

Committee Substitute for Senate Bill No. 2960

An act relating to banking; amending s. 494.0025, F.S.; prohibiting the use of the name or logo of a financial institution or its affiliates or subsidiaries under certain circumstances without written consent; amending s. 516.07, F.S.; providing that the use of the name or logo of a financial institution or its affiliates or subsidiaries under certain circumstances without written consent is grounds for denial of license or for disciplinary action; amending s. 520.995, F.S.; providing that the use of the name or logo of a financial institution or its affiliates or subsidiaries under certain circumstances without written consent is grounds for disciplinary action; amending s. 626.9541, F.S.; providing that the deceptive use of a name is an unfair method of competition and an unfair or deceptive act or practice; amending s. 655.005, F.S.; revising certain definitions relating to financial institutions to include the term "international branch"; amending s. 655.0322, F.S.; revising the definition of the term "financial institution" to include an international branch; amending s. 655.0385, F.S.; clarifying requirements for notification of the appointment of an executive director or equivalent by state financial institutions; requiring a nonrefundable fee to accompany notification; amending s. 655.045, F.S.; providing an exemption from audit requirements; amending s. 655.059, F.S.; providing for the inspection and examination of financial institution records and books pursuant to subpoena; providing for reimbursement of reasonable costs and fees for compliance; providing for setting the reimbursement amount when charges are contested; amending s. 655.921, F.S.; prohibiting certain out-of-state financial institutions from locating branch offices in the state in order to qualify for certain exempt transactions; deleting provisions relating to authorization of offices in the state; amending s. 655.922, F.S.; clarifying provisions authorizing financial institutions under another state's financial codes to transact business in this state; expanding the names or titles under which only a financial institution may transact business; prohibiting the use of the name or logo of a financial institution or its affiliates or subsidiaries under certain circumstances without written consent; requiring the Financial Services Commission to adopt rules; amending s. 655.94, F.S.; deleting a prohibition against certain notary publics being involved in opening safety deposit boxes for nonpayment of rent; requiring use of certified mail instead of registered mail; amending s. 658.16, F.S.; providing criteria for a bank or trust company chartered as a limited liability company to be considered "incorporated" under the financial institutions codes; providing definitions; amending s. 658.23, F.S.; correcting terminology; deleting a requirement for a current copy of the bylaws of a bank or trust company to be on file with the Office of Financial Regulation; amending s. 658.26, F.S.; providing for state banks to relocate offices upon approval; providing that certain financial institutions may establish or relocate an office upon written notification; providing requirements for notification and a fee; requiring an application for relocation of a main office

outside the state; exempting applications from publication in the Florida Administrative Weekly; modifying requirements for applications for branch offices by a bank ineligible for branch notification; deleting a requirement that such applications be published in the Florida Administrative Weekly and be subject to ch. 120, F.S.; requiring a relocation application to be filed with the Office of Financial Regulation; providing for a filing fee, investigations, and restrictions relating to such applications; amending s. 658.33, F.S.; adding to the list of persons who must meet certain qualification levels; providing for a waiver of qualification requirements; amending s. 658.37, F.S.; prohibiting an imminently insolvent bank from paying dividends; amending s. 658.48, F.S.; specifying limitations on making loans and extending credit by a bank declared to be imminently insolvent; amending s. 658.67, F.S.; providing multiple dates for the assessment of the value of property acquisition as security; amending s. 658.73, F.S.; delineating which entities or individuals must pay a fee for a certificate of good standing; amending s. 663.16, F.S.; revising definitions to include the term “branch” and to reduce the percentage of voting stock necessary for consideration as control; amending s. 663.304, F.S.; deleting a requirement for reservation of a proposed corporate name with the Department of State; amending s. 665.034, F.S.; revising a percentage designating control of an association; amending s. 674.406, F.S.; reducing the time that banks must retain receipts of items; reducing the time within which one must report unauthorized signatures; providing a time limitation within which to assert claims against a bank for an unauthorized endorsement; repealing s. 658.68, F.S., relating to liquidity requirements for a state bank; providing an effective date.

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

Section 1. Subsection (10) is added to section 494.0025, Florida Statutes, to read:

494.0025 Prohibited practices.—It is unlawful for any person:

(10) To use the name or logo of a financial institution, as defined in s. 655.005(1), or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without the written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of the financial institution or its affiliates or subsidiaries.

Section 2. Paragraph (o) is added to subsection (1) of section 516.07, Florida Statutes, to read:

516.07 Grounds for denial of license or for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(o) Using the name or logo of a financial institution, as defined in s. 655.005(1), or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without the written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of the financial institution or its affiliates or subsidiaries.

Section 3. Paragraph (j) is added to subsection (1) of section 520.995, Florida Statutes, to read:

520.995 Grounds for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for the disciplinary actions specified in subsection (2):

(j) Using the name or logo of a financial institution, as defined in s. 655.005(1), or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without the written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of the financial institution or its affiliates or subsidiaries.

Section 4. Paragraph (bb) is added to subsection (1) of section 626.9541, Florida Statutes, to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(bb) Deceptive use of name.—Using the name or logo of a financial institution, as defined in s. 655.005(1), or its affiliates or subsidiaries when marketing or soliciting existing or prospective customers if such marketing materials are used without the written consent of the financial institution and in a manner that would lead a reasonable person to believe that the material or solicitation originated from, was endorsed by, or is related to or the responsibility of the financial institution or its affiliates or subsidiaries.

Section 5. Paragraphs (h) and (p) of subsection (1) of section 655.005, Florida Statutes, are amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(h) “Financial institution” means a state or federal association, bank, savings bank, trust company, international bank agency, international branch, representative office or international administrative office, or credit union.

(p) “State financial institution” means a state-chartered or state-organized association, bank, investment company, trust company, international bank agency, international branch, international representative office, international administrative office, or credit union.

Section 6. Subsection (1) of section 655.0322, Florida Statutes, is amended to read:

655.0322 Prohibited acts and practices; criminal penalties.—

(1) As used in this section, the term “financial institution” means a financial institution as defined in s. 655.50 which includes a state trust company, state or national bank, state or federal association, state or federal savings bank, state or federal credit union, Edge Act or agreement corporation, international bank agency, international branch, representative office or administrative office or other business entity as defined by the commission by rule, whether organized under the laws of this state, the laws of another state, or the laws of the United States, which institution is located in this state.

Section 7. Section 655.0385, Florida Statutes, is amended to read:

655.0385 Disapproval of directors and executive officers.—

(1) Each state financial institution shall notify the office of the proposed appointment of any individual to the board of directors or the appointment or employment of any individual as an executive officer or equivalent position at least 60 days before such appointment or employment becomes effective, if the state financial institution:

(a) Has been chartered for less than 2 years;

(b) Has undergone a change in control or conversion within the preceding 2 years. The office may exempt a financial institution from this paragraph if it operates in a safe and sound manner;

(c) Is not in compliance with the minimum capital requirements applicable to such financial institution; or

(d) Is otherwise operating in an unsafe and unsound condition, as determined by the office, on the basis of such financial institution’s most recent report of condition or report of examination.

(2) A state financial institution may not appoint any individual to the board of directors, or employ any individual as an executive officer or equivalent position, if the office issues a notice of disapproval with respect to that person.

(3) The office shall issue a notice of disapproval if the competence, experience, character, or integrity of the individual to be appointed or employed indicates that it is not in the best interests of the depositors, the members, or the public to permit the individual to be employed by or associated with the state financial institution.

(4) Beginning 1 year after opening, each notification of a proposed appointment of an individual to the board of directors must be accompanied by a nonrefundable fee of \$35.

~~(5)~~(4) The commission may adopt rules to implement this section.

Section 8. Subsection (3) of section 655.045, Florida Statutes, is amended to read:

655.045 Examinations, reports, and internal audits; penalty.—

(3)(a) The board of directors of each state financial institution or, in the case of a credit union, the supervisory committee or audit committee shall perform or cause to be performed, within each calendar year, an internal audit of each state financial institution, subsidiary, or service corporation and to file a copy of the report and findings of such audit with the office on a timely basis. Such internal audit must include such information as the commission by rule requires for that type of institution.

(b) With the approval of the office, the board of directors or, in the case of a credit union, the supervisory committee may elect, in lieu of such periodic audits, to adopt and implement an adequate continuous audit system and procedure which must include full, adequate, and continuous written reports to, and review by, the board of directors or, in the case of a credit union, the supervisory committee, together with written statements of the actions taken thereon and reasons for omissions to take actions, all of which shall be noted in the minutes and filed among the records of the board of directors or, in the case of a credit union, the supervisory committee. If at any time such continuous audit system and procedure, including the reports and statements, becomes inadequate, in the judgment of the office, the state financial institution shall promptly make such changes as may be required by the office to cause the same to accomplish the purpose of this section.

(c) Any de novo state financial institution open less than 4 months is exempt from the audit requirements of this section.

Section 9. 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 office 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) With respect to an international banking corporation, to the home-country supervisor of the corporation, provided:

1. The supervisor provides advance notice to the office that the supervisor intends to examine the Florida office of the corporation.
2. The supervisor confirms to the office 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 office 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) As compelled by a court of competent jurisdiction, pursuant to a subpoena issued pursuant to the Florida Rules of Civil or Criminal Procedure or the Federal Rules of Civil Procedure, or pursuant to a subpoena issued in accordance with state or federal law. Prior to the production of the books and records of a financial institution, the party seeking production must reimburse the financial institution for the reasonable costs and fees incurred in compliance with the production. If the parties disagree regarding the amount of reimbursement, the party seeking the records may request the court or agency having jurisdiction to set the amount of reimbursement;

(f) As compelled by legislative subpoena as provided by law, in which case the provisions of s. 655.057 apply;

(g) Pursuant to a subpoena, to any federal or state law enforcement or prosecutorial instrumentality authorized to investigate suspected criminal activity;

(h) As authorized by the board of directors of the financial institution; or

(i) As provided in subsection (2).

Section 10. Section 655.921, Florida Statutes, is amended to read:

655.921 Transaction of business by out-of-state financial institutions; exempt transactions in the financial institutions codes.—

(1) Nothing in the financial institutions codes shall be construed to prohibit a financial institution having its principal place of business outside this state and not operating branches in this state from:

(a) Contracting in this state with any person to acquire from such person a part, or the entire, interest in a loan that such person proposes to make, has heretofore made, or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan.

(b) Entering into mortgage servicing contracts with persons authorized to transact business in this state and enforcing in this state the obligations heretofore or hereafter acquired by it in the transaction of business outside this state or in the transaction of any business authorized by this section.

(c) Acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise protecting, managing, or conveying property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged, or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized by this section.

(d) Making loans or committing to make loans to any person located in this state and soliciting compensating deposit balances in connection therewith.

(2) No such financial institution shall be deemed to be transacting business in this state, or be required to qualify so to do, solely by reason of the performance of any of the acts or business authorized in this section. ~~This section does not authorize or permit any such financial institution to maintain an office within the state.~~

Section 11. Section 655.922, Florida Statutes, is amended to read:

655.922 Banking business by unauthorized persons; use of name.—

(1) No person other than a financial institution authorized to do business in this state pursuant to the financial institutions codes of any state or federal law shall, in this state, engage in the business of soliciting or receiving funds for deposit or of issuing certificates of deposit or of paying checks; and no person shall establish or maintain a place of business in this state for any of the functions, transactions, or purposes mentioned in this subsection. Any person who violates the provisions of this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This subsection does not prohibit the issuance or sale by a financial institution of traveler's checks, money orders, or other instruments for the transmission or payment of money, by or through employees or agents of the financial institution off the financial institution's premises.

(2) No person other than a financial institution shall, in this state:

(a) Transact business under any name or title that contains the words "bank," "banco," "banque," "banker," "banking," "trust company," "savings and loan association," "savings bank," or "credit union," or words of similar import, in any context or in any manner;

(b) Use any name, word, sign, symbol, or device in any context or in any manner; or

(c) Circulate or use any letterhead, billhead, circular, paper, or writing of any kind or otherwise advertise or represent in any manner,

which indicates or reasonably implies that the business being conducted or advertised is the kind or character of business transacted or conducted by

a financial institution or which is likely to lead any person to believe that such business is that of a financial institution; however, the words “bank,” “banker,” “banking,” “trust company,” “savings and loan association,” “savings bank,” or “credit union,” or the plural of any thereof, may be used by, and in the corporate or other name or title of, any company which is or becomes a financial institution holding company pursuant to federal law; any subsidiary of any such financial institution holding company which includes as a part of its name or title all or any part, or abbreviations, of the name or title of the financial institution holding company of which it is a subsidiary; any trade organization or association, whether or not incorporated, functioning for the purpose of promoting the interests of financial institutions or financial institution holding companies, the active members of which are financial institutions or financial institution holding companies; and any international development bank chartered pursuant to part II of chapter 663.

(3) No person may use the name or logo of any financial institution or an affiliate or subsidiary thereof, or use a name similar to that of a financial institution or an affiliate or subsidiary thereof, to market or solicit business from a customer or prospective customer of such institution if:

(a) The solicitation is done without the written consent of the financial institution or its affiliate or subsidiary; and

(b) A reasonable person would believe that the materials originated from, are endorsed by, or are connected with the financial institution or its affiliates or subsidiaries.

(4)(3) Any court, in a proceeding brought by the office, by any financial institution the principal place of business of which is in this state, or by any other person residing, or whose principal place of business is located, in this state and whose interests are substantially affected thereby, may enjoin any person from violating any of the provisions of this section. For the purposes of this subsection, the interests of a trade organization or association are deemed to be substantially affected if the interests of any of its members are so affected. In addition, the office may issue and serve upon any person who violates any of the provisions of this section a complaint seeking a cease and desist order in accordance with the procedures and in the manner prescribed by s. 655.033.

(5)(4) Nothing in this section shall be construed to prohibit the lawful establishment or the lawful operations of a financial institution and nothing in this code shall be construed to prohibit any advertisement or other activity in this state by any person if such prohibition would contravene any applicable federal law which preempts the law of this state.

(6) The commission shall adopt rules to administer this section.

Section 12. Subsection (1) of section 655.94, Florida Statutes, is amended to read:

655.94 Special remedies for nonpayment of rent.—

(1) If the rental due on a safe-deposit box has not been paid for 3 months, the lessor may send a notice by ~~certified registered~~ mail to the last known address of the lessee stating that the safe-deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public ~~who is not a director, officer, employee, or stockholder of the lessor~~. The contents shall be sealed in a package by a notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box, and a list of its contents. The certificate shall be included in the package, and a copy of the certificate shall be sent by ~~certified registered~~ mail to the last known address of the lessee. The package shall then be placed in the general vaults of the lessor at a rental not exceeding the rental previously charged for the box. The lessor has a lien on the package and its contents to the extent of any rental due and owing plus the actual, reasonable costs of removing the contents from the safe-deposit box.

Section 13. Section 658.16, Florida Statutes, is amended to read:

658.16 Creation of banking or trust corporation.—

(1) When authorized by the office, as provided herein, a corporation may be formed under the laws of this state for the purpose of becoming a state bank or a state trust company and conducting a general banking or trust business.

(2) A bank or trust company that is chartered as a limited liability company under the law of any state is deemed to be incorporated under the financial institutions codes if:

(a) The institution is not subject to automatic termination, dissolution, or suspension upon the occurrence of an event including the death, disability, bankruptcy, expulsion, or withdrawal of an owner of the institution, other than the passage of time;

(b) The exclusive authority to manage the institution is vested in a board of managers or directors that is elected or appointed by the owners which operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and responsibilities, as a board of directors of a bank or trust company chartered as a corporation; and

(c) Neither the laws of the state of the institution's organization nor the institution's operating agreement, bylaws, or other organizational documents:

1. Provide that an owner of the institution is liable for the debts, liabilities, or obligations of the institution in excess of the amount of the owner's investment; or

2. Require the consent of any other owner of the institution in order for an owner to transfer an ownership interest in the institution, including voting rights.

(3) As used in the financial institutions codes, the term:

(a) “Stockholder” or “shareholder” includes an owner of any interest in a bank or trust company chartered as a limited liability company, including a member or participant;

(b) “Director” includes a manager or director of a bank or trust company chartered as a limited liability company, or other person who has, with respect to such a bank or trust company, authority substantially similar to that of a director of a corporation;

(c) “Officer” includes an officer of a bank or trust company chartered as a limited liability company, or other person who has, with respect to such a bank or trust company, authority substantially similar to that of an officer of a corporation;

(d) “Stock,” “voting stock,” “voting shares,” and “voting securities” includes similar ownership interests in a bank or trust company chartered as a limited liability company, including certificates or other evidence of ownership interests;

(e) “Articles of incorporation” or “bylaws” of a bank or trust company chartered as a limited liability company means the institution’s articles of organization and operating agreement or other organizational documentation that is substantially similar to that of a corporation;

(f) “Par value” of any ownership interest in a bank or trust company chartered as a limited liability company means the amount of capital which must be invested for each unit of ownership; and

(g) “Dividend” includes distributions of earnings to the owners of a bank or trust company chartered as a limited liability company.

Section 14. Subsection (5) of section 658.23, Florida Statutes, is amended to read:

658.23 Submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.—

(5) Unless the articles of incorporation provide otherwise, the board of directors shall have authority to adopt or amend bylaws that do not conflict with bylaws that may have been adopted by the stockholders. The bylaws shall be for the governance ~~government~~ of the bank or trust company, subordinate only to the articles of incorporation and the laws of the United States and of this state. ~~A current copy of the bylaws shall be filed with the office at all times.~~

Section 15. Section 658.26, Florida Statutes, is amended to read:

658.26 Places of transacting business; branches; facilities.—

(1) Any bank or trust company heretofore or hereafter incorporated pursuant to this chapter shall have one main office, which shall be located within the state.

(2)(a) In addition, with the approval of the office and upon such conditions as the commission or office prescribes, any state bank or trust company may establish branches or relocate offices within or outside the state. With the approval of the office upon a determination that the resulting bank or trust company will be of sound financial condition, any bank or trust company incorporated pursuant to this chapter may establish branches by merger with any other bank or trust company.

(b) As provided by commission rules, a financial institution operating in a safe and sound manner may establish or relocate an office by filing a written notice with the office at least 30 days before opening or relocating that office, without filing an application or paying an application fee. The notification must specify the name and location of the office and effective date of the change. The relocation of a main office to a location outside this state must be by application only.

(c) Applications filed pursuant to this subsection need not be published in the Florida Administrative Weekly, but shall otherwise be subject to chapter 120.

~~(d)(b)~~ An application to establish ~~for~~ a branch by a bank that is ineligible ~~does not meet the requirements~~ for the branch notification process shall be in writing in such form as the commission prescribes and be supported by such information, data, and records as the commission or office may require to make findings necessary for approval. ~~Applications filed pursuant to this subsection shall not be published in the Florida Administrative Weekly but shall otherwise be subject to the provisions of chapter 120.~~ Upon the filing of an application and a nonrefundable filing fee for the establishment of any branch permitted by paragraph (a), the office shall ~~make an investigation with respect to compliance with the requirements of paragraph (a) and shall investigate and consider all factors relevant to such requirements, including the following:~~

1. The sufficiency of capital accounts in relation to the deposit liabilities of the bank, or in relation to the number and valuation of fiduciary accounts of the trust company, including the proposed branch, and the additional fixed assets, if any, which are proposed for the branch and its operations, without undue risk to the bank or its depositors, or undue risk to the trust company or its fiduciary accounts;

2. The sufficiency of earnings and earning prospects of the bank or trust company to support the anticipated expenses and any anticipated operating losses of the branch during its formative or initial years;

3. The sufficiency and quality of management available to operate the branch;

4. The name of the proposed branch to determine if it reasonably identifies the branch as a branch of the main office and is not likely to unduly confuse the public; and

5. Substantial compliance by the applicants with applicable law governing their operations.

(e)(e) A state bank that is not eligible for notification of a branch relocation must file an application in the form required by the commission. Upon the filing of a relocation application and a nonrefundable filing fee, the office shall investigate to determine whether the financial institution has substantially complied with applicable law governing its operations. Additional investments in land, buildings, leases, and leasehold improvements resulting from such relocation must comply with the limitations imposed by s. 658.67(7)(a). A main office may not be moved outside this state unless the move is expressly authorized by the financial institutions codes or by federal law. A financial institution that has been in operation for less than 24 months must provide evidence that the criteria of s. 658.21(1) will be met. As provided by commission rule, a financial institution operating in a safe and sound manner may establish a branch by filing a written notice with the office at least 30 days before opening that branch. In such case, the financial institution need not file a branch application or pay a branch application fee.

~~(3)(a) An office in this state may be relocated with prior written approval of the office. An application for relocation shall be in writing in such form as the commission prescribes and shall be supported by such information, data, and records as the commission or office may require to make findings necessary for approval.~~

~~(b) Applications filed pursuant to this subsection shall not be published in the Florida Administrative Weekly but shall otherwise be subject to the provisions of chapter 120. Upon the filing of a relocation application and a nonrefundable filing fee, the office shall investigate to determine substantial compliance by the financial institution with applicable law governing its operations. Additional investments in land, buildings, leases, and leasehold improvements resulting from such relocation shall comply with the limitations imposed by s. 658.67(7)(a). A main office may not be moved outside this state unless expressly authorized by the financial institutions codes or by federal law.~~

~~(c) A relocation application filed by a state bank or trust company that is operating in a safe and sound manner which is not denied within 10 working days after receipt shall be deemed approved unless the office notifies the financial institution in writing that the application was not complete.~~

~~(d) In addition to the application required by paragraph (a), a financial institution whose main office in this state has been in operation less than 24 months must provide evidence that the criteria of s. 658.21(1) will be met.~~

~~(f)(e) A branch office may be closed with 30 days' prior written notice to the office. The notice shall include any information the commission prescribes by rule.~~

(3)(4) With prior written notification to the office, any bank may operate facilities which are not physically connected to the main or branch office of the bank, provided that the facilities are situated on the property of the main or branch office or property contiguous thereto. Property which is separated from the main or branch office of a bank by only a street, and one or more

walkways and alleyways are determined to be, for purposes of this subsection, contiguous to the property of the main or branch office.

(4)(5) A bank may provide, directly or through a contract with another company, off-premises armored car service to its customers. Armored car services shall not be considered a branch for the purposes of subsection (2).

(5)(6)(a) Any state bank that is a subsidiary of a bank holding company may agree to receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations, as an agent for an affiliated depository institution.

(b) The term “close loan” does not include the making of a decision to extend credit or the extension of credit.

(c) As used in this section, “receive deposits” means the taking of deposits to be credited to an existing account and does not include the opening or origination of new deposit accounts at an affiliated institution by the agent institution.

(d) Under this section, affiliated banks may act as agents for one another regardless of whether the institutions are located in the same or different states. This section applies solely to affiliated depository institutions acting as agents, and has no application to agency relationships concerning non-depositories as agent, whether or not affiliated with the depository institution.

(e) In addition, under this section, agent banks may perform ministerial functions for the principal bank making a loan. Ministerial functions include, but are not limited to, such activities as providing loan applications, assembling documents, providing a location for returning documents necessary for making the loan, providing loan account information, and receiving payments. It does not include such loan functions as evaluating applications or disbursing loan funds.

Section 16. Subsection (5) of section 658.33, Florida Statutes, is amended to read:

658.33 Directors, number, qualifications; officers.—

(5) The president, or chief executive officer, or any other person, regardless of title, who has equivalent rank or leads the overall operations of a bank or trust company must have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 3 years. This requirement may be waived by the office after considering the overall experience and expertise of the proposed officer and the condition of the bank or trust company, as reflected in the most recent regulatory examination report and other available data.

Section 17. Section 658.37, Florida Statutes, is amended to read:

658.37 Dividends and surplus.—

(1) The directors of any bank or trust company, after charging off bad debts, depreciation, and other worthless assets if any, and making provision for reasonably anticipated future losses on loans and other assets, may quarterly, semiannually, or annually declare a dividend of so much of the aggregate of the net profits of that period combined with its retained net profits of the preceding 2 years as they shall judge expedient, and, with the approval of the office, any bank or trust company may declare a dividend from retained net profits which accrued prior to the preceding 2 years, but each bank or trust company shall, before the declaration of a dividend on its common stock, carry 20 percent of its net profits for such preceding period as is covered by the dividend to its surplus fund, until the same shall at least equal the amount of its common and preferred stock then issued and outstanding. No bank or trust company shall declare any dividend at any time at which its net income from the current year combined with the retained net income from the preceding 2 years is a loss or which would cause the capital accounts of the bank or trust company to fall below the minimum amount required by law, regulation, order, or any written agreement with the office or a state or federal regulatory agency. A bank or trust company may, however, split up or divide the issued shares of capital stock into a greater number of shares without increasing or decreasing the capital accounts of the bank or trust company, and such shall not be construed to be a dividend within the meaning of this section.

(2) A bank that has been determined to be imminently insolvent may not pay a dividend.

Section 18. Present subsection (10) of section 658.48, Florida Statutes, is redesignated as subsection (11), and a new subsection (10) is added to that section, to read:

658.48 Loans.—A state bank may make loans and extensions of credit, with or without security, subject to the following limitations and provisions:

(10) IMMINENTLY INSOLVENT BANK.—When the office has determined that a state bank is imminently insolvent, the bank may not make any new loans or discounts other than by discounting or purchasing bills of exchange payable at sight.

Section 19. Paragraph (a) of subsection (9) of section 658.67, Florida Statutes, is amended to read:

658.67 Investment powers and limitations.—A bank may invest its funds, and a trust company may invest its corporate funds, subject to the following definitions, restrictions, and limitations:

(9) ACQUISITIONS OF PROPERTY AS SECURITY.—A bank or trust company may acquire property of any kind to secure, protect, or satisfy a loan or investment previously made in good faith, and such property shall be entered on the books of the bank or trust company and held and disposed of subject to the following conditions and limitations:

(a) The book entry shall be the lesser of the balance of the loan or investment plus acquisition costs and accrued interest or the appraisal value or

market value of the property acquired which shall be determined and dated within 1 year prior to or 90 days after the date of acquisition and in compliance with s. 655.60.

Section 20. Subsection (4) of section 658.73, Florida Statutes, is amended to read:

658.73 Fees and assessments.—

(4) Any individual or entity other than a financial institution chartered in this state must ~~Each state bank and state trust company shall~~ pay to the office \$25 for each “certificate of good standing” certifying that a state-chartered financial institution is licensed to conduct business in this state under the financial institutions codes. All such requests shall be in writing. The office shall waive this fee when the request is by a state or federal regulatory agency or law enforcement agency.

Section 21. Subsections (4) and (7) of section 663.16, Florida Statutes, are amended to read:

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

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

(7) “Control” means any person or group of persons acting in concert, directly or indirectly, owning, controlling, or holding the power to vote 25 more than 50 percent or more 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 office.

Section 22. Subsection (1) of section 663.304, Florida Statutes, is amended to read:

663.304 Application for authority to organize an international development bank.—

(1) A written application for authority to organize an international development bank shall be filed with the office by the proposed incorporator and shall include:

(a) The name, residence, and occupation of each incorporator and proposed director.

~~(b) The proposed corporate name and evidence of reservation of the proposed corporate name with the Department of State.~~

~~(b)~~(e) The total initial capital and the number of shares of capital stock to be authorized.

~~(c)~~(d) The location, by street and post-office address and county, of the principal office of the proposed international development bank.

(d)(e) If known, the name and residence of the proposed president and the proposed chief executive officer, if other than the proposed president.

(e)(f) Such detailed financial, business, and biographical information as the commission or office may reasonably require for each proposed director and for the proposed president and the proposed chief executive officer, if other than the president.

Section 23. Paragraph (a) of subsection (4) of section 665.034, Florida Statutes, is amended to read:

665.034 Acquisition of assets of or control over an association.—

(4) For purposes of this section, a person or group of persons shall be deemed to have control of an association if such person or group of persons:

(a) Directly or indirectly, or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with powers to vote, or holds proxies representing ~~more than~~ 25 percent or more of the voting common stock of such association.

Section 24. Subsections (2) and (6) of section 674.406, Florida Statutes, are amended to read:

674.406 Customer's duty to discover and report unauthorized signature or alteration.—

(2) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of 5 7 years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(6) Without regard to care or lack of care of either the customer or the bank, a customer who does not within 180 days ~~1 year~~ after the statement or items are made available to the customer (subsection (1)) discover and report the customer's unauthorized signature on or any alteration on the item or who does not, within 1 year after that time, discover, and report any unauthorized endorsement is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under s. 674.2081 with respect to the unauthorized signature or alteration to which the preclusion applies.

Section 25. Section 658.68, Florida Statutes, is repealed.

Section 26. This act shall take effect July 1, 2004.

Approved by the Governor June 18, 2004.

Filed in Office Secretary of State June 18, 2004.