

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1825 (PCB COM 04-03) Banking  
**SPONSOR(S):** Commerce  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 2960

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1) <u>Commerce</u>	<u>18 Y, 0 N</u>	<u>Sheheane</u>	<u>Billmeier</u>
2) <u>Appropriations</u>	<u>(W/D)</u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
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**SUMMARY ANALYSIS**

HB 1825 is a result of discussions between the Office of Financial Regulation (OFR) and the Florida Bankers Association. The bill updates various provisions of Florida’s financial institutions code. The bill makes numerous changes to chapters 655 and 658, Florida Statutes, relating to banking and revises chapters 494, 516, 520, and 626, Florida Statutes, to prohibit other companies from using the logo of a financial institution without permission from that institution. The bill also revises definitions in chapter 663, Florida Statutes, and revises chapter 665, Florida Statutes, relating to persons in control over an association. The bill revises chapter 674, Florida Statutes, decreasing the time limit for customers to report forged signatures to 90 days and the time for customers to report forged endorsements to one year. To summarize, the bill:

- Permits banks to respond to subpoenas without having to seek a court order and set reasonable fees incurred in compliance with subpoenas;
- Permits banks to form as limited liability companies;
- Removes daily liquidity calculations providing banks meet requirements. If banks fail to meet requirements they are prohibited from making new loans and paying dividends;
- Permits branch and main office relocations for certain banks to be done through notice provisions;
- Adds \$35 fee to pay for background checks for prospective bank directors; and
- Modernizes definitions and makes technical corrections to certain banking regulations.

There will be an indeterminate fiscal impact as a result of the \$35 fee placed on appointed bank directors and the clarification for persons other than state chartered or licensed banks to pay a \$25 fee for a “certificate of good standing.”

This bill will take effect upon becoming a law.

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

**STORAGE NAME:** h1825a.com.doc  
**DATE:** April 27, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### **Misuse of Bank Name (Sections 1-4, 11)**

Currently, there are concerns regarding nonbank lenders searching public records and notifying bank customers about their mortgages and making them offers to refinance. Representatives of the Florida Bankers Association state that the letters to the bank customers are sometimes misleading, resulting in the customer believing that the lender is somehow affiliated with the bank. According to the Florida Bankers Association, insurance agents have contacted bank customers to offer them insurance with the same types of misleading information.

The bill will make it a violation for the banking,<sup>1</sup> insurance,<sup>2</sup> retail installment seller,<sup>3</sup> consumer finance,<sup>4</sup> and mortgage broker and lender codes<sup>5</sup> to use the name or logo of a financial institution or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers. A violation will also be incurred if such marketing materials are used without the expressed written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is anyway related to or the responsibility of the financial institution or its affiliates or subsidiaries.

##### **International Branch (Sections 5, 6)**

Chapter 663, F.S., regulates international banks doing business in Florida. The bill amends the definition of “financial institution” to clarify that an “international branch” is included in the definition for the purposes of the financial institutions code.

##### **Background Check for Board Members (Section 7)**

Each state financial institution is required to notify the office of the proposed appointment of any individual to its board of directors.<sup>6</sup> The OFR must approve the new directors. When this occurs, the bank will submit a full list of names for OFR’s approval prior to settling on the actual director. The OFR must perform a background check on the proposed director. The proposed change to this section will

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<sup>1</sup> See ch. 655, F.S.

<sup>2</sup> See ch. 626, F.S.

<sup>3</sup> See ch. 520, F.S.

<sup>4</sup> See ch. 516, F.S.

<sup>5</sup> See ch. 494, F.S.

<sup>6</sup> See s. 655.0385, FS.,

authorize the OFR to collect \$35 for each name on the list of proposed directors which is intended to offset some of the cost of performing the background check.

### **Auditing Exemption (Section 8)**

Section 655.045, F.S., requires financial institutions to annually submit the findings of either an annual audit or a continuous audit. The bill will exempt de novo financial institutions which have been open for less than 4 months. The reason for this exemption is that banks who are 4 months into business generally have not had the time to establish operations and therefore it would not be beneficial to audit these banks.

### **Compliance with a Subpoena (Section 9)**

In many instances a bank has its records subpoenaed in cases in which the bank is not involved, such as divorce action or a business dispute. According to the Florida Bankers Association, the bank is served a subpoena and must take a great deal of time and effort to research, find, and copy the records. Many times, the search is long and costly. When complying with the subpoena, the attorney seeking the information will only pay a certain amount which, the Florida Bankers Association contends, is far below the cost for the research and copying of the documents. If the bank believes that the amount paid is too low, the bank must go to court and ask for a higher fee.

The bill amends s. 655.059, F.S., to allow the bank set the fee for complying with the subpoena. The fee must be reasonable. If the attorney seeking the information believes that the cost of compliance is too high, then the attorney must go to court and get relief.

### **Transactions of Business by Out of State Financial Institutions (Section 10)**

Chapter 655.921, F.S., regulates transactions of business by out of state financial institutions. The bill makes a technical change to this section by clarifying that financial institutions having the principal place of business outside of this state, and not operating branches in this state, are not prohibited from contracting with any person in Florida to acquire interest in a loan, to enter into mortgage servicing contracts, and to manage property in Florida as security for obligations acquired in transacting business.

### **Use of Name (Section 11)**

The purpose of the section is to prohibit individuals from forming businesses with a name that would lead consumers to believe that they were dealing with a bank. The change in the bill clarifies what types of names used are prohibited, such as "banco" and "banque." The bill gives the Financial Services Commission rulemaking authority to implement this change.

### **Safe Deposit Box (Section 12)**

Section 655.94, F.S., provides that if the rental due on a safe-deposit box has not been paid for three months, the lessor may send a notice by registered mail to the lessee stating that the safe-deposit box will be opened and the contents stored unless the rent is paid. If the rent is not paid, the box may be opened in the presence of an officer of the lessor and a notary public. The notary public is required to seal the contents of the box in a package. Section 655.94(1), F.S. provides that the notary public cannot be a director, officer, employee, or stockholder of the lessor.

The bill deletes the restriction on who can be the notary public and permits directors, officers, employees, or stockholders of the lessor to act as the notary public.

### **Limited Liability Companies (Section 13)**

Until recently, banks were required to be a corporation to be in existence. Recently, the Federal Reserve issued an opinion that banks may now form as a limited liability company (LLC). However, since the IRS tax code does not recognize this as a business organization for banks, there is no favorable tax treatment yet to do so. Additionally, any bank which reforms as a LLC must pay an additional tax to do so.

The bill provides that a bank may be formed as a LLC if (1) the bank is not subject to automatic termination or suspension, (2) the authority to manage the bank is vested in a board of directors or managers elected or appointed by the owners, and (3) providing that neither the bylaws of the bank or state laws:

- (a) Provide that an owner of the institution is liable for debts in excess of the amount of the owner's investment, or
- (b) Require the consent of any other owner of the institution in order for an owner to transfer ownership interest, including voting rights.

### **Bylaws (Section 14)**

Currently, s. 658.23, F.S., states that a bank or trust company must keep a current copy of their bylaws with OFR at all times. The bill removes this provision.

### **Liquidity (Sections 17, 18, 25)**

Currently, s. 658.68, F.S. requires a financial institution to make daily liquidity calculations. The bill will repeal this section and therefore remove the requirement for a daily liquidity calculation. In its place the bill amends two sections of the Florida Banking Code: (1) s. 658.37, F.S., to prohibit any bank which is imminently insolvent from paying dividends and (2) s. 658.48(10), F.S., to prohibit an imminently insolvent bank from making any further loans.

### **Relocation (Section 15)**

Currently, Florida law requires that when a bank or trust company relocates its main office it must obtain the OFR's approval in advance. The bill will amend this to permit a financial institution or trust company that is operating in a safe and sound manner to relocate its main office and only notify the OFR of the relocation. Currently, branch relocations have the same notification requirements (this change will make bank and trust company requirements nearly identical).

### **Officers (Section 16)**

Currently, when a financial institution is formed the bank president and chief executive officer must have at least one year experience as a senior officer in the last three years. The bill amends this section to include these offices or however else they are defined with the same authority and responsibility. Also the bill grants the OFR the authority to examine the condition of the bank in the previous employment as a condition to waving this requirement.

### **Foreclosure (Section 19)**

Currently, a bank must appraise property held as collateral within one year prior to foreclosure. This would require ongoing appraisals on property for loans which may become problem loans. The bill will add that the property may be appraised within 90 days after the foreclosure. The change will place a cost on the bank after it decides to foreclose but prior to the sale.

## **Fees and assessments (Section 20)**

The bill clarifies that only individuals or entities other than state chartered or licensed banks must pay the \$25 fee for each "certificate of good standing".

## **Control (Sections 21, 23)**

Section 663.16, F.S., provides definitions to the international banking code and section 665.034, F.S., provides for control over an association. The bill amends these two sections to clarify the definition of "control" to conform to federal law. The bill defines "control" as a person or group of persons acting in concert, directly or indirectly, owning, controlling, or holding the power to 25 percent or more of the voting stock of a company, or having the ability in any manner to elect a majority of directors of a corporation, or otherwise exercising a controlling influence over the management and policies of a corporation as determined by the office.

## **Application for Authority to Organize an International Development Bank (Section 22)**

Chapter 663.304, F.S., provides provisions for the application for authority to organize an international development bank. The bill removes outdated language in this section relating to the Department of State.

## **Fraudulent Signatures and Endorsements (Section 24)**

Currently, Florida law states that a customer has one year to discover and report fraudulent signatures and five years for fraudulent endorsements. The bill will change this to 90 days for fraudulent signatures and one year for fraudulent endorsements after the statement or items are made available to the customer. The bill also provides that the person retaining any items in question must keep a copy of the items on record for a minimum of five years rather than seven years.

## **Repeal of Liquidity Requirements (Sections 25-29)**

These sections are amended to remove references to s. 658.68, F.S., relating to liquidity requirements. Section 29 of the bill repeals s. 658.68, F.S.

The bill will take effect upon becoming a law.

### **C. SECTION DIRECTORY:**

Section 1. Amends s. 494.0025, F.S., prohibiting mortgage brokers and lenders to use a bank's name when offering services without the expressed written consent of the financial institution.

Section 2. Amends s. 516.07, F.S., prohibiting an individual making consumer finance loans to use a bank's name when offering services without the expressed written consent of the financial institution.

Section 3. Amends s. 520.995, F.S., prohibiting any individual or an institution engaged in home improvement sales and finance loans to use a bank's name when offering services without the expressed written consent of the financial institution.

Section 4. Amends s. 626.9541, F.S., prohibiting any person involved in the business of insurance to use a bank's name when offering services without the expressed written consent of the financial institution.

Section 5. Amends s. 655.005, F.S., to clarify the definition of “financial institution” to include the term “international branch.”

Section 6. Amends, s. 655.0322, F.S., to clarify the definition of “financial institution” to include the term “international branch.”

Section 7. Amends s. 655.0385, F.S., to require a \$35 fee with each notification of a proposed appointment of an individual to the board of directors.

Section 8. Amends s. 655.045, F.S., exempting any de novo state financial institution open less than four months from audit requirements of this section.

Section 9. Amends s. 655.059, F.S., permitting banks to set a reasonable fee for compliance with subpoenas.

Section 10. Amends s. 655.921, F.S., clarifying that nothing in the financial institutions codes shall prohibit a financial institution not operating branches in this state engaging in certain activities.

Section 11. Amends s. 655.922, F.S., to prohibit the deceptive use of a bank’s name when offering services and authorizes the Commission to develop rules to implement the section.

Section 12. Amends s. 655.94, F.S., clarifying who may open a safe deposit box for nonpayment of rent.

Section 13. Amends 658.16, F.S., permitting banks to form as limited liability companies, providing provisions.

Section 14. Amends s. 658.23, F.S., removing a requirement that banks and trust companies file a current copy of bylaws with the office kept current at all times.

Section 15. Amends s. 658.26, F.S., permitting branch and main office relocations for well run banks to be done through notice provisions.

Section 16. Amends s. 658.33, F.S., clarifying qualifications of officers of banks and trust companies.

Section 17. Amends s. 658.37, F.S., providing that no bank that has been determined to be imminently insolvent shall pay dividends.

Section 18. Amends s. 658.48, F.S., providing that a state bank will not make any new loans when the office has determined the bank insolvent.

Section 19. Amends s. 658.67, F.S., clarifying when an appraisal must be completed when acquiring property as security.

Section 20. Amends s. 658.73, F.S., clarifying who must be issued a certificate of good standing.

Section 21. Amends s. 663.16, F.S., revising the definition of “control” by reducing the voting stock parameter from 50 percent to 25 percent.

Section 22. Amends s. 663.304, F.S., removing a requirement regarding the application to organize an international development bank.

Section 23. Amends s. 665.034, F.S., clarifying the conditions of persons deemed to have control over an association.

Section 24. Amends s. 674.406, F.S., to shorten the time limit in which a customer has to discover and report for forged signatures from one year to 90 days and forged endorsements to one year.

Section 25. Amends s. 655.948, F.S., to remove a reference to s. 658.68, F.S., relating to daily liquidity requirements. The bill repeals that section.

Section 26. Amends s. 658.60, F.S., to remove a reference to s. 658.68, F.S., which is repealed by the bill.

Section 27. Amends s. 663.02, F.S., to remove a reference to s. 658.68, F.S., which is repealed by the bill.

Section 28. Amends s. 663.318, F.S., to remove a reference to s. 658.68, F.S., which is repealed by the bill.

Section 29. Repeals s. 658.68, F.S., thus removing daily liquidity calculations.

Section 30. This bill shall take effect upon becoming a law.

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

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

#### **1. Revenues:**

There will be an indeterminate fiscal impact as a result of the \$35 fee placed on appointed bank directors and the clarification for persons other than state chartered or licensed banks to pay a \$25 fee for a "certificate of good standing."

#### **2. Expenditures:**

None.

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

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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

Unknown.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

The bill gives rule making authority to the Commission to make rules relating to banking businesses by unauthorized persons.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.