

CHAPTER 97-109

House Bill No. 397

An act relating to international banking; amending s. 655.059, F.S.; providing for access to books and records of international banking corporations under certain circumstances; amending s. 663.01, F.S.; revising a definition; amending s. 663.07, F.S.; clarifying exclusion of certain deposits, borrowings, and credit of international banking facilities from total assets and liabilities; clarifying certain cash and security deposit requirements for international bank agencies or international branches; creating ss. 663.16-663.181, F.S.; providing for liquidation of international bank agencies and branches; providing definitions; providing for possession of a business and property by the Department of Banking and Finance; providing for inventory of assets; providing for wages; providing for deposit of certain assets; providing for appointment of agents and judges; providing for repudiation of contracts; providing for liability on repudiation or termination of contracts; providing for retention of certain security interests under qualified financial contracts; providing for effects on leases under repudiated contracts; providing for effect of possession of an international banking corporation by the department; providing for damages; requiring notice of taking possession; providing criteria; providing for disposition of certain property; providing for claims; providing procedures; exempting the department from paying certain fees; providing for challenging possession of an international banking corporation by the department; repealing s. 663.02(2), F.S., relating to applicability of certain state banking laws to certain financial institutions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 655.059, Florida Statutes, is amended to read:

655.059 Access to books and records; confidentiality; penalty for disclosure.—

(1) The books and records of a financial institution are confidential and shall be made available for inspection and examination only:

- (a) To the department or its duly authorized representative;
- (b) To any person duly authorized to act for the financial institution;
- (c) To any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;
- (d) To the department or its duly authorized representative, to the home-country supervisor of the corporation, provided:

1. The supervisor provides advance notice to the department that the supervisor intends to examine the Florida office of the corporation.
2. The supervisor confirms to the department that the purpose of the examination is to ensure the safety and soundness of the corporation.
3. The books and records pertaining to customer deposit, investment, and custodial accounts are not disclosed to the supervisor.
4. At any time during the conduct of the examination, the department reserves the right to have an examiner present or to participate jointly in the examination.

For purposes of this paragraph, “home-country supervisor” means the governmental entity in the corporation’s home country with responsibility for the supervision and regulation of the corporation.

- (e)(d) As compelled by a court of competent jurisdiction;
- (f)(e) As compelled by legislative subpoena as provided by law, in which case the provisions of s. 655.057 apply;
- (g)(f) Pursuant to a subpoena, to any federal or state law enforcement or prosecutorial instrumentality authorized to investigate suspected criminal activity;
- (h)(g) As authorized by the board of directors of the financial institution;
or
- (i)(h) As provided in subsection (2).

Section 2. Subsection (8) of section 663.01, Florida Statutes, is amended to read:

663.01 Definitions.—As used in this part, the term:

(8) “International representative office” means an office of a representative of an international banking corporation organized and licensed under the laws of a foreign country that is established or maintained in this state for the purpose of engaging in the activities described in s. 663.062, or any person whose primary business is to engage in such activities, on behalf of such international banking corporation, from an office located in this state.

Section 3. Subsections (5) and (8) of section 663.07, Florida Statutes, are amended to read:

663.07 Asset maintenance or capital equivalency.—

(5) The term “assets” as used in this section excludes accrued income and amounts due from other offices or branches of, and wholly owned, except for a nominal number of directors’ shares, subsidiaries of the international banking corporation in question. The term “liabilities” as used in this section excludes accrued expenses and amounts due and other liabilities to branches, offices, agencies, and wholly owned, except for a nominal number

of directors' shares, subsidiaries of the international banking corporation in question, and such other liabilities as the department may specify by rule. International banking facility deposits, borrowings, and extensions of credit are excluded from the total liabilities and total assets of an international bank agency or international branch unless the department determines that inclusion of international banking facility deposits, borrowings, and extensions of credit is necessary to ensure the maintenance of a sound financial condition, protect depositors, creditors, and the public interest, and maintain public confidence in the business of the international bank agency or international branch. ~~Except as the department may require pursuant to subsection (6), international banking facility deposits and extensions of credit shall be excluded from the total liabilities and total assets of an international bank agency or international branch.~~

(8) Regardless of whether an international bank agency or international branch complies with the requirements of this section pursuant to subsections (1) or (3), if, by reason of the existence, or the potential occurrence, of unusual or extraordinary circumstances, the department finds it necessary or desirable for maintaining a sound financial condition, protecting creditors and the public interest, and maintaining public confidence in the business of the international bank agency or international branch it may by order require such international bank agency or international branch banking corporation to deposit cash or and eligible securities with a bank or trust company located in this state, or to hold in this state assets acceptable to the department in an aggregate amount that bears such relationship as the department prescribes to the aggregate liabilities of the international bank agency or international branch in an amount not exceeding twice the amount required under subsection (1). The assets required to be held in this state pursuant to this subsection shall be deposited with a bank or trust company located in this state that the international banking corporation designates and the department approves.

Section 4. Sections 663.16, 663.17, 663.171, 663.172, 663.173, 663.174, 663.175, 663.176, 663.177, 663.178, 663.18, and 663.181, Florida Statutes, are created to read:

663.16 Definitions.—As used in ss. 663.17-663.181, the term:

(1) “Business and property in this state” includes, but is not limited to, all property of the international banking corporation, real, personal, or mixed, whether tangible or intangible:

(a) Wherever situated, constituting a part of the business of the Florida agency and appearing on its books as such.

(b) Situated within this state whether or not constituting part of the business of the Florida agency or so appearing on its books.

(2) “Claims” means debts, obligations, deposits, and other similar items that the department takes possession of pursuant to s. 663.17(1).

(3) “Creditors” and “depositors” means the owners of claims.

(4) Except where the context otherwise requires, “international banking corporation” or “corporation” means any international bank agency operating in this state.

(5) “Officer” means the agent or other person in charge of an international banking corporation.

(6) “Affiliate” means any person or group of persons acting in concert that controls, is controlled by, or is under common control of an international banking corporation.

(7) “Control” means any person or group of persons acting in concert, directly or indirectly, owning, controlling, or holding the power to vote more than 50 percent of the voting stock of a company, or having the ability in any manner to elect a majority of directors of a corporation, or otherwise exercising a controlling influence over the management and policies of a corporation as determined by the department.

(8) “Qualified financial contract” means any securities contract, commodity contract, forward contract, including spot and forward foreign exchange, repurchase agreement, swap agreement, or any similar agreement, any option to enter into any such agreement, including any combination of the foregoing, and any master agreement for such agreements. Such master agreement, together with all supplements thereto, shall be treated as one qualified financial contract, provided that such contract, option, or agreement, or combination of contracts, options, or agreements is reflected in the books, accounts, or records of the international banking corporation or a party provides evidence of such agreement. The department may define, by rule, securities contract, commodity contract, forward contract, repurchase agreement, or swap agreement, and may, by rule or order, determine any other agreement to be a qualified financial contract for the purpose of this subsection. The department may prescribe such rules relating to qualified financial contracts and netting thereof as the department deems appropriate.

(9) “Global payment net payment obligation” means the amount, if any, owed by an international banking corporation as a whole to a party, after giving effect to the netting provisions of a qualified financial contract, with respect to all transactions subject to netting under such qualified financial contract.

(10) “Global net payment entitlement” means the amount, if any, owed by a party or that would be owed if the relevant agreements provided for payments to either party upon termination thereof under any and all circumstances, to an international banking corporation as a whole, after giving effect to the netting provisions, with respect to all transactions subject to netting under such qualified financial contract.

(11) “Branch or agency net obligations” means, with respect to a qualified financial contract, the amount, if any, that would have been owed by the international banking corporation to a party after netting only those transactions entered into by the branch or agency and such party under such qualified financial contract.

(12) "Branch or agency net payments entitlement" means, with respect to a qualified financial contract, the amount, if any, that would have been owed by a party to the international banking corporation after netting only those transactions entered into by the branch or agency and such party under such qualified financial contract.

663.17 Liquidation; possession of business and property; inventory of assets; wages; depositing collected assets; appointing agents; appointment of judges.—

(1) The department may, at its discretion, take possession of the business and property in this state of any international banking corporation that has been licensed to operate in this state upon finding that the corporation's international bank agency operating in this state has violated any law, has neglected or refused to comply with the terms of a duly issued order of the department, is insolvent or imminently insolvent, or is transacting business in an unsound, unsafe, or unauthorized manner such that the corporation is threatened with imminent insolvency, or that the corporation is in liquidation at its domicile or elsewhere. Title to such business and property shall vest by operation of law in the department upon taking possession. Thereafter, the department shall liquidate or otherwise deal with such business and property in accordance with the provisions of this part, chapter 658, and any other provision relating to the liquidation of banking corporations. The department may deal with such business and property and prosecute and defend any and all actions relating to the liquidation. Only the claims of creditors of the international banking corporation arising out of transactions those creditors had with the international banking corporation's international bank agency or agencies located in this state shall be accepted by the department for payment out of the business and property which it has taken possession of in this state. Acceptance or rejection of such claims by the department shall not prejudice any creditor's rights to otherwise share in other assets of the international banking corporation. The following claims shall not be accepted by the department for payment out of the business and property in the department's possession in this state:

(a) Claims which would not represent an enforceable legal obligation against an international bank agency if such agency were a separate and independent legal entity.

(b) Amounts due and other liabilities to other offices, agencies, and branches of and affiliates of such international banking corporation.

(2) Whenever all accepted claims, together with interest on such claims, and the expenses of the liquidation have been paid in full or properly provided for, the department, upon the order of a court of competent jurisdiction, shall transfer the remaining assets to the principal office of such international banking corporation, or to the duly appointed domiciliary liquidator or receiver of such corporation. Dividends and other amounts that remain unclaimed or unpaid and are in the possession of the department for 6 months after such transfer shall be deposited by the department as provided by law.

(3) When the department takes possession of the property and business of any international banking corporation, the department shall:

(a) Give notice of such fact to all corporations, unincorporated associations, partnerships, governmental entities, and other entities and individuals known by the department to hold any assets of such corporation. No corporation, unincorporated association, partnership, governmental entity, or other entity or individual having notice or knowledge that the department has taken possession of such corporation shall have a lien or charge for any payment, advance, or clearance thereafter made against any of the assets of such corporation for liability thereafter incurred.

(b) Upon written demand of the department, any corporation, unincorporated association, partnership, governmental entity, or other entity or individual holding assets of such corporation shall deliver such assets to the department and shall be discharged from liability with respect to any claim upon such assets; provided, such demand shall not affect the right of a secured creditor with a perfected security interest, or other valid lien or security interest enforceable against third parties, to retain collateral, including any right of such secured creditor under any security agreement related to a qualified financial contract to retain collateral and apply such collateral in accordance with the provisions of the financial institutions codes.

(c) Nothing in paragraphs (a) and (b) shall affect any right of set-off permitted under applicable law; provided, in connection with the liquidation of an international bank agency of any other international banking corporation pursuant to this part, no entity or individual may set off the business and property in this state of an international banking corporation being liquidated under this subsection, against the liabilities of such corporation other than those that arise out of transactions engaged in by such entity or individual with such international bank agency. For purposes of this paragraph, liabilities shall be deemed to include, in the case of qualified financial contracts, the lesser of the two amounts calculated with respect to any such qualified financial contract pursuant to s. 663.172(3), and this paragraph shall not be deemed to authorize set-off except as otherwise permissible under applicable law.

(4) Any international banking corporation of which the department has taken possession or which is operating under restrictions imposed by duly constituted authority may be permitted to resume business subject to the department's discretion and any conditions which the department may impose.

(5) After the department takes possession of and determines to liquidate the property and business of any international banking corporation, the department shall make an inventory, in duplicate, of the assets of such corporation. One copy of such inventory shall be filed in an office of the department and one copy shall be filed with a court of competent jurisdiction in the county in which the principal office of such corporation is located.

(6) Notwithstanding s. 658.84, all wages actually owing to the employees of an international banking corporation for services rendered within 3

months prior to the date possession was taken by the department, and not exceeding \$2,000 to each employee, shall be paid prior to the payment of any other debt or claim, and, in the discretion of the department, may be paid as soon as practicable after taking possession, except that at all times the department shall reserve such funds as will, in the department's opinion, be sufficient for the expenses of administration.

(7) The department is authorized, upon taking possession of any international banking corporation, to liquidate the affairs of such corporation and to do all acts and to make such expenditures as in the department's judgment are necessary to conserve the assets and business of the corporation. The department shall proceed to collect the debts due to the corporation. The department may, upon an order of a court of competent jurisdiction, sell, assign, compromise, or otherwise dispose of all bad or doubtful debts held by, and compromise claims against, such corporation, other than deposit claims, provided, whenever the principal amount of any such debt or claim owed by or owing to such corporation does not exceed \$50,000, the department may sell, assign, compromise, or otherwise dispose of such debt or claim upon such terms as the department may deem to be in the best interests of such corporation wherever situated. When the real property of an international banking corporation, to be disposed of pursuant to this subsection, is located in a county in this state other than a county in which an application to the court for leave to dispose is made, the department shall file a certified copy of the order of such court authorizing such disposal in the office of the clerk of the county in which such real property is located.

(8) Moneys collected by the department in liquidating an international banking corporation shall be:

(a) Deposited on demand, time or otherwise, in one or more banks, associations, or trust companies organized under the laws of this state and, in the case of insolvency or voluntary or involuntary liquidation of the depository, such deposits shall be entitled to priority of payment equally with any other priority given under the financial institutions codes;

(b) Deposited on demand, time or otherwise, in one or more national banks with a principal office located in this state and with total assets exceeding \$1 billion; or

(c) Invested in obligations of the United States, or obligation for which the full faith and credit of the United States is pledged to provide for the payment of interest and principal.

(9) The department may appoint one or more persons as agent or agents to assist in the liquidation of the business and affairs of any international banking corporation in the department's possession. The department shall file a certificate of such appointment in one of the department's offices and shall file a certified copy of such certificate with a court of competent jurisdiction in the county in which the principal office of such corporation is located in this state. The department may employ such counsel and expert assistants under such titles that the department shall assign to them, and may retain such officers or employees of such corporation as the department deems necessary in the liquidation and distribution of the corporation's

assets. The department may require such security as it may deem proper from the agents and assistants appointed pursuant to the provisions of this subsection.

(10) When the department has taken possession of and is liquidating the business and property in this state of any international banking corporation under the provisions of this part, the department shall be entitled to the appointment of a single judge to supervise the liquidation in the judicial circuit in which the principal office of such corporation is located. Such judge shall have the power to order expedited or simplified procedures or order a reference whenever necessary to resolve a matter in such liquidation.

(11) The compensation of agents and any other employees appointed by the department to assist in the liquidation of an international bank agency, the distribution of its assets, or the expenses of supervision, shall be paid out of the assets of the agency in the hands of the department. Expenses of liquidation and approved claims for fees and assessments due the department shall be given first priority among unsecured creditors.

663.171 Liquidation; repudiation of contracts.—

(1) Except as otherwise provided in this section, when the department has taken possession of the business and property in this state of an international banking corporation, the department may assume or repudiate any contract, including an unexpired lease, of the corporation:

(a) To which such corporation is a party.

(b) The performance of which the department, in its discretion, determines to be burdensome.

(c) The repudiation of which the department, in its discretion, determines will promote the orderly administration of the corporation's affairs.

(2) After the expiration of 90 days after the date the department takes possession of an international banking corporation, any party to a contract with such corporation may demand in writing that the department assume or repudiate such contract. If the department has not assumed or repudiated the contract within 15 calendar days after the date of receipt of such demand, the affected party may bring an action in a court of competent jurisdiction in the county in which the principal office of the corporation is located to obtain an order requiring the department to assume or repudiate the contract. If the department has not assumed or repudiated the contract by at least 1 month before the last date for filing claims against the corporation, such contract shall be deemed repudiated.

(3) Notwithstanding subsection (2), with respect to an unexpired lease of the corporation for rental of real property under which the corporation was a lessee, if the department remains in possession of the leasehold, the department shall not be required to assume or repudiate such lease and may continue in possession of such leasehold for the remainder of the term of the lease in accordance with the terms of the lease; provided, if the department later repudiates the lease before the end of the lease term, any amounts that

may be due the lessor with respect to such lease shall be calculated as provided by law.

(4) Notwithstanding any other provision of this section relating to liquidating an international banking corporation, the department shall not assume or repudiate any qualified financial contract that the international bank agency entered into which is subject to a multi-branch or multi-agency netting agreement or arrangement that provides for netting present or future payment obligations or payment entitlements, including termination or close-out values relating to the obligations or entitlements, among the parties to the contract and agreement or arrangement and the department may, but shall not be required to, assume or repudiate any other qualified financial contract an international bank agency entered into; provided, upon the repudiation of any qualified financial contract or the termination or liquidation of any qualified financial contract in accordance with its terms, the liability of the department under such qualified financial contract shall be determined in accordance with s. 663.172.

663.172 Liability on repudiation or termination of contracts.—

(1) Except as otherwise provided in this section, upon the repudiation or termination of any contract pursuant to s. 663.171, the liability of the department shall be limited to the actual direct compensatory damages of the parties to the contract, determined as of the date the department took possession of the international banking corporation. The department shall not be liable for any future wages other than severance payments, to the extent such payments are reasonable standards, or for payments for future service, costs of cover, or any consequential, punitive, or exemplary damages, damages for lost profits or lost opportunity, or damages for pain and suffering.

(2) Except as otherwise provided in this section, the liability of the department, upon the repudiation of any qualified financial contract or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms of such contract, shall be limited as provided in subsection (1), except compensatory damages shall be deemed to include normal and reasonable costs of cover or other reasonable measures of damages used among participants in the market for qualified financial contract claims, calculated as of the date of repudiation or the date of the termination of such qualified financial contract in accordance with the terms of the contract. Upon the repudiation of any qualified financial contract or in connection with the termination or liquidation of any qualified financial contract in accordance with the terms of such contract, the department shall be entitled to damages and such damages shall be paid to the department upon written demand from the department to the other party or parties to the contract.

(3) In the case of the liquidation of an international bank agency of an international banking corporation by the department, with respect to qualified financial contracts subject to netting agreements or arrangements that provide for netting present or future payment obligations or payment entitlements, including termination or close-out values relating to the obligations or entitlements, among the parties to the contracts and agreements or

arrangements, the liability of the department to any party to any such qualified financial contract upon the repudiation or in any connection with the termination or liquidation of such qualified financial contract in accordance with the terms of such contract shall be limited to the lesser of:

(a) The global net payment obligation; or

(b) The branch to agency or agency to agency net payment obligation.

(4) The liability of the department to a party under this section shall be reduced by any amount otherwise paid or received by the party with respect to the global net payment obligation pursuant to such qualified financial contract which, if added to the liability of the department under subsection (1), would exceed the global net payment obligation. The liability of the department under this section to a party to a qualified financial contract also shall be reduced by the fair market value or the amount of any proceeds of collateral that secures and has been applied to satisfy the obligations of the international banking corporation to the party pursuant to such qualified financial contract. If netting under the applicable netting agreement or arrangement results in a branch to agency net payment entitlement, notwithstanding any provision in any such contract that purports to effect a forfeiture of such entitlement, the department may make written demand for and shall be entitled to received from the party to such contract an amount not to exceed the lesser of the global net payment entitlement or the branch to agency net payment entitlement.

(5) The liability of a party under this section shall be reduced by any amount otherwise paid to or received by the department or any other liquidator or receiver of the international banking corporation with respect to the global net payment entitlement pursuant to such qualified financial contract which, if added to the liability of the party under this section, would exceed the global net payments entitlement. The liability of a party under this section to the department pursuant to such qualified financial contract also shall be reduced by the fair market value of the amount of any proceeds of the collateral that secures and has been applied to satisfy the obligations of the party to the international banking corporation pursuant to such qualified financial contract.

663.173 Qualified financial contract; net obligation and net entitlement.—A party to a qualified financial contract with an international banking corporation, possession of which has been taken by the department pursuant to s. 663.17, which party has a perfected security interest in collateral or other valid lien or security interest in collateral enforceable against third parties pursuant to a security arrangement related to such qualified financial contract, may retain all such collateral and, upon repudiation or termination of such qualified financial contract in accordance with the terms of the contract, may apply such collateral in satisfaction of any claims secured by the collateral provided the total amount so applied to such claims shall in no event exceed the global net payment obligation, if any.

663.174 Repudiation; lease, lessee, or lessor; real or personal property.—

(1) If the department repudiates a lease of an international banking corporation, the real or personal property under which the corporation was a lessee, the lessor under such lease shall be entitled to file a claim with the department for the lesser of:

(a) The amount designated as liquidated damages contained in the lease between the corporation and the lessor;

(b) The amount equal to 1 year's rent under the terms of the repudiated lease; or

(c) An amount equal to the rent for the remaining term of the lease.

(2) If the department repudiates the lease of an international banking corporation for the rental of real property under which the corporation was the lessor and the lease was not in default at the time of the repudiation, the lessee under such lease may:

(a) Treat the lease as terminated by such repudiation and vacate the premises; or

(b) Remain in possession of the leasehold interest for the balance of the term of the lease, and for any renewal or extension of such term that is enforceable by such lessee under applicable non-insolvency law, unless the lessee defaults under the terms of the lease after the date of such repudiation. If the lessee remains in possession of the leasehold interest, the lessee shall continue to pay to the department the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease and may offset against such rent payment any damages which may accrue due to nonperformance of any obligation of the corporation under the lease after the date of repudiation.

The department shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under this paragraph. Nothing in this subsection prohibits the department from entering into a new contract with the lessee for the rental of the leasehold which was the subject of the repudiated lease.

(3) Except as otherwise provided, notwithstanding any provision in an unexpired lease or other contract or in applicable law, a contract or unexpired lease of an international banking corporation may not be terminated or modified by any party other than the department without the concurrence of the department, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the department has taken possession, solely pursuant to a provision in such contract or lease purporting to allow termination or modification upon the department's taking possession or upon the insolvency or liquidation or deterioration of the financial condition of the corporation.

(4) Nothing in this section affects the right of a party to contract with an international banking corporation to seek performance of such contract or damages under such contract in any other jurisdiction; provided, the depart-

ment shall not be liable for the performance of such contract or damages under such contract in any other jurisdiction.

(5) The rights granted in this section are in addition to any other rights available to the department under common law or any other law.

663.175 Liquidation; continuation, stay, and injunction.—

(1) Except as provided in this section, the department's taking of possession of any international banking corporation and the liquidation of the corporation shall operate as a stay of and as an injunction against, as of the date the department takes possession of the corporation and applicable to all persons or entities:

(a) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the corporation that was or could have been commenced before the taking of possession, or to cover a claim against the corporation that arose before the taking of possession.

(b) The enforcement against the corporation, or the business and property of the corporation in this state, of a judgment obtained before the taking of possession.

(c) Any act to obtain possession of property of the corporation or of property from the corporation or to exercise control over property of the corporation.

(d) Any act to create, perfect, or enforce any lien against property of the corporation.

(e) Any act to create, perfect, or enforce against property of the corporation any lien to the extent that such lien secures a claim that arose before the taking of possession.

(f) Any act to collect, assess, or recover a claim against the corporation and the liquidation of the corporation does not operate as a stay of or as an injunction against the claim.

(2) The department's taking of possession of an international banking corporation and the liquidation of the corporation does not operate as a stay of or as an injunction against:

(a)1. The filing of a claim in the liquidation of the corporation;

2. The making of a demand upon the department to assume or repudiate a contract of the corporation;

3. The exercise of any set-off otherwise permissible under applicable law except limited by s. 663.17;

4. The right of any secured creditor with a perfected security interest or other valid lien or security interest enforceable against third parties to retain collateral, including any right of such secured creditor under any

security agreement related to a qualified financial contract as defined in s. 663.17 to retain collateral and to apply such collateral in accordance with s. 663.173;

5. Any automatic termination in accordance with the terms of any qualified financial contract or any right to cause the termination or liquidation of any qualified financial contract, as defined in this part in accordance with the terms of such contract;

6. Any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with one or more such qualified financial contracts; or

7. The commencement of an action under s. 663.181 or any other action relating to the liquidation of the corporation before the court of competent jurisdiction overseeing the liquidation of the corporation.

(b) The commencement or continuation of a criminal action or proceeding against the corporation.

(c) The commencement or continuation of an action or proceeding pursuant to a governmental unit's police or regulatory power.

(d) The enforcement of a judgment, other than money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power.

(e) The issuance to the corporation by a governmental unit of a notice of tax deficiency.

(f) The commencement or continuation of a judicial action or proceeding by a secured creditor with a perfected security interest, or other valid lien or security interest enforceable against third parties, including any right of such secured creditor under any security arrangement related to a qualified financial contract to enforce such interest or lien.

(3) Except as otherwise provided in this section:

(a) The staying or enjoining of an act against property of an international banking corporation under this section shall continue until such property is no longer the property of the department in possession of the corporation.

(b) The staying or enjoining of any other act under this section shall continue until the department has concluded liquidating the corporation.

(4) For good cause shown, on request of a party in interest and after notice and hearing, a court of competent jurisdiction overseeing the liquidation of an international banking corporation may grant relief from a stay or injunction provided under this section, including, but not limited to, terminating, annulling, modifying, or conditioning such stay or injunction.

(5) In the case of any willful violation of a stay or injunction provided in this section by any person who has knowledge of the department's taking of possession of an international banking corporation that is the subject of the

stay or injunction, the department shall recover actual damages, including costs and fees and, in appropriate circumstances, may recover punitive damages.

663.176 Liquidation; notice of possession.—When the department has taken possession of an international banking corporation and has determined to liquidate the corporation's affairs, the department shall notify all persons who may have claims against the corporation to present such claims to the department and make proper proof of such claims within 4 months after the date of such notice and at a place specified in the notice; provided, if the department finds that a shorter period than 4 months will afford a reasonable time for presenting claims and making proof of such claims, the department may specify such shorter period which shall in no event be less than 30 days. In any event, the department shall specify in such notice the last day for processing claims and for making proof of such claims. The department shall cause such notice to be mailed to all persons whose names appear as creditors upon the books of the corporation. Such notice to persons appearing as depositors shall be mailed to the address appearing upon the deposit records or ledger of the corporation. The department shall also cause such notice to be published biweekly in such newspaper or newspapers as the department may direct in the county where the principal office of the corporation in the state is located and, in the department's discretion, elsewhere for publication 3 consecutive months, the first to be published more than 90 days before the last day fixed in such notice for presenting proof of claims. However, if the notice requires claims to be presented within less than 4 months, the department shall cause such notice to be published weekly in such newspaper or newspapers as the department may direct for 3 consecutive weeks, the first publication to be published more than 21 days before the last day fixed in such notice for presenting claims. Such notice shall specify that all persons having claims for priority of payment shall make demand in writing for priority in the proof of their claims. The department shall have no power to accept any claim presented after the date specified in such notice as the last date for presenting claims.

663.177 Disposition of property held as bailee or depositary; opening of safe deposit boxes; disposal of contents.—

(1) The department may, after it has taken possession of the business and property of an international banking corporation, send a written notice by registered mail to each person claiming, or appearing upon the books of the corporation, to be:

(a) The owner of any personal property in the custody or possession of the corporation, as bailee or depositary for hire or otherwise, including the contents of any safe, vault, or box opened after taking possession of such property for nonpayment of any rent; or

(b) The lessee of any safe, vault, or box, to such person's last address appearing on the books of the international banking corporation or the last known address if no address appears on such books, notifying such person to remove all such property or the contents of any such safe, vault, or box, within a period stated in such notice which period shall be not less than 60

days after the date of such notice. The contract of bailment or of deposit for hire, or lease of safe, vault, or box, if any, between the person to whom such notice is mailed and the corporation shall cease upon the date for removal fixed in such notice. Such persons shall have a claim against the corporation for the amount of unearned rent or charges, if any, paid by such person from the date fixed in such notice, if the property or contents is removed on or before such date, or from the date of actual removal, if the property or contents is removed after such date.

(2) If such property or contents are not removed, and all rent or storage and other charges accrued up to that time, if any, are not paid, within the time fixed by such notice, the department may cause such property to be inventoried, or such safe, vault, or box, or any package, parcel, or receptacle in the custody or possession of the corporation as bailee or depository for hire or otherwise, to be opened and the contents, if any, to be removed and inventoried. Such property or contents shall be sealed by a notary public in a package distinctly marked by the department with the name of the person in whose name such property or such safe, vault, box, package, parcel, or receptacle is recorded upon the books of the corporation and a copy of such inventory shall be certified and attached to such package by such notary public. The package shall be kept in a place that the department determines at the expense and risk of the person in whose name it is recorded until delivered to such person or until sold, destroyed, or otherwise disposed of. Such package may, pending final disposition of its contents, be opened by the department for inspection or appraisal or to enable the department to exercise any powers conferred or duties imposed by this part. Whenever such package is opened, the department shall endorse on the outside of the package the date of opening and resealing and shall prepare an affidavit which shall be attached to the package showing the reason for opening and the articles, if any, removed from the package or placed or replaced in the package.

(3) At any time prior to the sale, destruction, or other disposition of the contents of the package, the person in whose name the package is recorded may require the delivery of the package upon the payment of all rental or storage charges accrued, and all other charges or expenses paid or incurred to the date of delivery with respect to such package or contents of the package including the cost of inventorying or of opening and inventorying, the fees of the notary public, the cost of preparing and mailing the notice, and advertising, if any.

(4) After the expiration of 1 year after the mailing of the notice required in subsection (1), the department may apply to a court of competent jurisdiction for an order authorizing the department to sell, destroy, or otherwise dispose of the contents of such package. Whenever, pursuant to the provisions of this subsection, the department is given the power to sell the contents of any package, such power to sell shall be deemed a power to sell in satisfaction of a lien for nonpayment of rental or storage charges accrued, and all other charges and expenses paid or incurred to the date of sale with respect to such package and the contents of the package, including charges and expenses described in subsection (3).

(5) The provisions of this section do not affect or preclude any other remedy, by action or otherwise, for the enforcement of claims or rights of the department, or of an international banking corporation of which the department is in possession, against the person in whose name any property or any safe, vault, box, package, parcel, or receptacle is recorded, or affect or bar the right of the department or the corporation to recover, before sale, any debt or claim due to the department or the corporation, or, after sale, so much of the debt or claim as is not paid by the proceeds of the sale.

663.178 Claims; valuation; priority; listing; filing; objection; endorsement; adverse interest.—

(1) Proof of claim shall consist of a written statement under oath signed by the claimant or his or her attorney in fact and shall be in such form as the department requires.

(2) The department shall not accept a claim based on an agreement with an international banking corporation unless the agreement is reflected on the accounts, books, or records of the corporation or a creditor provides documentary evidence of such agreement. The department may adopt any rules determined necessary to implement this section.

(3) No claim or account of any secured claimant or creditor shall be accepted at a sum greater than the difference between the face value of the claim or account and the value of the security itself as of the commencement of the liquidation unless the claimant or creditor, prior to the expiration of the time fixed by the department for the presentation of claims, surrenders his or her security to the department, in which event the claim or account may be accepted in its full face amount.

(4) The department shall not determine priorities in accepting or rejecting claims and the acceptance by the department of a claim in which priority of payment is demanded shall not entitle the claimant to priority. Accepted claims in which priority of payment is demanded shall be presented to a court of competent jurisdiction on notice to the claimant for determination as to the priority of payment of such claims. Except as otherwise provided in ss. 663.17-663.181, all claims entitled to priority of payment shall be paid ratably and proportionately.

(5) The department shall prepare in duplicate a complete list of all claims presented, specifying the name of the claimant, the nature of the claim, and the amount of such claim. Such list shall also contain a statement of accounts payable as shown by the books and records of the corporation and as to which no claims have been presented, specifying the name of each person to whom such account appears to be payable, the nature of the debt, and the amount of such claim. Within 60 days after the last date fixed in the notice to creditors to present and make proof of claims, the department shall file one copy of such list in one of its offices for public inspection and shall file one copy with a court of competent jurisdiction in the county in which the principal office of the corporation is located.

(6) Within 40 days after the department has filed in its office a copy of the list of claims required by subsection (5), objections to any claim pres-

ented or to any account appearing on such list may be made by any party interested by filing such objections with the department, in writing, signed by the objector, and verified. Unless the department rejects any claim or accounts to which objections have been filed with it, the department shall, within 60 days after the time to file such objections has expired, apply to a court of competent jurisdiction, upon notice to the objector, for an order directing the department as to the disposition of such claim or account. The court may then dispose of such objections or may order a reference for that purpose.

(7) The department shall, not later than 60 days after the time has expired to file objections to claims presented, accept or reject, in whole or in part, every filed claim, except claims as to which objections are still pending before a court, and shall accept or reject, in whole or in part, every account payable as shown by the books and records and as to which no claim has been presented, except accounts as to which objections are still pending before a court. Whenever the department accepts a portion of a claim or account and rejects the remainder, the portion accepted and the portion rejected shall, for the purpose of this section, each be deemed separate claims or accounts.

(8) Every claim or account payable accepted by the department shall be endorsed as "accepted" and be filed so endorsed. If the department is unable, from the books, accounts, or records of an international banking corporation, to determine the ownership of a claim or account payable or if for any other reason the department doubts the validity of any claim or account payable, the department shall reject such claim or account payable and shall endorse the claim or account payable as "rejected" and file it as so endorsed. The department shall mail notice of such acceptance or rejection within 14 calendar days after the department has accepted or rejected all claims filed. If a proof of claim has been filed, such notice need be mailed only to the address appearing on such claim and, if no proof of claim has been filed, the notice need be mailed only to the address appearing upon the books of the corporation. If the department is unable from the proof of claim or the books and records of the corporation to identify a name or address, such notice of rejection need not be given.

(9) Within 30 days after the department has accepted or rejected all claims filed, and all accounts payable as shown by the books and records as to which no claims have been presented, the department shall make a list of all such claims and accounts accepted or rejected by the department for public inspection and file one copy of such list in an office of the department and one copy with a court of competent jurisdiction in the county in which the principal Florida office of such corporation is located.

(10) When the department has accepted a filed claim and has filed such claim, endorsed as "accepted," the claimant, unless priority of payment has been demanded and such claim is entitled by law to priority of payment, shall be entitled to share ratably with other general creditors in the distribution of the proceeds of the liquidation of the assets of the international banking corporation; provided, any accepted claim or claims for taxes owed to any taxing authority shall be paid in full, to the extent that assets of the

corporation are available, prior to the payment of any other accepted claim pursuant to this section. If the claimant has demanded priority of payment, the receipt and acceptance of ratable dividends shall be without prejudice to the right of such priority of payment.

(11) Any person who fails to demand in writing priority of payment as specified in the notice to file claims shall be deemed to have waived and abandoned any right to such priority of payment. Any person who fails to demand in writing priority of payment as provided in this section is not entitled to maintain any action or proceeding for any priority of payment. In any action or proceeding for priority of payment, the claimant shall allege and prove that the claim upon which the action is instituted was filed and demand for priority of payment was made in writing.

(12) Within 6 months after the date the department files the list of claims and accounts payable which are accepted or rejected by the department, a claimant whose claim has been filed and has not been accepted by the department, or any person whose account payable as shown by the books and records as to which no claim has been presented, has not been accepted by the department, may institute and maintain an action against the international banking corporation. Such action may be maintained only in a court of competent jurisdiction in the county in which the principal Florida office of such international banking corporation is located.

(13) A lien shall not attach to any property or assets of an international banking corporation as a result of any judicial process after the department has taken possession of the assets of the corporation.

(14) No action shall be maintained against an international banking corporation while the department is in possession of the affairs and business of the corporation unless brought within the period of limitation specified in s. 663.17. In any action instituted against such corporation while the department is in possession of the corporation's property and business, the plaintiff shall be required to allege and prove that the claim upon which the action is instituted was filed and that such claim has not been accepted or, in the case of an action upon an account as to which no claim has been presented, the plaintiff shall be required to allege and prove that such account appeared upon the books and records and that such account has not been accepted.

(15) Notice to the department of an adverse interest in a claim or account payable accepted by the department to the credit of any person shall not require the department to recognize such adverse claimant unless the adverse claimant also:

(a) Procures a restraining order, injunction, or other appropriate process against the department from a court of competent jurisdiction in a cause instituted by the department in which the person to whose credit such claim or account payable was accepted or his or her executor or administrator is made a party and served with summons; or

(b) Executes to the department, in a form and with sureties acceptable to the department, a bond indemnifying the department from any and all

liability, loss, damage, cost, and expenses for and on account of the payment of dividends.

(16) In any action or proceeding against the department to recover dividends accepted, if there is any person who is not a party to the action who makes such a claim, the court in which the action or proceeding is pending may, on the motion of the department, make an order amending the proceedings making such person a party to such action or proceeding and the court shall thereafter proceed to determine the rights and interests of the parties to such funds. The remedy provided in this section is in addition to and not exclusive of that provided in any other interpleader.

663.18 Fees.—The department is not required to pay any fee to any clerk, sheriff, register, or other public officer for entering, filing, docketing, registering, recording, executing, or issuing a copy, transcript, extract, or certificate of, or authenticating or exemplifying, any paper, record, or instrument pertaining to the exercise by the department of any powers conferred or duties imposed upon the department by the provisions of this part, whether or not such paper, record, or instrument is executed by the department and whether or not it is connected with an action. The term “action” is construed as including a special proceeding in any action.

663.181 Manner and time within which taking possession may be tested.—At any time within 10 days after the department has taken possession of the property and business of an international banking corporation, such corporation may apply to a court of competent jurisdiction in the county in which its principal office is located in this state for an order requiring the department to show cause why the department should not be enjoined from continuing such possession. The court may, upon good cause shown, direct the department to refrain from such proceedings and to surrender such possession.

Section 5. Subsection (2) of section 663.02, Florida Statutes, is hereby repealed.

Section 6. This act shall take effect October 1, 1997.

Became a law without the Governor's approval May 24, 1997.

Filed in Office Secretary of State May 23, 1997.