

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 1238

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Family Trust Companies

DATE: April 7, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1238 creates “Family Trust Companies” in Florida. Trust companies are for-profit business organizations that are authorized to engage in trust business and to act as a fiduciary for the general public. Some states allow families to form and operate private or family trust companies that provide trust services similar to those that can be provided by an individual trustee or a financial institution. However these family trust companies are owned exclusively by family members and may not provide fiduciary services to the public. These private, family trust companies are generally formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements for a variety of personal, investment, regulatory, and tax reasons. Currently, there are no Florida statutes authorizing the formation of family trust companies, licensed family trust companies, and foreign licensed family trust companies.

The bill authorizes families to form and operate any of these three family trust companies in Florida, subject to varying regulatory requirements, including a license or registration with the Office of Financial Regulation (OFR), maintenance of minimum capital accounts with a principal place of business in Florida, and certain reporting requirements. This bill specifies the powers of family trust companies such as serving as a trustee of trusts held for the benefit of family members and providing fiduciary, investment advisory, and wealth management services to a family. A family trust company cannot perform these services for the general public.

This bill authorizes the OFR to investigate applications for licensure or registration, requires annual renewals and other regulatory filings from licensees and registrants, and authorizes the

OFR to conduct periodic examinations of family trust companies, licensed family trust companies, and foreign licensed family trust companies.

This bill is effective October 1, 2015, if the linked public records bill or similar legislation is adopted in the same legislative session.<sup>1</sup>

## II. Present Situation:

### Trusts

A trust is generally defined as, “a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it . . . .”<sup>2</sup> A trust must have three interest holders—a settlor (also called a “grantor”), a trustee, and a beneficiary. The settlor is the party creating the trust. The trustee holds legal title to the property held in trust for the benefit of the beneficiary.<sup>3</sup> The beneficiary has an equitable interest in property subject to trust, enjoying the benefit of the administration of the trust by a trustee.<sup>4</sup> A trust company may offer its services to the general public to serve as trustee of private trusts.

### Trust Companies

The OFR supervises banks and trust companies.<sup>5</sup> The OFR issues charters to state trust companies to conduct “general . . . trust business.”<sup>6</sup> A “trust company” is a business organization, other than a bank or state or federal association, engaged in “trust business.”<sup>7</sup> “Trust business” is the business of acting as a fiduciary when such business is conducted by a bank, state or federal association, or a trust company and when conducted by any other business organization as its sole or principal business.<sup>8</sup>

### The Family Trust Company

A family trust company provides trust services to a related group of people and cannot provide services to the general public.<sup>9</sup> This includes serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family.<sup>10</sup> At least 14 states currently have statutes governing the organization and operation of family trust companies.<sup>11</sup>

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<sup>1</sup> See Senate Bill 1320 (2014).

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

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

<sup>4</sup> *Id.*

<sup>5</sup> See s. 20.121(3)(a)2., F.S.

<sup>6</sup> See s. 658.16(1) and 658.12(19), F.S.

<sup>7</sup> See s. 658.12(21), F.S.

<sup>8</sup> See s. 658.12(20), F.S.

<sup>9</sup> See White Paper for SB 1238 by Senator Richter Relating to Family Trust Companies provided by the Real Property, Probate, and Trust Law Section of the Florida Bar (on file with the Senate Committee on Banking and Insurance).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

No Florida statutes authorizes the formation of a family trust company. Other vehicles are currently used which were primarily designed for trust companies serving the general public. 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.<sup>12</sup>

According to the Real Property, Probate, and Trust Law Section of The Florida Bar, some families enter into agreements with the OFR to form a “family trust company” by agreeing to limit the trust services to the family and not operate for profit or offer services to the general public.<sup>13</sup> Creation of a statutory regulatory structure would eliminate the need for these specialized agreements.<sup>14</sup>

### **III. Effect of Proposed Changes:**

This bill creates ch. 662, F.S., entitled “Family Trust Companies” and provides that the chapter may be cited as the “Florida Family Trust Company Act.” This bill provides that its purpose is to establish requirements for licensing private trust companies, to provide regulation of those persons who provide fiduciary services to family members of no more than two families and their related interests as a private family trust company, and establish the degree of regulatory oversight required of the OFR over such companies.

#### **Types of Family Trust Companies**

This bill creates three types of family trust companies: family trust companies, licensed family trust companies, and foreign licensed family trust companies.

This bill defines “family trust company” as a corporation or limited liability company (LLC) that is exclusively owned by one or more family members, is organized or qualified to do business in Florida, acts or proposes to act as a fiduciary to serve one or more family members, 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.

A “licensed family trust company” means a family trust company that operates in accordance with this chapter and has been issued a license that has not been revoked or suspended by the OFR.

A “foreign licensed family trust company” means a family trust company that is licensed by a state other than Florida, has its principal place of business in a jurisdiction in the United States other than Florida, is operated in accordance with family or private trust company laws of a jurisdiction other than Florida, and is subject to statutory or regulatory mandated supervision by the jurisdiction in which the principal place of business is located.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

A family trust company must be exclusively owned by family members. This bill defines “family members” as:

- A designated relative.<sup>15</sup>
- A person within the fourth degree of lineal kinship to a designated relative of a family trust company, or a person within the sixth degree of lineal kinship to a designated relative of a licensed family trust company.
- A person within the seventh degree of collateral kinship to a designated relative of a family trust company, or a person within the ninth degree of collateral kinship to a designated relative of a licensed family trust company.
- The spouse or former spouse of an individual qualifying as a family member and an individual who is within the fifth degree of lineal kinship to that spouse or former spouse.
- A family affiliate.<sup>16</sup>
- A trust established by a family member if the trust is funded exclusively by one or more family members.
- A trust established by an individual who is not a family member if all of the noncharitable qualified beneficiaries of the trust are family members.
- The probate estate of a family member or the probate estate of an individual who is not a family member if all of the noncharitable beneficiaries of the estate are family members.
- A charitable entity in which a majority of the governing body is composed of family members.

Section 1 provides that the financial institutions codes<sup>17</sup> do not apply to a family trust company, licensed family trust company, or foreign licensed family trust company except as provided in the bill.

Section 7 provides that a family trust company or a foreign licensed family trust company is not required to be a licensed family trust company.

### **Powers of a Family Trust Company (Sections 21, 22)**

Section 21 of this bill provides that a family trust company and a licensed family trust company may:

- Act as a sole or copersonal representative, executor, or curator for probate estates being administered in a state or jurisdiction other than Florida.
- Act as an attorney-in-fact or agent under a power of attorney, other than a power of attorney governed by ch. 709, F.S.
- Act within or outside of Florida as sole fiduciary or cofiduciary and possess, purchase, sell, invest, reinvest, safekeep, or otherwise manage or administer the real or personal property of eligible individuals and members.

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<sup>15</sup>“Designated relative” means a common ancestor of a family, who may be a living or deceased person, and who is so designated in the application for a license or annual license.

<sup>16</sup>“Family affiliate” is a company or other entity in which one or more family members own, control, or have the power to directly or indirectly vote more than 50 percent of a class of voting securities in the company or entity.

<sup>17</sup> The “financial institutions codes” are chs. 655, 657, 658, 660, 663, 665, and 667, F.S. But see, ch. 662, F.S., relating to family trust companies.

- Exercise the powers of a corporation or LLC incorporated or organized under Florida law, or qualified to transact business as a foreign corporation or LLC under Florida law, which are reasonably necessary to enable it to fully exercise, in accordance with commonly accepted customs and usages, a power conferred by the Florida Family Trust Company Act.
- Delegate duties and powers, including investment functions under s. 518.112, F.S., in accordance with the powers granted to a trustee under ch. 736, F.S., or other applicable law, and retain agents, attorneys, accountants, investment advisers, or other individuals or entities to advise or assist the family trust company, licensed family trust company, or foreign licensed family trust company in the exercise of its powers and duties.
- Perform all acts necessary for exercising these powers.

A foreign licensed family trust company that is in good standing in its principal jurisdiction may exercise all the trust powers in Florida that a Florida family trust company may exercise.

A family trust company, a licensed family trust company, and a foreign licensed family trust company:

- May not engage in commercial banking; however, it may establish accounts at financial institutions for its own purposes or on behalf of family members to whom it provides services.
- May not engage in fiduciary services with the public unless licensed pursuant to ch. 658, F.S.
- May not serve as a personal representative or a copersonal representative of a probate estate administered in Florida.
- May not serve as an attorney in fact or agent, including as a co-attorney in fact or co-agent, under a power of attorney pursuant to ch. 709, F.S.

### **Number of Designated Relatives (Section 9)**

A family trust company can only have one designated relative so it can operate for only one family. A licensed family trust company can have two designated relatives so it can operate for two families.

### **Licensing Process (Section 10)**

Section 10 provides that an applicant seeking to operate as a licensed family trust company must file an application with the OFR on forms prescribed by the OFR. There is a nonrefundable \$10,000 application fee. The application must contain or be accompanied by:

- The name of the proposed licensed family trust company.
- A copy of the articles of incorporation or articles of organization and the bylaws or operating agreement.
- The physical address and mailing address of the proposed licensed family trust company.
- A statement describing in detail the services that will be provided to family members.
- The name and biographical information of each individual who will initially serve as a director, officer, manager, or member acting in a managerial capacity of the proposed licensed family trust company.

- The name and biographical information of each individual who owns or has the ability or power to directly or indirectly vote at least 10 percent or more of the outstanding shares, membership interest, or membership units of the proposed licensed family trust company.
- The names of the designated relatives.
- The amount of the initial capital account and the form in which the capital was paid and will be maintained.
- The type and amount of bonds or insurance that will be procured and maintained on directors, officers, managers, or members acting in a managerial capacity or employees.

In addition, the application must include a statement signed by the applicant or the applicant's representative affirming that the proposed licensed family trust company is not currently transacting business with the general public. The applicant must affirm that no director, officer, manager, or member has served as a director, officer, or manager, or acted in a managerial capacity, for a trust company or any other financial institution that had a license issued that was suspended or revoked within the 10 years preceding the date of the application. It must affirm that no director, officer, manager, or member acting in a managerial capacity has been convicted of, or pled nolo contendere to, violations of specified crimes or rules. Finally, it must affirm that no director, officer, manager, or member acting in a managerial capacity has had a professional license suspended or revoked within the 10 years preceding the date of the application.

#### **Investigation of Applicants by the OFR (Sections 11, 37)**

Once an application is filed, Section 11 of this bill requires the OFR to conduct an investigation to confirm that persons who will serve as directors or officers of the corporation or, if the applicant is a LLC, managers or members acting in a managerial capacity, have not:

- Been convicted of, or entered a plea of nolo contendere to, a crime involving fraud, misrepresentation, or moral turpitude.
- Been convicted of, or pled nolo contendere to, a violation of the financial institutions codes or similar state or federal laws.
- Been directors or executive officers of a financial institution licensed or chartered under the financial institutions codes or by the Federal Government or any other state, the District of Columbia, a territory of the United States, or a foreign country, whose license or charter was suspended or revoked within the 10 years preceding the date of the application.
- Had a professional license suspended or revoked within 10 years preceding the application.
- Made a false statement of material fact on the application.

The OFR must also confirm that the name of the proposed company complies with naming requirements, that capital accounts of the proposed company conform to relevant law, that the fidelity bonds and errors and omissions insurance coverage required are issued and effective, and that the articles of incorporation or articles of organization conform to applicable law. If the OFR determines that an applicant does not meet the requirements, it must issue a notice of intent to deny the application and provides the applicant with an opportunity to request an administrative hearing pursuant to the Administrative Procedures Act.

Section 37 requires the OFR to approve or deny an application for a new licensed family trust company within 180 days after receipt of the application and required additional information.

**Registration of Unlicensed or Foreign Family Trust Companies (Section 12)**

A family trust company that does not seek to be licensed must register with the OFR. The registration application must provide the name of the designated relative, state that the company is a family trust company and that it will comply with the laws relating to family trust companies, and provide location and contact information.

A foreign licensed family trust company must register with the OFR before beginning operations in Florida. The registration application must state that the company's operations will comply with relevant family trust company laws and that it is currently in compliance with the family trust company laws and regulations of its principal jurisdiction. The registration application must provide addresses and contact information in Florida and in the company's principal jurisdiction. The registration must include documentation that the company is in good standing in the jurisdiction where it is licensed and proof that the company is organized in a manner similar to a family trust company as defined in Florida.

The registration application required for a family trust company and a foreign licensed family trust company must be accompanied by a registration fee of \$5,000.

**Requirements for a Family Trust Company, a Licensed Family Trust Company, and a Foreign Licensed Family Trust Company (Section 13)**

A family trust company or a licensed family trust must maintain a principal office in Florida. It must maintain original or true copies of all records and accounts of the family trust company or licensed family trust company at that office and make them available for examination by the OFR. A family trust company and a licensed family trust must also have a registered agent in Florida, maintain all applicable state and local business licenses, charters, and permits, and have a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida.

A foreign licensed family trust company must maintain an office in Florida and must maintain original or true copies of all records and accounts of the family trust company or licensed family trust company at that office and make them available for examination by the OFR. It must have a registered agent in Florida, maintain all applicable state and local business licenses, charters, permits, and a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida. Finally, it must be in good standing in its principal jurisdiction.

**Requirements in Corporate Documents (Section 14)**

This bill requires that the articles of incorporation, certificate of incorporation, or articles of organization (articles) of a family trust company or licensed family trust company contain the name adopted by the company. The name must be distinguishable from other family trust companies or trust companies. The articles must provide the purpose for which the company is formed, and must clearly identify the restricted activities permissible to a family trust company or licensed family trust company. The articles must state that the company will not offer its services to the general public and state that the articles will not be amended without the prior

written consent of the OFR. Any proposed amendment to the articles, bylaws, or operating agreement to a family trust company must be submitted to the OFR for review and approval at least 30 days before the amendment is filed or effective.

### **Minimum Capital Requirements (Section 15)**

A licensed family trust company that has one designated relative may not be organized or operated with an owners' capital account of less than \$250,000. The minimum owners' equity shall be increased to \$350,000 if two designated relatives of the licensed family trust company are named in the application for a license or in the annual license renewal. A family trust company may not be organized or operated with owners' equity of less than \$250,000. The initial minimum owners' equity of a family trust company or licensed family trust company must be composed of cash, government obligations or secured deposits, or marketable securities.

### **Directors in Licensed and Unlicensed Family Trust Companies (Section 16)**

This bill vests exclusive authority to manage a family trust company or licensed family trust company in a board of directors or, if the company is a LLC, a board of directors or managers. A family trust company or licensed family trust company shall have at least three directors or managers. At least one director or manager of the company must be a resident of Florida.

A licensed family trust company must notify the OFR of the proposed appointment of an individual to the board of directors or addition as a member (if an LLC) or the appointment or employment of an individual as an officer or manager or member acting in a managerial capacity at least 60 days before such appointment or employment becomes effective if (1) the company has been licensed for less than 2 years, (2) the company has undergone a change in control within the preceding 2 years, or (3) the company is operating under a cease and desist order. The OFR shall issue a notice of disapproval if it finds that the proposed appointment or employment would cause the licensed family trust company to violate provisions of the Family Trust Act.

### **Bond and Insurance Requirements (Section 17)**

This bill requires the directors or managers of a licensed family trust company to procure and maintain fidelity bonds of at least \$1 million on all active officers, directors, managers, members acting in a managerial capacity, and employees of the company in order to indemnify the company against loss because of a dishonest, fraudulent, or criminal act or omission. In lieu of the fidelity bonds, a licensed family trust company may increase its minimum owners' equity required by \$1 million so that if it has one designated relative, it is organized or operated with an owners' equity of at least \$1.25 million or if it has two designated relatives it is organized or operated with an owners' equity of at least \$1.35 million. A licensed family trust company must also procure and maintain an errors and omissions insurance policy of at least \$1 million in which it is listed as the insured to cover the acts of officers, directors, managers, and members acting in a managerial capacity.

A family trust company or licensed family trust company may also procure and maintain other insurance policies necessary or desirable in connection with the business of the company, including, but not limited to, one or more casualty insurance policies. A family trust company



that is not a licensed family trust company may procure and maintain fidelity bonds and may procure and maintain errors and omissions insurance coverage, but it is not required to do so.

### **Record Keeping (Section 18)**

Each family trust company and licensed family trust company must maintain its fiduciary books and records separate and distinct from other company records. It must segregate all assets held in any fiduciary capacity from other company assets. Assets received or held in a fiduciary capacity by a family trust company or licensed family trust company are not subject to the debts or obligations of the company.

### **Renewal of Licenses or Registrations (Section 19)**

This bill requires family trust companies, licensed family trust companies, and foreign licensed family trust companies to file annual renewal applications with the OFR. This bill specifies the information that must be provided on each type of application. It provides for renewal fees of \$750 for a family trust company, \$1,500 for a licensed family trust company, and \$1,000 for a foreign licensed family trust company.

### **Licensed Family Trust Company Discontinuing Business (Section 20)**

If a licensed family trust company desires to discontinue business as a licensed family trust company, it must file with the OFR a certified copy of the resolution of the board of directors authorizing that action. Upon discharge from all fiduciary duties that it has undertaken, the company must provide certification of such discharge and voluntarily relinquish its license to operate as a licensed family trust company to the OFR. Once it has done so, the licensed family trust company is released from any fidelity bonds.

### **Investments (Section 23)**

This bill describes the type of assets that may be held to form the minimum capital of a licensed or unlicensed family trust company for all periods subsequent to its initial owners' equity contribution. In general, the minimum capital must be retained in liquid investments and the aggregate market value of these assets must be at least 100 percent of the company's required owners' equity. If the assets' value falls below the minimum, the company has 5 days to cure the problem.

This bill authorizes a family trust company or licensed family trust company to purchase or rent real or personal property for use in the conduct of the business or other activities. A family trust company or licensed family trust company may invest its funds, other than the minimum capital account, in any type or character of equity securities, debt securities, or other assets.

This bill places restrictions and requirements on a family trust company or licensed family trust company to the extent it desires to purchase or invest as a fiduciary for a fiduciary estate in securities of which the family trust company, licensed family trust company or a family affiliate has an interest. First, the investment cannot be expressly prohibited by the instrument establishing the fiduciary relationship. The family trust company or licensed family trust

company must obtain the written consent of other fiduciaries. Finally, the family trust company or licensed family trust company must notify persons to whom it sends account statements of the investment, the fees it will receive, and the nature of the relationship between the family trust company and the investment company.

### **Examinations, Investigations and Discipline by the OFR (Sections 28, 29, 30, 31)**

This bill provides that the OFR must conduct an examination of a licensed family trust company, family trust company, and foreign licensed family trust company at least once every 18 months. The licensed family trust company, family trust company, and foreign licensed family trust company must pay the OFR a fee for the costs of the examination. The OFR must determine whether the family trust company or licensed family trust company is operating in compliance with relevant statutes and rules. In lieu of an examination, the OFR may accept an audit of a family trust company, licensed family trust company, or foreign licensed family trust company by a certified public accountant who is independent of the company, or other person or entity acceptable to the OFR. In addition, the OFR may conduct an examination or investigation of a family trust company, licensed family trust company, or foreign licensed family trust company at any time to determine if a company has violated or is about to violate any provision of the financial institutions codes or the rules adopted by the Financial Services Commission.

The following acts or conduct constitute grounds for the revocation by the OFR of the license of a licensed family trust company:

- The company is not a family trust company.
- A violation of specified provisions of the Florida Family Trust Company Act.
- A violation of chapter 896, relating to financial transactions offenses, or any similar state or federal law or a violation of any rule of the Financial Service Commission or order of the OFR.
- A breach of any written agreement with the OFR.
- A failure to provide information or documents to the OFR upon written request.
- An act of commission or omission or a practice that is a breach of trust or of fiduciary duty.

Upon a finding that a licensed family trust company has committed any of the above acts, the OFR may enter an order suspending the company's license and provide notice of its intention to revoke the license and of the opportunity for a hearing pursuant to the Administrative Procedure Act. The licensed family trust company shall have 90 days to wind up its affairs after license revocation. If after 90 days the company is still in operation, the OFR may seek an order from the circuit court for the annulment or dissolution of the company.

The OFR may issue and serve a complaint stating charges upon a family trust company, licensed family trust company, or foreign licensed family trust company, or upon a family trust company-affiliated party,<sup>18</sup> if the OFR has reason to believe that such company, family trust company-affiliated party, or individual named therein is engaging in or has engaged in conduct that:

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<sup>18</sup> A "family trust company-affiliated party" is a director, officer, manager, employee, or controlling stockholder or member of a family trust company, licensed family trust company, or foreign licensed family trust company. The term also includes a stockholder, member, or any other person as determined by the OFR who participates in the affairs of a family trust company, licensed family trust company, or foreign licensed family trust company.

- Indicates that the company is not a family trust company or foreign licensed family trust company.
- Is a violation of relevant provisions of the Florida Family Trust Company Act.
- Is a violation of any rule of the Financial Services Commission or any order of the OFR.
- Is a breach of any written agreement with the OFR.
- Is a prohibited act or practice pursuant to the Florida Family Trust Company Act.
- Is a willful failure to provide information or documents to the OFR upon written request.
- Is an act of commission or omission or a practice that is a breach of trust or of fiduciary duty.

The complaint must contain a statement of facts and a notice of opportunity for a hearing pursuant to the Administrative Procedures Act. If no hearing is requested or if a hearing is held and the OFR finds that any of the charges are true, the OFR may enter an order directing the family trust company, licensed family trust company, or foreign licensed family trust company, or family trust company-affiliated party, or the individual named therein to cease and desist from engaging in the conduct complained of and to take corrective action. A failure to respond to the complaint justifies the entry of a cease and desist order by the OFR. This bill also contains provisions allowing the OFR to enter an emergency cease and desist order.

If a family trust company, licensed family trust company, or foreign licensed family trust company fails to timely submit its annual certification or any other required report, the OFR may impose a fine of up to \$100 for each day that the report is overdue. The failure to provide the annual certification within 60 days after the end of the calendar year will automatically result in termination of registration of a family trust company or revocation of the license of a licensed family trust company.

### **Grounds for Removal of a Family Trust Company Affiliated Party (Section 32)**

The OFR may issue and serve upon a licensed family trust company or a family trust company and a family trust company-affiliated party a complaint stating charges if the OFR has reason to believe that the family trust company-affiliated party is engaging or has engaged in conduct that:

- Demonstrates that the company is not a family trust company.
- Is a violation of various provisions of the Florida Family Trust Company Act.
- Is a violation of any other law involving fraud or felony moral turpitude.
- Is a violation of chapter 896, relating to financial transactions or similar state or federal law.
- Is a willful violation of a rule of the Financial Services Commission, a willful violation of an order of the OFR, or a willful breach of a written agreement with the OFR.
- Is an act of commission or omission or a practice that is a breach of trust or fiduciary duty.

The complaint must contain a statement of facts and give notice of an opportunity for an administrative hearing. If no hearing is requested or if a hearing is held and the OFR finds that any of the charges in the complaint is true, the OFR may enter an order removing the family trust company-affiliated party or restricting or prohibiting participation by the family trust company-affiliated party in the affairs of the family trust company, licensed family trust company, or other state financial institution, subsidiary, or service corporation.

This bill provides that the OFR may enter an emergency order suspending the family trust company-affiliated party if a family trust company-affiliated party is charged with a felony in a state, a federal court, or certain foreign courts which involves a violation of law relating to fraud, currency transaction reporting, money laundering, theft, or moral turpitude. The emergency order must contain notice of an opportunity for a hearing.

### **Confidentiality of Books and Records (Section 33)**

Section 33 provides that the books and records<sup>19</sup> of a family trust company, licensed family trust company, and foreign licensed family trust company are confidential.<sup>20</sup> This bill provides that the books and records shall be made available for inspection only:

- To the OFR or its authorized representative.
- To any person authorized to act for the company.
- As compelled by a court, pursuant to a subpoena issued pursuant to the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, or the Federal Rules of Civil Procedure.
- Pursuant to a subpoena issued in accordance with state or federal law.
- As authorized by the board of directors or the managers of the corporation or LLC.

This bill further provides that each customer, stockholder, or member (if the company is a LLC) has the right to inspect the books and records of a family trust company or licensed family trust company as they pertain to his or her accounts or the determination of his or her voting rights.

This bill provides that the books and records pertaining to customers, members, and stockholders of a family trust company or licensed family trust company must be kept confidential by the company and its directors, managers, officers, and employees. The books and records of customers, members, and stockholders, with limited exceptions, may not be released except upon the express authorization of the customer as to his or her own accounts or a stockholder or member regarding his or her voting rights. Violation of provisions relating to unlawful disclosure of confidential information is a third degree felony.

The confidentiality provisions do not apply to a foreign licensed family trust company. The laws of the jurisdiction of its principal place of business govern the rights of customers, members, and stockholders to inspect its books and records.

### **Records Relating to the OFR Examination (Section 34)**

A family trust company, licensed family trust company, and foreign licensed family trust company must keep full and complete records of the names and residences of all the shareholders or members of the trust company and the number of shares or membership units held by each. It must also keep records of the ownership percentage of each shareholder or member. The records are subject to the inspection of all the shareholders or members of the trust

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<sup>19</sup> This bill defines “books and records” as including an application for a license and any documents connected with the application, the OFR’s corresponding investigation granting or denying the issuance of the license, the initial registration documents of a family trust company or foreign licensed family trust company, the annual certification made by a family trust company, licensed family trust company, or foreign licensed family trust company, and the documentation submitted to the OFR in connection with a licensed family trust company discontinuing its business.

<sup>20</sup> The books and records here are not held by a state agency; so Article I, s. 24, Fla. Const., is not implicated here.

company, and the officers authorized to assess taxes under state authority. A current list of shareholders or members shall be made available to the OFR and shall be submitted to the OFR upon request.

This bill requires the OFR to retain examination reports, investigatory reports, documents relating to family trust company licensure or registration, annual certifications by all types of family trust companies, and documents relating to licensed family trust companies discontinuing business for 10 years.

This bill provides that a copy of any document on file with the OFR which is certified by the OFR as being a true copy may be introduced in evidence as if it were the original.

This bill provides that orders issued by courts or administrative law judges for the production of confidential records or information must provide for inspection in camera by the court or the administrative law judge. If the court or administrative law judge determines that the documents requested are relevant or would likely lead to the discovery of admissible evidence, the documents shall be subject to further orders by the court or the administrative law judge to protect the confidentiality of the documents. An order directing the release of information is immediately reviewable. A petition by the OFR for review of the order stays any further proceedings in the trial court or the administrative hearing until the disposition of the petition by the reviewing court. If any other party files a petition for review, it will operate as a stay of the proceedings only upon order of the reviewing court.

### **Domestication of a Foreign Family Trust Company (Section 35)**

A foreign family trust company in good standing with the state regulatory agency in the jurisdiction where it is organized may become domesticated in Florida by filing a certificate of domestication and articles of incorporation with the Department of State. It must also file an application for a license as a licensed family trust company or file registration forms with the OFR.

### **Registration of Foreign FTC (Section 36)**

A foreign licensed family trust company in good standing with the state regulatory agency in the jurisdiction under the law of which it is organized may qualify to begin operations in Florida by filing an application with the Department of State or to apply for a statement of foreign qualification to transact business in Florida. It must also file an initial registration to begin operations as a foreign licensed family trust company. If a company in operation on the effective date of this bill meets the definition of a family trust company, it must apply for licensure as a licensed family trust company, register as a family trust company or foreign licensed family trust company, or cease doing business in Florida within 90 days.

### **Miscellaneous Provisions (Sections 24, 25, 26, 27, 38, 39, and 40)**

Section 24 of this bill provides who can make an oath, affirmation, affidavit, or acknowledgment on behalf of a family trust company or licensed family trust company.

Section 25 of this bill provides that a family trust company, a licensed family trust company, or a foreign licensed family trust company may not advertise its services to the public.

Section 26 provides that a licensed family trust company is not required to provide or otherwise post a bond to serve as a court-appointed fiduciary.

Section 27 provides that the Financial Services Commission may adopt rules necessary to carry out the purposes of this bill.

Section 38 allows a family trust company, a licensed family trust company, or a foreign licensed family trust company to engage in certain transactions authorized by the Florida Family Trust Company Act without violating the duty of loyalty in s. 736.0802, F.S.

Section 39 provides that a licensed family trust company or a foreign licensed family trust company is not required to file a bond when acting as a guardian pursuant to the Florida Guardianship Law.

Section 40 provides an effective date of October 1, 2015, contingent upon the passage of a public records bill. The public records bill linked to this bill is SB 1320.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

This bill provides that an applicant for licensure as a licensed family trust company must pay a \$10,000 application fee and a licensed family trust company must pay a \$1,500 annual renewal fee.

Applicants for registration as a family trust company or foreign licensed family trust company must pay a \$5,000 registration fee. A family trust company must pay a \$750 annual renewal fee and a foreign licensed family trust company must pay a \$1,000 annual renewal fee.

This bill requires a licensed family trust company, family trust company, and foreign licensed family trust company to pay the OFR a fee for the costs of examinations required under this bill.

All fees collected pursuant to this bill are deposited in the Financial Institutions Regulatory Trust Fund.

**B. Private Sector Impact:**

This bill could make Florida a more attractive jurisdiction for the establishment of family trust companies.

**C. Government Sector Impact:**

The OFR will have an increased workload but the OFR anticipates that existing legal resources are sufficient to handle the increased workload.<sup>21</sup>

**VI. Technical Deficiencies:**

**VII. None. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 662.10, 662.102, 662.111, 662.112, 662.113, 662.114, 662.115, 662.120, 662.121, 662.1215, 662.122, 662.1225, 662.123, 662.124, 662.125, 662.126, 662.127, 662.128, 662.129, 662.130, 662.131, 662.132, 662.133, 662.134, 662.135, 662.140, 662.141, 662.142, 662.143, 662.144, 662.145, 662.146, 662.147, 662.150, and 662.151.

This bill amends the following sections of the Florida Statutes: 120.80, 655.005, 736.0802, and 744.351.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

**CS by Banking and Insurance on March 25, 2014:**

The committee adopted an amendment making numerous technical changes to this bill.

The amendment:

- Clarified that the Florida Family Trust Act is to be included within the Financial Institutions Codes.
- Provided for the treatment of confidential records or information in judicial or administrative proceedings from the linked public records bill.

<sup>21</sup> Office of Financial Regulation, (CS/HB 1267) *SB 1238 Legislative Bill Analysis* (March 26, 2014) (on file with the Senate Committee on Judiciary).

- Clarified the definitions of “capital account,” “foreign licensed family trust company,” and “officer.”
- Clarified the permissible use of “trust” in a family trust company’s name.
- Clarified that licensees and registrants certify compliance with other applicable state and federal laws and regulations.
- Clarified that the powers of any family trust company type apply as to its eligible members and individuals.
- Removed language providing for limited confidentiality of emergency orders by the OFR.
- Provided rulemaking authority for the Financial Services Commission instead of the OFR.
- Changed the effective date to October 1, 2015.

B. Amendments:

None.