982 may levy an administrative fine of up to \$1,000 per day for each
983 day the payment is overdue.

984 (6) All fees collected under this section must be
985 deposited into the Financial Institutions' Regulatory Trust Fund
986 pursuant to s. 655.049 for the purpose of administering this
987 chapter.

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988 Section 29. Section 662.142, Florida Statutes, is created
989 to read:

990 662.142 Revocation of license.-

991 (1) The following acts or conduct constitute grounds for
992 the revocation by the office of the license of a licensed family
993 trust company:

994 (a) The company is not a family trust company as defined
995 in this chapter;

996 (b) A violation of s. 662.1225, s. 662.123(1)(a), s.
997 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, s.
998 662.131, s. 662.134, or s. 662.144;

999 (c) A violation of chapter 896, relating to financial
1000 transactions offenses, or any similar state or federal law or
1001 any related rule or regulation;

1002 (d) A violation of any rule of the commission;

1003 (e) A violation of any order of the office;

1004 (f) A breach of any written agreement with the office;

1005 (g) A prohibited act or practice under s. 662.131;

1006 (h) A failure to provide information or documents to the
1007 office upon written request; or

1008 (i) An act of commission or omission that is judicially
1009 determined to be a breach of trust or of fiduciary duty pursuant
1010 to a court of competent jurisdiction.

1011 (2) Upon a finding that a licensed family trust company
1012 has committed any of the acts set forth in paragraphs (1)(a)-
1013 (h), the office may enter an order suspending the company's

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1014 license and provide notice of its intention to revoke the
1015 license and of the opportunity for a hearing pursuant to ss.
1016 120.569 and 120.57. If there has been a commission or omission
1017 under paragraph (1)(i), the office may immediately enter an
1018 order revoking the license. The licensed family trust company
1019 shall have 90 days to wind up its affairs after license
1020 revocation. If after 90 days the company is still in operation,
1021 the office may seek an order from the circuit court for the
1022 annulment or dissolution of the company.

1023 Section 30. Section 662.143, Florida Statutes, is created
1024 to read:

1025 662.143 Cease and desist authority.-

1026 (1) The office may issue and serve upon a family trust
1027 company, licensed family trust company, or foreign licensed
1028 family trust company, or upon a family trust company-affiliated
1029 party, a complaint stating charges if the office has reason to
1030 believe that such company, family trust company-affiliated
1031 party, or individual named therein is engaging in or has engaged
1032 in conduct that:

1033 (a) Indicates that the company is not a family trust
1034 company or foreign licensed family trust company as defined in
1035 this chapter;

1036 (b) Is a violation of s. 662.1225, s. 662.123(1)(a), s.
1037 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, or
1038 s. 662.134;

1039 (c) Is a violation of any rule of the commission;

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- 1040 (d) Is a violation of any order of the office;
1041 (e) Is a breach of any written agreement with the office;
1042 (f) Is a prohibited act or practice pursuant to s.
1043 662.131;
1044 (g) Is a willful failure to provide information or
1045 documents to the office upon written request;
1046 (h) Is an act of commission or omission or a practice that
1047 the office has reason to believe is a breach of trust or of
1048 fiduciary duty; or
1049 (i) Is a violation of chapter 896 or similar state or
1050 federal law or any related rule or regulation.
1051 (2) The complaint must contain the statement of facts and
1052 a notice of opportunity for a hearing pursuant to ss. 120.569
1053 and 120.57.
1054 (3) If no hearing is requested within the time allowed by
1055 ss. 120.569 and 120.57, or if a hearing is held and the office
1056 finds that any of the charges are true, the office may enter an
1057 order directing the family trust company, licensed family trust
1058 company, or foreign licensed family trust company, or family
1059 trust company-affiliated party, or the individual named therein
1060 to cease and desist from engaging in the conduct complained of
1061 and to take corrective action.
1062 (4) If the family trust company, licensed family trust
1063 company, foreign licensed family trust company, or family trust
1064 company-affiliated party, or the individual named in such order,
1065 fails to respond to the complaint within the time allotted in

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1066 ss. 120.569 and 120.57, such failure constitutes a default and
1067 justifies the entry of a cease and desist order.

1068 (5) A contested or default cease and desist order is
1069 effective when reduced to writing and served upon the family
1070 trust company, licensed family trust company, or foreign
1071 licensed family trust company, or family trust company-
1072 affiliated party, or the individual named therein. An
1073 uncontested cease and desist order is effective as agreed.

1074 (6) If the office finds that conduct described in
1075 subsection (1) is likely to cause substantial prejudice to
1076 members, shareholders, or beneficiaries of fiduciary accounts of
1077 the family trust company, licensed family trust company, or
1078 foreign licensed family trust company, or to beneficiaries of
1079 services rendered by such company, it may issue an emergency
1080 cease and desist order requiring the family trust company,
1081 licensed family trust company, or foreign licensed family trust
1082 company, family trust company-affiliated party, or individual
1083 named therein to immediately cease and desist from engaging in
1084 the conduct complained of and to take corrective action. The
1085 emergency order is effective immediately upon service of a copy
1086 of the order upon the family trust company, licensed family
1087 trust company, or foreign licensed family trust company, or
1088 family trust company-affiliated party and remains effective for
1089 90 days. If the office begins nonemergency cease and desist
1090 proceedings under subsection (1), the emergency order remains

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1091 effective until the conclusion of the proceedings under ss.
1092 120.569 and 120.57.

1093 (7) A family trust company or foreign licensed family
1094 trust company shall have 90 days to wind up its affairs after
1095 entry of any order to cease and desist from operating as a
1096 family trust company or foreign licensed family trust company.
1097 If, after 90 days, a family trust company is still operating,
1098 the office may seek an order from the circuit court for the
1099 annulment or dissolution of the company. If after 90 days a
1100 foreign licensed family trust company is still operating, the
1101 office may seek an injunction from the circuit court restraining
1102 the company from continuing to operate in this state.

1103 Section 31. Section 662.144, Florida Statutes, is created
1104 to read:

1105 662.144 Failure to submit required report; fines.—If a
1106 family trust company, licensed family trust company, or foreign
1107 licensed family trust company fails to submit within the
1108 prescribed period its annual renewal or any other report
1109 required by this chapter or any rule, the office may impose a
1110 fine of up to \$100 for each day that the annual renewal or
1111 report is overdue. Failure to provide the annual renewal within
1112 60 days after the end of the calendar year shall automatically
1113 result in termination of registration of a family trust company
1114 or revocation of the license of a licensed family trust company.
1115 The trust company shall thereafter have 90 days to wind up its
1116 affairs.

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1117 Section 32. Section 662.145, Florida Statutes, is created
1118 to read:

1119 662.145 Grounds for removal.-

1120 (1) The office may issue and serve upon a licensed family
1121 trust company or a family trust company and a family trust
1122 company-affiliated party a complaint stating charges if the
1123 office has reason to believe that the family trust company-
1124 affiliated party is engaging or has engaged in conduct that:

1125 (a) Demonstrates that the company is not a family trust
1126 company as defined in this chapter;

1127 (b) Is a prohibited act or practice under s. 662.131;

1128 (c) Is a violation of s. 662.1225, s. 662.123(1)(a), s.
1129 662.126, s. 662.127, s. 662.128, s. 662.130, or s. 662.134;

1130 (d) Is a violation of any other law involving fraud or
1131 moral turpitude which constitutes a felony;

1132 (e) Is a violation of chapter 896, relating to offenses
1133 related to financial transactions, or similar state or federal
1134 law;

1135 (f) Is a willful violation of a rule of the commission;

1136 (g) Is a willful violation of an order of the office;

1137 (h) Is a willful breach of a written agreement with the
1138 office; or

1139 (i) Is an act of commission or omission or a practice that
1140 the office has reason to believe is a breach of trust or
1141 fiduciary duty.

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1142 (2) The complaint must contain a statement of facts and a
1143 notice of opportunity for a hearing pursuant to ss. 120.569 and
1144 120.57.

1145 (3) If no hearing is requested within the time allowed by
1146 ss. 120.569 and 120.57, or if a hearing is held and the office
1147 finds that any of the charges in the complaint is true, the
1148 office may enter an order removing the family trust company-
1149 affiliated party or restricting or prohibiting participation by
1150 the family trust company-affiliated party in the affairs of the
1151 family trust company, licensed family trust company, or state
1152 financial institution, subsidiary, or service corporation.

1153 (4) If the family trust company-affiliated party fails to
1154 respond to the complaint within the time allowed in ss. 120.569
1155 and 120.57, such failure constitutes a default and justifies the
1156 entry of an order of removal.

1157 (5) A contested or default order of removal is effective
1158 when reduced to writing and served on the family trust company
1159 or licensed family trust company and the family trust company-
1160 affiliated party. An uncontested order of removal is effective
1161 as agreed.

1162 (6) The chief executive officer, or the person holding the
1163 equivalent office, of a family trust company or licensed family
1164 trust company shall promptly notify the office if he or she has
1165 actual knowledge that a family trust company-affiliated party is
1166 charged with a felony in a state or federal court.

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1167 (a) If a family trust company-affiliated party is charged
1168 with a felony in a state or federal court, or in the courts of a
1169 foreign country with which the United States maintains
1170 diplomatic relations which involves a violation of law relating
1171 to fraud, currency transaction reporting, money laundering,
1172 theft, or moral turpitude and the charge is equivalent to a
1173 felony charge under state or federal law, the office may enter
1174 an emergency order suspending the family trust company-
1175 affiliated party or restricting or prohibiting participation by
1176 such company-affiliated party in the affairs of that particular
1177 family trust company or licensed family trust company or any
1178 financial institution, subsidiary, or service corporation, upon
1179 service of the order upon the company and the family trust
1180 company-affiliated party so charged.

1181 (b) The order must contain notice of opportunity for a
1182 hearing pursuant to ss. 120.569 and 120.57, at which the family
1183 trust company-affiliated party may request a postsuspension
1184 hearing to show that continued service to or participation in
1185 the affairs of the family trust company or licensed family trust
1186 company does not pose a threat to the interests of the company.
1187 In accordance with applicable commission rules, the office shall
1188 notify the family trust company-affiliated party whether the
1189 order suspending or prohibiting the company-affiliated party
1190 from participating in the affairs of a licensed family trust
1191 company or family trust company, or state financial institution,
1192 subsidiary, or service corporation will be rescinded or

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1193 otherwise modified. The emergency order remains in effect,
1194 unless otherwise modified by the office, until the criminal
1195 charge is disposed of. The acquittal of the family trust
1196 company-affiliated party charged, or the final, unappealed
1197 dismissal of all charges against such person, dissolves the
1198 emergency order, but does not prohibit the office from
1199 instituting proceedings under subsection (1). If the family
1200 trust company-affiliated party charged is convicted or pleads
1201 guilty or nolo contendere, regardless of adjudication, the
1202 emergency order becomes final.

1203 (7) A family trust company-affiliated party removed from
1204 office pursuant to this section is not eligible for reelection
1205 to such position or to any official position in a family trust
1206 company, licensed family trust company, or financial institution
1207 in this state except with the written consent of the office. A
1208 family trust company-affiliated party who is removed,
1209 restricted, or prohibited from participation in the affairs of a
1210 family trust company, licensed family trust company, or state
1211 financial institution pursuant to this section may petition the
1212 office for modification or termination of such removal,
1213 restriction, or prohibition.

1214 (8) The resignation, termination of employment or
1215 participation, or separation from a family trust company or a
1216 licensed family trust company of the family trust company-
1217 affiliated party does not affect the jurisdiction and authority
1218 of the office to issue a notice and proceed under this section

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1219 against the company-affiliated party if such notice is served
1220 before the end of the 6-year period beginning on the date such
1221 person ceases to be a family trust company-affiliated party with
1222 respect to such company.

1223 Section 33. Section 662.146, Florida Statutes, is created
1224 to read:

1225 662.146 Confidentiality of books and records.—

1226 (1) The books and records of a family trust company,
1227 licensed family trust company, and foreign licensed family trust
1228 company are confidential and shall be made available for
1229 inspection and examination only:

1230 (a) To the office or its authorized representative;

1231 (b) To any person authorized to act for the company;

1232 (c) As compelled by a court, pursuant to a subpoena issued
1233 pursuant to the Florida Rules of Civil Procedure, the Florida
1234 Rules of Criminal Procedure, or the Federal Rules of Civil
1235 Procedure or pursuant to a subpoena issued in accordance with
1236 state or federal law. Before the production of the books and
1237 records of a family trust company, licensed family trust
1238 company, or foreign licensed family trust company, the party
1239 seeking production must reimburse the company for the reasonable
1240 costs and fees incurred in compliance with the production. If
1241 the parties disagree regarding the amount of reimbursement, the
1242 party seeking the records may request the court having
1243 jurisdiction to set the amount of reimbursement;

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1244 (d) Pursuant to a subpoena, to any federal or state law
1245 enforcement or prosecutorial instrumentality authorized to
1246 investigate suspected criminal activity;

1247 (e) As authorized by the board of directors, if in
1248 corporate form, or the managers, if in limited liability company
1249 form; or

1250 (f) As provided in subsection (2).

1251 (2) (a) Each customer and stockholder, if a corporation, or
1252 member, if a limited liability company, has the right to inspect
1253 the books and records of a family trust company or licensed
1254 family trust company as they pertain to his or her accounts or
1255 the determination of his or her voting rights.

1256 (b) The books and records pertaining to customers,
1257 members, and stockholders of a family trust company or licensed
1258 family trust company shall be kept confidential by the company
1259 and its directors, managers, officers, and employees. The books
1260 and records of customers, members, and stockholders may not be
1261 released except upon the express authorization of the customer
1262 as to his or her own accounts or a stockholder or member
1263 regarding his or her voting rights. However, information may be
1264 released, without the authorization of a customer, member, or
1265 shareholder in a manner prescribed by the board of directors, if
1266 a corporation, or managers, if a limited liability company, to
1267 verify or corroborate the existence or amount of a customer's
1268 account if that information is reasonably provided to meet the
1269 needs of commerce and to ensure accurate credit information.

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1270 Notwithstanding this paragraph, this subsection does not
1271 prohibit a family trust company or licensed family trust company
1272 from disclosing financial information referenced in this
1273 subsection as permitted under 15 U.S.C. s. 6802, as amended.

1274 (c) A person who willfully violates a provision of this
1275 section which relates to unlawful disclosure of confidential
1276 information commits a felony of the third degree, punishable as
1277 provided in s. 775.082, s. 775.083, or s. 775.084.

1278 (d) This subsection does not apply to a foreign licensed
1279 family trust company. The laws of the jurisdiction of its
1280 principal place of business govern the rights of customers,
1281 members, and stockholders to inspect its books and records.

1282 (3) For purposes of this section, the term "books and
1283 records" includes, but is not limited to, an application for a
1284 license and any documents connected with the application under
1285 s. 662.121; the office's corresponding investigation under s.
1286 662.1215 in granting or denying the issuance of the license; the
1287 initial registration documents of a family trust company or
1288 foreign licensed family trust company under s. 662.122; the
1289 annual renewal made by a family trust company, licensed family
1290 trust company, or foreign licensed family trust company under s.
1291 662.128; and the documentation submitted to the office in
1292 connection with a licensed family trust company discontinuing
1293 its business under s. 662.129.

1294 Section 34. Section 662.147, Florida Statutes, is created
1295 to read:

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1296 662.147 Records relating to the office examination;
1297 limited restrictions on public access.-

1298 (1) A family trust company, licensed family trust company,
1299 and foreign licensed family trust company shall keep at the
1300 office it is required to maintain pursuant to s. 662.1225 full
1301 and complete records of the names and residences of all the
1302 shareholders or members of the trust company and the number of
1303 shares or membership units held by each, as applicable, as well
1304 as the ownership percentage of each shareholder or member, as
1305 the case may be. The records are subject to the inspection of
1306 all the shareholders or members of the trust company, and the
1307 officers authorized to assess taxes under state authority,
1308 during the normal business hours of the trust company. A current
1309 list of shareholders or members shall be made available to the
1310 office's examiners for their inspection and, upon the request of
1311 the office, shall be submitted to the office.

1312 (2) The office shall retain for at least 10 years:

1313 (a) Examination reports.

1314 (b) Investigatory records.

1315 (c) The application for a license, any documents connected
1316 with the application, and the office's corresponding
1317 investigation in granting or denying the issuance of the
1318 license.

1319 (d) The initial registration documents of a family trust
1320 company or foreign licensed family trust company.

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1321 (e) The annual renewal made by a family trust company,
1322 licensed family trust company, or foreign licensed family trust
1323 company.

1324 (f) The documentation submitted to the office in
1325 connection with a licensed family trust company discontinuing
1326 its business and any related information compiled by the office,
1327 or photographic copies thereof.

1328 (3) A copy of any document on file with the office which
1329 is certified by the office as being a true copy may be
1330 introduced in evidence as if it were the original. The office
1331 shall establish a schedule of fees for preparing true copies of
1332 documents.

1333 (4) Orders issued by courts or administrative law judges
1334 for the production of confidential records or information must
1335 provide for inspection in camera by the court or the
1336 administrative law judge. If the court or administrative law
1337 judge determines that the documents requested are relevant or
1338 would likely lead to the discovery of admissible evidence, the
1339 documents shall be subject to further orders by the court or the
1340 administrative law judge to protect the confidentiality thereof.
1341 An order directing the release of information shall be
1342 immediately reviewable, and a petition by the office for review
1343 of the order shall automatically stay any further proceedings in
1344 the trial court or the administrative hearing until the
1345 disposition of the petition by the reviewing court. If any other

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1346 party files a petition for review, it will operate as a stay of
1347 the proceedings only upon order of the reviewing court.

1348 Section 35. Section 662.150, Florida Statutes, is created
1349 to read:

1350 662.150 Domestication of a foreign family trust company.—

1351 (1) A foreign family trust company lawfully organized and
1352 currently in good standing with the state regulatory agency in
1353 the jurisdiction where it is organized may become domesticated
1354 in this state by:

1355 (a) Filing with the Department of State a certificate of
1356 domestication and articles of incorporation in accordance with
1357 and subject to s. 607.1801 or by filing articles of conversion
1358 in accordance with s. 605.1045; and

1359 (b) Filing an application for a license to begin
1360 operations as a licensed family trust company in accordance with
1361 s. 662.121, which must first be approved by the office or by
1362 filing the prescribed form with the office to register as a
1363 family trust company to begin operations in accordance with s.
1364 662.122.

1365 (2) A foreign family trust company may apply pursuant to
1366 paragraph (1)(b) before satisfying the requirements of paragraph
1367 (1)(a); however, upon receipt of a certificate of authority, the
1368 company must satisfy the requirements of paragraph (1)(a) before
1369 beginning operations.

1370 Section 36. Section 662.151, Florida Statutes, is created
1371 to read:

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1372 662.151 Registration of a foreign licensed family trust
1373 company to operate in this state.—A foreign licensed family
1374 trust company lawfully organized and currently in good standing
1375 with the state regulatory agency in the jurisdiction under the
1376 law of which it is organized may qualify to begin operations in
1377 this state by:

1378 (1) Filing an application with the Department of State to
1379 apply for a certificate of authority in accordance with and
1380 subject to s. 605.0902 or s. 607.1503.

1381 (2) Filing an initial registration to begin operations as
1382 a foreign licensed family trust company in accordance with and
1383 subject to s. 662.122 and subject to the sections of this
1384 chapter which specifically state that they apply to a foreign
1385 licensed family trust company.

1386 (3) A company in operation as of the effective date of
1387 this law that meets the definition of a family trust company
1388 shall have 90 days from the effective date of this act to apply
1389 for licensure as a licensed family trust company, register as a
1390 family trust company or foreign licensed family trust company,
1391 or cease doing business in this state.

1392 Section 37. Paragraph (a) of subsection (3) of section
1393 120.80, Florida Statutes, is amended to read:

1394 120.80 Exceptions and special requirements; agencies.—

1395 (3) OFFICE OF FINANCIAL REGULATION.—

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1396 (a) Notwithstanding s. 120.60(1), in proceedings for the
1397 issuance, denial, renewal, or amendment of a license or approval
1398 of a merger pursuant to title XXXVIII:

1399 1.a. The Office of Financial Regulation of the Financial
1400 Services Commission shall have published in the Florida
1401 Administrative Register notice of the application within 21 days
1402 after receipt.

1403 b. Within 21 days after publication of notice, any person
1404 may request a hearing. Failure to request a hearing within 21
1405 days after notice constitutes a waiver of any right to a
1406 hearing. The Office of Financial Regulation or an applicant may
1407 request a hearing at any time prior to the issuance of a final
1408 order. Hearings shall be conducted pursuant to ss. 120.569 and
1409 120.57, except that the Financial Services Commission shall by
1410 rule provide for participation by the general public.

1411 2. Should a hearing be requested as provided by sub-
1412 subparagraph 1.b., the applicant or licensee shall publish at
1413 its own cost a notice of the hearing in a newspaper of general
1414 circulation in the area affected by the application. The
1415 Financial Services Commission may by rule specify the format and
1416 size of the notice.

1417 3. Notwithstanding s. 120.60(1), and except as provided in
1418 subparagraph 4., an every application for license for a new
1419 bank, new trust company, new credit union, ~~or~~ new savings and
1420 loan association, or new licensed family trust company must
1421 ~~shall~~ be approved or denied within 180 days after receipt of the

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1422 original application or receipt of the timely requested
1423 additional information or correction of errors or omissions. An
1424 ~~Any~~ application for such a license or for acquisition of such
1425 control which is not approved or denied within the 180-day
1426 period or within 30 days after conclusion of a public hearing on
1427 the application, whichever is later, shall be deemed approved
1428 subject to the satisfactory completion of conditions required by
1429 statute as a prerequisite to license and approval of insurance
1430 of accounts for a new bank, a new savings and loan association,
1431 ~~or a new credit union,~~ or a new licensed family trust company by
1432 the appropriate insurer.

1433 4. In the case of an ~~every~~ application for license to
1434 establish a new bank, trust company, or capital stock savings
1435 association in which a foreign national proposes to own or
1436 control 10 percent or more of any class of voting securities,
1437 and in the case of an ~~every~~ application by a foreign national
1438 for approval to acquire control of a bank, trust company, or
1439 capital stock savings association, the Office of Financial
1440 Regulation shall request that a public hearing be conducted
1441 pursuant to ss. 120.569 and 120.57. Notice of such hearing shall
1442 be published by the applicant as provided in subparagraph 2. The
1443 failure of ~~any~~ such foreign national to appear personally at the
1444 hearing shall be grounds for denial of the application.
1445 Notwithstanding ~~the provisions of~~ s. 120.60(1) and subparagraph
1446 3., every application involving a foreign national shall be
1447 approved or denied within 1 year after receipt of the original

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1448 application or any timely requested additional information or
1449 the correction of any errors or omissions, or within 30 days
1450 after the conclusion of the public hearing on the application,
1451 whichever is later.

1452 Section 38. Subsections (2) and (3) of section 736.0802,
1453 Florida Statutes, are amended, and paragraph (i) is added to
1454 subsection (5) of that section, to read:

1455 736.0802 Duty of loyalty.—

1456 (2) Subject to the rights of persons dealing with or
1457 assisting the trustee as provided in s. 736.1016, a sale,
1458 encumbrance, or other transaction involving the investment or
1459 management of trust property entered into by the trustee for the
1460 trustee's own personal account or which is otherwise affected by
1461 a conflict between the trustee's fiduciary and personal
1462 interests is voidable by a beneficiary affected by the
1463 transaction unless:

1464 (a) The transaction was authorized by the terms of the
1465 trust;

1466 (b) The transaction was approved by the court;

1467 (c) The beneficiary did not commence a judicial proceeding
1468 within the time allowed by s. 736.1008;

1469 (d) The beneficiary consented to the trustee's conduct,
1470 ratified the transaction, or released the trustee in compliance
1471 with s. 736.1012;

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1472 (e) The transaction involves a contract entered into or
1473 claim acquired by the trustee when that person had not become or
1474 contemplated becoming trustee;

1475 (f) The transaction was consented to in writing by a
1476 settlor of the trust while the trust was revocable; ~~or~~

1477 (g) The transaction is one by a corporate trustee that
1478 involves a money market mutual fund, mutual fund, or a common
1479 trust fund described in s. 736.0816(3); or

1480 (h) With regard to a trust that is administered by a
1481 family trust company, licensed family trust company, or foreign
1482 licensed family trust company operating under chapter 662, the
1483 transaction is authorized by s. 662.132(4)-(8).

1484 (3) (a) A sale, encumbrance, or other transaction involving
1485 the investment or management of trust property is presumed to be
1486 affected by a conflict between personal and fiduciary interests
1487 if the sale, encumbrance, or other transaction is entered into
1488 by the trustee with:

1489 1.(a) The trustee's spouse;

1490 2.(b) The trustee's descendants, siblings, parents, or
1491 their spouses;

1492 3.(e) An officer, director, employee, agent, or attorney
1493 of the trustee; or

1494 4.(d) A corporation or other person or enterprise in which
1495 the trustee, or a person that owns a significant interest in the
1496 trustee, has an interest that might affect the trustee's best
1497 judgment.

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1498 (b) This subsection does not apply to a trust being
1499 administered by a family trust company, licensed family trust
1500 company, or foreign licensed family trust company operating
1501 under chapter 662 if the sale, encumbrance, or other transaction
1502 is authorized by s. 662.132(4)-(8).

1503 (5)

1504 (i) This subsection does not apply to a trust administered
1505 by a family trust company, licensed family trust company, or
1506 foreign licensed family trust company operating under chapter
1507 662.

1508 Section 39. Subsection (5) of section 744.351, Florida
1509 Statutes, is amended to read:

1510 744.351 Bond of guardian.—

1511 (5) Financial institutions as defined in s. 744.309(4),
1512 other than a trust company operating under chapter 662 which is
1513 not a licensed family trust company or foreign licensed family
1514 trust company, and public guardians authorized by law to be
1515 guardians are shall not be required to file bonds.

1516 Section 40. This act shall take effect October 1, 2014, if
1517 HB 1269 or similar legislation is adopted in the same
1518 legislative session or an extension thereof and becomes law.

1519

1520

1521

1522

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

1523

Remove everything before the enacting clause and insert:

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1524 A bill to be entitled
1525 An act relating to family trust companies; amending s.
1526 655.005, F.S.; revising the definition of the term
1527 "financial institutions codes"; creating chapter 662,
1528 F.S.; creating s. 662.10, F.S.; providing a short
1529 title; creating s. 662.102, F.S.; providing the
1530 purpose of the act; creating s. 662.111, F.S.;
1531 defining terms; creating s. 662.112, F.S.; providing
1532 for the calculation of kinship; creating s. 662.114,
1533 F.S.; exempting a family trust company or foreign
1534 licensed family trust company from licensure; creating
1535 s. 662.115, F.S.; providing for the applicability of
1536 the chapter to a family trust company or foreign
1537 licensed family trust company; creating s. 662.120,
1538 F.S.; specifying the maximum number of designated
1539 relatives allowed for a family trust company and a
1540 licensed family trust company; creating s. 662.121,
1541 F.S.; providing procedures for applying for a family
1542 trust company license; requiring a fee; creating s.
1543 662.1215, F.S.; providing for investigations of
1544 applicants by the Office of Financial Regulation;
1545 creating s. 662.122, F.S.; providing procedures for
1546 the registration of a family trust company or a
1547 foreign licensed family trust company; requiring a
1548 fee; creating s. 662.1225, F.S.; providing
1549 requirements for a family trust company, licensed

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1550 family trust company, and foreign licensed family
1551 trust company; creating s. 662.123, F.S.; requiring
1552 organizational documents to include certain
1553 provisions; authorizing the use of the term "trust";
1554 creating s. 662.124, F.S.; requiring a minimum capital
1555 account; creating s. 662.125, F.S.; vesting exclusive
1556 authority to manage a family trust company or licensed
1557 family trust company in a board of directors or
1558 managers; providing for appointment of directors and
1559 managers; requiring certain notice to the office in
1560 specified circumstances; requiring the office to issue
1561 a notice of disapproval of a proposed appointment in
1562 specified circumstances; authorizing the office to
1563 obtain criminal history information; creating s.
1564 662.126, F.S.; requiring that licensed family trust
1565 companies procure and maintain fidelity bonds or
1566 specified minimum capital account and errors and
1567 omissions insurance; authorizing a family trust
1568 company that is not licensed to procure and maintain
1569 such coverage; authorizing licensed and unlicensed
1570 family trust companies to procure and maintain other
1571 insurance policies; creating s. 662.127, F.S.;
1572 requiring certain books and records to be segregated;
1573 creating s. 662.128, F.S.; requiring annual license
1574 and registration renewal; requiring a fee; creating s.
1575 662.129, F.S.; providing for the discontinuance of a

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1576 licensed family trust company; creating s. 662.130,
1577 F.S.; authorizing family trust companies to conduct
1578 certain activities; creating s. 662.131, F.S.;
1579 prohibiting certain activities on the part of family
1580 trust companies; creating s. 662.132, F.S.; imposing
1581 certain requirements on the assets that form the
1582 minimum capital of licensed family trust companies and
1583 family trust companies; authorizing such trust
1584 companies to purchase or rent real or personal
1585 property, invest funds, and, while acting as a
1586 fiduciary, make certain purchases; imposing a
1587 restriction on that authorization; clarifying the
1588 degree of prudence required of fiduciaries;
1589 restricting the authority of a fiduciary to purchase
1590 certain bonds or securities; specifying additional
1591 authority of fiduciaries; applying the duty of loyalty
1592 to family trust companies in certain cases; creating
1593 s. 662.133, F.S.; requiring certain officers,
1594 directors, or managers of a licensed family trust
1595 company or a family trust company to make an oath,
1596 affirmation, affidavit, or acknowledgment on behalf of
1597 the company in certain circumstances; creating s.
1598 662.134, F.S.; prohibiting a family trust company from
1599 advertising to the public; creating s. 662.135, F.S.;
1600 providing that a licensed family trust company is not
1601 required to post a bond to serve as a court-appointed

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1602 fiduciary; creating s. 662.140, F.S.; authorizing the
1603 commission to adopt rules; creating s. 662.141, F.S.;
1604 authorizing the office to conduct examinations and
1605 investigations; requiring that family trust companies
1606 be examined at least once every 18 months; authorizing
1607 the office to accept an independent audit in lieu of
1608 conducting an examination; requiring the office to
1609 examine the books and records of a family trust
1610 company or licensed family trust company; authorizing
1611 the office to rely on a certificate of trust, trust
1612 summary, or written statement in certain
1613 circumstances; authorizing the commission to adopt
1614 rules relating to records and requirements;
1615 authorizing the office to examine the books and
1616 records of a foreign licensed family trust company;
1617 requiring family trust companies to pay examination
1618 fees tied to actual costs incurred by the office;
1619 providing a penalty for late payment and authorizing
1620 an administrative fine if late payment is intentional;
1621 creating s. 662.142, F.S.; providing for license
1622 revocation; specifying acts and conduct that
1623 constitute grounds for revocation; authorizing the
1624 office to suspend a license pending revocation;
1625 creating s. 662.143, F.S.; authorizing the office to
1626 issue a cease and desist order and an emergency cease
1627 and desist order; creating s. 662.144, F.S.;

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1628 authorizing the office to collect fines for the
1629 failure to submit required reports; creating s.
1630 662.145, F.S.; providing grounds for the removal of an
1631 officer, director, manager, employee, or agent of a
1632 licensed family trust company or a family trust
1633 company; creating s. 662.146, F.S.; providing for the
1634 confidentiality of certain company books and records;
1635 creating s. 662.147, F.S.; providing requirements for
1636 books and records of family trust companies; requiring
1637 the office to retain certain records for a specified
1638 time; allowing the introduction of certain copies into
1639 evidence; requiring the office to establish a schedule
1640 of fees for such copies; providing requirements for
1641 orders issued by courts or administrative law judges
1642 for the production of confidential records or
1643 information; creating s. 662.150, F.S.; providing for
1644 the domestication of a foreign family trust company;
1645 creating s. 662.151, F.S.; providing for the
1646 registration of a foreign licensed family trust
1647 company; amending s. 120.80, F.S.; adding licensed
1648 family trust companies to the entities regulated by
1649 the office that are exempted from licensing timeframes
1650 under ch. 120, F.S.; amending s. 736.0802, F.S.;
1651 providing circumstances under which certain trust
1652 transactions are not voidable by a beneficiary
1653 affected by a transaction; providing circumstances

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1267 (2014)

Amendment No.

1654 | under which certain transactions involving the
1655 | investment or management of trust property are not
1656 | presumed to be affected by conflicts of interest;
1657 | providing an exception; amending s. 744.351, F.S.;
1658 | exempting a family trust company from certain bond
1659 | requirements and applying those requirements to
1660 | licensed family trust companies and foreign licensed
1661 | family trust companies; providing a contingent
1662 | effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1269 Pub. Rec./Family Trust Companies/OFR
SPONSOR(S): McBurney
TIED BILLS: HB 1267 **IDEN./SIM. BILLS:** SB 1320

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

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 predates 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 662.148 of the Florida Statutes, a public records exemption for certain information held by the Office of Financial Regulation (OFR) relating to family trust companies, licensed family trust companies, and foreign licensed family trust companies, which is the subject of a pending bill, House Bill 1267. HB 1267 authorizes families to form and operate any of these three family trust companies, subject to varying regulatory requirements. In general, a FTC is an entity which provides trust services similar to those that can be provided by an individual or financial institution. This includes serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A Florida FTC must be owned exclusively by family members and may not provide fiduciary services to the public.

The bill treats the following as confidential and exempt from public disclosure: all records relating to a registration, an application, or annual certification; examinations and reports of examinations, operations, or conditions (including working papers); and information received by the OFR from a person from another state or nation or the federal government which is otherwise confidential or exempt pursuant to the laws of that state, nation, or federal government. The bill authorizes release of confidential and exempt information to specified persons, and provides a criminal penalty for willful disclosure of such information. Additionally, the bill provides for the treatment of confidential information used in judicial and administrative proceedings, as well as confidential information furnished pursuant to a legislative subpoena.

The bill provides for repeal of the exemption on October 2, 2019, 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 1267 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.

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

STORAGE NAME: h1269.IBS.DOCX

DATE: 3/17/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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:

[A]ll 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 exemption¹² 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.

House Bill 1267 (2014) – Family Trust Companies

The Office of Financial Regulation (OFR) administers the Florida Financial Institutions Codes (chs. 655-667, F.S., "the Codes"), which includes the regulation of trust companies. Trust companies are for-profit business organizations that are authorized to engage in trust business and to act as a fiduciary for the

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).

general public. Section 655.057, F.S., exempts certain records relating to the OFR's investigations and examinations of trust companies (and other financial institutions) from public records disclosure.

A small number of states allow families to form and operate *private or family trust companies (FTCs)*, which provide trust services similar to those that can be provided by an individual trustee or a financial institution, but are owned exclusively by family members and may not provide fiduciary services to the public. These private, family trust companies are generally formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements, for a variety of personal, investment, regulatory, and tax reasons. Currently, there are no Florida statutes authorizing the formation of family trust companies, licensed trust companies, and foreign-licensed trust companies.

House Bill 1267 creates ch. 662, F.S., to authorize families to form and operate any of these three family trust companies in this state, subject to varying regulatory requirements, including a license or registration with the OFR, maintenance of minimum owners' equity for FTCs with a principal place of business in Florida, and certain reporting requirements. The bill prohibits all three FTC types from advertising and conducting trust business with the public. HB 1267 authorizes the OFR to investigate applications for licensure or registration, require annual certifications and other regulatory filings from licensees and registrants, and to conduct periodic examinations of all three family trust company types.

Effect of the Bill

The bill, which is linked to the passage of HB 1267, creates s. 662.148, F.S., a public records exemption for:

- All records relating to a registration, an application, or annual certification;
- All records relating to an examination of any FTC type;
- Reports of examinations, operations, or conditions of any FTC type, including working papers;
- Any portion of a list of names on the shareholders or members of any FTC type, and
- Information received by the OFR from a person from another state or nation or the federal government which is otherwise confidential or exempt pursuant to the laws of that state, nation, or federal government.

The bill authorizes release of confidential and exempt information to specified persons, including the publication of reports required by federal law and the publication of the names and addresses of any FTC and its registered agent. Further, the bill provides that it is a third-degree felony for willful disclosure of such information.

Section 2 of the bill amends s. 662.146, F.S. (which is created by HB 1267 to provide for the confidentiality of certain FTC books and records), to provide that books and records of any FTC type shall be available for inspection and examination by certain persons. The bill specifies that such books and records may be made available as compelled by legislative subpoena as provided by law, in which s. 662.47 applies.

Section 3 of the bill amends s. 662.147, F.S. (which is created by HB 1267 to provide books and records requirements for FTCs), to permit the OFR to release information otherwise made confidential by this bill to other state, federal, or foreign regulators of family trust companies or to report any suspected criminal activity to appropriate law enforcement and prosecutorial agencies. Additionally, the bill provides for the treatment of confidential information used in judicial or administrative proceedings, as well as confidential information that is compelled by legislative subpoena.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 creates s. 662.148, F.S., to provide an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to a family trust company, licensed family trust company, or foreign licensed family trust company; to provide for the authorized release of certain information by the office; to permit the publication of certain information; to provide a penalty; to provide for future legislative review and repeal of the exemption.

Sections 2 and 3 amends ss. 662.146 and 662.147, F.S., to provide for additional authorized release of certain information by the office; to provide for production of confidential records pursuant to court orders, orders by administrative law judges, and legislative subpoenas; to conform provisions to changes made by the act; to provide a statement of public necessity.

Section 4 provides a statement of public necessity as required by the State Constitution.

Section 5 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may provide protection for high net worth families' assets, as well as the methodologies and practices of their family-owned businesses, which could otherwise be subject to security risks and criminal activity.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on OFR, because OFR staff would be responsible for complying with public records requests and may require training related to the creation of the public records exemption. In addition, OFR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of OFR.

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.

Subject Requirement

Section 24(c), art. I of the State Constitution requires the Legislature to create public-records or public-meetings exemptions in legislation separate from substantive law changes.

Public Necessity Statement

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly-created public-records or public-meetings exemption.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A strike-all amendment is anticipated to address the following issues:

- Line 107 provides for the applicability of s. 662.47, F.S. when books and records are compelled by legislative subpoena as provided by law. It appears the correct cross-reference should be s. 662.147.
- Lines 113-124, which address exceptions to confidentiality, should be moved into section 1 of the bill, which creates the public records exemption.
- Lines 125-139 provide for the treatment of confidential information when used in judicial or administrative proceedings. This should be in the substantive bill, HB 1267, because the requirements of the Public Records Act do not apply to an exemption that applies solely to the State Court System.¹⁸
 - The Rules of Judicial Administration governs administrative matters in all state courts (to the extent the Rules of Appellate Procedure already do not control in proceedings in the supreme court and the district courts).
 - Specifically, Rule 2.420, Fla. R. Jud. Admin. governs public access to the records of the judicial branch of government, and sets forth the procedures and requirements to protect information that are confidential and exempt from public records disclosure in the course of a judicial proceeding. Such treatment must be determined in accordance with this rule.
- It is also noted that lines 1205-1209 of the main bill, HB 1267, contains an apparent public records exemption for emergency orders issued by the OFR against any FTC type. The language provides that such emergency orders are confidential and exempt from s. 119.07(1), F.S., until the emergency order is made permanent, unless the office finds that such confidentiality will result in substantial risk of financial loss to the public.” Any new exemption from public records must be in accordance with the requirements of art. I, s. 24 of the State

Constitution; as such, the language should appear in this bill instead of the substantive bill and should reference the State Constitution.

- Definitions of “reports of examinations, operations, or conditions” and “working papers” will be added to the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

27 family trust companies, licensed family trust companies, and
 28 foreign licensed family trust companies.-

29 (1) PUBLIC RECORDS EXEMPTION.-The following information
 30 held by the Office of Financial Regulation is confidential and
 31 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 32 Constitution:

33 (a) All records relating to a registration, an
 34 application, or an annual certification of a family trust
 35 company, licensed family trust company, or foreign licensed
 36 family trust company.

37 (b) All records relating to an examination of a family
 38 trust company, licensed family trust company, or foreign
 39 licensed family trust company.

40 (c) Reports of examinations, operations, or conditions of
 41 a family trust company, licensed family trust company, or
 42 foreign licensed family trust company, including working papers.

43 (d) Any portion of a list of names of the shareholders or
 44 members of a family trust company, licensed family trust
 45 company, or foreign licensed family trust company.

46 (e) Information received by the office from a person from
 47 another state or nation or the Federal Government which is
 48 otherwise confidential or exempt pursuant to the laws of that
 49 state or nation or pursuant to federal law.

50 (2) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT
 51 INFORMATION.-Information made confidential and exempt under
 52 subsection (1) may be disclosed by the Office of Financial

53 Regulation to:

54 (a) The authorized representative or representatives of
 55 the family trust company, licensed family trust company, or
 56 foreign licensed family trust company under examination. The
 57 authorized representative or representatives shall be identified
 58 in a resolution or by written consent of the board of directors,
 59 if the trust company is a corporation, or of the managers, if
 60 the trust company is a limited liability company.

61 (b) A fidelity insurance company, upon written consent of
 62 the trust company's board of directors, if a corporation, or its
 63 managers, if a limited liability company.

64 (c) An independent auditor, upon written consent of the
 65 trust company's board of directors, if a corporation, or its
 66 managers, if a limited liability company.

67 (d) A liquidator, receiver, or conservator for a family
 68 trust company, licensed family trust company, or foreign
 69 licensed family trust company in the event of the appointment of
 70 the liquidator, receiver, or conservator. However, any portion
 71 of the information which discloses the identity of a bondholder,
 72 customer, family member, member, or stockholder must be redacted
 73 by the Office of Financial Regulation before the release of such
 74 portion to the liquidator, receiver, or conservator.

75 (e) Any other state, federal, or foreign agency
 76 responsible for the regulation or supervision of family trust
 77 companies, licensed family trust companies, or foreign licensed
 78 family trust companies.

79 (f) A law enforcement agency in the furtherance of the
 80 agency's official duties and responsibilities.

81 (3) PUBLICATION OF INFORMATION.—This section does not
 82 prevent or restrict the publication of:

83 (a) A report required by federal law.

84 (b) The name of the family trust company, licensed family
 85 trust company, or foreign licensed family trust company and the
 86 name and address of the registered agent of that company.

87 (4) PENALTY.—A person who willfully discloses information
 88 made confidential and exempt by this section commits a felony of
 89 the third degree, punishable as provided in s. 775.082, s.
 90 775.083, or s. 775.084.

91 (5) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
 92 to the Open Government Sunset Review Act in accordance with s.
 93 119.15 and shall stand repealed on October 2, 2019, unless
 94 reviewed and saved from repeal through reenactment by the
 95 Legislature.

96 Section 2. Paragraphs (d), (e), and (f) of subsection (1)
 97 of section 662.146, Florida Statutes, as created by HB 1267,
 98 2014 Regular Session, are redesignated as paragraphs (e), (f),
 99 and (g), respectively, and a new paragraph (d) is added to that
 100 subsection, to read:

101 662.146 Confidentiality of books and records.—

102 (1) The books and records of a family trust company,
 103 licensed family trust company, and foreign licensed family trust
 104 company are confidential and shall be made available for

105 inspection and examination only:

106 (d) As compelled by legislative subpoena as provided by
 107 law, in which case s. 662.47 applies;

108 Section 3. Subsections (1), (2), and (3) of section
 109 662.147, Florida Statutes, as created by HB 1267, 2014 Regular
 110 Session, are renumbered as subsections (3), (4), and (5),
 111 respectively, and new subsections (1) and (2) are added to that
 112 section, to read:

113 662.147 Records relating to the office examination;
 114 limited restrictions on public access.-

115 (1) The public records exemptions contained in s. 662.148
 116 do not prevent or restrict the Office of Financial Regulation
 117 from:

118 (a) Furnishing records or information to any other state,
 119 federal, or foreign agency responsible for the regulation or
 120 supervision of family trust companies, licensed family trust
 121 companies, or foreign licensed family trust companies.

122 (b) Reporting any suspected criminal activity, with
 123 supporting documents and information, to appropriate law
 124 enforcement and prosecutorial agencies.

125 (2)(a) Orders issued by courts or administrative law
 126 judges for the production of confidential records or information
 127 must provide for inspection in camera by the court or the
 128 administrative law judge. If the court or administrative law
 129 judge determines that the documents requested are relevant or
 130 would likely lead to the discovery of admissible evidence, the

131 | documents shall be subject to further orders by the court or the
 132 | administrative law judge to protect the confidentiality thereof.
 133 | An order directing the release of information shall be
 134 | immediately reviewable, and a petition by the office for review
 135 | of the order shall automatically stay any further proceedings in
 136 | the trial court or the administrative hearing until the
 137 | disposition of the petition by the reviewing court. If any other
 138 | party files a petition for review, it will operate as a stay of
 139 | the proceedings only upon order of the reviewing court.

140 | (b) Confidential records and information furnished
 141 | pursuant to a legislative subpoena shall be kept confidential by
 142 | the legislative body or committee that received the records or
 143 | information, except in a case involving the investigation of
 144 | charges against a public official subject to impeachment or
 145 | removal, in which case disclosure of the information shall be
 146 | only to the extent necessary as determined by the legislative
 147 | body or committee.

148 | Section 4. The Legislature finds that it is a public
 149 | necessity that records held by the Office of Financial
 150 | Regulation which pertain to a family trust company, licensed
 151 | family trust company, or foreign licensed family trust company
 152 | relating to registration or certification; an examination;
 153 | reports of examinations, operations, or conditions, including
 154 | working papers; any portion of a list of the names of
 155 | shareholders or members; or information received by the Office
 156 | of Financial Regulation from a person from another state or

157 nation or the Federal Government which is otherwise confidential
 158 or exempt pursuant to the laws of that jurisdiction be made
 159 confidential and exempt from s. 119.07(1), Florida Statutes, and
 160 s. 24(a), Article I of the State Constitution. This exemption is
 161 necessary because:

162 (1) No public interest is served by granting public access
 163 to family trust company records, and no protection is afforded
 164 to the public or the state by allowing public access to private
 165 financial records. Additionally, a family trust company is
 166 prohibited from serving or marketing its services to the general
 167 public in any way; therefore, no public interests are involved.

168 (2) Families with a high net worth are frequently the
 169 targets of criminal predators seeking access to their assets. It
 170 is important that the exposure of such families to threats of
 171 extortion, kidnapping, and other crimes not be increased.
 172 Placing family business records and methodologies in the public
 173 domain would increase the security risk that a family could
 174 become the target of criminal activity.

175 (3) Family trust companies often provide a consolidated
 176 structure for the ownership of an operating business owned by
 177 multiple family members. Placing those private business
 178 operations and methods in the public domain could jeopardize
 179 their business assets, methodologies, and practices.

180 Section 5. This act shall take effect on the same date
 181 that HB 1267 or similar legislation takes effect, if such
 182 legislation is adopted in the same legislative session or an

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183 | extension thereof and becomes a law.

INSURANCE & BANKING SUBCOMMITTEE

HB 1269 by Rep. McBurney
Pub. Rec./Family Trust Companies/OFR

AMENDMENT SUMMARY March 19, 2014

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

- Corrects a cross-reference,
- Moves the exceptions to confidentiality to section 1 of the bill, which creates the public records exemption,
- Removes language providing for the treatment of confidential records or information in judicial or administrative proceedings, which will be inserted into the substantive bill (HB 1267),
- Inserts language from the substantive bill (HB 1267) that provides limited confidential and exempt treatment of emergency orders to this bill, and
- Provides definitions of “reports of examinations, operations, or conditions” and “working papers.”



Amendment No.

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 _____

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative McBurney offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 662.148, Florida Statutes, is created
8 and assigned to part IV of chapter 662, Florida Statutes, as
9 created by HB 1267, 2014 Regular Session, to read:

10 662.148 Public records exemption; records relating to
11 family trust companies, licensed family trust companies, and
12 foreign licensed family trust companies.-

13 (1) PUBLIC RECORDS EXEMPTION.-The following information
14 held by the office is confidential and exempt from s. 119.07(1)
15 and s. 24(a), Art. I of the State Constitution:

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Bill No. HB 1269 (2014)

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16 (a) Records relating to a registration, an application, or
17 an annual certification of a family trust company, licensed
18 family trust company, or foreign licensed family trust company.

19 (b) Records relating to an examination of a family trust
20 company, licensed family trust company, or foreign licensed
21 family trust company.

22 (c) Reports of examinations, operations, or conditions of
23 a family trust company, licensed family trust company, or
24 foreign licensed family trust company, including working papers.

25 (d) Any portion of a list of names of the shareholders or
26 members of a family trust company, licensed family trust
27 company, or foreign licensed family trust company.

28 (e) Information received by the office from a person from
29 another state or nation or the Federal Government which is
30 otherwise confidential or exempt pursuant to the laws of that
31 state or nation or pursuant to federal law.

32 (f) An emergency cease and desist order under s. 662.143
33 until the emergency order is made permanent unless the office
34 finds that such confidentiality will result in substantial risk
35 of financial loss to the public.

36 (2) DEFINITIONS.—As used in this section, the term:

37 (a) "Reports of examinations, operations, or conditions"
38 means records submitted to or prepared by the office as part of
39 the office's duties performed pursuant to s. 655.012 or s.
40 655.045(1).

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41 (b) "Working papers" means the records of the procedure
42 followed, the tests performed, the information obtained, and the
43 conclusions reached in an examination under s. 655.032 or s.
44 655.045. The term also includes books and records.

45 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT
46 INFORMATION.--Information made confidential and exempt under
47 subsection (1) may be disclosed by the office to:

48 (a) The authorized representative or representatives of
49 the family trust company, licensed family trust company, or
50 foreign licensed family trust company under examination. The
51 authorized representative or representatives shall be identified
52 in a resolution or by written consent of the board of directors,
53 if the trust company is a corporation, or of the managers, if
54 the trust company is a limited liability company.

55 (b) A fidelity insurance company, upon written consent of
56 the trust company's board of directors, if a corporation, or its
57 managers, if a limited liability company.

58 (c) An independent auditor, upon written consent of the
59 trust company's board of directors, if a corporation, or its
60 managers, if a limited liability company.

61 (d) A liquidator, receiver, or conservator for a family
62 trust company, licensed family trust company, or foreign
63 licensed family trust company in the event of the appointment of
64 the liquidator, receiver, or conservator. However, any portion
65 of the information which discloses the identity of a bondholder,
66 customer, family member, member, or stockholder must be redacted

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67 by the office before the release of such portion to the
68 liquidator, receiver, or conservator.

69 (e) Any other state, federal, or foreign agency
70 responsible for the regulation or supervision of family trust
71 companies, licensed family trust companies, or foreign licensed
72 family trust companies.

73 (f) A law enforcement agency in the furtherance of the
74 agency's official duties and responsibilities.

75 (4) PUBLICATION OF INFORMATION.—This section does not
76 prevent or restrict the publication of:

77 (a) A report required by federal law.

78 (b) The name of the family trust company, licensed family
79 trust company, or foreign licensed family trust company and the
80 name and address of the registered agent of that company.

81 (5) PENALTY.—A person who willfully discloses information
82 made confidential and exempt by this section commits a felony of
83 the third degree, punishable as provided in s. 775.082, s.
84 775.083, or s. 775.084.

85 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject
86 to the Open Government Sunset Review Act in accordance with s.
87 119.15 and shall stand repealed on October 2, 2019, unless
88 reviewed and saved from repeal through reenactment by the
89 Legislature.

90 Section 2. Subsections (1) through (4) of section 662.147,
91 Florida Statutes, as created by HB 1267, 2014 Regular Session,

Amendment No.

92 are renumbered as subsections (3) through (6), respectively, and
93 new subsections (1) and (2) are added to that section to read:

94 662.147 Records relating to the office examination;
95 limited restrictions on public access.-

96 (1) The public records exemptions contained in s. 662.148
97 do not prevent or restrict the office from:

98 (a) Furnishing records or information to any other state,
99 federal, or foreign agency responsible for the regulation or
100 supervision of family trust companies, licensed family trust
101 companies, or foreign licensed family trust companies.

102 (b) Reporting any suspected criminal activity, with
103 supporting documents and information, to appropriate law
104 enforcement and prosecutorial agencies.

105 (2) Confidential records and information furnished
106 pursuant to a legislative subpoena shall be kept confidential by
107 the legislative body or committee that received the records or
108 information, except in a case involving the investigation of
109 charges against a public official subject to impeachment or
110 removal, in which case disclosure of the information shall be
111 only to the extent necessary as determined by the legislative
112 body or committee.

113 Section 3. Paragraphs (d), (e), and (f) of subsection (1)
114 of section 662.146, Florida Statutes, as created by HB 1267,
115 2014 Regular Session, are redesignated as paragraphs (e), (f),
116 and (g), respectively, and a new paragraph (d) is added to that
117 subsection to read:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1269 (2014)

Amendment No.

118 662.146 Confidentiality of books and records.—

119 (1) The books and records of a family trust company,
120 licensed family trust company, and foreign licensed family trust
121 company are confidential and shall be made available for
122 inspection and examination only:

123 (d) As compelled by legislative subpoena as provided by
124 law, in which case s. 662.147 applies;

125 Section 4. The Legislature finds that it is a public
126 necessity that records held by the Office of Financial
127 Regulation which pertain to a family trust company, licensed
128 family trust company, or foreign licensed family trust company
129 relating to registration or certification; an examination;
130 reports of examinations, operations, or conditions, including
131 working papers; any portion of a list of the names of
132 shareholders or members; information received by the Office of
133 Financial Regulation from a person from another state or nation
134 or the Federal Government which is otherwise confidential or
135 exempt pursuant to the laws of that jurisdiction; or an
136 emergency cease and desist order be made confidential and exempt
137 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
138 the State Constitution. This exemption is necessary because:

139 (1) No public interest is served by granting public access
140 to family trust company records, and no protection is afforded
141 to the public or the state by allowing public access to private
142 financial records. Additionally, a family trust company is

Amendment No.

143 prohibited from serving or marketing its services to the general
144 public in any way; therefore, no public interests are involved.

145 (2) Families with a high net worth are frequently the
146 targets of criminal predators seeking access to their assets. It
147 is important that the exposure of such families to threats of
148 extortion, kidnapping, and other crimes not be increased.

149 Placing family business records and methodologies in the public
150 domain would increase the security risk that a family could
151 become the target of criminal activity.

152 (3) Family trust companies often provide a consolidated
153 structure for the ownership of an operating business owned by
154 multiple family members. Placing those private business
155 operations and methods in the public domain could jeopardize
156 their business assets, methodologies, and practices.

157 Section 5. This act shall take effect on the same date
158 that HB 1267 or similar legislation takes effect, if such
159 legislation is adopted in the same legislative session or an
160 extension thereof and becomes law.

161

162 -----

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

164 Remove everything before the enacting clause and insert:

165 A bill to be entitled

166 An act relating to public records; creating s.

167 662.148, F.S.; providing an exemption from public

168 records requirements for certain information held by

COMMITTEE/SUBCOMMITTEE AMENDMENT



Bill No. HB 1269 (2014)

Amendment No.

169 the Office of Financial Regulation relating to a
170 family trust company, licensed family trust company,
171 or foreign licensed family trust company; providing
172 definitions; providing for the authorized release of
173 certain information by the office; permitting the
174 publication of certain information; providing a
175 penalty; providing for future legislative review and
176 repeal of the exemption; amending s. 662.147, F.S.;
177 providing for additional authorized release of certain
178 information by the office; providing for production of
179 confidential records pursuant to legislative
180 subpoenas; providing an exemption from public records
181 requirements for an emergency order; providing an
182 exception; conforming provisions to changes made by
183 the act; amending s. 662.146, F.S.; providing for
184 production of certain confidential records pursuant to
185 legislative subpoenas; providing a statement of public
186 necessity; providing a contingent effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1271 Insurer Solvency
SPONSOR(S): Ingram
TIED BILLS: HB 1273 **IDEN./SIM. BILLS:** CS/SB 1308

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

SUMMARY ANALYSIS

The Office of Insurance Regulation (OIR) is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program. NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department.

The NAIC also periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards. The OIR has identified several model act components not found in the current Insurance Code, and which must be implemented in order for the OIR to maintain its accreditation.

House Bill 1271 implements the following NAIC components:

- Requires insurers to file actuarial opinion summaries and supporting workpapers annually;
- Requires acquirers of controlling interests to disclose "enterprise risk" and for ultimate controlling persons to file an annual enterprise risk report;
- Requires insurance holding companies to file an annual registration statement;
- Allows the OIR to examine any insurer and its affiliates to ascertain enterprise risk;
- Provides for confidentiality of enterprise risk reports, actuarial opinion summaries;
- Provides a privilege for memoranda supporting actuarial opinions on reserves, actuarial opinion summaries and related information;
- Requires health maintenance organizations and prepaid limited health service organizations to file risk-based capital filings;
- Incorporates a risk-based capital trend test for life and health and property and casualty insurers; which expands the scenarios in which a company may be required to take corrective action;
- Allows the OIR to initiate the establishment of, and to participate in, supervisory colleges with other state insurance regulators;
- Authorizes the OIR to impose sanctions for violations of acquisition, enterprise risk reporting, and holding company registration requirements; and
- Updates the Financial Services Commission's rulemaking authority to reflect these new NAIC requirements.

The bill does not have a fiscal impact on local government, and the OIR does not anticipate a fiscal impact to state government. The bill has a positive but indeterminate impact on the private sector.

Except as otherwise expressly provided, the bill provides a contingent effective date of October 1, 2014, if the linked public records bill (HB 1273) or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: Insurer Solvency Regulation

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance departments that regulate the conduct and solvency of insurers in their respective states or territories.¹ The Florida Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the insurance code or ch. 636, F.S.²

As a member of the NAIC, the OIR is required to participate in the organization's Financial Regulation Standards and Accreditation Program.³ NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department. The accreditation program is designed to allow for interstate cooperation and reduces regulatory redundancies. For example, the OIR's examinations may be recognized by other member states, thereby avoiding the need to have a Florida domestic insurer examined by multiple states. All fifty states, the District of Columbia, and Puerto Rico are accredited by the NAIC. Once accredited, a state is subject to a full accreditation review every five years, as well as interim reviews. The OIR's most recent full accreditation review occurred in the fall of 2013, and the OIR retained its accredited status.⁴

NAIC accreditation standards are grouped into four major areas, with laws and regulations being one of these areas. It includes, but is not limited to, the NAIC Risk-Based Capital (RBC) for Insurers Model Act, Model Holding Company Regulatory Act, Standard Valuation Law, and Actuarial Opinion and Memorandum Regulation or substantially similar provisions.⁵ The NAIC also periodically reviews these model solvency standards,⁶ and revises accreditation requirements to adapt to evolving industry practices, particularly in the wake of the recent economic crisis.

The OIR has identified new elements of these NAIC model acts that must be implemented in the Insurance Code in order for the OIR to maintain its accreditation. In addition, the bill adopts the 2009 NAIC revisions to the Standard Valuation Law (which Florida adopted in s. 625.121, F.S.), including the adoption of a new manual for valuing life insurer reserves and a principle-based approach to determining reserve levels and implements a group-wide supervision standard for international insurance companies.

Effect of the Bill

This bill implements these model act elements, to be discussed in further detail below:

- *Model Holding Company Act & Regulations*
 - NAIC accreditation effective date January 1, 2016
 - Acquisition and controlling stock reporting
 - Registration and regulation of insurance holding companies
 - Enterprise risk reporting

¹ About the NAIC, http://www.naic.org/index_about.htm (last accessed March 4, 2014).

² Section 20.121(3)(a), F.S. The OIR's agency head for purposes of final agency action is the commissioner, and its rulemaking body is the Financial Services Commission (the Governor and the Cabinet).

³ NAIC Financial Regulation Standards and Accreditation Committee: http://www.naic.org/committees_f.htm (last accessed March 7, 2014).

⁴ OIR bill analysis of HB 1273 (received March 7, 2014), on file with the Insurance & Banking Subcommittee staff.

⁵ All NAIC Model Laws, Regulations and Guidelines are available at: http://www.naic.org/store_model_laws.htm (last accessed March 7, 2014).

- Supervisory colleges
- *Risk-Based Capital for Insurers & Health Organizations*
 - Risk-based capital standards for health organizations – NAIC accreditation effective date: January 1, 2015
 - Risk-based capital trend test for property and casualty insurers
 - NAIC accreditation effective date: January 1, 2012
 - Risk-based capital trend test for life and health insurers
 - NAIC accreditation effective date: January 1, 2017
- *Property & Casualty Actuarial Opinion Model Law*
 - NAIC accreditation effective date: January 1, 2010
 - Actuarial opinion summary
 - Confidentiality⁷ and privilege
- *Standard Valuation Law*
 - Confidentiality⁸ and privilege

1. NAIC Model Holding Company Act and Regulations

For years, the OIR's financial oversight authority has included a review of transactions among affiliates and members of insurance holding companies by adopting the NAIC's Model Insurance Holding Company Act and Regulation.⁹

However, in response to the recent financial crisis, the NAIC studied key group supervision issues for insurance holding company systems. In light of the 2008 liquidity crisis and collapse of American International Group, Inc., the NAIC's efforts focused on the risks and activities of non-insurance entities within insurance holding companies and concluded there was a corresponding regulatory need to obtain affiliates' financial information, such as enterprise risk, in order to ensure that the overall solvency of the holding company (whose main business is insurance) is not jeopardized. The NAIC model act defines "enterprise risk" as:

[A]ny activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state requirement] or would cause the insurer to be in a hazardous financial condition.¹⁰

As a result, the NAIC adopted revisions to its *Model Insurance Holding Company System Regulatory Act and Regulations* in December 2010, which states must adopt as an accreditation component by January 1, 2016. These revisions include:

- expansions to regulators' ability to evaluate any entity within an insurance holding company system;
- enhancements to the regulator's rights to access books and records and to compel production of information;
- establishment of expectation of funding with regard to regulator participation in supervisory colleges;
- enhancements in corporate governance, such as board of directors and senior management responsibilities;
- the inclusion of financial statements as part of an affiliate's registration requirements; and
- enterprise risk reporting requirements.¹¹

⁷ See the linked/public records exemption bill, HB 1273.

⁸ See linked/public records exemption bill, HB 1273.

⁹ The NAIC model act numbers for the Model Holding Company Act and Regulations are #440 and #450, respectively.

¹⁰ Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.

¹¹ NAIC Group Supervision, http://www.naic.org/cipr_topics/topic_group_supervision.htm (last accessed March 7, 2014).

Definitions

- **Section 1** of the bill amends s. 624.10, F.S., to define “affiliate,” “affiliated person,” and “control” for purposes of reporting acquisition of controlling stock.
 - The bill defines “affiliate” to include direct or indirect control through equity ownership of voting securities, common managerial control, or collusive participation by the management of the insurer and affiliate in the management of the insurer or the affiliate.
 - The bill moves the current definition of “affiliated person” in s. 628.461(12)(a), F.S., and places it in this new provision.
 - Consistent with the Model Holding Company Act, the bill uses a 10% threshold for the definition of “control.”
 - The bill also defines “NAIC” as the National Association of Insurance Commissioners and renumbers the current subsection for the definition of “transact.”

- **Section 3** amends s. 624.402, F.S., relating to the types of services that may be provided by an insurer under common ownership or control.

Examination and investigation reports

- **Section 2** of the bill amends s. 624.319, F.S., to provide that the production of documents during the course of an examination or investigation by the OIR or the DFS does not constitute a waiver of the attorney-client or work-product privileges.

Acquisition and disclaimer of controlling stock

- Currently, s. 628.461, F.S., requires an individual or affiliated person to file a letter of notification and a statement for the OIR’s approval before concluding a tender offer to acquire 5% or more of a domestic stock insurer or of a controlling company. The statute also sets forth the information required to be disclosed in the statement, such as criminal and regulatory history information.
 - Alternatively, a party acquiring less than 10% of the outstanding voting securities of an insurer may file a disclaimer of affiliation of control, and such disclaimer must fully disclose all material relationships and affiliation with the insurer, as well as the reason for the disclaimer.
 - This disclaimer is mandatory for acquisitions of more than 10% of the outstanding voting securities of an insurer.
 - During the pendency of the OIR’s review of an acquisition filing, the insurer is not permitted to make a “material change” to its operation or management, unless the OIR has approved or been notified, respectively. A “material change” consists of a disposal or obligation of 5% or more of the insurer’s capital and surplus, or a change in management involving a person who has the authority to dispose or obligate 5% of the insurer’s capital and surplus.
- **Section 10** of the bill amends s. 628.461, F.S., to comport substantially with the Model Act disclaimer requirements:
 - Increases the ownership threshold (which triggers the notification and statement requirements) from 5% to 10% or more of the outstanding voting securities of a domestic stock insurer or of a controlling company.
 - Deletes the provision stating “in lieu of filing an acquisition statement, a party acquiring less than 10% of the outstanding voting securities of an insurer, may file a disclaimer of affiliation and control.”
 - Specifies that effective January 1, 2015, the acquiring party’s statement must include an agreement to file an “annual enterprise risk report,” if control exists.
 - Adds language that states effective January 1, 2015, the person required to file the statement pursuant to s. 628.461(1), F.S. will provide the annual report specified in s. 628.801(2), F.S., if control exists.

- Adds a provision that the presumption of control may be rebutted by filing a disclaimer of control on a form prescribed by the office or by providing a copy of a Schedule 13G on file with the SEC. After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer.
 - It is noted that the option to file a Schedule 13G does not appear in the NAIC's Model Holding Company Act.
 - The federal Securities and Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*, as amended), and Regulation 13D-G (17 CFR Part 240.13d), require certain investment advisers and brokers to file acquisition and beneficial ownership reports with the SEC when they directly or indirectly acquire more than 5% of any issuer's outstanding "Section 13" or "equity securities," which is measured at the end of each calendar year.
 - Schedule 13G has generally been described as a more streamlined and passive reporting form than Schedule 13D, and may be used by the following:
 - qualified institutional investors, which include insurance companies;
 - exempt investors, and
 - passive investors).
 - It is noted that Schedule 13G only requires the following disclosures (compared with the disclosures required by s. 628.461, F.S.):
 - Names and types of reporting persons
 - Address
 - Title of class of securities and CUSIP number
 - Citizenship or place of organization
 - Aggregated amount beneficially owned by each reporting person
 - Identification and classification of members of a reporting group
 - Certification and signature
- Adds a provision that any controlling person of a domestic insurer that seeks to *divest* its controlling interest in the domestic insurer shall file with the OIR a confidential notice of its proposed divestiture at least 30 days prior to the relinquishment of control.
- Moves the definition of "affiliated person" to section 1 of the bill
- Deletes the definition of "controlling company," which means any corporation, trust, or association that owns 25% or more of the voting securities of one or more domestic stock insurance companies, since the new requirements will be triggered at 10% ownership.

Registration and regulation of insurance holding companies; enterprise risk reporting

- Currently, all insurers authorized to do business in Florida and who are members of insurance holding companies, are required to register with the OIR and be subject to regulation in relation to their holding companies. The Financial Services Commission has rulemaking authority to adopt rules regarding registration, and those rules must include the requirements and standards of certain NAIC model regulations.¹²
- **Section 11** of the bill amends s. 628.801, F.S. (regarding the registration and regulation of insurance holding companies), with the following:
 - Incorporates changes from 2010 revisions to the NAIC Model Holding Company Act, and to permit subsequent updates having a substantially consistent methodology. Effective January 1, 2015, this section also defines "enterprise risk," incorporates the NAIC "enterprise risk" reporting requirements and authorizes the OIR to conduct examinations of insurer affiliates. The bill:

¹² A domestic insurer who is fully compliant with the registration laws of its holding company's state of domicile (if NAIC-accredited) may request a waiver from the Florida filing requirements. Section 628.801(1), F.S.

- Requires authorized insurers to file a registration statement on or before April 1 of each year. The bill also states a material transaction between an insurer and its affiliates shall be filed with the OIR as provided by rule.
- Adds a provision that requires the ultimate controlling person of every insurer subject to registration file an annual enterprise risk report on or before April 1 and comply with the December 2010 NAIC Insurance Holding Company System Model Regulation and subsequent amendments.
 - Defines the term “ultimate controlling person” as a person that is not controlled by any other person.
- Provides that the failure to file a registration statement or enterprise risk filing report is a violation of s. 628.801, F.S.
- Defines new criteria under which an insurer may apply for waiver of the requirements contained in s. 628.801, F.S.
- Prohibits the waiver of any applicable privilege or claim of confidentiality in the enterprise risk report as a result of disclosures to the OIR.
- Allows the insurer to satisfy the filing requirement by filing the parent corporation’s reports that have been filed with the Securities and Exchange Commission if compliant with requirements.
- This provision is effective January 1, 2015.

Sanctions

- Currently, the Insurance Code states that noncompliant insurance companies (and their directors, officers, employees, and agents) can be subject to a number of sanctions:
 - monetary penalties for failing to file registration statements or certificate,
 - civil forfeitures for knowingly engaging in transactions that have not been properly filed, approved, or in accordance with commission rule,
 - a cease and desist order for engaging in transactions or entering into contracts that violate commission rules, and rescission orders if in the best interests of the policyholders, creditors, or public.
 - Additionally, an officer, director, or employee of an insurance holding company who willfully and knowingly submits a false statement, false report, or false filing with the intent to deceive the OIR, is guilty of a third-degree felony.
- **Section 12** of the bill amends s. 628.803, F.S., to incorporate a new NAIC sanction to provide that a violation of the enterprise risk requirements serves as an independent basis for the Office to disapprove dividends and distributions and to place the insurer under an order of administrative supervision. This provision is effective January 1, 2015.

Supervisory colleges

- According to the Center for Insurance Policy & Research, “a supervisory college is a meeting of insurance regulators or supervisors where the topic of discussion is regulatory oversight of one specific insurance group that is writing significant amounts of insurance in other jurisdictions.”¹³ Supervisory colleges also facilitate oversight of internationally active insurance companies at the group level and promote regulatory information-sharing, subject to applicable confidentiality agreements.¹⁴ Supervisory college members are generally the states or jurisdictions where the

¹³ “Supervisory Colleges: A Regulatory Tool for Enhancing Supervisory Cooperation and Coordination,”

http://www.naic.org/cipr_newsletter_archive/vol4_supervisory_colleges.htm (last accessed March 1, 2014).

¹⁴ NAIC on Supervisory Colleges, http://www.naic.org/cipr_topics/topic_supervisory_college.htm (last accessed March 1, 2014).

Additionally, the public records bill, HB 1273, that is linked to this bill, provides for confidential treatment of regulatory information, including within the context of a supervisory college, which is shared between insurance regulators and law enforcement pursuant to confidentiality agreements.

largest insurance entities within a group are domiciled, premium underwritten and key corporate decision-makers in the organization are located.¹⁵

- **Section 14** creates s. 628.805, F.S., regarding supervisory colleges, with the following:
 - Allows the OIR to participate in supervisory colleges with other regulators and to initiate the establishment of a supervisory college, clarify membership, participation and functions of the role of other regulators, coordinate ongoing activities and establish a crisis management plan.
 - Allows the OIR to participate in a supervisory college if the insurance company is registered pursuant to s. 628.801, F.S., for any domestic insurer that is part of a holding company system.
 - Allows the OIR to assess a registered insurer for the reasonable expenses to participate in a supervisory college.
 - According to the OIR, its participation does not delegate any of its regulatory authority over insurers in its jurisdiction.¹⁶
 - This provision is effective January 1, 2015.

Group-wide supervision of international insurance groups

- In July 2012, Pennsylvania signed into law PA Public Law 111, No. 136, which significantly amended Pennsylvania's Insurance Holding Company Act to be in compliance with the NAIC Model Holding Company Act. The Pennsylvania legislation included a statute authorizing its insurance regulator to act as the group-wide supervisor for any international insurance group.¹⁷
- **Section 13** creates s. 628.804, F.S., to authorize the OIR to serve as group-wide supervisor for any international insurance group in which the ultimate controlling person is domiciled in this state. Where the person is not a Florida domiciliary, the OIR may determine it is the appropriate group-wide supervisor based on level of operations in this state, or acknowledge that another state should serve in this capacity. The bill sets forth criteria for making this determination. This provision is patterned after the Pennsylvania statute.
- The international criterion for determining a group-wide supervisor does not materially differ from the criteria contained within the *NAIC Financial Analysis Handbook* for determining the lead state.
- This provision is effective January 1, 2015.

2. Risk-Based Capital for Insurers & Health Organizations (#312 and 315); Trend Test Requirements

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital that an insurer must maintain, based on the inherent risks in the insurer's operations. It is determined by a formula that considers certain material risks depending on the type of insurer, and generates the regulatory minimum amount of capital that a company is required to maintain to avoid regulatory action. RBC raises a safety net for insurers, is uniform among states, and operates as a tripwire system to give state insurance regulators with authority for timely corrective action.¹⁸ In March 2006, the NAIC adopted revisions to the *Risk-Based Capital for Insurers Model Act (#312)*, which provides that states must require both life and health and property and casualty insurers to submit RBC filings with their regulators. Presently, this requirement is reflected in the Insurance Code, but does not apply to health maintenance organizations (HMOs) and prepaid limited health service organizations.¹⁹ "Prepaid limited health service organizations" provide limited health services (such as dental or vision care) through an exclusive panel of providers in return for a prepayment,²⁰

¹⁵ OIR bill analysis of HB 1271, on file with the Insurance & Banking Subcommittee staff.

¹⁶ *Id.*

¹⁷ 40 P.S. section 1406.2. It is noted that this language is currently not a NAIC accreditation requirement.

¹⁸ NAIC on Risk-Based Capital, http://www.naic.org/cipr_topics/topic_risk_based_capital.htm (last accessed March 4, 2014).

¹⁹ Section 624.4085, F.S.

²⁰ Section 636.003(7), F.S.

and “health maintenance organizations” generally provide a range of health coverage with providers under contract.²¹

In 2010, the NAIC adopted a recommendation to make the *Risk-Based Capital for Health Organizations (#315) Model Act* an accreditation standard.²² This Model Act defines “health organization” to include health maintenance organizations and limited health service organizations.²³ Accordingly, effective January 1, 2015, member states must require HMOs and prepaid limited health service organizations to submit risk-based capital filings in order to maintain accreditation.

In addition, the NAIC has developed a new “trend test” within RBC calculations for life and health and P/C insurers, as well as for health organizations. The trend test flags companies whose RBC is trending in a negative direction, and companies failing the trend test would trigger a “company action level event” and be required to file a corrective action plan. The NAIC accreditation effective date for the P/C trend test is January 1, 2012 and the accreditation effective date for the life and health trend test is January 1, 2017.

The following provisions of the bill relate to the model RBC Act requirements:

- **Section 4** amends s. 624.4085, F.S., to expand the definition of “life and health insurer” to include health maintenance organizations and prepaid health service organizations (that are authorized in Florida and one or more other states, jurisdictions, or countries) for purposes of risk-based capital requirements.
 - The amended risk-based capital trend test requirement establishes a company action level standard triggered by the trend test for both property and casualty and life and health insurers allowing more time for the company to correct the conditions causing a deterioration of its level of risk-based capital. The risk-based capital requirement is a significant element required for NAIC accreditation.
- **Section 15** amends s. 636.045, F.S. (regarding minimum surplus requirements for prepaid limited health service organizations), with the following:
 - Subjects prepaid limited health service organizations to the risk-based capital requirements of s. 624.4085 (Section 2 of the bill) and the confidentiality provision for risk-based capital information in s. 624.40851, F.S.
- **Section 16** amends s. 641.225, F.S. (surplus requirements for HMOs), with the following:
 - Subjects HMOs that are authorized in Florida and one or more other states, jurisdictions, or countries to the new RBC requirements of s. 624.4085, F.S., and the confidentiality provision for RBC information in s. 624.40851, F.S.
- **Section 17** amends s. 641.255, F.S. (acquisition, merger, or consolidation) with the following:
 - Subjects HMOs that are members of a holding company system to the acquisition and enterprise risk reporting requirements of s. 628.461, F.S., but not to the acquisition requirements for specialty insurers in s. 628.4615, F.S.

3. Property and Casualty Actuarial Opinion Model Law (#745); Captives

The *NAIC Property and Casualty Actuarial Opinion Model Law (#745)* specifies that states must require property and casualty insurers to submit a Statement of Actuarial Opinion, which is a public document. The model act also requires the submission of an Actuarial Opinion Summary, an Actuarial Report and

²¹ Section 641.19(12), F.S.

²² NAIC Financial Regulation Standards and Accreditation Committee, at: http://www.naic.org/committees_f.htm (last accessed March 4, 2014).

²³ Section 1(F) of the NAIC Risk-Based Capital for Health Organizations Model Act (#315).

workpapers to support each actuarial opinion, which must be treated as confidential and privileged. The NAIC accreditation effective date was January 1, 2010.

Current law requires insurers (except those providing life insurance and title insurance) to provide to OIR an annual statement of its financial condition and a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists. These insurers are also required to provide supporting workpapers upon the OIR's request.²⁴ Currently, these materials are not exempt from public records disclosure.

Section 5 of the bill relates to the NAIC's Property & Casualty Actuarial Opinion Model Law. It amends s. 624.424, F.S., to:

- Require insurers to provide actuarial opinion summaries, in accordance with NAIC instructions, with their annual statements to the OIR. This section excludes life and health insurers from this requirement.
 - The section also states that "proprietary business information" contained in these summaries are confidential and exempt from public records disclosure (pursuant to linked bill, HB 1273). This section also protects the summary and related information from subpoena, discovery, or admissibility in any private civil action and allows the OIR to use such information in pursuing any legal or regulatory action against an insurer.
 - Updates the Financial Services Commission's rulemaking authority under this section to specify that rule must be in substantial conformity with the 2006 Annual Financial Reporting Model Regulation adopted by the NAIC.
- Additionally, the bill includes a new subsection (11) to address captives.
 - According to the NAIC, captives were traditionally established by non-insurance companies. However, a small number of life insurers have recently entered the market, utilizing captives to form captive reinsurance subsidiaries and insurance securitizations to transfer insurance risk and to relieve themselves from conservative reserve requirements.²⁵
 - The NAIC issued a white paper in July 2013²⁶ to address the use and regulation of captives and engaged a consultant to make recommendations for address the solvency implications of life insurer-owned captive insurers and alternative mechanisms.
 - Based on these NAIC findings, the bill requires each insurer doing business in Florida and that reinsures through a captive insurance company to also file a report as a separate schedule with the OIR. This report must contain certain information specific to reinsurance assumed by each captive.

4. Standard Valuation Law (#820) / Principle-Based Reserving

Principle-Based Reserving

Life insurance policy reserves are the funds that an insurance company must set aside to pay future life insurance claims. Currently, life insurance reserves are calculated ("valued") using pre-set, formulaic assumptions as prescribed by state laws and regulations, which must be updated as increasingly complex insurance products are introduced and as economic conditions change. Additionally, current formulas may not always accurately reflect the risks or true costs or obligations of the insurer, which can lead to excessively conservative reserves for some products and inadequate reserves for others.

Consequently, the NAIC introduced revisions to the Standard Valuation Law (SVL) and the Valuation Manual to include a new method for calculating life insurance policy reserves, referred to as Principle-Based Reserving (PBR). According to the NAIC, the new PBR approach is expected to "right-size" reserves and to eventually reduce the incentive for company "workarounds" designed to reduce reserves.

²⁴ Section 624.424, F.S.

²⁵ NAIC on captive insurance companies, at http://www.naic.org/cipr_topics/topic_captives.htm (last accessed March 7, 2014).

²⁶ "Captives and Special Purpose Vehicles: An NAIC White Paper," at <http://www.naic.org/store/free/SPV-OP-13-ELS.pdf>.

The new SVL was adopted by a supermajority of NAIC members in December 2012. The revised SVL and valuation manual does not become operative until adopted by at least 42 states (a supermajority) representing 75% of total U.S. premium volume. PBR will be implemented over approximately three years and will apply only for new policies, except for contracts issued by single-state domestic insurers who qualify for an exemption from PBR.²⁷

As of February 1, 2014, 7 states (accounting for just under 8 percent of the total premium volume) has approved the revised model.²⁸ The requirements of the manual are applicable to life insurance contracts, accident and health contracts, and other specified contracts. Some products are not subject to PBR; however, some products, such as term life insurance policies and universal life insurance policies with a secondary guarantee issued on or after the operative date of the manual would be subject to PBR once the manual is operative.²⁹

Section 6 of the bill amends s. 625.121, F.S. (relating to standard valuation law for life insurers), to apply to policies and contracts issued prior to the operative ate of the valuation manual or otherwise exempt from PBR as a single-state domestic insurer.

- Current law requires life insurance companies to annually file an actuarial opinion of reserves and provides that any memoranda or material in support of the opinion is confidential and exempt from public records laws.
- The bill clarifies that such material is also not subject to subpoena or discovery or admissible in evidence in any private civil action and prohibits the OIR or any person with whom the OIR has shared this information, pursuant to this paragraph, to testify as to the confidential information.
- The bill also permits the OIR to use the information in furthering any legal or regulatory action brought against an insurer. Disclosure to the OIR does not result in a waiver of any applicable privilege or claim of confidentiality. Aside from the confidentiality provisions, the section includes only minor conforming changes to reflect pre-and post-valuation manual eras.

Section 7 of the bill creates s. 625.1212, F.S., to incorporate the new PBR provisions and to set forth valuation of life insurance contracts, accident and health contracts, and deposit-type contracts issue on or after the “operative date of the valuation manual.”

- The operative date is defined as the later of January 1, 2017, or January 1 following the first July 1 of the year in which the Insurance Commissioner certifies to the Financial Services Commission that the NAIC thresholds have been met (i.e., adopted by 42 of 55 states and territories, representing more than 75% of premium written).
- This section requires insurers to apply the standard prescribed in the valuation manual as the minimum standard for valuing reserves and use PBR for certain products specified in the valuation manual, except for product forms and lines exempted by single state domestic insurers meeting certain statutory criteria. The valuation manual currently requires the use of PBR for two products: term life insurance and universal life insurance with a secondary guarantee.³⁰ As under the existing SVL, this section requires insurers to submit an actuarial opinion of reserves and memorandum in support of each opinion.

²⁷ NAIC on Principle-Based Reserving, at http://www.naic.org/cipr_topics/principle_based_reserving_pbr.htm (last accessed March 7, 2014). However, insurers can implement PBR anytime during the 3-year transition period.

http://www.naic.org/documents/committees_ex_pbr_implementation_tf_130621_legislative_brief.pdf

²⁸ OIR bill analysis of HB 1271, on file with the Insurance & Banking Subcommittee staff.

²⁹ A universal life policy with a secondary guarantee is also known as a no-lapse guarantee. The policy will not lapse if certain conditions are met.

³⁰ Future revisions to the SVL may subject additional products to PBR. NAIC on Principle-Based Reserving, at http://www.naic.org/cipr_topics/principle_based_reserving_pbr.htm (last accessed March 7, 2014).

- This section also provides for the manual to delineate future product lines and forms subject to PBR and sets forth requirements for companies using PBR. This section also requires insurers to provide regulators with access to models and software used to compute principle-based reserves.
 - According to the OIR, the public should have confidence that the assumptions used in these reserving models are reasonable and subject to regulatory oversight and review.³¹
- The Commission is provided with express rulemaking authority to administer this section, including rules requiring the use of the NAIC 2009 Standard Valuation Law and the 2012 NAIC Valuation Manual.

Section 8 of the bill creates s. 625.1214, F.S., to set forth privilege and confidentiality for “documents, reports, materials, and other information created, produced, or obtained” pursuant to sections 6 and 7 of the bill.³²

The bill protects these items from subpoena or discovery, and renders them inadmissible in evidence in any private civil action. The OIR may use the information as part of any official regulatory or legal action it brings against the company. Neither the OIR nor any person who receives the information in an official capacity, or with whom the information is shared, may be required to testify in any private civil action concerning the confidential and exempt information. Finally, a privilege created in another state that is substantially similar to the privilege in this state must also be available and enforced in any proceeding in this state.

Section 9 of the bill amends s. 627.476, F.S., the Standard Nonforfeiture Law, which establishes minimum benefit values when life insurance policies lapse or are surrendered.

- According to the NAIC, changes to the Standard Nonforfeiture Law for life insurance is intended to be part of a package with the changes to the SVL so that mortality and interest rate assumptions are coordinated. However, such changes would apply to policies issued on or after the operative date of the valuation manual.
- The bill also specifies that the nonforfeiture interest rate may not be less than 4 percent, in order for a life insurance policy to meet maximum cash value requirements in the Internal Revenue Code and thus remain tax-qualified in favor of consumers. According to the OIR, this revision was adopted by the NAIC in December 2013.³³

B. SECTION DIRECTORY:

Section 1. Amends s. 624.10, F.S., to provide additional definitions applicable to the Insurance Code.

Section 2. Amends s. 624.319, F.S., to clarify that production of documents does not waive the attorney-client or work-product privilege.

Section 3. Amends s. 624.402, F.S., to conform a cross-reference.

Section 4. Amends s. 624.4085, F.S., to revise a definition; provide additional calculations for determining whether an insurer has a company action level event; revise provisions relating to mandatory control level events.

³¹ OIR bill analysis of HB 127, on file with the Insurance & Banking Subcommittee staff.

³² The linked public records bill, HB 1273, will address the confidentiality and public records exemption for certain “information created, produced or obtained” in connection with, and including, the actuarial opinion summary under the SVL; in the course of an actuarial examination of a company for compliance with the SVL; in support of, or in connection with, the annual certification of effective internal controls; In connection with and including any required PBR report; and in connection with experience data that may include company-identifying or personally-identifiable information.

³³ Document from the OIR (received January 16, 2014), on file with the Insurance & Banking Subcommittee staff.

Section 5. Amends s. 624.424, F.S., to require an insurer's annual statement to include an actuarial opinion summary and providing criteria for such summary, to provide an exception for life and health insurers, and to update provisions; to require insurers reinsuring through a captive insurance company to file a report containing certain information.

Section 6. Amends s. 625.121, F.S., to revise the Standard Valuation Law; distinguish the provisions from valuations done pursuant to the NAIC's valuation manual and incorporating certain provisions included in the manual; exempt certain documents from civil proceedings; revise the methods for evaluating the valuation of industrial life insurance policies; revise provisions relating to calculating additional premium; update provisions relating to reserve calculations for indeterminate premium plans.

Section 7. Creates 625.1212, F.S., to provide for the valuation of policies and contracts after the adoption of the NAIC's valuation manual; provide applicability; define terms; require the Office of Insurance Regulation to value insurer reserves; require actuarial opinions of the reserves and a supporting memorandum to the opinions; require the insurer to apply the standard prescribed in the valuation manual; provide exceptions; provide requirements for a principle-based valuation of reserves; require an insurer to submit certain data to the office; direct the Financial Services Commission to adopt rules.

Section 8. Creates s. 625.1214, F.S., to provide for the use of confidential information; prohibit the use of such information in private civil action.

Section 9. Amends s. 627.476, F.S., to revise the Standard Nonforfeiture Law; distinguish provisions subject to the valuation manual and provide for the application of tables found in the manual.

Section 10. Amends s. 628.461, F.S., to revise the amount of outstanding voting securities of a domestic stock insurer or a controlling company which a person is prohibited from acquiring unless certain requirements are met; to delete a provision authorizing insurers to file a disclaimer of affiliation of control in lieu of a letter notifying the office of the acquisition of the voting securities of a domestic stock company under certain circumstances; to conform a provision to changes made by the act; to provide that control is presumed under certain conditions; to specify how control may be rebutted and divested; and to delete definitions.

Section 11. Amends s. 628.801, F.S., to require insurers to file a registration statement by a specified date; to revise the requirements and standards for the rules establishing the information and statement form for the registration; to require an insurer to file an annual enterprise risk report; to authorize the OIR to conduct examinations to determine the financial condition of registrants; to provide that failure to file a registration or report is a violation of the section; to provide additional grounds, requirements, and conditions with respect to a waiver from this section.

Section 12. Amends s. 628.803, F.S., to provide for sanctions for persons who violate certain provisions relating to the acquisition of controlling stock.

Section 13. Creates s. 628.804, F.S., to provide for the groupwide supervision of international insurance groups; to define terms; to provide for the selection of a groupwide supervisor; and to authorize the commission to adopt rules.

Section 14. Creates s. 628.805, F.S., to authorize the OIR to participate in supervisory colleges and to authorize the OIR to assess fees on insurers for participation.

Section 15. Amends s. 636.045, F.S., to apply certain statutes related to solvency to prepaid limited health service organizations.

Section 16. Amends s. 641.225, F.S., to apply certain statutes related to solvency to health maintenance organizations.

Section 17. Amends s. 641.225, F.S., to provide for applicability of specified provisions to a health maintenance organizations that is a member of a holding company.

Section 18. Except as otherwise expressly provided in this act, the act shall take effect October 1, 2014, if HB 1273 (the public records bill) or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The OIR and the NAIC believe these revisions to the various model acts improve state insurance regulators' ability to provide necessary financial oversight, especially in the aftermath of the 2008 global financial crisis. Preserving OIR's accreditation benefits insurer operational efficiency. The American Council of Life Insurers, as it relates to revisions to the SVL, believes PBR is a more dynamic and appropriate reserving methodology that "right-sizes" insurer reserves based on a company's particular risk profile.³⁴ Advocates of PBR state that the method will reduce redundant reserves that are required under the current formulaic approach, and consequently increase consumer choices of products and free up capital for insurers. Insurers will have to option to phase in the PBR requirements over 3 years after the valuation manual is effective, which the bill provides would be no earlier than January 1, 2017.

Insurers may incur an indeterminate amount of administrative costs associated with complying with the additional reporting requirements and implementing principle based reserves, and the OIR's participation in the supervisory colleges. The PBR requirements would apply to policies issued on or after the operative date of the valuation manual.

D. FISCAL COMMENTS:

According to the OIR, a specific fiscal impact to state government revenues and expenditures is not anticipated for fiscal year 2014-2015. The OIR believes it is premature to indicate a fiscal impact at this time due to the range of outstanding implementation issues that may or may not arise, including NAIC assumption of any impact that arises between the bill's effective date of October 1, 2014 to January 1, 2017 (the earliest that PBR could take effect in Florida).³⁵

³⁴ *Id.*

³⁵ OIR bill analysis of HB 1271, on file with the Insurance & Banking Subcommittee staff.

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 of counties or municipalities 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 bill updates the Financial Services Commission's rulemaking authority to reflect the current NAIC requirements, including the adoption of the updated valuation manual and principle-based reserving.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to insurer solvency; amending s.
3 624.10, F.S.; providing additional definitions
4 applicable to the Florida Insurance Code; amending s.
5 624.319, F.S.; clarifying that production of documents
6 does not waive the attorney-client or work-product
7 privilege; amending s. 624.402, F.S.; conforming a
8 cross-reference; amending s. 624.4085, F.S.; revising
9 a definition; providing additional calculations for
10 determining whether an insurer has a company action
11 level event; revising provisions relating to mandatory
12 control level events; amending s. 624.424, F.S.;
13 requiring an insurer's annual statement to include an
14 actuarial opinion summary; providing criteria for such
15 summary; providing an exception for life and health
16 insurers; updating provisions; requiring insurers
17 reinsuring through a captive insurance company to file
18 a report containing certain information; amending s.
19 625.121, F.S.; revising the Standard Valuation Law;
20 distinguishing the provisions from valuations done
21 pursuant to the NAIC's valuation manual and
22 incorporating certain provisions included in the
23 manual; exempting certain documents from civil
24 proceedings; revising the methods for evaluating the
25 valuation of industrial life insurance policies;
26 revising provisions relating to calculating additional

27 premium; updating provisions relating to reserve
 28 calculations for indeterminate premium plans; creating
 29 s. 625.1212, F.S.; providing for the valuation of
 30 policies and contracts after the adoption of the
 31 NAIC's valuation manual; providing applicability;
 32 defining terms; requiring the Office of Insurance
 33 Regulation to value insurer reserves; requiring
 34 actuarial opinions of the reserves and a supporting
 35 memorandum to the opinions; requiring the insurer to
 36 apply the standard prescribed in the valuation manual;
 37 providing exceptions; providing requirements for a
 38 principle-based valuation of reserves; requiring an
 39 insurer to submit certain data to the office;
 40 directing the Financial Services Commission to adopt
 41 rules; creating s. 625.1214, F.S.; providing for the
 42 use of confidential information; prohibiting the use
 43 of such information in private civil actions; amending
 44 s. 627.476, F.S.; revising the Standard Nonforfeiture
 45 Law; distinguishing provisions subject to the
 46 valuation manual and providing for the application of
 47 tables founds in the manual; amending s. 628.461,
 48 F.S.; revising the amount of outstanding voting
 49 securities of a domestic stock insurer or a
 50 controlling company which a person is prohibited from
 51 acquiring unless certain requirements have been met;
 52 deleting a provision authorizing an insurer to file a

53 disclaimer of affiliation and control in lieu of a
 54 letter notifying the office of the acquisition of the
 55 voting securities of a domestic stock company under
 56 certain circumstances; requiring the statement
 57 notifying the office to include additional
 58 information; conforming a provision to changes made by
 59 the act; providing that control is presumed to exist
 60 under certain conditions; specifying how control may
 61 be rebutted and how a controlling interest may be
 62 divested; deleting definitions; amending s. 628.801,
 63 F.S.; requiring an insurer to annually file a
 64 registration statement by a specified date; revising
 65 the requirements and standards for the rules
 66 establishing the information and statement form for
 67 the registration; requiring an insurer to file an
 68 annual enterprise risk report; authorizing the office
 69 to conduct examinations to determine the financial
 70 condition of registrants; providing that failure to
 71 file a registration or report is a violation of the
 72 section; providing additional grounds, requirements,
 73 and conditions with respect to a waiver from the
 74 registration requirements; amending s. 628.803, F.S.;
 75 providing sanctions for persons who violate certain
 76 provisions relating to the acquisition of controlling
 77 stock; creating s. 628.804, F.S.; providing for the
 78 groupwide supervision of international insurance

79 groups; defining terms; providing for the selection of
 80 a groupwide supervisor; authorizing the commission to
 81 adopt rules; creating s. 628.805, F.S.; authorizing
 82 the office to participate in supervisory colleges;
 83 authorizing the office to assess fees on insurers for
 84 participation; amending ss. 636.045 and 641.225, F.S.;

85 applying certain statutes related to solvency to
 86 prepaid limited health service organizations and
 87 health maintenance organizations; amending s. 641.255,
 88 F.S.; providing for applicability of specified
 89 provisions to a health maintenance organization that
 90 is a member of a holding company; providing effective
 91 dates and a contingent effective date.

92

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

94

95 Section 1. Section 624.10, Florida Statutes, is amended to
 96 read:

97 624.10 Other definitions ~~Transacting insurance.~~ As used in
 98 the Florida Insurance Code, the term:

99 (1) "Affiliate" means an entity that exercises control
 100 over or is directly or indirectly controlled by the insurer
 101 through:

102 (a) Equity ownership of voting securities;

103 (b) Common managerial control; or

104 (c) Collusive participation by the management of the

105 insurer and affiliate in the management of the insurer or the
 106 affiliate.

107 (2) "Affiliated person" of another person means:

108 (a) The spouse of the other person;

109 (b) The parents of the other person and their lineal
 110 descendants, or the parents of the other person's spouse and
 111 their lineal descendants;

112 (c) A person who directly or indirectly owns or controls,
 113 or holds with the power to vote, 10 percent or more of the
 114 outstanding voting securities of the other person;

115 (d) A person, 10 percent or more of whose outstanding
 116 voting securities are directly or indirectly owned or
 117 controlled, or held with power to vote, by the other person;

118 (e) A person or group of persons who directly or
 119 indirectly control, are controlled by, or are under common
 120 control with the other person;

121 (f) An officer, director, partner, copartner, or employee
 122 of the other person;

123 (g) If the other person is an investment company, an
 124 investment adviser of such company, or a member of an advisory
 125 board of such company;

126 (h) If the other person is an unincorporated investment
 127 company not having a board of directors, the depositor of such
 128 company; or

129 (i) A person who has entered into a written or unwritten
 130 agreement to act in concert with the other person in acquiring

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131 or limiting the disposition of securities of a domestic stock
 132 insurer or controlling company.

133 (3) "Control," including the terms "controlling,"
 134 "controlled by," and "under common control with," means the
 135 direct or indirect possession of the power to direct or cause
 136 the direction of the management and policies of a person,
 137 whether through the ownership of voting securities, by contract
 138 other than a commercial contract for goods or nonmanagement
 139 services, or otherwise. Control is presumed to exist if a
 140 person, directly or indirectly, owns, controls, holds with the
 141 power to vote, or holds proxies representing 10 percent or more
 142 of the voting securities of another person.

143 (4) "NAIC" means the National Association of Insurance
 144 Commissioners.

145 (5) "Transact" with respect to insurance includes any of
 146 the following, in addition to other applicable provisions of
 147 this code:

148 (a) ~~(1)~~ Solicitation or inducement.

149 (b) ~~(2)~~ Preliminary negotiations.

150 (c) ~~(3)~~ Effectuation of a contract of insurance.

151 (d) ~~(4)~~ Transaction of matters subsequent to effectuation
 152 of a contract of insurance and arising out of it.

153 Section 2. Subsection (2) of section 624.319, Florida
 154 Statutes, is amended to read:

155 624.319 Examination and investigation reports.—

156 (2) The examination report ~~when~~ so filed ~~is~~ shall be

157 | admissible in evidence in any action or proceeding brought by
 158 | the department or office against the person examined, or against
 159 | its officers, employees, or agents. In all other proceedings,
 160 | the admissibility of the examination report is governed by the
 161 | evidence code. The department or office or its examiners may ~~at~~
 162 | ~~any time~~ testify and offer other proper evidence as to
 163 | information secured or matters discovered during the course of
 164 | an examination, regardless of whether ~~or not~~ a written report of
 165 | the examination has been ~~either~~ made, furnished, or filed in the
 166 | department or office. The production of documents during the
 167 | course of an examination or investigation does not constitute a
 168 | waiver of the attorney-client or work-product privilege.

169 | Section 3. Paragraph (c) of subsection (8) of section
 170 | 624.402, Florida Statutes, is amended to read:

171 | 624.402 Exceptions, certificate of authority required.—A
 172 | certificate of authority shall not be required of an insurer
 173 | with respect to:

174 | (8)

175 | (c) Subject to the limitations provided in this
 176 | subsection, services, including those listed in the definition
 177 | of the term "transact" in s. 624.10, may be provided by the
 178 | insurer or an affiliated person as defined in s. 624.04 under
 179 | common ownership or control with the insurer.

180 | Section 4. Paragraph (g) of subsection (1), paragraph (a)
 181 | of subsection (3), and paragraph (b) of subsection (6) of
 182 | section 624.4085, Florida Statutes, are amended to read:

183 624.4085 Risk-based capital requirements for insurers.-

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

185 (g) "Life and health insurer" means an ~~any~~ insurer
 186 authorized or eligible under the Florida Insurance Code to
 187 underwrite life or health insurance. The term includes a
 188 property and casualty insurer that writes accident and health
 189 insurance only. Effective January 1, 2015, the term also
 190 includes a health maintenance organization that is authorized in
 191 this state and one or more other states, jurisdictions, or
 192 countries; and a prepaid limited health service organization
 193 that is authorized in this state and one or more other states,
 194 jurisdictions, or countries.

195 (3) (a) A company action level event includes:

196 1. The filing of a risk-based capital report by an insurer
 197 which indicates that:

198 a. The insurer's total adjusted capital is greater than or
 199 equal to its regulatory action level risk-based capital but less
 200 than its company action level risk-based capital; ~~or~~

201 b. If a life and health insurer reports using the life and
 202 health annual statement instructions, the insurer has total
 203 adjusted capital that is greater than or equal to its company
 204 action level risk-based capital, but is less than the product of
 205 its authorized control level risk-based capital and 3.0 ~~2.5~~, and
 206 has a negative trend;

207 c. Effective January, 1, 2015, if a life and health or
 208 property and casualty insurer reports using the health annual

209 statement instructions, the insurer or organization has total
 210 adjusted capital that is greater than or equal to its company
 211 action level risk-based capital, but is less than the product of
 212 its authorized control level risk-based capital and 3.0, and
 213 triggers the trend test determined in accordance with the trend
 214 test calculation included in the Risk-Based Capital Forecasting
 215 and Instructions, Health, updated annually by the NAIC; or

216 d. If a property and casualty insurer reports using the
 217 property and casualty annual statement instructions, the insurer
 218 has total adjusted capital that is greater than or equal to its
 219 company action level risk-based capital, but less than the
 220 product of its authorized control level risk-based capital and
 221 3.0, and triggers the trend test determined in accordance with
 222 the trend test calculation included in the Risk-Based Capital
 223 Forecasting and Instructions, Property/Casualty, updated
 224 annually by the NAIC;

225 2. The notification by the office to the insurer of an
 226 adjusted risk-based capital report that indicates an event in
 227 subparagraph 1., unless the insurer challenges the adjusted
 228 risk-based capital report under subsection (7); or

229 3. If, under subsection (7), an insurer challenges an
 230 adjusted risk-based capital report that indicates an event in
 231 subparagraph 1., the notification by the office to the insurer
 232 that the office has, after a hearing, rejected the insurer's
 233 challenge.

234 (6)

235 (b) If a mandatory control level event occurs:
 236 1. With respect to a life and health insurer, the office
 237 shall, after due consideration of s. 624.408, and effective
 238 January 1, 2015, ss. 636.045 and 641.225, take any action
 239 necessary to place the insurer under regulatory control,
 240 including any remedy available under chapter 631. A mandatory
 241 control level event is sufficient ground for the department to
 242 be appointed as receiver as provided in chapter 631. The office
 243 may forego taking action for up to 90 days after the mandatory
 244 control level event if the office finds there is a reasonable
 245 expectation that the ~~mandatory control level~~ event may be
 246 eliminated within the 90-day period.

247 2. With respect to a property and casualty insurer, the
 248 office shall, after due consideration of s. 624.408, take any
 249 action necessary to place the insurer under regulatory control,
 250 including any remedy available under chapter 631, or, in the
 251 case of an insurer that is not writing new business, may allow
 252 the insurer to continue to operate under the supervision of the
 253 office. In either case, the mandatory control level event is
 254 sufficient ground for the department to be appointed as receiver
 255 as provided in chapter 631. The office may forego taking action
 256 for up to 90 days after the mandatory control level event if the
 257 office finds there is a reasonable expectation that the
 258 ~~mandatory control level~~ event may ~~will~~ be eliminated within the
 259 90-day period.

260 Section 5. Subsection (1) and paragraph (e) of subsection

261 (8) of section 624.424, Florida Statutes, are amended, and
 262 subsection (11) is added to that section, to read:
 263 624.424 Annual statement and other information.—
 264 (1)(a) Each authorized insurer shall file with the office
 265 full and true statements of its financial condition,
 266 transactions, and affairs. An annual statement covering the
 267 preceding calendar year shall be filed on or before March 1, and
 268 quarterly statements covering the periods ending on March 31,
 269 June 30, and September 30 shall be filed within 45 days after
 270 each such date. The office may, for good cause, grant an
 271 extension of time for filing ~~of~~ an annual or quarterly
 272 statement. The statements must ~~shall~~ contain information
 273 generally included in insurers' financial statements prepared in
 274 accordance with generally accepted insurance accounting
 275 principles and practices and in a form generally used ~~utilized~~
 276 by insurers for financial statements, sworn to by at least two
 277 executive officers of the insurer or, if a reciprocal insurer,
 278 by ~~the~~ oath of the attorney in fact or its like officer if a
 279 corporation. To facilitate uniformity in financial statements
 280 and to facilitate office analysis, the commission may by rule
 281 adopt the form and instructions for financial statements
 282 approved by the NAIC in 2014 ~~National Association of Insurance~~
 283 ~~Commissioners in 2002~~, and ~~may adopt~~ subsequent amendments
 284 thereto if the methodology remains substantially consistent, and
 285 may by rule require each insurer to submit to the office, or
 286 such organization as the office may designate, all or part of

287 the information contained in the financial statement in a
 288 computer-readable form compatible with the electronic data
 289 processing system specified by the office.

290 (b) Each insurer's annual statement must contain:

291 1. A statement of opinion on loss and loss adjustment
 292 expense reserves made by a member of the American Academy of
 293 Actuaries or by a qualified loss reserve specialist, pursuant to
 294 ~~under~~ criteria established by rule of the commission. In
 295 adopting the rule, the commission shall ~~must~~ consider any
 296 criteria established by the NAIC ~~National Association of~~
 297 ~~Insurance Commissioners~~. The office may require semiannual
 298 updates of the annual statement of opinion for ~~as to~~ a
 299 particular insurer if the office has reasonable cause to believe
 300 that such reserves are understated to the extent of materially
 301 misstating the financial position of the insurer. Workpapers in
 302 support of the statement of opinion must be provided to the
 303 office upon request. This paragraph does not apply to life
 304 insurance, health insurance, or title insurance.

305 2. An actuarial opinion summary written by the insurer's
 306 appointed actuary. The summary must be filed in accordance with
 307 the appropriate NAIC property and casualty annual statement
 308 instructions. Proprietary business information contained in the
 309 summary is confidential and exempt under s. 624.4212, and the
 310 summary and related information are not subject to subpoena or
 311 discovery or admissible in evidence in a private civil action.
 312 Neither the office nor any person who received documents,

313 materials, or other information while acting under the authority
 314 of the office, or with whom such information is shared pursuant
 315 to s. 624.4212, may testify in a private civil action concerning
 316 such confidential information. However, the department or office
 317 may use the confidential and exempt information in the
 318 furtherance of any regulatory or legal action brought against an
 319 insurer as a part of the official duties of the department or
 320 office. No waiver of any other applicable claim of
 321 confidentiality or privilege may occur as a result of a
 322 disclosure to the office under this section or any other section
 323 of the insurance code. This paragraph does not apply to life and
 324 health insurers subject to s. 625.121(3).

325 (c) The commission may by rule require reports or filings
 326 required under the insurance code to be submitted by electronic
 327 means in a computer-readable form compatible with the electronic
 328 data processing equipment specified by the commission.

329 (8)

330 (e) The commission shall adopt rules to administer
 331 ~~implement~~ this subsection, ~~which rules~~ must be in substantial
 332 conformity with the 2006 Annual Financial Reporting Model
 333 Regulation 1998 Model Rule requiring annual audited financial
 334 ~~reports~~ adopted by the NAIC National Association of Insurance
 335 ~~Commissioners~~ or subsequent amendments, except where
 336 inconsistent with the requirements of this subsection. Any
 337 exception to, waiver of, or interpretation of accounting
 338 requirements of the commission must be in writing and signed by

339 an authorized representative of the office. An ~~No~~ insurer may
 340 not raise an ~~as a defense in any action,~~ any exception to,
 341 waiver of, or interpretation of accounting requirements as a
 342 defense in an action, unless previously issued in writing by an
 343 authorized representative of the office.

344 (11) Each insurer doing business in this state which
 345 reinsures through a captive insurance company as defined in s.
 346 628.901, but without regard to domiciliary status, shall, in
 347 conjunction with the annual financial statement required under
 348 paragraph (1)(a), file a report with the office containing
 349 financial information specific to reinsurance assumed by each
 350 captive.

351 (a) The report shall be filed as a separate schedule
 352 designed to avoid duplication of disclosures required by the
 353 NAIC's annual statement and instructions.

354 (b) Insurers must:

355 1. Identify the products ceded to the captive and whether
 356 the products are subject to rule 690-164.020, Florida
 357 Administrative Code, the NAIC Valuation of Life Insurance
 358 Policies Regulation (Model #830), or the NAIC Actuarial
 359 Guideline XXXVIII (AG 38).

360 2. Disclose the assets of the captive in the format
 361 prescribed in the NAIC annual statement schedules.

362 3. Include a stand-alone actuarial opinion or
 363 certification identifying the differences between the assets the
 364 ceding company would be required to hold and the assets held by

365 the captive.

366 Section 6. Subsection (2), paragraphs (a) and (b) of
 367 subsection (3), subsection (5), paragraph (e) of subsection (6),
 368 and subsections (10), (11), and (12) of section 625.121, Florida
 369 Statutes, are amended to read:

370 625.121 Standard Valuation Law; life insurance.—

371 (2) ANNUAL VALUATION.—The office shall annually value, or
 372 cause to be valued, the reserves ~~reserve liabilities,~~
 373 ~~hereinafter called "reserves,"~~ for all outstanding life
 374 insurance policies and annuity and pure endowment contracts of
 375 each every life insurer doing business in this state, ~~and may~~
 376 ~~certify the amount of any such reserves, specifying the~~
 377 ~~mortality table or tables, rate or rates of interest, and~~
 378 ~~methods, net level premium method or others, used in the~~
 379 ~~calculation of such reserves.~~ In the case of an alien insurer,
 380 such valuation is ~~shall be~~ limited to its insurance transactions
 381 in the United States. In calculating ~~such~~ reserves, the office
 382 may use group methods and approximate averages for fractions of
 383 a year or otherwise, and. ~~It may accept in its discretion~~ the
 384 insurer's calculation of such reserves. In lieu of the valuation
 385 of the reserves ~~herein~~ required of a any foreign or alien
 386 insurer, the office ~~it~~ may accept any valuation made or caused
 387 to be made by the insurance supervisory official of any state or
 388 other jurisdiction if the ~~when such~~ valuation complies with the
 389 minimum standard ~~herein~~ provided under this section ~~and if the~~
 390 ~~official of such state or jurisdiction accepts as sufficient and~~

391 ~~valid for all legal purposes the certificate of valuation of the~~
 392 ~~office when such certificate states the valuation to have been~~
 393 ~~made in a specified manner according to which the aggregate~~
 394 ~~reserves would be at least as large as if they had been computed~~
 395 ~~in the manner prescribed by the law of that state or~~
 396 ~~jurisdiction. If a~~ When ~~any such~~ valuation is made by the
 397 office, the office ~~it~~ may use its ~~the~~ actuary ~~of the office~~ or
 398 employ an actuary for that ~~the~~ purpose; and the reasonable
 399 compensation of the actuary, at a rate approved by the office,
 400 plus ~~and~~ reimbursement of travel expenses pursuant to s. 624.320
 401 ~~upon demand by the office~~, supported by an itemized statement of
 402 such compensation and expenses, shall be paid by the insurer
 403 upon demand of the office. ~~If~~ When a domestic insurer furnishes
 404 the office with a valuation of its outstanding policies as
 405 computed by its own actuary or by an actuary deemed satisfactory
 406 for that ~~the~~ purpose by the office, the valuation shall be
 407 verified by the actuary of the office without cost to the
 408 insurer. This subsection applies to the calculation of reserves
 409 for policies and contracts not subject to s. 625.1212.

410 (3) ACTUARIAL OPINION OF RESERVES.—

411 (a) ~~1.~~ Each life insurer ~~insurance company~~ doing business
 412 in this state shall annually submit the opinion of a qualified
 413 actuary as to whether the reserves and related actuarial items
 414 held in support of the policies and contracts specified by the
 415 commission by rule are computed appropriately, are based on
 416 assumptions that ~~which~~ satisfy contractual provisions, are

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417 consistent with prior reported amounts, and comply with
 418 applicable laws of this state. The commission by rule shall
 419 define the specifics of this opinion and add any other items
 420 determined ~~to be~~ necessary to its scope.

421 1.2. The opinion shall be submitted with the annual
 422 statement and must reflect ~~reflecting~~ the valuation of such
 423 reserve liabilities for each year ending on or before ~~after~~
 424 December 31 of the year before the operative date of the
 425 valuation manual as defined in s. 625.1212(2), and in accordance
 426 with s. 625.1212(4) for each year thereafter, ~~1992.~~

427 2.3. The opinion applies ~~shall apply~~ to all business in
 428 force, including individual and group health insurance plans, in
 429 the form and substance acceptable to the office as specified by
 430 rule of the commission.

431 3.4. The commission may adopt rules providing the
 432 standards of the actuarial opinion consistent with standards
 433 adopted by the Actuarial Standards Board on December 31, 2013
 434 ~~2002~~, and subsequent revisions thereto if, ~~provided that~~ the
 435 standards remain substantially consistent.

436 4.5. ~~In the case of an opinion required to be submitted by~~
 437 ~~a foreign or alien company,~~ The office may accept an ~~the~~ opinion
 438 filed by a foreign or alien insurer ~~that company~~ with the
 439 insurance supervisory official of another state if the office
 440 determines that the opinion reasonably meets the requirements
 441 applicable to an insurer ~~a company~~ domiciled in this state.

442 5.6. As used in ~~For the purposes of~~ this subsection, the

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443 term "qualified actuary" means a member in good standing of the
444 American Academy of Actuaries who also meets the requirements
445 specified by rule of the commission.

446 6.7. Disciplinary action by the office against the insurer
447 ~~company~~ or the qualified actuary shall be in accordance with the
448 insurance code and related rules adopted by the commission.

449 7.8. A memorandum in the form and substance specified by
450 rule shall be prepared to support each actuarial opinion.

451 8.9. If the insurer ~~insurance company~~ fails to provide a
452 supporting memorandum at the request of the office within a
453 period specified by rule of the commission, or if the office
454 determines that the supporting memorandum provided by the
455 insurer ~~insurance company~~ fails to meet the standards prescribed
456 by rule of the commission, the office may engage a qualified
457 actuary at the expense of the insurer ~~company~~ to review the
458 opinion and the basis for the opinion and prepare such
459 supporting memorandum as ~~is~~ required by the office.

460 9.10. Except as otherwise provided in this subparagraph
461 ~~paragraph~~, any memorandum or other material in support of the
462 opinion is confidential and exempt from ~~the provisions of s.~~
463 119.07(1) and is not subject to subpoena or discovery or
464 admissible in evidence in any private civil action; however, the
465 memorandum or other material may be released by the office with
466 the written consent of the insurer ~~company~~, or to the American
467 Academy of Actuaries upon request stating that the memorandum or
468 other material is required for the purpose of professional

469 disciplinary proceedings and setting forth procedures
 470 satisfactory to the office for preserving the confidentiality of
 471 the memorandum or other material. If any portion of the
 472 confidential memorandum is cited by the insurer ~~company~~ in its
 473 marketing, ~~or~~ is cited before any governmental agency other than
 474 a state insurance department, or is released by the insurer
 475 ~~company~~ to the news media, no portion of the memorandum is
 476 confidential. Neither the office nor any person who receives
 477 documents, materials, or other information while acting under
 478 the authority of the office or with whom such information is
 479 shared pursuant to this paragraph may testify in a private civil
 480 action concerning the confidential documents, materials, or
 481 information. However, the department or office may use the
 482 confidential and exempt information in the furtherance of any
 483 regulatory or legal action brought against an insurer as a part
 484 of the official duties of the department or office. A waiver of
 485 an applicable privilege or claim of confidentiality in the
 486 documents, materials, or information may not occur as a result
 487 of disclosure to the office under this section or any other
 488 section of the insurance code, or as a result of sharing as
 489 authorized under s. 624.4212.

490 (b) In addition to the opinion required by paragraph (a)
 491 ~~subparagraph (a)1.~~, the office may, pursuant to commission rule,
 492 require an opinion of the same qualified actuary as to whether
 493 the reserves and related actuarial items held in support of the
 494 policies and contracts specified by the commission by rule, when

495 considered in light of the assets held by the insurer ~~company~~
 496 with respect to the reserves and related actuarial items,
 497 including, but not limited to, the investment earnings on the
 498 assets and considerations anticipated to be received and
 499 retained under the policies and contracts, make adequate
 500 provision for the insurer's ~~company's~~ obligations under the
 501 policies and contracts, including, but not limited to, the
 502 benefits under, and expenses associated with, the policies and
 503 contracts.

504 (5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND
 505 CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF THE STANDARD
 506 NONFORFEITURE LAW.—Except as otherwise provided in paragraph (h)
 507 and subsections (6), (13) ~~(11)~~, and (14), the minimum standard
 508 for the valuation of all such policies and contracts issued on
 509 or after the operative date of s. 627.476 ~~(Standard~~
 510 ~~Nonforfeiture Law for Life Insurance)~~ shall be the
 511 commissioners' reserve valuation method defined in subsections
 512 (7), (11), and (14); 5 percent interest for group annuity and
 513 pure endowment contracts and 3.5 percent interest for all other
 514 such policies and contracts, or in the case of life insurance
 515 policies and contracts, other than annuity and pure endowment
 516 contracts, issued on or after July 1, 1973, 4 percent interest
 517 for such policies issued prior to October 1, 1979, and 4.5
 518 percent interest for such policies issued on or after October 1,
 519 1979; and the following tables:

520 (a) For all ordinary policies of life insurance issued on

521 the standard basis, excluding any disability and accidental
 522 death benefits in such policies:

523 1. For policies issued before ~~prior to~~ the operative date
 524 of s. 627.476(9), the commissioners' 1958 Standard Ordinary
 525 Mortality Table; except that, for any category of such policies
 526 issued on female risks, modified net premiums and present
 527 values, referred to in subsection (7), may be calculated
 528 according to an age up to ~~not more than~~ 6 years younger than the
 529 actual age of the insured.

530 2. For policies issued on or after the operative date of
 531 s. 627.476(9), the ~~commissioners'~~ 1980 Standard Ordinary
 532 Mortality Table adopted by the NAIC or, at the election of the
 533 insurer for any one or more specified plans of life insurance,
 534 the ~~commissioners'~~ 1980 Standard Ordinary Mortality Table with
 535 Ten-Year Select Mortality Factors adopted by the NAIC.

536 3. For policies issued on or after July 1, 2004, ordinary
 537 mortality tables, adopted after 1980 by the NAIC ~~National~~
 538 ~~Association of Insurance Commissioners~~, adopted by rule by the
 539 commission for use in determining the minimum standard of
 540 valuation for such policies.

541 (b) For all industrial life insurance policies issued on
 542 the standard basis, excluding any disability and accidental
 543 death benefits in such policies:

544 1. For policies issued before ~~prior to~~ the first date ~~to~~
 545 ~~which~~ the ~~commissioners'~~ 1961 Standard Industrial Mortality
 546 Table adopted by the NAIC is applicable according to s. 627.476,

547 the 1941 Standard Industrial Mortality Table; and

548 2. For ~~such~~ policies issued on or after that date, the
 549 ~~commissioners'~~ 1961 Standard Industrial Mortality Table adopted
 550 by the NAIC.

551 3. For policies issued on or after October 1, 2014, an
 552 Industrial Mortality Table adopted after 1980 by the NAIC which
 553 is adopted by rule of the commission for use in determining the
 554 minimum standard of valuation for such policies.

555 (c) For individual annuity and pure endowment contracts,
 556 excluding any disability and accidental death benefits in such
 557 policies, the 1937 Standard Annuity Mortality Table or, at the
 558 option of the insurer, the Annuity Mortality Table for 1949,
 559 Ultimate, or any modification of ~~either of~~ these tables approved
 560 by the office.

561 (d) For group annuity and pure endowment contracts,
 562 excluding any disability and accidental death benefits in such
 563 policies, the Group Annuity Mortality Table for 1951; any
 564 modification of such table approved by the office; or, at the
 565 option of the insurer, any of the tables or modifications of
 566 tables specified for individual annuity and pure endowment
 567 contracts.

568 (e) For total and permanent disability benefits in or
 569 supplementary to ordinary policies or contracts:

570 1. For policies or contracts issued on or after January 1,
 571 1966, the tables of period 2 disablement rates and the 1930 to
 572 1950 termination rates of the 1952 disability study of the

573 Society of Actuaries, with due regard to the type of benefit;

574 2. For policies or contracts issued on or after January 1,
 575 1961, and before ~~prior to~~ January 1, 1966, either of the tables
 576 specified in subparagraph 1. ~~these tables~~ or, at the option of
 577 the insurer, the class three disability table (1926);

578 3. For policies issued before ~~prior to~~ January 1, 1961,
 579 the class three disability table (1926); and

580 4. For policies or contracts issued on or after July 1,
 581 2004, tables of disablement rates and termination rates adopted
 582 after 1980 by the NAIC ~~National Association of Insurance~~
 583 ~~Commissioners~~, adopted by rule by the commission for use in
 584 determining the minimum standard of valuation for those policies
 585 or contracts.

586
 587 Any such table for active lives shall be combined with a
 588 mortality table permitted for calculating the reserves for life
 589 insurance policies.

590 (f) For accidental death benefits in or supplementary to
 591 policies:

592 1. For policies issued on or after January 1, 1966, the
 593 1959 Accidental Death Benefits Table;

594 2. For policies issued on or after January 1, 1961, and
 595 before ~~prior to~~ January 1, 1966, the 1959 Accidental Death
 596 Benefits ~~either that~~ Table or, at the option of the insurer, the
 597 Intercompany Double Indemnity Mortality Table;

598 3. For policies issued before ~~prior to~~ January 1, 1961,

599 the Intercompany Double Indemnity Mortality Table; and

600 4. For policies issued on or after July 1, 2004, tables of
 601 accidental death benefits adopted after 1980 by the NAIC
 602 ~~National Association of Insurance Commissioners~~, adopted by rule
 603 by the commission for use in determining the minimum standard of
 604 valuation for those policies.

605
 606 Either table shall be combined with a mortality table permitted
 607 for calculating the reserves for life insurance policies.

608 (g) For group life insurance, life insurance issued on the
 609 substandard basis, and other special benefits, such tables as
 610 may be approved by the office as being sufficient with relation
 611 to the benefits provided by such policies.

612 (h) Except as provided in subsection (6), the minimum
 613 standard for the valuation of all individual annuity and pure
 614 endowment contracts issued on or after the operative date of
 615 this paragraph and for all annuities and pure endowments
 616 purchased on or after such operative date under group annuity
 617 and pure endowment contracts shall be the commissioners' reserve
 618 valuation method defined in subsection (7) and the following
 619 tables and interest rates:

620 1. For individual annuity and pure endowment contracts
 621 issued before ~~prior to~~ October 1, 1979, excluding any disability
 622 and accidental death benefits in such contracts, the 1971
 623 Individual Annuity Mortality Table, or any modification of this
 624 table approved by the office, and 6 percent interest for single-

625 premium immediate annuity contracts and 4 percent interest for
 626 all other individual annuity and pure endowment contracts.

627 2. For individual single-premium immediate annuity
 628 contracts issued on or after October 1, 1979, and before ~~prior~~
 629 ~~to~~ October 1, 1986, excluding any disability and accidental
 630 death benefits in such contracts, the 1971 Individual Annuity
 631 Mortality Table, or any modification of this table approved by
 632 the office, and 7.5 percent interest. For such contracts issued
 633 on or after October 1, 1986, the 1983 Individual Annual
 634 Mortality Table, or any modification of such table approved by
 635 the office, and the applicable calendar year statutory valuation
 636 interest rate as described in subsection (6).

637 3. For individual annuity and pure endowment contracts
 638 issued on or after October 1, 1979, and before ~~prior to~~ October
 639 1, 1986, other than single-premium immediate annuity contracts,
 640 excluding any disability and accidental death benefits in such
 641 contracts, the 1971 Individual Annuity Mortality Table, or any
 642 modification of this table approved by the office, and 5.5
 643 percent interest for single-premium deferred annuity and pure
 644 endowment contracts and 4.5 percent interest for all other such
 645 individual annuity and pure endowment contracts. For such
 646 contracts issued on or after October 1, 1986, the 1983
 647 Individual Annual Mortality Table, or any modification of such
 648 table approved by the office, and the applicable calendar year
 649 statutory valuation interest rate as described in subsection
 650 (6).

651 4. For all annuities and pure endowments purchased before
 652 ~~prior to~~ October 1, 1979, under group annuity and pure endowment
 653 contracts, excluding any disability and accidental death
 654 benefits purchased under such contracts, the 1971 Group Annuity
 655 Mortality Table, or any modification of this table approved by
 656 the office, and 6 percent interest.

657 5. For all annuities and pure endowments purchased on or
 658 after October 1, 1979, and before ~~prior to~~ October 1, 1986,
 659 under group annuity and pure endowment contracts, excluding ~~any~~
 660 disability and accidental death benefits purchased under such
 661 contracts, the 1971 Group Annuity Mortality Table, or any
 662 modification of this table approved by the office, and 7.5
 663 percent interest. For such contracts purchased on or after
 664 October 1, 1986, the 1983 Group Annuity Mortality Table, or any
 665 modification of such table approved by the office, and the
 666 applicable calendar year statutory valuation interest rate as
 667 described in subsection (6).

668
 669 After July 1, 1973, an ~~any~~ insurer may have filed with the
 670 former Department of Insurance a written notice of its election
 671 to comply with ~~the provisions of~~ this paragraph after a
 672 specified date before January 1, 1979, which shall be the
 673 operative date of this paragraph for such insurer. However, an
 674 insurer may elect a different operative date for individual
 675 annuity and pure endowment contracts from that elected for group
 676 annuity and pure endowment contracts. If an insurer does not

677 make ~~makes~~ ~~no~~ such election, the operative date of this
 678 paragraph for such insurer is ~~shall be~~ January 1, 1979.

679 (i) In lieu of the mortality tables specified in this
 680 subsection, and subject to rules previously adopted by the
 681 former Department of Insurance, the insurance company may, at
 682 its option:

683 1. Substitute the applicable 1958 CSO or CET Smoker and
 684 Nonsmoker Mortality Tables, in lieu of the 1980 CSO or CET
 685 mortality table standard, for policies issued on or after the
 686 operative date of s. 627.476(9) and before January 1, 1989.

687 2. Substitute the applicable 1980 CSO or CET Smoker and
 688 Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET
 689 mortality table standard.+

690 3. Use the Annuity 2000 Mortality Table for determining
 691 the minimum standard of valuation for individual annuity and
 692 pure endowment contracts issued on or after January 1, 1998, and
 693 before July 1, 1998.

694 4. Use the 1994 GAR Table for determining the minimum
 695 standard of valuation for annuities and pure endowments
 696 purchased on or after January 1, 1998, and before July 1, 1998,
 697 under group annuity and pure endowment contracts.

698 (j) The commission may adopt by rule the model regulation
 699 for valuation of life insurance policies as approved by the NAIC
 700 ~~National Association of Insurance Commissioners~~ in March 1999,
 701 including tables of select mortality factors, and may make the
 702 regulation effective for policies issued on or after January 1,

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703 2000.

704 (k) For individual annuity and pure endowment contracts
 705 issued on or after July 1, 2004, excluding ~~any~~ disability and
 706 accidental death benefits purchased under those contracts,
 707 individual annuity mortality tables adopted after 1980 by the
 708 NAIC ~~National Association of Insurance Commissioners~~, adopted by
 709 rule by the commission for use in determining the minimum
 710 standard of valuation for those contracts.

711 (l) For all annuities and pure endowments purchased on or
 712 after July 1, 2004, under group annuity and pure endowment
 713 contracts, excluding ~~any~~ disability and accidental death
 714 benefits purchased under those contracts, group annuity
 715 mortality tables adopted after 1980 by the NAIC ~~National~~
 716 ~~Association of Insurance Commissioners~~, adopted by rule by the
 717 commission for use in determining the minimum standard of
 718 valuation for those contracts.

719 (6) MINIMUM STANDARD OF VALUATION.—

720 (e) The interest rate index shall be the Moody's Corporate
 721 Bond Yield Average-Monthly Average Corporates as published by
 722 Moody's Investors Service, Inc., if the ~~as long as this~~ index is
 723 calculated by using substantially the same methodology ~~as~~ used
 724 by Moody's ~~it~~ on January 1, 1981. If Moody's corporate bond
 725 yield average ceases to be calculated in substantially the same
 726 ~~this~~ manner, the interest rate index shall be the index
 727 specified in the valuation manual, as applicable, as provided
 728 under s. 625.1212, or an index adopted by the NAIC and approved

729 by rule adopted ~~promulgated~~ by the commission. The methodology
 730 used in determining the index approved by rule must ~~shall~~ be
 731 substantially the same as the methodology employed on January 1,
 732 1981, for determining Moody's Corporate Bond Yield Average-
 733 Monthly Average Corporates as published by Moody's Investors
 734 Service, Inc.

735 (10) LOWER VALUATIONS.—An insurer that ~~which at any time~~
 736 ~~had~~ adopted a any standard of valuation producing greater
 737 aggregate reserves than those calculated according to the
 738 minimum standard ~~herein~~ provided under this section shall ~~may~~,
 739 with the approval of the office, adopt a any lower standard of
 740 valuation, but not lower than the minimum herein provided;
 741 however, for the purposes of this subsection, the holding of
 742 additional reserves previously determined by an appointed a
 743 ~~qualified~~ actuary, as defined in s. 625.1212(2), to be necessary
 744 to render the opinion required by subsection (3) may ~~shall~~ not
 745 be deemed to be the adoption of a higher standard of valuation.

746 (11) ADDITIONAL PREMIUM DEFICIENCY RESERVE.—If in any
 747 contract year the gross premium charged by a any life insurer on
 748 a any policy or contract is less than the valuation net premium
 749 for the policy or contract calculated by the method used in
 750 calculating the reserve thereon but using the minimum valuation
 751 standards of mortality and rate of interest, the minimum premium
 752 reserve required for the policy or contract shall be the greater
 753 of the reserve calculated according to the actual mortality
 754 table, rate of interest, and method used for the policy or

755 contract, or the actual method used for the policy or contract
 756 but using the minimum valuation standards of mortality and rate
 757 of interest and replacing the valuation net premium by the
 758 actual gross premium in each contract year for which the
 759 valuation net premium exceeds the actual gross premium. The
 760 minimum valuation standards of mortality and rate of interest
 761 are those standards ~~there shall be maintained on such policy or~~
 762 ~~contract a deficiency reserve in addition to the reserve defined~~
 763 ~~by subsections (4), (5), and (6) (7) and (12). For each such~~
 764 ~~policy or contract, the deficiency reserve shall be the present~~
 765 ~~value, according to the minimum valuation standards of mortality~~
 766 ~~and rate of interest, of the differences between all such~~
 767 ~~valuation net premiums and the corresponding premiums charged~~
 768 ~~for such policy or contract during the remainder of the premium-~~
 769 ~~paying period. For any category of policies, contracts, or~~
 770 ~~benefits specified in subsections (5) and (6), issued on or~~
 771 ~~after the operative date of s. 627.476 (the Standard~~
 772 ~~Nonforfeiture Law for Life Insurance), the aggregate deficiency~~
 773 ~~reserves may be reduced by the amount, if any, by which the~~
 774 ~~aggregate reserves actually calculated in accordance with~~
 775 ~~subsection (9) exceed the minimum aggregate reserves prescribed~~
 776 ~~by subsection (8). The minimum valuation standards of mortality~~
 777 ~~and rate of interest referred to in this subsection are those~~
 778 ~~standards stated in subsections (5) and (6). However, For any~~
 779 ~~life insurance policy that~~ which ~~is issued on or after January~~
 780 ~~1, 1985, for which the gross premium in the first policy year~~

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781 exceeds that of the second year and for which no comparable
 782 additional benefit is provided in the first year for such
 783 excess, and which provides an endowment benefit, a cash
 784 surrender value, or a combination thereof in an amount greater
 785 than such excess premium, the foregoing provisions of this
 786 subsection shall be applied as if the method actually used in
 787 calculating the reserve for such policy were the method
 788 described in subsection (7), the provisions of subparagraph
 789 (7)(a)2. being ignored. The minimum premium reserve amount ~~of~~
 790 ~~the deficiency reserve~~, if any, at each policy anniversary of
 791 such a policy is ~~shall be~~ the excess, if any, of the amount
 792 determined by the foregoing provisions of this subsection plus
 793 the reserve calculated by the method described in subsection
 794 (7), the provisions of subparagraph (7)(a)2. being ignored, over
 795 the reserve actually calculated by the method described in
 796 subsection (7), the provisions of subparagraph (7)(a)2. being
 797 taken into account.

798 (12) RESERVE CALCULATION FOR INDETERMINATE PREMIUM PLANS
 799 ~~ALTERNATE METHOD FOR DETERMINING RESERVES IN CERTAIN CASES.~~—In
 800 the case of a ~~any~~ plan of life insurance which provides for
 801 future premium determination, the amounts of which are to be
 802 determined by the insurer based on then estimates of future
 803 experience, or in the case of a ~~any~~ plan of life insurance or
 804 annuity for ~~is of such a nature that~~ the minimum reserves
 805 cannot be determined by the methods described in subsections (7)
 806 and (11) ~~subsection (7)~~, the reserves that ~~which~~ are held under

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807 ~~any~~ such plan must ~~shall~~:

808 (a) Be appropriate in relation to the benefits and the
809 pattern of premiums for that plan; and

810 (b) Be computed by a method that ~~which~~ is consistent with
811 the principles of this section, as determined by rules adopted
812 ~~promulgated~~ by the commission.

813 Section 7. Section 625.1212, Florida Statutes, is created
814 to read:

815 625.1212 Valuation of policies and contracts issued on or
816 after the operative date of the valuation manual.-

817 (1) APPLICABILITY.-This section applies to life insurance
818 contracts, accident and health insurance contracts, and deposit-
819 type contracts issued on or after the operative date of the
820 valuation manual unless the manual requires or permits an
821 insurer to determine reserves according to the standards in
822 effect before the operative date of the manual and rules adopted
823 by the commission as provided under s. 625.121. Subsections (5)
824 and (6) do not apply to policies and contracts subject to s.
825 625.121.

826 (2) DEFINITIONS.-As used in this section, the term:

827 (a) "Accident and health insurance" means contracts that
828 incorporate morbidity risk and provide protection against
829 economic loss resulting from accident, sickness, or medical
830 conditions and as may be specified in the valuation manual.

831 (b) "Appointed actuary" means a qualified actuary who is
832 appointed in accordance with the valuation manual to prepare the

833 actuarial opinion required in subsection (4).

834 (c) "Deposit-type contract" means a contract that does not
 835 incorporate mortality or morbidity risks and as may be specified
 836 in the valuation manual.

837 (d) "Insurer" means a person engaged as an indemnitor,
 838 surety, or contractor in the business of entering into contracts
 839 of insurance or reinsurance.

840 (e) "Life insurance" means policies or contracts that
 841 incorporate mortality risk, including annuity and pure endowment
 842 contracts, and as may be specified in the valuation manual.

843 (f) "Operative date of the valuation manual" means the
 844 latter of January 1, 2017, or the first January 1 after the
 845 first July 1 in which the following conditions, as certified in
 846 writing by the Commissioner of Insurance Regulation to the
 847 Financial Services Commission, have been met:

848 1. The valuation manual has been adopted by the NAIC by an
 849 affirmative vote of at least 42 members of the NAIC or 75
 850 percent of members voting, whichever is greater;

851 2. The Standard Valuation Law, as amended by the NAIC in
 852 2009, or substantially similar legislation, has been enacted in
 853 states representing more than 75 percent of the direct premiums
 854 written as reported in the 2008 annual statements for life,
 855 accident and health, health, or fraternal society insurance; and

856 3. The Standard Valuation Law as amended by the NAIC in
 857 2009, or substantially similar legislation, has been enacted in
 858 at least 42 of the following 55 jurisdictions: the 50 states of

859 the United States, the District of Columbia, American Samoa, the
 860 American Virgin Islands, Guam, and Puerto Rico.

861 (g) "Policyholder behavior" means an action a
 862 policyholder, contract holder, or other person who has the right
 863 to elect options, such as a certificateholder, may take under a
 864 policy or contract subject to this section including, but not
 865 limited to, lapse, withdrawal, transfer, deposit, premium
 866 payment, loan, annuitization, or benefit elections prescribed by
 867 the policy or contract but excluding events of mortality or
 868 morbidity that result in benefits prescribed in their essential
 869 aspects by the terms of the policy or contract.

870 (h) "Principle-based valuation" means a reserve valuation
 871 that uses one or more methods or assumptions determined by the
 872 insurer and must comply with subsection (6) as specified in the
 873 valuation manual.

874 (i) "Qualified actuary" means an individual who is
 875 qualified to sign the applicable statement of actuarial opinion
 876 in accordance with the American Academy of Actuaries
 877 qualification standards for actuaries signing such statements
 878 and who meets the requirements specified in the valuation
 879 manual.

880 (j) "Tail risk" means a risk that occurs when the
 881 frequency of low probability events is higher than expected
 882 under a normal probability distribution or when there are
 883 observed events of very significant size or magnitude.

884 (k) "Valuation manual" means the manual of valuation

885 instructions adopted by the NAIC, or as subsequently amended.

886 (3) RESERVE VALUATION.—The office shall annually value, or
 887 cause to be valued, insurer reserves for all outstanding life
 888 insurance contracts, accident and health contracts, and deposit-
 889 type contracts in this state. Insurers are subject to
 890 subsections (5) and (6) when calculating the reserves. In lieu
 891 of the reserve valuation for a foreign or alien insurer, the
 892 office may accept a valuation made, or caused to be made, by the
 893 insurance supervisory official of any state or other
 894 jurisdiction if the valuation complies with the minimum standard
 895 required in this section.

896 (4) ACTUARIAL OPINION OF RESERVES.—

897 (a) Each insurer that has outstanding life insurance
 898 contracts, accident and health insurance contracts, or deposit-
 899 type contracts in this state which are subject to regulation by
 900 the office must annually submit the opinion of a qualified
 901 actuary as to whether the reserves and related actuarial items
 902 held in support of the policies and contracts are computed
 903 appropriately, are based on assumptions that satisfy contractual
 904 provisions, are consistent with prior reported amounts, and
 905 comply with applicable state law. The specifics of the opinion,
 906 including any items deemed necessary to its scope, must be as
 907 prescribed by the valuation manual.

908 (b) Except as exempted in the valuation manual, each
 909 insurer that has outstanding life insurance contracts, accident
 910 and health insurance contracts, or deposit-type contracts in

911 this state shall also annually include an opinion by the same
 912 appointed actuary as to whether the reserves and related
 913 actuarial items held in support of the policies and contracts
 914 specified in the valuation manual, when considered in light of
 915 the assets held by the insurer with respect to the reserves and
 916 related actuarial items, including but not limited to, the
 917 investment earnings on the assets and the considerations
 918 anticipated to be received and retained under the policies and
 919 contracts, make adequate provision for the insurer's obligations
 920 under the policies and contracts, including, but not limited to,
 921 the benefits under and expenses associated with the policies and
 922 contracts.

923 (c) The insurer shall prepare a memorandum to support each
 924 actuarial opinion in such form and substance as specified in the
 925 valuation manual and acceptable to the office. If the insurer
 926 fails to provide a supporting memorandum within the period
 927 specified in the valuation manual, or if the office determines
 928 that the supporting memorandum fails to meet the standards
 929 required by the manual or is otherwise unacceptable to the
 930 office, the office may engage a qualified actuary at the expense
 931 of the insurer to review the opinion and the basis for the
 932 opinion and to prepare the supporting memorandum.

933 (d) Each opinion subject to this subsection must be
 934 submitted with the annual statement in such form and substance
 935 as specified in the valuation manual and acceptable to the
 936 office, must reflect the valuation of the reserve liabilities

937 for each year ending on or after the operative date of the
 938 valuation manual, and must apply to all policies and contracts
 939 subject to paragraph (b), plus other actuarial liabilities as
 940 may be specified in the valuation manual. The opinion must be
 941 based on standards adopted by the Actuarial Standards Board or
 942 its successor, and on such additional standards as may be
 943 prescribed in the valuation manual. For a foreign or alien
 944 insurer, the office may accept an opinion filed by the insurer
 945 with the insurance supervisory official of another state if the
 946 office determines that the opinion reasonably meets the
 947 requirements applicable to an insurer domiciled in this state.

948 (e) Disciplinary action by the office against the insurer
 949 or the appointed actuary shall be in accordance with the laws of
 950 this state and related rules adopted by the commission.

951 (5) MINIMUM STANDARD OF VALUATION.—

952 (a) In accordance with this subsection and subsection (6),
 953 an insurer must apply the standard prescribed in the valuation
 954 manual as the minimum standard of valuation for contracts issued
 955 on or after the operative date of the valuation manual, except:

956 1. For specific product forms or product lines exempted
 957 pursuant to paragraph (f); or

958 2. That an insurer domiciled in a state that does not
 959 require the insurer to apply the standards prescribed in the
 960 valuation manual as the minimum standard of valuation, including
 961 the principle-based valuation of reserves, may not apply such
 962 standards in this state.

963 (b) If, in the opinion of the office, there is no specific
 964 valuation requirement or a specific valuation requirement in the
 965 valuation manual is not in compliance with this section, the
 966 insurer shall comply with the minimum valuation standards
 967 prescribed by the commission by rule.

968 (c) The office may engage a qualified actuary, at the
 969 insurer's expense, to perform an actuarial examination of the
 970 insurer and to render an opinion as to the appropriateness of
 971 any reserve assumption or method, or computer model or modeling
 972 software used by the insurer, or to review and provide an
 973 opinion on the insurer's compliance with the requirements of
 974 this section. In calculating and establishing reserves under
 975 this section, the insurer may rely on the modeling software and
 976 tools of a third-party vendor only if the vendor contractually
 977 agrees to allow the insurer to provide the office with access to
 978 the software or tools as necessary to replicate the results of
 979 the software or tools for the purpose of evaluating and
 980 validating reserve valuations. The office may rely upon the
 981 opinion of a qualified actuary employed by or under contract
 982 with the commissioner of another state, district, or territory
 983 of the United States with respect to this section.

984 (d) The office may require an insurer to change any
 985 assumption or method that, in the opinion of the office, is
 986 necessary to comply with the valuation manual or this section.
 987 The insurer shall adjust the reserves as required by the office.
 988 The office may take other disciplinary action pursuant to

989 applicable state law and rules.

990 (e) The commission may adopt subsequent amendments to the
 991 valuation manual by rule if the methodology and standards remain
 992 substantially consistent with the valuation manual then in
 993 effect.

994 (f) A domestic insurer licensed and doing business only in
 995 this state may exempt specific product forms or product lines
 996 from the requirements of this subsection and subsection (6) if
 997 the insurer computes reserves for the specific product forms or
 998 product lines using assumptions and methods used before the
 999 operative date of the valuation manual, and the amount of
 1000 insurance subject to the stochastic or deterministic reserve
 1001 requirement is immaterial. The requirements of s. 625.121 apply
 1002 to specific product forms and product lines exempted under this
 1003 paragraph.

1004 (g) An insurer that adopted a standard of valuation
 1005 producing greater aggregate reserves than those calculated
 1006 according to the minimum standard provided under this section
 1007 may, with the approval of the office, adopt a lower standard of
 1008 valuation, but such standard may not be lower than the minimum
 1009 provided in this subsection. For purposes of this subsection,
 1010 holding additional reserves previously determined by an
 1011 appointed actuary to be necessary to render the opinion required
 1012 by subsection (4) may not be deemed to be the adoption of a
 1013 higher standard of valuation.

1014 (6) REQUIREMENTS OF A PRINCIPLE-BASED VALUATION OF

1015 RESERVES.—

1016 (a) Insurers required to use a principle-based valuation

1017 of reserves for specified product forms and product lines and

1018 associated policies and contracts, pursuant to subparagraph

1019 (5)(a)2., must:

1020 1. Quantify the benefits and guarantees, and the funding

1021 associated with the policies or contracts and their risks at a

1022 level of conservatism that reflects conditions that:

1023 a. Include unfavorable events that have a reasonable

1024 probability of occurring during the lifetime of the policies or

1025 contracts; and

1026 b. Are appropriately adverse to quantifying the tail risk.

1027 2. Incorporate assumptions, risk analysis methods, and

1028 financial models and management techniques that are consistent

1029 with, but not necessarily identical to, those used within the

1030 insurer's overall risk assessment process while recognizing

1031 potential differences in financial reporting structures and any

1032 prescribed assumptions or methods.

1033 3. Incorporate assumptions that are derived in one of the

1034 following manners:

1035 a. The assumption is prescribed in the valuation manual.

1036 b. For assumptions that are not prescribed, the

1037 assumptions must:

1038 (I) Be established using the insurer's available

1039 experience, to the extent that it is relevant and statistically

1040 credible; or

1041 (II) To the extent that insurer data is not available,
 1042 relevant, or statistically credible, be established using other
 1043 relevant, statistically credible experience.

1044 4. Provide margins for uncertainty including adverse
 1045 deviation and estimation error, such that the greater the
 1046 uncertainty, the larger the margin and resulting reserve.

1047 (b) An insurer using a principle-based valuation for one
 1048 or more policies or contracts subject to this section as
 1049 specified in the valuation manual shall:

1050 1. Establish procedures for corporate governance and
 1051 oversight of the actuarial valuation function consistent with
 1052 those prescribed in the valuation manual.

1053 2. Submit an annual certification to the office and the
 1054 insurer's board of directors of the effectiveness of internal
 1055 controls on the principle-based valuation. The internal controls
 1056 must be designed to assure that all material risks inherent in
 1057 the liabilities and associated assets subject to the valuation
 1058 are included in the valuation, and that valuations are made in
 1059 accordance with the valuation manual. The certification must be
 1060 based on controls in place as of the end of the preceding
 1061 calendar year.

1062 3. Upon request, develop and file with the office a
 1063 principle-based valuation report that complies with standards
 1064 prescribed in the valuation manual.

1065 (c) A principle-based valuation may include a prescribed
 1066 formulaic reserve component.

1067 (7) EXPERIENCE REPORTING.—An insurer shall submit
 1068 mortality, morbidity, policyholder behavior, or expense
 1069 experience and other data as prescribed in the valuation manual
 1070 to the office.

1071 (8) RULE ADOPTION.—The commission may adopt rules as
 1072 necessary to administer this section, including rules requiring
 1073 the use of the NAIC 2009 Standard Valuation Law and the NAIC
 1074 2012 Valuation Manual. The adoption of such rules is not subject
 1075 to s. 120.541(3), and the rules do not take effect until the
 1076 operative date of the valuation manual.

1077 Section 8. Section 625.1214, Florida Statutes, is created
 1078 to read:

1079 625.1214 Use of confidential information.—

1080 (1) Documents, reports, materials, and other information
 1081 created, produced, or obtained pursuant to ss. 625.121 and
 1082 625.1212, are privileged, confidential, and exempt as provided
 1083 in s. 624.4212, and are not subject to subpoena or discovery, or
 1084 admissible in evidence in any private civil action. However, the
 1085 department or office may use the confidential and exempt
 1086 information in the furtherance of any regulatory or legal action
 1087 brought against an insurer as a part of the official duties of
 1088 the department or office. A waiver of any other applicable claim
 1089 of confidentiality or privilege may not occur as a result of a
 1090 disclosure to the office under this section, any other section
 1091 of the insurance code, or as a result of sharing under s.
 1092 624.4212.

1093 (2) Neither the office nor any person who received
 1094 confidential and exempt information while acting under the
 1095 authority of the office, or with whom such information is shared
 1096 pursuant to s. 624.4212, may be permitted or required to testify
 1097 in a private civil action concerning any confidential and exempt
 1098 information subject to s. 624.4212. If any portion of the
 1099 confidential memorandum is cited by the insurer in its
 1100 marketing, is cited before a governmental agency other than a
 1101 state insurance department, or is released by the insurer to the
 1102 news media, no portion of the memorandum is confidential.

1103 (3) A privilege established under the law of any state or
 1104 jurisdiction that is substantially similar to the privilege
 1105 established under subsection (1) shall be available and enforced
 1106 in any proceeding in, and in any court of, this state.

1107 Section 9. Paragraphs (h) and (i) of subsection (9) and
 1108 subsection (14) of section 627.476, Florida Statutes, are
 1109 amended to read:

1110 627.476 Standard Nonforfeiture Law for Life Insurance.—

1111 (9) CALCULATION OF ADJUSTED PREMIUMS AND PRESENT VALUES
 1112 FOR POLICIES ISSUED AFTER OPERATIVE DATE OF THIS SUBSECTION.—

1113 (h) All adjusted premiums and present values referred to
 1114 in this section shall, for all policies of ordinary insurance,
 1115 be calculated on the basis of the ~~Commissioners'~~ 1980 Standard
 1116 Ordinary Mortality Table adopted by the NAIC or, at the election
 1117 of the insurer for any one or more specified plans of life
 1118 insurance, the ~~Commissioners'~~ 1980 Standard Ordinary Mortality

1119 Table with Ten-Year Select Mortality Factors adopted by the
 1120 NAIC; ~~shall~~ for all policies of industrial insurance be
 1121 calculated on the basis of the ~~Commissioners'~~ 1961 Standard
 1122 Industrial Mortality Table adopted by the NAIC; and ~~shall~~ for
 1123 all policies issued in a particular calendar year be calculated
 1124 on the basis of a rate of interest not exceeding the
 1125 nonforfeiture interest rate as defined in this subsection for
 1126 policies issued in that calendar year. However:

1127 1. At the option of the insurer, calculations for all
 1128 policies issued in a particular calendar year may be made on the
 1129 basis of a rate of interest not exceeding the nonforfeiture
 1130 interest rate, as defined in this subsection, for policies
 1131 issued in the immediately preceding calendar year.

1132 2. Under any paid-up nonforfeiture benefit, including any
 1133 paid-up dividend additions, any cash surrender value available,
 1134 whether required or not required by subsection (2), shall be
 1135 calculated on the basis of the mortality table and rate of
 1136 interest used in determining the amount of such paid-up
 1137 nonforfeiture benefit and paid-up dividend additions, if any.

1138 3. An insurer may calculate the amount of any guaranteed
 1139 paid-up nonforfeiture benefit, including any paid-up additions
 1140 under the policy, on the basis of an interest rate no lower than
 1141 that specified in the policy for calculating cash surrender
 1142 values.

1143 4. In calculating the present value of any paid-up term
 1144 insurance with accompanying pure endowment, if any, offered as a

1145 nonforfeiture benefit, the rates of mortality assumed may be not
 1146 more than those shown in the ~~Commissioners'~~ 1980 Extended Term
 1147 Insurance Table adopted by the NAIC for policies of ordinary
 1148 insurance and not more than the ~~Commissioners'~~ 1961 Industrial
 1149 Extended Term Insurance Table adopted by the NAIC for policies
 1150 of industrial insurance.

1151 5. In lieu of the mortality tables specified in this
 1152 section, at the option of the insurance company and subject to
 1153 rules adopted by the commission, the insurance company may
 1154 substitute:

1155 a. The 1958 CSO or CET Smoker and Nonsmoker Mortality
 1156 Tables, whichever is applicable, for policies issued on or after
 1157 the operative date of this subsection and before January 1,
 1158 1989;

1159 b. The 1980 CSO or CET Smoker and Nonsmoker Mortality
 1160 Tables, whichever is applicable, for policies issued on or after
 1161 the operative date of this subsection;

1162 c. A mortality table that is a blend of the sex-distinct
 1163 1980 CSO or CET mortality table standard, whichever is
 1164 applicable, or a mortality table that is a blend of the sex-
 1165 distinct 1980 CSO or CET smoker and nonsmoker mortality table
 1166 standards, whichever is applicable, for policies that are
 1167 subject to the United States Supreme Court decision in *Arizona*
 1168 *Governing Committee v. Norris* to prevent unfair discrimination
 1169 in employment situations.

1170 6. For policies issued:

1171 a. Before the operative date of the valuation manual,
 1172 ordinary mortality tables, adopted after 1980 by the NAIC
 1173 ~~National Association of Insurance Commissioners,~~ adopted by rule
 1174 by the commission for use in determining the minimum
 1175 nonforfeiture standard may be substituted for the ~~Commissioners'~~
 1176 1980 Standard Ordinary Mortality Table with or without Ten-Year
 1177 Select Mortality Factors or ~~for the Commissioners'~~ 1980 Extended
 1178 Term Insurance Table adopted by the NAIC.

1179 b. On or after the operative date of the valuation manual,
 1180 the valuation manual shall provide the Standard Mortality Table
 1181 for use in determining the minimum nonforfeiture standard that
 1182 may be substituted for:

1183 (I) The 1980 Standard Ordinary Mortality Table with or
 1184 without Ten-Year Select Mortality Factors or the 1980 Extended
 1185 Term Insurance Table adopted by the NAIC. If the commission
 1186 approves by rule a Standard Ordinary Mortality Table adopted by
 1187 the NAIC for use in determining the minimum nonforfeiture
 1188 standard for policies issued on or after the operative date of
 1189 the valuation manual, the minimum nonforfeiture standard
 1190 supersedes the minimum nonforfeiture standard provided by the
 1191 valuation manual.

1192 (II) The 1961 Standard Industrial Mortality Table or 1961
 1193 Industrial Extended Term Insurance Table adopted by the NAIC. If
 1194 the commission approves by rule any Standard Industrial
 1195 Mortality Table adopted by the NAIC for use in determining the
 1196 minimum nonforfeiture standard for policies issued on or after

1197 the operative date of the valuation manual, the minimum
 1198 nonforfeiture standard supersedes the minimum nonforfeiture
 1199 standard provided by the valuation manual.

1200 7. For insurance issued on a substandard basis, the
 1201 calculation of any such adjusted premiums and present values may
 1202 be based on appropriate modifications of the aforementioned
 1203 tables.

1204 (i) The nonforfeiture interest rate per year for a any
 1205 policy issued in a particular calendar year for policies issued:

1206 1. Before the operative date of the valuation manual shall
 1207 be equal to 125 percent of the calendar year statutory valuation
 1208 interest rate for such policy as defined in the Standard
 1209 Valuation Law, rounded to the nearest one-fourth of 1 percent;
 1210 however, the nonforfeiture interest rate may not be less than 4
 1211 percent.

1212 2. On or after the operative date of the valuation manual
 1213 shall be as provided by the valuation manual.

1214 (14) OPERATIVE DATE.—

1215 (a) After the effective date of this code, an any insurer
 1216 may file with the office a written notice or notices of its
 1217 election to comply with ~~the provisions of~~ this section on and
 1218 after a specified date or dates before January 1, 1966, as to
 1219 either or both of its policies of ordinary and industrial
 1220 insurance, in which case such specified date or dates shall be
 1221 the operative date of this section with respect to such
 1222 policies. The operative date of this section for policies of

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1223 both ordinary and industrial insurance shall be the earlier of
 1224 January 1, 1966, and any prior operative date or dates resulting
 1225 from such previously filed written notices. With respect to
 1226 policies of industrial insurance issued on and after the
 1227 operative date of this section for such policies but before
 1228 January 1, 1968, any insurer may file with the office written
 1229 notice of its election to have the ~~Commissioners'~~ 1961 Standard
 1230 Industrial Mortality Table and ~~the Commissioners'~~ 1961
 1231 Industrial Extended Term Insurance Table adopted by the NAIC
 1232 applicable with respect to subsection (8) for policies issued on
 1233 and after the date specified in such election.

1234 (b) As used in subsection (9), the term "operative date of
 1235 the valuation manual" has the same meaning as provided in s.
 1236 625.1212(2).

1237 Section 10. Subsections (1), (3), (10), (12), and (13) of
 1238 section 628.461, Florida Statutes, are amended to read:

1239 628.461 Acquisition of controlling stock.—

1240 (1) A person may not, individually or in conjunction with
 1241 any affiliated person of such person, acquire directly or
 1242 indirectly, conclude a tender offer or exchange offer for, enter
 1243 into any agreement to exchange securities for, or otherwise
 1244 finally acquire 10 ~~5~~ percent or more of the outstanding voting
 1245 securities of a domestic stock insurer or of a controlling
 1246 company, unless:

1247 (a) The person or affiliated person has filed with the
 1248 office and sent to the insurer and controlling company a letter

1249 of notification regarding the transaction or proposed
 1250 transaction within ~~no later than~~ 5 days after any form of tender
 1251 offer or exchange offer is proposed, or within ~~no later than~~ 5
 1252 days after the acquisition of the securities if no tender offer
 1253 or exchange offer is involved. The notification must be provided
 1254 on forms prescribed by the commission containing information
 1255 determined necessary to understand the transaction and identify
 1256 all purchasers and owners involved;

1257 (b) The person or affiliated person has filed with the
 1258 office the ~~a~~ statement as specified in subsection (3). The
 1259 statement must be completed and filed within 30 days after:

- 1260 1. Any definitive acquisition agreement is entered;
- 1261 2. Any form of tender offer or exchange offer is proposed;

1262 or

- 1263 3. The acquisition of the securities, if no definitive
 1264 acquisition agreement, tender offer, or exchange offer is
 1265 involved; and

1266 (c) The office has approved the tender or exchange offer,
 1267 or acquisition if no tender offer or exchange offer is involved,
 1268 and approval is in effect.

1269

1270 ~~In lieu of a filing as required under this subsection, a party~~
 1271 ~~acquiring less than 10 percent of the outstanding voting~~
 1272 ~~securities of an insurer may file a disclaimer of affiliation~~
 1273 ~~and control. The disclaimer shall fully disclose all material~~
 1274 ~~relationships and basis for affiliation between the person and~~

1275 ~~the insurer as well as the basis for disclaiming the affiliation~~
 1276 ~~and control. After a disclaimer has been filed, the insurer~~
 1277 ~~shall be relieved of any duty to register or report under this~~
 1278 ~~section which may arise out of the insurer's relationship with~~
 1279 ~~the person unless and until the office disallows the disclaimer.~~
 1280 ~~The office shall disallow a disclaimer only after furnishing all~~
 1281 ~~parties in interest with notice and opportunity to be heard and~~
 1282 ~~after making specific findings of fact to support the~~
 1283 ~~disallowance.~~ A filing ~~as~~ required under this subsection must be
 1284 made for ~~as to~~ any acquisition that equals or exceeds 10 percent
 1285 of the outstanding voting securities.

1286 (3) The statement to be filed with the office under
 1287 subsection (1) and furnished to the insurer and controlling
 1288 company must ~~shall~~ contain all the following information and any
 1289 additional information that ~~as~~ the office deems necessary to
 1290 determine the character, experience, ability, and other
 1291 qualifications of the person or affiliated person of such person
 1292 for the protection of the policyholders and shareholders of the
 1293 insurer and the public:

1294 (a) The identity of, and the background information
 1295 specified in subsection (4) on, each natural person by whom, or
 1296 on whose behalf, the acquisition is to be made; and, if the
 1297 acquisition is to be made by, or on behalf of, a corporation,
 1298 association, or trust, as to the corporation, association, or
 1299 trust and as to any person who controls, ~~either~~
 1300 indirectly, the corporation, association, or trust, the identity

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1301 of, and the background information specified in subsection (4)
 1302 on, each director, officer, trustee, or other natural person
 1303 performing duties similar to those of a director, officer, or
 1304 trustee for the corporation, association, or trust.†

1305 (b) The source and amount of the funds or other
 1306 consideration used, or to be used, in making the acquisition.†

1307 (c) Any plans or proposals that ~~which~~ such persons may
 1308 have made to liquidate such insurer, to sell any of its assets
 1309 or merge or consolidate it with any person, or to make any other
 1310 major change in its business or corporate structure or
 1311 management; and any plans or proposals that ~~which~~ such persons
 1312 may have made to liquidate any controlling company of such
 1313 insurer, to sell any of its assets or merge or consolidate it
 1314 with any person, or to make any other major change in its
 1315 business or corporate structure or management.†

1316 (d) The number of shares or other securities that ~~which~~
 1317 the person or affiliated person of such person proposes to
 1318 acquire, the terms of the proposed acquisition, and the manner
 1319 in which the securities are to be acquired.† ~~and~~

1320 (e) Information as to any contract, arrangement, or
 1321 understanding with any party with respect to any of the
 1322 securities of the insurer or controlling company, including, but
 1323 not limited to, information relating to the transfer of any of
 1324 the securities, option arrangements, puts or calls, or the
 1325 giving or withholding of proxies, which information names the
 1326 party with whom the contract, arrangement, or understanding has

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1327 | been entered into and gives the details thereof.

1328 | (f) Effective January 1, 2015, an agreement by the person
 1329 | required to file the statement that the person will provide the
 1330 | annual report specified in s. 628.801(2) if control exists.

1331 | (g) Effective January 1, 2015, an acknowledgement by the
 1332 | person required to file the statement that the person and all
 1333 | subsidiaries within the person's control in the insurance
 1334 | holding company system will provide, as necessary, information
 1335 | to the office upon request to evaluate enterprise risk to the
 1336 | insurer.

1337 | (10) Upon notification to the office by the domestic stock
 1338 | insurer or a controlling company that any person or any
 1339 | affiliated person of such person has acquired 10 ~~5~~ percent or
 1340 | more of the outstanding voting securities of the domestic stock
 1341 | insurer or controlling company without complying with ~~the~~
 1342 | ~~provisions of~~ this section, the office shall order that the
 1343 | person and any affiliated person of such person cease
 1344 | acquisition of any further securities of the domestic stock
 1345 | insurer or controlling company; however, the person or any
 1346 | affiliated person of such person may request a proceeding, which
 1347 | proceeding shall be convened within 7 days after the rendering
 1348 | of the order for the sole purpose of determining whether the
 1349 | person, individually or in connection with any affiliated person
 1350 | of such person, has acquired 10 ~~5~~ percent or more of the
 1351 | outstanding voting securities of a domestic stock insurer or
 1352 | controlling company. Upon the failure of the person or

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1353 affiliated person to request a hearing within 7 days, or upon a
 1354 determination at a hearing convened pursuant to this subsection
 1355 that the person or affiliated person has acquired voting
 1356 securities of a domestic stock insurer or controlling company in
 1357 violation of this section, the office may order the person and
 1358 affiliated person to divest themselves of any voting securities
 1359 so acquired.

1360 (12) (a) A presumption of control may be rebutted by any
 1361 person by filing a disclaimer of control with the office. The
 1362 disclaimer must fully disclose all material relationships and
 1363 bases for affiliation between the person and the insurer as well
 1364 as the basis for disclaiming the affiliation. The disclaimer of
 1365 control shall be filed on a form prescribed by the office. A
 1366 person or acquiring party may file a disclaimer of control by
 1367 filing with the office a copy of a Schedule 13G filed with the
 1368 Securities and Exchange Commission pursuant to rules 13d-1(b) or
 1369 13d-1(c) under the Securities Exchange Act of 1934, as amended.
 1370 After a disclaimer has been filed, the insurer is relieved of
 1371 any duty to register or report under this section which may
 1372 arise out of the insurer's relationship with the person unless
 1373 the office disallows the disclaimer.

1374 (b) A controlling person of a domestic insurer who seeks
 1375 to divest the person's controlling interest in the domestic
 1376 insurer in any manner shall file with the office, with a copy
 1377 provided to the insurer, confidential notice, not subject to
 1378 public inspection as provided under s. 624.4212, of the person's

1379 proposed divestiture at least 30 days before the cessation of
 1380 control. The office shall determine those instances in which the
 1381 party seeking to divest or to acquire a controlling interest in
 1382 an insurer must file for and obtain approval of the transaction.
 1383 The information remains confidential until the conclusion of the
 1384 transaction unless the office, in its discretion, determines
 1385 that confidential treatment interferes with enforcement of this
 1386 section. If the statement referred to in subsection (1) is
 1387 otherwise filed, this paragraph does not apply ~~For the purpose~~
 1388 ~~of this section, the term "affiliated person" of another person~~
 1389 ~~means:~~

- 1390 ~~1. The spouse of such other person;~~
- 1391 ~~2. The parents of such other person and their lineal~~
 1392 ~~descendants and the parents of such other person's spouse and~~
 1393 ~~their lineal descendants;~~
- 1394 ~~3. Any person who directly or indirectly owns or controls,~~
 1395 ~~or holds with power to vote, 5 percent or more of the~~
 1396 ~~outstanding voting securities of such other person;~~
- 1397 ~~4. Any person 5 percent or more of the outstanding voting~~
 1398 ~~securities of which are directly or indirectly owned or~~
 1399 ~~controlled, or held with power to vote, by such other person;~~
- 1400 ~~5. Any person or group of persons who directly or~~
 1401 ~~indirectly control, are controlled by, or are under common~~
 1402 ~~control with such other person;~~
- 1403 ~~6. Any officer, director, partner, copartner, or employee~~
 1404 ~~of such other person;~~

1405 ~~7. If such other person is an investment company, any~~
 1406 ~~investment adviser of such company or any member of an advisory~~
 1407 ~~board of such company;~~

1408 ~~8. If such other person is an unincorporated investment~~
 1409 ~~company not having a board of directors, the depositor of such~~
 1410 ~~company; or~~

1411 ~~9. Any person who has entered into an agreement, written~~
 1412 ~~or unwritten, to act in concert with such other person in~~
 1413 ~~acquiring or limiting the disposition of securities of a~~
 1414 ~~domestic stock insurer or controlling company.~~

1415 ~~(b) For the purposes of this section, the term~~
 1416 ~~"controlling company" means any corporation, trust, or~~
 1417 ~~association owning, directly or indirectly, 25 percent or more~~
 1418 ~~of the voting securities of one or more domestic stock insurance~~
 1419 ~~companies.~~

1420 (13) The commission may adopt, ~~amend, or repeal~~ rules that
 1421 are necessary to administer ~~implement the provisions of this~~
 1422 ~~section, pursuant to chapter 120.~~

1423 Section 11. Section 628.801, Florida Statutes, is amended
 1424 to read:

1425 628.801 Insurance holding companies; registration;
 1426 regulation.—

1427 (1) An ~~Every~~ insurer that is authorized to do business in
 1428 this state and that is a member of an insurance holding company
 1429 shall, on or before April 1 of each year, register with the
 1430 office and file a registration statement and be subject to

1431 regulation with respect to its relationship to the holding
 1432 company as provided by law or rule ~~or statute~~. The commission
 1433 shall adopt rules establishing the information and statement
 1434 form required for registration and the manner in which
 1435 registered insurers and their affiliates are regulated. The
 1436 rules apply to domestic insurers, foreign insurers, and
 1437 commercially domiciled insurers, except for a foreign insurer
 1438 domiciled in states that were ~~are~~ accredited by the NAIC
 1439 ~~National Association of Insurance Commissioners~~ by December 31,
 1440 1995. Except to the extent of any conflict with this code, the
 1441 rules must include all requirements and standards of ss. 4 and 5
 1442 of the Insurance Holding Company System Regulatory Act and the
 1443 Insurance Holding Company System Model Regulation of the NAIC
 1444 ~~National Association of Insurance Commissioners~~, as adopted in
 1445 December 2010. The commission may adopt subsequent amendments
 1446 thereto if the methodology remains substantially consistent. The
 1447 rules ~~Regulatory Act and the Model Regulation existed on~~
 1448 ~~November 30, 2001,~~ and may include a prohibition on oral
 1449 contracts between affiliated entities. Material transactions
 1450 between an insurer and its affiliates shall be filed with the
 1451 office as provided by rule ~~Upon request, the office may waive~~
 1452 ~~filing requirements under this section for a domestic insurer~~
 1453 ~~that is the subsidiary of an insurer that is in full compliance~~
 1454 ~~with the insurance holding company registration laws of its~~
 1455 ~~state of domicile, which state is accredited by the National~~
 1456 ~~Association of Insurance Commissioners.~~

1457 (2) Effective January 1, 2015, the ultimate controlling
 1458 person of every insurer subject to registration shall also file
 1459 an annual enterprise risk report on or before April 1. As used
 1460 in this subsection, the term "ultimate controlling person" means
 1461 a person who is not controlled by any other person. The report,
 1462 to the best of the ultimate controlling person's knowledge and
 1463 belief, must identify the material risks within the insurance
 1464 holding company system that could pose enterprise risk to the
 1465 insurer. The report shall be filed with the lead state office of
 1466 the insurance holding company system as determined by the
 1467 procedures within the Financial Analysis Handbook adopted by the
 1468 NAIC and is confidential and exempt from public disclosure as
 1469 provided in s. 624.4212.

1470 (a) An insurer may satisfy this requirement by providing
 1471 the office with the most recently filed parent corporation
 1472 reports that have been filed with the Securities and Exchange
 1473 Commission which provide the appropriate enterprise risk
 1474 information.

1475 (b) The term "enterprise risk" means an activity,
 1476 circumstance, event, or series of events involving one or more
 1477 affiliates of an insurer which, if not remedied promptly, is
 1478 likely to have a materially adverse effect upon the financial
 1479 condition or liquidity of the insurer or its insurance holding
 1480 company system as a whole, including anything that would cause
 1481 the insurer's risk-based capital to fall into company action
 1482 level as set forth in s. 624.4085 or would cause the insurer to

1483 be in a hazardous financial condition.

1484 (3) Effective January 1, 2015, pursuant to chapter 624
 1485 relating to the examination of insurers, the office may examine
 1486 any insurer registered under this section and its affiliates to
 1487 ascertain the financial condition of the insurer, including the
 1488 enterprise risk to the insurer by the ultimate controlling
 1489 party, or by any entity or combination of entities within the
 1490 insurance holding company system, or by the insurance holding
 1491 company system on a consolidated basis.

1492 (4) The filings and related documents filed pursuant to
 1493 this section are confidential and exempt as provided in s.
 1494 624.4212 and are not subject to subpoena or discovery or
 1495 admissible in evidence in any private civil action. A waiver of
 1496 any applicable privilege or claim of confidentiality in the
 1497 filings and related documents may not occur as a result of any
 1498 disclosure to the office under this section or any other section
 1499 of the insurance code as authorized under s. 624.4212. Neither
 1500 the office nor any person who received the filings and related
 1501 documents while acting under the authority of the office or with
 1502 whom such information is shared pursuant to s. 624.4212 is
 1503 permitted or required to testify in any private civil action
 1504 concerning any confidential documents, materials, or information
 1505 subject to s. 624.4212. However, the department or office may
 1506 use the confidential and exempt information in the furtherance
 1507 of any regulatory or legal action brought against an insurer as
 1508 a part of the official duties of the department or office.

1509 (5) Effective January 1, 2015, the failure to file a
 1510 registration statement, or a summary of the registration
 1511 statement, or the enterprise risk filing report required by this
 1512 section within the time specified for filing is a violation of
 1513 this section.

1514 (6) Upon request, the office may waive the filing
 1515 requirements of this section:

1516 (a) If the insurer is a domestic insurer that is the
 1517 subsidiary of an insurer that is in full compliance with the
 1518 insurance holding company registration laws of its state of
 1519 domicile, which state is accredited by the NAIC; or

1520 (b) If the insurer is a domestic insurer that writes only
 1521 in this state and has annual direct written and assumed premium
 1522 of less than \$300 million, excluding premiums reinsured with the
 1523 Federal Crop Insurance Corporation and Federal Flood Program,
 1524 and demonstrates that compliance with this section would not
 1525 provide substantial regulatory or consumer benefit. In
 1526 evaluating a waiver request made under this paragraph, the
 1527 office may consider various factors including, but not limited
 1528 to, the type of business entity, the volume of business written,
 1529 the ownership or organizational structure of the entity, or
 1530 whether the company is in run-off.

1531
 1532 A waiver granted pursuant to this subsection is valid for 2
 1533 years unless sooner withdrawn due to a change in the
 1534 circumstances under which the waiver was granted.

1535 Section 12. Effective January 1, 2015, present subsection
 1536 (4) of section 628.803, Florida Statutes, is renumbered as
 1537 subsection (5), and a new subsection (4) is added to that
 1538 section to read:

1539 628.803 Sanctions.—

1540 (4) If the office determines that any person violated s.
 1541 628.461 or s. 628.801, the violation may serve as an independent
 1542 basis for disapproving dividends or distributions and for
 1543 placing the insurer under an order of supervision in accordance
 1544 with part VI of chapter 624.

1545 Section 13. Effective January 1, 2015, section 628.804,
 1546 Florida Statutes, is created to read:

1547 628.804 Groupwide supervision for international insurance
 1548 groups.—

1549 (1) As used in this section:

1550 (a) "Groupwide supervisor" means the chief insurance
 1551 regulatory official for the jurisdiction who is determined by
 1552 the office to have significant contacts with the international
 1553 insurance group sufficient to conduct and coordinate groupwide
 1554 supervision activities.

1555 (b) "International insurance group" means an insurance
 1556 group operating internationally which includes an insurer.

1557 (2) The office may act as the groupwide supervisor for an
 1558 international insurance group in which the ultimate controlling
 1559 person of the group is domiciled in this state.

1560 (3) (a) If the ultimate controlling person is domiciled

1561 outside this state, the office, in cooperation with other
 1562 groupwide supervisors, may:

1563 1. Determine that the office is the appropriate groupwide
 1564 supervisor for an international insurance group with substantial
 1565 operations concentrated in this state or in insurance operations
 1566 conducted by subsidiary insurance companies domiciled in this
 1567 state; or

1568 2. Acknowledge that another chief insurance regulatory
 1569 official is the appropriate groupwide supervisor for the
 1570 international insurance group.

1571 (b) Before issuing a determination, the office must notify
 1572 the insurer and the ultimate controlling person within the
 1573 international insurance group and provide the international
 1574 insurance group with at least 30 days to submit information
 1575 pertinent to the pending determination.

1576 (4) The commission may adopt rules to administer this
 1577 section, including rules establishing the criteria for making a
 1578 determination under paragraph (3)(a), such as the extent of
 1579 insurance operations in this state and nation; the location of
 1580 the executive offices, assets and liabilities, and business
 1581 operations of the international insurance group; the domicile of
 1582 the ultimate controlling person of the international insurance
 1583 group; and the similarity of the regulatory systems of other
 1584 jurisdictions acting or seeking to act as lead groupwide
 1585 supervisor.

1586 Section 14. Effective January 1, 2015, section 628.805,

1587 Florida Statutes, is created to read:
 1588 628.805 Supervisory colleges.—In order to assess the
 1589 business strategy, financial position, legal and regulatory
 1590 position, risk exposure, risk management, and governance
 1591 processes, and as part of the examination of individual insurers
 1592 in accordance with ss. 628.801 and 624.316, the office may
 1593 participate in a supervisory college with other regulators
 1594 charged with supervision of the insurer or its affiliates,
 1595 including other state, federal, and international regulatory
 1596 agencies. In accordance with s. 624.4212 regarding confidential
 1597 information sharing, the office may enter into agreements that
 1598 provide the basis for cooperation between the office and the
 1599 other regulatory agencies and the activities of the supervisory
 1600 college. This section does not delegate to the supervisory
 1601 college the office's authority to regulate or supervise the
 1602 insurer or its affiliates under its jurisdiction.

- 1603 (1) With respect to participation in a supervisory
 1604 college, the office may:
- 1605 (a) Initiate the establishment of a supervisory college.
 - 1606 (b) Clarify the membership and participation of other
 1607 supervisors in the supervisory college.
 - 1608 (c) Clarify the functions of the supervisory college and
 1609 the role of other regulators, including the establishment of a
 1610 groupwide supervisor.
 - 1611 (d) Coordinate the ongoing activities of the supervisory
 1612 college, including planning meetings, supervisory activities,

1613 and processes for information sharing.

1614 (e) Establish a crisis management plan.

1615 (2) With respect to an insurer registered under s.

1616 628.801, and in accordance with this section, the office may
 1617 participate in a supervisory college for any domestic insurer
 1618 that is part of an insurance holding company system that has
 1619 international operations in order to determine the insurer's
 1620 compliance with this chapter.

1621 (3) Each registered insurer subject to this section is
 1622 liable for and shall pay reasonable expenses for the office's
 1623 participation in a supervisory college, including reasonable
 1624 travel expenses. A supervisory college may be convened as a
 1625 temporary or permanent forum for communication and cooperation
 1626 between the regulators charged with the supervision of the
 1627 insurer or its affiliates, and the office may impose a regular
 1628 assessment on the insurer for the payment of these expenses.

1629 Section 15. Effective January 1, 2015, subsection (3) is
 1630 added to section 636.045, Florida Statutes, to read:

1631 636.045 Minimum surplus requirements.-

1632 (3) A prepaid limited health service organization that is
 1633 authorized in this state and one or more other states,
 1634 jurisdictions, or countries is subject to ss. 624.4085 and
 1635 624.40851.

1636 Section 16. Effective January 1, 2015, subsection (7) is
 1637 added to section 641.225, Florida Statutes, to read:

1638 641.225 Surplus requirements.-

1639 (7) A health maintenance organization that is authorized
 1640 in this state and one or more other states, jurisdictions, or
 1641 countries is subject to ss. 624.4085 and 624.40851.

1642 Section 17. Effective January 1, 2015, subsection (3) is
 1643 added to section 641.255, Florida Statutes, to read:

1644 641.255 Acquisition, merger, or consolidation.—

1645 (3) A health maintenance organization that is a member of
 1646 a holding company system is subject to s. 628.461 but not s.
 1647 628.4615.

1648 Section 18. Except as otherwise expressly provided in this
 1649 act, this act shall take effect October 1, 2014, if HB 1273 or
 1650 similar legislation is adopted in the same legislative session
 1651 or an extension thereof and becomes law.

INSURANCE & BANKING SUBCOMMITTEE

HB 1271 by Rep. Ingram Insurer Solvency

AMENDMENT SUMMARY March 19, 2014

Amendment 1 by Rep. Ingram (line 324): Makes the following changes:

- This is a technical, conforming amendment to provide an exemption for life and health insurers that will be subject to the new valuation manual after the operative date of the valuation manual.

Amendment 2 by Rep. Ingram (line 523): Makes the following changes:

- This is a technical amendment to correct references to mortality tables adopted by the National Association of Insurance Commissioners and codified in the statutes.

Amendment 3 by Rep. Ingram (line 843): Makes the following changes:

- This change is a technical rewording that would allow certification to occur after July 1, if the triggers were met by that date, and would prevent timing issues that could preclude adoption of the valuation manual by July 1.

Amendment 4 by Rep. Ingram (line 843): Makes the following changes:

- This is a technical amendment to clarify and update the requirement for foreign insurers to file a holding company registration statement with Florida, if they are domiciled in a state that is accredited by the NAIC.



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 Ingram offered the following:

Amendment

Remove line 324 and insert:

health insurers subject to s. 625.121(3), before the operative
date of the valuation manual as defined in s. 625.1212(2), and
does not apply to life and health insurers subject to s.
625.1212(4) on or after such operative date.



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	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Ingram offered the following:

4
5 **Amendment**

6 Remove lines 523-554 and insert:

7 1. For policies issued before ~~prior to~~ the operative date
8 of s. 627.476(9), the ~~commissioners~~ 1958 Commissioners Standard
9 Ordinary (CSO) Mortality Table; except that, for any category of
10 such policies issued on female risks, modified net premiums and
11 present values, referred to in subsection (7), may be calculated
12 according to an age up to ~~not more than~~ 6 years younger than the
13 actual age of the insured.

14 2. For policies issued on or after the operative date of
15 s. 627.476(9), the ~~commissioners~~ 1980 Commissioners Standard
16 Ordinary Mortality Table or, at the election of the insurer for
17 any one or more specified plans of life insurance, the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1271 (2014)

Amendment No. 2

18 ~~commissioners~~ 1980 Commissioners Standard Ordinary Mortality
19 Table with Ten-Year Select Mortality Factors.

20 3. For policies issued on or after July 1, 2004, ordinary
21 mortality tables, adopted after 1980 by the NAIC ~~National~~
22 ~~Association of Insurance Commissioners~~, adopted by rule by the
23 commission for use in determining the minimum standard of
24 valuation for such policies.

25 (b) For all industrial life insurance policies issued on
26 the standard basis, excluding any disability and accidental
27 death benefits in such policies:

28 1. For policies issued before ~~prior to~~ the first date ~~to~~
29 ~~which the commissioners~~ 1961 Commissioners Standard Industrial
30 Mortality Table is applicable according to s. 627.476, the 1941
31 Standard Industrial Mortality Table; ~~and~~

32 2. For ~~such~~ policies issued on or after that date, the
33 ~~commissioners~~ 1961 Commissioners Standard Industrial Mortality
34 Table; ~~and~~

35 3. For policies issued on or after October 1, 2014, a
36 Commissioners Standard Industrial Mortality Table adopted by the
37 NAIC after 1980 which is adopted by rule of the commission for
38 use in determining the minimum standard of valuation for such
39 policies.

40



Amendment No. 3

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	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Ingram offered the following:

4
5 **Amendment**

6 Remove lines 843-847 and insert:

7 (f) "Operative date of the valuation manual" means the
8 later of January 1, 2017, or the January 1 immediately following
9 the July 1 that the Commissioner of the Office of Insurance
10 Regulation certifies to the Financial Services Commission in
11 writing that the following conditions occurred on or before July
12 1:
13



Amendment No. 4

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	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Ingram offered the following:



4
5 **Amendment**

6 Remove lines 1437-1440 and insert:

7 commercially domiciled insurers, except for a foreign insurers
8 ~~insurer~~ domiciled in states that are currently accredited by the
9 NAIC National Association of Insurance Commissioners by December
10 ~~31, 1995~~. Except to the extent of any conflict with this code,
11 the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1273 Pub. Rec./Proprietary Business Information/OIR
SPONSOR(S): Ingram
TIED BILLS: HB 1271 **IDEN./SIM. BILLS:** CS/SB 1300

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

SUMMARY ANALYSIS

House Bill 1273, which is linked to HB 1271, creates section 624.4212, F.S., to incorporate the necessary confidentiality elements for the Office of Insurance Regulation (OIR) to meet the National Association of Insurance Commissioners' accreditation standards.

The bill provides that proprietary business information held by OIR is confidential and exempt from public records requirements. OIR may disclose the confidential and exempt proprietary business information in certain circumstances. The bill also defines "proprietary information" for purposes of the public record exemption.

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. It also provides a statement of public necessity as required by the State Constitution.

The bill provides that the act shall take effect on October 1, 2013, if the main bill (HB 821) or similar legislation is adopted in the same legislative session or an extension thereof and becomes 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:

Background

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

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.

formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

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 exemption¹² 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.

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).

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).

Public Records Exemptions and the Insurance Code

The Insurance Code currently provides a number of public records exemptions relating to insurance-related information, including:

- Trade secret documents;¹⁸
- Risk-based capital information;¹⁹
- Information related to orders of supervision;²⁰ and
- Personal consumer and personal financial information.²¹

Section 624.319, F.S., makes OIR's examination and investigation reports and workpapers confidential during the pendency of an examination or investigation. This provision allows the OIR to share this information with other governmental entities (if disclosure is necessary for the receiving entity to perform its duties and responsibilities) and with the NAIC.

While there is no generic exemption for information claimed to be proprietary business information in the Florida Statutes, the Legislature has created a number of exemptions from ch. 119, F.S. for proprietary business information held by certain agencies. This term is generally defined by the statute creating the exemption, and frequently includes trade secrets.

Currently, the Insurance Code has a specific exemption relating to "proprietary business information" held by the OIR, but relates only to such information provided by a title insurance agency or insurer.²²

HB 1271: Insurer Solvency

The Office of Insurance Regulation (OIR) is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program. NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department. Once accredited, a member state is subject to a full accreditation review every five years.

The NAIC also periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards. The OIR has identified several model act components not found in the current Insurance Code, and which must be implemented in order for the OIR to maintain its accreditation this fall.

Among other NAIC model act components, House Bill 1271 implements the following NAIC confidentiality requirements:

- *NAIC Property and Casualty Actuarial Opinion Model Law*
Current law requires insurers to provide to OIR a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists, and supporting workpapers. Current law treats these documents as public.²³

¹⁸ Section 624.4213, F.S. Even in the absence of a statutory exemption for particular trade secrets, s. 815.045, F.S., "should be read to exempt from disclosure as public records *all* trade secrets [as defined in s. 812.081(1)(c), F.S.]." *Sepro Corp. v. Florida Dep't of Environmental Protection*, 911 So.2d 792 (Fla. 1st DCA 2003), *review denied sub nom.*

¹⁹ Section 624.40851, F.S.

²⁰ Section 624.82, F.S.

²¹ Section 624.23, F.S.

²² Section 626.94195, F.S.

²³ Section 624.424, F.S.

The NAIC model law provides that states must require insurers to provide *actuarial opinion summaries* and that the regulators must keep these summaries confidential. HB 1271 adopts this requirement and states that “proprietary business information” contained in these summaries are confidential and exempt from public records disclosure, and provides protection from waiver of confidentiality to both property and casualty insurers and life and health insurers.

- **Model Holding Company Act & Regulations**

In response to the recent financial crisis, a NAIC workgroup focused on group supervision issues in the context of large insurers and their affiliates in their respective holding companies. The workgroup noted the corresponding regulatory need to enhance insurance regulators’ ability to obtain and evaluate financial information from affiliates, especially regarding “enterprise risk.”²⁴

In adopting the NAIC model act, HB 1271 will require persons seeking a controlling interest in an insurer or controlling company to file an annual enterprise risk report to OIR. The bill requires insurers agree to have the ultimate controlling person and all its affiliates to provide information regarding enterprise risk to the OIR, and provides that the filings and related documents filed pursuant to s. 628.801, F.S. (related to registration and regulation of insurance holding companies) are confidential and exempt from public disclosure.

HB 1271 also provides that a controlling person of a domestic insurer may divest its controlling interest by providing notice to the OIR. HB 1271 provides that this notice is confidential and exempt until the divestiture transaction is completed, unless the OIR, in its discretion, determines that confidential treatment interferes with enforcement of this section.

The NAIC also made establishment and participation in supervisory colleges an accreditation standard. Supervisory colleges are essentially interstate meetings for insurance regulators to focus on large insurers that write significant amounts of insurance in multiple jurisdictions. HB 1271 provides for the OIR’s participation in a supervisory college with other insurance regulators. This bill creates a public records exemption for proprietary business information as it may be found in information obtained by OIR pursuant to its participation in a supervisory college.

Effect of the Bill

HB 1273, which is linked to HB 1271, incorporates the necessary confidentiality elements for OIR to meet NAIC accreditation standards. The bill provides that proprietary business information held by OIR is confidential and exempt from public records requirements. OIR may disclose the confidential and exempt proprietary business information:

- If the insurer to which it pertains gives prior written consent;
- Pursuant to a court order;
- To the American Academy of Actuaries upon a request stating the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory to OIR for preserving the confidentiality of the information;
- To other states, federal and international agencies, NAIC, and state, federal, and international law enforcement authorities, including members of a supervisory college, if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality; or
- For the purpose of aggregating information on an industry wide basis and disclosing the information to the public only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.

²⁴ Enterprise risk is “any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedies promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance company as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital as set forth in [state statutory requirement] or would cause the insurer to be in a hazardous financial condition.” Section 1(F) of the NAIC Model

The bill defines “proprietary business information” to mean information, regardless of form or characteristics, that is owned or controlled by an insurer, or a person or affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and that:

- Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and
- Includes, but is not limited to:
 - Trade secrets as defined in s. 688.002, F.S.,²⁵ and that complies with s. 624.4213, F.S.²⁶
 - Information relating to competitive interests the disclosure of which would impair the competitive business of the provider of the information.
 - The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.
 - Information relating to bids or other contractual data the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.
 - Internal auditing controls and reports of internal auditors.
 - The actuarial opinion summary required under s. 624.424(1)(b), F.S., and the documents, materials, and other information related thereto.
 - A notice filed with OIR by the person or affiliated person who seeks to divest controlling stock in an insurer pursuant to s. 628.461, F.S.
 - The filings required by s. 628.801, F.S., and all documents, materials, and other information related thereto.
 - The enterprise risk report required by ss. 628.461(3) and 628.801, F.S., and the documents, materials, and other information related to the enterprise risk report.
 - Information provided to or obtained by OIR pursuant to participation in a supervisory college established under s. 628.805, F.S.
 - Information received from another governmental entity or NAIC that is confidential or exempt if held by that entity for use by OIR in the performance of its duties.

The bill provides a statement of public necessity and for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

As indicated in the bill's statement of public necessity, public disclosure of proprietary business information would disadvantage insurers' competitive interests, particularly in proposed acquisitions, and in turn could lead to some insurers providing inaccurate or biased information to the OIR and an overall loss of confidence in the marketplace. Without this public records exemption, release of this information could impair the economic value of such information and result in financial loss to the proprietor.

²⁵ Section 688.002(4), F.S., defines the term “trade secret” to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

²⁶ Section 624.4213, F.S., creates a process for submitting trade secret documents to certain agencies, including marking each document as a trade secret.

B. SECTION DIRECTORY:

Section 1 creates s. 624.4212, F.S., to create an exemption from public records requirements for proprietary business information submitted to OIR; defines the term "proprietary business information"; provides exceptions; provides for future legislative review and repeal.

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

Section 3 provides that the act shall take effective October 1, 2014, if HB 1271 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This public records exemption bill will have an indeterminate positive impact on the private sector by protecting insurers' proprietary business information.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on OIR, because staff responsible for complying with public record requests could require training related to creation of the new public records exemption. In addition, OIR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the OIR.

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.

Subject Requirement

Section 24(c), art. I of the State Constitution requires the Legislature to create public-records or public-meetings exemptions in legislation separate from substantive law changes.

Public Necessity Statement

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly-created public-records or public-meetings exemption

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

An amendment is anticipated to incorporate proprietary business information relating to the new requirements of the valuation manual that are addressed in sections 6-9 of the linked bill, HB 1271.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 624.4212, F.S.; providing an exemption from public
 4 records requirements for proprietary business
 5 information submitted to the Office of Insurance
 6 Regulation; defining the term "proprietary business
 7 information"; providing exceptions; providing for
 8 future legislative review and repeal of the exemption;
 9 providing a statement of public necessity; providing a
 10 contingent effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Section 624.4212, Florida Statutes, is created
 15 to read:

16 624.4212 Confidentiality of proprietary business
 17 information.—Proprietary business information held by the Office
 18 of Insurance Regulation in accordance with its statutory duties
 19 with respect to insurer solvency is confidential and exempt from
 20 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

21 (1) As used in this section, the term "proprietary
 22 business information" means information, regardless of form or
 23 characteristics, which is owned or controlled by an insurer, or
 24 a person or an affiliated person who seeks acquisition of
 25 controlling stock in a domestic stock insurer or controlling
 26 company, and which:

27 (a) Is intended to be and is treated by the insurer or the
 28 person as private in that the disclosure of the information
 29 would cause harm to the insurer, the person, or the company's
 30 business operations and has not been disclosed unless disclosed
 31 pursuant to a statutory requirement, an order of a court or
 32 administrative body, or a private agreement that provides that
 33 the information will not be released to the public;

34 (b) Is not otherwise readily ascertainable or publicly
 35 available by proper means by other persons from another source
 36 in the same configuration as requested by the office; and

37 (c) Includes, but is not limited to:

38 1. Trade secrets as defined in s. 688.002 which comply
 39 with s. 624.4213.

40 2. Information relating to competitive interests the
 41 disclosure of which would impair the competitive business of the
 42 provider of the information.

43 3. The source, nature, and amount of the consideration
 44 used or to be used in carrying out a merger or other acquisition
 45 of control in the ordinary course of business, including the
 46 identity of the lender, if the person filing a statement
 47 regarding consideration so requests.

48 4. Information relating to bids or other contractual data
 49 the disclosure of which would impair the efforts of the insurer
 50 or its affiliates to contract for goods or services on favorable
 51 terms.

52 5. Internal auditing controls and reports of internal

53 auditors.

54 6. The actuarial opinion summary required under ss.
 55 624.424(1)(b) and 625.121(3) and the documents, materials, and
 56 other information related thereto.

57 7. A notice filed with the office by the person or
 58 affiliated person who seeks to divest controlling stock in an
 59 insurer pursuant to s. 628.461.

60 8. The filings required under s. 628.801 and the
 61 documents, materials, and other information related thereto.

62 9. The enterprise risk report required under ss.
 63 628.461(3) and 628.801 and the documents, materials, and other
 64 information related thereto.

65 10. Information provided to or obtained by the office
 66 pursuant to participation in a supervisory college established
 67 under s. 628.805.

68 11. Information received from another governmental entity
 69 or the National Association of Insurance Commissioners which is
 70 confidential or exempt if held by that entity for use by the
 71 office in the office's performance of its duties.

72 (2) The office may disclose confidential and exempt
 73 proprietary business information:

74 (a) If the insurer to which it pertains gives prior
 75 written consent;

76 (b) Pursuant to a court order;

77 (c) To the American Academy of Actuaries upon a request
 78 stating that the information is for the purpose of professional

79 disciplinary proceedings and specifying procedures satisfactory
 80 to the office for preserving the confidentiality of the
 81 information;

82 (d) To other states, federal and international agencies,
 83 the National Association of Insurance Commissioners and its
 84 affiliates and subsidiaries, and state, federal, and
 85 international law enforcement authorities, including members of
 86 a supervisory college described in s. 628.805, if the recipient
 87 agrees in writing to maintain the confidential and exempt status
 88 of the document, material, or other information and has verified
 89 in writing its legal authority to maintain such confidentiality;
 90 or

91 (e) For the purpose of aggregating information on an
 92 industrywide basis and disclosing the information to the public
 93 only if the specific identities of the insurers, or persons or
 94 affiliated persons, are not revealed.

95 (3) This section is subject to the Open Government Sunset
 96 Review Act in accordance with s. 119.15 and shall stand repealed
 97 on October 2, 2019, unless reviewed and saved from repeal
 98 through reenactment by the Legislature.

99 Section 2. The Legislature finds that it is a public
 100 necessity that proprietary business information that is provided
 101 to the Office of Insurance Regulation by an insurer or acquiring
 102 party pursuant to the requirements of the Florida Insurance Code
 103 or the Holding Company System Regulatory Act of the National
 104 Association of Insurance Commissioners in order for the office

105 | to conduct its regulatory duties with respect to insurer
 106 | solvency be made confidential and exempt from s. 119.07(1),
 107 | Florida Statutes, and s. 24(a), Article I of the State
 108 | Constitution. The disclosure of such information could injure an
 109 | insurer in the marketplace by providing its competitors with
 110 | detailed insight into the financial status and strategic plans
 111 | of the insurer, thereby diminishing the advantage that the
 112 | insurer maintains over competitors that do not possess such
 113 | information. Without this exemption, an insurer or acquiring
 114 | party might refrain from providing accurate and unbiased data,
 115 | thus impairing the office's ability to accurately evaluate the
 116 | propriety of proposed acquisitions in the state and the
 117 | financial condition of insurers and their affiliates.
 118 | Proprietary business information derives actual or potential
 119 | independent economic value from not being generally known to,
 120 | and not being readily ascertainable by proper means by, other
 121 | persons who may derive economic value from its disclosure or
 122 | use. The office, in performing its duties and responsibilities,
 123 | may need to obtain proprietary business information from
 124 | insurers and regulated entities. Without an exemption from
 125 | public records requirements for proprietary business information
 126 | provided to the office, such information becomes a public record
 127 | when received and must be divulged upon request. Divulgence of
 128 | proprietary business information under the public records law
 129 | would destroy the value of that property to the proprietor,
 130 | causing a financial loss not only to the proprietor but also to

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2014

131 the residents of this state due to the loss of reliable
132 financial data necessary for the accurate evaluation of proposed
133 acquisitions. Release of proprietary business information would
134 give business competitors an unfair advantage and weaken the
135 position in the marketplace of the proprietor who owns or
136 controls the business information. The harm to insurers in the
137 marketplace and to the effective administration of acquisitions
138 caused by the public disclosure of such information far
139 outweighs the public benefits derived from its release.

140 Section 3. This act shall take effect October 1, 2014, if
141 HB 1271 or similar legislation is adopted in the same
142 legislative session or an extension thereof and becomes law.

INSURANCE & BANKING SUBCOMMITTEE

**HB 1273 by Rep. Ingram
Pub. Rec./Proprietary Business Information/OIR**

**AMENDMENT SUMMARY
March 19, 2014**

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

- Expands the public records exemption to incorporate proprietary business information contained in reports and documents relating to the Standard Valuation Law provisions of the linked bill, HB 1271.



Amendment No.

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 _____

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Ingram offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 624.4212, Florida Statutes, is created
8 to read:

9 624.4212 Confidentiality of proprietary business and other
10 information.-

11 (1) As used in this section, the term "proprietary
12 business information" means information, regardless of form or
13 characteristics, which is owned or controlled by an insurer, or
14 a person or an affiliated person who seeks acquisition of
15 controlling stock in a domestic stock insurer or controlling
16 company, and which:

17 (a) Is intended to be and is treated by the insurer or the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1273 (2014)

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18 would cause harm to the insurer, the person, or the company's
19 business operations and that the information has not been
20 disclosed unless disclosed pursuant to a statutory requirement,
21 an order of a court or administrative body, or a private
22 agreement that provides that the information will not be
23 released to the public;

24 (b) Is not otherwise readily ascertainable or publicly
25 available by proper means by other persons from another source
26 in the same configuration as requested by the office; and

27 (c) Includes, but is not limited to:

28 1. Trade secrets as defined in s. 688.002 which comply
29 with s. 624.4213.

30 2. Information relating to competitive interests, the
31 disclosure of which would impair the competitive business of the
32 provider of the information.

33 3. The source, nature, and amount of the consideration
34 used or to be used in carrying out a merger or other acquisition
35 of control in the ordinary course of business, including the
36 identity of the lender, if the person filing a statement
37 regarding consideration so requests.

38 4. Information relating to bids or other contractual data,
39 the disclosure of which would impair the efforts of the insurer
40 or its affiliates to contract for goods or services on favorable
41 terms.

42 5. Internal auditing controls and reports of internal
43 auditors.

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44 (2) Proprietary business information contained in the
45 following items held by the office is confidential and exempt
46 from s. 119.07(1) and s. 24(a), Art. I of the State
47 Constitution:

48 1. The actuarial opinion summary required under ss.
49 624.424(1)(b) and 625.121(3) and information related thereto.

50 2. A notice filed with the office by the person or
51 affiliated person who seeks to divest controlling stock in an
52 insurer pursuant to s. 628.461.

53 3. The filings required under s. 628.801 and information
54 related thereto.

55 4. The enterprise risk report required under ss.
56 628.461(3) and 628.801 and information related thereto.

57 5. Information provided to or obtained by the office
58 pursuant to participation in a supervisory college established
59 under s. 628.805.

60 6. Beginning on the operative date of the valuation manual
61 as defined in s. 625.1212(2):

62 a. An actuarial examination conducted pursuant to s.
63 625.1212(5)(c), and information related thereto;

64 b. The annual certification submitted by the insurer
65 pursuant to s. 625.1212(6)(b)2., and information related
66 thereto;

67 c. The principle-based valuation report filed pursuant to
68 s. 625.1212(6)(b)3., and information related thereto; and

69 d. Mortality, morbidity, policyholder behavior, or expense

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70 experience and other data submitted pursuant to s. 625.1212(7),
71 which includes potentially company-identifiable or personally
72 identifiable information.

73 (3) Information received from the NAIC or another
74 governmental entity in this or another state, the Federal
75 Government, or another nation which is confidential or exempt if
76 held by that entity and which is held by the office for use in
77 the office's performance of its duties relating to insurer
78 valuation and solvency is confidential and exempt from s.
79 119.07(1) and s. 24(a), Art. I of the State Constitution.

80 (4) The office may disclose information made confidential
81 and exempt under this section:

82 (a) If the insurer to which it pertains gives prior
83 written consent;

84 (b) Pursuant to a court order;

85 (c) To the American Academy of Actuaries upon a request
86 stating that the information is for the purpose of professional
87 disciplinary proceedings and specifying procedures satisfactory
88 to the office for preserving the confidentiality of the
89 information;

90 (d) To other states, federal and international agencies,
91 the National Association of Insurance Commissioners and its
92 affiliates and subsidiaries, and state, federal, and
93 international law enforcement authorities, including members of
94 a supervisory college described in s. 628.805 if the recipient
95 agrees in writing to maintain the confidential and exempt status

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96 of the document, material, or other information and has
97 certified in writing its legal authority to maintain such
98 confidentiality; or

99 (e) For the purpose of aggregating information on an
100 industrywide basis and disclosing the information to the public
101 only if the specific identities of the insurers, or persons or
102 affiliated persons, are not revealed.

103 (5) This section is subject to the Open Government Sunset
104 Review Act in accordance with s. 119.15 and is repealed on
105 October 2, 2019, unless reviewed and saved from repeal through
106 reenactment by the Legislature.

107 Section 2. (1) The Legislature finds that it is a public
108 necessity that proprietary business information that is provided
109 to the Office of Insurance Regulation by an insurer or by an
110 acquiring party pursuant to the Florida Insurance Code or the
111 Holding Company System Regulatory Act of the National
112 Association of Insurance Commissioners in order for the office
113 to conduct its regulatory duties with respect to insurer
114 valuation and solvency, be made confidential and exempt from s.
115 119.07(1), Florida Statutes, and s. 24(a), Article I of the
116 State Constitution. The disclosure of such information could
117 injure an insurer in the marketplace by providing its
118 competitors with detailed insight into the reserve assumptions
119 and strategies, modeling methodologies, business plans, pricing
120 and marketing strategies, management systems and operational
121 protocols, and financial status of the insurer, thereby

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122 diminishing the advantage that the insurer maintains over
123 competitors that do not possess such information. Without this
124 exemption, an insurer or an acquiring party might refrain from
125 providing accurate and unbiased data, thus impairing the
126 office's ability to accurately evaluate the propriety of
127 proposed acquisitions in the state and the financial condition
128 of insurers and their affiliates. Proprietary business
129 information derives actual or potential independent economic
130 value from not being generally known to, and not being readily
131 ascertainable by proper means by, other persons who can derive
132 economic value from its disclosure or use. The office, in
133 performing its duties and responsibilities, may need to obtain
134 proprietary business information from insurers and regulated
135 entities. Without an exemption from public records requirements
136 for proprietary business information provided to the office,
137 such information becomes a public record when received and must
138 be divulged upon request. Divulgence of proprietary business
139 information under the public records law would destroy the value
140 of that property to the proprietor, causing a financial loss not
141 only to the proprietor but also to the residents of this state
142 due to the loss of reliable financial data necessary for the
143 accurate evaluation of proposed acquisitions. Release of
144 proprietary business information would give business competitors
145 an unfair advantage and weaken the position in the marketplace
146 of the proprietor who owns or controls the business information.

147 (2) The Legislature also finds that it is a public

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148 necessity that information received by the office from the
149 National Association of Insurance Commissioners, or from an
150 agency in this or another state or nation or the Federal
151 Government, which is otherwise exempt or confidential pursuant
152 to the laws of this or another state or nation or pursuant to
153 federal law or which is confidential or exempt if held by that
154 entity, for use by the office in the performance of duties
155 related to insurer valuation and solvency under the Florida
156 Insurance Code, be made confidential and exempt from s.
157 119.07(1), Florida Statutes, and s. 24(a), Article I of the
158 State Constitution. Divulgence of such information could impede
159 the exchange of information and communication among regulators
160 across multiple agencies and jurisdictions and jeopardize the
161 ability of regulators to effectively supervise insurers and
162 groups operating in multiple jurisdictions and engaged in
163 significant cross-border activities.

164 Section 3. This act shall take effect October 1, 2014, if
165 HB 1271 or similar legislation is adopted in the same
166 legislative session or an extension thereof and becomes a law.

167
168

169 -----

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

171 Remove everything before the enacting clause and insert:

172 A bill to be entitled

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1273 (2014)

Amendment No.

173 An act relating to public records; creating s. 624.4212, F.S.;
174 defining the term "proprietary business information"; creating
175 an exemption from public records requirements for proprietary
176 business information and information that is confidential when
177 held by another entity in this state, the Federal Government, or
178 another state or nation, and which is held by the Office of
179 Insurance Regulation; providing exceptions; providing for future
180 legislative review and repeal; providing a statement of public
181 necessity; providing a contingent effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1035 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		Reilly <i>RR</i>	Cooper <i>PK</i>

SUMMARY ANALYSIS

The Florida Medical Malpractice Joint Underwriting Association (FMMJUA) is an insurance risk apportionment plan that provides professional liability insurance coverage in Florida for health care providers that cannot find coverage in the private market. Five of the nine members of the FMMJUA's board of governors represent insurers and are selected by the Chief Financial Officer (CFO). Three of the five insurer members are selected by the CFO based on recommendations from three insurance trade associations. The American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers each recommend board members to the CFO, who chooses one board member from the recommendations of each trade association. In 2004, the Alliance of American Insurers and the National Association of Independent Insurers merged to form the Property Casualty Insurers Association of America (PCI).

The Proposed Committee Substitute for HB 1035 (PCS) removes authority for the Alliance of American Insurers and the National Association of Independent Insurers to recommend FMMJUA board members, and authorizes their successor organization, the PCI, to make recommendations to the CFO, who will choose one insurer representative to the board from these recommendations. Additionally, the Florida Insurance Council is authorized to recommend board members to the CFO, who will select one insurer representative to the FMMJUA board from these recommendations.

The Florida Birth-Related Neurological Injury Compensation Association (NICA) manages the Florida Birth-Related Neurological Injury Compensation Plan (the Plan). The Plan provides a wide range of benefits to children who have sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury during labor, delivery, or resuscitation in the immediate post-delivery period. NICA operates under the direction of a five-member board of directors appointed by the CFO. The board is comprised of one representative of each of the following groups: citizens; participating physicians; hospitals; casualty insurers; and physicians other than participating physicians. The CFO can choose board members, except for the representative of citizens, from a list of names submitted by various trade associations, but is not bound by these nominations.

The Florida Obstetric and Gynecological Society and the Florida Hospital Association, respectively, submit recommendations for the representative of participating physicians and the representative of hospitals on the NICA board. The bill removes authority for the Florida Obstetric and Gynecological Society to make recommendations for the NICA board, and provides authority to the American Congress of Obstetricians and Gynecologists (ACOG), District XII. ACOG, District XII became effective January 1, 2013 and represents the entire state of Florida.

The American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers each submit one name to the CFO for the casualty insurer representative on the NICA board. The bill maintains the authority of the American Insurance Association and authorizes the PCI, the successor organization of the Alliance of American Insurers and the National Association of Independent Insurers, to recommend a casualty insurer representative to the NICA board. It also authorizes the Florida Insurance Council to recommend a casualty insurer representative to the NICA board.

The PCS has no fiscal impact on state or local government and takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Medical Malpractice Joint Underwriting Association

The Florida Medical Malpractice Joint Underwriting Association (FMMJUA) is an insurance risk apportionment plan that provides professional liability insurance coverage in Florida for health care providers that cannot find coverage in the private market. Individual physicians, surgeons, osteopaths, podiatrists, chiropractors, dentists, nurses, other types of health care providers, physician partnerships or corporations, hospitals, and certain medical facilities can be covered by professional liability insurance provided by the FMMJUA.¹

The FMMJUA operates under the direction of a nine-member board of governors. Five of the nine board members represent insurers and are selected by the Chief Financial Officer (CFO). The CFO selects three of the five board members representing insurers from recommendations from three insurance trade associations. The American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers each recommend board members to the CFO, who chooses one board member from the recommendations from each of the three trade associations.

In 2004 the Alliance of American Insurers and the National Association of Independent Insurers merged to form the Property Casualty Insurers Association of America (PCI).² Thus, the Proposed Committee Substitute for HB 1035 (PCS) removes authority for these trade associations to recommend board members, and provides authority for their successor organization, the PCI, to make recommendations for the FMMJUA board. It also provides authority for the Florida Insurance Council to make recommendations for board membership. The CFO will choose one board member from the recommendations made by the PCI and one board member from recommendations made by the Florida Insurance Council.

Florida Birth-Related Neurological Injury Compensation Association

The Florida Birth-Related Neurological Injury Compensation Association (NICA) manages the Florida Birth-Related Neurological Injury Compensation Plan (Plan). The Plan provides a wide range of benefits to a child who has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury during labor, delivery, or resuscitation in the immediate post-delivery period.³ Acceptance into the Plan is determined by an administrative law judge after a petition is filed with the Department of Administrative Hearings.⁴ Once a child is accepted into the Plan by order from the judge, the child is covered by the Plan and provided benefits and care under the Plan for a lifetime.

NICA's mission⁵ is to:

1. Encourage physicians to practice obstetrics and make obstetrical services available to patients.
2. Stabilize and help make malpractice insurance available to all physicians.
3. Provide needed care to injured children.

NICA operates under the direction of a five-member board of directors appointed by the CFO. One board member represents citizens, one represents participating physicians, one represents hospitals, one represents casualty insurers, and one represents physicians other than participating physicians. The CFO can choose board members from a list of names submitted by various trade associations for

¹ Section 627.351(4)(h)1., F.S.

² <http://www.insurancejournal.com/magazines/features/2004/01/12/35629.htm> (Last accessed: March 16, 2014).

³ Section 766.302(2), F.S.

⁴ Section 766.304, F.S.

⁵ <http://www.nica.com/what-is-nica.html> (Last accessed: March 16, 2014).

all board members except the one representing citizens, but is not bound by the nominations from the associations.⁶

The Florida Obstetric and Gynecological Society and the Florida Hospital Association, respectively, submit recommendations for the representative of participating physicians and the representative of hospitals on the NICA board. The PCS removes authority for the Florida Obstetric and Gynecological Society to make recommendations for a NICA board member to represent participating physicians and provides authority to the American Congress of Obstetricians and Gynecologists (ACOG), District XII. District XII Florida became effective January 1, 2013 and represents the entire state of Florida.⁷

The American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers each submit one name to the CFO for the casualty insurer representative on the NICA board.⁸ The PCS maintains the authority of the American Insurance Association to recommend a NICA board member to the CFO. It also provides authority to the Florida Insurance Council and the PCI (the successor organization to the Alliance of American Insurers and the National Association of Independent Insurers) to each recommend a board member.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 2. Amends s. 766.315, F.S., relating to Florida Birth-Related Neurological Injury Compensation Association; board of directors.

Section 3. Provides an effective date of upon becoming a 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.

D. FISCAL COMMENTS:

⁶ Section 766.315(2)(a), F.S.

⁷ See the ACOG, District XII Florida website: http://www.acog.org/About_ACOG/ACOG_Districts/District_XII (Last accessed: March 16, 2014). Any member of ACOG, District XII holding the designation of Fellow, Junior Fellow, or Life Fellow automatically qualifies as an active member of the Florida Obstetric and Gynecological Society.

⁸ Other trade associations submit names to the CFO for the NICA board. (s. 766.315(2), F.S.).

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
An act relating to Insurance; amending s. 627.351,
F.S.; revising membership of the Joint Underwriting
Association; amending s. 766.315, F.S.; revising
membership of the Florida Birth-Related Neurological
Injury Compensation Association; providing an
effective date.
Be It Enacted by the Legislature of the State of Florida:
Section 1. Paragraph (c) of subsection (4) of section
627.351, Florida Statutes, is amended to read:
627.351 Insurance risk apportionment plans.—
(4) MEDICAL MALPRACTICE RISK APPORTIONMENT.—
(c) The Joint Underwriting Association shall operate
subject to the supervision and approval of a board of governors
consisting of representatives of five of the insurers
participating in the Joint Underwriting Association, an attorney
to be named by The Florida Bar, a physician to be named by the
Florida Medical Association, a dentist to be named by the
Florida Dental Association, and a hospital representative to be
named by the Florida Hospital Association. The Chief Financial
Officer shall select the representatives of the five insurers.
One insurer representative shall be selected from
recommendations of the American Insurance Association. One
insurer representative shall be selected from recommendations of

27 the Property Casualty Insurers Association of America Alliance
 28 ~~of American Insurers~~. One insurer representative shall be
 29 selected from recommendations of the Florida Insurance Council.
 30 ~~National Association of Independent Insurers~~. Two insurer
 31 representatives shall be selected to represent insurers that are
 32 not affiliated with these associations. The board of governors
 33 shall choose, during the first meeting of the board after June
 34 30 of each year, one of its members to serve as chair of the
 35 board and another member to serve as vice chair of the board.
 36 There shall be no liability on the part of, and no cause of
 37 action of any nature shall arise against, any member insurer,
 38 self-insurer, or its agents or employees, the Joint Underwriting
 39 Association or its agents or employees, members of the board of
 40 governors, or the office or its representatives for any action
 41 taken by them in the performance of their powers and duties
 42 under this subsection.

43 Section 2. Paragraph (a) of subsection (2) of section
 44 766.315, Florida Statutes, is amended to read:

45 766.315 Florida Birth-Related Neurological Injury
 46 Compensation Association; board of directors.-


47 (2) (a) The Chief Financial Officer may select the
 48 representative of the participating physicians from a list of at
 49 least three names to be recommended by the American Congress of
 50 Obstetricians and Gynecologists, District XII; ~~Florida Obstetric~~
 51 ~~and Gynecologic Society~~; the representative of hospitals from a
 52 list of at least three names to be recommended by the Florida

53 Hospital Association; the representative of casualty insurers
 54 from a list of at least three names, one of which is recommended
 55 by the American Insurance Association, one by the Florida
 56 Insurance Council, ~~Alliance of American Insurers~~, and one by the
 57 Property Casualty Insurers Association of America ~~National~~
 58 ~~Association of Independent Insurers~~; and the representative of
 59 physicians other than participating physicians from a list of
 60 three names to be recommended by the Florida Medical Association
 61 and a list of three names to be recommended by the Florida
 62 Osteopathic Medical Association. In no case shall the Chief
 63 Financial Officer be bound to make any appointment from among
 64 the nominees of such respective associations.

65 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1351 Workers' Compensation Fees
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

In Florida's workers' compensation system, the Three-Member Panel, consisting of the Chief Financial Officer, an employer representative, and an employee representative, adopts uniform schedules of maximum reimbursement allowances for physicians, hospitals, ambulatory surgical centers, and other service providers. Biennially, the Three-Member Panel is required to submit recommendations to the Florida Legislature on methods to improve the workers' compensation health care delivery system.

Hospital outpatient services in workers' compensation are reimbursed at 75 percent of "usual and customary charges," except as otherwise provided. The term usual and customary charges is not defined in statute and its meaning varies among insurers. For inpatient hospital care, maximum reimbursement allowances are based on a schedule of per diem rates approved by the Three-Member Panel. When inpatient charges exceed a specified amount, the hospital is reimbursed 75 percent of charges.

The 2013 Biennial Report of the Three-Member Panel recommended in part that hospital inpatient and outpatient services be reimbursed pursuant to Medicare's hospital inpatient and outpatient prospective payment systems, with a payment adjustment factor. Proposed Committee Substitute for HB 1351 (PCS) reflects these recommendations. It provides that all compensable charges for hospital outpatient care be reimbursed at up to 140 percent of the Medicare outpatient prospective payment system, except as otherwise provided. For inpatient hospital care, the maximum reimbursement allowances are to be based on up to 140 percent of the Medicare inpatient prospective payment system. Both inpatient and outpatient reimbursement rates must be approved by the Three-Member panel no later than October 1st of each year for the following calendar year.

The National Council on Compensation Insurance has estimated a preliminary cost savings to the system of -7%, or \$200 million if hospital inpatient and outpatient fee schedules are both based on 140 percent of Medicare reimbursement rates. As the PCS allows for reimbursements of up to 140 percent of Medicare, additional savings would be realized if reimbursement rates are lower than 140 percent of Medicare.

The PCS has no fiscal impact on state or local government. It is effective July 1, 2014, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Workers' Compensation Medical Benefits

For work-related injuries sustained by employees, workers' compensation provides medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require, including medicines, medical supplies, durable medical equipment, and prosthetics.^{1,2}

Maximum Reimbursement Allowances

In Florida, the Three-Member Panel adopts uniform schedules of maximum reimbursement allowances in workers' compensation for physicians, hospitals, ambulatory surgical centers, and other service providers.³ The Three-Member Panel consists of the Chief Financial Officer, an employer representative, and an employee representative, with the latter two members appointed by the Governor and confirmed by the Senate. Biennially, the Three-Member Panel is required to submit recommendations to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

Hospital Outpatient Reimbursement

Hospital outpatient services must be reimbursed at 75 percent of "usual and customary charges," except as otherwise provided in the workers' compensation law.^{4,5} The term usual and customary charges is not defined in statute and its meaning varies among insurers.

Hospital Inpatient Reimbursement

Maximum reimbursement allowances for inpatient hospital care are based on a schedule of per diem rates approved by the Three-Member Panel.⁶ The bulk of inpatient hospital services are paid according to the established surgical or non-surgical per diem amount. The Florida Workers' Compensation Hospital Reimbursement Manual contains the schedule of per diem rates. However, if the inpatient charges, excluding the charges for implants, exceed \$51,400, the hospital is reimbursed 75 percent of charges.

Medical Cost Drivers

Medical expenses account for 69 percent of total workers' compensation benefits costs in Florida; indemnity (monetary) benefits account for 31 percent of total costs.⁷ Payments for hospital inpatient

¹ Section 440.13(2)(a), F.S.

² The workers' compensation law also provides compensation (indemnity benefits) for disability when the injury causes the employee to miss more than 7 days of work.

³ The Division of Workers' Compensation's website lists reimbursement manuals for health care providers (Rule 69L-7.020, F.A.C.), dentists (Rule 69L-7.020, F.A.C., Section IV), hospitals (Rule 69L-7.501, F.A.C.), pharmacies (Rule 69L-7.020, F.A.C., Section V), durable medical equipment (Rule 69L-7.020, F.A.C., Section VI), and ambulatory surgical centers (Rule 69L-7.100, F.A.C.). See <http://www.myfloridacfo.com/division/WC/provider/reimbursement-manuals.htm> (Last accessed: March 14, 2014).

⁴ Section 440.13(12)(a), F.S.

⁵ The difficulties in defining usual and customary charges are illustrated in *One Beacon Insurance Agency v. Agency for Health Care Administration* (958 So.2d 1127). The First District Court of Appeal (1st DCA) ruled against the Agency for Health Care Administration in a medical reimbursement dispute involving an ambulatory surgical center. The 1st DCA determined that it was the Legislature's intent to eliminate calculation of a usual and customary charge based on the fees of any one provider in favor of a calculation of such charge based on the average fees of all providers in a given geographical area. The Division of Workers' Compensation's attempts to comply with this ruling have resulted in three separate proposals to the Three-Member Panel since 2008.

⁶ Section 440.13(12)(a), F.S.

⁷ January 1, 2014, workers' compensation filing by the National Council on Compensation Insurance (NCCI). NCCI is the designated statistical agent and rating organization for workers' compensation insurance in Florida. NCCI's responsibilities include collecting and analyzing data from workers' compensation insurers conducting business in Florida and submitting rate filings to the Office of

services represent 18.6 percent of total medical payments; payments for hospital outpatient services represent 18.8 percent of total medical payments.⁸ A recent study by the Workers' Compensation Research Institute (WCRI)⁹ found that the rapid growth in hospital payments per claim mainly drove increases in medical payments per workers' compensation claim in Florida from 2005 to 2011.

Recommendations of the Three-Member Panel

The Three-Member Panel, in its 2013 biennial report to the Legislature,¹⁰ recommended that the reimbursement methodologies for both outpatient¹¹ and inpatient hospital services¹² be changed to provide for reimbursements based on percentages of Medicare. It was recommended that outpatient hospital services be reimbursed at 120 to 140 percent of Medicare's payments under Medicare's outpatient prospective payment system. In the alternative, the Three-Member Panel recommended that the term "usual and customary charge" be defined to make all stakeholders aware of its intended meaning and when it is to be used in determining reimbursement amounts.

In the 2013 report, the Three-Member Panel also recommended that inpatient hospital services be reimbursed at 120 or 140 percent of Medicare's payments under Medicare's inpatient prospective payment system.

Proposed Committee Substitute for HB 1351 reflects the recommendations by the Three-Member Panel to base hospital reimbursements for workers' compensation care and treatment on Medicare's hospital inpatient and outpatient prospective payment systems, combined with a payment adjustment factor. Specifically, it provides that all compensable charges (charges covered by workers' compensation) for hospital outpatient care be reimbursed at up to 140 percent of the Medicare outpatient prospective payment system, except as otherwise provided. For inpatient hospital care, the maximum reimbursement allowances are to be based on up to 140 percent of the Medicare inpatient prospective payment system. The Three-Member Panel must approve hospital outpatient and hospital inpatient reimbursement schedules by October 1st of each year for the following calendar year.

The National Council on Compensation Insurance has estimated a preliminary cost savings to the system of -7%, or \$200 million if hospital inpatient and outpatient fee schedules are both based on 140 percent of Medicare reimbursement rates.¹³ As the PCS allows for reimbursements of up to 140 percent of Medicare, additional savings would be realized if reimbursement rates are lower than 140 percent of Medicare.

B. SECTION DIRECTORY:

Section 1. Amends s. 44013(12)(a), F.S., relating to guides of maximum reimbursement allowances under the workers' compensation system.

Section 2. Amends s. 440.13(12)(b), F.S., to make a conforming change.

Section 3. Provides an effective date of July 1, 2014, except as otherwise provided.

Insurance Regulation. NCCI is often asked by the Florida Legislature to provide cost impacts of pending legislation to the Florida's workers' compensation system.

⁸ Correspondence from NCCI dated March 10, 2014, on file with the Insurance & Banking Subcommittee.

⁹ WCRI is an independent research organization that analyzes workers' compensation systems for states with which it contracts. WCRI provides information through studies and data collection efforts, and does not take positions on the issues it researches. See "CompScope™ Medical Benchmarks for Florida, 14th Edition," by WCRI, a 16-state study on overall medical payments per workers' compensation claim. Available at the WCRI website: [https://www.wcrinet.org/cgi-bin/search.asp?Q=14th edition&E=1&X=0&S=80](https://www.wcrinet.org/cgi-bin/search.asp?Q=14th%20edition&E=1&X=0&S=80) (Last accessed: March 17, 2014).

¹⁰ The "Three-Member Panel, 2013 Biennial Report" is available at <http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/Default.htm> (Last accessed: March 16, 2014).

¹¹ Currently, outpatient hospital services are reimbursed at 75 percent of usual and customary charges, except as otherwise provided.

¹² Currently, inpatient hospital services are reimbursed at approved per diem rates.

¹³ Correspondence from NCCI dated March 10, 2014, on file with the Insurance & Banking Subcommittee.

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DATE: 3/17/2014

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:

To the extent that the bill decreases workers' compensation rates, businesses may pass their savings on to consumers or, in some cases, expand and hire additional workers. Hospitals will experience a reduction in reimbursement from workers' compensation carriers for services provided.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to workers' compensation fees;
 3 amending s. 440.13, F.S.; revising the maximum
 4 reimbursement allowance for inpatient hospital care;
 5 revising a date by which the panel shall approve the
 6 allowance; revising the maximum compensable charges
 7 for hospital outpatient care; making a conforming
 8 change; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Paragraph (a) of subsection (12) of section
 13 440.13, Florida Statutes, is amended to read:

14 440.13 Medical services and supplies; penalty for
 15 violations; limitations.—

16 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
 17 REIMBURSEMENT ALLOWANCES.—

18 (a) A three-member panel is created, consisting of the
 19 Chief Financial Officer, or the Chief Financial Officer's
 20 designee, and two members to be appointed by the Governor,
 21 subject to confirmation by the Senate, one member who, on
 22 account of present or previous vocation, employment, or
 23 affiliation, shall be classified as a representative of
 24 employers, the other member who, on account of previous
 25 vocation, employment, or affiliation, shall be classified as a
 26 representative of employees. The panel shall determine statewide

27 schedules of maximum reimbursement allowances for medically
 28 necessary treatment, care, and attendance provided by
 29 physicians, hospitals, ambulatory surgical centers, work-
 30 hardening programs, pain programs, and durable medical
 31 equipment. The maximum reimbursement allowances for inpatient
 32 hospital care shall be based on a rate of up to 140 percent of
 33 the Medicare inpatient prospective payment system ~~a schedule of~~
 34 ~~per diem rates~~, to be approved by the three-member panel no
 35 later than October 1st of each year for the following calendar
 36 year, March 1, 1994, to be used in conjunction with a
 37 precertification manual as determined by the department,
 38 including maximum hours in which an outpatient may remain in
 39 observation status, which shall not exceed 23 hours. No later
 40 than October 1st of each year for the following calendar year,
 41 the three-member panel must approve ~~All~~ all compensable charges
 42 for hospital outpatient care, which shall be reimbursed at up to
 43 140 percent of the Medicare outpatient prospective payment
 44 system ~~75 percent of usual and customary charges~~, except as
 45 otherwise provided by this subsection. Annually, the three-
 46 member panel shall adopt schedules of maximum reimbursement
 47 allowances for physicians, hospital inpatient care, hospital
 48 outpatient care, ambulatory surgical centers, work-hardening
 49 programs, and pain programs. An individual physician, hospital,
 50 ambulatory surgical center, pain program, or work-hardening
 51 program shall be reimbursed either the agreed-upon contract
 52 price or the maximum reimbursement allowance in the appropriate

53 schedule.

54 Section 2. Effective January 1, 2015, paragraph (b) of
55 subsection (12) of section 440.13, Florida Statutes, is amended
56 to read:

57 440.13 Medical services and supplies; penalty for
58 violations; limitations.—

59 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
60 REIMBURSEMENT ALLOWANCES.—

61 (b) It is the intent of the Legislature to increase the
62 schedule of maximum reimbursement allowances for selected
63 physicians effective January 1, 2004, and to pay for the
64 increases through reductions in payments to hospitals. Revisions
65 developed pursuant to this subsection are limited to the
66 following:

67 1. Payments for outpatient physical, occupational, and
68 speech therapy provided by hospitals shall be reduced to the
69 schedule of maximum reimbursement allowances for these services
70 which applies to nonhospital providers.

71 2. Payments for scheduled outpatient nonemergency
72 radiological and clinical laboratory services that are not
73 provided in conjunction with a surgical procedure shall be
74 reduced to the schedule of maximum reimbursement allowances for
75 these services which applies to nonhospital providers.

76 3. ~~Outpatient reimbursement for scheduled surgeries shall~~
77 ~~be reduced from 75 percent of charges to 60 percent of charges.~~

78 ~~4.~~ Maximum reimbursement for a physician licensed under

79 chapter 458 or chapter 459 shall be increased to 110 percent of
80 the reimbursement allowed by Medicare, using appropriate codes
81 and modifiers or the medical reimbursement level adopted by the
82 three-member panel as of January 1, 2003, whichever is greater.

83 4.5. Maximum reimbursement for surgical procedures shall
84 be increased to 140 percent of the reimbursement allowed by
85 Medicare or the medical reimbursement level adopted by the
86 three-member panel as of January 1, 2003, whichever is greater.

87 Section 3. Except as otherwise provided in this act, this
88 act shall take effect July 1, 2014.

INSURANCE & BANKING SUBCOMMITTEE

**PCS for HB 1351 by Rep. Stone
Workers' Compensation Fees**

**AMENDMENT SUMMARY
March 19, 2014**

Amendment 1 by Rep. Stone (Lines 32-44): Provides for hospital inpatient services and hospital outpatient services to be reimbursed, respectively, under Medicare's inpatient prospective payment system and Medicare's outpatient prospective payment system as follows: 140 percent of Medicare rates in 2015, 130 percent in 2016, and 120 percent in 2017 and thereafter.



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	_____	

1 Committee/Subcommittee hearing PCB: Insurance & Banking
 2 Subcommittee

3 Representative Stone offered the following:

4

5 **Amendment**

6 Remove lines 32-44 and insert:

7 hospital care shall be based on 140 percent of the Medicare
 8 inpatient prospective payment system for calendar year 2015, 130
 9 percent of the Medicare inpatient prospective payment system for
 10 calendar year 2016, and 120 percent of the Medicare inpatient
 11 prospective payment system for calendar year 2017 and
 12 thereafter. a schedule of per diem rates, Such maximum
 13 reimbursement allowances must ~~to~~ be approved by the three-member
 14 panel no later than October 1st of each year for the following
 15 calendar year, ~~March 1, 1994,~~ to be used in conjunction with a
 16 precertification manual as determined by the department,
 17 including maximum hours in which an outpatient may remain in

PCS for HB 1351 a1

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Amendment No. 1

18 observation status, which shall not exceed 23 hours. No later
19 than October 1st of each year for the following calendar year,
20 the three-member panel must approve ~~All~~all compensable charges
21 for hospital outpatient care, which shall be reimbursed at 140
22 percent of the Medicare outpatient prospective payment system
23 for calendar year 2015, 130 percent of the Medicare outpatient
24 prospective payment system for calendar year 2016, and 120
25 percent of the Medicare outpatient prospective payment system
26 for calendar year 2017 and thereafter, ~~75 percent of usual and~~
27 ~~customary charges,~~ except as

28