

By the Committee on Appropriations; and Senator Flores

576-04524-16

20161106c1

1                   A bill to be entitled  
2           An act relating to international trust entities;  
3           amending s. 663.01, F.S.; defining the term  
4           "international trust entity"; creating s. 663.041,  
5           F.S.; providing for a moratorium for a specified  
6           timeframe on enforcement by the Office of Financial  
7           Regulation of certain licensure requirements for  
8           certain organizations and entities providing services  
9           to international trust companies; providing conditions  
10          to apply the moratorium to specified persons of the  
11          organization or entity; providing for construction;  
12          specifying requirements for a letter to the office to  
13          request qualification as a party to the moratorium;  
14          requiring the office to confirm specified findings  
15          when processing a request; specifying circumstances  
16          for establishing adequate supervision; providing  
17          procedures and timeframes for the office's processing  
18          of requests and the office's requests for additional  
19          information; providing timeframes for the office to  
20          confirm with the organization or entity whether it has  
21          been confirmed as a party to the moratorium; requiring  
22          the office to issue a notice of denial if it  
23          determines that an organization or entity is not a  
24          party to the moratorium; providing that a denied  
25          organization or entity may request a certain hearing  
26          to contest the denial; providing for construction if  
27          certain timeframes are not met; authorizing the office  
28          to conduct an onsite visitation of an organization or  
29          entity for a specified purpose until a specified time;  
30          requiring the office to issue an immediate final order  
31          disqualifying an organization or entity if it finds  
32          that such organization or entity made a material false

576-04524-16

20161106c1

33 statement in its request; providing for construction;  
34 providing for future repeal; providing an effective  
35 date.

36  
37 Be It Enacted by the Legislature of the State of Florida:

38  
39 Section 1. Present subsections (10) and (11) of section  
40 663.01, Florida Statutes, are renumbered as subsections (11) and  
41 (12), respectively, and a new subsection (10) is added to that  
42 section, to read:

43 663.01 Definitions.—As used in this part, the term:

44 (10) "International trust entity" means an international  
45 trust company, an international business, an international  
46 business organization, or an affiliated or subsidiary entity  
47 that is licensed, chartered, or similarly permitted to conduct  
48 trust business in a foreign country or countries under the laws  
49 of which it is organized and supervised.

50 Section 2. Section 663.041, Florida Statutes, is created to  
51 read:

52 663.041 Moratorium on the office's enforcement of licensing  
53 requirements for an international trust entity or related  
54 entities.—

55 (1) Until June 30, 2017, the office shall delay the  
56 enforcement of the requirement under s. 663.04(4) relating to  
57 licensure of an organization or entity in this state providing  
58 services to an international trust entity that engages in the  
59 activities described in s. 663.0625. This delay applies to any  
60 person who manages or controls or is employed by such  
61 organization or entity that:

576-04524-16

20161106c1

62 (a) Has been organized to conduct business in this state  
63 before October 1, 2013;

64 (b) Has not been fined or sanctioned as a result of any  
65 complaint to the office or to any other state or federal  
66 regulatory agency;

67 (c) Has not been convicted of a felony or ordered to pay a  
68 fine or penalty in any proceeding initiated by any federal,  
69 state, foreign, or local law enforcement agency or international  
70 agency within the 10 years before the effective date of this  
71 section;

72 (d) Has not had any of its directors, executive officers,  
73 principal shareholders, managers, or employees arrested for,  
74 charged with, convicted of, or plead guilty or nolo contendere  
75 to, regardless of adjudication, any offense that is punishable  
76 by imprisonment for 1 year or more, or to any offense that  
77 involves money laundering, currency transaction reporting, tax  
78 evasion, facilitating or furthering terrorism, fraud, or that is  
79 otherwise related to the operation of a financial institution,  
80 within the 10 years before the effective date of this section;

81 (e) Does not provide services for any international trust  
82 entity that is in bankruptcy, conservatorship, receivership,  
83 liquidation, or a similar status under the laws of any country;

84 (f) Does not provide banking services or promote or sell  
85 investments or accept custody of assets;

86 (g) Does not act as a fiduciary, which includes, but is not  
87 limited to, accepting the fiduciary appointment, executing the  
88 fiduciary documents that create the fiduciary relationship, or  
89 making discretionary decisions regarding the investment or  
90 distribution of fiduciary accounts; and

576-04524-16

20161106c1

91 (h) Conducts those activities permissible for an  
92 international trust company representative office as described  
93 in s. 663.0625.

94 (2) This moratorium does not prevent the office from  
95 otherwise enforcing the financial institutions codes.

96 (3) An organization or entity that requests to qualify for  
97 this moratorium shall notify the office in writing by letter on  
98 official letterhead via United States Postal Service or  
99 commercial mail delivery service by July 1, 2016, and shall  
100 provide the following:

101 (a) Written proof that it has been organized to do business  
102 in this state before October 1, 2013;

103 (b) The name or names under which it conducts business in  
104 this state;

105 (c) The addresses of its locations from which it conducts  
106 business;

107 (d) A detailed list and description of the activities being  
108 conducted at the locations from which it conducts business. The  
109 detailed description must include the types of consumers that  
110 utilize those activities and an explanation of how those  
111 activities serve the business purpose of an international trust  
112 entity.

113 (e) As to each international trust entity the organization  
114 or entity provides services for in this state, the following:

115 1. The name of the international trust entity;

116 2. A list of the current officers and directors of the  
117 international trust entity;

118 3. The country or countries where the international trust  
119 entity is organized;

576-04524-16

20161106c1

120       4. The supervisory or regulatory authority, or equivalent  
121 or other similarly sanctioned body, organization, governmental  
122 entity, or recognized authority that has licensing, chartering,  
123 oversight, or similar responsibilities over the international  
124 trust entity;

125       5. Proof that the international trust entity has been  
126 authorized by a charter, license, or similar authorization by  
127 operation of law in its home country jurisdiction to engage in  
128 trust business;

129       6. Proof that the international trust entity lawfully  
130 exists and is in good standing under the laws of the  
131 jurisdiction where it is chartered, licensed, organized, or  
132 lawfully existing. The organization or entity shall submit a  
133 certificate of good standing or equivalent document issued by  
134 the supervisory or regulatory authority, or equivalent or other  
135 similarly sanctioned body, organization, governmental entity, or  
136 recognized authority that has similar responsibilities, of the  
137 country where the international trust entity is licensed,  
138 chartered, or has similar authorization by operation of law and  
139 is duly organized and lawfully exists;

140       7. A statement that the international trust entity is not  
141 in bankruptcy, conservatorship, receivership, liquidation, or in  
142 a similar status under the laws of any country; and

143       8. Proof that the international trust entity is not  
144 operating under the direct control of the government,  
145 regulatory, or supervisory authority of the jurisdiction of its  
146 incorporation, through government intervention or any other  
147 extraordinary actions, and confirmation that it has not been in  
148 such a status or under such control at any time within the 7

576-04524-16

20161106c1

149 years before the date of notification to the office.

150 (f) A declaration under penalty of perjury signed by an  
151 executive officer or managing member of the organization or  
152 entity, declaring that the information provided to the office is  
153 true and correct to the best of his or her knowledge.

154 (4) In processing the request to qualify for the  
155 moratorium, the office shall confirm the following:

156 (a) That the international trust entity is adequately  
157 supervised by the appropriate regulatory authority, or  
158 equivalent or other similarly sanctioned body, organization,  
159 governmental entity, or recognized authority that has similar  
160 responsibilities in the foreign country where it is organized,  
161 chartered, or licensed, or has similar authorization by  
162 operation of law; and

163 (b) That the jurisdiction of the international trust entity  
164 or its offices, subsidiaries, or any affiliates that are  
165 directly involved in or facilitate the financial services  
166 functions, banking, or fiduciary activities of the international  
167 trust entity, is not listed on the Financial Action Task Force  
168 Public Statement or on its list of jurisdictions with  
169 deficiencies in anti-money laundering or counterterrorism.

170 (5) For purposes of establishing adequate supervision under  
171 paragraph (4) (a):

172 (a) An international trust entity with foreign  
173 establishments is considered adequately supervised if it is  
174 subject to consolidated supervision. As used in this paragraph,  
175 "consolidated supervision" means supervision that enables the  
176 appropriate regulatory authority, or equivalent or other  
177 similarly sanctioned body, organization, governmental entity, or

576-04524-16

20161106c1

178 recognized authority that has similar responsibilities of the  
179 home country (home country supervisor) to evaluate:

180 1. The safety and soundness of the international trust  
181 entity's operations located within the home country supervisor's  
182 primary jurisdiction; and

183 2. The safety and soundness of the operations performed by  
184 the international trust entity's offices, subsidiaries, or any  
185 affiliates that are directly involved in or facilitate the  
186 financial services functions, banking, or fiduciary activities  
187 of the international trust entity, wherever located.

188 (b) An international trust entity with no foreign  
189 establishments is considered adequately supervised if the home  
190 country supervisor can evaluate the safety and soundness of the  
191 international trust entity's operations through its offices or  
192 subsidiaries located in the home country. For purposes of this  
193 paragraph, the home country supervisor is deemed to be able to  
194 evaluate the safety and soundness of the international trust  
195 entity if the home country supervisor has the authority to  
196 collect and maintain information on the following regulatory  
197 components:

198 1. The technical competence and administrative ability of  
199 the management of the international trust entity;

200 2. The adequacy of the operational, accounting, and  
201 internal control systems of the international trust entity,  
202 particularly the international trust entity's ability to monitor  
203 and supervise the activities of its offices or subsidiaries  
204 wherever located;

205 3. The adequacy of asset management and asset  
206 administration policies and procedures;

576-04524-16

20161106c1

207       4. The capital adequacy of the international trust entity,  
208 its offices or subsidiaries as specified by any capital adequacy  
209 guidelines in the home country;

210       5. The earnings of the international trust entity; and

211       6. The external and internal auditors' reports as well as  
212 any management comment letters or any documented corrective  
213 action by management.

214       (c) As used in paragraphs (4) (a), (5) (a), and (5) (b),  
215 adequate supervision does not require supervision of companies  
216 that control the international trust entity or supervision of  
217 companies under common control with the international trust  
218 entity but that are not in the international trust entity's  
219 chain of control. However, in cases where a holding company is  
220 the only controlling element in a trust business group, holding  
221 company supervision by a home country supervisor shall be  
222 required when it is needed to ensure consolidated supervision of  
223 all trust business entities in the group.

224       (d) If a holding company is not supervised, adequate  
225 supervision is deemed to exist if the home country supervisor  
226 regulates transactions between the international trust entity  
227 and controlling persons or entities under common control.

228       (e) An international trust entity and its offices or  
229 subsidiaries is deemed to be adequately supervised if it is  
230 subject to comprehensive supervision. For purposes of this  
231 paragraph, comprehensive supervision:

232       1. Means supervision that ensures that the supervisory  
233 processes and procedures are designed to inform the home country  
234 supervisor about the international trust entity's financial  
235 condition, including capital position; asset management and



576-04524-16

20161106c1

236 asset administration; internal controls and audit; compliance  
237 with existing laws and regulations; and capability of  
238 management.

239 2. Does not require the home country supervisor to conduct  
240 onsite examinations of the international trust entity or its  
241 offices or subsidiaries. However, at a minimum, it requires that  
242 the home country supervisor:

243 a. Is able to determine that the international trust entity  
244 and its offices and subsidiaries have adequate procedures for  
245 monitoring and controlling its domestic and foreign operations;

246 b. Is authorized to obtain information, by examination,  
247 audits or by other means, on the domestic and foreign operations  
248 of the international trust entity, including its offices and  
249 subsidiaries, and the authority to demand financial reports  
250 which permit analysis of the consolidated condition of the  
251 international trust entity;

252 c. Is able to obtain information on the dealings and  
253 relationships between the international trust entity and its  
254 offices and subsidiaries, wherever located; and

255 d. Is authorized by the home country's laws to ensure the  
256 safety and soundness of the international trust entity and its  
257 offices and subsidiaries.

258 3. Includes the ability and willingness of the home country  
259 supervisor to provide the office early notice of any weaknesses  
260 being experienced by the international trust entities, including  
261 its offices or subsidiaries wherever located.

262 4. Includes the ability of the home country supervisor to  
263 provide the office assurance of cooperation by both the  
264 international trust entity and the home country supervisor.

576-04524-16

20161106c1

265 (6) The office shall process requests made for inclusion  
266 under the moratorium as follows:

267 (a) Upon receipt of any request, the office shall review  
268 the information contained therein, and request any additional  
269 information to complete the request to qualify for the  
270 moratorium within 30 days after receipt. The organization or  
271 entity shall provide the requested additional information within  
272 45 days after the receipt of the notice from the office. If the  
273 office does not make such request within 30 days after receipt,  
274 the request to qualify for the moratorium is deemed complete as  
275 of the date it was received.

276 (b) Within 20 days after receipt of any additional  
277 information requested, the office shall deem the request to  
278 qualify for the moratorium complete or provide notification to  
279 the organization or entity that the information provided does  
280 not satisfy the office's request or requests.

281 (c) Within 90 days after receipt of a completed request to  
282 qualify for the moratorium, the office shall confirm with the  
283 organization or entity that they are or are not a party to the  
284 moratorium.

285 1. If the office determines that an organization or entity  
286 is not a party to the moratorium, the office shall issue a  
287 notice of denial informing the organization or entity of its  
288 determination. An organization or entity receiving a notice of  
289 denial may request a hearing under chapter 120 to contest the  
290 denial.

291 2. If the office fails to notify the organization or entity  
292 within such time whether or not the organization or entity is a  
293 party to the moratorium, then the organization or entity is

576-04524-16

20161106c1

294 considered a party to the moratorium by operation of law.

295 (d) During the period of the moratorium, the office may  
296 conduct an onsite visitation of an organization or entity to  
297 confirm information provided to the office in deeming the  
298 organization or entity qualified for the moratorium. If the  
299 office finds that the organization or entity made a material  
300 false statement in its request to qualify for the moratorium,  
301 the office shall issue an immediate final order suspending the  
302 organization's or entity's qualification and disqualifying the  
303 organization or entity from participating in the moratorium. A  
304 material false statement made in the request to qualify for the  
305 moratorium constitutes an immediate and serious danger to the  
306 public health, safety, and welfare.

307 Section 3. Section 663.041, Florida Statutes, and the  
308 amendments to section 663.01, Florida Statutes, made by this  
309 act, are repealed on July 1, 2017.

310 Section 4. This act shall take effect upon becoming a law.