

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Banking and Insurance Committee

BILL: SB 562

INTRODUCER: Senator Fasano

SUBJECT: Ownership or Transfer of Securities

DATE: February 13, 2007      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill permits a Florida domestic insurer to deposit securities with a clearing corporation where the custodian is a broker or dealer. The bill also revises the definition of a “clearing corporation.” The amendments are in conformity with the National Association of Insurance Commissioners Model Act on Custodial Agreements and the Use of Clearing Corporations (#295).

This bill substantially amends the following sections of the Florida Statutes: 628.511

**II. Present Situation:**

Section 628.511, F.S., permits domestic insurers to hold and transfer securities in a clearing corporation or in the Federal Reserve book-entry system<sup>1</sup> without actual physical delivery of securities certificates. Florida defines a “clearing corporation” as “a person registered as a ‘clearing agency’ under federal securities laws, a federal reserve bank, or a person who would be required to be registered as a clearing agency but for an exemption and is subject to regulation by a state or federal governmental authority.”<sup>2</sup> Securities may be deposited with a clearing corporation that holds 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

<sup>1</sup> The Federal Reserve book entry system is defined in Florida statute as 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. See s. 628.511(2)(d), F.S.

<sup>2</sup> Section 678.1021, F.S.

insurer and the accounts where the securities are kept. The purpose of the section is to allow domestic insurers to use modern systems for holding and transferring securities.

Florida based s. 628.511, F.S., on the National Association of Insurance Commissioners (NAIC) Model Act on Custodial Agreements and the Use of Clearing Corporations (#295). The NAIC amended the Model Act in 2004, primarily by updating language referring to the definition of a clearing corporation and allowing broker/dealers to serve as a custodian—an entity that is legally qualified to accept custody of a security. Currently, Florida only permits a national bank, state, bank, or trust company to serve as a custodian.

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

Section 1. Amends s. 628.511, F.S., relating to the ownership or transfer of securities by domestic insurers without actual physical delivery of the security certificate. The bill permits a securities broker/dealer to act as the custodian for securities that are held in a clearing corporation. The bill does not contain a definition of “broker/dealer.” The term is defined in the NAIC Model Regulation on Custodial Agreements and the Use of Clearing Corporations (#298). That model rule 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 for a broker dealer seeks to safeguard 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. The Office of Insurance Regulation has indicated that it intends to conform the Florida Administrative Code to the NAIC Model Regulation.

A “clearing corporation” that may hold such securities is redefined to include “the Treasury/Reserve Automated Debt Entry System or Treasury Direct book-entry securities systems as established pursuant to 31 USC chapter 31, 12 USC s. 391, and 5 USC s. 301.” This modifies the Florida Statutes to include the various book-entry systems in which a Treasury security may be maintained.

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

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

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Representatives from the Office of Insurance Regulation indicate that rulemaking will be necessary to amend Rule 69O-143.041, F.A.C, and Rule 69O-143.042, F.A.C., in order to conform the rules to the National Association of Insurance Commissioners Model Regulation on Custodial Agreements and the Use of Clearing Corporations (#298). The bill is not anticipated to have a financial impact on the OIR.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.



## **VIII. Summary of Amendments:**

None.

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

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