

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 Committee on Banking and Insurance

BILL: SB 1950

INTRODUCER: Senator Gruters

SUBJECT: Financial Institutions

DATE: March 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 1950 makes a number of revisions to Florida law relating to financial institutions. The bill:

- Allows foreign nationals proposing to own 10 percent or more of any class of voting securities of a proposed or established bank to appear by video during the hearing on the matter;
- Prohibits the direct or indirect charging of a customer a fee by a third-party agent or other entity for an online audit verification of the associated balance of an account which is maintained by a financial institution;
- Revises the required scheduling dates for examination of financial institutions;
- Clarifies when approval from the Office of Financial Regulation (OFR) is needed when acquiring assets or liabilities of another financial institution;
- Revises the definition of “financial institution” for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act;
- Requires credit unions, within 30 days following a meeting where certain persons are elected, to notify the OFR of persons’ names and residence addresses;
- Revises existing requirements to allow credit unions to invest up to 60 percent of the equity of the credit union in in real estate and improvements;
- Revises the scope of the OFR’s investigation of applicants seeking authority to start a bank or trust company to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of a target market to support the proposed bank or trust company;
- Revises a requirement that the proposed president or chief executive officer of a proposed banking corporation must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years;
- Defines trust representative offices and specifies that a trust representative office in Florida may only engage in specified activities that are ancillary to fiduciary business;

- Requires that persons acquiring a controlling interest in a state bank or state trust company through probate or trust shall notify the office within 90 days after acquiring such interest;
- Defining a “de novo branch” for the purposes of an existing de novo interstate branching provision;
- Authorizing the OFR to not publish registration applications for a family trust company or a foreign licensed family trust company in the Florida Administrative Register;
- Authorizing a family trust company or licensed family trust company to maintain the deposit account, required under current law, with any bank that is both insured by the Federal Deposit Insurance Corporation and located in the United States;
- Revising when family trust companies, licensed family trust companies, or foreign licensed family trust companies must file a required annual renewal application;
- Allowing international bank agencies and international branches to maintain a required deposit in banks outside of Florida; and
- Allowing the OFR to suspend the qualification of qualified limited service affiliates under certain conditions.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Regulation of Financial Institutions

Florida law defines the term “financial institution” broadly; the term includes “state and federal savings or thrift associations, banks, savings banks, trust companies, international bank agencies, international banking corporations, international branches, international representative offices, international administrative offices, international trust entities, international trust company representative offices, qualified limited service affiliates, credit unions, agreement corporations operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. and Edge Act corporations organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.”¹

However, not all financial institutions are expressly authorized to accept or hold deposits or certificates of deposits.²

Dual Regulatory System

Banks and credit unions may be either state or federally chartered. The OFR is responsible for chartering and supervising state financial institutions, including state-chartered banks and state-chartered credit unions.³

¹ Section 655.005(1)(i), F.S.

² For instance, holding a deposit does not fall within the enumerated permissible activities of an international representative office, an international administrative office, an international trust company representative office, or a qualified limited service affiliate. See ss. 663.062, 663.063, 663.409, and 663.531, F.S.

³ Section 655.012(1)(a), F.S.

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency (OCC).⁴ National banks are required to be members of the Federal Reserve System; state banks may apply for membership.⁵ The Federal Reserve is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.⁶

Federally-chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).⁷ Both state- and federally-chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.⁸

Consumer Protection Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.⁹ The state attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.¹⁰ The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.¹¹ Consumers may also file suit through private actions.¹²

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders;
- Civil penalties of up to \$10,000 per willful violation; and
- Civil penalties of up to \$15,000 per willful violation where certain aggravating factors are found.¹³

⁴ 12 U.S.C. s. 481.

⁵ 12 U.S.C. s. 208.3 and 222.

⁶ 12 U.S.C. s. 248.

⁷ See 12 U.S.C. s. 1751, et. seq.

⁸ Section 657.033, F.S.; 12 U.S.C. s. 1784.

⁹ Section 501.202, F.S.

¹⁰ Sections 501.207 and 501.202, F.S. David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. B.J. 52, December 2002, available at http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on March 13, 2021).

¹¹ Section 501.203(2), F.S.

¹² Section 501.211, F.S.

¹³ Sections 501.207(1), 501.2075, 501.2077, and 501.208, F.S.

Remedies for private parties are limited to:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.¹⁴

Exemptions under the FDUTPA

FDUTPA exempts certain entities from its governance, including:¹⁵

- Any person or activity regulated under laws administered by the Office of Insurance Regulation of the Financial Services Commission (OIR);
- Banks, credit unions, and savings and loan associations regulated by the OFR;
- Banks, credit unions, or savings and loan associations regulated by federal agencies; or
- Any person or activity regulated under the laws administered by the former Department of Insurance, which are now administered by the Department of Financial Services (DFS).

Examination of Financial Institutions

Pursuant to s. 655.045(1), the OFR is required to conduct an examination of each state financial institution at least every 18 months. Section 655.045(1)(a), however, allows the OFR to accept an examination from an appropriate federal regulatory agency or may conduct a joint or concurrent examination of the institution with the federal agency. However, at least once every 36-months, the OFR must conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The alternating, joint, or concurrent examination authorized by this provision reduces regulatory burden on the financial institutions subject to dual regulation, and the OFR works in coordination with these federal agencies when possible.¹⁶

According to OFR, many of the documents it must analyze in these examinations are paper files with digital copies not available. As such, examiners must be physically present at an institution to perform examinations. The ongoing COVID-19 pandemic has created issues in adhering to examination schedules. Additionally, other natural disasters (such as hurricanes) can create problematic examination environments.¹⁷

Financial Institution Acquisition of Assets and Assumption of Liabilities

Current law allows a financial entity, under s. 655.414, F.S., to acquire “all or substantially all” of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. Similarly, subsection (6) of the statute states that a mutual financial institution may not sell “all or substantially all” of its assets to a stock financial institution, subject to certain conditions. For both of these provisions, the term “substantially all” is not

¹⁴ Sections 501.211(1)-(2), and 501.2105 F.S.

¹⁵ Section 501.212(4), F.S.

¹⁶ Office of Financial Regulation, *Legislative Bill Analysis of HB 1641* (March 8, 2021) (on file with Senate Banking and Insurance Committee).

¹⁷ *Id.*

defined and may be subject to some conjecture. According to the OFR, this undefined term has caused some confusion in the financial industry.¹⁸

Money Laundering and Terrorist Financing in Financial Institutions Act

The Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act, under s. 655.50, F.S., was created to require the submission certain reports to the OFR and the maintenance of certain records involving currency or monetary instruments or suspicious activities where such reports and records deter the use of financial institutions to conceal, move, or provide proceeds relating to criminal or terrorist activities and if such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. Subsection (3) of the act defines “financial institutions” a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state. This definition is quite broad, and includes a number of entities over which the OFR generally does not have regulatory authority—such as the United States Postal Service, casinos, travel agencies—or are obsolete—such as telegraph companies.¹⁹

Credit Union Boards of Directors

Section 657.021(1)-(6), F.S., specifies the minimum requirements for boards of directors for credit unions, including the filling of vacancies, meeting requirements, and conduct requirements. As part of these requirements, subsection (2) requires that directors assuming office in a credit union must make a prescribed oath and a signed copy of the oath must be filed with the OFR within 30 days after election. According to the OFR, at the Federal-level, the NCUA historically required credit unions to submit a record of the names and addresses of the members of the board of directors, members of the committees on a particular form called “Report of Officials.” The OFR had access to these documents through agreements with the NCUA. However, in 2009, the NCUA moved to a web-based system to collect this data and the forms were no longer collected.²⁰ At present Florida law does not require state-chartered credit unions to submit a similar report.

State-chartered Credit Union Investments in Real Estate and Equipment

Section 657.042(5), F.S., authorizes state-chartered credit unions to invest up to five percent of their capital in real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business. Exceeding this cap requires approval by the OFR. The National Credit Union Administration (NCUA) previously had a similar restriction; however the NCUA removed this restriction in 2015. In issuing its supervisory letter regarding this change to its regulations, the NCUA noted that “several state supervisory authorities (SSAs) maintain an aggregate fixed asset limit” and that the “guidance

¹⁸ *Supra* note 16.

¹⁹ The world’s last telegram was sent in 2013. Monica Sarkar, *The Day Telegrams Came to a Final STOP*, CNN (July 15, 2013).

²⁰ NCUA Supervisory Letter 09-CU-17, “Credit Union Online: Credit Union Profile and 5300 Call Report,” National Credit Union Administration, available at: <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/credit-union-online-credit-union-profile-and-5300-call-report> (August 2009).

does not supersede these limits in any way.”²¹ Thus, Florida-chartered credit unions are subject to stricter controls on their investments in real estate, improvements, and equipment than their Federally-chartered counterparts.

Target Markets

According to the American Bankers Association, nearly 75 percent of United States residents most often access their bank accounts via electronic platforms (i.e. via mobile device or personal computer).²² With this ever-growing trend, and branch traffic slowing, many banks have been closing bank branches at a growing pace and making investments in electronic platforms.²³

While the trend in banking has been to de-emphasize the local branch, a Florida application for authority to organize a banking corporation or trust company must describe the community where the principal office of the bank will be located²⁴ and part of the OFR’s approval process looks at the need for, and ability to support, the proposed bank or trust company in the entity’s primary service area.²⁵ In order for an application to be approved, the local conditions in the primary service area must indicate a reasonable promise of successful operation.²⁶ The OFR evaluates the viability of the business plan in light of current conditions in the primary service area and the metropolitan statistical area or county, as well as in the industry in general.²⁷

Applications for Authority to Organize a Banking Corporation or Trust Company

Section 658.19, F.S., specifies the requirements for an application for authority to organize a banking corporation or trust company, which must be filed with the OFR by the proposed directors, and what the application shall include. Upon the submission of this application, pursuant to s. 658.20, F.S., the OFR must investigate the:

- Character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors;
- Need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located; and
- Ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.

Section 658.20, F.S. also authorizes the OFR to obtain criminal record information from the National Crime Information Center or from the Florida Department of Law Enforcement (FDLE) to conduct the required investigation.

²¹ NCUA Supervisory Letter 15-CU-06, “Fixed Asset Management,” National Credit Union Administration, *available at*: <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/fixed-asset-management> (October 2015).

²² Survey: Bank Customers Preference for Digital Channels Continues to Grow, American Bankers Association, <https://www.aba.com/about-us/press-room/press-releases/survey-bank-customers-preference-for-digital-channels-continues-to-grow> (November 5, 2019).

²³ *Id.*

²⁴ Section 658.19, F.S.

²⁵ Section 658.20, F.S.

²⁶ Rule 69U-105.206(2)(a), F.A.C.

²⁷ Rule 69U-105.206(2)(a)1.-2., F.A.C.

To approve an application, the OFR must find, in part, that:²⁸

- Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company;
- The proposed capitalization is in such amount as the OFR deems adequate;
- The proposed capital structure is in such form as the OFR may require;
- The proposed officers have sufficient financial institution experience, ability, standing, and reputation in order to be approved. As part of this requirement, the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years;
- The corporate name of the proposed state bank or trust company is approved by the OFR; and
- Provision has been made for suitable quarters at the location specified in the application.

In regards to the requirement that the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years, the OFR has expressed a concern that this provision narrows the pool of otherwise qualified potential executive officers who may serve in that capacity at a new Florida-chartered bank. By comparison, proposed chief executive officers of proposed nationally chartered banks are not subject to a similar restriction.²⁹

Trust Representative Offices

According to 12 C.F.R. s. 9.2(k), a trust representative office is an office of a national bank, other than a main office or a branch, at which the bank engages in certain activities relating to their fiduciary business. Examples of such activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer; and inspecting or maintaining custody of fiduciary assets or holding title to real property.

In Florida, the OFR supervises state-chartered banks with trust powers and state-chartered trust companies. The determination of whether an entity qualifies as a “trust company” is dependent on whether an entity has “trust powers” and is engaging in “trust business,” defined as follows:³⁰

- “Trust powers” means the rights and powers necessary to act as a fiduciary and, when the context so requires or admits, the term also means the authority granted to a bank, state or federal association, or trust company by, or pursuant to, the laws of this or any other jurisdiction to engage in trust business.
- “Trust business” means the business of acting as a fiduciary when such business is conducted by a bank, a state or federal association, or a trust company, or when conducted by any other business organization for compensation that the OFR does not consider to be de minimis.

Based on this definition, an office that provides just ancillary fiduciary services to a nationally-chartered bank or trust company (or one chartered by another state) would not qualify as a trust company.

²⁸ 658.21, F.S.

²⁹ *Supra* note 16.

³⁰ Section 658.12, F.S.

Controlling Interests in State Banks and Trust Companies

Under s. 658.28, F.S., for the purposes of determining whether a party has acquired control of a bank or trust company, in general, a party will be presumed to have such control if any of the following are true:

- The party directly or indirectly owns, control, or has the power to vote 25 percent or more of any class of voting securities of the institution;
- The party controls, in any manner, the election of a majority of the directors, trustees, or other governing body of the institution;
- The party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution; or
- The OFR determines, after notice and opportunity for a hearing, that the person or persons directly or indirectly exercises a controlling influence over the bank or trust company.

In addition, the OFR is not limited to the above standards or criteria in determining whether any such person may be deemed to be acting by or through one or more other persons. The presumption above, regarding where a party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution, is rebuttable by notifying the OFR and presenting information rebutting control at an informal conference.³¹ After such hearing, if the OFR determines that the party in questions does, in fact, have control of the bank or trust company, the party must file the application required under 658.28(1), F.S.

Section 658.28(1), F.S., also requires persons seeking to purchase or otherwise acquire controlling interest in a state bank or trust company, to first apply with the OFR for a certificate of approval. Approval is based upon the OFR's determination, after investigation and review, that the proposed new owners are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company and that the interests of the other stockholders, if any, the depositors and creditors of the bank or trust company, and the public generally will not be jeopardized by the proposed change.

Florida law does not currently contemplate the acquisition of a controlling interest without prior approval. However, according to the OFR, not every such acquisition is planned. Shares may pass to an unapproved owner by operation of law, such as by way of inheritance. For example, if a controlling shareholder dies and their shares pass to an unapproved beneficiary, the unapproved beneficiary commits an unavoidable, technical violation of statute upon becoming the owner of the shares.³²

De Novo Interstate Branching by State Banks

Section 658.2953(11)(a), F.S., permits state banks to, with approval of the OFR, establish and maintain a de novo branch or acquire a branch in a state other than Florida by submitting an

³¹ 658.28(3), F.S.

³² *Supra* note 16.

application to the OFR. Section 658.2953(11)(a), F.S., also allows out-of-state bank meeting certain conditions to establish and maintain a de novo branch or acquire a branch in Florida.

Family Trust Companies

A family trust company provides trust services to wealthy families and cannot provide services to the general public. These services include 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 family might wish to form a family trust company in order to keep family matters more private than they would be if turned over to an independent trustee, to gain liability protection, to establish its own trust fee structure, and to obtain tax advantages. Traditional trust companies require regulatory oversight, licensing of investment personnel, public disclosure and capitalization requirements considered by practitioners to be overbroad and intrusive for the family trust.

In 2014, the Legislature authorized the creation of family trust companies in Florida.³³ The Florida Family Trust Company Act is codified in ch. 662, F.S. The Act allows for the creation of family trust companies in Florida and provides differing degrees of regulatory oversight by the OFR.

Chapter 662, F.S., creates three types of family trust companies: family trust companies, licensed family trust companies, and foreign licensed family trust companies. A “family trust company” is a corporation or limited liability company that is exclusively owned by one or more family members, is organized or qualified to do business in this state, and acts or proposes to act as a fiduciary to serve one or more family members.³⁴ A “licensed family trust company” means a family trust company that has been issued a license that has not been revoked or suspended by the OFR.³⁵ A “foreign licensed family trust company” means a family trust company that is licensed by a state other than Florida, or the District of Columbia.³⁶ Family trust companies that are not licensed and foreign family trust companies must register the OFR and renew such registration annually.³⁷ Family trust companies and licensed family trust companies must maintain a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida.³⁸

Asset Maintenance or Capital Equivalency for International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution in regards to loans, extension of credit, or investment. An international bank agency may act as custodian and may furnish investment

³³ Ch. 2014-97, Laws of Fla.

³⁴ See s. 662.111(12), F.S. and does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the family trust company or one or more trusts, companies, or other entities that are family members

³⁵ See s. 662.111(16), F.S.

³⁶ See s. 662.111(15), F.S.

³⁷ See ss. 662.122, 662.128, F.S.

³⁸ Section 662.1225(1), F.S.

management, and investment advisory services, to nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international, foreign, or domestic investments.³⁹ An international branch has the same rights and privileges as a federally-licensed international branch.⁴⁰ Under s. 663.07, F.S., each international bank agency and international branch must maintain, with one or more banks in this state evidence of dollar deposits or investment securities, as specified by the OFR, of the type that may be held by a state bank.

Qualified Limited Service Affiliates of International Trust Entities (QLSA)

Part IV of Chapter 663, F.S., regulates QLSAs in Florida. Pursuant to s. 663.530, F.S., a QLSA means a person or entity that is qualified under this part to perform the permissible activities outlined in s. 663.531, F.S., related to or for the benefit of an affiliated international trust entity. This section also defines an “international trust entity” as an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised. Section 663.531(1), F.S. allows a QLSA to engage in:

- Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
- Advertising and marketing at trade, industry, or professional events;
- Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
- Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

To qualify as a QLSA, the entity must file a written notice with the OFR that includes, in part, a declaration (under penalty of perjury) that jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.⁴¹ While this is a required disclosure, the OFR asserts that it does not have a mechanism to suspend or revoke the qualification of the QLSA if the jurisdiction of the international trust entity is later added to this list.⁴²

III. Effect of Proposed Changes:

Section 1 amends s. 120.80(3)(a) to allow a foreign national proposing to own or control 10 percent or more of any class of voting securities of a proposed or established bank, trust company, or capital stock savings association to appear at the public hearing required to be held for such matter via video conference in lieu of appearing personally.

³⁹ Section 663.061, F.S.

⁴⁰ Section 663.064, F.S.

⁴¹ Section 663.532(1)(i)3., F.S.

⁴² *Supra* note 16.

Section 2 amends s. 475.01, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S. in the bill.

Section 3 creates s. 501.2076, F.S., to make the direct or indirect charging of a customer a fee, by a third-party agent or other entity, for an online audit verification of the associated balance of an account which is maintained by a financial institution, a violation of the FDUTPA.

Section 4 amends s. 475.01, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S. in the bill.

Section 5 amends s. 655.045(1)(a), F.S. to remove the specific date of July 1, 2014, which the scheduling of examinations are pegged to for financial institutions. Instead, examinations would be on a rolling basis, but still be conducted every 18 months as otherwise required. The OFR states that this revision will give it greater flexibility to schedule examinations and work cooperatively with federal regulators.⁴³

The section also creates s. 655.045(1)(f), F.S., to allow the Commissioner of the OFR, under certain conditions, to determine that an emergency condition exists and delay examinations when such delay would not be inconsistent with Federal law. Such delay would persist until the earlier of when the emergency conditions cease to exist or the office determines that conditions no longer present undue risk to examiners or significantly hinder or impede the examination process or the ordinary operations of a financial institution scheduled to be examined. This provision does not appear to be dependent on an emergency declaration by the Governor pursuant to s. 262.36, F.S.

Section 6 amends s. 655.414, F.S., to revise allowing financial entities to acquire “all or substantially all” of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. The bill updates this language to read “all or 50 percent more.”

Similarly, subsection (6) of the section presently states that a mutual financial institution may not sell “all or substantially all” of its assets to a stock financial institution, subject to certain conditions. The bill also updates this to read “all or 50 percent more.”

Section 7 amends s. 655.50, F.S., to revise the definition of “financial institution” for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act. The definition is significantly narrowed to just include a state association, a bank, a trust company, a credit union, a credit card bank, an international bank agency, or an international branch. This would narrow the institutions to which the Act would apply and, according to the OFR, eliminate ambiguity.⁴⁴

Section 8 creates s. 657.021, F.S., to require credit unions, within 30 days following a meeting where any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, shall submit to the OFR the names and

⁴³ *Id.*

⁴⁴ *Id.*

residence addresses of the elected person or persons on a specified form. The provision also directs the OFR to adopt rules to create the form.

Section 9 amends s. 657.042, F.S., to allow credit unions to invest up to 60 percent of the equity of the credit union in in real estate and improvements thereon, furniture, fixtures, and equipment utilized or to be utilized by the credit union for the transaction of business. The bill also clarifies that leasehold interests are also subject to limitation. This revision makes the credit union limitations in this area similar to state-chartered banks.⁴⁵

Section 10 amends s. 658.12, F.S., to create a definition for “target market” to mean the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

Section 11 amends s. 658.20, F.S., to incorporate the definition of target market created in **Section 10** and effectively expand the scope of the OFR’s investigation (regarding an application for authority to organize a bank or trust company) to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of a target market to support the proposed bank or trust company.

Section 12 amends s. 658.21, F.S. to revise a requirement that, for the OFR to approve an application for authority to organize a banking corporation or trust company, the proposed president or chief executive officer must have at least one year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years. The revision eliminates the requirement that the 1 year of experience be within the last 5 years.

Section 13 creates s. 658.265, F.S. to define trust representative offices and specify the activities a trust representative office in Florida may engage in, which are, as follows:

- Advertising, marketing, and soliciting for fiduciary business.
- Contacting existing or potential customers, answering questions, and providing information about matters related to customer accounts.
- Acting as a liaison between the bank or trust company and the customer, including, but not limited to, forwarding requests for distribution or changes in investment objectives or forwarding forms and funds received from the customer.
- Inspecting or maintaining custody of fiduciary assets or holding title to real property.

The section also specifies that trust representative offices may not engage in any activities considered to be fiduciary in nature.

Section 14 amends s. 658.28, F.S., to create a requirement that persons acquiring a controlling interest in a state bank or state trust company through probate or trust shall notify the office within 90 days after acquiring such interest. The bill also stipulates that this interest does not

⁴⁵ See s. Section 658.67(7)(a)1.

give rise to a presumption of control unless such persons votes the shares or the office has issued a certificate of approval in response to an application approval of change control pursuant to subsection (1) of the section.

Section 15 amends s. 658.2953, F.S., to create a definition of “de novo branch” to mean a branch of a financial institution which is originally established by the financial institution as a branch and does not become a branch of such financial institution as a result of specified transactions. This clarifies the applicability of s. 658.2953(11), F.S., which regulates de novo interstate branching, but currently does not define the term.

Section 16 amends s. 662.122, F.S., to authorize the OFR to not publish registration applications for a family trust company or a foreign licensed family trust company in the Florida Administrative Register. The provision does however, state that the other requirements of ch. 120, F.S. would still apply.

Section 17 amends s. 662.1225, F.S., to allow a family trust company or licensed family trust company to maintain the deposit account, required under the section, with any bank that is both insured by the Federal Deposit Insurance Corporation and located in the United States. Under current law, such companies were limited to only state-chartered or national financial institution that has a principal or branch office in Florida.

Section 18 amends s. 662.128, F.S., to require family trust companies, licensed family trust companies, or foreign licensed family trust companies to file an annual renewal application no later than 45 days after the anniversary of the filing of either the initial application or the prior year’s renewal application. The previous requirement under 662.128, F.S., has also been retained in the section, specifying that such entities must file their renewal 45 days after the end of each calendar year. As presently written, this may require entities, other than those whose anniversary dates fall within the first 45 days of the year, to file two renewals each year.

Section 19 amends s. 633.07, F.S., to allow international bank agencies and international branches to maintain the required deposit amount under the section with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States. Under current law, the deposit had to be maintained at a bank in Florida.

Section 20 amends s. 663.552, F.S. to allow the OFR to summarily suspend the qualification of a qualified limited service affiliate of an international trust entity if the OFR becomes aware that a jurisdiction of an international trust entity served by the QLSA is included on the Financial Action Task Force list of High-Risk Jurisdictions subject to a Call for Action. Such a summary suspension would be lifted upon the jurisdiction being removed from the Financial Action Task Force’s list of High-Risk Jurisdictions subject to a Call for Action.

Section 21 amends s. 736.0802, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S. in the bill.

Section 22 provides for an effective date of July 1, 2021 for the bill.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

In **Section 6** of the bill, the phrase “50 percent more” is used twice. However, it appears from context that the intention was to state “50 percent or more.” The OFR suggests revising the bill to make this change.⁴⁶

Section 16 of the bill authorizes the OFR to not publish registration applications for a family trust company or a foreign licensed family trust company in the Florida Administrative Register. However, s. 120.80(3), F.S. states that in proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII, persons have 21 days after publication of a notice to request a hearing. Pursuant to s. 120.52, F.S., such registrations would appear to be a “license” for the purposes of ch. 120, F.S., and thus persons would have

⁴⁶ *Supra* note 16.

such a period to challenge one of these registrations.⁴⁷ However, without such publication, it is unclear when this 21-day clock would begin.

In **Section 18** of the bill, as mentioned above, the new provision may require family trust companies, licensed family trust companies, or foreign licensed family, other than those whose anniversary dates fall within the first 45 days of the year, to file two renewals each year. It is unclear if this was the initial intention; however, the OFR suggests revision of the bill to clarify this provision.⁴⁸

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.80, 475.01, 518.117, 655.045, 655.414, 655.50, 657.021, 657.042, 658.12, 658.20, 658.21, 658.28, 658.2953, 662.122, 662.1225, 662.128, 663.07, 663.532, and 736.0802.

This bill creates the following sections of the Florida Statutes: 501.2076 and 658.265.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁴⁷ Section 120.52(10), F.S. defines a license as a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

⁴⁸ *Supra* note 16.