

1989

Session Law 89-319

Florida Senate & House of Representatives

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**H 895 GENERAL BILL/CS by Commerce; Lippman and others
(Similar CS/S 786)**

Control of Money Laundering; creates Fla. Control of Money Laundering in Financial Institutions Act; requires & authorizes financial institutions to keep certain records; directs Banking & Finance Dept. & financial institutions to keep copies of certain reports for certain time period; provides additional powers of dept.; provides additional penalties & increases penalties; creates advisory council to study administration & funding of act, etc. Amends 655.50. Effective Date: 10/01/89.

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03/17/89 HOUSE Prefiled
03/23/89 HOUSE Referred to Commerce; Appropriations
04/04/89 HOUSE Introduced, referred to Commerce; Appropriations -HJ 86
04/06/89 HOUSE Subreferred to Subcommittee on Banking and Commerce;
On subcommittee agenda—Commerce, 04/10/89, 1:15 pm,
24-HOB
04/10/89 HOUSE Subcommittee Recommendation: Favorable with 2 amend-
ments; On Committee agenda—Commerce, 04/12/89, 3:30
pm, 21-HOB
04/12/89 HOUSE Preliminary Committee Action by Commerce: Favorable as
a CS
04/25/89 HOUSE Comm. Report: CS by Commerce -HJ 274; CS read first
time -HJ 274; Now in Appropriations -HJ 275
05/12/89 HOUSE On Committee agenda—Appropriations, 05/16/89, 8:00
am, 21-HOB
05/16/89 HOUSE Preliminary Committee Action by Appropriations: Favor-
able
05/18/89 HOUSE Comm. Report: Favorable by Appropriations, placed on
Calendar -HJ 537
05/26/89 HOUSE Placed on Consent Calendar; Read second time; Read third
time; CS passed; YEAS 112 NAYS 0 -HJ 666
05/26/89 SENATE In Messages
05/30/89 SENATE Received, referred to Commerce; Judiciary-Criminal; Ap-
propriations -SJ 562
06/02/89 SENATE Withdrawn from Commerce; Judiciary-Criminal; Appro-
priations; Substituted for CS/SB 786; CS passed; YEAS 37
NAYS 0 -SJ 890
06/02/89 Ordered enrolled
06/20/89 Signed by Officers and presented to Governor
07/05/89 Approved by Governor; Chapter No. 89-319

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h895-f.com
DATE: 07/06/89

HOUSE OF REPRESENTATIVES
COMMITTEE ON COMMERCE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 895
RELATING TO: Control of Money Laundering
SPONSOR(S): Commerce, Representative Lippman & Others
EFFECTIVE DATE: October 1, 1989
DATE BECAME LAW: July 5, 1989
CHAPTER #: 89-319, Laws of Florida
COMPANION BILL(S): SB 786
OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2)

I. SUMMARY:

The committee substitute creates the Control of Money Laundering in Financial Institutions Act to deter the use of financial institutions to conceal proceeds of criminal activities. The committee substitute expands the list of definitions, and expedites and facilitates the record collection and dissemination process by allowing the electronic submission of information by financial institutions. Transactions involving currency of a value of \$10,000 (whether U.S. or foreign currency) or proceeds of specified unlawful activity must be recorded. Institutions are permitted to report transactions under \$10,000 in certain circumstances without liability to the institution, officers or employees for damages. The procedures to exempt certain transactions are clarified and a five year retention period of all records of exemptions is created. The committee substitute also increases the civil and criminal penalties for failure to file Currency Transaction Reports (CTR's). Finally, an advisory committee is created to study the administration and findings of the CTR program.

A. PRESENT SITUATION:

In 1984, Florida created and implemented the state Currency Transaction Reporting Program which is similar to that of the federal government. The CTR statute, s. 655.50, F.S., requires all financial institutions doing business in Florida to report all currency transactions in excess of \$10,000 to the Department. Access to the CTR's are limited to the Florida Department of Law Enforcement and specified individuals. The currency transaction reporting requirement is one of three programs the department has implemented to create impediments to money laundering. The

Currency Transaction Reporting Program has become crucial to the department's ability to evaluate the potential of financial institutions to be used as vehicles to launder drug money.

Financial institutions can satisfy the requirements relating to CTR's by filing with the department a copy of the report required under federal law, and the same exceptions that are available under federal are available under Florida law.

Civil and criminal penalties are provided for violations of the reporting law, and they are comparable to the penalties applicable to violations of the federal law.

Over the past four years, financial institutions have been quite vigilant in their efforts to eradicate illicit funds. This determination has changed the focus of the program away from institutional compliance and toward insuring that state law enforcement has access to currency transaction information with the timeliness unavailable at the federal level. While this goal has been accomplished admirably, the focus of the program has changed from divisional goals to general public policy goals. The department, therefore, maintains that such an orientation demonstrates that general revenue rather than assessments of state-chartered financial institutions is the most appropriate funding mechanism.

According to information supplied by the department, the biennium budget projection is that the trust fund, upon which the Division of Banking operates, will be substantially depleted over the next few years, declining from \$2.8 million as of the end of FY 1987-88 to \$20,000 as of the end of FY 1990-91. Funding the CTR program during this period is projected to cost \$873,306. The operation of the program without a specific revenue source significantly adds to the depletion of the Division's trust fund.

B. EFFECT OF PROPOSED CHANGES:

The committee substitute revises current money laundering provisions by creating the Florida Control of Money Laundering in Financial Institutions Act. See section-by-section analysis for details.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 655.50, F.S., relating to money laundering.

Subsection (1) creates the Florida Control of Money Laundering in Financial Institution Act.

Subsection (2) clarifies that the purpose of the act by deleting the words "United States" to explain that transactions involving all currency, not just United States currency, must be reported and maintained when such reports and records deter the use of financial institutions to conceal proceeds of criminal activity.

Subsection (3) expands the list of definitions within s. 655.50, F.S. The term "currency" is amended to clarify that the word includes currency and coins of countries other than the United States. The term "report" means a report of each deposit, withdrawal, exchange of currency, or other payments or transfer involving a financial institution and required or authorized by s. 655.50, F.S. This includes electronic submission of such information as provided for by rule of the department. Additionally, the terms "financial transaction", "monetary instrument", "transaction" and "specified unlawful activity" are defined.

Subsection (4) requires all financial institutions to keep a record of transactions known to involve currency of a value in excess of \$10,000 or to involve the proceed of specified unlawful activity. Current law only provides for such requirement when the currency transaction is in excess of \$10,000. Additionally, this subsection allows financial institutions to report transactions under \$10,000, without liability to the institution, officers or employees for damages if there is suspicion that the transaction involves proceeds of specified unlawful activity. This provision is consistent with federal guidelines regarding the reporting of transactions falling under the \$10,000 reporting requirement.

Subsection (5) Clarifies the procedures to exempt certain transactions by requiring a written statement describing in detail the specifics regarding the customer and the reasons for the exemption. Records of the exemptions must be submitted to the department within 15 days of the request.

Subsection (6) provides for a five year retention period of all records of exemptions, unless it is known that the customer of the exemption is involved in a criminal proceeding. A retention period of five years for the department and the financial institution to maintain copies of reports filed is also mandated by this bill, unless the transaction is known to be involved in a criminal proceeding.

Subsection (7) increases the powers of the department to permit the department to bring an action in any court of competent jurisdiction to enforce or administer the provisions of this section, to issue a cease and desist order, and to impose and collect an administrative fine not to exceed \$10,000 for each violation. Any civil penalty or administrative fine recovered under this subsection shall be deposited into the Financial Institutions' Regulatory Trust Fund. Present law only permits the imposition of an administrative fine not to exceed \$1,000 for an intentional violation.

Subsection (8) increases the criminal penalties for willful violation of reporting requirements from a second degree to a first degree misdemeanor. Additionally, the penalty is increased from a third degree to a second degree felony for a pattern of illegal activity exceeding \$100,000 in any 12-month period. The committee substitute also allows for the imposition of greater

finer in lieu of those in s. 775.083, F.S. The fines proposed are consistent with federal fines levied for violation of federal currency transaction requirements. Further, a person who willfully violates this section is also liable for a civil penalty of not more than the value of the property involved or \$10,000.

Section 2 requires the Comptroller to appoint a Money Laundering and Currency Transaction Reporting Advisory Council to study the CTR program and to make recommendations to the Comptroller and the legislature regarding a stable and equitable funding source by April 1, 1990. Currently, the department maintains a trust fund designed to finance the regulation and supervision of state-chartered financial institutions and is funded through assessment of those institutions. In that federally-chartered institutions in this state are required to file currency transaction reports with the department and are not paying fees to support the program, state-chartered institutions are supporting the entire statewide program through their supervisory assessment fees. The advisory council would review this inequity.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None other than costs associated with existing statute.

2. Direct Private Sector Benefits:

No significant economic impact is expected. However, to the extent that the required transmission of information will be permitted through electronic means or magnetic tape, financial institutions and the department should experience reduced costs associated with such transfers.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

This bill may have some future positive impact in that both administrative and criminal fines are increased and, if ever levied, they would bring in new revenue to the general revenue fund.

The Division of Banking and Finance hopes to save up to \$300,000 in two years by using magnetic tapes to process reports.

III. LONG RANGE CONSEQUENCES:

This committee substitute is designed to aid Florida in the attainment of its public safety goals as outlined in several portions of the State Comprehensive Plan relating to the goal of preventing, discouraging, and punishing criminal behavior. More specifically, this committee substitute seeks to increase crime prevention efforts to enhance the protection of individual personal safety and property, especially those individuals who are most vulnerable. Additionally, CS/HB 895 strives to continue to implement coordinated and integrated strategies to combat organized crime, economic crime, and drug trafficking. Finally, the committee substitute strengthens the state's commitment to pursue, both criminally and civilly, those individuals who profit from economic crimes, and assure that the commitment keeps pace with the level and sophistication of these criminal activities. (s. 187.201(7)(b)11, 13, 15, F.S.)

IV. COMMENTS:

Statement of Substantial Changes:

The committee substitute deleted the general revenue funding in the bill for the CTR program. The consequence is that the program will continue to be funded under current law by an assessment against state-chartered financial institutions. However, an amendment was adopted to create an advisory council to review the program and its funding source and made recommendations to the legislature.

V. LEGISLATIVE HISTORY:

ENACTED BILL:

House bill 895 was prefiled by Representative Lippman on March 17, 1989 and referred to the Committees on Commerce and Appropriations. The Subcommittee on Banking and Commerce recommended the bill favorably with 2 amendments on April 10, which provided funding for the CTR program through the collection of a \$1 filing fee from each financial institution for each report filed with the Department of Banking and Finance. On April 12, the Full Commerce Committee reported the bill favorably as a committee substitute, however, the subcommittee amendments were not adopted. The full committee provided for the creation of an advisory council to study and make recommendations regarding equitable funding for the CTR program. The CS was reported favorably by the Appropriations Committee on May 16, and placed on the Calendar. On May 26, the CS was placed on the Consent Calendar and passed by a vote of 112-0 (HJ 00666). After being received in Messages, the Senate referred the CS to the Committees on Commerce, Judiciary-Criminal, and Appropriations (SJ 00562). The bill was withdrawn from each of the committees and Senate substituted the identical House bill for the Senate companion. The House bill passed by a vote of 37-0 (SJ 00980) On June 2, the CS was ordered enrolled, June 20 signed by the Officers and presented to the Governor, and on July 5, became Chapter 89-319.

DISPOSITION OF COMPANION:

Senate bill 786 was prefiled by Senator Grant on March 29, 1989, and referred to the Committees on Commerce and Judiciary-Criminal, and Appropriations. The Commerce Committee reported the bill favorably as a committee substitute on April 17. Both the Committees on Judiciary-Criminal and Appropriations reported the bill favorably as a CS. On June 2, the CS was placed on the Special Order Calendar, and the identical House bill was substituted for the Senate bill.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Beryl D. Burke Beryl D. Burke

Staff Director:

William Leary _____

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: _____

BILL NO. CS/SB 786DATE: May 25, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Jones</u>	<u>Wilkes</u>	1. <u>COM</u>	<u>Fav/CS</u>
2. <u>Dugger</u>	<u>Liepshutz</u>	2. <u>JCR</u>	<u>Favorable</u>
3. <u>Barrett</u>	<u>Smith</u>	3. <u>AP</u>	<u>Favorable</u>
4. _____	_____	4. _____	_____

SUBJECT:

Financial Institutions

BILL NO. AND SPONSOR:

CS/SB 786 by
Commerce Committee and
Senator GrantI. SUMMARY:

A. Present Situation:

In 1984, Florida created and implemented the state Currency Transaction Reporting Program (CTR), which is similar to a program employed by the federal government. The CTR statute, s. 655.50, F.S., requires financial institutions doing business in Florida to report currency transactions in excess of \$10,000 to the Department of Banking and Finance (department). Access to the CTR's is limited to the Florida Department of Law Enforcement and by subpoena to other individuals specified within s. 655.50(3)(b), F.S.

Financial institutions can satisfy the CTR requirement by filing with the department a copy of the same report which is required under federal law. In addition, generally the same exceptions to the reporting requirement which are available under federal law are also available under Florida law.

Section 655.50(5)&(6), F.S., provide civil and criminal penalties for violations of the reporting law. These penalties are comparable to the penalties applicable to violations of the federal law.

B. Effect of Proposed Changes:

This bill revises the current money laundering provisions of s. 655.50, F.S., by creating the Florida Control of Money Laundering in Financial Institutions Act. A detailed section by section analysis is provided below:

Section 1 amends s. 655.50, F.S.

Subsection (1) creates the Florida Control of Money Laundering in Financial Institutions Act.

Subsection (2) deletes the words "United States" to require that transactions involving all currency, not just United States currency, must be reported and maintained when such reports and records "deter the use of financial institutions [in]. . .conceal[ing] proceeds of criminal activity."

Subsection (3) expands the list of definitions within s. 655.50, F.S. The term "currency" is amended to clarify that the word includes currency and coins of countries other than the United States. The term "financial transaction" is defined to include the movement of funds or the involvement of a financial institution which will have an affect upon commerce. In addition, the definition of "monetary instruments" is expanded to include negotiable instruments in bearer form.

The term "report" means a report of each deposit, withdrawal, exchange of currency, or other payment or transfer which involves a financial institution and is required or authorized by s. 655.50, F.S. This includes electronic submission of such information as provided for by department rule. Definitions are also provided for the terms "transaction" and "specified unlawful activity."

Subsection (4) requires all financial institutions to keep a record of transactions known to involve currency of a value in excess of \$10,000 or that involve the proceeds of a specified unlawful activity. Current law only requires reporting when the currency transaction is in excess of \$10,000. Additionally, this subsection allows financial institutions to report transactions under \$10,000, without liability to the institution, officers or employees for damages, if there is suspicion that the transaction involves proceeds of a specified unlawful activity.

Subsection (5) clarifies the method to exempt certain transactions by requiring a written statement describing in detail the specifics regarding the customer and the reasons for the exemption. Records of the exemptions must be submitted to the department within 15 days of the request.

Subsection (6) requires the department and financial institutions to retain copies of CTR reports for 5 years. If such reports are the subject of a criminal investigation then the reports are required to be held for 10 years. Records of exemptions from the reporting requirements are also required to be held 5 years, or 10 years in the case of a criminal investigation.

Subsection (7) increases the powers of the department. Pursuant to the provisions of this subsection, the department may bring an action in any court of competent jurisdiction to enforce or administer the provisions of this section, issue a cease and desist order, and impose and collect an administrative fine not to exceed \$10,000 for each violation. Any civil penalty or administrative fine which is recovered is deposited into the Financial Institutions' Regulatory Trust Fund. Present law only permits the imposition of an administrative fine, not to exceed \$1,000, for an intentional violation.

Subsection (8) increases the criminal penalty for a willful violation of the reporting requirement from a second degree misdemeanor to a first degree misdemeanor. Additionally, the penalty for a willful violation when it is committed as part of a pattern of illegal activity involving transactions exceeding \$100,000 in any 12-month period is increased from a third degree felony to a second degree felony.

The bill also allows for the imposition of greater fines in lieu of those authorized by s. 775.083, F.S. The fines proposed are comparable to federal fines levied for violation of federal currency transaction requirements. Under the bill, a person convicted of violating s. 655.50 for the first time, may be fined up to \$250,000 or twice the value of the property involved in the transaction, whichever is greater. A second or subsequent violation may subject such person to a fine up to \$500,000 or quintripple the value of the property, whichever is greater. Further, a person who willfully violates this section is also liable for a civil penalty of not more than either the value of the property involved or \$10,000.

Section 2 provides for the creation of the Money Laundering and Currency Transaction Reporting Advisory Council, consisting of not more than nine members, to study the administration and funding of programs established by s. 655.50, F.S. Currently, the department maintains a trust fund designed to finance the

regulation and supervision of state chartered financial institutions. The trust fund is funded by assessments placed upon such institutions. Because federally chartered institutions in this state are required to file currency transaction reports with the department and are not paying fees to support the program, state chartered institutions are supporting the entire statewide program through their supervisory assessment fees.

The Advisory Council's primary purpose is to make recommendations concerning the establishment of a stable and equitable funding source for the administration of the CTR program. Recommendations by the Council are reported to the Comptroller, the President of the Senate, and to the Speaker of the House of Representatives. The Council's recommendations must be reported to these elected officials no later than April 1, 1990.

Section 3 provides an effective date of October 1, 1989.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

To the extent that the required transmission of information will be permitted through electronic means or magnetic tape, financial institutions and the department may experience cost reductions associated with such transfers. However, the amount of these cost savings is currently indeterminate.

B. Government:

The Department of Banking and Finance reports that this bill will have no fiscal impact. (The bill) "would merely revise some other provisions of the present statute...(and)...may have some future positive impact in that both administrative and criminal fines are increased and, if ever levied, they would bring in new revenue to the General Revenue Fund as well as the department trust fund." (Gerald Lewis, Comptroller)

III. COMMENTS:

None.

IV. AMENDMENTS:

None.