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# **Insurance & Banking Subcommittee**

**Tuesday, March 10, 2015  
9:00 AM  
Sumner Hall (404 HOB)**

**MEETING PACKET**



# The Florida House of Representatives

Regulatory Affairs Committee

Insurance & Banking Subcommittee

Steve Crisafulli  
Speaker

John Wood  
Chair

## AGENDA

Tuesday, March 10, 2015

404 HOB

9:00 am – 11:00 am

- I. Call to Order
- II. Roll Call
- III. Consideration of the following bill(s):
  - a. PCS for HB 275 Offer Or Sale of Securities
  - b. HB 715 Citizens Property Insurance Corporation by Raschein
  - c. HB 825 Family Trust Companies by Roberson, K.
  - d. HB 927 Title Insurance by Hager
  - e. HB 987 Organization of Department of Financial Services by Plakon
- IV. Adjournment

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Insurance & Banking Subcommittee

**Start Date and Time:** Tuesday, March 10, 2015 09:00 am  
**End Date and Time:** Tuesday, March 10, 2015 11:00 am  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 715 Citizens Property Insurance Corporation by Raschein  
HB 825 Family Trust Companies by Roberson, K.  
HB 927 Title Insurance by Hager  
HB 987 Organization of Department of Financial Services by Plakon

**Consideration of the following proposed committee substitute(s):**

PCS for HB 275 -- Offer Or Sale of Securities

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., Monday, March 9, 2015.



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., Monday, March 9, 2015.

**NOTICE FINALIZED on 03/06/2015 16:22 by McCloskey.Michele**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 275 Offer Or Sale of Securities  
**SPONSOR(S):** Insurance & Banking Subcommittee  
**TIED BILLS:** IDEN./SIM. PCSS: SB 914

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

### SUMMARY ANALYSIS

Crowdfunding describes an evolving method of raising funds for a variety of innovative projects, artistic endeavors, and non-profit political and charitable causes, typically through small individual contributions from a large number of people through the Internet. Most crowdfunding projects are *donation-based* or *reward-based*, where the donor does not receive anything or may receive a free token of gratitude for funding the project. Under this model, the donation is akin to a gift, not a security. In recent years, there has been a growing interest in the use of *equity crowdfunding* to provide start-up or seed capital for small businesses and other ventures that are promoted on the basis of a potential economic return to the donors. Equity crowdfunding implicates state and federal securities laws, which require registration of securities and market participants by the U.S. Securities & Exchange Commission and state securities regulators, unless an applicable exemption applies. These laws also contain disclosure requirements and civil remedies for investors.

In 2012, Congress enacted the Jumpstart Our Business Startups (JOBS) Act in an effort to ease regulatory burdens faced by startups and small businesses in connection with capital formation, especially for relatively small-dollar amounts. Title III of the JOBS Act created a new registration exemption from federal securities law to permit the issuance, offer, and sale of up to \$1 million of crowdfunding securities per year, subject to specified requirements for issuers and intermediaries, and is not limited to accredited investors. However, national equity crowdfunding under Title III is not permitted until the SEC implements Title III by final rule, which has not yet been completed. In response to the delay, a number of states have recently enacted intrastate crowdfunding exemptions, which combine some elements of Title III of JOBS with §3(a)(11) of the 1933 Act, which exempts issuers from federal registration if the issuer, purchaser, and securities offering are all contained within the same state.

The PCS creates an intrastate crowdfunding exemption within the Florida Securities and Investor Protection Act, ch. 517, F.S., which is administered by the Florida Office of Financial Regulation (OFR). The issuer, intermediary, investor, and transaction must all be in Florida in accordance with the federal intrastate exemption. Like Title III of JOBS, the PCS exempts an issuer and the offering for a 12-month offering up to \$1 million of securities, requires registration for the intermediary, and mirrors the federal law's investment limitations for investors. The PCS requires issuer notice filings and intermediary registration with OFR, initial and periodic disclosures to investors, an escrow agreement for investor funds, a right of rescission, and financial reporting to investors and to the OFR. The PCS also gives authority to the Financial Services Commission to adopt rules relating to notice-filing and registration forms, books and records, and investor protections.

The PCS has an indeterminate fiscal impact on state revenue and expenditures, because the anticipated number of issuers and intermediaries that may use this exemption is unknown. The OFR notes that the PCS may have an agency technology impact and may require additional positions for implementation. The impact to the private sector is indeterminate.

The PCS is effective on October 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Crowdfunding – Donation/Rewards vs. Equity Models**

Crowdfunding describes an evolving method of raising funds for a variety of projects, typically through small individual contributions from a large number of people through the Internet. These projects often involve innovative product ideas or artistic endeavors like movies or music, as well as political, charitable, and non-profit causes. Currently, the most popular forms of crowdfunding are *donation-based*, where the donor does not receive anything in exchange, or *reward-based*, where the donor may receive a free item (such as a t-shirt or movie ticket) as a token of gratitude for funding the project. These projects are increasingly facilitated online through platforms such as Kickstarter, Indiegogo, and Fundable. Under this model, the donation is akin to a gift, not a security.

In recent years, there has been a growing interest in the use of *equity crowdfunding* to provide start-up or seed capital for small businesses and other ventures that are promoted on the basis of a potential economic return to the donors. As discussed in further detail below, equity crowdfunding has been particularly attractive for small or emerging businesses since the 2008-2009 recession and the resulting constriction in the credit markets, although borrowing conditions for small businesses have been gradually improving.

Unlike donation- or rewards-based crowdfunding, *equity crowdfunding* triggers the application of the federal and state securities laws. Both federal and Florida securities law broadly define “security” to include, among other things: notes; stocks; bonds; debentures; certificates of deposit; evidence of indebtedness; and investment contracts.<sup>1</sup> In 1946, the U.S. Supreme Court interpreted “investment contract” to include the purchase of a real estate interest in a Lake County, Florida citrus grove that included an optional management package. The Court articulated the following test (sometimes referred to as the *Howey* test) that is widely used at the state levels to determine the existence of a security:

1. An investment of money due to
2. an expectation of profits arising from
3. a common enterprise
4. which depends solely on the efforts of a promoter or third party.<sup>2</sup>

##### **Securities Regulation**

###### **Federal Securities Regulation**

The federal Securities Act of 1933 (“’33 Act”), often described as a “truth in securities” act, requires every offer or sale of securities using the means and instrumentalities of interstate commerce to be registered with the U.S. Securities & Exchange Commission (SEC), unless an exemption (such as the intrastate exemption, discussed below) is available.<sup>3</sup> The ’33 Act’s emphasis on disclosure of important financial information through the registration of securities enables investors to make informed judgments about whether to purchase a company’s securities. While the SEC requires that the information provided be accurate, it does not guarantee it. Investors who purchase securities and suffer losses have important recovery rights if they can prove that there was incomplete or inaccurate

<sup>1</sup> 15 U.S.C. § 77b(a)(1) and s. 517.021(21), F.S.

<sup>2</sup> *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946).

<sup>3</sup> 15 U.S.C. §§ 77a-77aa.

disclosure of important information.<sup>4</sup> Once a company is registered under the '33 Act or becomes publicly traded, it becomes subject to periodic reporting requirements under the federal Securities Exchange Act of 1934, which also requires registration of market participants like broker-dealers and exchanges.<sup>5</sup>

### State Securities Regulation

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public through registration requirements for both broker-dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.<sup>6</sup> In Florida, the Securities and Investor Protection Act, ch. 517, F.S. ("the Act"), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (the OFR)'s Division of Securities regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the Act) and Chapter 69W, Florida Administrative Code.<sup>7</sup> As of December 2014, the OFR oversees:

- 2,789 dealers
- 5,182 investment advisers
- 10,373 branch offices
- 296,271 stockbrokers.<sup>8</sup>

The Act prohibits dealers, associated persons, and issuers from offering or selling securities in this state unless registered with the OFR or specifically exempted.<sup>9</sup> Additionally, all securities in Florida must be registered with the OFR unless they meet one of the exemptions in ss. 517.051 or 517.061, F.S., or are federally covered (i.e., under the exclusive jurisdiction of the SEC).<sup>10</sup> Failure to meet the precise requirements of these exemptions, can subject the issuer to civil, criminal, and administrative liability for the sale of unregistered securities, which is a third-degree felony in Florida.<sup>11</sup> Civil remedies under the act include rescission and damages.<sup>12</sup> In addition, issuers must comply with disclosure requirements in state and federal laws that provide potential investors with full and fair disclosures regarding the security.

In 2009, the Legislature amended the Act to expand the jurisdiction of the statewide grand jury and the Office of Statewide Prosecution to consider and prosecute violations of the Florida Money Laundering Act and the Act. Additionally, the 2009 legislation expanded the investigative and enforcement authority of Office of the Attorney General for commodities, antifraud, and boiler room telephonic sales violations, in coordination with OFR.<sup>13</sup>

Currently, no Florida exemption permits the advertising or solicitation for the offer or sale of unregistered securities to the general public, or for securities sold to the general public to be sold by an unregistered dealer.

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<sup>4</sup> U.S. SECURITIES & EXCHANGE COMMISSION, *The Laws That Govern the Securities Industry*, <http://www.sec.gov/about/laws.shtml> (last visited February 10, 2015).

<sup>5</sup> *Id.*

<sup>6</sup> U.S. SECURITIES & EXCHANGE COMMISSION, *Blue Sky Laws*, <http://www.sec.gov/answers/bluesky.htm>

<sup>7</sup> Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the OFR's agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

<sup>8</sup> Office of Financial Regulation, *Fast Facts* (2<sup>nd</sup> ed., Dec. 2014), at <http://fiofr.com/StaticPages/documents/FastFacts2015.pdf>  
<sup>9</sup> s. 517.12, F.S.

<sup>10</sup> s. 517.07, F.S. If a security is registered with the SEC, s. 517.082, F.S., requires the broker or issuer to notify OFR that the security is registered with the SEC.

<sup>11</sup> s. 517.302(1), F.S.

<sup>12</sup> s. 517.211(3-5), F.S.

<sup>13</sup> Ch. 2009-242, Laws of Fla.; see s. 517.191(5), F.S.

## Self-Regulatory Organizations

The Financial Industry Regulatory Authority, Inc. (FINRA) is the largest private self-regulatory organization for all securities firms doing business in the United States.<sup>14</sup> FINRA was formed as a result of a 2007 merger between its predecessor, the National Association of Securities Dealers, and certain operational arms of the New York Stock Exchange. In addition to operating the largest securities arbitration forum in the U.S., FINRA operates the Central Registration Depository and the Investment Adviser Registration Depository, which are central databases for registration, reporting, and disclosure information for the securities industry.

## Funding Sources for Startups and Small Businesses

According to the U.S. Small Business Administration (SBA), the most common startup sources are owners' savings, family contributions, and external credit (i.e., bank or finance company loans, credit cards, credit lines).<sup>15</sup> A 2012 study by the National Small Business Association found that 43% of small business owners surveyed could not obtain the financing they needed.<sup>16</sup> The SBA reported that small businesses (meaning an independent business having fewer than 500 employees) make up over 99% of employer firms in the U.S. Below are funding options for small and startup businesses, and trends following the 2008-2009 recession.

### Bank Lending

Bank lending data from 2006-2013 shows that small business loans (under \$1 million) declined from a lending peak in 2008, with a decline of 18% from 2008-2013.<sup>17</sup> However, small businesses have experienced gradually improving borrowing conditions, although at an uneven and slower pace than those for large firms. The SBA estimated that total small business borrowing amounted to almost \$1 trillion in 2013.<sup>18</sup>

Surveys from mid-2013 indicate that the net portion of small businesses having difficulty obtaining credit has declined, and approval rates for small business loans has increased at credit unions and at large banks (i.e., those with \$10 billion or more in assets). Many commercial banks reported easing their lending conditions and terms, although not to pre-recession levels. However, bank lending growth has been weaker for small business loans, partly due to regulatory demands such as increased bank capital requirements as well as increased collateral and underwriting requirements for borrowers.<sup>19</sup> According to a 2014 Federal Reserve study, most banks expect a moderate increase in retail small business lending in 2015.<sup>20</sup> The Federal Reserve recently reported that for its Atlanta district (which includes Florida), "while large businesses had easy access to credit, small businesses were experiencing small improvements in their ability to access credit."<sup>21</sup> This reflects the greater risk in

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<sup>14</sup> About FINRA, <http://www.finra.org/AboutFINRA/>

<sup>15</sup> SEC Proposed Regulation Crowdfunding, pp. 325-326; Small Business Administration Office of Advocacy, *Small Business Finance: Frequently Asked Questions* (Feb. 2014), at: <https://www.sba.gov/category/advocacy-navigation-structure/frequently-asked-questions-about-small-business-finance>

<sup>16</sup> NATIONAL SMALL BUSINESS ASSOCIATION, *Small Business Access to Capital Survey* (July 11, 2012), p. 4, <http://www.nsba.biz/wp-content/uploads/2012/07/Access-to-Capital-Survey.pdf>.

<sup>17</sup> U.S. SECURITIES & EXCHANGE COMMISSION, Proposed Regulation Crowdfunding, pp. 325-326, citing Federal Deposit Insurance Corporation, *Statistics on Banking*, available at: <http://www2.fdic.gov/SDI/SOB/>

<sup>18</sup> SBA Small Business Finance FAQ, p. 1

<sup>19</sup> Victoria Williams, *Small Business Lending in the United States 2013*, OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, Dec. 2014, at: <https://www.sba.gov/advocacy/small-business-lending-united-states-2013>

<sup>20</sup> THE FEDERAL RESERVE BOARD, *The October 2014 Senior Loan Officer Opinion Survey on Bank Lending Practices* (Oct. 2014), at: <http://www.federalreserve.gov/BoardDocs/snloansurvey/201411/default.htm>

<sup>21</sup> FEDERAL RESERVE, *Summary of Commentary on Current Economic Conditions by Federal Reserve District* (Jan. 14, 2015), available at <http://www.federalreserve.gov/monetarypolicy/beigebook/default.htm>)



lending to smaller businesses, as the latter are more sensitive to economic swings and have fewer collateral.

Additionally, some bank loans may be federally guaranteed, such as SBA loans or the U.S. Treasury's Small Business Lending Fund, which may increase availability of bank credit for small businesses.<sup>22</sup>

#### Other Lending Options

- *Peer-to-peer (P2P) lending*, which matches interested lenders with borrowers over the Internet and offers an alternative to bank financing due to some flexibility in pricing terms.<sup>23</sup>
- *Personal and business credit card debt*, which the SBA reports makes up roughly 7% of all startup capital.<sup>24</sup>
- *State-administered business assistance programs*, such as those administered by the Department of Economic Opportunity.<sup>25</sup>

#### Capital Markets

- *Registered offerings*, which are cost-prohibitive for small or startup businesses. Recent surveys estimated the average initial regulatory costs for an initial public offering (IPO) averaged \$2.5 million, with ongoing annual compliance costs of \$1.5 million.<sup>26</sup>
- *Exempt offerings* (such as private placements, Rule 504, Rule 505, Rule 506), although varying restrictions on general solicitation and advertising, resale, and investor quantity and experience, significantly limit the offerings and may also not be suitable for startups and small businesses.<sup>27</sup>
- The *angel investment* market, which has been on a gradual upward trend since 2012 and has been shifting to later-stage investments.<sup>28</sup>
- *Venture capital (VC)*, which has remained relatively flat since 1999-2001, and is almost evenly split in terms of early-stage, expansion, and later-stage investments.<sup>29</sup> VC tends to be selective as to geography and industry niche (e.g., Silicon Valley tech firms), and often expects significant control rights over the startup company and specific growth benchmarks.<sup>30</sup> The research findings on the failure rate of VC-backed businesses in the U.S. vary, ranging from industry estimates of 25-30%, to as high as 75% by one business academic.<sup>31</sup>

### **Title III of the Jumpstart Our Business Startups (JOBS) Act – Equity Crowdfunding**

In 2012, Congress enacted the Jumpstart Our Business Startups (JOBS) Act in an effort to ease the funding gap and regulatory burdens faced by startups and small businesses in connection with capital

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<sup>22</sup> U.S. DEPARTMENT OF THE TREASURY, *SBLF Helps Lenders Increase Small Business Loans by \$14 Billion*, [http://www.treasury.gov/connect/blog/Pages/SBLF-Helps-Lenders-Increase-Small-Business-Loans-by-\\$14-Billion.aspx](http://www.treasury.gov/connect/blog/Pages/SBLF-Helps-Lenders-Increase-Small-Business-Loans-by-$14-Billion.aspx)

<sup>23</sup> The SEC generally requires P2P lenders to register their offerings under the '33 Act. Additionally, P2P lending may be subject to oversight by other federal and state financial regulatory agencies. See Karen Gordon Mills and Brayden McCarthy, *The State of Small Business Lending: Credit Access during the Recovery and How Technology May Change the Game*, Harvard Business School Working Paper 15-004 (Jul. 22, 2014), at [http://www.hbs.edu/faculty/Publication%20Files/15-004\\_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf](http://www.hbs.edu/faculty/Publication%20Files/15-004_09b1bf8b-eb2a-4e63-9c4e-0374f770856f.pdf)

<sup>24</sup> SBA Small Business Finance, p. 1.

<sup>25</sup> DEO administers several loan programs under ch. 288, F.S., designed to stimulate business activity and to expand economic opportunity, including the Rural Community Development Revolving Loan Program, the Economic Gardening Business Loan Pilot Program, and the Microfinance Loan Program, which the Legislature created in 2014 (ch. 2014-218, Laws of Fla.).

<sup>26</sup> See IPO Task Force, *Rebuilding the IPO On-Ramp*, at 9 (Oct. 20, 2011), available at [http://www.sec.gov/info/smallbus/acsec/rebuilding\\_the\\_ipo\\_on-ramp.pdf](http://www.sec.gov/info/smallbus/acsec/rebuilding_the_ipo_on-ramp.pdf).

<sup>27</sup> SEC Proposed Regulation Crowdfunding, pp. 319-324.

<sup>28</sup> SBA Small Business Finance (Feb. 2014), p. 2.

<sup>29</sup> *Id.*

<sup>30</sup> SEC Proposed Regulation Crowdfunding, p. 331.

<sup>31</sup> Deborah Gage, *The Venture Capital Secret: 3 Out of 4 Start-Ups Fail*; THE WALL ST. JOURNAL (Sept. 20, 2012), <http://www.wsj.com/articles/SB10000872396390443720204578004980476429190>

formation, especially for relatively small-dollar amounts.<sup>32</sup> In particular, Title III of the JOBS Act (Title III) created a new registration exemption from the '33 Act to permit the issuance, offer, and sale of up to \$1 million of crowdfunding securities in a 12-month period, subject to specified requirements for issuers and intermediaries and investor limitations. Title III provides that individual investments are limited to 1) the greater of \$2,000 or 5% of the investor's annual income or net worth, if annual income or net worth is less than \$100,000; and 2) 10% of the investor's annual income or net worth (not to exceed a total investment of \$100,000), if annual income or net worth is over \$100,000.

Unlike other securities exemptions, Title III permits the fundraiser (*issuer*) to advertise and solicit sales of securities from the general public and to sell the securities to non-accredited investors without first registering with the SEC or other regulatory authority. Title III also allows *intermediaries* - either registered broker-dealers or a new Internet-based platform entity (funding portals) - to facilitate the online offer or sale of securities, subject to certain requirements, including registering with "with any applicable self-regulatory organization" as defined as in the 1934 Securities Exchange Act. The SEC's proposed rule provides that this self-regulatory organization is FINRA, which is the only registered national securities association.<sup>33</sup> If the Title III conditions are met, funding portals are exempt from having to also register with the SEC.

Certain companies are not eligible to use the Title III exemption, such as non-U.S. companies, companies that already are SEC reporting companies, certain investment companies, and as determined by SEC rule. Title III also includes a disqualification provision under which the exemption is unavailable if the issuer or related persons were subject to certain disqualifying events, such as being subject to a state financial regulatory final order barring the individual from the financial industry or a criminal conviction involving the purchase or sale of securities or false filings with the SEC.

Intermediaries (whether broker-dealers or funding portals) are required to comply with certain due diligence requirements and Title III's investor protections, including:

- Providing investors with disclosures and education materials,
- Conducting background checks on the issuer and related persons to ensure they are not subject to disqualification;
- Ensuring investor funds are escrowed, and released only when the target offering amount is reached, and
- Protecting the privacy of information collected from investors, and ensure that promoters and finders are not compensated for providing potential investors' personal identifying information,

Title III is a brief federal statutory framework, and requires the SEC to write significant implementing rules and to issue studies to facilitate capital formation, disclosure, and registration requirements.

### SEC Rulemaking for Title III National Equity Crowdfunding

Many of the Title III requirements must be implemented by SEC rule. Title III directed the SEC to write rules within 270 days of enactment, i.e., by December 31, 2012. However, it was not until October 23, 2013 that the SEC published proposed rules ("Regulation Crowdfunding") and sought public comment.<sup>34</sup> Since the notice and comment period of the proposed rules, the SEC has not yet finalized them. Recently, the SEC released a rulemaking agenda indicating a target date of October 2015 to adopt final rules to implement Title III.<sup>35</sup> The federal rules will then require an additional 60 days of

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<sup>32</sup> The JOBS Act was signed into law on April 5, 2012. Pub. L. No. 112-106, 126 Stat. 306 (2012) (codified at various sections of 15 U.S.C.).

<sup>33</sup> SEC Proposed Regulation Crowdfunding §227.400.

<sup>34</sup> SEC Release No. 33-9470; 34-70741 (Oct. 23, 2013) (Proposed Regulation Crowdfunding), available at <http://www.sec.gov/rules/proposed/2013/33-9470.pdf>

<sup>35</sup> EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, RIN 3235-AL37, at: <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201410&RIN=3235-AL37>

publication in the Federal Register before becoming law, which means it is more likely that national equity crowdfunding will not legally begin until early 2016.

The SEC has advised that no Title III (interstate) crowdfunding is permitted until the SEC's rules are finalized; specifically, one cannot operate a crowdfunding intermediary or funding portal unless registered in accordance with the final rules.<sup>36</sup>

Currently, the only legally authorized national equity crowdfunding is under Title II of the JOBS Act, which is limited to accredited investors.<sup>37</sup> "Accredited investors" are defined in Rule 501 of Regulation D to include banks, insurance companies, or individuals and entities with specified income and net worth levels. A natural person with an individual net worth of over \$1,000,000 (not including the value of a primary residence), an individual income in excess of \$200,000 in each of the two most recent years, or a joint income of \$3,000,000 in each of those two years, is considered an accredited investor.<sup>38</sup>

### **The Intrastate Exemption & State Crowdfunding Legislation**

In light of the SEC's significant delay in implementing Title III national equity crowdfunding, a number of states have crafted *intrastate* crowdfunding exemptions, based on the federal intrastate exemption in §3(a)(11) of the '33 Act.<sup>39</sup> Section 3(a)(11) exempts "any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of such security is a person resident and doing business within or, if a corporation, incorporated by and doing business within such State or Territory." This exemption recognizes that state, not federal, regulation is more appropriate for an issuer that only offers and sells securities within one state and does most of its business within that state.

Issuers may also rely on the SEC's Rule 147, known as the "safe harbor" rule, which provides specific guidance on §3(a)(11) offerings.<sup>40</sup> For example, Rule 147 specifies that at least 80% of the gross revenues and its subsidiaries (on a consolidated basis) be derived from the subject state in order to be deemed "doing business within a state or territory." Rule 147 states that the legislative history of §3(a)(11) suggests that "the exemption was intended to apply only to issues genuinely local in character, which in reality represent local financing to local industries, carried out through local investment."

Unlike the Title III crowdfunding exemption, §3(a)(11) does not limit the size of the offering, and unlike several other exemptions, §3(a)(11) does not limit the number of investors or require that they be accredited. However, it is noted that §3(a)(11) is strictly and narrowly construed, and if any of the securities are offered or sold to even one out-of-state person, the exemption may be lost and the company could be in violation of the '33 Act.<sup>41</sup> It is also important to note that §3(a)(11) only provides an exemption from federal registration, but does not provide immunity from the antifraud or civil liability provisions of the federal securities laws, including investor rescission. States may still require registration for purely intrastate offerings involving a general solicitation of investors.

Currently, seventeen states and the District of Columbia have some form of intrastate crowdfunding law in place (whether by statute, regulation, or administrative order), to exempt the issuer and offering from

<sup>36</sup> U.S. SECURITIES & EXCHANGE COMMISSION, Information Regarding the Use of Crowdfunding Exemption in the JOBS Act, at <http://www.sec.gov/spotlight/jobact/crowdfundingexemption.htm>. See also JOBS Act Frequently Asked Questions About Crowdfunding Intermediaries, at <http://www.sec.gov/divisions/marketreg/tmjobact-crowdfundingintermediariesfaq.htm>

<sup>37</sup> Title II of the JOBS Act was implemented by final SEC rule on July 10, 2013. SEC Release No. 33-9415, at: <http://www.sec.gov/rules/final/2013/33-9415.pdf>

<sup>38</sup> 17 CFR § 230.501(a)(5-6). Issuers may be exempt from the '33 Act if they sell securities to only accredited investors in accordance with Rules 505 or 506 of Regulation D.

<sup>39</sup> 15 U.S.C. §77c(a)(11).

<sup>40</sup> 17 CFR §230.147.

<sup>41</sup> U.S. SECURITIES & EXCHANGE COMMISSION, *Small Business and the SEC*, <http://www.sec.gov/info/smallbus/qasbsec.htm#intrastate>

state registration, if certain regulatory requirements are met. Many of these exemptions were only recently enacted or became effective in the latter half of 2014, and intrastate crowdfunding legislation or rulemaking has been introduced and pending in more than a dozen other states.<sup>42</sup> While these intrastate exemptions are based on §3(a)(11) of the '33 Act, they also appear to be based Title III's goals of easing regulatory burdens and promoting small business growth. Accordingly, these "hybrid" intrastate crowdfunding exemptions incorporate elements of Title III to varying degrees; for example, while most states have capped the total offering amount at \$1 million to match Title III of JOBS, some have allowed issuances up to \$2 million, or have income or net worth requirements for investors different than those found in Title III.<sup>43</sup>

The cost of raising capital under an intrastate crowdfunding campaign of identical offering amount is unknown, given the infancy and wide variation of existing state intrastate crowdfunding exemptions. However, the SEC has estimated that the cost of raising capital under Title III of JOBS is approximately \$39,000 (in fees for accountants, attorneys, and funding portal) for a \$100,000 national equity crowdfunding campaign, and more than \$150,000 to raise \$1 million. The SEC estimates that initial development of an intermediary platform could cost an additional \$250,000 to \$600,000, and would likely include establishing functionalities such as investor account opening procedures, electronic delivery, and the maintenance and transmission of investor funds.<sup>44</sup>

Additionally, data on the success of these intrastate offerings or regarding regulatory or enforcement trends is not yet available.<sup>45</sup>

### The Internet and Intrastate Offerings

Questions have arisen as to the applicability of the intrastate exemption to crowdfunding offers and sales conducted through the Internet, which can be accessed across state lines. SEC guidance from 2008 has suggested that internet-based offerings would be deemed interstate, not intrastate, in nature if out-of-state investors are given access to such offerings.<sup>46</sup> Some securities law experts have questioned the appropriateness and effectiveness of using §3(a)(11) for internet-based offerings, stating that the intrastate exemption is "fraught with both technical and subtle traps for issuers"<sup>47</sup> and may not be useful to issuers making a broad solicitation over the Internet.<sup>48</sup>

Issuers and intermediaries conducting online crowdfunding issuances, even under the auspices of a state law referencing the federal exemption, must ensure they comply with the substantive requirements of the federal exemption, or risk running afoul of the federal securities law for illegal,

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<sup>42</sup> NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, *Intrastate Crowdfunding Resource Center*, <http://www.nasaa.org/industry-resources/corporation-finance/intrastate-crowdfunding-resource-center/> (last viewed Feb. 10, 2015).

<sup>43</sup> Indiana, Michigan, and Wisconsin permit up to a \$2 million offering of crowdfunding securities if the issuer has audited financial statements. The D&O Diary, *Some States have Sidestepped the JOBS Act's Burdensome Crowdfunding Rules* (May 15, 2014), at <http://www.dandodiary.com/2014/05/articles/securities-litigation/some-states-have-sidestepped-the-jobs-acts-burdensome-crowdfunding-rules/>

<sup>44</sup> SEC Proposed Regulation Crowdfunding, pp. 442-454.

<sup>45</sup> A recent notable example of a state enforcement action against a *rewards-based* crowdfunding project is the State of Washington's Attorney General's lawsuit against a Kickstarter campaign promising, but failing to deliver, a deck of cards and other promotional gifts, in return for cash donations. The complaint alleged a violation of Washington State's unfair and deceptive trade practices law. Ángel González, *AG sues Kickstarter project that didn't deliver*, THE SEATTLE TIMES (May 1, 2014), <http://www.seattletimes.com/business/ag-sues-kickstarter-project-that-didnt-deliver/>

<sup>46</sup> U.S. SECURITIES & EXCHANGE COMMISSION, *The SEC Guide to Broker-Dealer Registration* (Apr. 2008), <http://www.sec.gov/divisions/marketreg/bdguide.htm> (last viewed Feb. 10, 2015), stating "information posted on the Internet that is accessible by persons in another state would be considered an interstate offer of securities or investment services that would require Federal broker-dealer registration."

<sup>47</sup> Stuart R. Cohn, *The New Crowdfunding Registration Exemption: Good Idea, Bad Execution*, 64 FLA. L. REV. 1433 (2012). Available at: <http://scholarship.law.ufl.edu/flr/vol64/iss5/9>

<sup>48</sup> Thomas Lee Hazen, *Crowdfunding or Fraudfunding? Social Networks and the Securities Laws – Why the Specially Tailored Exemption Must Be Conditioned on Meaningful Disclosure*, 90 N.C.L. REV. 1735 (2012). Available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1954040](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1954040)

unregistered transactions.<sup>49</sup> The North American Securities Administrators Association (NASAA) recently suggested minimum safeguards, such as password access upon residency verification, or other attestations or certifications of investor residency prior to sale.<sup>50</sup>

On April 10, 2014, the SEC issued interpretive guidance regarding §3(a)(11) and the Internet.<sup>51</sup> The SEC indicated that use of a third-party Internet portal to promote an offering to residents of a single state would not violate the intrastate exemption, if the portal implemented “adequate measures,” such as disclaimers, restrictive legends, and limited access to information about specific investment opportunities to persons who confirm they are residents of the relevant states by way of zip codes or address verification. Although the SEC’s interpretive ruling is not conclusive, issuers generally would not be able to use popular social media platforms (such as Facebook, Twitter, or LinkedIn) to promote an intrastate crowdfunding offering, because these sites can be indiscriminately accessed by non-Florida residents. In addition, the issuer would likely need to ensure that an investor does not continue to use the portal after moving out of state.<sup>52</sup>

### Investor Protections

A primary investor protection concern regarding equity crowdfunding is that investors may not adequately appreciate the high risk of loss when investing in a startup company. According to U.S. Department of Labor statistics, almost half of all new businesses do not survive after their fifth year of operation.<sup>53</sup> Survival rates have changed little over time, even before, during, and after the recent recession.

An offering under several other securities exemptions, such as Regulation D, requires investors to be accredited in order to invest in a start-up company. On the other hand, Title III and almost all current intrastate crowdfunding exemptions allow all types of investors to participate in crowdfunding offerings, including individuals with modest incomes or net worth who may not have the financial sophistication or means to avoid or absorb a loss of investment.

Because non-accredited, intrastate equity crowdfunding is only in its infancy in several states, no data exists for average rates of return or loss. However, one study reviewed return rates in angel investments, finding a “kind of feast-or-famine universe,” where only the top 10% of angel investors garnered 75% of the total returns. Even where angel investors spread their risk through a portfolio strategy, the top 10% of angel investors still earned 50% of the total gains. However, the strategies and resources (time, due diligence, legal and accounting advice, etc.,) necessary for such investments are mostly unavailable for non-accredited investors, leaving the possibility that rates of return could be even less favorable in equity crowdfunding offerings.<sup>54</sup> Additionally, investments in these startup companies are illiquid, and investors cannot resell their investments until such investments are executed on an exchange or in a public market. It is unknown the extent to which a secondary market for intrastate crowdfunding securities will be readily available.

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<sup>49</sup> As noted above, national crowdfunding to unaccredited investors is not permitted until the SEC’s Title III rules are final.

<sup>50</sup> Letter from NASAA to the National Conference of State Legislatures (Jan. 17, 2014), on file with the Insurance & Banking Subcommittee staff. NASAA is the oldest international organization devoted to investor protection and consists of the securities regulators in the 50 states, the District of Columbia, Mexico, Puerto Rico and the U.S. Virgin Islands.

<sup>51</sup> See Questions 141.03-141.05 (issued April 10, 2014), available at <http://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm>

<sup>52</sup> Elizabeth J. Chandler, *SEC Staff Releases Compliance and Disclosure Interpretations Related to Intrastate Crowdfunding*, THE NATIONAL LAW REVIEW (Apr. 14, 2014), <http://www.natlawreview.com/article/sec-securities-and-exchange-commission-staff-releases-compliance-and-disclosure-inte>

<sup>53</sup> U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, *Business Employment Dynamics, Chart 3: Survival rates of establishments*, at: <http://www.bls.gov/bdm/entrepreneurship/entrepreneurship.htm>

<sup>54</sup> Michael B. Dorff, *The Siren Call of Equity Crowdfunding* (Sept. 13, 2013). Available at SSRN: <http://ssrn.com/abstract=2325634>

NASAA has identified internet fraud (including social media and crowdfunding) as a persistent threat facing investors in 2015.<sup>55</sup> NASAA and the OFR have issued investor alerts regarding crowdfunding and investment scams, respectively.<sup>56</sup> The SEC has also issued an investor alert regarding social media and investing.<sup>57</sup>

### **Effect of the Proposed Committee Substitute (PCS)**

The PCS amends the Act to create a new equity crowdfunding exemption from state securities registration. The PCS requires the issuer to file a notice with the OFR before conducting an offering. These proposed securities may be generally advertised to the public (such as over the Internet), and may be sold through an intermediary, who is required to register with the OFR. The PCS provides for the exempt offer and sale of up to \$1 million of unregistered securities per offering, and sets forth terms and conditions for issuers and intermediaries offering and selling such securities. The PCS matches the income and investment caps set out in Title III, so that individual investments are limited to 1) the greater of \$2,000 or 5% of the investor's annual income or net worth, if annual income or net worth is less than \$100,000; and 2) 10% of the investor's annual income or net worth (not to exceed a total investment of \$100,000), if annual income or net worth is over \$100,000.

The PCS clarifies that an offer or sale of a security under the crowdfunding exemption is exempt from the registration provisions of the Act, but like other exempt securities, crowdfunding securities remain subject to the Act's antifraud and boiler room provisions. The PCS clarifies that unlike the other exempt transactions of s. 517.061, F.S., the crowdfunding exemption is not self-executing, so that crowdfunding issuers must demonstrate compliance with the requirements of this new exemption.

The securities must meet all of the requirements of the federal intrastate exemption, §3(a)(11), and the safe harbor rule, Rule 147, described above. The PCS contains many similar or identical requirements of Title III of the JOBS Act.

#### *Issuer*<sup>58</sup>

- The PCS requires the issuer to be a for-profit business entity formed under Florida law, be registered with the Secretary of State, maintain its principal place of business in the state, and derive its revenues primarily from operations in the state.
- As with Title III of JOBS, the PCS prohibits investment companies and certain companies that are required to report to the SEC.
  - The PCS also disqualifies directors, officers, and 20% shareholders of the issuer based on s. 517.1611, F.S., or Rule 506(d) of the '33 Act.
  - The PCS also prohibits issuers with undefined business operations, that lack business plans and stated investment goals, or that have plans to engage in a merger or acquisition with an unspecified business entity.<sup>59</sup>
- The issuer must submit a \$200 filing fee and a notice-filing to OFR, containing specified information, and keep the notice-filing current with OFR. The PCS requires the notice filing to contain certain information about the issuer, such as the amount of the offering and the intermediary's website address.

<sup>55</sup> NASAA, New Products in Classic Schemes Identified as Top Investor Threats (Nov. 12, 2014), at <http://www.nasaa.org/33485/new-products-classic-schemes-identified-top-investor-threats/>.

<sup>56</sup> NASAA Investor Advisory, <http://www.nasaa.org/12842/informed-investor-advisory-crowdfunding/>; OFR, *Consumer Alert: Common Investment Scam Red Flags*, <http://flofr.com/PressReleaseDetail.aspx?id=4371>

<sup>57</sup> U.S. Securities & Exchange Commission, *Updated Investor Alert: Social Media & Investing – Avoiding Fraud*, <http://www.investor.gov/news-alerts/investor-alerts/investor-alert-social-media-investing-avoiding-fraud>

<sup>58</sup> Current law defines "issuer" as "any person who proposed to issue, has issued, or shall hereafter issue any security. Any person who acts as a promoter for and on behalf of a corporation, trust, or unincorporated association or partnership of any kind to be formed shall be deemed an issuer." Section 517.021(14), F.S.

<sup>59</sup> These development-stage companies are known as "blank check companies" and often fall within the SEC's definition of "penny stocks" or are considered "microcap stocks." See U.S. SECURITIES & EXCHANGE COMMISSION, *Blank Check Company*, at <http://www.sec.gov/answers/blankcheck.htm>

- As with Title III of JOBS, the PCS requires the issuer to execute an escrow agreement with a federally insured financial institution to deposit and hold investor funds.
  - The PCS requires that escrowed funds be released only when the target offering amount is reached, and the issuer must allow an investor to cancel an investment within 3 days of the offering's deadline.
- Like Title III of JOBS, the PCS requires issuers to provide a *disclosure statement* containing specified information to potential investors.
  - The issuer must also provide a copy of the disclosure statement to OFR at the time it files a notice with OFR.
  - The disclosure statement must include certain financial disclosures (depending on the target amount of the offering) and standard language that the investor must accept to affirm his or her knowledge and understanding of the risks involved with crowdfunding.<sup>60</sup>

### *Intermediary*

The intermediary may be either a natural person who resides in Florida or a legal entity registered with the Secretary of State to do business in Florida. The PCS creates a definition of "intermediary" to mean a natural person residing in this state, or legal entity registered with the Secretary of State to do business in this state, that facilitates the offer or sale of securities under the crowdfunding exemption.

The PCS contains several requirements that are similar or identical to requirements in Title III. The PCS:

- Prohibits intermediaries from engaging in crowdfunding transactions if certain affiliated persons are disqualified based on their regulatory and criminal backgrounds.
- Requires intermediaries to conduct a background check and regulatory enforcement history check on each officer, director, and persons holding more than 20% of the issuer's outstanding equity.
- Requires intermediaries to provide specified basic information on its website, including its business plan, a description of the escrow agreement for investor funds, and whether its financial information has been audited by an independent certified public accountant.
- Requires intermediaries to conduct certain due diligence requirements, such as:
  - Verifying that potential investors are Florida residents in order to comply with the intrastate requirement,
  - Obtaining affidavits from investors stating their investments are consistent with the Act's income requirements, and require investors to certify in writing that they acknowledge the risks of the investment,
  - Depositing and releasing investor funds in accordance with the Act's escrow requirements,
  - Providing monthly updates to investors after the offering's first full month,
  - Directing investor funds to the qualified third-party designated in the escrow agreement, and
  - Taking reasonable steps to protect investors' personal information, as required by s. 501.171, F.S.<sup>61</sup>
- Prohibits an intermediary from:
  - Offering investment advice or recommendations;
  - Soliciting purchases, sales, offers (or compensate others to solicit) to buy the securities offered on its website;
  - Holding, managing, possessing, or otherwise handling investor funds or securities; and
  - Compensating certain third parties for providing personal identifying information of potential investors.

### *Intermediary Registration*

The PCS requires intermediaries to be registered dealers or to register as an intermediary, and creates a new registration requirement for the latter within s. 517.12, F.S. The PCS requires a \$200 filing fee, a consent to process, and information determined by commission rule as part of the application.

<sup>60</sup> Similar or identical language appears in other state crowdfunding exemptions, e.g., Mich. Comp. Laws §451.2002a(1)(h).

<sup>61</sup> Section 501.171, F.S., is the Florida Information Protection Act of 2014, which requires "covered entities" to give notice of a security breach to the Department of Legal Affairs. Ch. 2014-189, Laws of Fla.

*Books and Records*

The PCS amends s. 517.121, F.S. to require intermediaries to be subject to the Act's requirements to maintain books and records and OFR examinations.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 517.021, F.S., relating to definitions.

Section 2. Amends s. 517.061, F.S., relating to exempt transactions.

Section 3. Creates s. 517.0611, F.S., relating to the Florida Intrastate Crowdfunding Act.

Section 4. Amends s. 517.12, F.S., relating to registration of dealers, associated persons, and investment advisers.

Section 5. Amends s. 517.121, F.S., relating to books and records requirements; examinations.

Section 6. Amends s. 626.9911, F.S., relating to definitions.

Section 7. Provides an effective date of October 1, 2015.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The PCS requires issuers to pay notice-filing fees (\$200) and requires intermediaries to pay registration fees (\$200). However, the anticipated number of notice-filing and registration applications is indeterminate.<sup>62</sup>

2. Expenditures:

Indeterminate. According to the OFR, additional positions are required to process notice-filings and applications, to maintain records and respond to records requests, process complaints, review records of intermediaries, and if necessary, initiate enforcement actions for non-compliance or fraud.

Additionally, the OFR noted a technology impact. The PCS will require updates to the OFR's licensing and examination software as well as IT support and increased data storage to integrate notice-filings by issuers and applications by intermediaries. The PCS authorizes the Financial Services Commission to adopt rules creating electronic forms for notice-filings and applications. The fiscal impact and timetable for implementing such changes are unknown at this time.<sup>63</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

<sup>62</sup> Office of Financial Regulation, Agency Analysis of 2015 House Bill 275, p. 4

<sup>63</sup> *Id.* at pp. 4-5.



C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. It is unknown how many issuers and intermediaries will utilize this exemption.

The PCS may provide an additional source of capital for new businesses in Florida. As discussed above, however, the rates of return or loss for crowdfunding investors are also unknown.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The OFR notes that the SEC has not yet promulgated final rules implementing interstate crowdfunding under Title III of the JOBS Act, and notes that such final rules could conflict with provisions of the PCS or rules adopted under it.<sup>64</sup>

B. RULE-MAKING AUTHORITY:

The PCS grants authority to the Financial Services Commission to adopt rules for notice-filing and application forms, procedures, the deposit of notice-filing and registration fees, certain financial reporting requirements, intermediary requirements for reducing the risk of fraud, prohibited intermediary activities, and books and records requirements for intermediaries.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>64</sup> *Id.* at p. 7.

1                                   A bill to be entitled  
 2           An act relating to the offer or sale of securities;  
 3           amending s. 517.021, F.S.; conforming a cross-  
 4           reference; defining the term "intermediary" for  
 5           purposes of the Florida Securities and Investor  
 6           Protection Act; amending s. 517.061, F.S.; exempting  
 7           offers or sales of securities by certain issuers from  
 8           registration requirements; creating s. 517.0611, F.S.;  
 9           providing a short title; exempting the intrastate  
 10          offering and sale of certain securities from certain  
 11          regulatory requirements; providing applicability;  
 12          providing registration and reporting requirements for  
 13          issuers and intermediaries offering such securities;  
 14          limiting the aggregate amount of sales of such  
 15          securities within a specified period; limiting the  
 16          aggregate amount of sales to specified investors;  
 17          requiring a qualified third party to hold certain  
 18          funds in escrow; authorizing the Financial Services  
 19          Commission to adopt rules; amending s. 517.12, F.S.;  
 20          providing registration requirements for an  
 21          intermediary; conforming a cross-reference; amending  
 22          s. 517.121, F.S.; requiring an intermediary to comply  
 23          with specified recordkeeping requirements; amending s.  
 24          626.9911, F.S.; conforming a cross-reference;  
 25          providing an effective date.

26

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

28

29 Section 1. Subsections (13) through (23) of section  
 30 517.021, Florida Statutes, are renumbered as subsections (14)  
 31 through (24), respectively, subsection (9) is amended, and a new  
 32 subsection (13) is added to that section, to read:

33 517.021 Definitions.—When used in this chapter, unless the  
 34 context otherwise indicates, the following terms have the  
 35 following respective meanings:

36 (9) "Federal covered adviser" means a person who is  
 37 registered or required to be registered under s. 203 of the  
 38 Investment Advisers Act of 1940. The term "federal covered  
 39 adviser" does not include any person who is excluded from the  
 40 definition of investment adviser under subparagraphs (14)(b)1.-  
 41 8. ~~(13)(b)1.-8.~~

42 (13) "Intermediary" means a natural person residing in the  
 43 state or a corporation, trust, partnership, association, or  
 44 other legal entity registered with the Secretary of State to do  
 45 business in the state, which facilitates the offer or sale of  
 46 securities under s. 517.0611.

47 Section 2. Section 517.061, Florida Statutes, is amended  
 48 to read:

49 517.061 Exempt transactions.—Except as otherwise provided  
 50 in s. 517.0611 for a transaction listed in subsection (21), the  
 51 exemption for each transaction listed below is self-executing  
 52 and does not require any filing with the office before ~~prior to~~

53 claiming the ~~such~~ exemption. Any person who claims entitlement  
 54 to any of the exemptions bears the burden of proving such  
 55 entitlement in any proceeding brought under this chapter. The  
 56 registration provisions of s. 517.07 do not apply to any of the  
 57 following transactions; however, such transactions are subject  
 58 to the provisions of ss. 517.301, 517.311, and 517.312:

59 (1) At any judicial, executor's, administrator's,  
 60 guardian's, or conservator's sale, or at any sale by a receiver  
 61 or trustee in insolvency or bankruptcy, or any transaction  
 62 incident to a judicially approved reorganization in which a  
 63 security is issued in exchange for one or more outstanding  
 64 securities, claims, or property interests.

65 (2) By or for the account of a pledgeholder or mortgagee  
 66 selling or offering for sale or delivery in the ordinary course  
 67 of business and not for the purposes of avoiding the provisions  
 68 of this chapter, to liquidate a bona fide debt, a security  
 69 pledged in good faith as security for such debt.

70 (3) The isolated sale or offer for sale of securities when  
 71 made by or on behalf of a vendor not the issuer or underwriter  
 72 of the securities, who, being the bona fide owner of such  
 73 securities, disposes of her or his own property for her or his  
 74 own account, and such sale is not made directly or indirectly  
 75 for the benefit of the issuer or an underwriter of such  
 76 securities or for the direct or indirect promotion of any scheme  
 77 or enterprise with the intent of violating or evading any  
 78 provision of this chapter. For purposes of this subsection,

79 isolated offers or sales include, but are not limited to, an  
 80 isolated offer or sale made by or on behalf of a vendor of  
 81 securities not the issuer or underwriter of the securities if:

82 (a) The offer or sale of securities is in a transaction  
 83 satisfying all of the requirements of subparagraphs (11)(a)1.,  
 84 2., 3., and 4. and paragraph (11)(b); or

85 (b) The offer or sale of securities is in a transaction  
 86 exempt under s. 4(1) of the Securities Act of 1933, as amended.  
 87

88 For purposes of this subsection, any person, including, without  
 89 limitation, a promoter or affiliate of an issuer, shall not be  
 90 deemed an underwriter, an issuer, or a person acting for the  
 91 direct or indirect benefit of the issuer or an underwriter with  
 92 respect to any securities of the issuer which she or he has  
 93 owned beneficially for at least 1 year.

94 (4) The distribution by a corporation, trust, or  
 95 partnership, actively engaged in the business authorized by its  
 96 charter or other organizational articles or agreement, of  
 97 securities to its stockholders or other equity security holders,  
 98 partners, or beneficiaries as a stock dividend or other  
 99 distribution out of earnings or surplus.

100 (5) The issuance of securities to such equity security  
 101 holders or other creditors of a corporation, trust, or  
 102 partnership in the process of a reorganization of such  
 103 corporation or entity, made in good faith and not for the  
 104 purpose of avoiding the provisions of this chapter, either in

105 exchange for the securities of such equity security holders or  
 106 claims of such creditors or partly for cash and partly in  
 107 exchange for the securities or claims of such equity security  
 108 holders or creditors.

109 (6) Any transaction involving the distribution of the  
 110 securities of an issuer exclusively among its own security  
 111 holders, including any person who at the time of the transaction  
 112 is a holder of any convertible security, any nontransferable  
 113 warrant, or any transferable warrant which is exercisable within  
 114 not more than 90 days of issuance, when no commission or other  
 115 remuneration is paid or given directly or indirectly in  
 116 connection with the sale or distribution of such additional  
 117 securities.

118 (7) The offer or sale of securities to a bank, trust  
 119 company, savings institution, insurance company, dealer,  
 120 investment company as defined by the Investment Company Act of  
 121 1940, pension or profit-sharing trust, or qualified  
 122 institutional buyer as defined by rule of the commission in  
 123 accordance with Securities and Exchange Commission Rule 144A (17  
 124 C.F.R. s. 230.144(A)(a)), whether any of such entities is acting  
 125 in its individual or fiduciary capacity; provided that such  
 126 offer or sale of securities is not for the direct or indirect  
 127 promotion of any scheme or enterprise with the intent of  
 128 violating or evading any provision of this chapter.

129 (8) The sale of securities from one corporation to another  
 130 corporation provided that:

131 (a) The sale price of the securities is \$50,000 or more;  
 132 and

133 (b) The buyer and seller corporations each have assets of  
 134 \$500,000 or more.

135 (9) The offer or sale of securities from one corporation  
 136 to another corporation, or to security holders thereof, pursuant  
 137 to a vote or consent of such security holders as may be provided  
 138 by the articles of incorporation and the applicable corporate  
 139 statutes in connection with mergers, share exchanges,  
 140 consolidations, or sale of corporate assets.

141 (10) The issuance of notes or bonds in connection with the  
 142 acquisition of real property or renewals thereof, if such notes  
 143 or bonds are issued to the sellers of, and are secured by all or  
 144 part of, the real property so acquired.

145 (11)(a) The offer or sale, by or on behalf of an issuer,  
 146 of its own securities, which offer or sale is part of an  
 147 offering made in accordance with all of the following  
 148 conditions:

149 1. There are no more than 35 purchasers, or the issuer  
 150 reasonably believes that there are no more than 35 purchasers,  
 151 of the securities of the issuer in this state during an offering  
 152 made in reliance upon this subsection or, if such offering  
 153 continues for a period in excess of 12 months, in any  
 154 consecutive 12-month period.

155 2. Neither the issuer nor any person acting on behalf of  
 156 the issuer offers or sells securities pursuant to this

157 subsection by means of any form of general solicitation or  
 158 general advertising in this state.

159 3. Prior to the sale, each purchaser or the purchaser's  
 160 representative, if any, is provided with, or given reasonable  
 161 access to, full and fair disclosure of all material information.

162 4. No person defined as a "dealer" in this chapter is paid  
 163 a commission or compensation for the sale of the issuer's  
 164 securities unless such person is registered as a dealer under  
 165 this chapter.

166 5. When sales are made to five or more persons in this  
 167 state, any sale in this state made pursuant to this subsection  
 168 is voidable by the purchaser in such sale either within 3 days  
 169 after the first tender of consideration is made by such  
 170 purchaser to the issuer, an agent of the issuer, or an escrow  
 171 agent or within 3 days after the availability of that privilege  
 172 is communicated to such purchaser, whichever occurs later.

173 (b) The following purchasers are excluded from the  
 174 calculation of the number of purchasers under subparagraph

175 (a)1.:

176 1. Any relative or spouse, or relative of such spouse, of  
 177 a purchaser who has the same principal residence as such  
 178 purchaser.

179 2. Any trust or estate in which a purchaser, any of the  
 180 persons related to such purchaser specified in subparagraph 1.,  
 181 and any corporation specified in subparagraph 3. collectively  
 182 have more than 50 percent of the beneficial interest (excluding



183 contingent interest).

184 3. Any corporation or other organization of which a  
 185 purchaser, any of the persons related to such purchaser  
 186 specified in subparagraph 1., and any trust or estate specified  
 187 in subparagraph 2. collectively are beneficial owners of more  
 188 than 50 percent of the equity securities or equity interest.

189 4. Any purchaser who makes a bona fide investment of  
 190 \$100,000 or more, provided such purchaser or the purchaser's  
 191 representative receives, or has access to, the information  
 192 required to be disclosed by subparagraph (a)3.

193 5. Any accredited investor, as defined by rule of the  
 194 commission in accordance with Securities and Exchange Commission  
 195 Regulation 230.501 (17 C.F.R. s. 230.501).

196 (c)1. For purposes of determining which offers and sales  
 197 of securities constitute part of the same offering under this  
 198 subsection and are therefore deemed to be integrated with one  
 199 another:

200 a. Offers or sales of securities occurring more than 6  
 201 months prior to an offer or sale of securities made pursuant to  
 202 this subsection shall not be considered part of the same  
 203 offering, provided there are no offers or sales by or for the  
 204 issuer of the same or a similar class of securities during such  
 205 6-month period.

206 b. Offers or sales of securities occurring at any time  
 207 after 6 months from an offer or sale made pursuant to this  
 208 subsection shall not be considered part of the same offering,

209 provided there are no offers or sales by or for the issuer of  
 210 the same or a similar class of securities during such 6-month  
 211 period.

212 2. Offers or sales which do not satisfy the conditions of  
 213 any of the provisions of subparagraph 1. may or may not be part  
 214 of the same offering, depending on the particular facts and  
 215 circumstances in each case. The commission may adopt a rule or  
 216 rules indicating what factors should be considered in  
 217 determining whether offers and sales not qualifying for the  
 218 provisions of subparagraph 1. are part of the same offering for  
 219 purposes of this subsection.

220 (d) Offers or sales of securities made pursuant to, and in  
 221 compliance with, any other subsection of this section or any  
 222 subsection of s. 517.051 shall not be considered part of an  
 223 offering pursuant to this subsection, regardless of when such  
 224 offers and sales are made.

225 (12) The sale of securities by a bank or trust company  
 226 organized or incorporated under the laws of the United States or  
 227 this state at a profit to such bank or trust company of not more  
 228 than 2 percent of the total sale price of such securities;  
 229 provided that there is no solicitation of this business by such  
 230 bank or trust company where such bank or trust company acts as  
 231 agent in the purchase or sale of such securities.

232 (13) An unsolicited purchase or sale of securities on  
 233 order of, and as the agent for, another by a dealer registered  
 234 pursuant to the provisions of s. 517.12; provided that this

235 exemption applies solely and exclusively to such registered  
 236 dealers and does not authorize or permit the purchase or sale of  
 237 securities on order of, and as agent for, another by any person  
 238 other than a dealer so registered; and provided, further, that  
 239 such purchase or sale is not directly or indirectly for the  
 240 benefit of the issuer or an underwriter of such securities or  
 241 for the direct or indirect promotion of any scheme or enterprise  
 242 with the intent of violation or evading any provision of this  
 243 chapter.

244 (14) The offer or sale of shares of a corporation which  
 245 represent ownership, or entitle the holders of the shares to  
 246 possession and occupancy, of specific apartment units in  
 247 property owned by such corporation and organized and operated on  
 248 a cooperative basis, solely for residential purposes.

249 (15) The offer or sale of securities under a bona fide  
 250 employer-sponsored stock option, stock purchase, pension,  
 251 profit-sharing, savings, or other benefit plan when offered only  
 252 to employees of the sponsoring organization or to employees of  
 253 its controlled subsidiaries.

254 (16) The sale by or through a registered dealer of any  
 255 securities option if at the time of the sale of the option:

256 (a) The performance of the terms of the option is  
 257 guaranteed by any dealer registered under the federal Securities  
 258 Exchange Act of 1934, as amended, which guaranty and dealer are  
 259 in compliance with such requirements or rules as may be approved  
 260 or adopted by the commission; or

261 (b) Such options transactions are cleared by the Options  
 262 Clearing Corporation or any other clearinghouse recognized by  
 263 the office; and

264 (c) The option is not sold by or for the benefit of the  
 265 issuer of the underlying security; and

266 (d) The underlying security may be purchased or sold on a  
 267 recognized securities exchange or is quoted on the National  
 268 Association of Securities Dealers Automated Quotation System;  
 269 and

270 (e) Such sale is not directly or indirectly for the  
 271 purpose of providing or furthering any scheme to violate or  
 272 evade any provisions of this chapter.

273 (17)(a) The offer or sale of securities, as agent or  
 274 principal, by a dealer registered pursuant to s. 517.12, when  
 275 such securities are offered or sold at a price reasonably  
 276 related to the current market price of such securities, provided  
 277 such securities are:

278 1. Securities of an issuer for which reports are required  
 279 to be filed by s. 13 or s. 15(d) of the Securities Exchange Act  
 280 of 1934, as amended;

281 2. Securities of a company registered under the Investment  
 282 Company Act of 1940, as amended;

283 3. Securities of an insurance company, as that term is  
 284 defined in s. 2(a)(17) of the Investment Company Act of 1940, as  
 285 amended;

286 4. Securities, other than any security that is a federal

287 covered security pursuant to s. 18(b)(1) of the Securities Act  
 288 of 1933 and is not subject to any registration or filing  
 289 requirements under this act, which appear in any list of  
 290 securities dealt in on any stock exchange registered pursuant to  
 291 the Securities Exchange Act of 1934, as amended, and which  
 292 securities have been listed or approved for listing upon notice  
 293 of issuance by such exchange, and also all securities senior to  
 294 any securities so listed or approved for listing upon notice of  
 295 issuance, or represented by subscription rights which have been  
 296 so listed or approved for listing upon notice of issuance, or  
 297 evidences of indebtedness guaranteed by companies any stock of  
 298 which is so listed or approved for listing upon notice of  
 299 issuance, such securities to be exempt only so long as such  
 300 listings or approvals remain in effect. The exemption provided  
 301 for herein does not apply when the securities are suspended from  
 302 listing approval for listing or trading.

303 (b) The exemption provided in this subsection does not  
 304 apply if the sale is made for the direct or indirect benefit of  
 305 an issuer or controlling persons of such issuer or if such  
 306 securities constitute the whole or part of an unsold allotment  
 307 to, or subscription or participation by, a dealer as an  
 308 underwriter of such securities.

309 (c) This exemption shall not be available for any  
 310 securities which have been denied registration pursuant to s.  
 311 517.111. Additionally, the office may deny this exemption with  
 312 reference to any particular security, other than a federal

313 covered security, by order published in such manner as the  
 314 office finds proper.

315 (18) The offer or sale of any security effected by or  
 316 through a person in compliance with s. 517.12(17).

317 (19) Other transactions defined by rules as transactions  
 318 exempted from the registration provisions of s. 517.07, which  
 319 rules the commission may adopt from time to time, but only after  
 320 a finding by the office that the application of the provisions  
 321 of s. 517.07 to a particular transaction is not necessary in the  
 322 public interest and for the protection of investors because of  
 323 the small dollar amount of securities involved or the limited  
 324 character of the offering. In conjunction with its adoption of  
 325 such rules, the commission may also provide in such rules that  
 326 persons selling or offering for sale the exempted securities are  
 327 exempt from the registration requirements of s. 517.12. No rule  
 328 so adopted may have the effect of narrowing or limiting any  
 329 exemption provided for by statute in the other subsections of  
 330 this section.

331 (20) Any nonissuer transaction by a registered associated  
 332 person of a registered dealer, and any resale transaction by a  
 333 sponsor of a unit investment trust registered under the  
 334 Investment Company Act of 1940, in a security of a class that  
 335 has been outstanding in the hands of the public for at least 90  
 336 days; provided, at the time of the transaction:

337 (a) The issuer of the security is actually engaged in  
 338 business and is not in the organization stage or in bankruptcy

339 or receivership and is not a blank check, blind pool, or shell  
 340 company whose primary plan of business is to engage in a merger  
 341 or combination of the business with, or an acquisition of, any  
 342 unidentified person;

343 (b) The security is sold at a price reasonably related to  
 344 the current market price of the security;

345 (c) The security does not constitute the whole or part of  
 346 an unsold allotment to, or a subscription or participation by,  
 347 the broker-dealer as an underwriter of the security;

348 (d) A nationally recognized securities manual designated  
 349 by rule of the commission or order of the office or a document  
 350 filed with the Securities and Exchange Commission that is  
 351 publicly available through the commission's electronic data  
 352 gathering and retrieval system contains:

353 1. A description of the business and operations of the  
 354 issuer;

355 2. The names of the issuer's officers and directors, if  
 356 any, or, in the case of an issuer not domiciled in the United  
 357 States, the corporate equivalents of such persons in the  
 358 issuer's country of domicile;

359 3. An audited balance sheet of the issuer as of a date  
 360 within 18 months before such transaction or, in the case of a  
 361 reorganization or merger in which parties to the reorganization  
 362 or merger had such audited balance sheet, a pro forma balance  
 363 sheet; and

364 4. An audited income statement for each of the issuer's

365 immediately preceding 2 fiscal years, or for the period of  
 366 existence of the issuer, if in existence for less than 2 years  
 367 or, in the case of a reorganization or merger in which the  
 368 parties to the reorganization or merger had such audited income  
 369 statement, a pro forma income statement; and

370 (e) The issuer of the security has a class of equity  
 371 securities listed on a national securities exchange registered  
 372 under the Securities Exchange Act of 1934 or designated for  
 373 trading on the National Association of Securities Dealers  
 374 Automated Quotation System, unless:

375 1. The issuer of the security is a unit investment trust  
 376 registered under the Investment Company Act of 1940;

377 2. The issuer of the security has been engaged in  
 378 continuous business, including predecessors, for at least 3  
 379 years; or

380 3. The issuer of the security has total assets of at least  
 381 \$2 million based on an audited balance sheet as of a date within  
 382 18 months before such transaction or, in the case of a  
 383 reorganization or merger in which parties to the reorganization  
 384 or merger had such audited balance sheet, a pro forma balance  
 385 sheet.

386 (21) The offer or sale of a security by an issuer  
 387 conducted in accordance with s. 517.0611.

388 Section 3. Section 517.0611, Florida Statutes, is created  
 389 to read:

390 517.0611 Intrastate crowdfunding.—



391 (1) This section may be cited as the "Florida Intrastate  
 392 Crowdfunding Act of 2015."

393 (2) Notwithstanding any other provision of this chapter,  
 394 an offer or sale of a security by an issuer is an exempt  
 395 transaction under s. 517.061 if the offer or sale is conducted  
 396 in accordance with this section. The exemption provided in this  
 397 section may not be used in conjunction with any other exemption  
 398 from registration requirements under this chapter.

399 (3) The offer or sale of securities under this section  
 400 must be conducted in accordance with the requirements of the  
 401 federal exemption for intrastate offerings in s. 3(a)(11) of the  
 402 Securities Act of 1933, 15 U.S.C. s. 77c(a)(11), and United  
 403 States Securities and Exchange Commission Rule 147, 17 C.F.R. s.  
 404 230.147, adopted pursuant to the Securities Act of 1933.

405 (4) An issuer must:

406 (a) Be a for-profit business entity formed under the laws  
 407 of the state, be registered with the Secretary of State,  
 408 maintain its principal place of business in the state, and  
 409 derive its revenues primarily from operations in the state.

410 (b) Conduct transactions for the offering through a  
 411 registered dealer or an intermediary registered under s.  
 412 517.12(20).

413 (c) Not be, either before or as a result of the offering,  
 414 an investment company as defined in s. 3 of the Investment  
 415 Company Act of 1940, 15 U.S.C. s. 80a-3, subject to the  
 416 reporting requirements of s. 13 or s. 15(d) of the Securities

417 Exchange Act of 1934, 15 U.S.C. s. 78m or s. 78o(d), or be a  
 418 company with an undefined business operation, lacks a business  
 419 plan, lacks a stated investment goal for the funds being raised,  
 420 or that plans to engage in a merger or acquisition with an  
 421 unspecified business entity.

422 (d) Not be subject to a disqualification established by  
 423 the commission or office or a disqualification described in s.  
 424 517.1611 or United States Securities and Exchange Commission  
 425 Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the  
 426 Securities Act of 1933. Each director, officer, person occupying  
 427 a similar status or performing a similar function, or person  
 428 holding more than 20 percent of the shares of the issuer, is  
 429 subject to this requirement.

430 (e) File a notice of the offering with the office, in  
 431 writing or electronic form, in a format prescribed by commission  
 432 rule, together with a nonrefundable filing fee of \$200. The  
 433 commission may adopt rules establishing procedures for the  
 434 deposit of fees and the filing of documents by electronic means  
 435 if the procedures provide the office with the information and  
 436 data required by this section. The office may revoke the filing  
 437 of a notice under this paragraph if payment for the filing fee  
 438 is by check or electronic transmission of funds that is  
 439 dishonored by the financial institution upon which the funds are  
 440 drawn. A notice is effective upon receipt by the office of the  
 441 form and filing fee, and the notice may be terminated by filing  
 442 with the office a notice of such termination. The notice and

443 offering expire 12 months after filing the notice with the  
 444 office. The notice must:

445 1. Be filed with the office at least 10 days before the  
 446 issuer commences an offering of securities or the offering is  
 447 displayed on a website of an intermediary, in reliance upon the  
 448 exemption provided by this section.

449 2. Indicate that the issuer is conducting an offering in  
 450 reliance upon the exemption provided by this section.

451 3. Contain the names and addresses of the issuer, all  
 452 persons who will be involved in the offer or sale of securities  
 453 on behalf of the issuer, and the federally insured financial  
 454 institution authorized to do business in the state, in which  
 455 investor funds will be deposited.

456 4. Include documentation verifying that the issuer is  
 457 organized under the laws of the state and authorized to do  
 458 business in the state.

459 5. Include the intermediary's website address.

460 6. Include the target offering amount.

461 7. Include an attestation that each control person of the  
 462 issuer is not subject to disqualification under paragraph (c).

463  
 464 A notice filed by an issuer under this section shall be  
 465 summarily suspended by the office if the issuer fails to provide  
 466 to the office, within 30 days after a written request from the  
 467 office, information required by this section or rules adopted  
 468 under this section. The summary suspension shall remain in

469 effect until the issuer submits the requested information to the  
 470 office, pays a fine as prescribed by s. 517.221(3), and a final  
 471 order is entered. For purposes of s. 120.60(6), failure to  
 472 provide such information constitutes an immediate and serious  
 473 danger to the public health, safety, and welfare. If the issuer  
 474 fails to provide the requested information after 90 days, the  
 475 office shall revoke the filing of the notice.

476 (f) Amend the notice form within 30 days after any  
 477 information contained in the notice becomes inaccurate for any  
 478 reason. The commission may require, by rule, an issuer who has  
 479 filed a notice under this section to file amendments with the  
 480 office.

481 (g) Execute an escrow agreement with a federally insured  
 482 financial institution authorized to do business in the state for  
 483 the deposit of investor funds, and ensure that all offering  
 484 proceeds are provided to the issuer only when the aggregate  
 485 capital raised from all investors is equal to or greater than  
 486 the target offering amount.

487 (h) Allow an investor to cancel a commitment to invest  
 488 within 3 business days before the offering deadline.

489 (i) Provide a disclosure statement to potential investors,  
 490 with a copy to the office at the time of filing the notice,  
 491 containing material information about the issuer and the  
 492 offering, including:

493 1. The name, legal status, physical address, and website  
 494 address of the issuer.

495        2. The names of the directors, officers, and any person  
 496 occupying a similar status or performing a similar function, and  
 497 each person holding more than 20 percent of the shares of the  
 498 issuer.

499        3. A description of the business of the issuer and the  
 500 anticipated business plan of the issuer.

501        4. A description of the stated purpose and intended use of  
 502 the proceeds of the offering.

503        5. The target offering amount, the deadline to reach the  
 504 target offering amount, and regular updates regarding the  
 505 progress of the issuer in meeting the target offering amount.

506        6. The price to the public of the securities or the method  
 507 for determining the price.

508        7. A description of the ownership and capital structure of  
 509 the issuer, including terms of the securities and how the terms  
 510 may be modified.

511        8. A description of the financial condition of the issuer.

512        a. For offerings that, in combination with all other  
 513 offerings of the issuer within the preceding 12-month period,  
 514 have target offering amounts of \$100,000 or less, the  
 515 description must include the most recent income tax return filed  
 516 by the issuer, if any, and a financial statement that must be  
 517 certified by the principal executive officer of the issuer as  
 518 true and complete in all material respects.

519        b. For offerings that, in combination with all other  
 520 offerings of the issuer within the preceding 12-month period,

521 have target offering amounts of more than \$100,000, but not more  
 522 than \$500,000, the description must include financial statements  
 523 prepared in accordance with generally accepted accounting  
 524 principles and reviewed by a certified public accountant, as  
 525 defined in s. 473.302, who is independent of the issuer.

526 c. For offerings that, in combination with all other  
 527 offerings of the issuer within the preceding 12-month period,  
 528 have target offering amounts of more than \$500,000, the  
 529 description must include audited financial statements prepared  
 530 in accordance with generally accepted accounting principles by a  
 531 certified public accountant, as defined in s. 473.302, who is  
 532 independent of the issuer, and other requirements as the  
 533 commission may establish by rule.

534 9. The following statement in boldface, conspicuous type on  
 535 the front page of the disclosure statement:

536  
 537 These securities are offered and will be sold in  
 538 reliance upon an exemption from the registration  
 539 requirements of federal and Florida securities laws.  
 540 Consequently, neither the Federal Government nor the  
 541 state of Florida have reviewed the accuracy or  
 542 completeness of any offering materials. In making an  
 543 investment decision, investors must rely on their own  
 544 examination of the issuer and the terms of the  
 545 offering, including the merits and risks involved.  
 546 These securities are subject to restrictions on

547 transferability and resale and may not be transferred  
 548 or resold except as specifically authorized by  
 549 applicable federal and state securities laws.  
 550 Investing in these securities involves a speculative  
 551 risk, and investors should be able to bear the loss of  
 552 their entire investment.

553  
 554 (j) File with the office and provide to investors through  
 555 the intermediary annual reports of the results of operations and  
 556 financial statements of the issuer, subject to additional  
 557 requirements as the commission may establish by rule.

558 (5) An intermediary must:

559 (a)1. Be registered as a dealer in accordance with s.  
 560 517.12(6); or

561 2. Submit a nonrefundable filing fee of \$200 and submit an  
 562 application for registration as an intermediary in accordance  
 563 with s. 517.12(20), in a format prescribed by commission rule,  
 564 specifying that the intermediary will conduct business as an  
 565 intermediary in furtherance of an offering in reliance upon the  
 566 exemption provided in this section.

567 (b) Not be subject to a disqualification established by  
 568 the commission or office or a disqualification described in s.  
 569 517.1611 or United States Securities and Exchange Commission  
 570 Rule 506(d), 17 C.F.R. 230.506(d), adopted pursuant to the  
 571 Securities Act of 1933. Each director, officer, control person  
 572 of the issuer, any person occupying a similar status or

573 performing a similar function, and each person holding more than  
 574 20 percent of the shares of the intermediary is subject to this  
 575 requirement.

576 (c) Take measures, as established by commission rule, to  
 577 reduce the risk of fraud. Such measures shall include obtaining  
 578 a background check and securities enforcement regulatory history  
 579 check on each officer, director, and person holding more than 20  
 580 percent of the outstanding equity of every issuer whose  
 581 securities are offered by such person.

582 (d) Provide basic information on its website regarding the  
 583 high risk of investment in and limitation on the resale of  
 584 exempt securities and the potential for loss of an entire  
 585 investment. The basic information shall include:

586 1. A description of the escrow agreement that the issuer  
 587 has executed and the conditions for release of such funds to the  
 588 issuer in accordance with the agreement and paragraph (4)(g).

589 2. A description of whether financial information provided  
 590 by the issuer has been audited by an independent certified  
 591 public accountant, as defined in s. 473.302.

592 (e) Obtain a zip code or residence address from each  
 593 potential investor who seeks to view information regarding  
 594 specific investment opportunities, in order to confirm that the  
 595 potential investor is a resident of the state.

596 (f) Obtain and verify, pursuant to commission rule, a  
 597 valid Florida driver license number or official Florida personal  
 598 identification card number from each investor, before purchase



599 of a security, to confirm that the investor is a resident of the  
 600 state.

601 (g) Obtain an affidavit from each investor stating that  
 602 the investment being made by the investor is consistent with the  
 603 income requirements of subsection (8).

604 (h) Deposit and release investor funds in escrow in  
 605 accordance with paragraph (4)(g).

606 (i) Provide a monthly update for each offering, after the  
 607 first full month following the date of the offering. The update  
 608 must be accessible on the intermediary's website and must  
 609 display the date and amount of each of sale of securities in the  
 610 previous calendar month.

611 (j) Require each investor to certify in writing, and to  
 612 include as part of such certification his or her signature, and  
 613 his or her initials next to each paragraph of the certification,  
 614 as follows:

615  
 616 I understand and acknowledge that:

617  
 618 I am investing in a high-risk, speculative business  
 619 venture. I may lose all of my investment, and I can  
 620 afford the loss of my investment.

621  
 622 This offering has not been reviewed or approved by any  
 623 state or federal securities commission or other  
 624 regulatory authority and no regulatory authority has

625 confirmed the accuracy or determined the adequacy of  
 626 any disclosure made to me relating to this offering.

627  
 628 The securities I am acquiring in this offering are  
 629 illiquid and are subject to possible dilution. There  
 630 is no ready market for the sale of the securities. It  
 631 may be difficult or impossible for me to sell or  
 632 otherwise dispose of the securities, and I may be  
 633 required to hold the securities indefinitely.

634  
 635 I may be subject to tax on my share of the taxable  
 636 income and losses of the issuer, whether or not I have  
 637 sold or otherwise disposed of my investment or  
 638 received any dividends or other distributions from the  
 639 issuer.

640  
 641 By entering into this transaction with the issuer, I  
 642 am affirmatively representing myself as being a  
 643 Florida resident at the time this contract is formed,  
 644 and if this representation is subsequently shown to be  
 645 false, the contract is void.

646  
 647 If I resell any of the securities I am acquiring in  
 648 this offering to a person that is not a Florida  
 649 resident within 9 months after the closing of the  
 650 offering, my contract with the issuer for the purchase

651 of these securities is void.

652

653 (k) Require each investor to answer questions  
 654 demonstrating an understanding of the level of risk generally  
 655 applicable to investments in startups, emerging businesses, and  
 656 small issuers, and an understanding of the risk of illiquidity.

657 (l) Take reasonable steps to protect personal information  
 658 collected from investors, as required by s. 501.171.

659 (m) Prohibit its directors and officers from having any  
 660 financial interest in the issuer using its services.

661 (6) An intermediary may not:

662 (a) Offer investment advice or recommendations. A refusal  
 663 by an intermediary to post an offering that it deems to not be  
 664 credible or representing a potential for fraud shall not be  
 665 construed as an offer of investment advice or recommendation.

666 (b) Solicit purchases, sales, or offers to buy securities  
 667 offered or displayed on its website.

668 (c) Compensate employees, agents, or other persons for the  
 669 solicitation of purchases, sales, or offers to buy the  
 670 securities offered or displayed on its website.

671 (d) Hold, manage, possess, or otherwise handle investor  
 672 funds or securities.

673 (e) Compensate promoters, finders, or lead generators for  
 674 providing the intermediary with the personal identifying  
 675 information of any potential investor.

676 (f) Engage in any other activities set forth by commission

677 rule.

678 (7) The sum of all cash and other consideration received  
 679 for sales of a security under this section may not exceed \$1  
 680 million, less the aggregate amount received for all sales of  
 681 securities by the issuer within the 12 months preceding the  
 682 first offer or sale made in reliance upon this exemption.

683 (8) Unless the investor is an accredited investor as  
 684 defined by Rule 501 of Regulation D, adopted pursuant to the  
 685 Securities Act of 1933, the aggregate amount sold by an issuer  
 686 to an investor in transactions exempt from registration  
 687 requirements under this subsection during the 12-month period  
 688 preceding the date of such transaction may not exceed:

689 (a) The greater of \$2,000 or 5 percent of the annual  
 690 income or net worth of such investor, if the annual income and  
 691 the net worth of the investor is less than \$100,000.

692 (b) Ten percent of the annual income or net worth of such  
 693 investor, not to exceed a maximum aggregate amount sold of  
 694 \$100,000, if either the annual income or net worth of the  
 695 investor exceeds \$100,000.

696 (9) All funds received from investors must be directed to  
 697 the qualified third party designated to hold the funds and must  
 698 be used in accordance with representations made to investors by  
 699 the intermediary. If an investor cancels a commitment to invest,  
 700 the intermediary must direct the third party designated to hold  
 701 the funds to promptly refund the funds of the investor.

702

703 (11) The commission may adopt rules to administer this  
 704 section and to protect investors who purchase securities under  
 705 this section

706 Section 4. Subsection (20) of section 517.12, Florida  
 707 Statutes, is renumbered as subsection (21) and amended, and a  
 708 new subsection (20) is added to that section, to read:

709 517.12 Registration of dealers, associated persons,  
 710 intermediaries, and investment advisers.—

711 (20) An intermediary that has filed a registration  
 712 application in accordance with this subsection may facilitate  
 713 the offer or sale of securities in accordance with s. 517.0611.

714 (a) A registration application must consist of any  
 715 information required by commission rule, together with a consent  
 716 to service of process and a nonrefundable filing fee of \$200.  
 717 The commission may adopt rules establishing procedures for the  
 718 deposit of fees and the filing of documents by electronic means  
 719 if the procedures provide the office with the information and  
 720 data required by this section.

721 (b) The office may issue a permit as evidence of the  
 722 effectiveness of an intermediary's registration.

723 (21)-(20) The registration requirements of this section do  
 724 not apply to any general lines insurance agent or life insurance  
 725 agent licensed under chapter 626, for the sale of a security as  
 726 defined in s. 517.021(22)(g) ~~517.021(21)(g)~~, if the individual  
 727 is directly authorized by the issuer to offer or sell the  
 728 security on behalf of the issuer and the issuer is a federally

729 chartered savings bank subject to regulation by the Federal  
 730 Deposit Insurance Corporation. Actions under this subsection  
 731 shall constitute activity under the insurance agent's license  
 732 for purposes of ss. 626.611 and 626.621.

733 Section 5. Subsections (1) and (2) of section 517.121,  
 734 Florida Statutes, are amended to read:

735 517.121 Books and records requirements; examinations.—

736 (1) A dealer, investment adviser, branch office, ~~or~~  
 737 associated person, or intermediary shall maintain such books and  
 738 records as the commission may prescribe by rule.

739 (2) The office shall, at intermittent periods, examine the  
 740 affairs and books and records of each registered dealer,  
 741 investment adviser, associated person, intermediary, or branch  
 742 office notice-filed with the office, or require such records and  
 743 reports to be submitted to it as required by rule of the  
 744 commission, to determine compliance with this act.

745 Section 6. Paragraph (b) of subsection (4) of section  
 746 626.9911, Florida Statutes, is amended to read:

747 626.9911 Definitions.—As used in this act, the term:

748 (4) "Life expectancy provider" means a person who  
 749 determines, or holds himself or herself out as determining, life  
 750 expectancies or mortality ratings used to determine life  
 751 expectancies:

752 (b) In connection with a viatical settlement investment,  
 753 pursuant to s. 517.021(24) ~~517.021(23)~~; or

754 Section 7. This act shall take effect October 1, 2015.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 715 Citizens Property Insurance Corporation  
**SPONSOR(S):** Raschein  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 842

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Peterson <i>RP</i>	Cooper <i>RC</i>
2) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company. Current law provides an eligibility restriction for insurance in Citizens based on the location of the property. The current restriction based on property location prevents a major structure that is newly-constructed or substantially-improved pursuant to a building permit applied for on or after July 1, 2015, from obtaining insurance in Citizens if the structure is located seaward of the coastal construction control line or within the Coastal Barrier Resources System.

The bill removes the prohibition on coverage for any major structure that is substantially improved pursuant to a building permit applied for on or after July 1, 2015, but retains the prohibition on new construction of a major structure. A major structure built before July 1, 2015 and subsequently rebuilt, repaired, restored, or remodeled to a size less than 125 percent of its original square footage is not subject to the prohibition.

The bill has no fiscal impact on state or local governments. Owners of major structures in certain coastal areas will be able to repair, remodel, or rebuild their properties and remain eligible for insurance through Citizens provided the square footage of the structure is not increased by 25% or more.

The bill is effective July 1, 2015.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Citizens Property Insurance Corporation**

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

As of January 22, 2015, Citizens is the largest property insurer in Florida with over 660,000 policies extending approximately \$202 billion of property coverage to Floridians.<sup>1</sup> Citizens insures over 282,000 residential and commercial policies in Florida's coastal areas and over 370,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

Citizens was created statutorily in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association (FWUA). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida, while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

Citizens writes property insurance in three separate accounts:<sup>2</sup>

- Personal Lines Account – personal residential<sup>3</sup> multiperil<sup>4</sup> policies
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Commercial Lines Account – commercial residential<sup>5</sup> and commercial non-residential policies
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area
- Coastal Account – personal residential, commercial residential, and commercial non-residential wind-only<sup>6</sup> and multiperil policies<sup>7</sup> for properties in limited eligible coastal areas.<sup>8</sup>

##### **Eligibility for Insurance in Citizens**

Current law requires provides specific eligibility requirements for property to be insured by Citizens which are based on premium amount,<sup>9</sup> value of the property insured,<sup>10</sup> and the location of the property.<sup>11</sup> Property not meeting the statutory eligibility requirements cannot be insured by Citizens.

The current restriction based on property location prevents a major structure that is newly-constructed or substantially-improved pursuant to a building permit applied for on or after July 1, 2015, from obtaining insurance in Citizens if the structure is located seaward of the coastal construction control

<sup>1</sup> <https://www.citizensfla.com/about/bookofbusiness/> (last viewed March 11, 2014).

<sup>2</sup> s. 627.351(6)(b)2., F.S.

<sup>3</sup> Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

<sup>4</sup> A multiperil policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. Multiperil property insurance policies may include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

<sup>5</sup> Commercial residential policies include condominium association, apartment building, homeowner's association policies

<sup>6</sup> A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

<sup>7</sup> Effective July 1, 2014, Citizens may no longer offer new commercial residential policies providing multiperil coverage, but may continue to renew existing policies. (s. 627.351(6)(b)2.a.(III), F.S.)

<sup>8</sup> These include areas eligible for coverage by the FWUA as those areas were defined on January 1, 2002. (s. 627.351(6)(a)2., F.S.)

<sup>9</sup> s. 627.351(6)(c)5.a. and b., F.S.

<sup>10</sup> s. 627.351(6)(a)3., F.S.

<sup>11</sup> s. 627.351(6)(a)5.b., F.S.

line<sup>12</sup> or within the Coastal Barrier Resources System (CBRS).<sup>13</sup> The definition of “major structure”<sup>14</sup> is very broad, encompassing all residential and commercial buildings. The definition of “substantial improvement”<sup>15</sup> generally encompasses any repair, reconstruction, rehabilitation, or improvement to a structure that costs 50% or more of the market value of the structure.

#### *Statewide Impact of Citizens’ Eligibility Based on Location of Property*

Using county property appraiser data collected by the Department of Revenue, Citizens identified approximately 89,000 statewide parcels of improved residential land and 23,000 statewide parcels of vacant land within the CBRS or seaward of the coastal construction control line. Citizens does not insure any of the 23,000 vacant parcels because property insurance cannot be purchased to insure vacant land. It only insures structures and contents in structures located on land. Citizens currently insures 19,000 - 55,000 of the 89,000 residential parcels. Thus, any substantial improvement to property located on one of the 89,000 parcels where a building permit is applied for on or after July 1, 2015 would render the property ineligible for new or renewed coverage by Citizens. The homeowner would have to find insurance in the private voluntary or surplus lines market.<sup>16</sup>

In addition, Citizens currently writes a minimum of over 4,000 and a maximum of almost 13,000 policies insuring commercial buildings and condominium associations in the affected coastal areas. Thus, any substantial improvement to the property insured by these 4,000 - 13,000 policies where a building permit is applied for on or after July 1, 2015 would render the property ineligible for coverage by Citizens and these business owners and condominium associations currently insured by Citizens would have to find insurance in the private voluntary or surplus lines market.

#### *Effect of Proposed Changes Related to Citizens’ Eligibility Based on Location of Property*

The bill revises eligibility for insurance with Citizens based on location of the property. It removes the prohibition on coverage for any major structure that is substantially improved pursuant to a building permit applied for on or after July 1, 2015, but retains the prohibition on new construction of a major structure. As written, the bill provides that a major structure built before July 1, 2015 and subsequently rebuilt, repaired, restored, or remodeled to a size less than 125 percent of its original square footage is not subject to the sub-subparagraph that creates the prohibition. While it appears the intent may be to ensure that structures that are rebuilt to a size larger than 125% of their original square footage are

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<sup>12</sup> A coastal construction control line (CCCL) is an upland jurisdictional line defining the portion of the beach and dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes. The CCCL permitting program regulates construction activities on Florida’s beach-dune system. Its purpose is to preserve and protect beaches from imprudent construction that can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access. The CCCL is not a setback line or line of prohibition for construction. Rather, new construction, as well as additions, remodeling, and repairs to existing structures are allowed seaward of the control line; however, such structures and activities, unless exempt by rule or law, require a CCCL permit from the Florida Department of Environmental Protection (DEP). (see ch. 62B-33-005(1), F.A.C.; s. 161.053(1)(a), F.S., and part III of chapter 161, F. S. An interactive map is available at <http://w/ww.dep.state.fl.us/beaches/> (last visited March 4, 2015).

<sup>13</sup> The Coastal Barrier Resources Act (CBRA or Act) was passed in 1982 and reauthorized in 1990, 2000 and 2005. Under CBRA, some undeveloped land located on coastal barriers is designated by the Secretary of the Interior as CBRA units in the Coastal Barrier Resource System. The Act does not prohibit or regulate development of land in the CBRS, it simply precludes land owners from obtaining federal financial assistance for development of coastal barrier land. The Act encourages the conservation of hurricane prone, biologically rich coastal barriers by restricting federal expenditures that encourage development, such as federal flood insurance, road building, disaster relief, and wastewater systems. Areas within the CBRS can be developed if the private developer or other non-federal party bears the full cost of development. The U.S. Fish and Wildlife Service is the federal agency responsible for implementing CBRA. Florida has 128 units in the CBRS totaling 680,915 acres, and 414 shoreline miles. The CBRS boundaries are depicted on U.S. Geological Survey topographic quadrangle maps. With three exceptions, only Congress has the authority to change CBRA boundaries to include or exclude specific property. The exceptions allow the Secretary of the Interior to change the boundaries for (1) voluntary additions to the CBRS by property owners, (2) additions of excess federal property to the CBRS, and (3) the required CBRA 5-year review that solely considers changes to the CBRS by natural forces such as erosion or accretion. (see generally U.S.FISH AND WILDLIFE SERVICE, *Coastal Barrier Resources Act*, <http://www.fws.gov/CBRA/index.html> (last visited March 5, 2015).

<sup>14</sup> A “major structure” means houses, mobile homes, apartment buildings, condominiums, motels, hotels, restaurants, and other types of construction having the potential for substantial impact on coastal zones. (s. 161.54(6), F.S.)

<sup>15</sup> A “substantial improvement” means any repair, reconstruction, rehabilitation, or improvement of a structure when the cost of the improvement or repair to pre-damage condition is 50 percent or more of the market value before construction begins or the damage occurred, as applicable. (see s. 161.54(12), F.S.)

<sup>16</sup> Numbers reflect policies as of September 30, 2014. Original data on file with the House Insurance & Banking Subcommittee.

ineligible for coverage in Citizens, the language, as written, would appear not to accomplish this. By deleting the reference to substantial improvement, the bill limits the effect of the sub-subparagraph to newly constructed major structures, only. Thus, there would be no effect to making that prohibition inapplicable to existing structures.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 2: Provides an effective date of July 1, 2015.

**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:**

Owners of structures in certain coastal areas will be able to improve or repair or rebuild their properties and remain eligible for insurance through Citizens provided the original square footage of the structure is not increased by 25% or more.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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 provided by the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

As written, lines 153 – 156 have a technical problem. They exempt certain improvements to existing major structures from a prohibition on eligibility for coverage related to location of the property. However, lines 147 – 148 of the bill make that prohibition applicable only to new construction. Thus, lines 153 – 156 appear to exempt the improvements from a prohibition that is not applicable to them in the first place. The language also does not indicate what constitutes “original” square footage, for example whether it is measured at the time the structure was first built or when the law takes effect. The sponsor has indicated she will be filing an amendment to address these technical issues.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

A bill to be entitled

An act relating to the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; deleting a provision prohibiting certain improvements to major structures from being eligible for coverage by Citizens Property Insurance Corporation; authorizing coverage for major structures built before a certain date and subsequently rebuilt to a specified percentage less than the major structure's original square footage; reenacting s. 627.712(1), F.S., relating to residential windstorm coverage, to incorporate the amendment made by this act to s. 627.351, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (a) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.

1. The Legislature finds that private insurers are unwilling or unable to provide affordable property insurance

27 coverage in this state to the extent sought and needed. The  
28 absence of affordable property insurance threatens the public  
29 health, safety, and welfare and likewise threatens the economic  
30 health of the state. The state therefore has a compelling public  
31 interest and a public purpose to assist in assuring that  
32 property in the state is insured and that it is insured at  
33 affordable rates so as to facilitate the remediation,  
34 reconstruction, and replacement of damaged or destroyed property  
35 in order to reduce or avoid the negative effects otherwise  
36 resulting to the public health, safety, and welfare, to the  
37 economy of the state, and to the revenues of the state and local  
38 governments which are needed to provide for the public welfare.  
39 It is necessary, therefore, to provide affordable property  
40 insurance to applicants who are in good faith entitled to  
41 procure insurance through the voluntary market but are unable to  
42 do so. The Legislature intends, therefore, that affordable  
43 property insurance be provided and that it continue to be  
44 provided, as long as necessary, through Citizens Property  
45 Insurance Corporation, a government entity that is an integral  
46 part of the state, and that is not a private insurance company.  
47 To that end, the corporation shall strive to increase the  
48 availability of affordable property insurance in this state,  
49 while achieving efficiencies and economies, and while providing  
50 service to policyholders, applicants, and agents which is no  
51 less than the quality generally provided in the voluntary  
52 market, for the achievement of the foregoing public purposes.

53 | Because it is essential for this government entity to have the  
 54 | maximum financial resources to pay claims following a  
 55 | catastrophic hurricane, it is the intent of the Legislature that  
 56 | the corporation continue to be an integral part of the state and  
 57 | that the income of the corporation be exempt from federal income  
 58 | taxation and that interest on the debt obligations issued by the  
 59 | corporation be exempt from federal income taxation.

60 |         2. The Residential Property and Casualty Joint  
 61 | Underwriting Association originally created by this statute  
 62 | shall be known as the Citizens Property Insurance Corporation.  
 63 | The corporation shall provide insurance for residential and  
 64 | commercial property, for applicants who are entitled, but, in  
 65 | good faith, are unable to procure insurance through the  
 66 | voluntary market. The corporation shall operate pursuant to a  
 67 | plan of operation approved by order of the Financial Services  
 68 | Commission. The plan is subject to continuous review by the  
 69 | commission. The commission may, by order, withdraw approval of  
 70 | all or part of a plan if the commission determines that  
 71 | conditions have changed since approval was granted and that the  
 72 | purposes of the plan require changes in the plan. For the  
 73 | purposes of this subsection, residential coverage includes both  
 74 | personal lines residential coverage, which consists of the type  
 75 | of coverage provided by homeowner, mobile home owner, dwelling,  
 76 | tenant, condominium unit owner, and similar policies; and  
 77 | commercial lines residential coverage, which consists of the  
 78 | type of coverage provided by condominium association, apartment

79 building, and similar policies.

80 3. With respect to coverage for personal lines residential  
81 structures:

82 a. Effective January 1, 2014, a structure that has a  
83 dwelling replacement cost of \$1 million or more, or a single  
84 condominium unit that has a combined dwelling and contents  
85 replacement cost of \$1 million or more is not eligible for  
86 coverage by the corporation. Such dwellings insured by the  
87 corporation on December 31, 2013, may continue to be covered by  
88 the corporation until the end of the policy term. The office  
89 shall approve the method used by the corporation for valuing the  
90 dwelling replacement cost for the purposes of this subparagraph.  
91 If a policyholder is insured by the corporation before being  
92 determined to be ineligible pursuant to this subparagraph and  
93 such policyholder files a lawsuit challenging the determination,  
94 the policyholder may remain insured by the corporation until the  
95 conclusion of the litigation.

96 b. Effective January 1, 2015, a structure that has a  
97 dwelling replacement cost of \$900,000 or more, or a single  
98 condominium unit that has a combined dwelling and contents  
99 replacement cost of \$900,000 or more, is not eligible for  
100 coverage by the corporation. Such dwellings insured by the  
101 corporation on December 31, 2014, may continue to be covered by  
102 the corporation only until the end of the policy term.

103 c. Effective January 1, 2016, a structure that has a  
104 dwelling replacement cost of \$800,000 or more, or a single



105 condominium unit that has a combined dwelling and contents  
 106 replacement cost of \$800,000 or more, is not eligible for  
 107 coverage by the corporation. Such dwellings insured by the  
 108 corporation on December 31, 2015, may continue to be covered by  
 109 the corporation until the end of the policy term.

110 d. Effective January 1, 2017, a structure that has a  
 111 dwelling replacement cost of \$700,000 or more, or a single  
 112 condominium unit that has a combined dwelling and contents  
 113 replacement cost of \$700,000 or more, is not eligible for  
 114 coverage by the corporation. Such dwellings insured by the  
 115 corporation on December 31, 2016, may continue to be covered by  
 116 the corporation until the end of the policy term.

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118 The requirements of sub-subparagraphs b.-d. do not apply in  
 119 counties where the office determines there is not a reasonable  
 120 degree of competition. In such counties a personal lines  
 121 residential structure that has a dwelling replacement cost of  
 122 less than \$1 million, or a single condominium unit that has a  
 123 combined dwelling and contents replacement cost of less than \$1  
 124 million, is eligible for coverage by the corporation.

125 4. It is the intent of the Legislature that policyholders,  
 126 applicants, and agents of the corporation receive service and  
 127 treatment of the highest possible level but never less than that  
 128 generally provided in the voluntary market. It is also intended  
 129 that the corporation be held to service standards no less than  
 130 those applied to insurers in the voluntary market by the office

131 with respect to responsiveness, timeliness, customer courtesy,  
 132 and overall dealings with policyholders, applicants, or agents  
 133 of the corporation.

134 5.a. Effective January 1, 2009, a personal lines  
 135 residential structure that is located in the "wind-borne debris  
 136 region," as defined in s. 1609.2, International Building Code  
 137 (2006), and that has an insured value on the structure of  
 138 \$750,000 or more is not eligible for coverage by the corporation  
 139 unless the structure has opening protections as required under  
 140 the Florida Building Code for a newly constructed residential  
 141 structure in that area. A residential structure is deemed to  
 142 comply with this sub-subparagraph if it has shutters or opening  
 143 protections on all openings and if such opening protections  
 144 complied with the Florida Building Code at the time they were  
 145 installed.

146 b. Any major structure as defined in s. 161.54(6)(a) for  
 147 which a permit is applied on or after July 1, 2015, for new  
 148 construction ~~or substantial improvement as defined in s.~~  
 149 ~~161.54(12)~~ is not eligible for coverage by the corporation if  
 150 the structure is seaward of the coastal construction control  
 151 line established pursuant to s. 161.053 or is within the Coastal  
 152 Barrier Resources System as designated by 16 U.S.C. ss. 3501-  
 153 3510. This sub-subparagraph does not apply to a major structure  
 154 built before July 1, 2015, and subsequently rebuilt, repaired,  
 155 restored, or remodeled to a size less than 125 percent of the  
 156 major structure's original square footage.

157           6. With respect to wind-only coverage for commercial lines  
 158 residential condominiums, effective July 1, 2014, a condominium  
 159 shall be deemed ineligible for coverage if 50 percent or more of  
 160 the units are rented more than eight times in a calendar year  
 161 for a rental agreement period of less than 30 days.

162           Section 2. For the purpose of incorporating the amendment  
 163 made by this act to section 627.351, Florida Statutes, in a  
 164 reference thereto, subsection (1) of s. 627.712, Florida  
 165 Statutes, is reenacted to read:

166           627.712 Residential windstorm coverage required;  
 167 availability of exclusions for windstorm or contents.—

168           (1) An insurer issuing a residential property insurance  
 169 policy must provide windstorm coverage. Except as provided in  
 170 paragraph (2)(c), this section does not apply to risks that are  
 171 eligible for wind-only coverage from Citizens Property Insurance  
 172 Corporation under s. 627.351(6), and risks that are not eligible  
 173 for coverage from Citizens Property Insurance Corporation under  
 174 s. 627.351(6)(a)3. or 5. A risk ineligible for coverage by the  
 175 corporation under s. 627.351(6)(a)3. or 5. is exempt from this  
 176 section only if the risk is located within the boundaries of the  
 177 coastal account of the corporation.

178           Section 3. This act shall take effect July 1, 2015.

**Insurance & Banking Subcommittee**

**HB 715 by Rep. Raschein  
Citizens Property Insurance Corporation**

**AMENDMENT SUMMARY  
March 10, 2015**

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**Amendment 1 by Rep. Raschein (Line 146):** The amendment corrects a drafting error related to the prohibition on eligibility for existing properties that are rebuilt or remodeled to give effect to the prohibition, and changes the threshold for the prohibition from an increase of 25% or more of original square footage to an increase of more than 25% of total square footage of finished area. The amendment also narrows the title to an act relating to Citizens Property Insurance Corporation Eligibility for Coverage.



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 Raschein offered the following:

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**Amendment (with title amendment)**

Remove lines 146-156 and insert:

b. Any major structure, as defined in s. 161.54(6)(a),  
that for which is newly constructed, or rebuilt, repaired,  
restored, or remodeled to increase the total square footage of  
finished area by more than 25 percent, pursuant to a permit is  
applied for on or after July 1, 2015, for new construction or  
~~substantial improvement as defined in s. 161.54(12)~~ is not  
 eligible for coverage by the corporation if the structure is  
 seaward of the coastal construction control line established  
 pursuant to s. 161.053 or is within the Coastal Barrier  
 Resources System as designated by 16 U.S.C. ss. 3501-3510.



Amendment No. 1

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



Remove lines 3-10 and insert:

Corporation eligibility for coverage; amending s. 627.351, F.S.;  
deleting a provision prohibiting certain improvements to major  
structures from being eligible for coverage by Citizens Property  
Insurance Corporation; prohibiting coverage for major structures  
rebuilt, repaired, restored, or remodeled to increase the total  
square footage of finished area by a specified amount;  
reenacting s. 627.712(1), F.S.,



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 825 Family Trust Companies  
**SPONSOR(S):** Roberson  
**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 568

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

In 2014, the Florida Legislature created the Florida Family Trust Company Act (ch. 662, F.S., "the Act"). Effective October 1, 2015, the Act allows families to form unlicensed, licensed, and foreign licensed private family trust companies (FTCs), subject to certain regulatory requirements. The Act will be enforced by the Office of Financial Regulation (OFR), which charters and regulates entities engaging in financial institution business in Florida, including public, commercial trust companies.

The bill modifies and clarifies a number of the Act's requirements of licensed FTCs, unlicensed FTCs, and foreign licensed FTCs. The bill:

- Provides that OFR must conduct an examination of a licensed FTC every 36 months instead of the current 18 months;
- Removes the requirement that OFR conduct examinations of unlicensed FTCs;
- Requires that judicial determination of a breach of fiduciary duty or trust before the OFR may enter a cease and desist order, and clarifies that a FTC has an opportunity for an administrative hearing before the OFR may revoke a FTC's license;
- Requires all FTCs in operation on October 1, 2015, to either apply for the appropriate FTC license or registration, or cease doing business in this state by December 30, 2015;
- Clarifies that OFR is responsible for the regulation, supervision, and examinations of licensed FTCs, but limits the OFR's role over unlicensed or foreign FTCs to ensuring that services provided by such companies are provided only to family members and to determining conformity with the Act;
- Requires the management of a licensed FTC to have at least three directors or managers and requires that at least one of those directors or managers be a Florida resident;
- Provides that a FTC registration application must state that trust operations will comply with statutory provisions relating to organizational documents, minimum capital requirements, and segregated books, records, and assets;
- Provides that the designated relatives in a licensed FTC may not have a common ancestor within three generations, instead of the current five generations;
- Requires that a registration application for a foreign licensed FTC must provide proof that the company is in compliance with the FTC laws and regulations of its principal jurisdiction;
- Requires amendments to certificates of formation or certificates of organization to be submitted to the OFR at least 30 days before it is filed or effective; and
- Allows FTCs to file annual renewal applications within 45 days of the end of each calendar year.

The bill does not appear to have a fiscal impact on state and local governments. The bill may have a positive impact on the private sector.

The bill is effective October 1, 2015.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### 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."<sup>1</sup> 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.<sup>2</sup> The trustee holds legal title to the property held in trust for the benefit of the beneficiary.<sup>3</sup> A bank with trust powers or a trust company may offer its services to the general public to serve as trustee of private trusts.

##### Background: Florida Family Trust Company Act

In 2014, the Florida Legislature created the Florida Family Trust Company Act (ch. 662, F.S., "the Act").<sup>4</sup> Effective October 1, 2015, the Act allows families to form unlicensed, licensed, and foreign licensed private family trust companies (FTCs), subject to certain regulatory requirements that will be enforced by the Office of Financial Regulation (OFR), which charters and regulates entities engaging in financial institution business in Florida, which include public, commercial trust companies, in accordance with the Florida Financial Institutions Codes (Codes).<sup>5</sup>

Families may prefer to form a private FTC (instead of using individual or institutional trustees) for a variety of reasons, such as tax and regulatory advantages, privacy, flexibility, and self-governance of the family's financial affairs. At least 14 other states currently have statutes governing the organization and operation of FTCs.

In general, an FTC is an entity which provides trust services similar to those provided by an individual or an institutional trustee. 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.<sup>6</sup> The Act's three FTC types are<sup>7</sup>:

##### 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.

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

<sup>2</sup> *Id.*

<sup>3</sup> 55A Fla.Jur.2d Trusts s.1.

<sup>4</sup> Ch. 2014-97, Laws of Fla.

<sup>5</sup> The Codes consist of 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.

<sup>6</sup> s. 662.102, F.S.

<sup>7</sup> s. 662.111(12), (15), and 16), F.S.

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 or by the District of Columbia, and is not owned by or a subsidiary of a business entity that is organized in or licensed by any foreign country as defined by the international banking chapter of the Codes.<sup>8</sup>

3. *Licensed family trust company*

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

The Act contains regulatory requirements relating to:

- Initial and renewal licensure and registration,
- Acts authorizing the OFR to take action against a FTC's license or registration, including cease and desist authority,
- Qualifications for directors, officers, managers or managerial members of any FTC type,
- Organizational and management authority for FTCs,
- Capital requirements for FTCs with a principal place of business in Florida, and
- Investigation, examination, and enforcement authority by the OFR, including cease and desist authority.

### **Current Situation**

According to proponents of the Act and the bill, a number of family offices in Florida have indicated that the Act is not workable in its current form, namely due to the Act's examination requirements that would be intrusive into private family arrangements, and may exceed what is minimally required to avoid triggering the application of certain federal securities laws.<sup>9</sup> Currently, the Act requires that OFR conduct an examination of all FTC types at least once every 18 months.<sup>10</sup>

### **Deficiencies in the Act for unlicensed FTCs and foreign licensed FTCs**

Section 662.141(1), F.S., requires OFR to conduct mandatory examinations of each unlicensed FTC once every 18 months in order to determine that it is operating as an unlicensed FTC within the meaning of the Act. It is unclear how OFR will conduct such examinations, but each review of an unlicensed FTC will necessarily require a review of private family trust instruments and financial arrangements. The majority of FTCs in existence in other jurisdictions choose to organize as unlicensed, unregulated FTCs, due to the desire to keep family arrangements private and to avoid being subjected to intrusive examinations. Examinations of unlicensed FTCs are inconsistent with the purpose of the Act, which provides that "unlike trust companies formed under chapter 658, there is no public interest to be served outside of ensuring that fiduciary activities performed by a family trust company are restricted to family members."<sup>11</sup> If unlicensed FTCs are subject to mandatory OFR examinations, then Florida's comparatively intrusive examination requirements may deter unlicensed FTCs located in other states, as well as family offices currently operating in Florida, from organizing as an unlicensed FTC in Florida.<sup>12</sup>

### **Deficiencies in the Act for licensed FTCs**

According to the proponents, there is no public interest served by having OFR regulate FTCs. Nevertheless, a small number of FTCs may desire OFR supervision for any of a number of reasons

<sup>8</sup> See s. 663.01(3), F.S.

<sup>9</sup> Real Property, Probate and Trust Law Section (RPPTL) of the Florida Bar, *White Paper on Proposed Changes to the Florida Family Trust Company Act*, pp. 2-3 (on file with the Insurance & Banking Subcommittee staff).

<sup>10</sup> s. 662.141(1), F.S.

<sup>11</sup> s. 662.102, F.S.

<sup>12</sup> RPPTL White Paper, pp. 3-4.

including family governance issues, federal income tax considerations and exemption from SEC regulation under the federal Investment Adviser Act of 1940. A family office may need to register with the SEC as an "investment adviser" if it does not fit within the SEC's definition of "family office."<sup>13</sup> An "investment adviser" is any person who, for compensation, engages in the 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.<sup>14</sup> However, the SEC has somewhat restrictively defined "family office," and for many families this definition would exclude certain in-laws, aunts and uncles, and cousins. 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.

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.<sup>15</sup> While the 1940 Investment Adviser Act generally protects the disclosure of client identity, investments or affairs and the fact of examination or investigation by the SEC, it does make public information contained in registration applications, reports, and amendments thereto filed with the SEC, unless the SEC "finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors."<sup>16</sup>

The Act was written with the intention that a licensed FTC would not be required to register as an "investment adviser" under the 1940 Investment Advisers Act. In addition to exempting family offices, the 1940 Act excludes "banks" from the definition of "investment adviser," and includes "trust company[ies]... doing 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 provisions of this subchapter"<sup>17</sup> (emphasis added). It was believed that OFR regulation of licensed FTCs under the Act would be sufficient to constitute "supervised and examined" within the meaning of this so-called "bank exemption" from SEC regulation under the 1940 Act.

The view of SEC regulation experts regarding whether state "supervision and examination" is sufficient to allow an FTC to qualify for the "bank exemption" has evolved since the enactment of chapter 662. Currently, the Act requires OFR to examine licensed FTCs once every 18 months, but only for compliance with very specific provisions of the Act.<sup>18</sup> Moreover, licensed FTCs may be able to satisfy examination requirements through the submission of audits conducted by certified public accounting firms. Experts in the field of SEC regulation now believe that in order to qualify for the "bank exemption," a licensed FTC must be regulated and examined in substantially the same manner as a public trust company, although not necessarily with the same frequency.<sup>19</sup> The regulation and examination of licensed FTCs under the current Act falls short of this standard, which would make them unlikely to qualify for the "bank exemption" from investment advisor registration requirements.<sup>20</sup>

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<sup>13</sup> 15 U.S.C. §80-2(a)(11).

<sup>14</sup> 15 U.S.C. §80b-2(a)(11).

<sup>15</sup> 15 U.S.C. §§80b-3 and 80b-4; *see also* SECURITIES & EXCHANGE COMMISSION, *How to Register as an Investment Adviser*, at <http://www.sec.gov/divisions/investment/iaregulation/regia.htm> (last viewed Mar. 1, 2015).

<sup>16</sup> 15 U.S.C. §80b-10.

<sup>17</sup> *See* 15 U.S.C. §80b-2(a)(11)(A) (definition of "investment adviser") and 15 U.S.C. §80b-2(a)(2)(C) (definition of "bank").

<sup>18</sup> s. 662.141, F.S.

<sup>19</sup> Section 655.045(1), F.S., requires the OFR to examine each state financial institution at least every 18 months. While OFR may accept an examination from an appropriate federal regulator or conduct joint or concurrent examinations with federal regulators, OFR must conduct its own independent examination at least once during each 36-month period beginning July 1, 2014.

<sup>20</sup> RPPTL White Paper, pp. 4-6.

## **Effect of the Bill**

In addition to the changes to the Act's examination requirements discussed above, the bill clarifies a number of other provisions in the Act.

### **Examinations of FTCs**

**Section 1** of the bill amends 662.102, F.S., which describes the purpose of the Act to clarify that OFR will regulate, supervise and examine only those FTCs which choose to organize as licensed FTCs.

**Section 3** of the bill creates s. 662.113, F.S., to clarify that the financial institutions codes do not apply to FTCs unless otherwise indicated in the Act, although it does not limit the OFR's ability to investigate any such trust company to ensure compliance with the Act and applicable provisions of the financial institutions codes. The Act is intended to be a stand-alone framework for FTC governance.

**Section 11** of the bill amends s. 662.141, F.S., to expand the scope of OFR examinations of *licensed FTCs* to make them sufficiently similar to examinations of public trust companies in order for to qualify for the "bank exemption" from SEC regulation under the 1940 Act. Although examinations of licensed FTCs will be more rigorous, the bill provides that they will occur only once every 36 months rather than once every 18 months. The bill also eliminates OFR examinations of *unlicensed FTCs and foreign licensed FTCs*, and makes some drafting changes to reorder subsections.

### **Licensure, Registration, and Regulation of FTCs**

**Section 5** of the bill amends s. 662.1215, F.S., to specify that the OFR's initial investigation of applicants seeking to become licensed FTCs includes a confirmation that the proposed FTC's management structure complies with s. 662.125, F.S., which contains requirements for directors and officers.

**Section 6** of the bill amends s. 662.122, F.S., to add cross-references (regarding organizational documents and minimum capital requirements) for the registration process for unlicensed FTCs and foreign licensed FTCs. It also adds a requirement to this statute, that foreign licensed FTCs provide proof is in compliance with the FTC laws and regulations of its principal jurisdiction.

**Section 7** of the bill amends s. 662.1225, F.S., to clarify that a foreign licensed FTC must be in compliance with the FTC laws and regulations of its principal jurisdiction as a condition to operating in this state.

**Section 9** of the bill amends s. 662.128, F.S., to allow FTCs to file their annual renewals within 45 days after the end of the calendar year, rather than the 30 days currently required in statute. The annual renewal application is anticipated to be a somewhat complex document requiring more than 30 days to prepare. The bill also clarifies that the license renewal application's verified statement be made by the FTC's authorized representative.

**Section 12** of the bill amends s. 662.142, F.S., which sets forth the grounds for revocation of a licensed FTC's license by OFR, including an act of commission or omission that is determined by a court of competent jurisdiction to be a breach of trust or fiduciary duty. If OFR finds that an FTC has committed an act constituting a breach of trust or fiduciary duty, OFR may enter an order immediately revoking the FTCs license. The bill modifies s. 662.142, F.S., to account for the licensed FTC's administrative hearing rights under the Administrative Procedure Act (ch. 120, F.S.), and clarifies that the OFR may enter an order of revocation after a hearing has not been timely requested pursuant to ss. 120.569 and 120.57 or if a hearing is held and it has been determined that the licensed FTC has committed any enumerated in subsection (1).

**Section 13** of the bill amends s. 662.143, F.S., allows OFR to issue a cease and desist order upon an FTC in the event of certain violations of the Act, including an act of commission or omission that OFR has reason to believe constitutes a breach of trust or a breach of fiduciary duty. The bill modifies s. 662.143, F.S., to require that an act of commission or omission be judicially determined to be a breach of trust or fiduciary duty prior to OFR issuing a cease and desist order.

**Section 16** of the bill amends s. 662.151, F.S., which requires that an FTC that is in operation prior to October 1, 2015 must apply for licensure as a licensed FTC or register as an unlicensed FTC within 90 days of the Act's effective date (i.e., January 1, 2016), or cease doing business in this state. The bill clarifies that FTCs in operation as of October 1, 2015 must, on or before December 30, 2015, apply for the appropriate FTC licensure or registration.

#### FTC Organization & Operation

**Section 2** of the bill amends s. 662.111, F.S., is the definition of "officer," and includes non-director individuals who participate in the FTC's major policymaking functions. The definition contains a presumption that certain officers, such as the president, the chief financial officer, etc., are *executive* officers, unless excluded from major policymaking function by board resolution, bylaws, or operating agreement, as well as actual non-participation in those major policymaking functions by the individual. The bill amends this definition to eliminate reference to an "executive" officer.

**Section 4** of the bill amends s. 662.120(2), F.S., permits licensed FTCs to have more than two "designated relatives," so long as the designated relatives do not have a common ancestor within five generations. The bill amends this provision to limit licensed FTCs to *up to two* designated relatives with common ancestry within *three* generations.

**Section 8** of the bill amends s. 662.123, F.S., sets forth certain requirements for organizational documents for an FTC and requires an FTC to submit any proposed changes to its articles of incorporation, articles of organization, bylaws, or articles of organization of a limited liability company to OFR for review at least 30 days before an amendment is to become effective. The bill adds certificates of formation or certificates of organization to these organizational documents requiring OFR's preapproval, but eliminates bylaws and articles of organization. According to the proponents, amendments to a FTC's bylaws or articles of organization should not require approval from OFR, because the overwhelming majority of such instruments typically involve ministerial acts of day-to-day governance.<sup>21</sup>

**Section 10** of the bill amends s. 662.132, F.S., sets forth restrictions on the purchases of bonds or other security instruments by an FTC from an affiliate of the FTC. The bill deletes the reference with the term "affiliate" in order to avoid confusion with the defined term "family affiliate" in s. 662.111, F.S. The bill substitutes "parent or subsidiary company" in place of the term "affiliate."

**Sections 14 and 15** of the bill make technical changes to ss.662.145 and 662.150, F.S.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 662.102, F.S., relating to the purpose of the Family Trust Company Act.

Section 2. Amends s. 662.111, F.S., relating to definitions.

Section 3. Creates s. 662.113, F.S., relating to applicability of other chapters of the financial institutions codes.

Section 4. Amends s. 662.120, F.S., relating to maximum number of designated relatives.

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<sup>21</sup> RPPTL White Paper, p. 7.  
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Section 5. Amends s. 662.1215, F.S., relating to investigation of license applicants.

Section 6. Amends s. 662.122, F.S., relating to registration of a family trust company or a foreign licensed family trust company.

Section 7. Amends s. 662.1225, F.S., relating to requirements for a family trust company, licensed family trust company, and foreign licensed family trust company.

Section 8. Amends s. 662.123, F.S., relating to organizational documents; use of term "family trust" in name.

Section 9. Amends s. 662.128, F.S., relating to annual renewal.

Section 10. Amends s. 662.132, F.S., relating to investments.

Section 11. Amends s. 662.141, F.S., relating to examination, investigations, and fees.

Section 12. Amends s. 662.142, F.S., relating to revocation of license.

Section 13. Amends s. 662.143, F.S., relating to cease and desist authority.

Section 14. Amends s. 662.145, F.S., relating to grounds for removal.

Section 15. Amends s. 662.150, F.S., relating to domestication of a foreign family trust company.

Section 16. Amends s. 662.151, F.S., relating to registration of a foreign licensed family trust company.

Section 17. Provides an effective date of October 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

According to the bill's proponents, the bill should not have a fiscal impact on state and local governments. The bill's elimination and simplification of OFR examination requirements on licensed and non-licensed FTCs, respectively, should be revenue neutral or revenue positive. The application fees for establishing FTCs, annual certification and other fees are anticipated to offset OFR's costs in regulating licensed FTCs.<sup>22</sup>

OFR does not anticipate that the bill will have a fiscal impact to state government.<sup>23</sup>

#### 2. Expenditures:

See Revenues, above.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

<sup>22</sup> RPPTL White Paper, p. 10.

<sup>23</sup> Office of Financial Regulation, Agency Analysis of 2015 House Bill 825, p. 5 (Mar. 3, 2015).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to the proponents, the bill should help attract high net worth families to choose Florida as a jurisdiction to establish family trust companies.<sup>24</sup>

D. FISCAL COMMENTS:

See above.

### 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:

The bill does not provide any new rulemaking authority. The bill reorganizes s. 662.141, F.S., to move existing rulemaking authority to the Financial Services Commission in subsection (3) (regarding records and requirements necessary to demonstrate conformity with the Act) to subsection (6).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A strike-all amendment is anticipated to incorporate additional clarifying amendments to the Act and to make the bill identical to the companion bill, CS/SB 568.

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<sup>24</sup> *Id.*

1                                   A bill to be entitled  
 2           An act relating to family trust companies; amending s.  
 3           662.102, F.S.; revising the purposes of the Family  
 4           Trust Company Act; providing legislative findings;  
 5           amending s. 662.111, F.S.; redefining the term  
 6           "officer"; creating s. 662.113, F.S.; specifying the  
 7           applicability of other chapters of the financial  
 8           institutions codes to family trust companies;  
 9           providing that the section does not limit the  
 10          authority of the Office of Financial Regulation to  
 11          investigate a family trust company to ensure  
 12          compliance with the chapter and applicable financial  
 13          institutions codes; amending s. 662.120, F.S.;

14          revising the ancestry requirements for designated  
 15          relatives of a licensed family trust company; amending  
 16          s. 662.1215, F.S.; revising the requirements for  
 17          investigations of license applicants by the Office of  
 18          Financial Regulation; amending s. 662.122, F.S.;

19          revising the requirements for registration of a family  
 20          trust company and a foreign licensed family trust  
 21          company; amending s. 662.1225, F.S.; requiring a  
 22          foreign licensed family trust company to be in  
 23          compliance with the family trust laws and regulations  
 24          in its jurisdiction; amending s. 662.123, F.S.;

25          revising the types of amendments to organizational  
 26          documents which must have prior approval by the



27 office; amending s. 662.128, F.S.; extending the  
 28 deadline for the filing of, and revising the  
 29 requirements for, specified license and registration  
 30 renewal applications; amending s. 662.132, F.S.;  
 31 revising the prohibition against the purchase of  
 32 certain bonds or securities by specified family trust  
 33 companies; amending s. 662.141, F.S.; deleting the  
 34 requirement that the office examine a family trust  
 35 company that is not licensed and a foreign licensed  
 36 family trust company; providing that the office may  
 37 rely upon specified documentation that identifies the  
 38 qualifications of beneficiaries as permissible  
 39 recipients of family trust company services; deleting  
 40 a provision that authorizes the office to accept an  
 41 audit by a certified public accountant in lieu of an  
 42 examination by the office; authorizing the Financial  
 43 Services Commission to adopt rules establishing  
 44 specified requirements for family trust companies;  
 45 amending s. 662.142, F.S.; deleting a provision that  
 46 authorizes the office to immediately revoke the  
 47 license of a licensed family trust company under  
 48 certain circumstances; revising the circumstances  
 49 under which the office may enter an order revoking the  
 50 license of a licensed family trust company; amending  
 51 s. 662.143, F.S.; revising the acts that may result in  
 52 the entry of a cease and desist order against

53 specified family trust companies and affiliated  
 54 parties; amending s. 662.145, F.S.; revising the  
 55 office's authority to suspend a family trust company-  
 56 affiliated party who is charged with a specified  
 57 felony or to restrict or prohibit the participation of  
 58 such party in certain financial institutions; amending  
 59 ss. 662.150 and 662.151, F.S.; making technical  
 60 changes; providing an effective date.

61

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

63

64 Section 1. Section 662.102, Florida Statutes, is amended  
 65 to read:

66 662.102 Purposes; findings Purpose.—The purposes ~~purpose~~  
 67 of the Family Trust Company Act are ~~is~~ to establish requirements  
 68 for licensing family trust companies, to regulate ~~provide~~  
 69 ~~regulation of these~~ persons who provide fiduciary services to  
 70 family members of no more than two families and their related  
 71 interests as a family trust company, and to establish the degree  
 72 of regulatory oversight required of the Office of Financial  
 73 Regulation over such companies. The ~~Unlike trust companies~~  
 74 ~~formed under chapter 658, there is no~~ public interest ~~to be~~  
 75 served by this chapter is to ensure ~~outside of ensuring~~ that  
 76 fiduciary activities performed by a family trust company are  
 77 restricted to family members and their related interests and as  
 78 otherwise provided ~~for~~ in this chapter. Therefore, the

79 Legislature finds that:

80 (1) A family trust company is ~~companies are not a~~  
 81 financial institution ~~institutions~~ within the meaning of the  
 82 financial institutions codes, ~~and~~ Licensure of such a company  
 83 ~~these companies~~ pursuant to chapters 658 and 660 is ~~should not~~  
 84 ~~be~~ required as it would not promote the purposes of the codes  
 85 specified as set forth in s. 655.001.

86 (2) A family trust company may elect to be a licensed  
 87 family trust company under this chapter if the company desires  
 88 to be subject to the regulatory oversight of the office, as  
 89 provided in this chapter, notwithstanding that the company  
 90 restricts its services to family members.

91 (3) With respect to: ~~Consequently, the office~~

92 (a) A licensed ~~of Financial Regulation is not responsible~~  
 93 ~~for regulating~~ family trust company, the office is responsible  
 94 for regulating, supervising, and examining the company as  
 95 provided under this chapter.

96 (b) A family trust company that does not elect to be  
 97 licensed and a foreign licensed family trust company, ~~companies~~  
 98 ~~to ensure their safety and soundness, and the responsibility of~~  
 99 the office's role ~~office~~ is limited to ensuring that fiduciary  
 100 services provided by the company ~~such companies~~ are restricted  
 101 to family members and authorized related interests and not to  
 102 the general public. The office is not responsible for examining  
 103 a family trust company or a foreign licensed family trust  
 104 company regarding the safety or soundness of its operations.

105 Section 2. Subsection (19) of section 662.111, Florida  
 106 Statutes, is amended to read:

107 662.111 Definitions.—As used in this chapter, the term:

108 (19) "Officer" of a family trust company means an  
 109 individual, regardless of whether the individual has an official  
 110 title or receives a salary or other compensation, who may  
 111 participate in the major policymaking functions of a family  
 112 trust company, other than as a director. The term does not  
 113 include an individual who may have an official title and  
 114 exercise discretion in the performance of duties and functions,  
 115 but who does not participate in determining the major policies  
 116 of the family trust company and whose decisions are limited by  
 117 policy standards established by other officers, regardless of  
 118 whether the policy standards have been adopted by the board of  
 119 directors. The chair of the board of directors, the president,  
 120 the chief officer, the chief financial officer, the senior trust  
 121 officer, and all executive vice presidents of a family trust  
 122 company, and all managers if organized as a limited liability  
 123 company, are presumed to be ~~executive~~ officers unless such  
 124 officer is excluded, by resolution of the board of directors or  
 125 members or by the bylaws or operating agreement of the family  
 126 trust company, other than in the capacity of a director, from  
 127 participating in major policymaking functions of the family  
 128 trust company, and such excluded officer does not actually  
 129 participate therein.

130 Section 3. Section 662.113, Florida Statutes, is created

131 to read:

132 662.113 Applicability of other chapters of the financial  
 133 institutions codes.—If a family trust company, licensed family  
 134 trust company, or foreign licensed family trust company limits  
 135 its activities to the activities authorized under this chapter,  
 136 the provisions of other chapters of the financial institutions  
 137 codes do not apply to the trust company unless otherwise  
 138 expressly provided in this chapter. This section does not limit  
 139 the office's authority to investigate any such trust company to  
 140 ensure that it is in compliance with this chapter and applicable  
 141 financial institutions codes.

142 Section 4. Subsection (2) of section 662.120, Florida  
 143 Statutes, is amended to read:

144 662.120 Maximum number of designated relatives.—

145 (2) A licensed family trust company may ~~not~~ have up to  
 146 ~~more than~~ two designated relatives., ~~and~~ The designated  
 147 relatives may not have a common ancestor within three ~~five~~  
 148 generations.

149 Section 5. Paragraph (e) is added to subsection (2) of  
 150 section 662.1215, Florida Statutes, to read:

151 662.1215 Investigation of license applicants.—

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

155 (e) That the management structure of the proposed company  
 156 complies with s. 662.125.

157 Section 6. Paragraph (b) of subsection (1) and paragraphs  
 158 (a) and (c) of subsection (2) of section 662.122, Florida  
 159 Statutes, are amended to read:

160 662.122 Registration of a family trust company or a  
 161 foreign licensed family trust company.—

162 (1) A family trust company that is not applying under s.  
 163 662.121 to become a licensed family trust company must register  
 164 with the office before beginning operations in this state. The  
 165 registration application must:

166 (b) State that the family trust company is a family trust  
 167 company as defined under this chapter and that its operations  
 168 will comply with ss. 662.1225, 662.123(1), 662.124, 662.125,  
 169 662.127, 662.131, and 662.134.

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

172 (a) The registration application must state that its  
 173 operations will comply with ss. 662.1225, 662.125, 662.127,  
 174 662.131, and 662.134 and that it is currently in compliance with  
 175 the family trust company laws and regulations of its principal  
 176 jurisdiction.

177 (c) The registration must include a certified copy of a  
 178 certificate of good standing, or an equivalent document,  
 179 authenticated by the official having custody of records in the  
 180 jurisdiction where the foreign licensed family trust company is  
 181 organized, along with satisfactory proof, as determined by the  
 182 office, that the company is organized in a manner similar to a

183 family trust company as defined under this chapter and is in  
 184 compliance with the family trust company laws and regulations of  
 185 its principal jurisdiction.

186 Section 7. Subsection (2) of section 662.1225, Florida  
 187 Statutes, is amended to read:

188 662.1225 Requirements for a family trust company, licensed  
 189 family trust company, and foreign licensed family trust  
 190 company.—

191 (2) In order to operate in this state, a foreign licensed  
 192 family trust company must be in good standing in its principal  
 193 jurisdiction, must be in compliance with the family trust  
 194 company laws and regulations of its principal jurisdiction, and  
 195 must maintain:

196 (a) An office physically located in this state where  
 197 original or true copies of all records and accounts of the  
 198 foreign licensed family trust company pertaining to its  
 199 operations in this state may be accessed and made readily  
 200 available for examination by the office in accordance with this  
 201 chapter.

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

204 (c) All applicable state and local business licenses,  
 205 charters, and permits.

206 (d) A deposit account with a state-chartered or national  
 207 financial institution that has a principal or branch office in  
 208 this state.

209 Section 8. Subsection (2) of section 662.123, Florida  
 210 Statutes, is amended to read:

211 662.123 Organizational documents; use of term "family  
 212 trust" in name.—

213 (2) A proposed amendment to the articles of incorporation,  
 214 articles of organization, certificate of formation, or  
 215 certificate of organization, bylaws, or articles of organization  
 216 of a ~~limited liability company,~~ family trust company, or  
 217 licensed family trust company must be submitted to the office  
 218 for review at least 30 days before it is filed or effective. An  
 219 amendment is not considered filed or effective if the office  
 220 issues a notice of disapproval with respect to the proposed  
 221 amendment.

222 Section 9. Subsections (1) through (4) of section 662.128,  
 223 Florida Statutes, are amended to read:

224 662.128 Annual renewal.—

225 (1) Within 45 ~~30~~ days after the end of each calendar year,  
 226 a family trust company ~~companies,~~ licensed family trust company  
 227 ~~companies,~~ or and foreign licensed family trust company  
 228 ~~companies~~ shall file its ~~their~~ annual renewal application with  
 229 the office.

230 (2) The license renewal application filed by a licensed  
 231 family trust company must include a verified statement by an  
 232 authorized representative of the trust company that:

233 (a) The licensed family trust company operated in full  
 234 compliance with this chapter, chapter 896, or similar state or



235 federal law, or any related rule or regulation. The application  
 236 must include proof acceptable to the office that the company is  
 237 a family trust company as defined under this chapter.

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

242 (3) The registration renewal application filed by a family  
 243 trust company must include:

244 (a) A verified statement by an authorized representative  
 245 ~~officer~~ of the trust company that it is a family trust company  
 246 as defined under this chapter and that its operations are in  
 247 compliance with ss. 662.1225, 662.123(1), 662.124, 662.125,  
 248 662.127, 662.131, and 662.134, ~~+~~ chapter 896, ~~+~~ or similar state  
 249 or federal law, ~~+~~ or ~~any~~ related rule or regulation.

250 (b) ~~, and include~~ The name of the company's ~~its~~ designated  
 251 relative or relatives, if applicable, and the street address for  
 252 its principal place of business.

253 (4) The registration renewal application filed by a  
 254 foreign licensed family trust company must include a verified  
 255 statement by an authorized representative of the trust company  
 256 that its operations are in compliance with ss. 662.1225,  
 257 662.125, 662.131, and 662.134 and in compliance with the family  
 258 trust company laws and regulations of its principal  
 259 jurisdiction. It must also provide:

260 (a) The current telephone number and street address of the

261 physical location of its principal place of business in its  
 262 principal jurisdiction.

263 (b) The current telephone number and street address of the  
 264 physical location in this state of its principal place of  
 265 operations where its books and records pertaining to its  
 266 operations in this state are maintained.

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

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

271 (e) Documentation satisfactory to the office that the  
 272 foreign licensed family trust company is in compliance with the  
 273 family trust company laws and regulations of its principal  
 274 jurisdiction.

275 Section 10. Subsection (7) of section 662.132, Florida  
 276 Statutes, is amended to read:

277 662.132 Investments.—

278 (7) Notwithstanding subsections (1)-(6), a family trust  
 279 company or licensed family trust company may not, while acting  
 280 as a fiduciary, purchase a bond or security issued by the  
 281 company or its parent, or a subsidiary company ~~an affiliate~~  
 282 thereof or its parent, unless:

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

- 285 1. The terms of the instrument creating the trust;
- 286 2. A court order;

287 3. The written consent of the settlor of the trust for  
 288 which the family trust company or licensed family trust company  
 289 is serving as trustee; or

290 4. The written consent of every adult qualified  
 291 beneficiary of the trust who, at the time of such purchase, is  
 292 entitled to receive income under the trust or who would be  
 293 entitled to receive a distribution of principal if the trust  
 294 were terminated; and

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

297 1. The prudent investor rule in s. 518.11~~7~~ or other  
 298 prudent investor or similar rule under other applicable law,  
 299 unless ~~such~~ compliance is waived in accordance with s. 518.11 or  
 300 other applicable law.

301 2. The terms of the instrument, judgment, decree, or order  
 302 establishing the fiduciary relationship.

303 Section 11. Section 662.141, Florida Statutes, is amended  
 304 to read:

305 662.141 Examination, investigations, and fees.—The office  
 306 may conduct an examination or investigation of a family trust  
 307 company, licensed family trust company, or foreign licensed  
 308 family trust company at any time it deems necessary to determine  
 309 whether the ~~a~~ family trust company, licensed family trust  
 310 company, or foreign licensed family trust company, or family  
 311 trust company-affiliated party thereof ~~person~~ has violated or is  
 312 about to violate any provision of this chapter, ~~or rules adopted~~

313 ~~by the commission pursuant to this chapter, or any applicable~~  
 314 ~~provision of the financial institution codes, or any rule~~ rules  
 315 ~~adopted by the commission pursuant to this chapter or the such~~  
 316 ~~codes.~~

317 (1) The office may rely upon a certificate of trust, trust  
 318 summary, or written statement from the trust company which  
 319 identifies the qualified beneficiaries of any trust or estate  
 320 for which a family trust company, licensed family trust company,  
 321 or foreign licensed family trust company serves as a fiduciary  
 322 and the qualifications of such beneficiaries as permissible  
 323 recipients of company services.

324 (2) The office shall conduct an examination of a licensed  
 325 family trust company, ~~family trust company,~~ and foreign licensed  
 326 family trust company at least once every 36 ~~18~~ months.

327 ~~(2) In lieu of an examination by the office, the office~~  
 328 ~~may accept an audit of a family trust company, licensed family~~  
 329 ~~trust company, or foreign licensed family trust company by a~~  
 330 ~~certified public accountant licensed to practice in this state~~  
 331 ~~who is independent of the company, or other person or entity~~  
 332 ~~acceptable to the office. If the office accepts an audit~~  
 333 ~~pursuant to this subsection, the office shall conduct the next~~  
 334 ~~required examination.~~

335 ~~(3) The office shall examine the books and records of a~~  
 336 ~~family trust company or licensed family trust company as~~  
 337 ~~necessary to determine whether it is a family trust company or~~  
 338 ~~licensed family trust company as defined in this chapter, and is~~

339 operating in compliance with this chapter ~~ss. 662.1225, 662.125,~~  
 340 ~~662.126, 662.131, and 662.134,~~ as applicable. The office may  
 341 ~~rely upon a certificate of trust, trust summary, or written~~  
 342 ~~statement from the trust company identifying the qualified~~  
 343 ~~beneficiaries of any trust or estate for which the family trust~~  
 344 ~~company serves as a fiduciary and the qualification of the~~  
 345 ~~qualified beneficiaries as permissible recipients of company~~  
 346 ~~services. The commission may establish by rule the records to be~~  
 347 ~~maintained or requirements necessary to demonstrate conformity~~  
 348 ~~with this chapter as a family trust company or licensed family~~  
 349 ~~trust company.~~

350 (3)-(4) The office shall examine the books and records of a  
 351 foreign licensed family trust company as necessary to determine  
 352 if it is a foreign licensed trust company as defined in this  
 353 chapter and is in compliance with ss. 662.1225, 662.125,  
 354 662.130(2), 662.131, and 662.134. In connection with an  
 355 examination of the books and records of the company, the office  
 356 may rely upon the most recent examination report or review or  
 357 certification letters or similar documentation issued by the  
 358 regulatory agency to which the foreign licensed family trust  
 359 company is subject to supervision. ~~The commission may establish~~  
 360 ~~by rule the records to be maintained or requirements necessary~~  
 361 ~~to demonstrate conformity with this chapter as a foreign~~  
 362 ~~licensed family trust company.~~ The office's examination of the  
 363 books and records of a foreign licensed family trust company is,  
 364 to the extent practicable, limited to books and records of the

365 operations in this state.

366 ~~(4)(5)~~ For each examination of the books and records of a  
 367 family trust company, licensed family trust company, or foreign  
 368 licensed family trust company as authorized under this chapter,  
 369 the trust company shall pay a fee for the costs of the  
 370 examination by the office. As used in this section, the term  
 371 "costs" means the salary and travel expenses of field staff  
 372 which are directly attributable to the examination of the trust  
 373 company and the travel expenses of any supervisory and ~~or~~  
 374 support staff required as a result of examination findings. The  
 375 mailing of payment for costs incurred must be postmarked within  
 376 30 days after the receipt of a notice stating that the such  
 377 costs are due. The office may levy a late payment of up to \$100  
 378 per day or part thereof that a payment is overdue, unless waived  
 379 for good cause. However, if the late payment of costs is  
 380 intentional, the office may levy an administrative fine of up to  
 381 \$1,000 per day for each day the payment is overdue.

382 ~~(5)(6)~~ All fees collected under this section must be  
 383 deposited into the Financial Institutions' Regulatory Trust Fund  
 384 pursuant to s. 655.049 for the purpose of administering this  
 385 chapter.

386 (6) The commission may establish by rule the records to be  
 387 maintained or requirements necessary to demonstrate conformity  
 388 with this chapter as a family trust company, licensed family  
 389 trust company, or foreign licensed family trust company.

390 Section 12. Section 662.142, Florida Statutes, is amended

391 to read:

392 662.142 Revocation of license.—

393 (1) Any of the following acts constitute ~~or conduct~~  
 394 ~~constitutes~~ grounds for the revocation by the office of the  
 395 license of a licensed family trust company:

396 (a) The company is not a family trust company as defined  
 397 in this chapter.†

398 (b) A violation of s. 662.1225, s. 662.123(1)(a), s.  
 399 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, s.  
 400 662.131, s. 662.134, or s. 662.144.†

401 (c) A violation of chapter 896, relating to financial  
 402 transactions offenses, or a ~~any~~ similar state or federal law or  
 403 ~~any~~ related rule or regulation.†

404 (d) A violation of any rule of the commission.†

405 (e) A violation of any order of the office.†

406 (f) A breach of any written agreement with the office.†

407 (g) A prohibited act or practice under s. 662.131.†

408 (h) A failure to provide information or documents to the  
 409 office upon written request.† ~~or~~

410 (i) An act of commission or omission which ~~that~~ is  
 411 judicially determined by a court of competent jurisdiction to be  
 412 a breach of trust or ~~of~~ fiduciary duty ~~pursuant to a court of~~  
 413 ~~competent jurisdiction.~~

414 (2) If the office finds ~~Upon a finding~~ that a licensed  
 415 family trust company has committed any of the acts specified ~~set~~  
 416 ~~forth~~ in subsection (1) ~~paragraphs (1)(a)–(h)~~, the office may

417 enter an order suspending the company's license and provide  
 418 notice of its intention to revoke the license and of the  
 419 opportunity for a hearing pursuant to ss. 120.569 and 120.57.

420 (3) If a hearing is not timely requested pursuant to ss.  
 421 120.569 and 120.57 or if a hearing is held and it has been  
 422 determined that the licensed family trust company has committed  
 423 any of the acts specified in subsection (1) ~~there has been a~~  
 424 ~~commission or omission under paragraph (1)(i),~~ the office may  
 425 immediately enter an order revoking the company's license. A The  
 426 licensed family trust company has ~~shall have~~ 90 days to wind up  
 427 its affairs after license revocation. If after 90 days the  
 428 company is still in operation, the office may seek an order from  
 429 the circuit court for the annulment or dissolution of the  
 430 company.

431 Section 13. Subsection (1) of section 662.143, Florida  
 432 Statutes, is amended to read:

433 662.143 Cease and desist authority.—

434 (1) The office may issue and serve upon a family trust  
 435 company, licensed family trust company, ~~or~~ foreign licensed  
 436 family trust company, or ~~upon a~~ family trust company-affiliated  
 437 party, a complaint stating charges if the office has reason to  
 438 believe that such company, family trust company-affiliated  
 439 party, or individual named therein is engaging in or has engaged  
 440 in any of the following acts ~~conduct that~~:

441 (a) ~~Indicates that~~ The company is not a family trust  
 442 company or foreign licensed family trust company as defined in



443 this chapter.~~†~~

444 (b) ~~Is~~ A violation of s. 662.1225, s. 662.123(1)(a), s.  
 445 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, or  
 446 s. 662.134.~~†~~

447 (c) ~~Is~~ A violation of any rule of the commission.~~†~~

448 (d) ~~Is~~ A violation of any order of the office.~~†~~

449 (e) ~~Is~~ A breach of any written agreement with the office.~~†~~

450 (f) ~~Is~~ A prohibited act or practice pursuant to s.  
 451 662.131.~~†~~

452 (g) ~~Is~~ A willful failure to provide information or  
 453 documents to the office upon written request.~~†~~

454 (h) ~~Is~~ An act of commission or omission that is judicially  
 455 determined by ~~or a court of competent jurisdiction practice that~~  
 456 ~~the office has reason to be believe is~~ a breach of trust or ~~of~~  
 457 fiduciary duty.~~† or~~

458 (i) ~~Is~~ A violation of chapter 896 or similar state or  
 459 federal law or any related rule or regulation.

460 Section 14. Paragraph (a) of subsection (6) of section  
 461 662.145, Florida Statutes, is amended to read:

462 662.145 Grounds for removal.—

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

468 (a) If a family trust company-affiliated party is charged

469 with a felony in a state or federal court, or is charged with an  
 470 offense in a court ~~the courts~~ of a foreign country with which  
 471 the United States maintains diplomatic relations which involves  
 472 a violation of law relating to fraud, currency transaction  
 473 reporting, money laundering, theft, or moral turpitude and the  
 474 charge is equivalent to a felony charge under state or federal  
 475 law, the office may enter an emergency order suspending the  
 476 family trust company-affiliated party or restricting or  
 477 prohibiting participation by such ~~company-affiliated~~ party in  
 478 the affairs of that particular family trust company or licensed  
 479 family trust company or any state financial institution,  
 480 subsidiary, or service corporation, upon service of the order  
 481 upon the company and ~~the~~ family trust company-affiliated party  
 482 ~~se~~ charged.

483 Section 15. Paragraph (b) of subsection (1) of section  
 484 662.150, Florida Statutes, is amended to read:

485 662.150 Domestication of a foreign family trust company.—

486 (1) A foreign family trust company lawfully organized and  
 487 currently in good standing with the state regulatory agency in  
 488 the jurisdiction where it is organized may become domesticated  
 489 in this state by:

490 (b) Filing an application for a license to begin  
 491 operations as a licensed family trust company in accordance with  
 492 s. 662.121, which must first be approved by the office, or by  
 493 filing the prescribed form with the office to register as a  
 494 family trust company to begin operations in accordance with s.

495 662.122.

496 Section 16. Subsection (3) of section 662.151, Florida  
 497 Statutes, is amended to read:

498 662.151 Registration of a foreign licensed family trust  
 499 company to operate in this state.—A foreign licensed family  
 500 trust company lawfully organized and currently in good standing  
 501 with the state regulatory agency in the jurisdiction under the  
 502 law of which it is organized may qualify to begin operations in  
 503 this state by:

504 (3) A company in operation as of October 1, 2015, which  
 505 ~~the effective date of this act that~~ meets the definition of a  
 506 family trust company must, on or before December 30, 2015, shall  
 507 ~~have 90 days from the effective date of this act to~~ apply for  
 508 licensure as a licensed family trust company, register as a  
 509 family trust company or foreign licensed family trust company,  
 510 or cease doing business in this state.

511 Section 17. This act shall take effect October 1, 2015.



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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 Roberson, K. offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
7 Section 1. Section 662.102, Florida Statutes, is amended  
8 to read:

9 662.102 Purposes; findings Purpose.—The purposes ~~purpose~~  
10 of the Family Trust Company Act are ~~is~~ to establish requirements  
11 for licensing family trust companies, to regulate ~~provide~~  
12 ~~regulation of these~~ persons who provide fiduciary services to  
13 family members of no more than two families and their related  
14 interests as a family trust company, and to establish the degree  
15 of regulatory oversight required of the Office of Financial  
16 Regulation over such companies. The ~~Unlike trust companies~~  
17 ~~formed under chapter 658, there is no public interest to be~~



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18 served by this chapter is to ensure ~~outside of ensuring~~ that  
19 fiduciary activities performed by a family trust company are  
20 restricted to family members and their related interests and as  
21 otherwise provided ~~for~~ in this chapter. Therefore, the  
22 Legislature finds that:

23 (1) A family trust company is ~~companies are not a~~  
24 financial institution ~~institutions~~ within the meaning of the  
25 financial institutions codes, ~~and~~ Licensure of such a company  
26 ~~these companies~~ pursuant to chapters 658 and 660 is ~~should not~~  
27 ~~be required~~ as it would not promote the purposes of the codes  
28 specified as set forth in s. 655.001.

29 (2) A family trust company may elect to be a licensed  
30 family trust company under this chapter if the company desires  
31 to be subject to the regulatory oversight of the office, as  
32 provided in this chapter, notwithstanding that the company  
33 restricts its services to family members.

34 (3) With respect to: ~~Consequently, the office~~

35 (a) A licensed ~~of Financial Regulation is not responsible~~  
36 ~~for regulating~~ family trust company, the office is responsible  
37 for regulating, supervising, and examining the company as  
38 provided under this chapter.

39 (b) A family trust company that does not elect to be  
40 licensed and a foreign licensed family trust company, ~~companies~~  
41 ~~to ensure their safety and soundness, and the responsibility of~~  
42 the office's role ~~office~~ is limited to ensuring that fiduciary  
43 services provided by the company ~~such companies~~ are restricted



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44 to family members and authorized related interests and not to  
45 the general public. The office is not responsible for examining  
46 a family trust company or a foreign licensed family trust  
47 company regarding the safety or soundness of its operations.

48 Section 2. Subsection (19) of section 662.111, Florida  
49 Statutes, is amended to read:

50 662.111 Definitions.—As used in this chapter, the term:

51 (19) "Officer" of a family trust company means an  
52 individual, regardless of whether the individual has an official  
53 title or receives a salary or other compensation, who may  
54 participate in the major policymaking functions of a family  
55 trust company, other than as a director. The term does not  
56 include an individual who may have an official title and  
57 exercise discretion in the performance of duties and functions,  
58 but who does not participate in determining the major policies  
59 of the family trust company and whose decisions are limited by  
60 policy standards established by other officers, regardless of  
61 whether the policy standards have been adopted by the board of  
62 directors. The chair of the board of directors, the president,  
63 the chief officer, the chief financial officer, the senior trust  
64 officer, and all executive vice presidents of a family trust  
65 company, and all managers if organized as a limited liability  
66 company, are presumed to be ~~executive~~ officers unless such  
67 officer is excluded, by resolution of the board of directors or  
68 members or by the bylaws or operating agreement of the family  
69 trust company, other than in the capacity of a director, from

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70 participating in major policymaking functions of the family  
71 trust company, and such excluded officer does not actually  
72 participate therein.

73 Section 3. Section 662.113, Florida Statutes, is created  
74 to read:

75 662.113 Applicability of other chapters of the financial  
76 institutions codes.—If a family trust company, licensed family  
77 trust company, or foreign licensed family trust company limits  
78 its activities to the activities authorized under this chapter,  
79 the provisions of other chapters of the financial institutions  
80 codes do not apply to the trust company unless otherwise  
81 expressly provided in this chapter. This section does not limit  
82 the office's authority to investigate any entity to ensure that  
83 it is not in violation of this chapter or applicable provisions  
84 of the financial institutions codes.

85 Section 4. Subsection (2) of section 662.120, Florida  
86 Statutes, is amended to read:

87 662.120 Maximum number of designated relatives.—

88 (2) A licensed family trust company may ~~not~~ have up to  
89 ~~more than~~ two designated relatives, ~~and~~ The designated  
90 relatives may not have a common ancestor within three ~~five~~  
91 generations.

92 Section 5. Paragraph (e) is added to subsection (2) of  
93 section 662.1215, Florida Statutes, to read:

94 662.1215 Investigation of license applicants.—



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

98 (e) That the management structure of the proposed company  
99 complies with s. 662.125.

100 Section 6. Paragraph (b) of subsection (1) and paragraphs  
101 (a) and (c) of subsection (2) of section 662.122, Florida  
102 Statutes, are amended to read:

103 662.122 Registration of a family trust company or a  
104 foreign licensed family trust company.—

105 (1) A family trust company that is not applying under s.  
106 662.121 to become a licensed family trust company must register  
107 with the office before beginning operations in this state. The  
108 registration application must:

109 (b) State that the family trust company is a family trust  
110 company as defined under this chapter and that its operations  
111 will comply with ss. 662.1225, 662.123(1), 662.124, 662.125,  
112 662.127, 662.131, and 662.134.

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

115 (a) The registration application must state that its  
116 operations will comply with ss. 662.1225, 662.125, 662.127,  
117 662.131, and 662.134 and that it is currently in compliance with  
118 the family trust company laws and regulations of its principal  
119 jurisdiction.





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120 (c) The registration must include a certified copy of a  
121 certificate of good standing, or an equivalent document,  
122 authenticated by the official having custody of records in the  
123 jurisdiction where the foreign licensed family trust company is  
124 organized, along with satisfactory proof, as determined by the  
125 office, that the company is organized in a manner similar to a  
126 family trust company as defined under this chapter and is in  
127 compliance with the family trust company laws and regulations of  
128 its principal jurisdiction.

129 Section 7. Subsection (2) of section 662.1225, Florida  
130 Statutes, is amended, and subsection (3) is added to that  
131 section, to read:

132 662.1225 Requirements for a family trust company, licensed  
133 family trust company, and foreign licensed family trust  
134 company.—

135 (2) In order to operate in this state, a foreign licensed  
136 family trust company must be in good standing in its principal  
137 jurisdiction, must be in compliance with the family trust  
138 company laws and regulations of its principal jurisdiction, and  
139 must maintain:

140 (a) An office physically located in this state where  
141 original or true copies of all records and accounts of the  
142 foreign licensed family trust company pertaining to its  
143 operations in this state may be accessed and made readily  
144 available for examination by the office in accordance with this  
145 chapter.



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

148 (c) All applicable state and local business licenses,  
149 charters, and permits.

150 (d) A deposit account with a state-chartered or national  
151 financial institution that has a principal or branch office in  
152 this state.

153 (3) A company in operation as of October 1, 2015, which  
154 meets the definition of a family trust company, must, on or  
155 before December 30, 2015, apply for licensure as a licensed  
156 family trust company, register as a family trust company or  
157 foreign licensed family trust company, or cease doing business  
158 in this state.

159 Section 8. Subsection (2) of section 662.123, Florida  
160 Statutes, is amended to read:

161 662.123 Organizational documents; use of term "family  
162 trust" in name.—

163 (2) A proposed amendment to the articles of incorporation,  
164 articles of organization, certificate of formation, or  
165 certificate of organization, bylaws, or articles of organization  
166 of a limited liability company, family trust company, or  
167 licensed family trust company must be submitted to the office  
168 for review at least 30 days before it is filed or effective. An  
169 amendment is not considered filed or effective if the office  
170 issues a notice of disapproval with respect to the proposed  
171 amendment.



## Amendment No. 1

172 Section 9. Subsections (1) through (4) of section 662.128,  
173 Florida Statutes, are amended to read:

174 662.128 Annual renewal.—

175 (1) Within 45 ~~30~~ days after the end of each calendar year,  
176 a family trust company ~~companies~~, licensed family trust company  
177 ~~companies~~, or and foreign licensed family trust company  
178 ~~companies~~ shall file its ~~their~~ annual renewal application with  
179 the office.

180 (2) The license renewal application filed by a licensed  
181 family trust company must include a verified statement by an  
182 authorized representative of the trust company that:

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

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

192 (3) The registration renewal application filed by a family  
193 trust company must include:

194 (a) A verified statement by an authorized representative  
195 ~~officer~~ of the trust company that it is a family trust company  
196 as defined under this chapter and that its operations are in  
197 compliance with ss. 662.1225, 662.123(1), 662.124, 662.125,



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198 662.127, 662.131, and 662.134,† chapter 896,† or similar state  
199 or federal law,† or any related rule or regulation.

200 (b) ~~, and include~~ The name of the company's ~~its~~ designated  
201 relative or relatives, if applicable, and the street address for  
202 its principal place of business.

203 (4) The registration renewal application filed by a  
204 foreign licensed family trust company must include a verified  
205 statement by an authorized representative of the trust company  
206 that its operations are in compliance with ss. 662.1225,  
207 662.125, 662.131, and 662.134 and in compliance with the family  
208 trust company laws and regulations of its principal  
209 jurisdiction. It must also provide:

210 (a) The current telephone number and street address of the  
211 physical location of its principal place of business in its  
212 principal jurisdiction.

213 (b) The current telephone number and street address of the  
214 physical location in this state of its principal place of  
215 operations where its books and records pertaining to its  
216 operations in this state are maintained.

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

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

221 (e) Documentation satisfactory to the office that the  
222 foreign licensed family trust company is in compliance with the



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223 family trust company laws and regulations of its principal  
224 jurisdiction.

225 Section 10. Subsections (4) and (7) of section 662.132,  
226 Florida Statutes, are amended to read:

227 662.132 Investments.—

228 (4) Notwithstanding any other law, a family trust company  
229 or licensed family trust company may, while acting as a  
230 fiduciary, purchase directly from underwriters or broker-dealers  
231 ~~distributors~~ or in the secondary market:

232 (a) Bonds or other securities underwritten or brokered  
233 ~~distributed~~ by:

234 1. The family trust company or licensed family trust  
235 company;

236 2. A family affiliate; or

237 3. A syndicate, including the family trust company,  
238 licensed family trust company, or family affiliate.

239 (b) Securities of an investment company, including a  
240 mutual fund, closed-end fund, or unit investment trust, as  
241 defined under the federal Investment Company Act of 1940, for  
242 which the family trust company or licensed family trust company  
243 acts as an advisor, custodian, distributor, manager, registrar,  
244 shareholder servicing agent, sponsor, or transfer agent.

245 (7) Notwithstanding subsections (1)-(6), a family trust  
246 company or licensed family trust company may not, while acting  
247 as a fiduciary, purchase a bond or security issued by the



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248 company or its parent, or a subsidiary company ~~an affiliate~~  
249 thereof or its parent, unless:

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

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

253 2. A court order;

254 3. The written consent of the settlor of the trust for  
255 which the family trust company or licensed family trust company  
256 is serving as trustee; or

257 4. The written consent of every adult qualified  
258 beneficiary of the trust who, at the time of such purchase, is  
259 entitled to receive income under the trust or who would be  
260 entitled to receive a distribution of principal if the trust  
261 were terminated; and

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

264 1. The prudent investor rule in s. 518.11~~7~~ or other  
265 prudent investor or similar rule under other applicable law,  
266 unless ~~such~~ compliance is waived in accordance with s. 518.11 or  
267 other applicable law.

268 2. The terms of the instrument, judgment, decree, or order  
269 establishing the fiduciary relationship.

270 Section 11. Section 662.141, Florida Statutes, is amended  
271 to read:

272 662.141 Examination, investigations, and fees.—The office  
273 may conduct an examination or investigation of a ~~family trust~~



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274 ~~company, licensed family trust company, or foreign licensed~~  
275 ~~family trust company~~ at any time it deems necessary to determine  
276 whether the a family trust company, licensed family trust  
277 ~~company, foreign licensed family trust company, or licensed~~  
278 family trust company-affiliated party thereof person has  
279 violated or is about to violate any provision of this chapter,  
280 ~~or rules adopted by the commission pursuant to this chapter, or~~  
281 any applicable provision of the financial institution codes, or  
282 any rule rules adopted by the commission pursuant to this  
283 chapter or the such codes. The office may conduct an examination  
284 or investigation of a family trust company or foreign licensed  
285 family trust company at any time it deems necessary to determine  
286 whether the family trust company or foreign licensed family  
287 trust company has engaged in any act prohibited under s. 662.131  
288 or s. 662.134 and, if a family trust company or a foreign  
289 licensed family trust company has engaged in such act, to  
290 determine whether any applicable provision of the financial  
291 institution codes has been violated.

292 (1) The office may rely upon a certificate of trust, trust  
293 summary, or written statement from the trust company which  
294 identifies the qualified beneficiaries of any trust or estate  
295 for which a family trust company, licensed family trust company,  
296 or foreign licensed family trust company serves as a fiduciary  
297 and the qualifications of such beneficiaries as permissible  
298 recipients of company services.



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299       (2) The office shall conduct an examination of a licensed  
300 family trust company, ~~family trust company, and foreign licensed~~  
301 ~~family trust company~~ at least once every 36 ~~18~~ months.

302       ~~(2) In lieu of an examination by the office, the office~~  
303 ~~may accept an audit of a family trust company, licensed family~~  
304 ~~trust company, or foreign licensed family trust company by a~~  
305 ~~certified public accountant licensed to practice in this state~~  
306 ~~who is independent of the company, or other person or entity~~  
307 ~~acceptable to the office. If the office accepts an audit~~  
308 ~~pursuant to this subsection, the office shall conduct the next~~  
309 ~~required examination.~~

310       ~~(3) The office shall examine the books and records of a~~  
311 ~~family trust company or licensed family trust company as~~  
312 ~~necessary to determine whether it is a family trust company or~~  
313 ~~licensed family trust company as defined in this chapter, and is~~  
314 ~~operating in compliance with this chapter ss. ~~662.1225, 662.125,~~~~  
315 ~~662.126, 662.131, and 662.134, as applicable. The office may~~  
316 ~~rely upon a certificate of trust, trust summary, or written~~  
317 ~~statement from the trust company identifying the qualified~~  
318 ~~beneficiaries of any trust or estate for which the family trust~~  
319 ~~company serves as a fiduciary and the qualification of the~~  
320 ~~qualified beneficiaries as permissible recipients of company~~  
321 ~~services. The commission may establish by rule the records to be~~  
322 ~~maintained or requirements necessary to demonstrate conformity~~  
323 ~~with this chapter as a family trust company or licensed family~~  
324 ~~trust company.~~





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325        ~~(3)(4)~~ The office shall examine the books and records of a  
326 foreign licensed family trust company as necessary to determine  
327 if it is a foreign licensed trust company as defined in this  
328 chapter and is in compliance with ss. 662.1225, 662.125,  
329 662.130(2), 662.131, and 662.134. In connection with an  
330 examination of the books and records of the company, the office  
331 may rely upon the most recent examination report or review or  
332 certification letters or similar documentation issued by the  
333 regulatory agency to which the foreign licensed family trust  
334 company is subject to supervision. ~~The commission may establish~~  
335 ~~by rule the records to be maintained or requirements necessary~~  
336 ~~to demonstrate conformity with this chapter as a foreign~~  
337 ~~licensed family trust company.~~ The office's examination of the  
338 books and records of a foreign licensed family trust company is,  
339 to the extent practicable, limited to books and records of the  
340 operations in this state.

341        ~~(4)(5)~~ For each examination of the books and records of a  
342 family trust company, licensed family trust company, or foreign  
343 licensed family trust company as authorized under this chapter,  
344 the trust company shall pay a fee for the costs of the  
345 examination by the office. As used in this section, the term  
346 "costs" means the salary and travel expenses of field staff  
347 which are directly attributable to the examination of the trust  
348 company and the travel expenses of any supervisory and ~~or~~  
349 support staff required as a result of examination findings. The  
350 mailing of payment for costs incurred must be postmarked within



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351 30 days after the receipt of a notice stating that the ~~such~~  
352 costs are due. The office may levy a late payment of up to \$100  
353 per day or part thereof that a payment is overdue, unless waived  
354 for good cause. However, if the late payment of costs is  
355 intentional, the office may levy an administrative fine of up to  
356 \$1,000 per day for each day the payment is overdue.

357 (5)~~(6)~~ All fees collected under this section must be  
358 deposited into the Financial Institutions' Regulatory Trust Fund  
359 pursuant to s. 655.049 for the purpose of administering this  
360 chapter.

361 (6) The commission may establish by rule the records to be  
362 maintained or requirements necessary to demonstrate conformity  
363 with this chapter as a family trust company, licensed family  
364 trust company, or foreign licensed family trust company.

365 Section 12. Section 662.142, Florida Statutes, is amended  
366 to read:

367 662.142 Revocation of license.—

368 (1) Any of the following acts constitute ~~or conduct~~  
369 ~~constitutes~~ grounds for the revocation by the office of the  
370 license of a licensed family trust company:

371 (a) The company is not a family trust company as defined  
372 in this chapter.†

373 (b) A violation of s. 662.1225, s. 662.123(1)(a), s.  
374 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, s.  
375 662.131, s. 662.134, or s. 662.144.†



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376 (c) A violation of chapter 896, relating to financial  
377 transactions offenses, or a any similar state or federal law or  
378 any related rule or regulation.†

379 (d) A violation of any rule of the commission.†

380 (e) A violation of any order of the office.†

381 (f) A breach of any written agreement with the office.†

382 (g) A prohibited act or practice under s. 662.131.†

383 (h) A failure to provide information or documents to the  
384 office upon written request.†~~or~~

385 (i) An act of commission or omission which ~~that~~ is  
386 judicially determined by a court of competent jurisdiction to be  
387 a breach of trust or ~~of~~ fiduciary duty ~~pursuant to a court of~~  
388 ~~competent jurisdiction.~~

389 (2) If the office finds ~~Upon a finding~~ that a licensed  
390 family trust company has committed any of the acts specified ~~set~~  
391 ~~forth~~ in subsection (1) paragraphs (1)(a)-(h), the office may  
392 enter an order suspending the company's license and provide  
393 notice of its intention to revoke the license and of the  
394 opportunity for a hearing pursuant to ss. 120.569 and 120.57.

395 (3) If a hearing is not timely requested pursuant to ss.  
396 120.569 and 120.57 or if a hearing is held and it has been  
397 determined that the licensed family trust company has committed  
398 any of the acts specified in subsection (1) there has been a  
399 ~~commission or omission under paragraph (1)(i)~~, the office may  
400 ~~immediately~~ enter an order revoking the company's license. A ~~The~~  
401 licensed family trust company has ~~shall~~ have 90 days to wind up



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402 its affairs after license revocation. If after 90 days the  
403 company is still in operation, the office may seek an order from  
404 the circuit court for the annulment or dissolution of the  
405 company.

406 Section 13. Subsection (1) of section 662.143, Florida  
407 Statutes, is amended to read:

408 662.143 Cease and desist authority.-

409 (1) The office may issue and serve upon a family trust  
410 company, licensed family trust company, ~~or~~ foreign licensed  
411 family trust company, or ~~upon~~ a family trust company-affiliated  
412 party, a complaint stating charges if the office has reason to  
413 believe that such company, family trust company-affiliated  
414 party, or individual named therein is engaging in or has engaged  
415 in any of the following acts ~~conduct that~~:

416 (a) ~~Indicates that~~ The company is not a family trust  
417 company or foreign licensed family trust company as defined in  
418 this chapter.†

419 (b) ~~Is~~ A violation of s. 662.1225, s. 662.123(1)(a), s.  
420 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, or  
421 s. 662.134.†

422 (c) ~~Is~~ A violation of any rule of the commission.†

423 (d) ~~Is~~ A violation of any order of the office.†

424 (e) ~~Is~~ A breach of any written agreement with the office.†

425 (f) ~~Is~~ A prohibited act or practice pursuant to s.  
426 662.131.†



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427 (g) ~~Is~~ A willful failure to provide information or  
428 documents to the office upon written request. ~~†~~

429 (h) ~~Is~~ An act of commission or omission that is judicially  
430 determined by or a court of competent jurisdiction practice that  
431 the office has reason to be believe is a breach of trust or of  
432 fiduciary duty. ~~† or~~

433 (i) ~~Is~~ A violation of chapter 896 or similar state or  
434 federal law or any related rule or regulation.

435 Section 14. Section 662.144, Florida Statutes, is amended  
436 to read:

437 662.144 Failure to submit required report; fines.—If a  
438 family trust company, licensed family trust company, or foreign  
439 licensed family trust company fails to submit within the  
440 prescribed period its annual renewal or any other report  
441 required by this chapter or any rule, the office may impose a  
442 fine of up to \$100 for each day that the annual renewal or  
443 report is overdue. Failure to provide the annual renewal within  
444 60 days after the end of the calendar year shall automatically  
445 result in termination of the registration of a family trust  
446 company or foreign licensed family trust company or revocation  
447 of the license of a licensed family trust company. A family  
448 trust company may have its registration or license automatically  
449 reinstated by submitting to the office, on or before August 31  
450 of the calendar year in which the renewal application is due,  
451 the company's annual renewal application and fee required under  
452 s. 662.128, a \$500 late fee, and the amount of any fine imposed



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453 by the office under this section. A family The trust company  
454 that fails to renew or reinstate its registration or license  
455 must shall thereafter have 90 days to wind up its affairs on or  
456 before November 30 of the calendar year in which such failure  
457 occurs. Fees and fines collected under this section shall be  
458 deposited into the Financial Institutions' Regulatory Trust Fund  
459 pursuant to s. 655.049 for the purpose of administering this  
460 chapter.

461 Section 15. Paragraph (a) of subsection (6) of section  
462 662.145, Florida Statutes, is amended to read:

463 662.145 Grounds for removal.—

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

469 (a) If a family trust company-affiliated party is charged  
470 with a felony in a state or federal court, or is charged with an  
471 offense in a court the courts of a foreign country with which  
472 the United States maintains diplomatic relations which involves  
473 a violation of law relating to fraud, currency transaction  
474 reporting, money laundering, theft, or moral turpitude and the  
475 charge is equivalent to a felony charge under state or federal  
476 law, the office may enter an emergency order suspending the  
477 family trust company-affiliated party or restricting or  
478 prohibiting participation by such ~~company-affiliated~~ party in



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479 the affairs of that particular family trust company or licensed  
480 family trust company or any state financial institution,  
481 subsidiary, or service corporation, upon service of the order  
482 upon the company and ~~the~~ family trust company-affiliated party  
483 ~~se~~ charged.

484 Section 16. Paragraph (b) of subsection (1) of section  
485 662.150, Florida Statutes, is amended to read:

486 662.150 Domestication of a foreign family trust company.—

487 (1) A foreign family trust company lawfully organized and  
488 currently in good standing with the state regulatory agency in  
489 the jurisdiction where it is organized may become domesticated  
490 in this state by:

491 (b) Filing an application for a license to begin  
492 operations as a licensed family trust company in accordance with  
493 s. 662.121, which must first be approved by the office, or by  
494 filing the prescribed form with the office to register as a  
495 family trust company to begin operations in accordance with s.  
496 662.122.

497 Section 17. Subsection (3) of section 662.151, Florida  
498 Statutes, is amended to read:

499 662.151 Registration of a foreign licensed family trust  
500 company to operate in this state.—A foreign licensed family  
501 trust company lawfully organized and currently in good standing  
502 with the state regulatory agency in the jurisdiction under the  
503 law of which it is organized may qualify to begin operations in  
504 this state by:



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505       ~~(3) A company in operation as of the effective date of~~  
506 ~~this act that meets the definition of a family trust company~~  
507 ~~shall have 90 days from the effective date of this act to apply~~  
508 ~~for licensure as a licensed family trust company, register as a~~  
509 ~~family trust company or foreign licensed family trust company,~~  
510 ~~or cease doing business in this state.~~

511       Section 18. This act shall take effect October 1, 2015.

512  
513       -----

**T I T L E   A M E N D M E N T**

514       Remove everything before the enacting clause and insert:

515                       A bill to be entitled  
516  
517       An act relating to family trust companies; amending s.  
518       662.102, F.S.; revising the purposes of the Family  
519       Trust Company Act; providing legislative findings;  
520       amending s. 662.111, F.S.; redefining the term  
521       "officer"; creating s. 662.113, F.S.; specifying the  
522       applicability of other chapters of the financial  
523       institutions codes to family trust companies;  
524       providing that the section does not limit the  
525       authority of the Office of Financial Regulation to  
526       investigate any entity to ensure that it is not in  
527       violation of ch. 662, F.S., or applicable provisions  
528       of the financial institutions codes; amending s.  
529       662.120, F.S.; revising the ancestry requirements for  
530       designated relatives of a licensed family trust





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531 company; amending s. 662.1215, F.S.; revising the  
532 requirements for investigations of license applicants  
533 by the Office of Financial Regulation; amending s.  
534 662.122, F.S.; revising the requirements for  
535 registration of a family trust company and a foreign  
536 licensed family trust company; amending s. 662.1225,  
537 F.S.; requiring a foreign licensed family trust  
538 company to be in compliance with the family trust laws  
539 and regulations in its jurisdiction; specifying the  
540 date upon which family trust companies must be  
541 registered or licensed or, if not registered or  
542 licensed, cease doing business in this state; amending  
543 s. 662.123, F.S.; revising the types of amendments to  
544 organizational documents which must have prior  
545 approval by the office; amending s. 662.128, F.S.;  
546 extending the deadline for the filing of, and revising  
547 the requirements for, specified license and  
548 registration renewal applications; amending s.  
549 662.132, F.S.; revising the authority of specified  
550 family trust companies while acting as fiduciaries to  
551 purchase certain bonds and securities; revising the  
552 prohibition against the purchase of certain bonds or  
553 securities by specified family trust companies;  
554 amending s. 662.141, F.S.; revising the purposes for  
555 which the office may examine or investigate a family  
556 trust company that is not licensed and a foreign



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557 licensed family trust company; deleting the  
558 requirement that the office examine a family trust  
559 company that is not licensed and a foreign licensed  
560 family trust company; providing that the office may  
561 rely upon specified documentation that identifies the  
562 qualifications of beneficiaries as permissible  
563 recipients of family trust company services; deleting  
564 a provision that authorizes the office to accept an  
565 audit by a certified public accountant in lieu of an  
566 examination by the office; authorizing the Financial  
567 Services Commission to adopt rules establishing  
568 specified requirements for family trust companies;  
569 amending s. 662.142, F.S.; deleting a provision that  
570 authorizes the office to immediately revoke the  
571 license of a licensed family trust company under  
572 certain circumstances; revising the circumstances  
573 under which the office may enter an order revoking the  
574 license of a licensed family trust company; amending  
575 s. 662.143, F.S.; revising the acts that may result in  
576 the entry of a cease and desist order against  
577 specified family trust companies and affiliated  
578 parties; amending s. 662.144, F.S.; authorizing a  
579 family trust company to have its terminated  
580 registration or revoked license reinstated under  
581 certain circumstances; revising the timeframe for a  
582 family trust company to wind up its affairs under



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583 | certain circumstances; requiring the deposit of  
584 | certain fees and fines in the Financial Institutions'  
585 | Regulatory Trust Fund; amending s. 662.145, F.S.;  
586 | revising the office's authority to suspend a family  
587 | trust company-affiliated party who is charged with a  
588 | specified felony or to restrict or prohibit the  
589 | participation of such party in certain financial  
590 | institutions; s. 662.150, F.S.; making a technical  
591 | change; amending s. 662.151, F.S.; conforming a  
592 | provision to changes made by the act; providing an  
593 | effective date.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 927 Title Insurance  
**SPONSOR(S):** Hager  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1136

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Lloyd <i>[Signature]</i>	Cooper <i>[Signature]</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

**SUMMARY ANALYSIS**

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by encumbrance, defective title, invalidity, or adverse claim to title. Title insurance is a policy issued by a title insurer that, after evaluating a search of title, insures against certain covered risks including forgery, fraud, liens and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Title insurers are regulated by the Office of Insurance Regulation (OIR), as to licensing and rates, and the Department of Financial Services in its role as "receiver," either through liquidation or rehabilitation. Because liquidation requires cancellation of policies and unforeseen costs to property owners and lenders, the two current title insurer insolvencies are handled by rehabilitation. The claim costs and expenses of the cases are funded through assessments on active title insurers (three assessments to date) and recovered through surcharges on all title insurance policies issued in the state. A \$3.28 surcharge per policy is currently in force. The surcharges are retained by the insurer until they have recovered their assessment payments and excess surcharges are paid to the Insurance Regulatory Trust Fund. To date, no such payments have occurred. These excess surcharges are not used to reduce the need for future assessments or assist other insurers that are slow to recover their assessment payments due to the low policy volume of their business.

Once all insurers recover their assessment payment, surcharges will cease. Because the insurer's share of the assessment is based on market share as determined by direct written premium and some insurers have low policy counts but high premium written, and are therefore slow to recover their assessment, and others may go inactive before recovering their assessment payment, it is unclear when, if ever, the surcharges will end.

The bill changes the administration process of assessment recovery surcharges. The bill:

- removes language limiting the surcharge to one per insolvent company, permitting the receiver to adjust the surcharge amount related to a particular company;
- requires transaction settlement statements to specify that the surcharge amount is a "surcharge" and provide that the surcharge is not premium;
- requires any insurer that was not subject to a given assessment, regardless of their activity in the previous calendar year, to collect and remit the surcharge to the receiver as an excess surcharge for use as provided in the bill;
- establishes an excess surcharge account under the receiver for use as specified in the bill;
- rolls unused excess surcharges held by the receiver into the Insurance Regulatory Trust Fund one year after all title insurer receiverships have been terminated, rather than immediately upon receipt; and
- grants the OIR specific rulemaking authority.

The bill has an undetermined impact on state revenues and expenditures; an undetermined positive impact on local government expenditures; and, an undetermined positive impact on the private sector.

The bill is effective July 1, 2015.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### **Title Insurance**

Title insurance insures owners of real property or others having an interest in real property, such as lenders, against loss by encumbrance, defective title, invalidity, or adverse claim to title.<sup>1</sup> Title insurance is a policy issued by a title insurer that, after evaluating a search of title, insures against certain covered risks including forgery, fraud, liens and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.<sup>2</sup>

##### **Regulation in Florida**

Two entities provide regulatory oversight of the title insurance industry in Florida: the Department of Financial Services (DFS or receiver), which regulates title insurance agents and acts as receiver of insolvent title insurer estates, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage<sup>3</sup> and premium rates charged by title insurers are specified by rule by the Financial Services Commission (FSC).<sup>4</sup> Title insurers may petition the OIR for an order authorizing a specific deviation from the adopted premium.<sup>5</sup>

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.<sup>6</sup> Eighteen title insurers are authorized and actively writing title insurance in the state.<sup>7</sup>

Pursuant to s. 627.782, F.S., the FSC is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every three years.

Title insurers and title insurance agencies are required to submit to the OIR, on or before May 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined

<sup>1</sup> Section 624.608, F.S. Title insurance is also insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code.

<sup>2</sup> See, e.g., the website of the American Land Title Association (ALTA), <http://www.alta.org> (Last accessed: March 7, 2015). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.

<sup>3</sup> Section 627.777, F.S.

<sup>4</sup> Section 627.782, F.S.

<sup>5</sup> Section 627.783, F.S.

<sup>6</sup> Section 627.786, F.S.

<sup>7</sup> Florida Office of Insurance Regulation, <http://www.floridair.com/CompanySearch/> (last accessed March 8, 2015). Search for "Title Insurance" under "Company Type."

necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry.

### **Insurer Insolvency: Rehabilitation and Liquidation**

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.<sup>8</sup> Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the DFS is responsible for rehabilitating or liquidating insurance companies as the "receiver."<sup>9</sup> This process involves the initiation of a delinquency proceeding and the placement of an insurer under the control of the department as the receiver. Insolvencies are handled before the Circuit Court of Leon County, i.e., the 2<sup>nd</sup> Judicial Circuit.<sup>10</sup>

### **Foreign Title Insurers in Receivership<sup>11</sup>**

When a foreign title insurer with policies in Florida is placed in receivership by its domiciliary state, the DFS may apply to the court for an order appointing it as ancillary receiver for the purpose of making assessments. The proceeds of such assessments may be used for the payment of claims, to acquire reinsurance, or otherwise provide for the assumption of Florida policy obligations by another insurer. If the assets in Florida are insufficient to pay the administrative costs of the ancillary receivership, the receiver may request additional funds from the Insurance Regulatory Trust Fund.

### **Liquidation**

When the DFS determines that a Florida-domiciled insurer is insolvent or is operating in a financially hazardous manner, it petitions the court for an order requiring the insurer to show cause why it should not be placed into liquidation.<sup>12</sup> If the insurer's board of directors either joins in the petition or consents, a liquidation order is issued appointing the DFS as receiver to liquidate the insurer; otherwise, a hearing is held to determine whether the petition should be granted.

Under the court's supervision, the receiver as liquidator is charged with gathering (marshaling) the company's assets, converting them into cash, and distributing the cash to the insurer's claimants in accordance with the priority for claims payment established by statute.

After issuance of the liquidation order, the DFS takes possession of the insurer's offices, equipment, records and assets, and notice of the liquidation is sent to all potential claimants advising them of the liquidation and the process to follow to perfect their claim against the insurer's estate. All property and casualty insurance policies are cancelled within 30 days of the liquidation order.

After all assets have been converted to cash, claims prioritized and valued, and any objections to the valuation of claims resolved, the receiver will file a petition with the court asking for authority to distribute the cash according to the priorities set in statute.<sup>13</sup>

Liquidation of title insurers is disfavored because it results in the cancellation of the insurer's policies. This would eliminate the insurance covering the lender's interest in the title and require the owner to

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<sup>8</sup> The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

<sup>9</sup> Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. See s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

<sup>10</sup> Section 631.021, F.S.

<sup>11</sup> "Foreign insurer" is defined in s. 624.06, F.S., as an insurer formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida.

<sup>12</sup> The grounds for liquidation are set forth in s. 631.061, F.S.

<sup>13</sup> Section 631.271, F.S.

obtain new title insurance or refinance the mortgage at unexpected additional cost. According to the DFS, they have never liquidated a title insurer in the state.

## Rehabilitation

The receiver of an impaired insurer, as the rehabilitator, prepares a plan to assist an insurer to resolve its difficulties, and is responsible for taking actions necessary to correct the conditions that necessitated the receivership, as the court may direct. Generally, the receiver suspends all powers of the company's directors, officers, and managers.

By statute and court order, for insurers generally, the receiver:

- Is authorized to conduct all business of the insurer.
- Directs, manages, hires, and discharges employees.
- Is authorized to manage the property and assets of the insurer as it deems necessary.
- Files for release of the company from receivership if rehabilitation efforts are successful and grounds for receivership no longer exist.

By statute, for title insurers, the receiver reviews the insurer's condition and files a rehabilitation plan, subject to court approval, that provides for the following:<sup>14</sup>

- Title insurance policies covering real property in Florida are to remain in force, unless assessments on other title insurers would be insufficient to pay the insurer's claims in the ordinary course of business.
- Title insurance policies covering real property in other states ("out-of-state policies") that do not statutorily provide for payment of future losses of title insurers in receivership may be cancelled as of a date proposed by the receiver (if approved by the court); with a claims filing deadline proposed for out-of-state policies that are cancelled.
- A proposed percentage of the remaining estate assets to fund out-of-state claims where policies have been cancelled, with any unused funds returned to the general assets of the insurer's estate.
- A proposed percentage of the remaining estate assets to fund out-of-state claims where policies remain in force.
- That funds allocated to pay claims on out-of-state policies are to be based on the pro-rata share of premiums written in each state over each of the 5 calendar years preceding the date of the order of rehabilitation.

If the receiver determines that further attempts to rehabilitate the insurer are futile or if continued rehabilitation would increase the risk of loss to policyholders, the receiver may file for liquidation of the insurer. However, as noted above, liquidation of title insurance companies is disfavored.

## Title Insurers in Rehabilitation

There are two title insurers in rehabilitation: National Title Insurance Company (National) and K.E.L. Title Insurance Group, Inc. (K.E.L.).<sup>15</sup> According to the DFS, these two are the only title insurers to go into receivership in the state. Both cases resulted in assessments<sup>16</sup> and the collection of surcharges.

<sup>14</sup> Section 631.400, F.S.

<sup>15</sup> See State of Florida, ex rel., the Department of Financial Services of the State of Florida v. National Title Insurance Company, Case No. 2009-CA-2511 (Fla. Cir. Ct.), and State of Florida, ex rel., the Department of Financial Services of the State of Florida v. K.E.L. Title Insurance Group, Inc., Case No. 2012-CA-3514 (Fla. Cir. Ct.). Detailed information can be obtained from the Office of Insurance Regulation at <http://www.myfloridacfo.com/Division/Receiver/Companies/CompaniesinRehabilitation.htm#.VPu66mxOncv>. (Last accessed on March 7, 2015.)



## Assessments<sup>17</sup>

As a condition of doing business in the state, title insurers are liable for an assessment to pay all unpaid title insurance claims on policies covering real property in Florida, and the expenses of administering and settling such claims, of a title insurer ordered into rehabilitation. The OIR, upon request of the receiver, is required to order an annual assessment in an amount the receiver considers sufficient to pay known claims, loss adjustment expenses, and the cost of administration of rehabilitation expenses. In requesting an assessment, the receiver is required to consider the remaining assets of the insurer in receivership. Annual assessments may be made until the insurer in rehabilitation does not have any policies in force or the potential for future liability has been satisfied. Assessments are to be based on each title insurer's pro-rata share of direct title insurance premiums written in Florida in the previous calendar year as reported to the OIR.

The assessment levied against a title insurer cannot exceed three percent of an insurer's surplus to policyholders at the end of the previous calendar year or ten percent of an insurer's surplus to policyholders over any consecutive five-year period. The ten percent limitation is to be calculated as the sum of the percentages of surplus to policyholders assessed in each of those five years. An emergency assessment may also be ordered, if requested by the receiver. However, the total of the emergency assessment and any annual assessment to be paid by a title insurer in a single calendar year cannot exceed the cap applicable to the annual assessment alone. The OIR may exempt a title insurer from, or limit payment of, the assessment when such payment would reduce the insurer's surplus to policyholders below the minimum required for the insurer to maintain its certificate of authority in another state. Assessments are payable within 90 days or under a quarterly installment plan approved by the receiver, accompanied by applicable finance charges.

Proceeds of assessments may be used by the receiver in an effort to keep in force title policies on Florida real property, including purchasing reinsurance or otherwise providing for the assumption of policy obligations by another insurer. When an assessment has been ordered, the insurer in rehabilitation is barred from issuing new title insurance policies until it is released from rehabilitation. An insurer may not be released from rehabilitation until all title insurers have received full reimbursement for assessments paid. However, because an insurer may become inactive in the interim, it may be impossible to meet this condition.

## Surcharges

To reimburse title insurers for assessments paid, the OIR is required to order a surcharge on all subsequently issued title insurance policies on Florida real property. The surcharge cannot exceed \$25 per transaction for each impaired title insurer and the surcharge must be in an amount estimated to be sufficient to recover all amounts assessed within 7 years. The surcharge is to be paid by the party responsible for payment of the title insurance premium, unless otherwise agreed between the parties.

If additional title insurers become impaired, the OIR is required to order an increase in the surcharge amount to reflect the aggregate surcharge. However, the statute does not permit the OIR to alter the surcharge related to a particular insolvency. The OIR may authorize one surcharge per insolvency, but a particular surcharge cannot be adjusted as additional claim and expenses develop. Because of the nature of title insurance, it is very difficult to estimate the development of claims and expenses over the long term.

Title insurance agents and agencies are required to collect and remit the surcharges to the title insurer upon which a policy is written within 60 days. No surcharge is due or owing as to any policy of

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<sup>16</sup> See 2012 Title Insurance Assessment for National Title Insurance Company Rehabilitation, Office of Insurance Regulation Case No. 127302-12, 2014 Title Insurance Assessment for National Title Insurance Company Rehabilitation, Office of Insurance Regulation Case No. 162723-14, and 2014 Title Insurance Assessment for K.E.L. Title Insurance Group Rehabilitation, Office of Insurance Regulation Case No. 150289-14.

<sup>17</sup> Section 631.400, F.S.

insurance issued at the simultaneous issue rate. The surcharge is to be considered a separate governmental assessment to be separately stated on any settlement statement, and is not subject to premium tax or reserve requirements. Title insurers are required to provide the OIR with an accounting, by March 1<sup>st</sup> of each year, of assessments paid and surcharges collected during the previous calendar year. Any surcharges collected by an insurer in excess of the assessment paid are payable to the Insurance Regulatory Trust Fund.

The OIR may only order the collection of surcharges ceased after all title insurers that paid the assessment fully recover the amount of the assessment.<sup>18</sup> Because the assessment is set as a pro rata share of direct written premium, but the surcharge is collected on a per policy basis, title insurers with a high average premium but a low policy volume may require an exceptionally long period of time to fully recover their assessment payment. Additionally, title insurers that paid the assessment may become inactive prior to recovering their assessment payments. So, the condition precedent to ceasing the surcharge may be impossible to meet.

### **Current Assessments and Surcharges**

To date, the OIR, at the request of the receiver, has ordered three assessments.<sup>19</sup> Two have been ordered related to National (\$212,478.00 in 2012 and \$300,000.00 in 2014) and one related to K.E.L. (\$2,023,870.00 in 2014). Seventeen title insurers were ordered to pay the 2012 assessment. Fifteen title insurers were ordered to pay the 2014 assessments. There is a difference between in the number assessed because K.E.L. became insolvent and another company became inactive prior to the 2014 assessments. The OIR reports that the first two assessments have been fully paid and that compliance on the last is ongoing.

Together, the total authorized surcharge on all title insurance policies written in the state is \$3.28 (\$0.28 related to National and \$3.00 related to K.E.L.). Title insurers began collecting surcharges in September 2014. Excess surcharge collections have not yet occurred.

### **Effect of the Bill**

The bill removes language limiting the surcharge to one per insolvent company. This permits the receiver to adjust the surcharge amount related to a particular company as claims and expenses develop. Currently, the surcharge related to National is set at \$0.28 per policy. To date, there has been only \$512,478.00 in claims and expenses converted into assessments in the matter. If higher claim activity occurs, the surcharge related to National cannot be adjusted in response. When one considers that the assessment related to K.E.L., which only held 0.27 percent of the Florida market in 2012, was over \$2,000,000.00, it becomes apparent that far higher claim activity could occur in the National case. The bill would allow the flexibility to react to actual claim development, as it occurs.

Currently, the amount of the surcharge is required to be listed on title transaction settlement statements. The bill requires the settlement statement to specify that the amount is a "surcharge." Also, the surcharge is not subject to premium tax. The bill specifically states that the surcharge is not premium.

Title insurers who did not write title insurance policies in the previous calendar year are required to collect and remit surcharges if they begin writing policies. The bill clarifies this provision to require any insurer that was not subject to a given assessment, when issued, to collect and remit the surcharge for any policies they write while the assessment is in effect. These surcharge collections are entirely excess surcharges (because these companies did not pay the assessment) and are remitted to the excess surcharge account maintained by the receiver, as established by the bill.

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<sup>18</sup> Section 627.401(6), F.S.

<sup>19</sup> See footnote 16, above.

While no excess surcharges have been collected and remitted, statute requires excess surcharges to be paid into the Insurance Regulatory Trust Fund. The bill establishes an excess surcharge account under the receiver (i.e., the Department of Financial Services). The receiver is allowed to use the excess surcharge funds only to:

- Reduce or eliminate the amount of a future assessment related to a title insurer in receivership,
- Reduce the amount of time that a surcharge for the recovery of assessment is in effect, by transferring excess surcharge collections to title insurers that have not yet recovered the amount of assessment the paid, and
- Reduce or eliminate the need for future assessments for title insurers not yet in receivership.

The bill rolls over excess surcharges held in the account to the Insurance Regulatory Trust Fund one year after all title insurer receiverships have been terminated. This allows the receiver to continue to use the excess surcharge collections to fund the claims and expenses of title insurers in receivership as long as at least one title insurer is in receivership. This avoids sending excess surcharges to the Insurance Regulatory Trust Fund while those funds could be used for other ongoing title insurer insolvencies. This is expected to minimize the value of additional assessments and the value and term of the aggregate surcharges.

The OIR is given specific rulemaking authority to adopt rules governing the collection, use, and transfer of surcharges, including excess surcharges.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 631.401, F.S., relating to recovery of assessments and assumed policy obligations.

**Section 2:** Provides an effective date of July 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

No excess surcharges have been remitted for deposit to the Insurance Regulatory Trust Fund. However, such payments are expected at an undetermined value and time in the future. The bill would reduce this expected revenue by redirecting the funds into an account retained by the Department of Financial Services, as receiver, to exclusively service the needs of insolvent title insurer estates, potential estates, and title insurers that have yet to recover their assessment payments.

#### 2. Expenditures:

The bill authorizes the receiver to expend excess surcharges remitted under the statute and bill for purposes specified by the bill. This includes distributing funds to title insurers that are not claimants to receivership estates. Rather, these funds are outside of and are not the asset of any insolvent estate. It is unclear if this activity is subject to legislative appropriation, court order, or solely within the discretion of the receiver to expend.

The bill should have a positive impact on state government expenditures to the extent that the state is a purchaser of title insurance and the value and term of surcharges will be minimized.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill should have a positive impact on local government expenditures to the extent that they are purchasers of title insurance and the value and term of surcharges will be minimized.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill is expected to have an undetermined but positive impact on the private sector. It will minimize the value of assessments and value and duration of surcharges to recover assessments that fund the claims and expenses of insolvent title insurers.

**D. FISCAL COMMENTS:**

See comments in section II. A., Fiscal Impact on State Government, above.

**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:**

The bill grants specific rulemaking authority to the Office of Insurance Regulation to establish the processes for collecting, using, and transferring surcharges, including excess surcharges. However, the Department of Financial Services, as receiver, may also need such rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

Current statute provides that the collection of surcharges will continue until all assessments are recovered. This presents a conundrum when a title insurer ceases to write policies in the state. This could be because they become inactive by choice or enter receivership. If that occurs, the collection of excess surcharges would continue without end. The bill does not directly address this issue, rather, it provides for the use of the collected excess surcharges. If the cessation of the surcharges were conditioned on the completed recovery of surcharges by the title insurers that are actively writing title insurance in the state, then the surcharges could cease despite the failure of inactive title insurers to recover their assessment payment. This would minimize the accumulation of excess surcharges consistent with the effect of the bill.

The bill gives the receiver authority to use excess surcharges to "reduce or eliminate the need for future assessments for title insurers not yet in receivership."<sup>20</sup> The turn of phrase "not yet in receivership" is

<sup>20</sup> HB 927, relating to title insurance, lines 82-83.

broad. If the intent is to use the excess surcharges held by the receiver to meet the expenses and claims relating to title insurers that subsequently enter receivership, then that turn of phrase should be narrowed, otherwise the authority may exist to release these funds to any title insurer not in receivership with no other conditions precedent being stated aside from limiting the need for future assessments. Additionally, it is unclear whether expenditures from the excess surcharges held by the receiver are subject to the authority of the court or receiver or the constitutional appropriation authority of the Legislature, since the excess surcharge is not part of the corpus of any receivership estate, rather they merely relate to the recovery of an assessment paid by a title insurer, which has been fully recovered by the insurer.

The bill authorizes the transfer of excess surcharges held by the receiver to the Insurance Regulatory Trust Fund one year following the termination of all title insurer receiverships. The term "year" is unqualified and could be made clear by specifying that it is a calendar year, fiscal year, or a consecutive twelve-month period. Also, termination of a receivership requires a court order.<sup>21</sup> Since no title insurer receiverships have been terminated in the state, the conditions which a court would require to order termination is unknown. Given that title insurance policies remain in effect for the life of the owner's or lender's interest, claims may not develop for decades following inception of the policy. This concern could be relieved if the transfer of the excess surcharges was conditioned upon a specified period of claims inactivity or the receiver's classification of the estate as inactive or closed.

Rulemaking authority is given to the Office of Insurance Regulation to adopt rule concerning the collection, use, and transfer of surcharges, including excess surcharges. However, the bill gives the receiver authority to use the excess surcharges remitted under the bill for the specified purposes. The receiver may also need rulemaking authority to establish procedures to claim and distribute the excess surcharge account funds.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>21</sup> Section 631.101, F.S.  
STORAGE NAME: h0927.IBS.DOCX  
DATE: 3/8/2015

A bill to be entitled

An act relating to title insurance; amending s. 631.401, F.S.; revising procedures and requirements relating to the recovery of assessments from title insurers through surcharges assessed on policies; revising provisions relating to surcharges collected in excess of the assessments paid by title insurers; revising requirements for the payment of excess surcharges to the Insurance Regulatory Trust Fund; authorizing the Office of Insurance Regulation to adopt rules for certain purposes; providing an effective date.

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

Section 1. Section 631.401, Florida Statutes, is amended to read:

631.401 Recovery of assessments and assumed policy obligations.—

(1) Upon the making of any assessment allowed by s. 631.400, the office shall order a surcharge or, if a surcharge is currently in effect, an additional surcharge amount on each title insurance policy thereafter issued insuring an interest in real property in this state. The office shall set the per transaction surcharge at an amount estimated to generate sufficient funds to recover the amount assessed over a period of

27 not more than 7 years. The amount of the surcharge ordered under  
 28 this section may not exceed \$25 per transaction for each  
 29 impaired title insurer. ~~If additional surcharges are occasioned~~  
 30 ~~by additional title insurers becoming impaired, the office shall~~  
 31 ~~order an increase in the amount of the surcharge to reflect the~~  
 32 ~~aggregate surcharge.~~

33 (2) The party responsible for the payment of title  
 34 insurance premium, unless otherwise agreed between the parties,  
 35 shall be responsible for the payment of the surcharge. No  
 36 surcharge will be due or owing as to any policy of title  
 37 insurance subject to ~~issued at~~ the simultaneous issue premium  
 38 ~~rate. For all other purposes,~~ The surcharge will be considered a  
 39 governmental assessment to be separately stated on any  
 40 settlement statement as a surcharge. The surcharge is not  
 41 premium and is not subject to premium tax or reserve  
 42 requirements under chapter 625.

43 (3) Title insurers doing business in this state which are  
 44 not subject to a given assessment ~~writing no premiums in the~~  
 45 ~~prior calendar year~~ shall collect the same per transaction  
 46 surcharge as provided by this section. Such surcharge collected  
 47 shall be paid to the receiver within 60 days after receipt to be  
 48 maintained in an excess surcharge account and used only as  
 49 provided in subsection (6) ~~from the title agent or agency.~~

50 (4) Each title insurance agent, agency, or direct title  
 51 operation shall collect the surcharge as to each title insurance  
 52 policy written and remit those surcharges ~~along with the~~

53 ~~policies and premiums~~ within 60 days to the title insurer on  
 54 which ~~whom~~ the policy was written.

55 (5) A title insurer may not retain more in surcharges ~~for~~  
 56 ~~an ordered assessment~~ than the amount of aggregate assessments  
 57 paid by the assessment that title insurer ~~paid~~. Any surcharges  
 58 collected in excess of the amount of the aggregate assessments  
 59 paid by a title insurer shall be paid as provided in subsection  
 60 (6). As used in this section, the term "aggregate assessments"  
 61 means the total amount of assessments ordered by the office  
 62 under s. 631.400.

63 (6) Each title insurer collecting surcharges shall  
 64 promptly notify the office when it has collected surcharges  
 65 equal to the amount of the aggregate assessments ~~assessment~~ paid  
 66 pursuant to s. 631.400. The office shall notify all companies,  
 67 including those collecting surcharges as required by subsection  
 68 (3), to cease collecting surcharges when notified that all  
 69 aggregate assessments have been recovered. Any surcharges  
 70 collected by a title insurer in excess of the total amount it  
 71 was assessed for aggregate assessments shall be paid quarterly  
 72 to the receiver to be maintained in the excess surcharge account  
 73 by the receiver. Excess surcharges may be used by the receiver  
 74 for the following purposes only:

75 (a) To reduce or eliminate the amount of a future  
 76 assessment for a title insurer in receivership;

77 (b) To reduce the amount of time that consumers in the  
 78 state are subject to surcharges by transferring excess



79 surcharges to title insurers that have not fully collected  
 80 surcharges equal to the amount of the aggregate assessments they  
 81 paid pursuant to s. 631.400; or

82 (c) To reduce or eliminate the need for future assessments  
 83 for title insurers not yet in receivership.

84 (7) In conjunction with the filing of each quarterly  
 85 financial statement, each title insurer shall provide the office  
 86 with an accounting of assessments paid and surcharges collected  
 87 during the period. Any surcharges collected in excess of the  
 88 amount assessed which are not used under subsection (6) within 1  
 89 year after the termination of all title insurer receiverships  
 90 shall be paid to the Insurance Regulatory Trust Fund. The office  
 91 may adopt rules specifying procedures for the collection, use,  
 92 and transfer of surcharges, including excess surcharges.

93 Section 2. This act shall take effect July 1, 2015.

## Insurance & Banking Subcommittee

HB 927 by Rep. Hager  
Title Insurance

### AMENDMENT SUMMARY March 10, 2015

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**Amendment 1 by Rep. Hager (Line 69):** The amendment allows the Office of Insurance Regulation to end the collection of assessment recovery surcharges once all active title insurers have recovered their assessment payment, rather than continuing the surcharges until all title insurers that paid the assessment have recovered their payment.

**Amendment 2 by Rep. Hager (Line 75):** The amendment clarifies that excess surcharges can only be used to fund the claims and expenses of insolvent title insurers or to fund the unpaid assessment recovery balance of title insurers that are slow to recover their assessment payments due to the nature of their business.

**Amendment 3 by Rep. Hager (Line 87):** The amendment revises the condition precedent to paying the excess surcharges held by the receiver (DFS) into the Insurance Regulatory Trust Fund and clarifies rulemaking authority granted by the bill.



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 Hager offered the following:

4  
 5 **Amendment**

6 Remove line 69 and insert:

7 aggregate assessments have been recovered by the title insurers  
 8 that wrote policies in the state during the previous calendar  
 9 year. Any surcharges



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 Hager offered the following:

4  
 5 **Amendment**

6 Remove lines 75-83 and insert:

7 (a) To reduce or eliminate the amount of a future  
 8 assessment for a title insurer in receivership at the time of  
 9 the assessment or that later enters receivership; or

10 (b) To reduce the amount of time that consumers in the  
 11 state are subject to surcharges by transferring excess  
 12 surcharges to title insurers that have not fully collected  
 13 surcharges equal to the amount of the aggregate assessments they  
 14 paid pursuant to s. 631.400.



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 Hager offered the following:

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

6 Remove lines 87-92 and insert:  
 7 during the period.

8 (8) If the receiver has no active title insurer  
 9 receiverships for twelve consecutive months or there have been  
 10 no payable claims against any title insurer receivership for 60  
 11 consecutive months, all excess surcharges held by the receiver  
 12 under this section ~~Any surcharges collected in excess of the~~  
 13 ~~amount assessed~~ shall be paid to the Insurance Regulatory Trust  
 14 Fund.

15 (9) The financial services commission may adopt rules  
 16 specifying procedures for the collection, use, and transfer of  
 17 surcharges, including excess surcharges.



Amendment No. 3

18       (10) The division of rehabilitation and liquidation may  
19 adopt rules specifying procedures for the claiming,  
20 distribution, and use of excess surcharge account funds held by  
21 the receiver under this section and for the purposes specified  
22 in subsection (6).  
23

24       -----

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

26       Remove lines 10-11 and insert:  
27 authorizing the Financial Services Commission to adopt rules for  
28 certain purposes; authorizing the Division of Rehabilitation and  
29 Liquidation to adopt rules for certain purposes; providing an



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 987 Organization of Department of Financial Services  
**SPONSOR(S):** Plakon  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Gonzalez <i>BJG</i>	Cooper <i>PC</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The Department of Financial Services (DFS) consists of 14 divisions and several specialized offices. The bill eliminates three of those divisions: Administration, Legal Services, and Information Systems, which conduct administrative functions that are not required in statute. Also, the bill eliminates the Strategic Markets Research and Assessment Unit within DFS.

The bill also reorganizes DFS in several ways. It removes the Bureau of Unclaimed Property and the Office of Fiscal Integrity from the Division of Accounting and Auditing. The bureau will continue to exist, but will not be provided for in statute. The Office of Fiscal Integrity's functions will be taken up by the Division of Insurance Fraud, which is renamed the Division of Criminal Investigations. The bill authorizes the CFO to establish divisions, bureaus, and offices within DFS. It relocates the functions and duties of the Division of Consumer Services to section 624.307, F.S. The reorganization of DFS will not result in the loss of any filled employee positions, although, positions may be relocated to other divisions, bureaus, or offices.

The bill also removes the requirement of the Clerks of Court Operations Corporation (CCOC) to enter into a contract with DFS to audit court-related expenditures of individual clerks. According to DFS, the CFO has sufficient authority under ch. 17, F.S., to audit any state funds. The bill removes the fees to fund DFS's audits of individual clerks' court-related expenditures and clarifies that the clerk education funded by the Administrative Trust Fund will be provided by CCOC. The bill changes the trust fund account to which the \$15 service of process fee is paid from the Insurance Regulatory Trust Fund to the Administrative Trust Fund. The bill exempts audit and accounting positions within the Division of Accounting and Auditing from Career Service classification.

Local governments should see a minimal decrease in administrative costs associated with processing and sending fees to DFS to fund the audits of the Clerks of Court.

According to DFS, the department should see a decrease in revenue of approximately \$345,000 which would have been used to fund employee positions currently vacant and eliminated under this bill.

The bill provides for an effective date of July 1, 2015.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation – Divisions and Functions of the Department of Financial Services

The Chief Financial Officer (CFO) is an elected member of the Cabinet and serves as the chief fiscal officer of the State of Florida. The CFO is the head of the Department of Financial Services (DFS).<sup>1</sup> Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal and the Department of Banking and Finance merged into DFS. DFS consists of 14 divisions and several specialized offices.<sup>2</sup>

Currently, the divisions of DFS are established in section 20.121, F.S. The CFO does not have authority to establish divisions, bureaus, or offices of DFS. Among the 14 divisions of DFS, are Accounting and Auditing, Insurance Fraud, Administration, Legal Services, and Information Systems.

The Division of Accounting and Auditing includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity which functions as a criminal justice agency that investigates allegations of fraud, waste and abuse of state monies and resources.

The Strategic Markets Research and Assessment Unit is also within DFS. It is responsible for reporting on the status of the state's financial services markets, including issues, trends, and threats that impact the financial services industries, along with the effect on financial institutions, the securities industries, other financial entities, and the credit market.<sup>3</sup> According to DFS, this unit has not functioned since before 2010, and funding for this unit was cut during the 2009 session.<sup>4</sup>

##### Effect of the Bill

The bill eliminates three divisions within DFS, the Division of Administration, the Division of Legal Services, and the Division of Information Systems. According to DFS, these divisions all conduct administrative functions that every state agency has and are not required to be provided for in statute.

The bill removes the Bureau of Unclaimed Property and the Office of Fiscal Integrity from the Division of Accounting and Auditing. The bureau will continue to exist, along with other bureaus in DFS, without being provided for in statute. The duties and functions of the Office of Fiscal Integrity will be performed by the Division of Insurance Fraud, renamed the Division of Criminal Investigations. According to DFS, renaming the Division of Insurance Fraud will give the CFO the ability to leverage criminal justice assets currently housed in two separate divisions within one division of DFS.

The bill eliminates the Strategic Markets Research and Assessment Unit within DFS.

The elimination and reorganization of divisions, bureaus and offices under this bill will not result in the loss of any filled employee positions, although, such positions may be relocated to other divisions, bureaus, or offices.

The bill authorizes the CFO to establish divisions, bureaus, and offices of DFS.

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<sup>1</sup> s. 20.121(1), F.S.

<sup>2</sup> Id.

<sup>3</sup> s. 20.121(6), F.S.

<sup>4</sup> Department of Financial Services, HB 987 Bill Analysis, dated March 5, 2015.

The bill removes the functions, powers, and duties of the Division of Consumer Services from section 20.121(2), F.S., which addresses the organizational structure of DFS and relocates them to section 624.307, F.S., - General Powers and Duties. All functions, powers, and duties will remain the same.

#### Present Situation – Funding DFS, Clerk Audits and Education

Current law requires the Florida Clerks of Court Operations Corporation (CCOC) to enter into a contract with DFS for the department to audit the court related expenditures of individual clerks pursuant to section 17.03, F.S.

Currently, parties instituting any trial or appellate civil action, suit, or proceeding pay the clerk of that court a filing fee. Clerks of court remit \$1 of each filing fee collected under sections 28.241(1)(a)1.a. - b. and 28.241(1)(a)2.d. I - III, F.S., to the Department of Revenue for deposit into the Administrative Trust Fund within DFS to be used to fund audits by DFS of individual clerks' court-related expenditures.

The Administrative Trust Fund is also used to fund clerk education. Although, funding for such education is derived from other fees.

Additionally, in all instances in which service of process is authorized to be made upon the CFO or the director of the office, the plaintiff pays DFS or the office a \$15 fee for such service of process to be deposited into the Insurance Regulatory Trust Fund.

#### Effect of the Bill

The bill removes the requirement of CCOC to enter into a contract with DFS to audit court-related expenditures of individual clerks. According to DFS, the department has not been conducting these specific audits and the CFO has sufficient authority under ch. 17, F.S., to audit any state funds.

The bill also removes the fees to fund DFS's audits of individual clerks' court-related expenditures and clarifies that the clerk education funded by the Administrative Trust Fund will be provided by CCOC. The bill changes the trust fund account to which the \$15 service of process fee paid by the plaintiff to the department will be deposited. The \$15 fee will be deposited into the Administrative Trust Fund rather than the Insurance Regulatory Trust Fund.

#### Present Situation – Career Service Exemptions

The Department of Management Services (DMS) establishes and maintains a classification and compensation program addressing Career Service, Selected Exempt Service, and Senior Management Service positions within the state.<sup>55</sup> Auditing and Accounting positions within this division are not currently statutorily exempt from Career Service classification. In 2008, DMS authorized, by way of memorandum, that DFS investigators and auditors could remain classified as Selected Exempt status, but recommended that legislation exempt these positions from Career Service classification permanently. As the Select Exemption positions became vacant, they were reclassified to Career Service. According to DFS, this made recruitment and retention of qualified staff difficult.

#### Effect of the Bill

The bill exempts audit and accounting positions within the Division of Accounting and Auditing from Career Service classification. According to DFS, this bill will reclassify approximately 45 Career Service auditors and professional accountants.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 20.121, F.S., relating to the divisions and functions of DFS and the CFO's authority to create new divisions, bureaus, or offices within DFS.

**Section 2:** Amends s. 28.2401, F.S., relating to funding to the Florida Clerks of Court Operations Corporation for clerk education provided by the corporation.

**Section 3:** Amends s. 28.241, F.S. relating to the deposit of certain filing fees for trial and appellate proceedings into the Administrative Trust Fund within the Department.

**Section 4:** Amends s. 28.35, F.S., relating to the requirement that the Florida Clerks of Court Operations Corporation contract with the Department for certain audits.

**Section 5:** Amends s. 110.205, F.S., relating to exemption of audit and accounting positions of the Department from career services classification.

**Section 6:** Amends s. 624.26, F.S., relating to conforming cross-references to changes made by the bill.

**Section 7:** Amends s. 624.307, F.S., relating to the powers and duties of the Department's Division of Consumer Services.

**Section 8:** Amends s. 624.502, F.S., relating to the deposit of certain service of process fees into the Administrative Trust Fund within the Department.

**Section 9:** Provides an effective date of July 1, 2015.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

Clerks of Court Audits: Fees sent by the counties to DFS are intended to fund the Article V staff and their travel costs. However, DFS does not currently audit the clerks of court, and these six positions are currently vacant. Based on the February Revenue Estimating Conference the fees estimated to be collected this year is \$345,000. This bill eliminates the Article V staff positions and the fees associated with the staff funding.

**2. Expenditures:**

Career Service Exemptions: Historically, audit and accounting positions have been treated as Select Exempt. The cost of funding these positions has been covered with DFS's existing budget and therefore the exemption will not have a fiscal impact.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

None.

**2. Expenditures:**

Local governments should see a minimal decrease in administrative costs associated with processing and sending fees to DFS to fund the audits of the Clerks of Court.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Article V Program within DFS was established in FY 2004-05 which dealt with the CCOC and DFS. In 2009, the fee deposited to the Administrative Trust Fund was changed to \$1.50 and generated \$600,000 a year in revenue, but, according to DFS, there were only \$300,000-\$425,000 per year in expenditures. In 2013, the fee deposited to the trust fund was reduced to \$1, per filing fee. Revenue from this fee was approximately \$550,000 in FY 2013-14 and the current year revenue is estimated to be under \$400k (about \$345k per the February Revenue Estimating Conference). However, DFS, has stopped making expenditures covered by this fee. The fee is deposited into a separate account within the DFS Administrative Trust Fund. The account is estimated to have a balance at the end of this fiscal year of about \$2 million. If the program was eliminated, under this bill, these funds could be transferred to General Revenue.

**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 the organization of the Department  
 3           of Financial Services; amending s. 20.121, F.S.;  
 4           revising the divisions and functions of the  
 5           department; authorizing the Chief Financial Officer to  
 6           establish divisions, bureaus, or offices of the  
 7           department; amending s. 28.2401, F.S.; providing  
 8           funding from certain probate petition service charges  
 9           to the Florida Clerks of Court Operations Corporation  
 10          for clerk education provided by the corporation;  
 11          amending s. 28.241, F.S., relating to the deposit of  
 12          certain filing fees for trial and appellate  
 13          proceedings, to conform provisions to changes made by  
 14          the act; amending s. 28.35, F.S.; deleting a  
 15          requirement that the Florida Clerks of Court  
 16          Operations Corporation contract with the department  
 17          for certain audits; amending s. 110.205, F.S.;  
 18          exempting audit and accounting positions of the  
 19          department from career service requirements; amending  
 20          s. 624.26, F.S.; conforming provisions to changes made  
 21          by the act; amending s. 624.307, F.S.; providing  
 22          powers and duties of the department's Division of  
 23          Consumer Services; authorizing the division to impose  
 24          certain penalties; authorizing the department to adopt  
 25          rules relating to the division; providing for  
 26          construction; amending s. 624.502, F.S.; requiring

27 that certain service of process fees be deposited into  
 28 the Administrative Trust Fund; providing an effective  
 29 date.

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

32  
 33 Section 1. Subsections (2) and (6) of section 20.121,  
 34 Florida Statutes, are amended to read:

35 20.121 Department of Financial Services.—There is created  
 36 a Department of Financial Services.

37 (2) DIVISIONS.—The Department of Financial Services shall  
 38 consist of the following divisions and offices:

39 (a) The Division of Accounting and Auditing, ~~which shall~~  
 40 ~~include the following bureau and office:~~

41 1. ~~The Bureau of Unclaimed Property.~~

42 2. ~~The Office of Fiscal Integrity which shall function as~~  
 43 ~~a criminal justice agency for purposes of ss. 943.045-943.08 and~~  
 44 ~~shall have a separate budget. The office may conduct~~  
 45 ~~investigations within or outside this state as the bureau deems~~  
 46 ~~necessary to aid in the enforcement of this section. If during~~  
 47 ~~an investigation the office has reason to believe that any~~  
 48 ~~criminal law of this state has or may have been violated, the~~  
 49 ~~office shall refer any records tending to show such violation to~~  
 50 ~~state or federal law enforcement or prosecutorial agencies and~~  
 51 ~~shall provide investigative assistance to those agencies as~~  
 52 ~~required.~~

- 53 (b) The Division of State Fire Marshal.
- 54 (c) The Division of Risk Management.
- 55 (d) The Division of Treasury, which shall include a Bureau
- 56 of Deferred Compensation responsible for administering the
- 57 Government Employees Deferred Compensation Plan established
- 58 under s. 112.215 for state employees.
- 59 (e) The Division of Criminal Investigations, which shall
- 60 function as a criminal justice agency for purposes of ss.
- 61 943.045-943.08 Insurance-Fraud.
- 62 (f) The Division of Rehabilitation and Liquidation.
- 63 (g) The Division of Insurance Agent and Agency Services.
- 64 (h) The Division of Consumer Services.
- 65 ~~1. The Division of Consumer Services shall perform the~~
- 66 ~~following functions concerning products or services regulated by~~
- 67 ~~the department or by the Office of Insurance Regulation:~~
- 68 ~~a. Receive inquiries and complaints from consumers.~~
- 69 ~~b. Prepare and disseminate such information as the~~
- 70 ~~department deems appropriate to inform or assist consumers.~~
- 71 ~~c. Provide direct assistance and advocacy for consumers~~
- 72 ~~who request such assistance or advocacy.~~
- 73 ~~d. With respect to apparent or potential violations of law~~
- 74 ~~or applicable rules by a person or entity licensed by the~~
- 75 ~~department or office, report apparent or potential violations to~~
- 76 ~~the office or the appropriate division of the department, which~~
- 77 ~~may take such further action as it deems appropriate.~~
- 78 ~~e. Designate an employee of the division as primary~~

79 ~~contact for consumers on issues relating to sinkholes.~~

80 ~~2. Any person licensed or issued a certificate of~~  
 81 ~~authority by the department or by the Office of Insurance~~  
 82 ~~Regulation shall respond, in writing, to the Division of~~  
 83 ~~Consumer Services within 20 days after receipt of a written~~  
 84 ~~request for information from the division concerning a consumer~~  
 85 ~~complaint. The response must address the issues and allegations~~  
 86 ~~raised in the complaint. The division may impose an~~  
 87 ~~administrative penalty for failure to comply with this~~  
 88 ~~subparagraph of up to \$2,500 per violation upon any entity~~  
 89 ~~licensed by the department or the office and \$250 for the first~~  
 90 ~~violation, \$500 for the second violation, and up to \$1,000 per~~  
 91 ~~violation thereafter upon any individual licensed by the~~  
 92 ~~department or the office.~~

93 ~~3. The department may adopt rules to administer this~~  
 94 ~~paragraph.~~

95 ~~4. The powers, duties, and responsibilities expressed or~~  
 96 ~~granted in this paragraph do not limit the powers, duties, and~~  
 97 ~~responsibilities of the Department of Financial Services, the~~  
 98 ~~Financial Services Commission, the Office of Insurance~~  
 99 ~~Regulation, or the Office of Financial Regulation set forth~~  
 100 ~~elsewhere in the Florida Statutes.~~

- 101 ~~(i) The Division of Workers' Compensation.~~
- 102 ~~(j) The Division of Administration.~~
- 103 ~~(k) The Division of Legal Services.~~
- 104 ~~(l) The Division of Information Systems.~~



- 105        ~~(j)~~~~(m)~~ The Office of Insurance Consumer Advocate.
- 106        ~~(k)~~~~(n)~~ The Division of Funeral, Cemetery, and Consumer
- 107        Services.
- 108        ~~(l)~~~~(o)~~ The Division of Public Assistance Fraud.

109

110        The Chief Financial Officer may establish any other division,

111        bureau, or office of the department that he or she deems

112        necessary to promote the efficient and effective operation of

113        the department pursuant to s. 20.04.

114        ~~(6) STRATEGIC MARKETS RESEARCH AND ASSESSMENT UNIT. The~~

115        ~~Strategic Markets Research and Assessment Unit is established~~

116        ~~within the Department of Financial Services. The Chief Financial~~

117        ~~Officer or his or her designee shall report on September 1,~~

118        ~~2008, and quarterly thereafter, to the Cabinet, the President of~~

119        ~~the Senate, and the Speaker of the House of Representatives on~~

120        ~~the status of the state's financial services markets. At a~~

121        ~~minimum, the report must include a summary of issues, trends,~~

122        ~~and threats that broadly impact the condition of the financial~~

123        ~~services industries, along with the effect of such conditions on~~

124        ~~financial institutions, the securities industries, other~~

125        ~~financial entities, and the credit market. The Chief Financial~~

126        ~~Officer shall also provide findings and recommendations~~

127        ~~regarding regulatory and policy changes to the Cabinet, the~~

128        ~~President of the Senate, and the Speaker of the House of~~

129        ~~Representatives.~~

130        Section 2. Subsection (3) of section 28.2401, Florida

131 Statutes, is amended to read:

132 28.2401 Service charges and filing fees in probate  
133 matters.—

134 (3) An additional service charge of \$4 on petitions  
135 seeking summary administration, formal administration, ancillary  
136 administration, guardianship, curatorship, and conservatorship  
137 shall be paid to the clerk. The clerk shall transfer \$3.50 to  
138 the Department of Revenue for deposit into the Court Education  
139 Trust Fund and shall transfer 50 cents to the Department of  
140 Revenue for deposit into the Department of Financial Services'  
141 Administrative Trust Fund to fund clerk education provided by  
142 the Florida Clerks of Court Operations Corporation. No  
143 additional fees, charges, or costs shall be added to the service  
144 charges or filing fees imposed under this section, except as  
145 authorized by general law.

146 Section 3. Paragraph (a) of subsection (1) of section  
147 28.241, Florida Statutes, is amended to read:

148 28.241 Filing fees for trial and appellate proceedings.—

149 (1) Filing fees are due at the time a party files a  
150 pleading to initiate a proceeding or files a pleading for  
151 relief. Reopen fees are due at the time a party files a pleading  
152 to reopen a proceeding if at least 90 days have elapsed since  
153 the filing of a final order or final judgment with the clerk. If  
154 a fee is not paid upon the filing of the pleading as required  
155 under this section, the clerk shall pursue collection of the fee  
156 pursuant to s. 28.246.

157 (a)1.a. Except as provided in sub-subparagraph b. and  
 158 subparagraph 2., the party instituting any civil action, suit,  
 159 or proceeding in the circuit court shall pay to the clerk of  
 160 that court a filing fee of up to \$395 in all cases in which  
 161 there are not more than five defendants and an additional filing  
 162 fee of up to \$2.50 for each defendant in excess of five. Of the  
 163 first \$199 ~~\$200~~ in filing fees, \$195 must be remitted to the  
 164 Department of Revenue for deposit into the State Courts Revenue  
 165 Trust Fund and, \$4 must be remitted to the Department of Revenue  
 166 for deposit into the Administrative Trust Fund within the  
 167 Department of Financial Services and used to fund the contract  
 168 with the Florida Clerks of Court Operations Corporation created  
 169 in s. 28.35, ~~and \$1 must be remitted to the Department of~~  
 170 ~~Revenue for deposit into the Administrative Trust Fund within~~  
 171 ~~the Department of Financial Services to fund audits of~~  
 172 ~~individual clerks' court-related expenditures conducted by the~~  
 173 ~~Department of Financial Services.~~ By the 10th of each month, the  
 174 clerk shall submit that portion of the filing fees collected in  
 175 the previous month which is in excess of one-twelfth of the  
 176 clerk's total budget to the Department of Revenue for deposit  
 177 into the Clerks of the Court Trust Fund.

178 b. The party instituting any civil action, suit, or  
 179 proceeding in the circuit court under chapter 39, chapter 61,  
 180 chapter 741, chapter 742, chapter 747, chapter 752, or chapter  
 181 753 shall pay to the clerk of that court a filing fee of up to  
 182 \$295 in all cases in which there are not more than five

183 defendants and an additional filing fee of up to \$2.50 for each  
 184 defendant in excess of five. Of the first \$99 ~~\$100~~ in filing  
 185 fees, \$95 must be remitted to the Department of Revenue for  
 186 deposit into the State Courts Revenue Trust Fund and ~~7~~ \$4 must be  
 187 remitted to the Department of Revenue for deposit into the  
 188 Administrative Trust Fund within the Department of Financial  
 189 Services and used to fund the contract with the Florida Clerks  
 190 of Court Operations Corporation created in s. 28.35, ~~and \$1 must~~  
 191 ~~be remitted to the Department of Revenue for deposit into the~~  
 192 ~~Administrative Trust Fund within the Department of Financial~~  
 193 ~~Services to fund audits of individual clerks' court-related~~  
 194 ~~expenditures conducted by the Department of Financial Services.~~

195 c. An additional filing fee of \$4 shall be paid to the  
 196 clerk. The clerk shall remit \$3.50 to the Department of Revenue  
 197 for deposit into the Court Education Trust Fund and shall remit  
 198 50 cents to the Department of Revenue for deposit into the  
 199 Administrative Trust Fund within the Department of Financial  
 200 Services to fund clerk education provided by the Florida Clerks  
 201 of Court Operations Corporation. An additional filing fee of up  
 202 to \$18 shall be paid by the party seeking each severance that is  
 203 granted. The clerk may impose an additional filing fee of up to  
 204 \$85 for all proceedings of garnishment, attachment, replevin,  
 205 and distress. Postal charges incurred by the clerk of the  
 206 circuit court in making service by certified or registered mail  
 207 on defendants or other parties shall be paid by the party at  
 208 whose instance service is made. Additional fees, charges, or

209 costs may not be added to the filing fees imposed under this  
 210 section, except as authorized in this section or by general law.

211 2.a. Notwithstanding the fees prescribed in subparagraph  
 212 1., a party instituting a civil action in circuit court relating  
 213 to real property or mortgage foreclosure shall pay a graduated  
 214 filing fee based on the value of the claim.

215 b. A party shall estimate in writing the amount in  
 216 controversy of the claim upon filing the action. For purposes of  
 217 this subparagraph, the value of a mortgage foreclosure action is  
 218 based upon the principal due on the note secured by the  
 219 mortgage, plus interest owed on the note and any moneys advanced  
 220 by the lender for property taxes, insurance, and other advances  
 221 secured by the mortgage, at the time of filing the foreclosure.  
 222 The value shall also include the value of any tax certificates  
 223 related to the property. In stating the value of a mortgage  
 224 foreclosure claim, a party shall declare in writing the total  
 225 value of the claim, as well as the individual elements of the  
 226 value as prescribed in this sub-subparagraph.

227 c. In its order providing for the final disposition of the  
 228 matter, the court shall identify the actual value of the claim.  
 229 The clerk shall adjust the filing fee if there is a difference  
 230 between the estimated amount in controversy and the actual value  
 231 of the claim and collect any additional filing fee owed or  
 232 provide a refund of excess filing fee paid.

233 d. The party shall pay a filing fee of:

234 (I) Three hundred and ninety-five dollars in all cases in

235 which the value of the claim is \$50,000 or less and in which  
 236 there are not more than five defendants. The party shall pay an  
 237 additional filing fee of up to \$2.50 for each defendant in  
 238 excess of five. Of the first \$199 ~~\$200~~ in filing fees, \$195 must  
 239 be remitted by the clerk to the Department of Revenue for  
 240 deposit into the General Revenue Fund and, \$4 must be remitted  
 241 to the Department of Revenue for deposit into the Administrative  
 242 Trust Fund within the Department of Financial Services and used  
 243 to fund the contract with the Florida Clerks of Court Operations  
 244 Corporation created in s. 28.35, ~~and \$1 must be remitted to the~~  
 245 ~~Department of Revenue for deposit into the Administrative Trust~~  
 246 ~~Fund within the Department of Financial Services to fund audits~~  
 247 ~~of individual clerks' court-related expenditures conducted by~~  
 248 ~~the Department of Financial Services;~~

249 (II) Nine hundred dollars in all cases in which the value  
 250 of the claim is more than \$50,000 but less than \$250,000 and in  
 251 which there are not more than five defendants. The party shall  
 252 pay an additional filing fee of up to \$2.50 for each defendant  
 253 in excess of five. Of the first \$704 ~~\$705~~ in filing fees, \$700  
 254 must be remitted by the clerk to the Department of Revenue for  
 255 deposit into the General Revenue Fund and, \$4 must be remitted  
 256 to the Department of Revenue for deposit into the Administrative  
 257 Trust Fund within the Department of Financial Services and used  
 258 to fund the contract with the Florida Clerks of Court Operations  
 259 Corporation created in s. 28.35, ~~and \$1 must be remitted to the~~  
 260 ~~Department of Revenue for deposit into the Administrative Trust~~

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261 ~~Fund within the Department of Financial Services to fund audits~~  
262 ~~of individual clerks' court-related expenditures conducted by~~  
263 ~~the Department of Financial Services; or~~

264 (III) One thousand nine hundred dollars in all cases in  
265 which the value of the claim is \$250,000 or more and in which  
266 there are not more than five defendants. The party shall pay an  
267 additional filing fee of up to \$2.50 for each defendant in  
268 excess of five. Of the first \$1,704 ~~\$1,705~~ in filing fees, \$930  
269 must be remitted by the clerk to the Department of Revenue for  
270 deposit into the General Revenue Fund, \$770 must be remitted to  
271 the Department of Revenue for deposit into the State Courts  
272 Revenue Trust Fund and, \$4 must be remitted to the Department of  
273 Revenue for deposit into the Administrative Trust Fund within  
274 the Department of Financial Services to fund the contract with  
275 the Florida Clerks of Court Operations Corporation created in s.  
276 28.35, ~~and \$1 must be remitted to the Department of Revenue for~~  
277 ~~deposit into the Administrative Trust Fund within the Department~~  
278 ~~of Financial Services to fund audits of individual clerks'~~  
279 ~~court-related expenditures conducted by the Department of~~  
280 ~~Financial Services.~~

281 e. An additional filing fee of \$4 shall be paid to the  
282 clerk. The clerk shall remit \$3.50 to the Department of Revenue  
283 for deposit into the Court Education Trust Fund and shall remit  
284 50 cents to the Department of Revenue for deposit into the  
285 Administrative Trust Fund within the Department of Financial  
286 Services to fund clerk education provided by the Florida Clerks

287 of Court Operations Corporation. An additional filing fee of up  
 288 to \$18 shall be paid by the party seeking each severance that is  
 289 granted. The clerk may impose an additional filing fee of up to  
 290 \$85 for all proceedings of garnishment, attachment, replevin,  
 291 and distress. Postal charges incurred by the clerk of the  
 292 circuit court in making service by certified or registered mail  
 293 on defendants or other parties shall be paid by the party at  
 294 whose instance service is made. Additional fees, charges, or  
 295 costs may not be added to the filing fees imposed under this  
 296 section, except as authorized in this section or by general law.

297 Section 4. Paragraphs (e) through (h) of subsection (2) of  
 298 section 28.35, Florida Statutes, are amended to read:

299 28.35 Florida Clerks of Court Operations Corporation.—

300 (2) The duties of the corporation shall include the  
 301 following:

302 ~~(e) Entering into a contract with the Department of~~  
 303 ~~Financial Services for the department to audit the court-related~~  
 304 ~~expenditures of individual clerks pursuant to s. 17.03.~~

305 (e) ~~(f)~~ Reviewing, certifying, and recommending proposed  
 306 budgets submitted by clerks of the court pursuant to s. 28.36.  
 307 As part of this process, the corporation shall:

308 1. Calculate the minimum amount of revenue necessary for  
 309 each clerk of the court to efficiently perform the list of  
 310 court-related functions specified in paragraph (3)(a). The  
 311 corporation shall apply the workload measures appropriate for  
 312 determining the individual level of review required to fund the



313 clerk's budget.

314         2. Prepare a cost comparison of similarly situated clerks  
 315 of the court, based on county population and numbers of filings,  
 316 using the standard list of court-related functions specified in  
 317 paragraph (3)(a).

318         3. Conduct an annual base budget review and an annual  
 319 budget exercise examining the total budget of each clerk of the  
 320 court. The review shall examine revenues from all sources,  
 321 expenses of court-related functions, and expenses of noncourt-  
 322 related functions as necessary to determine that court-related  
 323 revenues are not being used for noncourt-related purposes. The  
 324 review and exercise shall identify potential targeted budget  
 325 reductions in the percentage amount provided in Schedule VIII-B  
 326 of the state's previous year's legislative budget instructions,  
 327 as referenced in s. 216.023(3), or an equivalent schedule or  
 328 instruction as may be adopted by the Legislature.

329         4. Identify those proposed budgets containing funding for  
 330 items not included on the standard list of court-related  
 331 functions specified in paragraph (3)(a).

332         5. Identify those clerks projected to have court-related  
 333 revenues insufficient to fund their anticipated court-related  
 334 expenditures.

335         6. Use revenue estimates based on the official estimate  
 336 for funds accruing to the clerks of the court made by the  
 337 Revenue Estimating Conference.

338         7. Identify and report pay and benefit increases in any

339 proposed clerk budget, including, but not limited to, cost of  
 340 living increases, merit increases, and bonuses.

341 8. Provide detailed explanation for increases in  
 342 anticipated expenditures in any clerk budget that exceeds the  
 343 current year budget by more than 3 percent.

344 9. Identify and report the budget of any clerk which  
 345 exceeds the average budget of similarly situated clerks by more  
 346 than 10 percent.

347 (f)~~(g)~~ Developing and conducting clerk education programs.

348 (g)~~(h)~~ Before ~~Beginning August 1, 2014, and each August 1~~  
 349 of each year thereafter, submitting to the Legislative Budget  
 350 Commission, as provided in s. 11.90, its proposed budget and the  
 351 information described in paragraph (e) ~~(f)~~, as well as the  
 352 proposed budgets for each clerk of the court. Before October 1  
 353 of each year ~~beginning in 2014~~, the Legislative Budget  
 354 Commission shall consider the submitted budgets and shall  
 355 approve, disapprove, or amend and approve the corporation's  
 356 budget and shall approve, disapprove, or amend and approve the  
 357 total of the clerks' combined budgets or any individual clerk's  
 358 budget. If the Legislative Budget Commission fails to approve or  
 359 amend and approve the corporation's budget or the clerks'  
 360 combined budgets before October 1, the clerk shall continue to  
 361 perform the court-related functions based upon the clerk's  
 362 budget for the previous county fiscal year.

363 Section 5. Paragraph (y) is added to subsection (2) of  
 364 section 110.205, Florida Statutes, to read:

365 110.205 Career service; exemptions.—

366 (2) EXEMPT POSITIONS.—The exempt positions that are not  
 367 covered by this part include the following:

368 (y) All audit and accounting positions of the Division of  
 369 Accounting and Auditing of the Department of Financial Services.

370 Section 6. Subsection (4) of section 624.26, Florida  
 371 Statutes, is amended to read:

372 624.26 Collaborative arrangement with the Department of  
 373 Health and Human Services.—

374 (4) The department's Division of Consumer Services may  
 375 respond to complaints by consumers relating to a requirement of  
 376 PPACA ~~as authorized under s. 20.121(2)(h),~~ and report apparent  
 377 or potential violations to the office and to the federal  
 378 Department of Health and Human Services.

379 Section 7. Subsection (10) is added to section 624.307,  
 380 Florida Statutes, to read:

381 624.307 General powers; duties.—

382 (10) (a) The department's Division of Consumer Services  
 383 shall perform the following functions concerning products or  
 384 services regulated by the department or office:

385 1. Receive inquiries and complaints from consumers.

386 2. Prepare and disseminate such information as the  
 387 department deems appropriate to inform or assist consumers.

388 3. Provide direct assistance and advocacy for consumers  
 389 who request such assistance or advocacy.

390 4. With respect to apparent or potential violations of law

391 or applicable rules by a person or entity licensed by the  
 392 department or office, report apparent or potential violations to  
 393 the office or the appropriate division of the department, which  
 394 may take such further action as it deems appropriate.

395 5. Designate an employee of the division as primary  
 396 contact for consumers on issues relating to sinkholes.

397 (b) Any person licensed or issued a certificate of  
 398 authority by the department or the office shall respond, in  
 399 writing, to the division within 20 days after receipt of a  
 400 written request for information from the division concerning a  
 401 consumer complaint. The response must address the issues and  
 402 allegations raised in the complaint. The division may impose an  
 403 administrative penalty for failure to comply with this paragraph  
 404 of up to \$2,500 per violation upon any entity licensed by the  
 405 department or the office and \$250 for the first violation, \$500  
 406 for the second violation, and up to \$1,000 per violation  
 407 thereafter upon any individual licensed by the department or the  
 408 office.

409 (c) The department may adopt rules to administer this  
 410 subsection.

411 (d) The powers, duties, and responsibilities expressed or  
 412 granted in this subsection do not limit the powers, duties, and  
 413 responsibilities of the Department of Financial Services, the  
 414 Financial Services Commission, the Office of Insurance  
 415 Regulation, or the Office of Financial Regulation as otherwise  
 416 provided by law.

417           Section 8.   Section 624.502, Florida Statutes, as amended  
 418   by chapter 2014-53, Laws of Florida, is amended to read:

419           624.502   Service of process fee.—In all instances as  
 420   provided in any section of the insurance code and s. 48.151(3)  
 421   in which service of process is authorized to be made upon the  
 422   Chief Financial Officer or the director of the office, the  
 423   plaintiff shall pay to the department or office a fee of \$15 for  
 424   such service of process, which fee shall be deposited into the  
 425   Administrative Trust Fund ~~Insurance Regulatory Trust Fund~~.

426           Section 9.   This act shall take effect July 1, 2015.