

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Committee

BILL: SB 792

INTRODUCER: Senator Gaetz and others

SUBJECT: Financial Institutions

DATE: January 28, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Favorable
2.	Howard	DeLoach	BGA	Favorable
3.	Howard	Rhodes	BC	Pre-meeting
4.				
5.				
6.				

I. Summary:

This bill codifies into state law the federal requirement that all state financial institutions certify that they have adopted policies, procedures, and controls, in accordance with promulgated rules established by the Office of Financial Regulation (OFR), to detect and assure the financial institution does not knowingly maintain any correspondent accounts or payable-through accounts with any financial institution that does business with Iran or any other terrorist organization designated by the U.S. Government. The bill mandates new reporting requirements upon all state chartered financial institutions as well as the OFR. The bill further authorizes the OFR to impose civil penalties of \$100,000 against any state chartered financial institution that is in noncompliance with the annual reporting requirement.

The bill has no fiscal impact to the Office of Financial Regulation. The OFR will adopt rules establishing minimum standards for due diligence procedures by July 1, 2012, make annual compliance report available on its website, and submit an annual report to the Governor, the President of the Senate, and the Speaker of the House by January 2013 with existing resources.

Noncompliance with the certification reporting requirements could subject Florida State-chartered financial institutions to civil penalties. Federally chartered financial institutions and out-of-state chartered financial institutions doing business in Florida will not be subject to the bill's requirements.

This bill creates an undesignated section of Florida statutes.

II. Present Situation:

As a result of Iran's support for international terrorism and its aggressive actions against non-belligerent shipping in the Persian Gulf, President Reagan issued Executive Order 12613,¹ imposing a new import embargo on Iranian-origin goods and services. Section 505 of the International Security and Development Cooperation Act of 1985 was utilized as the statutory authority for the embargo, which gave rise to the Iranian Transactions Regulations.²

In 1995, as a result of Iranian support of international terrorism and Iran's active pursuit of weapons of mass destruction, President Clinton issued Executive Order 12957³ prohibiting U.S. involvement with any petroleum development in Iran. Later that year, President Clinton issued Executive Order 12959,⁴ substantially tightening the U.S.'s sanctions against Iran. In 1997, President Clinton signed Executive Order 13059,⁵ prohibiting virtually all trade and investment activities with Iran by all U.S. Citizens.

On July 1, 2010, President Obama signed into law the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA).⁶ The CISADA requires the Secretary of the Treasury to prohibit or restrict the opening or maintaining in the U.S. of a correspondent or payable-through account by a foreign financial institution if that institution knowingly:

- Facilitates Iranian government, including the Iran's Revolutionary Guard Corps (IRGC), efforts to acquire weapons of mass destruction (WMD) or to support international terrorism;
- Engages in dealings with Iranian persons sanctioned by the Security Council;
- Engages in money laundering or facilitates Central Bank of Iran efforts to aid Iran's WMD programs, to support Iran's sponsorship of terrorism, or to support persons under Security Council sanction; or
- Conducts significant business with the IRGC, its affiliates, or financial institutions whose property or interests are blocked pursuant to the International Emergency Economic Powers Act.

The CISADA directs the Secretary of the Treasury to prohibit any person owned or controlled by a domestic financial institution from knowingly engaging in a transaction with or benefiting the IRGC or its affiliates whose property or interests are blocked pursuant to the International Emergency Economic Powers Act and applies specified penalties under the International Emergency Economic Powers Act to a domestic financial institution if:

- A person owned or controlled by the institution violates or attempts to violate such provisions; and
- The institution knew or should have known of such activity.

¹ Executive Order 12613, October 29, 1987.

² Title 31, Part 560 of the U.S. Code of Federal Regulations.

³ Executive Order 12957, March 16, 1995.

⁴ Executive Order 12959, May 6, 1995.

⁵ Executive Order 13059, August 19, 1997.

⁶ Pub. L. 111-195.

In addition, the CISADA directs the Secretary of the Treasury to require a domestic financial institution maintaining a correspondent account or payable-through account in the U.S. for a foreign financial institution to do one or more of the following:

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

Lastly, the act applies specified penalties to persons that violate such provisions and authorizes the Secretary of the Treasury to waive such prohibitions for purposes of U.S. national interest.

Currently, all Florida state chartered financial institutions must comply with the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) regulations and the promulgated federal Iranian sanctions.

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the U.S.. The OFAC acts under presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

The mission of the FinCEN is to enhance U.S. national security, deter and detect criminal activity, and safeguard financial systems from abuse by promoting transparency in the U.S. and international financial systems.

The bank examination processes, by both state and federal examiners, includes procedures for examining and assessing a financial institution's policies, procedures, and processes for ensuring compliance with the federal regulatory requirements and sanctions. As part of the scoping and planning procedures, examiners must review the bank's OFAC risk assessment and independent testing to determine the extent to which a review of the bank's OFAC compliance program should be conducted during the examination. The effectiveness of the examination process is heightened due to the existence of information sharing agreements between state and federal banking regulators with both the OFAC and the FinCEN. As a result, under present law the type of banking transactions being targeted by the bill are scrutinized and subject to federal laws, pursuant to state law based upon safety and soundness grounds or in the alternative based upon the Florida Control of Money Laundering provisions of Section 655.50, F.S.

III. Effect of Proposed Changes:

SB 792 requires the Office of Financial Regulation to adopt rules establishing minimum standards that all state chartered financial institutions must adopt to detect whether any correspondent accounts or a payable-through accounts with a foreign financial institution are knowingly:

- Facilitating the efforts of the Iranian Government to develop weapons of mass destruction;
- Providing support to a foreign terrorist organization;
- Facilitating the activities of a person who is subject to financial sanctions by a United Nations Security Council's Iranian sanction resolutions;
- Engaging in related money laundering activity;
- Facilitating efforts by Iranian financial institutions to carry out prohibited activities; or
- Facilitating a significant transaction or providing significant financial services to an entity whose property interests are blocked pursuant to federal law associated with Iran's proliferation of weapons of mass destruction or support for international terrorism.

The bill requires the OFR to submit an annual report to the Governor and the Legislature as well as post the report on the Department of Financial Services' website. The bill also authorizes the OFR to impose a \$100,000 civil penalty against any state chartered financial institution that fails to comply with the annual reporting requirement.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

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

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Federally chartered financial institutions and out-of-state chartered financial institutions doing business in Florida will not be subject to the bill's requirements. Noncompliance with the reporting requirements will subject Florida state chartered financial institutions to a \$100,000 civil penalty. In addition, there could be compliance costs that only state chartered financial institution would be subject to.

C. Government Sector Impact:

This will create additional regulatory costs for the Office of Financial Regulation associated with adopting rules establishing minimum standards for due diligence procedures by July 1, 2012, making annual compliance reports available on its website, and submitting an annual report to the Governor, the President of the Senate, and the Speaker of the House by January 2013. The OFR will be able to implement these changes using existing resources.

VI. Technical Deficiencies:

The Financial Services Commission is the authority through which rules are adopted for the Office of Financial Regulation.

VII. Related Issues:

Because the OFR has direct jurisdiction over financial institutions, the posting of the compliance report could be placed on the OFR's website, rather than, or in addition to, the Department of Financial Services' website.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.