

CHAPTER 2011-194

Committee Substitute for House Bill No. 1121

An act relating to financial institutions; amending s. 655.005, F.S.; revising definitions relating to the financial institutions codes; amending s. 655.013, F.S.; updating a reference; creating s. 655.03855, F.S.; authorizing the office to appoint provisional directors or executive officers; specifying the rights, qualifications, and reporting requirements of such directors and officers; clarifying the liability of such directors and officers and of the office; amending s. 655.044, F.S.; specifying which accounting principles must be followed by financial institutions; amending s. 655.045, F.S.; authorizing the office to conduct additional examinations of financial institutions if warranted; providing for the use of certain examination methods; amending s. 655.41, F.S.; revising definitions to conform provisions to changes made by the act; amending s. 655.411, F.S.; revising the criteria for approval of a financial entity's plan of conversion; amending s. 655.414, F.S.; providing for the transfer of assets from a federally chartered or out-of-state chartered institution; amending ss. 655.416, 655.417, and 655.418, F.S.; conforming provisions to changes made by the act; amending s. 655.4185, F.S.; revising provisions relating to emergency actions that may be taken for a failing financial institution; authorizing the office to provide prior approval for the chartering of an entity acquiring control of a failing institution; amending s. 655.419, F.S.; deleting a provision relating to actions conducted outside this state; amending s. 655.947, F.S.; conforming a cross-reference; amending s. 657.038, F.S.; specifying the loan factors that must be considered when computing a person's total obligations for purposes of extending credit; amending s. 657.042, F.S.; revising criteria that limit a credit union's investment of funds; requiring a credit union to establish policies and procedures for evaluating risk; amending ss. 657.063 and 657.064, F.S.; conforming cross-references; amending s. 658.12, F.S.; revising the definition of "banker's bank"; conforming a cross-reference; deleting a provision relating to the application of definitions in the financial institutions codes; amending s. 658.165, F.S.; revising provisions relating to banker's banks; specifying the type of business that such bank may do with entities or individuals that are not banks; revising provisions relating to the services a banker's bank may provide to financial institutions in organization; repealing s. 658.20(3), F.S., relating to applications for prior approval of officers or directors; amending s. 658.28, F.S.; providing additional limitations on acquiring or controlling another bank; repealing s. 658.295, F.S., relating to the Florida Interstate Banking Act; amending s. 658.2953, F.S.; revising and updating provisions relating to Florida bank mergers with out-of-state banks; deleting legislative intent; repealing s. 658.296, F.S., relating to the control of deposit-taking institutions; amending s. 658.36, F.S.; authorizing the office to approve a special stock offering plan under certain circumstances; amending s. 658.41, F.S.; clarifying that state laws do not restrict the right of a state bank or trust company to merge with an out-of-

state bank; amending s. 658.48, F.S.; revising provisions relating to bank loans; specifying the process for computing the liabilities of a person seeking a loan; amending s. 658.53, F.S.; deleting a provision providing that unpaid proceeds of sales are used to evaluate the adequacy of a bank's capital; repealing ss. 658.65, 665.013(33), and 667.003(35), F.S., relating to remote financial service units; amending s. 658.67, F.S.; updating provisions relating to the investment powers of a bank or trust company; requiring banks and trust companies to establish procedures for evaluating risk; amending ss. 288.772, 288.99, 440.12, 440.20, 445.051, 489.503, 501.005, 501.165, 624.605, 626.321, 626.730, and 626.9885, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 655.005, Florida Statutes, is reordered and amended to read:

655.005 Definitions.—

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

(a) “Affiliate” means a holding company of a any financial institution established holding company pursuant to state or federal law, a or any subsidiary or service corporation of such a holding company, or a subsidiary or service corporation of a financial institution.

(b) “Appropriate federal regulatory agency” means the federal financial institution regulatory agency that has granted federal statutory authority over a financial institution.

(c) “Bank holding company” means a business organization that is a bank holding company under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. ss. 1841 et seq., or is otherwise determined or authorized by the office to be a holding company of a financial institution pursuant to ss. 658.27-658.285.

(d)(e) “Capital accounts” means the aggregate value of unimpaired capital stock based on the par value of the shares, plus any unimpaired surplus; and undivided profits or retained earnings of a financial institution. For the purposes of determining insolvency or imminent insolvency, the term does not include allowances for loan or lease loss reserves, intangible assets, subordinated debt, deferred tax assets, or similar assets.

(e)(d) “Capital stock” means the aggregate of shares of stock issued to create nonwithdrawable capital issued.

(f)(e) “Commission” means the Financial Services Commission.

(h)(f) “Executive officer” means an individual, whether or not the individual has an official title or receives a salary or other compensation,

who participates or has authority to participate, other than in the capacity of a director, in the major policymaking functions of a the financial institution.; The term does not include an individual who may have an official title and may exercise discretion in the performance of duties and functions, including discretion in the making of loans, but who does not participate in the determination of major policies of the financial institution and whose decisions are limited by policy standards established by other officers ~~other than such individual~~, whether or not the ~~such~~ policy standards have been adopted by the board of directors. The chair of the board of of directors, the president, the chief executive officer, the chief financial officer, the senior loan officer, and every executive vice president of a financial institution, and the senior trust officer of a trust company, are presumed to be executive officers unless any such officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participating, other than in the capacity of a director, in major policymaking functions of the financial institution and the individual holding such office so excluded does not actually participate therein.

(i)(g) “Federal financial institution” means a federally or nationally chartered or organized financial institution.

(j)(h) “Financial institution” means a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, ~~or~~ credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

(k)(i) “Financial institution-affiliated party” means:

1. A ~~Any~~ director, officer, employee, or controlling stockholder, (other than a financial institution holding company,) of, or agent for, a financial institution, subsidiary, or service corporation;

2. Any other person who has filed or is required to file a change-of-control notice with the appropriate state or federal regulatory agency;

3. A ~~Any~~ stockholder, (other than a financial institution holding company), a ~~any~~ joint venture partner, or any other person as determined by the office who participates in ~~the conduct of~~ the affairs of a financial institution, subsidiary, or service corporation; or

4. An ~~Any~~ independent contractor, (including an ~~any~~ attorney, appraiser, consultant, or accountant,) who knowingly or recklessly participates in:

a. A ~~Any~~ violation of any law or regulation;

b. A ~~Any~~ breach of fiduciary duty; or

c. An ~~Any~~ unsafe and unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the financial institution, subsidiary, or service corporation.

(l)(j) “Financial institutions codes” means:

1. Chapter 655, relating to financial institutions generally;
2. Chapter 657, relating to credit unions;
3. Chapter 658, relating to banks and trust companies;
4. Chapter 660, relating to trust business;
5. Chapter 663, relating to international banking ~~corporations~~;
6. Chapter 665, relating to associations; and
7. Chapter 667, relating to savings banks.

(m) “Home state” means:

1. The state where a financial institution is chartered.
2. The state where the main office of a federal financial institution is located.
3. The state determined to be the home state of an international banking corporation pursuant to 12 U.S.C. s. 3103(c).

(n) “Home state regulator” means, with respect to an out-of-state state financial institution, the financial institution regulatory agency of the state in which the institution is chartered.

(o) “Host state” means a state, other than the home state, in which the financial institution seeks to establish or maintains a branch or nonbranch office.

(p)(k) “Imminently insolvent” means a condition in which a financial institution has total capital accounts, or equity in the case of a credit union, of less than 2 percent of its total assets, after adjustment for apparent losses.

(q)(4) “Insolvent” means a condition in which:

1. The capital accounts, or equity in the case of a credit union, and all assets of a financial institution are insufficient to meet liabilities;
2. The financial institution is unable to meet current obligations as they mature, even though assets may exceed liabilities; or

3. The capital accounts, ~~or equity in the case of a credit union,~~ of a financial institution, or equity in the case of a credit union, are exhausted by losses and no immediate prospect of replacement exists.

~~(r)(m)~~ “Main office” or “principal office” of a financial institution means the main business office designated ~~or provided for in its~~ the articles of incorporation or bylaws ~~of a financial institution at an such~~ identified location ~~as has been or is hereafter approved by the office of Financial Regulation, in the case of a state financial institution, or by the appropriate federal regulatory agency, in the case of a federal financial institution.; and,~~ With respect to the trust department of a bank or association that has trust powers, ~~the each of these terms mean~~ means the office or place of business of the trust department at an such identified location, which need not be the same location as the main office of the bank or association ~~exclusive of the trust department, as has been or is hereafter approved by the office of Financial Regulation, in the case of a state bank or association that has a trust department, or by the appropriate federal regulatory agency, in the case of a national bank or federal association that has a trust department.~~ The “main office” or “principal office” of a trust company means the office designated or provided for ~~as such~~ in its articles of incorporation, at an such identified location ~~as has been or is hereafter approved by the relevant chartering authority.~~

~~(t)(n)~~ “Officer” of a financial institution means an any individual ~~duly~~ elected or appointed to, or otherwise performing the duties and functions appropriate to, any position or office having the designation or title of chair of the board of directors, vice chair of the board of directors, chair of the executive committee, president, vice president, assistant vice president, cashier or assistant cashier, comptroller, assistant comptroller, trust officer, assistant trust officer, secretary or assistant secretary (of a trust company), or any other office or officer designated in, or as provided by, the articles of incorporation or bylaws.

(u) “Out-of-state financial institution” means a financial institution whose home state is a state other than this state.

(v) “Related interest” means, with respect to any person, the person’s spouse, partner, sibling, parent, child, or other individual residing in the same household as the person. With respect to any person, the term means a company, partnership, corporation, or other business organization controlled by the person. A person has control if the person:

1. Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the organization;

2. Controls in any manner the election of a majority of the directors of the organization; or

3. Has the power to exercise a controlling influence over the management or policies of the organization.

(w)(e) “Service corporation” means a corporation that is organized to perform, for two or more financial institutions, services related or incidental to the business of a financial institution and that is wholly or partially owned or controlled by one or more financial institutions.

(x) “State,” when used in the context of a state other than this state, means any other state of the United States, the District of Columbia, and any territories of the United States.

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

(z)(q) “Subsidiary” means an any organization that permitted by the office which is controlled by a financial institution or a holding company of a financial institution.

(aa)(r) “Unsafe or unsound practice” means any practice or conduct found by the office to be contrary to generally accepted standards applicable to a the specific financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the specific financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved.

(bb)(s) “Office” means the Office of Financial Regulation.

(cc)(t) “Debt cancellation products” means loan, lease, or retail installment contract terms, or modifications or addenda to such loan, lease, or retail ~~installment~~ contracts, under which a creditor agrees to cancel or suspend all or part of a customer’s obligation to make payments upon the occurrence of specified events and includes, but is not limited to, debt cancellation contracts, debt suspension agreements, and guaranteed asset protection contracts offered by financial institutions, insured depository institutions as defined in 12 U.S.C. s. 1813(c), and subsidiaries of such institutions. However, The term “debt cancellation products” does not include title insurance as defined in s. 624.608.

(2) Terms used but not defined in the financial institutions codes, but which are defined in Title XXXIX, entitled Commercial Relations, as enacted in chapters 668 through 680, have the meanings ascribed to them in Title XXXIX.

(2) ~~Terms which are defined in the financial institutions codes, unless the context otherwise requires, have the meanings ascribed to them therein.~~

Section 2. Section 655.013, Florida Statutes, is amended to read:

655.013 Effect on existing financial institutions.—The charters of state financial institutions existing on July 1, 1992, at the time of the adoption of this act shall continue in full force and effect. However, after that date, all state financial institutions and, to the extent applicable, all financial institutions shall operate hereafter ~~be operated~~ in accordance with the ~~provisions of the financial institutions codes.~~

Section 3. Section 655.03855, Florida Statutes, is created to read:

655.03855 Provisional directors and executive officers.—

(1) If a state financial institution has an insufficient number of directors to meet the minimum requirements of s. 657.021 or s. 658.33 for 30 days or longer, there are an insufficient number of executive officers, or the qualifications of the executive officers are insufficient to operate the financial institution in a safe and sound manner, the office may appoint one or more provisional directors or executive officers by order.

(2) A provisional director has all the rights and powers of a duly elected director, including the right to notice of and to vote at meetings of directors. A provisional executive officer has all the rights and powers provided in the financial institution’s articles of incorporation or bylaws, or as specified by the office in the appointment order. A provisional director or executive officer must be an impartial person and may not be a shareholder, member, or creditor of the financial institution or its affiliate. Additional qualifications, if any, may be determined by the office consistent with the financial institutions codes. Provisional directors and executive officers shall serve until the provisional director’s or executive officer’s tenure is ended by order of the office.

(3) A provisional director or executive officer is not liable for any action taken or decision made, except as provided in the financial institutions codes and s. 607.0831. If directed by the office, provisional directors and executive officers must submit reports to the office as to the financial and operating condition of the financial institution and recommendations as to appropriate corrective actions to be taken by the institution.

(4) The office shall allow reasonable compensation, if applicable, to a provisional director or executive officer appointed under this section for services rendered, and reimbursement or direct payment of all reasonable costs and expenses, which shall be paid by the financial institution. The office is not liable for any appointment, action, or decision made pursuant to this section.

Section 4. Subsection (1) of section 655.044, Florida Statutes, is amended to read:

655.044 Accounting practices; bad debts ineligible to be carried as assets.

(1) Except as otherwise provided by law, a state financial institution shall observe United States generally accepted accounting principles and

practices. The commission may authorize by rule exceptions to such accounting principles by rule practices as necessary.

Section 5. Subsections (1) and (4) of section 655.045, Florida Statutes, are amended to read:

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

~~(1)(a) The office shall conduct an examination of the condition of each state financial institution during each 18-month period, beginning July 1, 1981. The office may conduct more frequent examinations based upon the risk profile of the financial institution, prior examination results, or significant changes in the institution or its operations. The office may use continuous, phase, or other flexible scheduling examinations methods for very large or complex state financial institutions and financial institutions owned or controlled by a multi-financial institution holding company. The office shall consider examination guidelines from federal regulatory agencies in order to facilitate, coordinate, and standardize examination processes. The office may accept an examination made by the appropriate federal regulator, insuring or guaranteeing corporation, or agency with respect to the condition of the state financial institution or may make a joint or concurrent examination with the appropriate federal regulator, insuring or guaranteeing corporation, or agency. However, at least once during each 36-month period beginning on July 3, 1992, the office shall conduct an examination of each state financial institution in such a manner as to allow the preparation of a complete examination report not subject to the right of any federal or other non-Florida entity to limit access to the information contained therein.~~

(a) With respect to, and examination of, the condition of a state institution, the office may accept an examination made by an appropriate federal regulatory agency, or may make a joint or concurrent examination with the federal agency. The office may furnish a copy of all examinations or reviews made of financial institutions or their affiliates to the state or federal agencies participating in the examination, investigation, or review, or as otherwise authorized by s. 655.057.

~~(b) If, as a part of an examination or investigation of a state financial institution, subsidiary, or service corporation, the office has reason to believe that an affiliate is engaged in an unsafe or unsound practice or that the conduct or business operations of an affiliate may have has a negative impact on the state financial institution, subsidiary, or service corporation, then the office may conduct such review such books and records as are reasonably related to the examination or investigation of the affiliate as the office deems necessary. The office may furnish a copy of all examinations or reviews made of such financial institutions or their affiliates to the state or federal financial institution regulators participating in the examination of a bank holding company; an association holding company; or any of their subsidiaries, service corporations, or affiliates; an insuring or guaranteeing corporation or agency or its representatives; or state financial institution regulators participating in the examination of a holding company or its subsidiaries.~~

~~(c)~~^(b) The office may recover the costs of examination and supervision of a state financial institution, subsidiary, or service corporation that is determined by the office to be engaged in an unsafe or unsound practice. The office may also recover the costs of any review conducted pursuant to paragraph ~~(b)~~^(a) of any affiliate of a state financial institution determined by the office to have contributed to an unsafe or unsound practice at a state financial institution, subsidiary, or service corporation.

~~(d)~~^(e) For the purposes of this section, the term “costs” means the salary and travel expenses directly attributable to the field staff examining the state financial institution, subsidiary, or service corporation, and the travel expenses of any supervisory staff required as a result of examination findings. The mailing of any costs incurred under this subsection must be postmarked within ~~not later than~~ 30 days after the date of receipt of a notice stating that such costs are due. The office may levy a late payment of up to \$100 per day or part thereof that a payment is overdue, unless ~~it is~~ excused for good cause. However, for intentional late payment of costs, the office may levy an administrative fine of up to \$1,000 per day for each day the payment is overdue.

~~(e)~~^(d) The office may require an audit of a ~~any~~ state financial institution, subsidiary, or service corporation by an independent certified public accountant, or other person approved by the office, ~~if whenever~~ the office, after conducting an examination of the ~~such~~ state financial institution, subsidiary, or service corporation, or after accepting an examination of such state financial institution by an the appropriate state or federal regulatory agency, determines that ~~such~~ an audit is necessary in order to ascertain the condition of the financial institution, subsidiary, or service corporation. The cost of such audit shall be paid by the state financial institution, subsidiary, or state service corporation.

(4) A copy of the report of each examination must be furnished to the entity ~~financial institution~~ examined. Such report ~~of examination~~ shall be presented to the board of directors at its next regular or special meeting.

Section 6. Section 655.41, Florida Statutes, is amended to read:

655.41 ~~Cross-industry Conversions, mergers, consolidations, and acquisitions; Definitions used in ss. 655.41-655.419.—As used in ss. 655.41-655.419, the term:~~

(1) “Financial entity” means a financial institution whose an association, bank, credit union, savings bank, Edge Act or agreement corporation, or trust company organized under the laws of this state or organized under the laws of the United States and having its principal office is place of business in this state.

(2) “Capital stock financial institution” means a financial institution that ~~entity which~~ is authorized to issue capital stock.

(3) “Mutual financial institution” means a financial institution that entity which is not authorized to issue stock and the assets of which are owned by its members.

Section 7. Paragraphs (a) and (c) of subsection (1) of section 655.411, Florida Statutes, are amended to read:

655.411 Conversion of charter.—

(1) ~~Any~~ Any financial entity may apply to the office for permission to convert its charter without changing its a change of business form or ~~convert its charter in order to~~ do business as another type of financial entity in accordance with the following procedures:

(a) The board of directors must approve a plan of conversion by a majority vote ~~of a majority~~ of all the directors. The plan must include a statement of:

1. The type of financial entity which would result if the application were approved and the proposed name under which it would do business.

2. The method and schedule for terminating any activities and disposing of any assets or liabilities that which would not conform to the requirements ~~of applicable to~~ the resulting financial entity.

3. The ~~competitive~~ impact of such change on the financial entity's business plan and operations, including any effect on the availability of particular financial services in the market area served by the financial entity.

4. Such financial data as may be required to determine compliance with the capital, reserve, and liquidity requirements applicable to the resulting financial entity.

5. Such other information as the commission may by rule require.

(c) The office shall approve the plan if it finds that:

1. The resulting financial entity would have an adequate capital structure with regard to its activities and its deposit liabilities.

2. The proposed conversion would not cause a substantially adverse effect on the financial condition of the ~~any~~ financial entity ~~already established in the primary service area~~.

3. The officers and directors have sufficient experience, ability, and standing to indicate a reasonable promise for the successful operation of the resulting financial entity.

4. The schedule for termination of any nonconforming activities and disposition of any nonconforming assets and liabilities is reasonably prompt, and the plan for such termination and disposition does not include an any unsafe or unsound practice.

5. ~~None of~~ The officers or directors have not ~~has~~ been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida Control of money laundering in financial institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

6. The resulting financial entity is able to comply with the applicable terms of any regulatory action in effect before the date of the conversion.

7. The current and resulting primary federal regulatory agencies do not object to the proposed conversion.

If the office disapproves the plan, it shall state its objections and give the financial entity an opportunity ~~to the parties~~ to amend the plan to overcome such objections. The office may deny an application by an ~~any~~ financial entity that ~~which~~ is subject to a cease and desist order or other supervisory restriction or order imposed by a ~~any~~ state or federal supervisory authority, insurer, or guarantor.

Section 8. Section 655.414, Florida Statutes, is amended to read:

655.414 Acquisition of assets; assumption of liabilities.—With prior approval of the office and upon such conditions as the commission prescribes by rule, a ~~any~~ financial entity may acquire all or substantially all of the assets of, or assume all or any part of the liabilities of, any other financial institution entity in accordance with the procedures and subject to the following conditions and limitations:

(1) ADOPTION OF A PLAN.—The board of directors of the acquiring or assuming financial entity and the board of directors of the transferring financial institution entity must adopt, by a majority vote, a plan for such acquisition, assumption, or sale on ~~such~~ terms that as are mutually agreed upon. The plan must include:

(a) The names and types of financial institutions entities involved.

(b) A statement setting forth the material terms of the proposed acquisition, assumption, or sale, including the plan for disposition of all assets and liabilities not subject to the plan.

(c) A provision for liquidation, if applicable, of the transferring financial institution entity upon execution of the plan, or a provision setting forth the business plan for the continued operation of each financial institution after the execution of the plan.

(d) A statement that the entire transaction is subject to written approval of the office and approval of the members or stockholders of the transferring financial institution entity.

(e) If a stock financial institution is the transferring financial institution entity and the proposed sale is not ~~to be~~ for cash, a clear and concise

statement that dissenting stockholders of the institution ~~such financial entity~~ are entitled to the rights set forth in s. 658.44(4) and (5).

(f) The proposed effective date of the ~~such~~ acquisition, assumption, or sale and such other information and provisions as ~~may be~~ necessary to execute the transaction or as ~~may be~~ required by the office.

(2) APPROVAL OF OFFICE.—Following approval by the board of directors of each participating financial institution ~~entity~~, the plan, together with certified copies of the authorizing resolutions adopted by the boards and a completed application with a nonrefundable filing fee, must be forwarded to the office for its approval or disapproval. The office shall approve the plan of acquisition, assumption, or sale if it appears that:

(a) The resulting financial entity or entities would have an adequate capital structure in relation to its activities and its deposit liabilities;

(b) The plan is fair to all parties; and

(c) The plan is not contrary to the public interest.

If the office disapproves the plan, it shall state its objections and give the parties an opportunity ~~to the parties~~ to amend the plan to overcome such objections.

(3) VOTE OF MEMBERS OR STOCKHOLDERS.—If the office approves the plan, it may be submitted to the members or stockholders of the transferring financial institution ~~entity~~ at an annual meeting or at a any special meeting called to consider such action. Upon a majority favorable vote of ~~51 percent or more~~ of the total number of votes eligible to be cast or, in the case of a credit union, a majority vote ~~51 percent or more~~ of the members present at the meeting, the plan is adopted.

(4) ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

(a) If the plan is adopted by the members or stockholders of the transferring financial institution ~~entity~~, the president or vice president and the cashier, manager, or corporate secretary of such institution ~~financial entity~~ shall submit the adopted plan to the office, together with a certified copy of the resolution of the members or stockholders approving it.

(b) Upon receipt of the certified copies and evidence that the participating financial institutions ~~entities~~ have complied with all applicable state and federal law and rules ~~regulations~~, the office shall certify, in writing, to the participants that the plan has been approved.

(c) Notwithstanding approval of the members or stockholders or certification by the office, the board of directors of the transferring financial institution ~~entity~~ may, ~~in its discretion~~, abandon such a transaction without further action or approval by the members or stockholders, subject to the rights of third parties under any contracts relating thereto.

(5) FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A PARTICIPANT.—If one of the participants in a transaction under this section is a federally chartered financial institution or an out-of-state financial institution entity, all participants must also comply with such requirements ~~as may be imposed by federal and other state law for the such an acquisition, assumption, or sale and provide evidence of such compliance to the office as a condition precedent to the issuance of a certificate authorizing the transaction; however, if the purchasing or assuming financial institution entity is a federal or out-of-state state-chartered federally chartered financial institution and the transferring state financial entity will be liquidated,~~ approval of the office is not required.

(6) STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A mutual financial institution may not sell all or substantially all of its assets to a stock financial institution entity until it has first converted into a capital stock financial institution in accordance with s. 665.033(1) and (2). For this purpose, references in s. 665.033(1) and (2) to associations ~~are deemed to refer also refer~~ to credit unions; but, in the case of a credit union, the provision ~~therein~~ concerning proxy statements does not apply.

Section 9. Section 655.416, Florida Statutes, is amended to read:

655.416 Book value of assets.—Upon the effective date of a merger, consolidation, conversion, or acquisition pursuant to ss. 655.41-655.419, an asset may not be carried on the books of the resulting financial entity at a valuation higher than that at which it was carried on the books of a participating or converting financial institution entity at the time of its last examination by a state or federal examiner before such the effective date of ~~such merger, consolidation, conversion, or acquisition,~~ without written approval from the office.

Section 10. Section 655.417, Florida Statutes, is amended to read:

655.417 Effect of merger, consolidation, conversion, or acquisition.—From and after the effective date of a merger, consolidation, conversion, or acquisition, the resulting financial entity or entities may conduct business in accordance with the terms of the plan as approved, subject to the following conditions and limitations; ~~provided that:~~

(1) CONTINUING ENTITY.—Even though the charter of a participating or converting financial institution may have ~~entity has~~ been terminated, the resulting financial entity is deemed to be a continuation of the participating or converting financial institution entity such that all acquired property of the participating or converting institution ~~financial~~ entity, including rights, titles, and interests in and to all property of whatsoever kind, whether real, personal, or mixed, and things in action, and all rights, privileges, interests, and assets of any conceivable value or benefit which are then existing, or pertaining to it, or which would inure to it, are immediately vested in and continue to be the property of the resulting financial entity, by act of law and without any conveyance or transfer and without further act or deed. The

~~resulting; and such~~ financial entity has, holds, and enjoys the same in its own right as fully and to the same extent as the same was possessed, held, and enjoyed by the participating or converting financial institution entity; and, at the time of the taking effect of such merger, consolidation, conversion, or acquisition takes effect, the resulting financial entity has and succeeds to all the rights, obligations, and relations of the participating or converting institution ~~financial~~ entity.

(2) EFFECT ON JUDICIAL PROCEEDINGS.—Any pending action or other judicial proceeding to which the participating or converting financial institution entity is a party is not abated by reason of such merger, consolidation, conversion, or acquisition but may be prosecuted to final judgment, order, or decree ~~in the same manner as if such action had not been taken;~~ and The resulting financial entity ~~resulting from such merger, consolidation, conversion, or acquisition~~ may continue such action in its new name;~~;~~ and any judgment, order, or decree that may be rendered for or against it which might have been rendered for or against the participating or converting institution ~~may be rendered for or against the resulting~~ financial entity ~~previously involved in such judicial proceeding.~~

(3) CREDITORS' RIGHTS.—The resulting financial entity in a merger, consolidation, conversion, or acquisition is liable for all obligations of the participating or converting financial institution entity which existed before ~~prior to~~ such action;~~;~~ and the action taken does not prejudice the right of a creditor of the participating or converting financial institution ~~financial~~ entity to have his or her debts paid out of the assets thereof, nor may such creditor be deprived of, or prejudiced in, any action against the officers, directors, members, or other persons participating in the conduct of the affairs of a participating or converting financial institution entity for any neglect or misconduct.

(4) EXCEPTION.—In the case of an acquisition of assets or assumption of liabilities pursuant to s. 655.414, ~~the provisions of subsections (1), (2), and (3) apply only to the assets acquired and the liabilities assumed by the resulting financial entity if, provided~~ sufficient assets to satisfy all liabilities not assumed by the resulting financial entity are retained by the transferring financial institution entity.

Section 11. Section 655.418, Florida Statutes, is amended to read:

655.418 Nonconforming activities; cessation.—If, as a result of a merger, consolidation, conversion, or acquisition ~~pursuant to ss. 655.41-655.419,~~ the resulting financial entity is to be of a different type or of a different character than any one or all of the participating or converting financial institutions entities, such resulting financial entity is ~~will~~ be subject to the following conditions and limitations:

(1) PLAN FOR TERMINATION.—The plan of merger, consolidation, conversion, or acquisition must set forth the method and schedule for terminating those activities that are not permitted by the laws of this state

for the resulting financial entity but that were authorized for any of the participating or converting financial institutions entities.

(2) EFFECTIVE DATE.—The plan of merger, consolidation, conversion, or acquisition must state that, from the effective date of such action, the resulting financial entity will not engage in any nonconforming activities, except to the extent necessary to fulfill obligations existing before ~~prior to~~ the merger, consolidation, conversion, or acquisition, pursuant to subsection (4).

(3) COMPLIANCE WITH LENDING AND INVESTMENT LIMITATIONS.—If, as a result of such merger, consolidation, conversion, or acquisition, the resulting financial entity will exceed any lending, investment, or other limitations imposed by law, the financial entity must ~~shall~~ conform to such limitations within such period of time as is established by the office.

(4) DIVESTITURE.—The office may, as a condition to such merger, consolidation, conversion, or acquisition, require a nonconforming activity to be divested in accordance with such additional requirements as it considers appropriate under the circumstances.

Section 12. Section 655.4185, Florida Statutes, is amended to read:

655.4185 Emergency action.—

(1) Notwithstanding any other provision of the financial institutions codes or of chapter 120, if the office or the appropriate federal regulatory agency, or the appropriate home state regulatory agency for an out-of-state state financial institution, finds that immediate action is necessary in order to prevent the probable failure of one or more financial institutions, aid in the resolution of a receivership, conservatorship, or liquidation of a financial institution, or otherwise protect the depositors of a failing financial institution, which in this subsection may be referred to as a “failing financial entity,” the office may, ~~with the concurrence of the appropriate federal regulatory agency in the case of any financial institution the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration,~~ issue an emergency order authorizing:

(a) The merger of any such failing institution ~~financial~~ entity with an appropriate state financial institution entity;

(b) An appropriate state financial institution entity to acquire any of the assets or ~~and~~ assume any of the liabilities, or any combination thereof, of the any such failing institution ~~financial~~ entity, including all rights, powers, and responsibilities as fiduciary in an instance in which the failing ~~financial~~ institution is actively engaged in the exercise of trust powers;

(c) The conversion of a ~~any such failing institution~~ financial entity into a state financial institution ~~that is not failing~~ entity; ~~or~~

(d) The chartering of a new state financial institution entity to acquire any of the assets or and assume any of the liabilities, or any combination thereof, of a any such failing institution financial entity and to assume rights, powers, and responsibilities as fiduciary in a case in which such failing institution financial entity is engaged in the exercise of trust powers;

(e) The direct or indirect acquisition of control of the failing institution;

(f) The appointment of provisional directors, executive officers, or other employees for the failing institution pursuant to s. 655.03855; or

(g) Any other capital or liquidity restoration plan or action deemed prudent by the office.

(2) Any such finding by the office must be based upon reports or other information furnished to it by the failing financial institution, by a state or federal financial institution examiner or regulatory entity, or upon other evidence from which it is reasonable to conclude that the failing such financial institution is insolvent, or is threatened with imminent insolvency, or lacks a board of directors or executive management that can operate the entity in a safe and sound manner. The office may disallow intangible assets, deferred tax assets, loan or lease loss reserves, subordinated debt, and illegally obtained currency, monetary instruments, funds, or other financial resources from the capitalization requirements of the financial institutions codes. The stockholders of a failing institution bank, association, or trust company that is acquired by another financial institution bank or trust company under this section are entitled to the same procedural rights and to compensation for the remaining value of their shares as is provided for dissenters in s. 658.44, except that they may not have no right to vote against the transaction. Any transaction authorized by this section may be accomplished through the organization of a successor financial institution.

(3) The office may provide prior approval of business entities or individuals who, pursuant to this section, may charter a new state financial institution or acquire control of, purchase, merge with, or become directors and executive officers of, a failing financial institution. The application for prior approval must be in the form prescribed by the commission by rule and be accompanied by a nonrefundable filing fee of \$7,500.

Section 13. Section 655.419, Florida Statutes, is amended to read:

655.419 Effect.—The provisions of ss. 655.41-655.419 relating to merger, consolidation, conversion, or acquisition of assets of any financial institution entity are cumulative with all other provisions of the financial institutions codes and do not modify, limit, or repeal any of such other provisions except as expressly provided in the codes or as stated in an emergency order issued by the office pursuant to s. 655.4185 stated herein. Additionally, the provisions of ss. 655.41-655.419 do not grant any authority, directly or indirectly, for any bank, association, trust company, association holding company, or bank holding company, the operations of which are principally

conducted outside this state, to acquire, convert to, or merge or consolidate with any financial entity.

Section 14. Subsection (1) of section 655.947, Florida Statutes, is amended to read:

655.947 Debt cancellation products.—

(1) Debt cancellation products may be offered, and a fee may be charged, by financial institutions and subsidiaries of financial institutions subject to the provisions of this section and the rules and orders of the commission or office. As used in this section, the term “financial institutions” includes those defined in s. 655.005(1)(h), insured depository institutions as defined in 12 U.S.C. s. 1813, and subsidiaries of such institutions.

Section 15. Present subsections (8) through (16) of section 657.038, Florida Statutes, are redesignated as subsections (7) through (15), respectively, and subsections (6) and (7) of that section are amended, to read:

657.038 Loan powers.—

~~(6) As used in this section, the term “related interest” means a person’s interest in a partnership as a general partner, and any limited partnership, corporation, or other business organization controlled by that person. A limited partnership, corporation, or other business organization is controlled by a person who:~~

~~(a) Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of any such business organization;~~

~~(b) Controls in any manner the election of a majority of the directors of any such business organization; or~~

~~(c) Has the power to exercise a controlling influence over the management or policies of such business organization.~~

(6)(7) In computing a person’s the total obligations outstanding liabilities of any person, all loans endorsed or guaranteed as to repayment by that such person and by any related interest of such person must be included. The credit union must also include all of the person’s potential liabilities and obligations resulting from the person’s derivatives transactions, repurchase agreements, securities lending and borrowing transactions, credit default swaps, and similar contracts.

Section 16. Subsection (7) of section 657.042, Florida Statutes, is amended to read:

657.042 Investment powers and limitations.—A credit union may invest its funds subject to the following definitions, restrictions, and limitations:

(7) SPECIAL PROVISIONS.—

(a) A credit union may not invest its funds in ~~None of the~~ bonds or other obligations described in this section shall be eligible for investment by credit unions in any amount unless the bonds or other obligations are current as to all payments of principal and interest and unless rated in one of the four highest classifications, or, in the case of commercial paper, unless it is of prime quality and of the highest letter and numerical rating, as established by a nationally recognized investment rating service, or any comparable rating as determined by the office.

(b) A credit union shall establish written policies and procedures for evaluating the systemic and specific risks and benefits associated with investments authorized under this section before making such investments and must conduct appropriate risk management and monitoring for the duration of the investment. An investment decision may not be based solely on the rating of the bond or other obligation by an investment rating service. The office may require a credit union to divest itself of an investment that the office determines creates excessive risk or the associated risk exceeds the ability of the credit union to properly evaluate and manage.

~~(c)~~ (b) With prior office approval ~~of the office~~, any investment permitted in this section may also be made indirectly by investment in a trust or mutual fund, the investments of which are limited as set forth in this section,⁵ ~~provided that~~ The credit union must maintain a current file on each investment which contains sufficient information to determine whether the investment complies with the requirements of this section. If the investment fails to comply with the requirements of this section, the credit union must divest itself of its investment, unless otherwise approved by the office.

Section 17. Subsection (5) of section 657.063, Florida Statutes, is amended to read:

657.063 Involuntary liquidation.—

(5) When the liquidating agent of the credit union has been appointed, the office may waive or deem inapplicable the fees required by this chapter and the examination required by s. 655.045(1)(a) ~~if, provided~~ the liquidating agent submits periodic reports to the office on the status of the liquidation.

Section 18. Subsection (8) of section 657.064, Florida Statutes, is amended to read:

657.064 Voluntary liquidation.—A credit union may elect to dissolve voluntarily and liquidate its affairs in the following manner:

(8) When the liquidating agent of the credit union has been appointed, the office may waive or hold inapplicable the fees required by this chapter and the examination required by s. 655.045(1)(a) ~~if, provided~~ the liquidating agent submits periodic reports to the office on the status of the liquidation.

Section 19. Subsections (3), (4), and (25) of section 658.12, Florida Statutes, are amended to read:

658.12 Definitions.—Subject to other definitions contained in the financial institutions codes and unless the context otherwise requires:

(3) “Banker’s bank” means a bank insured by the Federal Deposit Insurance Corporation, or a holding company which owns or controls such an insured bank, if a minimum of 75 percent of when the stock of such bank or holding company is owned exclusively by other banks, the bank is organized solely to do business with other financial institutions, and the bank does not do business with the general public and such bank or holding company and all subsidiaries thereof are engaged exclusively in providing services for other financial institutions and their officers, directors, and employees.

(4) “Branch” or “branch office” of a bank means any office or place of business of a bank, other than its main office and the facilities and operations authorized by ss. 658.26(4), ~~658.65~~, and 660.33, at which deposits are received, checks are paid, or money is lent. With respect to a bank ~~that~~ which has a trust department, the terms “branch” and “branch office” have the meanings herein ascribed to a branch or a branch office of a trust company and mean. “Branch” or “branch office” of a trust company means any office or place of business of a trust company, other than its main office and its trust service offices established pursuant to s. 660.33, where trust business is transacted with its customers.

~~(25) Terms used but not defined in this code, but which are defined in Revised Article 3 or Article 4 of the Uniform Commercial Code as enacted in chapters 673 and 674 shall, in this code, unless the context otherwise requires, have the meanings ascribed to them in chapters 673 and 674.~~

Section 20. Section 658.165, Florida Statutes, is amended to read:

658.165 Banker’s banks; formation; applicability of financial institutions codes; exceptions.—

(1) ~~If~~ When authorized by the office, a corporation may be formed under the laws of this state for the purpose of becoming a banker’s bank. An application for authority to organize a banker’s bank is subject to the provisions of ss. 658.19, 658.20, and 658.21, except that ~~s. the provisions of ss. 658.20(1)(b) and (c) and the minimum stock ownership requirements for the organizing directors provided in s. 658.21(2) do not apply.~~

(2) A banker’s bank chartered pursuant to subsection (1) ~~is~~ shall be subject to the provisions of the financial institutions codes and rules adopted thereunder; and, except as otherwise specifically provided herein or by rule or order of the commission or office, a banker’s bank ~~is~~ shall be vested with or subject to the same rights, privileges, duties, restrictions, penalties, liabilities, conditions, and limitations that would apply to a state bank. A banker’s bank is organized solely to do business with other financial

institutions and is not deemed to be doing business with the general public even if, as an incidental part of its activities, it does business to a limited extent with entities and persons other than financial institutions as follows:

(a) The range of customers with which the banker's bank does business is limited to financial institutions, including subsidiaries or organizations owned by financial institutions; directors, officers, or employees of the same or other financial institutions; individuals whose accounts are acquired at the request of a financial institution's supervisory authority due to the actual or impending failure of a financial institution; and financial institution trade associations; and

(b) The banker's bank does not make loans to, or investments in, entities and persons other than financial institutions which exceed 10 percent of the banker's bank's total assets, and the banker's bank does not receive deposits from, or issue other liabilities to, entities and persons other than financial institutions which exceed 10 percent of the banker's bank total liabilities.

(3) Notwithstanding any other provision of this chapter, a banker's bank may repurchase, for its own account, shares of its own capital stock; however, the outstanding capital stock may not be reduced below the minimum required by this chapter without the prior approval of the office.

(4) A banker's bank may provide services at the request of financial institutions in organization ~~organizations~~ that have:

(a) Received conditional regulatory approval from the office in the case of a state bank or trust company, or from the appropriate state regulatory agency in the case of an out-of-state bank or trust company, or received preliminary approval from the Office of the Comptroller of the Currency in the case of a national bank.

(b) Filed articles of incorporation or organization pursuant to s. 658.23 in the case of a state bank or trust company, or pursuant to applicable state law in the case of an out-of-state bank or trust company, or filed acceptable articles of incorporation and an organization certificate in the case of a national bank.

(c) Received capital funds in an amount not less than the minimum capitalization required in any notice of or order granting conditional regulatory approval.

(5) A banker's bank may provide services to the organizers of a ~~proposed~~ financial institution in organization which ~~that~~ has not received conditional regulatory approval ~~if provided that~~ such services are limited to the financing of the expenses of organizing such proposed financial institution and expenses relating to the acquisition or construction of the institution's proposed operating facilities and associated fixtures and equipment.

(6) If the commission or office finds that any provision of this chapter is inconsistent with the purpose for which a banker's bank is organized and

that the welfare of the public or any financial institution would not be jeopardized thereby, the commission, by rule, or the office, by order, may exempt a banker's bank from such provision or limit the application thereof.

Section 21. Subsection (3) of section 658.20, Florida Statutes, is repealed.

Section 22. Subsection (1) of section 658.28, Florida Statutes, is amended to read:

658.28 Acquisition of control of a bank or trust company.—

(1) ~~If In any case in which~~ a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a any state bank or state trust company, and ~~thereby to change the control of that bank or trust company,~~ such each person or group of persons must shall first submit an make application to the office for a certificate of approval of such proposed change ~~of control of the bank or trust company.~~

(a) The application must shall contain the name and address, and such other relevant information as the commission or office requires, including information relating to other and former addresses and the reputation, character, responsibility, and business affiliations, of the proposed ~~new owner or each of the proposed~~ new owners of the controlling interest.

(b) The office shall issue a certificate of approval only after it has made an investigation and determined that the proposed new ~~owner or~~ owners of the interest are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company in a legal and proper manner and that the interests of the other stockholders, if any, ~~and~~ the depositors and creditors of the bank or trust company, and the interests of the public generally will not be jeopardized by the proposed change in ownership, controlling interest, or management.

(c) ~~A~~ No person who has been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to ~~the Florida Control of money laundering in financial institutions Act;~~ chapter 896, relating to offenses related to financial transactions; or any similar state or federal law may not receive shall be given a certificate of approval ~~by the office.~~

(d) A business organization that is not a bank holding company authorized by the office or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. ss. 1841 et seq., may not control a bank.

Section 23. Section 658.295, Florida Statutes, is repealed.

Section 24. Section 658.2953, Florida Statutes, is amended to read:

658.2953 Interstate branching.—

(1) ~~SHORT TITLE.~~—This section may be cited as the “Florida Interstate Branching Act.”

(2) ~~PURPOSE.~~—The purpose of this section is to provide for the regulation of permit interstate branching, effective May 31, 1997, by a merger transaction under s. 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, in accordance with this section and consistent with the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss. 1811 et seq.; the Bank Holding Company Act of 1956, as amended, 12 U.S.C. ss. 1841 et seq., and 12 U.S.C. s. 5451; and Pub. L. No. 111-203.

(3) ~~LEGISLATIVE INTENT.~~—The Legislature finds it is in the interest of the citizens of this state, and declares it to be the intent of this section, to:

(a) ~~Supervise, regulate, and examine persons, firms, corporations, associations, and other business entities furnishing depository, lending, and associated financial services in this state.~~

(b) ~~Protect the interests of shareholders, members, depositors, and other customers of financial institutions operating in this state.~~

(c) ~~Preserve the competitive equality of state financial institutions as compared with federal financial institutions.~~

(d) ~~Promote the availability, efficiency, and profitability of financial services in the communities of this state.~~

(e) ~~Preserve the advantages of the dual banking system.~~

(f) ~~Cooperate with federal regulators and regulators from other states in regulating financial institutions, in improving the quality of regulation, and in promoting the interests of this state in interstate matters.~~

(g) ~~Provide the commission and office sufficient powers and responsibilities to carry out such purposes.~~

(3)(4) ~~DEFINITIONS.~~—As used in this section, the term unless a different meaning is required by the context:

(a) ~~“Bank” has the meaning set forth in 12 U.S.C. s. 1813(h), provided the term “bank” does not include any “foreign bank” as defined in 12 U.S.C. s. 3101(7), except such term includes any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.~~

(b) ~~“Bank holding company” has the meaning set forth in 12 U.S.C. s. 1841(a)(1).~~

(c) ~~“Bank regulatory agency” means:~~

1.— Any agency of another state with primary responsibility for chartering and regulating banks.

2.— The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to such agencies.

(d) —“Branch” has the meaning set forth in s. 658.12.

(e) —“De novo branch” means a branch of a bank located in a host state which:

1. — Is originally established by the bank as a branch.

2. — Does not become a branch of the bank as a result of:

a. — The acquisition of another bank or a branch of another bank; or

b. — The merger, consolidation, or conversion involving any such bank or branch.

(f) —“Control” shall be construed consistently with the provisions of 12 U.S.C. s. 1841(a)(2).

(g) —“Failing financial entity” means an out-of-state state bank that has been determined by its home state regulator or the appropriate federal regulatory agency to be imminently insolvent or to require immediate action to prevent its probable failure.

(h) —“Home state” means:

1. — With respect to a state bank, the state by which the bank is chartered.

2. — With respect to a national bank, the state in which the main office of the bank is located.

3. — With respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. s. 3103(e).

(i) —“Home state regulator” means, with respect to an out-of-state state bank, the bank’s regulatory agency of the state in which such bank is chartered.

(j) —“Host state” means a state, other than the home state of a bank, in which the bank maintains or seeks to establish and maintain a branch.

(k) —“Insured depository institution” has the meaning set forth in 12 U.S.C. s. 1813(e)(2) and (3).

(a)(4) —“Interstate merger transaction” means the merger or consolidation of banks with different home states, and the conversion of branches of any

bank involved in the merger or consolidation into branches of the resulting bank.

~~(m) “Out-of-state bank” means a bank whose home state is a state other than this state.~~

~~(n) “Out-of-state state bank” means a bank chartered under the laws of any state other than this state.~~

~~(b)(e)~~ “Resulting bank” means a bank that results ~~has resulted~~ from an interstate merger transaction under this section.

~~(p) “State” means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.~~

~~(c)(q)~~ “Florida bank” means a bank whose home state is this state.

~~(r) “State bank” means a bank chartered under the laws of this state.~~

~~(5) INTERSTATE BRANCHING BY DE NOVO ENTRY PROHIBITED. An out-of-state bank that does not operate a branch in this state is prohibited from establishing a de novo branch in this state.~~

~~(4)(6)~~ AUTHORITY OF STATE BANKS TO ESTABLISH INTERSTATE BRANCHES BY MERGER.—With the prior written approval of the office, a state bank may establish, maintain, and operate one or more branches in a state other than this state pursuant to an interstate merger transaction in which the state bank is the resulting bank. No later than the date on which the required application for the interstate merger transaction is filed with the appropriate responsible federal bank regulatory agency, the applicant state bank shall file an application on a form prescribed by the commission accompanied by the required fee pursuant to s. 658.73. The applicant must ~~shall~~ also comply with the provisions of ss. 658.40-658.45.

~~(5)(7)~~ INTERSTATE MERGER TRANSACTIONS AND BRANCHING PERMITTED.—

(a) One or more Florida banks may enter into an interstate merger transaction with one or more out-of-state banks. An out-of-state bank resulting from such transaction may maintain and operate the branches of a Florida bank that participated in such transaction if, ~~provided that~~ the conditions and filing requirements of this section are met.

(b) Except as otherwise expressly provided in this section, an interstate merger transaction is ~~shall~~ not be permitted if, upon consummation of such transaction, the resulting bank, including all insured depository institutions that would be “affiliates,” as defined in 12 U.S.C. s. 1841(k), of the resulting bank, would control 30 percent or more of the total amount of deposits held by all insured depository institutions in this state. However, this paragraph

does not apply to initial entry into this state by an out-of-state bank or bank holding company.

~~(c) An interstate merger transaction resulting in the acquisition by an out-of-state bank of a Florida bank shall not be permitted under this section unless such Florida bank has been in existence and continuously operating, on the date of such acquisition, for more than 3 years.~~

~~(6)(8) NOTICE AND FILING REQUIREMENTS.—~~An Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Florida bank must ~~shall~~ notify the office of the proposed merger within 15 days after the date ~~on which~~ it files an application for an interstate merger transaction with the appropriate federal regulatory agency and the home state regulatory agency, if applicable. Thereafter, the out-of-state bank and the Florida bank must, upon request of the office, submit status updates with such information as the office specifies until the merger transaction is completed or the merger application is withdrawn or denied.

~~(7)(9) EXAMINATIONS; PERIODIC REPORTS; COOPERATIVE AGREEMENTS; ASSESSMENT OF FEES.—~~

(a) The office may examine any Florida branch of an out-of-state state bank which the office deems necessary for the purpose of determining whether the branch is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices.

(b) The office may enter into cooperative, coordinating, or information-sharing agreements with other bank regulatory agencies or any organization affiliated with or representing one or more bank regulatory agencies to facilitate the regulation of out-of-state state branches doing business in this state.

(c) The office may accept reports of examinations or investigations, or other records from other regulatory agencies having concurrent jurisdiction over a state bank or a bank holding company that controls out-of-state state banks that operate branches in this state in lieu of conducting its own examinations or investigations.

(d) The office may assess supervisory and examination fees that ~~are~~ shall be payable by state banks and out-of-state state bank holding companies doing business in this state in connection with the office's performance of its duties under this section and as prescribed by the commission. Such fees may be shared with other bank regulatory agencies or ~~any~~ organizations affiliated with or representing one or more bank regulatory agencies in accordance with agreements between them and the office.

~~(8)(10) LAWS APPLICABLE TO INTERSTATE BRANCHING OPERATIONS.—~~Laws of this state regarding consumer protection, fair lending, and establishment of intrastate branches apply to any out-of-state bank branch

doing business in this state to the same extent as the laws of this state apply to a state bank, unless except:

(a) ~~When~~ Federal law preempts the application of the laws of this state.

(b) ~~When~~ The Comptroller of the Currency determines that the application of the such laws of this state would have a discriminatory effect on the branch of a national bank in comparison with the effect the application of such state laws would have with respect to branches of a state bank.

~~(9)~~(11) ENFORCEMENT.—

(a) If the office determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of any ~~provision~~ of law of this state, or that such branch is being operated in an unsafe and unsound manner, the office may take all such enforcement actions as it would be empowered to take if the branch were a state bank ~~if, provided that~~ the office ~~shall promptly~~ gives ~~give~~ notice to the home state regulator of each enforcement action taken against the ~~an~~ out-of-state state bank and, to the extent practicable, consults and cooperates ~~shall consult and cooperate~~ with the home state regulator in pursuing and resolving the said enforcement action.

(b) The office may take any action jointly with other regulatory agencies having concurrent jurisdiction over out-of-state banks and bank holding companies that operate branches in this state, or take such action independently, to carry out its responsibilities.

~~(10)~~(12) NOTICE OF SUBSEQUENT MERGER.—

(a) Each out-of-state state bank that has established and maintains a branch in this state must ~~pursuant to this section~~ shall give at least 30 days' prior written notice to the office of any merger, consolidation, or other transaction that would cause a change of control pursuant to home state or federal law with respect to such bank or any bank holding company that controls such bank.

(b) ~~Notwithstanding any other provisions of the financial institutions codes or of chapter 120,~~ In the case of a failing financial institution entity, the office shall have the power, with the concurrence of the appropriate regulatory agencies ~~agency~~, may ~~to~~ issue an emergency order authorizing any necessary interstate banking or branching transaction pursuant to s. 655.4185.

1. ~~The merger or interstate merger transaction of any such failing financial entity with a state bank or bank holding company that controls a state bank;~~

2. ~~Any bank to acquire assets and assume liabilities of the Florida branches of any such failing financial entity;~~

~~3.—The conversion of any such failing financial entity into a state bank or trust company;~~

~~4.—The chartering of a new state bank to acquire the Florida branches of any such failing financial entity; or~~

~~5.—The chartering of a new state trust company to acquire assets and assume liabilities and rights, powers, and responsibilities as fiduciary of such failing financial entity.~~

~~(11)(13)~~ DE NOVO INTERSTATE BRANCHING BY STATE BANKS.

(a) With the prior approval of the office, a any state bank may establish and maintain a de novo branch or acquire a branch in a state other than this state by submitting an application with the office pursuant to s. 658.26.

(b) A state bank desiring to establish and maintain a branch in another state ~~pursuant to s. 658.26~~ shall pay the branch application fee set forth in s. 658.73. In acting on the application, the office shall consider the views of the appropriate bank regulatory agencies.

(c) An out-of-state bank may establish and maintain a de novo branch or acquire a branch in this state upon compliance with chapter 607 or chapter 608 relating to doing business in this state as a foreign business entity, including maintaining a registered agent for service of process and other legal notice pursuant to s. 655.0201.

~~(12)(14)~~ ADDITIONAL BRANCHES; POWERS.—

(a) An out-of-state bank ~~that has lawfully acquired or established a branch in this state or bank holding company that has acquired a bank in this state pursuant to s. 658.295, or by interstate merger pursuant to this section,~~ may establish an additional branch or additional branches in this state to the same extent that any Florida bank may establish a branch or branches in this state.

(b) An out-of-state bank may conduct only those activities at its Florida branch or branches which ~~that~~ are authorized under the laws of this state or of the United States. However, an out-of-state bank with trust powers ~~resulting from an interstate merger transaction with one or more Florida banks with trust powers shall be entitled to and may exercise all trust powers in this state as a Florida bank with trust powers that participated in the transaction.~~

Section 25. Section 658.296, Florida Statutes, is repealed.

Section 26. Section 658.36, Florida Statutes, is amended to read:

658.36 Changes in capital.—

(1) ~~A No~~ state bank or trust company ~~may not shall~~ reduce the number of shares of its outstanding capital stock without first obtaining the approval of the office, ~~and such~~ Approval shall be withheld if the reduction will cause the outstanding capital accounts stöck to be less than the minimum required pursuant to the financial institutions codes.

(2) ~~A Any~~ state bank or trust company may provide for an increase in its number of outstanding shares of capital stock after filing a written notice with the office at least 15 days before ~~prior to~~ making such increase. The office may waive the time requirement upon a demonstration of good cause.

(3) If a bank or trust company's capital accounts have been diminished by losses to less than the minimum required pursuant to the financial institutions codes, the market value of its shares of capital stock is less than the present par value, and the bank or trust company cannot reasonably issue and sell new shares of stock to restore its capital accounts at a share price of par value or greater of the previously issued capital stock, the office, notwithstanding any other provisions of chapter 607 or the financial institutions codes, may approve special stock offering plans.

(a) Such plans may include, but are not limited to, mechanisms for stock splits including reverse splits; revaluations of par value of outstanding stock; changes in voting rights, dividends, or other preferences; and creation of new classes of stock.

(b) The plan must be approved by majority vote of the bank or trust company's entire board of directors and by holders of two-thirds of the outstanding shares of stock.

(c) The office shall disapprove a plan that provides unfair or disproportionate benefits to existing shareholders, directors, executive officers, or their related interests. The office shall also disapprove any plan that is not likely to restore the capital accounts to sufficient levels to achieve a sustainable, safe, and sound financial institution.

(d) For any bank or trust company that the office determines to be a failing financial institution pursuant to s. 655.4185, the office may approve special stock offering plans without a vote of the shareholders.

Section 27. Subsection (2) of section 658.41, Florida Statutes, is amended to read:

658.41 Merger; resulting state or national bank.—

(2) ~~Nothing in~~ The laws law of this state ~~do not shall~~ restrict the right of a state bank or state trust company to merge with a resulting national bank or out-of-state bank. In such case the action to be taken by a constituent state bank or state trust company, and its rights and liabilities and those of its shareholders, ~~are shall~~ be the same as those prescribed for constituent national banks at the time of the action by the applicable federal law ~~of the~~ United States and not by the law of this state.

Section 28. Subsections (3) through (11) of section 658.48, Florida Statutes, are amended 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:

(3) LOANS TO OTHER PERSONS.—~~A No bank may not shall~~ extend credit, including the granting of a line of credit, to any ~~other~~ person ~~not included in subsection (2), including a any~~ related interest of that person, ~~which that, if when~~ aggregated with the amount of all other extensions of credit to that person and any related interest of that person, exceeds 15 percent of the capital accounts of the lending bank, unless the extension of credit has been approved in advance by a majority of the entire board of directors or by all members of an authorized committee thereof within not more than 1 year before ~~prior to~~ the time when such credit is extended.

(4) ~~RELATED INTERESTS.~~—As used in this section, the term “related interest” means, with respect to any person, any partnership, corporation, or other business organization controlled by that person. A corporation is controlled by a person who:

(a) ~~Owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the corporation;~~

(b) ~~Controls in any manner the election of a majority of the directors of the corporation; or~~

(c) ~~Has the power to exercise a controlling influence over the management or policies of the corporation.~~

(4)(5) SPECIAL PROVISIONS.—

(a) A limitation of 25 percent of the capital accounts of the lending bank applies to the aggregate of all loans made to a corporation, together with all loans secured by shares of stock, bonds, or other obligations of the same corporation, unless the stocks or bonds are listed and traded on a recognized stock exchange, ~~or are registered under the Securities Exchange Act of 1934, or are registered with the Board of Governors of the Federal Reserve System, with the Federal Deposit Insurance Corporation, or with the Comptroller of the Currency, in which case no aggregate loan limit applies.~~

(b) A limitation of 15 percent of the capital accounts of the lending bank applies to loans made to any one borrower on the security of shares of capital stock listed and traded on a recognized exchange. A limitation of 10 percent of the capital accounts of the lending bank applies to loans made to any one borrower on the security of shares of capital stock not listed on a recognized exchange or the obligations subordinate to deposits of another bank. A limitation of 25 percent of the capital accounts of the lending state bank applies to the aggregate of all loans secured by the shares of capital stock or the obligations subordinate to deposits of any one bank.

(c) ~~A~~ ~~No~~ loan may not shall be made by a bank:

1. On the security of the shares of its own capital stock or of its obligations subordinate to deposits.

2. On an unsecured basis for the purpose of purchasing ~~the purchase of~~ shares of its own capital stock or its obligations subordinate to deposits.

3. On a secured or unsecured basis for the purpose of purchasing ~~the purchase of~~ shares of the stock of its one-bank holding company.

(d) A one-bank holding company bank may make loans on its own one-bank holding company stock. For capital stock that is listed and traded on a recognized exchange, the stock may not be valued at more than 70 percent of its current market value, and for capital stock that is not listed and traded on a recognized exchange, the stock may not be valued at more than 70 percent of its current book value.

~~(e) Loans based upon the security of real estate mortgages shall be documented as first liens, except that liens other than first liens may be taken:~~

~~1. To protect a loan previously made in good faith;~~

~~2. To further secure a loan otherwise amply and entirely secured;~~

~~3. As additional security for Federal Housing Administration Title 1 loans or loans made with participation or guaranty by the Small Business Administration;~~

~~4. To secure a loan not in excess of 15 percent of the capital accounts of the bank; or~~

~~5. As provided by rules of the commission.~~

~~(e)(f)~~ In computing the total liabilities of any person, ~~there shall be included all loans or lines of credit endorsed or guaranteed as to repayment by such person and by any related interest of such person must be included.~~ Purchased participations in pools of loans which are carried as loans subject to the limits of this section must be aggregated when computing the total liabilities of a person who is a borrower, originator, seller, broker, or guarantor, or has a repurchase agreement obligation for the individual and pooled loans. The computation of total liabilities must also include all potential liabilities and obligations of the person, and any related interest, resulting from the person's derivatives transactions, repurchase agreements, securities lending and borrowing transactions, credit default swaps, and similar contracts.

~~(f)(g)~~ All loan documentation must shall be written in the English language or contain an English translation of foreign language provisions.

~~(5)(6)~~ **APPLICABILITY OF LOAN LIMITATIONS.**—The loan limitations otherwise provided in this section do not apply to:

(a) Loans ~~that~~ which are fully secured by assignment of a savings account or certificate of deposit of the lending bank;

(b) Loans ~~that~~ which are fully secured by notes, bonds, or other evidences of indebtedness issued by the United States Government or fully guaranteed as to repayment by the United States Government or its agencies, bureaus, boards, or commissions; ~~or~~

(c) Loans made to district school boards ~~if~~ when such loans are secured by the assignment of revenues reasonably expected to be received from the state and are otherwise made in compliance with statutes governing borrowings by such boards; or.

(d) Purchased participations in pools of loans which are carried as investments subject to the limitations of s. 658.67.

~~(6)(7)~~ **APPROVAL BY BOARD.**—The requirements of this section concerning approval of lending activities by the board of directors or an authorized committee therefrom are ~~have been~~ met only if ~~when~~ such approvals are recorded in the formal minutes of the actions of the board and its committees by name of borrower, amount of loan, maturity of loan, and general type of collateral. If, at the time of approval of a line of credit, such information is not available, the name of the borrower and the amount of the approved line of credit must ~~shall~~ be recorded in the minutes. Any action required by this section ~~to be taken by the board of directors or an authorized committee therefrom~~ may be taken pursuant to s. 607.0820(4) if the minutes of the proceedings of the board or of the committee reflect such action and each director taking such action signs the minutes reflecting such action at the next regular meeting of the board or committee attended by such director.

~~(7)(8)~~ **LIABILITY OF OFFICERS AND DIRECTORS.**—Officers and directors are personally liable, jointly and severally, for any loss that may be occasioned by a ~~any~~ willful violation of this section.

~~(8)(9)~~ If ~~When~~ a bank's capital has been diminished by losses so that its ability to honor legally binding written loan commitments is impaired, the office may approve limited expansion of the lending limitations set forth in this section.

~~(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.~~

~~(9)(11)~~ **FEDERAL RESTRICTIONS AND LIMITATIONS.**—~~Nothing in~~ This section does not expand, enlarge ~~shall be construed as expanding, enlarging,~~ or otherwise affect ~~affecting~~ any lending limits, restrictions, or

procedures now provided by federal law applicable to state banks in conjunction with any loan or loans to any borrower or class of borrowers.

Section 29. Subsection (4) of section 658.53, Florida Statutes, is amended to read:

658.53 Borrowing; limits of indebtedness.—

(4) Unrepaid proceeds of sales of capital notes and capital debentures ~~are, as provided herein, shall be considered as a part of the aggregate amount of capital and surplus in computing loan and investment limitations and in evaluating adequacy of capital of the issuing bank if the issuing bank is not in default thereunder.~~

Section 30. Section 658.65, subsection (33) of section 665.013, and subsection (35) of section 667.003, Florida Statutes, are repealed.

Section 31. Paragraph (c) of subsection (5) and subsections (6) and (10) of section 658.67, Florida Statutes, are 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:

(5) INVESTMENTS IN RELATED COMPANIES.—A bank or trust company may invest in the stock of incorporated companies to the extent hereinafter defined:

(c) Up to 10 percent of the capital accounts of a bank may be invested in a clearing corporation as defined in s. ~~678.1021~~ 678.102(3).

(6) INVESTMENTS IN CORPORATIONS.—Up to an aggregate of 10 percent of the total assets of a bank may be invested in the stock, obligations, or other securities of subsidiary corporations or other corporations or entities, except as limited or prohibited by federal law, and except that during the first 3 years of existence of a bank, such investments are limited to 5 percent of the total assets. ~~Any bank whose aggregate investment on June 30, 1992, exceeds the limitation in this subsection has 5 years within which to achieve compliance; additional time may be approved by the office if the office finds that compliance with this subsection will result in more than a minimal loss to the bank.~~ The commission may, by rule, ~~or the office by order,~~ may further limit any type of investment made pursuant to this subsection if it finds that such investment would constitute an unsafe or unsound practice.

(10) SPECIAL PROVISIONS.—

(a) ~~None of The bonds or other obligations described in this section are not shall be eligible for investment in any amount unless current as to all payments of principal and interest and unless rated in one of the four highest classifications, or, in the case of commercial paper, unless it is of prime quality and of the highest letter and numerical rating, as established by a~~

~~nationally recognized rating service or any comparable rating as determined by the office. Bonds or other obligations which are unrated shall not be eligible for investment unless otherwise supported as to investment quality and marketability by a credit rating file compiled and maintained in current status by the purchasing bank or trust company. Banks and trust companies shall establish written policies and procedures to evaluate the systemic and specific risks and benefits associated with all investments authorized in this section before making such investments and must provide for appropriate risk management and monitoring for the duration of the investment. An investment decision may not be based solely on the rating of the bond or other obligation by an investment rating service. The office may require a bank or trust company to divest itself of any investment that the office determines creates excessive risk or that has an associated risk that exceeds the ability of the bank or trust company to properly evaluate and manage.~~

(b) Investment securities shall be entered on the books of the bank or trust company at the fair market value on the date of acquisition. Premiums paid in excess of par value shall be amortized either over the life of the security or to the first call date at its call price and thereafter to subsequent call dates at their respective call prices until maturity. Discount may be accredited over the life of the security.

Section 32. Subsection (5) of section 288.772, Florida Statutes, is amended to read:

288.772 Definitions.—For purposes of ss. 288.771-288.778:

(5) “Financial institution” shall have the same meaning as that term is defined in s. 655.005(1)(h).

Section 33. Paragraph (b) of subsection (5) of section 288.99, Florida Statutes, is amended to read:

288.99 Certified Capital Company Act.—

(5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.—

(b) All capital not invested in qualified investments by the certified capital company:

1. Must be held in a financial institution as defined ~~in~~ by s. 655.005(1)(h) or held by a broker-dealer registered under s. 517.12, except as set forth in sub-subparagraph 3.g.

2. Must not be invested in a certified investor of the certified capital company or any affiliate of the certified investor of the certified capital company, except for an investment permitted by sub-subparagraph 3.g. ~~if~~ provided repayment terms do not permit the obligor to directly or indirectly manage or control the investment decisions of the certified capital company.

3. Must be invested only in:

- a. Any United States Treasury obligations;
- b. Certificates of deposit or other obligations, maturing within 3 years after acquisition of such certificates or obligations, issued by any financial institution or trust company incorporated under the laws of the United States;
- c. Marketable obligations, maturing within 10 years or less after the acquisition of such obligations, which are rated “A” or better by any nationally recognized credit rating agency;
- d. Mortgage-backed securities ~~that have, with~~ an average life of 5 years or less, after the acquisition of such securities, which are rated “A” or better by a ~~any~~ nationally recognized credit rating agency;
- e. Collateralized mortgage obligations and real estate mortgage investment conduits that are direct obligations of an agency of the United States Government; are not private-label issues; are in book-entry form; and do not include the classes of interest only, principal only, residual, or zero;
- f. Interests in money market funds, the portfolio of which is limited to cash and obligations described in sub-subparagraphs a.-d.; or
- g. Obligations that are issued by an insurance company that is not a certified investor of the certified capital company making the investment, that has provided a guarantee indemnity bond, insurance policy, or other payment undertaking in favor of the certified capital company’s certified investors as permitted by subparagraph (3)(1)1. or an affiliate of such insurance company as defined by subparagraph (3)(a)3. that is not a certified investor of the certified capital company making the investment, provided that such obligations are:
- (I) Issued or guaranteed as to principal by an entity whose senior debt is rated “AA” or better by Standard & Poor’s Ratings Group or such other nationally recognized credit rating agency as the commission may determine by rule ~~determine~~.
- (II) Not subordinated to other unsecured indebtedness of the issuer or the guarantor.
- (III) Invested by such issuing entity in accordance with sub-subparagraphs 3.a.-f.
- (IV) Readily convertible into cash within 5 business days for the purpose of making a qualified investment unless such obligations are held to provide a guarantee, indemnity bond, insurance policy, or other payment undertaking in favor of the certified capital company’s certified investors as permitted by subparagraph (3)(1)1.

Section 34. Subsection (1) of section 440.12, Florida Statutes, is amended to read:

440.12 Time for commencement and limits on weekly rate of compensation.—

(1) ~~No Compensation is not shall~~ be allowed for the first 7 days of the disability, except for benefits provided for in s. 440.13. However, if the injury results in ~~disability of more than 21 days of disability~~, compensation is shall be allowed from the commencement of the disability. All weekly compensation payments, except for the first payment, ~~must shall~~ be paid by check or, if authorized by the employee, deposited directly into the employee's account at a financial institution. ~~As used in this subsection, the term "financial institution" means a financial institution as defined in s. 655.005(1)(h).~~

Section 35. Paragraph (a) of subsection (1) of section 440.20, Florida Statutes, is amended to read:

440.20 Time for payment of compensation and medical bills; penalties for late payment.—

(1)(a) Unless the carrier ~~it~~ denies compensability or entitlement to benefits, the carrier shall pay compensation directly to the employee as required by ss. 440.14, 440.15, and 440.16, in accordance with those the obligations set forth in such sections. If authorized by the employee, the carrier's obligation to pay compensation directly to the employee is satisfied when the carrier directly deposits, by electronic transfer or other means, compensation into the employee's account at a financial institution. ~~As used in this paragraph, the term "financial institution" means a financial institution as defined in s. 655.005(1)(h).~~ Compensation by direct deposit is considered paid on the date the funds become available for withdrawal by the employee.

Section 36. Paragraph (c) of subsection (2) of section 445.051, Florida Statutes, is amended to read:

445.051 Individual development accounts.—

(2) As used in this section, the term:

(c) "Financial institution" has the same meaning ~~means a financial institution~~ as defined in s. 655.005(1)(h).

Section 37. Subsection (18) of section 489.503, Florida Statutes, is amended to read:

489.503 Exemptions.—This part does not apply to:

(18) The monitoring of an alarm system by a direct employee of any state or federally chartered financial institution, as defined in s. 655.005(1)(h), or any parent, affiliate, or subsidiary thereof, so long as:

(a) The institution is subject to, and in compliance with, s. 3 of the Federal Bank Protection Act of 1968, 12 U.S.C. s. 1882;

(b) The alarm system is in compliance with all applicable firesafety standards as set forth in chapter 633; and

(c) The monitoring is limited to an alarm system associated with:

1. The commercial property where banking operations are housed or where other operations are conducted by a state or federally chartered financial institution, ~~as defined in s. 655.005(1)(h)~~, or any parent, affiliate, or subsidiary thereof; or

2. The private property occupied by the institution’s executive officers, as defined in s. 655.005(1)(f),

and does not otherwise extend to the monitoring of residential systems.

Section 38. Paragraph (b) of subsection (15) of section 501.005, Florida Statutes, is amended to read:

501.005 Consumer report security freeze.—

(15) The provisions of this section do not apply to the following entities:

(b) A deposit account information service company ~~that, which~~ issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a consumer to an inquiring banks or other financial institution as defined in s. 655.005 institutions for use only in reviewing a consumer request for a deposit account at the inquiring ~~bank or financial institution~~, as defined in s. 655.005(1)(g) ~~or (h)~~, or in federal law.

Section 39. Paragraph (d) of subsection (2) of section 501.165, Florida Statutes, is amended to read:

501.165 Automatic renewal of service contracts.—

(2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

(d) This subsection does not apply to:

1. A financial institution as defined in s. 655.005(1)(h) or any depository institution as defined in 12 U.S.C. s. 1813(c)(2).

2. A foreign bank maintaining a branch or agency licensed under the laws of any state of the United States.

3. Any subsidiary or affiliate of an entity described in subparagraph 1. or subparagraph 2.

4. A health studio as defined in s. 501.0125(4).

5. Any entity licensed under chapter 624, chapter 627, chapter 634, chapter 636, or chapter 641.

6. Any electric utility as defined in s. 366.02(2).

7. Any private company as defined in s. 180.05 providing services described in chapter 180 which ~~that~~ is competing against a governmental entity or has a governmental entity providing billing services on its behalf.

Section 40. Paragraph (r) of subsection (1) of section 624.605, Florida Statutes, is amended to read:

624.605 “Casualty insurance” defined.—

(1) “Casualty insurance” includes:

(r) *Insurance for debt cancellation products.*—Insurance that a creditor may purchase against the risk of financial loss from the use of debt cancellation products with consumer loans or leases or retail installment contracts. Insurance for debt cancellation products is not liability insurance but is ~~shall~~ be considered credit insurance only for the purposes of s. 631.52(4).

1. For purposes of this paragraph, the term “debt cancellation products” means loan, lease, or retail installment contract terms, or modifications to loan, lease, or retail installment contracts, under which a creditor agrees to cancel or suspend all or part of a customer’s obligation to make payments upon the occurrence of specified events and includes, but is not limited to, debt cancellation contracts, debt suspension agreements, and guaranteed asset protection contracts. However, the term ~~“debt cancellation products”~~ does not include title insurance as defined in s. 624.608.

2. Debt cancellation products may be offered by financial institutions, as defined in s. 655.005(1)(h), insured depository institutions as defined in 12 U.S.C. s. 1813(c), and subsidiaries of such institutions, as provided in the financial institutions codes; by sellers as defined in s. 721.05, or by the parents, subsidiaries, or affiliated entities of sellers, in connection with the sale of timeshare interests; or by other business entities as ~~may~~ be specifically authorized by law, and such products are ~~shall~~ not constitute insurance for purposes of the Florida Insurance Code.

Section 41. Paragraph (g) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses.—

(1) The department shall issue to a qualified individual, or a qualified individual or entity under paragraphs (c), (d), (e), and (i), a license as agent authorized to transact a limited class of business in any of the following categories:

(g) *Credit property insurance.*—A license covering only credit property insurance may be issued to any individual except an individual employed by or associated with a ~~lending or~~ financial institution as defined in s. 655.005(1)(~~g~~), (~~h~~), or (~~p~~) and authorized to sell such insurance only with respect to a borrower or debtor, not to exceed the amount of the loan.

Section 42. Subsection (4) of section 626.730, Florida Statutes, is amended to read:

626.730 Purpose of license.—

(4) This section ~~does not shall not be deemed to~~ prohibit the licensing under a limited license as to motor vehicle physical damage and mechanical breakdown insurance or ~~the licensing under a limited license for~~ credit property insurance of any person employed by or associated with a motor vehicle sales or financing agency, a retail sales establishment, or a consumer loan office, other than a consumer loan office owned by or affiliated with a financial institution as defined in s. 655.005(1)(~~g~~), (~~h~~), or (~~p~~), with respect to insurance of the interest of such agency in a motor vehicle sold or financed by it or in personal property if ~~when~~ used as collateral for a loan. This section does not apply with respect to the interest of a real estate mortgagee in or as to insurance covering such interest or in the real estate subject to such mortgage.

Section 43. Section 626.9885, Florida Statutes, is amended to read:

626.9885 Financial institutions conducting insurance transactions.—A financial institution, as defined in s. 655.005(1)(~~g~~), (~~h~~), or (~~p~~), may conduct insurance transactions only through Florida-licensed insurance agents representing Florida-authorized insurers or representing Florida-eligible surplus lines insurers.

Section 44. This act shall take effect July 1, 2011.

Approved by the Governor June 21, 2011.

Filed in Office Secretary of State June 21, 2011.