

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill increase the services available from licensed securities brokers and dealers by allowing them to serve as “custodians” of securities bought and sold by domestic insurance companies.

B. EFFECT OF PROPOSED CHANGES:

Brief Background

It is a general premise that purchases, sales, and maturities of securities are recorded by computer. Under normal circumstances, certificates are not generally issued to the purchaser. A third party may act as a safekeeping agent or custodian of the assets. Currently, Florida law only allows banks and trust companies to serve as permissible custodians.

Section 628.511, F.S., authorizes domestic insurers to hold and transfer securities through a clearing corporation or through the Federal Reserve book entry system without taking physical possession of the securities. The records of the bank through which the insurer holds the securities in a clearing corporation must show at all times that the securities are held for the insurer and the accounts in which the securities are kept.

In 2006, the provisions of HB 115 were included in HB 1361 which generally related to insurance, banking, and medical issues, among other things. The bill passed the House and Senate; however, with some provisions viewed as controversial, Governor Bush vetoed it.

Book entry accounting system

Section 628.511(2), F.S., provides in part the following definitions:

(b) “Clearing corporation” means a clearing corporation as defined in s. 678.1021.¹

(c) “Direct participant” means a national bank, state bank or trust company which maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.

(d) “Federal Reserve book-entry system” means the computerized systems sponsored by the United States Department of the Treasury and agencies and instrumentalities of the United States for holding and transferring securities of the United States Government and such agencies and instrumentalities, respectively, in Federal Reserve banks through banks which are members of the Federal Reserve System or which otherwise have access to such computerized systems.

Proposed Changes

Section 1: The bill amends s. 628.511, F.S., relating to the ownership or transfer of securities by

¹ s. 678.1021(1), F.S.,

(e) “Clearing corporation” means:

1. A person that is registered as a “clearing agency” under the federal securities laws;

2. A federal reserve bank; or

3. Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

domestic insurers without actual physical delivery of the securities certificates.

The bill amends s. 628.511(1), F.S., to make grammatical change by replacing the word “utilize” with the word “use.”

Section 628.511(2), F.S., is amended by the bill:

1. To include in the definition for “clearing corporation” “Treasury/Reserve Automated Debt Entry System or Treasury Direct book-entry securities system, as these systems are established pursuant to 31 USC chapter 31, 12 USC s. 391, and 5 USC s. 301.” Moreover, this change correlates with the conforming deletion of the term “Federal Reserve book entry system” throughout the bill. This amendment modifies the current law to include the various Treasury securities book-entry systems.

2. To delete the term “direct participant” and replace it with the term “custodian” and adds “broker or dealer” to the entities recognized as permissible custodians. The bill does not define these terms; however, there is a definition of the term “dealer” in s. 517.021, F.S., and the term “broker” in s. 678.1021, F.S.

Additionally, the term “broker/dealer” is defined in the NAIC Model Act. This definition requires a “broker/dealer” to be “registered with and subject to jurisdiction of the Securities and Exchange Commission,” maintain “membership in the Securities Investor Protection Corporation” and have “a tangible net worth of at least \$250,000,000.” This standard presents some safeguard to the insurer’s securities investments by minimizing the risk of loss from the failure of the custodian that is holding the security in a clearing corporation.

3. To delete the term “member bank” which conforms to the entities captured under the broader term “custodian”.

Also, the bill amends ss. 623.511(3) and 623.511(4), F.S., to conform to deletion of “Federal Reserve book entry system” and the addition of “custodian”.

Section 2. The act is effective upon becoming a law.

C. SECTION DIRECTORY:

Section 1: The bill makes minor grammatical changes; re-defines clearing corporation; deletes the term direct participant; adds the term custodian which includes brokers and dealers as acceptable custodians; deletes the term Federal Reserve book entry system; deletes the term member bank; provides conforming language.

Section 2: This act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Dealers and brokers will be able to perform the same custodianship services for domestic insurers as they provided to their other clients.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Office of Insurance Regulation, Rule 690-143.041, FAC and Rule 690-143.0142, FAC, will need to be amended to become substantively the same as the NAIC Model Act for the change to the statute to be effective as intended.

D. STATEMENT OF THE SPONSOR

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES