

CHAPTER 2014-91

Committee Substitute for Committee Substitute for Senate Bill No. 1012

An act relating to financial services; amending s. 655.005, F.S.; revising the definition of “related interest”; creating s. 655.017, F.S.; preempting to the state the regulation of certain financial or lending activities of entities subject to the jurisdiction of the office or other regulatory agencies; providing that counties and municipalities may engage in investigations and proceedings against financial institutions that are not preempted; requiring a financial institution to notify the office if such local action is commenced; providing for the office’s sole and exclusive jurisdiction in certain cases; providing applicability; amending s. 655.0322, F.S.; revising provisions relating to prohibited acts and practices by a financial institution; applying certain provisions to affiliates; amending s. 655.034, F.S.; authorizing the circuit court to issue an injunction in order to protect the interests of the depositors, members, creditors, or stockholders of a financial institution and the public’s interest in the safety and soundness of the financial institution system; defining “formal enforcement action”; amending s. 655.037, F.S.; conforming a cross-reference; amending s. 655.0385, F.S.; prohibiting a director or executive officer from concurrently serving as a director or officer in a financial institution or affiliate in the same geographical area or the same major business market area unless waived by the Office of Financial Regulation; amending s. 655.041, F.S.; revising provisions relating to administrative fines; clarifying that the office may initiate administrative proceedings for violations of rules; providing that fines for violations begin accruing immediately upon the service of a complaint; applying certain provisions to affiliates; revising the applications for imposing a fine; amending s. 655.045, F.S.; requiring the office to conduct an examination of a financial institution within a specified period; amending s. 655.057, F.S.; conforming a cross-reference; providing that specified records are not considered a waiver of privileges or legal rights in certain proceedings; clarifying who has a right to copy member or shareholder records; creating s. 655.0591, F.S.; providing notice requirements and procedures that allow a financial institution to protect trade secrets included in documents submitted to the office; amending s. 655.50, F.S.; revising provisions relating to the control of money laundering to also include terrorist financing; adding and revising definitions; requiring a financial institution to have a BSA/AML compliance officer; revising records requirements; updating cross-references; amending s. 655.85, F.S.; clarifying that an institution may impose a fee for the settlement of a check under certain circumstances; providing legislative intent; amending s. 655.921, F.S.; revising provisions relating to business transactions by an out-of-state financial institution; providing that such institution may file suit to collect a security interest in collateral; amending s. 655.922, F.S.; revising provisions relating to the name of a financial institution; prohibiting certain financial institutions

from using a name that may mislead consumers; authorizing the office to seek court orders to annul or dissolve a business entity for certain violations and to issue emergency cease and desist orders; amending s. 655.948, F.S.; requiring a financial institution to notify the office of any investigations or proceedings initiated by a county or municipality against the institution within a specified timeframe; creating s. 655.955, F.S.; providing that a financial institution is not civilly liable solely by virtue of extending credit to a person; providing applicability; amending s. 657.008, F.S.; requiring certain credit unions seeking to establish a branch office to submit an application to the office for examination and approval; providing the criteria for the examination; amending s. 657.028, F.S.; revising provisions relating to prohibited activities of directors, officers, committee members, employees, and agents of credit unions; requiring the name and address of the credit manager to be submitted to the office; amending s. 657.041, F.S.; authorizing a credit union to pay health and accident insurance premiums and to fund employee benefit plans under certain circumstances; amending s. 658.12, F.S.; revising the definition of “trust business”; amending ss. 658.21 and 658.235, F.S.; conforming cross-references; repealing s. 658.49, F.S., relating to requirements for bank loans up to \$50,000; amending ss. 663.02 and 663.09, F.S.; conforming provisions to changes made by the act; amending s. 663.12, F.S.; deleting an annual assessment imposed on certain international offices; amending s. 663.306, F.S.; conforming provisions to changes made by the act; amending ss. 665.013, 665.033, 665.034, 667.003, 667.006, and 667.008, F.S.; conforming cross-references; amending s. 494.001, F.S.; providing and revising definitions; amending s. 494.0012, F.S.; authorizing the Office of Financial Regulation to conduct joint or concurrent examinations of licensees; amending s. 494.00255, F.S.; providing that violating specified rules is grounds for disciplinary action; repealing s. 494.0028, F.S., relating to arbitration of disputes involving certain agreements; amending ss. 494.00313 and 494.00322, F.S.; providing for change in license status if a licensed loan originator or mortgage broker fails to meet certain requirements for annual license renewal by specified dates; amending s. 494.0036, F.S.; providing guidelines for renewal of a mortgage broker branch office license; providing for change in license status if a licensed branch office fails to meet certain requirements for annual license renewal by specified dates; amending s. 494.0038, F.S.; deleting certain requirements regarding loan origination and disclosure; amending s. 494.004, F.S.; deleting a requirement that a licensee provide certain notice to a borrower in mortgage loan transactions; authorizing the Financial Services Commission to adopt rules prescribing the time by which a mortgage broker must file a report of condition; amending s. 494.0042, F.S.; conforming a cross-reference; repealing s. 494.00421, F.S., relating to required disclosures to borrowers in mortgage broker agreements by mortgage brokers receiving loan origination fees; amending s. 494.00611, F.S.; revising a cross-reference; amending s. 494.00612, F.S.; providing for change in license status if a licensed mortgage lender fails to meet certain requirements for annual license renewal by specified dates; amending s. 494.0066, F.S.; providing guidelines for renewal of a mortgage lender branch office license;

providing for change in license status if a licensed branch office fails to meet certain requirements for annual license renewal by specified dates; amending s. 494.0067, F.S.; deleting requirements that a mortgage lender provide an applicant for a mortgage loan a good faith estimate of costs and written disclosures related to adjustable rate mortgages; deleting requirement that mortgage lender provide notice of material changes in terms of a mortgage loan to a borrower in mortgage loan transactions; revising period during which mortgage lenders may service loans without meeting certain requirements; authorizing the commission to adopt rules prescribing the time by which a mortgage lender must file a report of condition; repealing s. 494.0068, F.S., relating to required disclosures to borrowers by mortgage lenders before the borrower accepts certain fees; amending s. 494.007, F.S.; deleting the requirement that a mortgage lender disclose a certain fee and whether the fee is refundable; amending s. 494.0073, F.S.; conforming a cross-reference; repealing part IV of chapter 494, F.S., relating to the Florida Fair Lending Act; repealing s. 494.008, F.S., relating to conditions for mortgage loans of specified amounts secured by vacant land; providing an effective date.

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

Section 1. Paragraph (t) of subsection (1) of section 655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

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

(t) “Related interest” means, with respect to a any person;

1. The person’s spouse, partner, sibling, parent, child, or other dependent individual residing in the same household as the person. ~~With respect to any person, the term means~~

2. A company, partnership, corporation, or other business organization controlled by the person. A person has control if the person:

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

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

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

3. An individual, company, partnership, corporation, or other business organization that engages in a common business enterprise with that person. A common business enterprise exists if:

a. The expected source for repayment of a loan or extension of credit is the same for each borrower and neither borrower has another source of income from which the loan, together with the borrower's other obligations, may be fully repaid. An employer will not be treated as a source of repayment under this paragraph because of wages and salaries paid to an employee, unless the standards of sub-subparagraph b. are met;

b. Loans or extensions of credit are made:

(I) To borrowers who are directly or indirectly related through common control, including where one borrower is directly or indirectly controlled by another borrower; and

(II) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence exists if 50 percent or more of one borrower's gross receipts or gross expenditures on an annual basis are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues and expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments;

c. Separate persons borrow from a financial institution to acquire a business enterprise such that those borrowers will own more than 50 percent of the voting securities or voting interests of the enterprise, in which case a common enterprise is deemed to exist between the borrowers for purposes of combining the acquisition loans; or

d. The office determines, based upon an evaluation of the facts and circumstances of particular transactions, that a common enterprise exists.

Section 2. Section 655.017, Florida Statutes, is created to read:

655.017 Local regulation preempted.—

(1) A county or municipality may not enact or enforce a resolution, ordinance, or rule that regulates financial or lending activities, including a resolution, ordinance, or rule that disqualifies persons from doing business with a county or municipality based on lending interest rates, or that imposes reporting requirements or other obligations regarding the financial services or lending practices of persons or entities, and subsidiaries or affiliates thereof which:

(a) Are subject to the jurisdiction of the office pursuant to the financial institutions codes;

(b) Are subject to the jurisdiction of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Federal Deposit Insurance Corporation, the Federal Trade Commission, or the United States Department of Housing and Urban Development;

(c) Originate, purchase, sell, assign, secure, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons referred to in paragraph (a) or paragraph (b) which assist or facilitate such transactions;

(d) Are chartered by the United States Congress to engage in secondary market mortgage transactions; or

(e) Are acting on behalf of the Florida Housing Finance Corporation.

(2) This section does not prevent a county or municipality from engaging in a civil investigation, initiating an administrative proceeding, or commencing a civil proceeding to determine compliance with or to enforce a state law, a rule or order of a state agency, or an ordinance or rule of a county or municipality which is not preempted pursuant to this section.

(3) Notwithstanding subsection (2), a financial institution shall notify the office of any civil investigation or administrative or civil proceeding initiated by a county or municipality in accordance with s. 655.948. The office shall have sole and exclusive jurisdiction to initiate appropriate administrative or civil proceedings to enforce such laws, rules, or orders if the office determines that such investigation or proceeding:

(a) Is based on a local resolution, ordinance, or rule that is preempted pursuant to subsection (1); or

(b) Directly and specifically regulates the manner, content, or terms and conditions of a financial transaction or account related thereto, that a financial institution is authorized to engage in, or prevents, significantly interferes with, or alters the exercise of powers granted to a financial institution under the financial institutions codes or any applicable federal law or regulation.

(4) This section does not limit or restrict the powers of the Department of Legal Affairs or the law enforcement agencies of this state to commence a civil or criminal action, as applicable.

Section 3. Section 655.0322, Florida Statutes, is amended to read:

655.0322 Prohibited acts and practices; criminal penalties.—

(1) As used in this section, the term “financial institution” means a financial institution as defined in ~~s. 655.005~~ s. 655.50 ~~which includes a state trust company, state or national bank, state or federal association, state or federal savings bank, state or federal credit union, Edge Act or agreement corporation, international bank agency, international branch, representative office or administrative office or other business entity as defined by the commission by rule, whether organized under the laws of this state, the laws of another state, or the laws of the United States, which institution is located in this state.~~

(2) ~~A~~ ~~It is unlawful for any~~ financial institution-affiliated party may not ~~to~~ ask for, or willfully and knowingly receive or consent to receive for himself or herself or any related interest, ~~a~~ any commission, emolument, gratuity, money, property, or thing of value for:

(a) Procuring, or endeavoring to procure, for any person a loan or extension of credit from such financial institution, affiliate, subsidiary, or service corporation; or

(b) Procuring, or endeavoring to procure, the purchase or discount of any note, draft, check, bill of exchange, or other obligation by such financial institution, affiliate, subsidiary, or service corporation.

Any person who violates this subsection commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) ~~A~~ ~~It is unlawful for any~~ financial institution-affiliated party may not ~~to~~:

(a) Knowingly receive or possess ~~himself or herself~~ of any of such financial institution's ~~its~~ property other ~~otherwise~~ than in payment of a just demand, or ~~and~~, with intent to deceive or defraud, to omit to make or cause to be made a full and true entry thereof in the financial institution's ~~its~~ books and accounts, or concur in omitting to make any material entry thereof;

(b) Embezzle, abstract, or misapply any money, property, or thing of value of such ~~the~~ financial institution, affiliate, subsidiary, or service corporation with intent to deceive or defraud the such ~~the~~ financial institution, affiliate, subsidiary, or service corporation;

(c) Knowingly make, draw, issue, put forth, or assign any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond or other obligation, mortgage, judgment, or decree without authority from the board of directors of such financial institution;

(d) Make a ~~any~~ false entry in any book, report, or statement of such financial institution, affiliate, subsidiary, or service corporation with intent to deceive or defraud the such ~~the~~ financial institution, affiliate, subsidiary, or service corporation, or another person, firm, or corporation, or with intent to deceive the office, any other appropriate federal or ~~state~~ regulatory agency, or an ~~any~~ authorized representative appointed to examine the affairs of the ~~such~~ financial institution, affiliate, subsidiary, or service corporation; or

(e) Deliver or disclose to the office or ~~any~~ of its employees any application, ~~any~~ examination report, report of condition, report of income and dividends, internal audit, account, statement, or other ~~other~~ document known by him or her to be fraudulent or false as to any material matter.

Any person who violates this subsection commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) ~~It is unlawful for any financial institution-affiliated party~~ may not ~~to knowingly place among the assets of such financial institution, affiliate, subsidiary, or service corporation any note, obligation, or security that which~~ the financial institution, affiliate, subsidiary, or service corporation does not own or ~~that, which to the party's individual's knowledge,~~ is fraudulent or otherwise worthless or for ~~the financial institution-affiliated party any such individual~~ to represent to the office that any note, obligation, or security carried as an asset of such financial institution, affiliate, subsidiary, or service corporation is the property of the financial institution, affiliate, subsidiary, or service corporation and is genuine if it is known to such party individual that such representation is false or that ~~the such~~ note, obligation, or security is fraudulent or otherwise worthless. Any person who violates this subsection commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Any person who willfully makes a ~~any~~ false statement or report, or willfully overvalues any land, property, or security, for the purposes of influencing in any way the action of ~~a any~~ financial institution, affiliate, subsidiary, or service corporation or any other entity authorized by law to extend credit, upon an any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of ~~any of~~ the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Any person who knowingly executes, or attempts to execute, a scheme or artifice to defraud a financial institution, affiliate, subsidiary, or service corporation or any other entity authorized by law to extend credit, or to obtain ~~any of~~ the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, affiliate, subsidiary, service corporation, or ~~any other~~ entity authorized by law to extend credit, by means of false or fraudulent pretenses, representations, or promises, commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Section 655.034, Florida Statutes, is amended to read:

655.034 Injunctions.—

(1) If the office determines that ~~Whenever~~ a violation of the financial institutions codes or a violation of a formal enforcement action has occurred ~~or is threatened or impending and such violation will cause substantial injury to a state financial institution or to the depositors, members, creditors, or stockholders thereof,~~ the circuit court has jurisdiction to hear a any complaint filed by the office and, upon proper showing, to issue an injunction restraining such violation or granting other ~~such~~ appropriate relief. Upon proper showing, the circuit court may also issue an injunction restraining any conduct or other act in order to protect the interests of depositors, members, creditors, or stockholders of a financial institution or the interests

of the public in the safety and soundness of the financial institution system in this state and the proper conduct of fiduciary functions.

(2) As used in this section, the term “formal enforcement action” means:

(a) With respect to a financial institution, a supervisory action subject to enforcement pursuant to s. 655.033, s. 655.037, or s. 655.041 which directs the financial institution to take corrective action to address violations of law or safety and soundness deficiencies.

(b) With respect to a person or entity that is not a financial institution, an order issued by the office pursuant the financial institutions codes which is directed to such person or entity.

Section 5. Subsection (1) of section 655.037, Florida Statutes, is amended to read:

655.037 Removal of a financial institution-affiliated party by the office.

(1) The office may issue and serve upon any financial institution-affiliated party and upon the state financial institution, subsidiary, or service corporation involved, a complaint stating charges ~~if whenever~~ the office has reason to believe that the financial institution-affiliated party is engaging or has engaged in conduct that is:

(a) An unsafe or unsound practice;

(b) A prohibited act or practice;

(c) A willful violation of any law relating to financial institutions;

(d) A violation of any other law involving fraud or moral turpitude which constitutes a felony;

(e) A violation of s. 655.50, relating to the ~~Florida~~ control of money laundering ~~and terrorist financing in Financial Institutions Act~~; chapter 896, relating to offenses related to financial transactions; or ~~any~~ similar state or federal law;

(f) A willful violation of any rule of the commission;

(g) A willful violation of any order of the office;

(h) A willful breach of any written agreement with the office; or

(i) An act of commission or omission or a practice which is a breach of trust or a breach of fiduciary duty.

Section 6. Present subsections (4) and (5) of section 655.0385, Florida Statutes, are redesignated as subsections (5) and (6), respectively, and a new subsection (4) is added to that section, to read:

655.0385 Disapproval of directors and executive officers.—

(4) A director or executive officer of a state financial institution or affiliate may not concurrently serve as a director, or be employed as an officer, of a nonaffiliated financial institution or affiliate whose principal place of business is located in the same metropolitan statistical area in this state. A person affected by this prohibition may provide written notice to the office of the proposed appointment or employment. Such notice may provide information that such concurrent service does not present a conflict of interest and that neither institution is competitively disadvantaged in the common market area. The office may waive this prohibition if the information provided demonstrates that the individual's proposed concurrent service does not present a conflict of interest and neither institution is competitively disadvantaged in the common market area. A person who violates this subsection is subject to suspension, removal, or prohibition under s. 655.037.

Section 7. Section 655.041, Florida Statutes, is amended to read:

655.041 Administrative fines; enforcement.—

(1) The office may, by complaint, initiate a proceeding pursuant to chapter 120 to impose an administrative fine against any person found to have violated a any provision of the financial institutions codes or the rules adopted thereunder, an or a cease and desist order of the office, or a any written agreement with the office. Such ~~No such proceeding may not shall~~ be initiated and ~~no fine shall accrue pursuant to this section until after such person has been notified in writing of the nature of the violation and has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so. If the office provided such notice, a fine for a violation of an office order or written agreement begins to accrue immediately upon service of the complaint and continues to accrue until the violation is corrected.~~

(2) ~~Any~~ Such fine may not exceed \$2,500 per a day for each violation except as provided in this section.

(a) If the office determines that ~~any~~ such person has recklessly violated ~~a any provision of the financial institutions codes, an or a cease and desist order of the office, or a any written agreement with the office, which violation results in more than a minimal loss to a financial institution, affiliate, subsidiary, or service corporation, or in a pecuniary benefit to such person, the office may impose a fine of up to not exceeding \$10,000 per~~ a day for each day the violation continues.

(b) If the office determines that ~~any~~ such person has knowingly violated ~~a any provision of the financial institutions codes, an or a cease and desist order of the office, or a any written agreement with the office, which violation results in more than a minimal loss to a financial institution, affiliate, subsidiary, or service corporation, or in a pecuniary benefit to such a person, the office may impose a fine of up to not exceeding the lesser of \$500,000 per~~

day or 1 percent of the total assets in the case of a financial institution, or \$50,000 per day in any other case for each day the violation continues.

(c) ~~The office may by complaint impose an administrative fine of up to, not exceeding \$10,000 per a day on a, upon any financial institution-affiliated party, on and upon a state financial institution, subsidiary, service corporation, or affiliate, or on a person subject to supervision by the office pursuant to s. 655.0391 which~~ who refuses to permit an examiner to examine a state financial institution, subsidiary, or service corporation; ~~who refuses to permit an examiner to review the books and records of an affiliate or a contracting service entity subject to supervision by the office pursuant to s. 655.0391;~~ or who refuses to give an examiner any information required in the course of an any examination or review of the books and records.

(3) ~~An Any~~ administrative fine levied by the office may be enforced by the office ~~by appropriate proceedings~~ in the circuit court of the county in which such person resides or in which the principal office of a state financial institution, affiliate, subsidiary, service corporation, or contracting service entity is located or does business in the state. In any administrative or judicial proceeding arising under this section, a party may elect to correct the violation asserted by the office and, upon doing so, any fine ceases to accrue; however, an election to correct the violation does not render an any administrative or judicial proceeding moot.

Section 8. Section 655.045, Florida Statutes, is amended to read:

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

(1) The office shall conduct an examination of the condition of each state financial institution at least every 18 months during each 18-month period. 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 examination 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.

(a) ~~With respect to, and examination of, the condition of a state institution,~~ The office may accept an examination of a state financial institution made by an appropriate federal regulatory agency; or may ~~conduct~~ make a joint or concurrent examination of the institution with the federal agency. However, at least once during each 36-month period beginning July 1, 2014, the office shall conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. 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 under 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 the conduct or business operations of an affiliate may have a negative impact on the state financial institution, subsidiary, or service corporation, the office may conduct such examination or investigation of the affiliate as the office deems necessary.

(c) 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 ~~a any~~ review conducted pursuant to paragraph (b) of ~~an 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) As used in ~~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 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 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) The office may require an audit of a state financial institution, subsidiary, or service corporation by an independent certified public accountant, or other person approved by the office, if the office, after conducting an examination of the state financial institution, subsidiary, or service corporation, or after accepting an examination of the such state financial institution by an appropriate state or federal regulatory agency, determines that 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 audited.

(2)(a) Each state financial institution, subsidiary, or service corporation shall submit a report, at least four times each calendar year, as of such dates as the commission or office determines. The Such report must include such information as the commission by rule requires for that type of institution.

~~(a)(b)~~ The office shall levy an administrative fine of up to \$100 per day for each day the report is past due, unless it is excused for good cause. ~~However,~~

(b) For an intentional late filing of the report required under paragraph ~~(a)~~, the office shall levy an administrative fine of up to \$1,000 per day for each day the report is past due.

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

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

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

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

Section 9. Paragraph (a) of subsection (3) and subsections (4) through (6) of section 655.057, Florida Statutes, are amended to read:

655.057 Records; limited restrictions upon public access.—

(3) The provisions of this section do not prevent or restrict:

(a) Publishing reports that are required to be submitted to the office pursuant to s. 655.045(2)(a) or required by applicable federal statutes or regulations to be published.

Any confidential information or records obtained from the office pursuant to this subsection shall be maintained as confidential and exempt from the provisions of s. 119.07(1).

(4)(a) Orders of courts or of administrative law judges for the production of confidential records or information must ~~shall~~ provide for inspection in camera by the court or the administrative law judge, and. ~~After the court or~~

administrative law judge ~~determines has made a determination~~ that the documents requested are relevant or would likely lead to the discovery of admissible evidence and that the information sought is not otherwise reasonably available from other sources, the said documents shall be subject to further orders by the court or the administrative law judge to protect the confidentiality thereof. Any order directing the release of information ~~is~~ shall be immediately reviewable, and a petition by the office for review of such order shall automatically ~~stays~~ stay further proceedings in the trial court or the administrative hearing until the disposition of such petition by the reviewing court. If any other party files such a petition for review, it will operate as a stay of such proceedings only upon order of the reviewing court.

(b) Confidential records and information furnished pursuant to a legislative subpoena shall be kept confidential by the legislative body or committee ~~that which~~ received the records or information. ~~However, except~~ in a case involving investigation of charges against a public official subject to impeachment or removal, ~~and then~~ disclosure of such information shall be only to the extent necessary as determined by the legislative body or committee ~~to be necessary~~.

(c) Documents, statements, books, records, and any other information provided to the office by any person pursuant to an investigation, examination, or other supervisory activity by the office are not considered a waiver of any privilege or other legal right in an administrative or legal proceeding in which the office is not a party.

(5) Every credit union and mutual association shall maintain, ~~in the principal office where its business is transacted~~, full and correct records of the names and residences of all the members of the credit union or mutual association in the principal office where its business is transacted. Such records ~~are~~ shall be subject to the inspection ~~by~~ of all the members of the credit union or mutual association, and the officers authorized to assess taxes under state authority, during normal business hours of each ~~business day~~. No member or any other person has the right to copy the membership records for any purpose other than in the course of business of the credit union or mutual association, as authorized by the office or the board of directors of the credit union or mutual association. A current list of members shall be made available to the office's examiners for their inspection and, upon the request of the office, shall be submitted to the office. Except as otherwise provided in this subsection, the list of the members of the credit union or mutual association is confidential and exempt from the provisions of s. 119.07(1).

(6) Every bank, trust company, and stock association shall maintain, in the principal office where its business is transacted, full and complete records of the names and residences of all the shareholders of the bank, trust company, or stock association and the number of shares held by each. Such records ~~are~~ shall be subject to the inspection of all the shareholders of the bank, trust company, or stock association, and the officers authorized to assess taxes under state authority, during normal business hours of each ~~banking day~~. No shareholder or any other person has the right to copy the

shareholder records for any purpose other than in the course of business of the bank, the trust company, or the stock association, as authorized by the office or the board of directors of the bank, the trust company, or the stock association. A current list of shareholders shall be made available to the office's examiners for their inspection and, upon the request of the office, shall be submitted to the office. Except as otherwise provided in this subsection, any portion of this list which reveals the identities of the shareholders is confidential and exempt from ~~the provisions of s. 119.07(1).~~

Section 10. Section 655.0591, Florida Statutes, is created to read:

655.0591 Trade secret documents.—

(1) If any person who is required to submit documents or other information to the office pursuant to the financial institutions codes, or by rule or order of the office or commission, claims that such submission contains a trade secret, such person may file with the office a notice of trade secret when the information is submitted to the office as provided in this section. Failure to file such notice constitutes a waiver of any claim by such person that the document or information is a trade secret. The notice must provide the contact information of the person claiming ownership of the trade secret. The person claiming the trade secret is responsible for updating the contact information with the office.

(a) Each page of such document or specific portion of a document claimed to be a trade secret must be clearly marked with the words "trade secret."

(b) All material identified as a trade secret shall be segregated from all other material, such as by being sealed in an envelope clearly marked with the words "trade secret."

(c) In submitting a notice of trade secret to the office or the Department of Financial Services, the submitting party shall include an affidavit certifying under oath to the truth of the following statements concerning all documents or information that are claimed to be trade secrets:

1. [...I consider/my company considers...] this information a trade secret that has value and provides an advantage or an opportunity to obtain an advantage over those who do not know or use it.

2. [...I have/my company has...] taken measures to prevent the disclosure of the information to anyone other than those who have been selected to have access for limited purposes, and [...I intend/my company intends...] to continue to take such measures.

3. The information is not, and has not been, reasonably obtainable without [...my/our...] consent by other persons by use of legitimate means.

4. The information is not publicly available elsewhere.

(2) If the office receives a public records request for a document or information that is marked and certified as a trade secret, the office shall promptly notify the person that certified the document as a trade secret. The notice shall be sent to the address provided with the most recent contact information provided to the office and must inform such person that, in order to avoid disclosure of the trade secret, the person must file an action in circuit court within 30 days after the date of the notice seeking a declaratory judgment that the document in question contains trade secrets and an order barring public disclosure of the document. The owner shall provide written notice to the office that the action was filed and the office may not release the documents pending the outcome of legal action. Failure to file an action within 30 days constitutes a waiver of any claim of confidentiality, and the office shall release the document as requested.

(3) The office may disclose a trade secret, together with the claim that it is a trade secret, to an officer or employee of another governmental agency whose use of the trade secret is within the scope of his or her employment.

Section 11. Section 655.50, Florida Statutes, is reordered and amended to read:

655.50 Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act; ~~reports of transactions involving currency or monetary instruments; when required; purpose; definitions; penalties.—~~

(1) This section may be cited as the “Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act.”

~~(2) It is~~ The purpose of this section is to require the submission to the office of certain reports and the maintenance of certain records of customers, accounts, and transactions involving currency or monetary instruments or suspicious activities if when such reports and records deter using the use of financial institutions to conceal, move, or provide the proceeds obtained from or intended for of criminal or terrorist activities and if such reports and records activity and have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

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

(a) “BSA/AML compliance officer” means the financial institution’s officer responsible for the development and implementation of the financial institution’s policies and procedures for complying with the requirements of this section relating to anti-money laundering (AML), and the requirements of the Bank Secrecy Act of 1970 (BSA), Pub. L. No. 91-508, as amended, the USA Patriot Act of 2001, Pub. L. No. 107-56, as amended, and federal and state rules and regulations adopted thereunder, and 31 C.F.R. parts 500-598, relating to the regulations of the Office of Foreign Assets Control (OFAC) of the United States Department of the Treasury.

(b)(a) “Currency” means currency and coin of the United States or of any other country.

(c)(b) “Financial institution” means a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state.

(d)(e) “Financial transaction” means a transaction involving the movement of funds by wire, electronic funds transfer, or any other means, or involving one or more monetary instruments, which in any way or degree affects commerce, or a transaction involving the use of a financial institution that which is engaged in, or the activities of which affect, commerce in any way or degree.

(e)(d) “Monetary instruments” means coin or currency of the United States or of any other country, travelers’ checks, personal checks, bank checks, money orders, stored value cards, prepaid cards, investment securities or in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery, or similar devices.

(i)(e) “Transaction” means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(f) “Report” means a report of each deposit, withdrawal, exchange of currency, or other payments or transfer, by, through, or to that financial institution, which that involves a transaction required or authorized to be reported by this section, and includes the electronic submission of such information in the manner provided ~~for~~ by rule of the commission.

(g) “Specified unlawful activity” means ~~any~~ “racketeering activity” as defined in s. 895.02.

(h) “Suspicious activity” means any transaction reportable as required and described under 31 C.F.R. s. 1020.320.

(4) A financial institution shall designate and retain a BSA/AML compliance officer. The board of directors of a financial institution must ensure that the designated compliance officer is properly qualified and has sufficient authority and resources to administer an effective BSA/AML compliance program. The board is ultimately responsible for establishing the institution’s BSA/AML policies and overall BSA/AML compliance. A change in the BSA/AML compliance officer must be reported to the office.

~~(5)(4)(a)~~ A Every financial institution shall keep a record of each financial transaction occurring in this state known to it which involves ~~to involve~~ currency or other monetary instrument, as the commission prescribes by rule, has ~~of~~ a value greater than in excess of \$10,000, and involves ~~to involve~~ the proceeds of specified unlawful activity, or is ~~to be~~ designed to evade the reporting requirements of this section, chapter 896, or any similar state or federal law, or which the financial institution reasonably believes is suspicious activity. Each financial institution ~~and~~ shall maintain appropriate procedures to ensure compliance with this section, chapter 896, and any other similar state or federal law. Any report of suspicious activity made pursuant to this subsection is entitled to the same confidentiality provided under 31 C.F.R. s. 1020.320, whether the report or information pertaining to or identifying the report is in the possession or control of the office or the reporting institution.

~~(a)(b)~~ Multiple financial transactions shall be treated as a single transaction if the financial institution has knowledge that they are made by or on behalf of any person and result in either cash in or cash out totaling more than \$10,000 during any business day, as defined in s. 655.89(1).

~~(b)(e)~~ A Any financial institution may keep a record of any financial transaction occurring in this state, regardless of the value, if it suspects that the transaction involves ~~to involve~~ the proceeds of specified unlawful activity.

~~(c)(d)~~ A financial institution, or officer, employee, or agent thereof, which ~~that~~ files a report in good faith pursuant to this subsection ~~section~~ is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.

~~(d)(5)(a)~~ Each financial institution shall file a report ~~with the office of the records record~~ required under this subsection ~~with the office~~ paragraphs (4)(a) and (b) and any record maintained pursuant to paragraph (4)(c). Each report shall ~~record filed pursuant to subsection (4)~~ must be filed at such time and must contain such information as the commission requires by rule.

~~(e)(b)~~ The timely filing of the reports ~~report~~ required by 31 U.S.C. s. 5313 and 31 C.F.R. part 1020 with the appropriate federal agency is deemed compliance with the reporting requirements of this subsection unless the reports are not regularly and comprehensively transmitted by the federal agency to the office.

(6) Each financial institution shall maintain a record of each qualified business customer that is ~~designation of a person~~ granted an exemption under the authority of 31 U.S.C. s. 5313, including any name, address, and taxpayer identification number of the exempt customer ~~person~~, as well as the name and address of the financial institution and the signature of the financial institution official designating the exempt customer ~~person~~. Such record of exemptions shall be made available to the office for inspection and copying and ~~shall be~~ submitted to the office within 15 days after request.

(7) All reports and records filed with the office pursuant to this section are confidential and exempt from s. 119.07(1). However, the office shall provide any report filed pursuant to this section, or information contained therein, to federal, state, and local law enforcement and prosecutorial agencies, and any federal or state agency responsible for the regulation or supervision of financial institutions.

(8)(a) Each financial institution shall maintain:

~~(a) For a minimum of 5 calendar years~~ Full and complete records of all financial transactions, including all records required by 31 C.F.R. parts 500-598 and 1010 for a minimum of 5 calendar years ~~parts 103.33 and 103.34.~~

~~(b) The financial institution shall retain~~ A copy of all reports filed with the office under subsection ~~(5)~~ (4) for a minimum of 5 calendar years after submission of the report.

~~(c) The financial institution shall retain~~ A copy of all records of exemption for each qualified business customer ~~designation of exempt person~~ made pursuant to subsection (6) for a minimum of 5 calendar years after termination of exempt status of such customer.

(9) The office, in addition to any other power conferred upon it to enforce and administer this chapter and the financial institutions codes, ~~the office~~ may:

(a) Bring an action in any court of competent jurisdiction to enforce or administer this section. In such action, the office may seek an award of any civil penalty authorized by law and any other appropriate relief at law or equity.

(b) Pursuant to s. 655.033, issue and serve upon a person an order requiring such person to cease and desist and take corrective action if ~~whenever~~ the office finds that such person is violating, has violated, or is about to violate any provision of this section, chapter 896, or ~~any~~ similar state or federal law; any rule or order adopted under this section, chapter 896, or ~~any~~ similar state or federal law; or any written agreement related to this section, chapter 896, or ~~any~~ similar state or federal law and entered into with the office.

(c) Pursuant to s. 655.037, issue and serve upon any person an order of removal if ~~whenever~~ the office finds that such person is violating, has violated, or is about to violate any provision of this section, chapter 896, or ~~any~~ similar state or federal law; any rule or order adopted under this section, chapter 896, or ~~any~~ similar state or federal law; or any written agreement related to this section, chapter 896, or ~~any~~ similar state or federal law and entered into with the office.

(d) Impose and collect an administrative fine against any person found to have violated any provision of this section, chapter 896, or ~~any~~ similar state or federal law; any rule or order adopted under this section, chapter 896, or

any similar state or federal law; or any written agreement related to this section, chapter 896, or any similar state or federal law and entered into with the office, in an amount up to not exceeding \$10,000 per a day for each willful violation or \$500 per a day for each negligent violation.

(10)(a) Except as provided in paragraph (b), a person who willfully violates ~~any provision of this section~~ commits ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who willfully violates or knowingly causes another to violate ~~any provision of this section~~, when the violation involves:

1. Financial transactions totaling or exceeding \$300 but less than \$20,000 in any 12-month period, commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083; or

2. Financial transactions totaling or exceeding \$20,000 but less than \$100,000 in any 12-month period, commits ~~is guilty of~~ a felony of the second degree, punishable as provided in s. 775.082 or s. 775.083; or

3. Financial transactions totaling or exceeding \$100,000 in any 12-month period, commits ~~is guilty of~~ a felony of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) In addition to the penalties otherwise authorized by ss. 775.082 and 775.083, a person who has been convicted of or who has pleaded guilty or nolo contendere to having violated paragraph (b) may be sentenced to pay a fine of up to not exceeding \$250,000 or twice the value of the financial transaction, whichever is greater, except that on a second or subsequent conviction for or plea of guilty or nolo contendere to a violation of paragraph (b), the fine may be up to \$500,000 or quintuple the value of the financial transaction, whichever is greater.

(d) A financial institution as defined in s. 655.005 which ~~that~~ willfully violates this section is also liable for a civil penalty of not more than the greater of the value of the financial transaction involved or \$25,000. However, the civil penalty may not exceed \$100,000.

(e) A person other than a financial institution as defined in s. 655.005 who violates this section is also liable for a civil penalty of not more than the greater of the value of the financial transaction involved or \$25,000.

(11) In any prosecution brought pursuant to this section, the common law corpus delicti rule does not apply. The defendant's confession or admission is admissible during trial without the state having to prove the corpus delicti if the court finds in a hearing conducted outside the presence of the jury that the defendant's confession or admission is trustworthy. Before the court admits the defendant's confession or admission, the state must prove by a preponderance of the evidence that there is sufficient corroborating evidence that tends to establish the trustworthiness of the statement by the defendant. Hearsay evidence is admissible during the presentation of

evidence at the hearing. In making its determination, the court may consider all relevant corroborating evidence, including the defendant's statements.

Section 12. Section 655.85, Florida Statutes, is amended to read:

655.85 Settlement of checks.—~~If a~~ Whenever any check is forwarded or presented to a financial ~~an~~ institution for payment, except when presented by the payee in person, the paying institution or remitting institution shall settle the amount of the check at par ~~may pay or remit the same~~, at its option, either in money or in exchange drawn on its reserve agent or agents in the City of New York or in any reserve city within the Sixth Federal Reserve District; ~~however, an institution may not settle any check drawn on it otherwise than at par. The term "at par" applies only to the settlement of checks between collecting and paying or remitting institutions and does not apply to, or prohibit an institution from, deducting from the face amount of the check drawn on it a fee for paying the check if the check is presented to the institution by the payee in person. The provisions of This section do not apply with respect to the settlement of a check sent to such institution as a special collection item.~~

Section 13. The Legislature intends that the amendment to s. 655.85, Florida Statutes, made by this act, clarify the relevant portions of the financial institutions codes as defined in s. 655.005, Florida Statutes, relating to fees imposed by a financial institution for the payment of checks presented in person without requiring further amendment.

Section 14. Section 655.921, Florida Statutes, is amended to read:

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

(1) ~~Nothing in~~ The financial institutions codes do not ~~shall be construed to~~ prohibit a financial institution or business trust that has ~~having its~~ principal place of business outside this state and that does not ~~operate~~ operating branches in this state from:

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

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

(c) Acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise protecting, managing, or conveying property in this state which is ~~has heretofore or may hereafter~~ be assigned, transferred, mortgaged, or

conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized by this section.

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

(e) Filing suit in any court in this state to collect any debt or foreclose on any security interest in collateral securing a debt.

(2) ~~A No such financial institution or business trust may not shall~~ be deemed to be transacting business in this state, or be required to qualify so to do so, solely by reason of the performance of any of the acts or business authorized in this section.

Section 15. Section 655.922, Florida Statutes, is amended to read:

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

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

(2) Only No person other than a financial institution authorized to do business shall, in this state as provided under subsection (1) may:

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

(b) Use any name, word, trademark, service mark, trade name, Internet address, logo, sign, symbol, or device in any context or in any manner; or

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

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

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

(3) ~~A No~~ person may not use the name, trademark, service mark, trade name, Internet address, or logo of a any financial institution or an affiliate or subsidiary thereof, or use a name similar to that of a financial institution or an affiliate or subsidiary thereof, to market or solicit business from a customer or prospective customer of such institution if:

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

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

(4) A financial institution, affiliate, subsidiary, or service corporation may not do business, solicit, or advertise in this state using a name, trademark, service mark, trade name, Internet address, or logo that may mislead consumers or cause confusion as to the identification of the proper legal business entity or the nature of the financial institution’s business.

~~(5)~~(4) Any court, in a proceeding brought by the office, by a any financial institution the principal place of business of which is in this state, or by any other person residing, or whose principal place of business is ~~located,~~ in this state and whose interests are substantially affected thereby, may enjoin any person from violating any provision ~~of the provisions~~ of this section. Except for a financial institution duly chartered by the office, the office may also seek an order from the circuit court for the annulment or dissolution of a corporation or any other business entity found violating any provision of this section. For the purposes of this subsection, the interests of a trade organization or association are deemed to be substantially affected if the interests of ~~any of its members~~ are so affected. ~~In addition,~~ The office may also issue and serve upon any person who violates any provision ~~of the provisions~~ of this section an emergency cease and desist order or a complaint seeking a cease and desist order in accordance with the procedures and in the

manner prescribed by s. 655.033. The office is not required to make any finding or determination that a violation of this section is likely to result in insolvency, substantial dissipation of assets or earnings, or substantial prejudice to any person in association with the issuance of an emergency cease and desist order.

~~(6)(5) Nothing in This section does not shall be construed to prohibit the lawful establishment or operation the lawful operations of a financial institution, affiliate, subsidiary, or service corporation or and nothing in this code shall be construed to prohibit any advertisement or other activity in this state by any person if such prohibition would contravene any applicable federal law that which preempts the law of this state.~~

Section 16. Subsection (4) of section 655.948, Florida Statutes, is amended to read:

655.948 Significant events; notice required.—

(4)(a) The office shall ~~must~~ exempt a financial institution from any of the provisions of this section if the office determines that such financial institution is operating in a safe and sound manner pursuant to commission rules relating to safe and sound operations. The commission shall adopt rules defining the term “safe and sound” and explicitly stating the criteria that which shall constitute operating in a safe and sound manner. Notwithstanding this subsection:

~~(a)(b) Notwithstanding paragraph (a),~~ All newly chartered financial institutions are ~~shall be~~ subject to the requirements of subsections (1) and (2) for 3 years.

(b) All financial institutions must notify the office within 30 days of any civil investigation or any civil or administrative proceeding initiated by a county or municipality against the financial institution or its subsidiary or service corporation. No liability may be incurred by a financial institution, subsidiary, service corporation, or financial institution-affiliated party as a result of making a good faith effort to fulfill this disclosure requirement.

Section 17. Section 655.955, Florida Statutes, is created to read:

655.955 Liability of financial institution to third parties.—A financial institution is not civilly liable to a third party for the actions or operations of a person solely by virtue of extending a loan or a line of credit to such person. This section does not modify, limit, or restrict the authority of a state agency under applicable law to conduct an investigation, bring a civil or administrative action, or otherwise enforce state or federal laws against a financial institution.

Section 18. Section 657.008, Florida Statutes, is amended to read:

657.008 Place of doing business.—

(1) A Every credit union authorized to transact business pursuant to the laws of this state shall have one principal place of doing business as designated in its bylaws and where legal process may be served. A credit union may change its place of business through an amendment to its bylaws.

(2)(a) ~~Following~~ With 30 days' prior written notification to the office or within such other time as is approved by the office, a credit union operating in a safe and sound manner may maintain branches without requiring prior office examination and approval at locations other than its main office or relocate branches previously established if the maintenance of such branches is determined by the board of directors to be reasonably necessary to furnish service to its members.

(a) A credit union that requires office examination and approval before establishing or relocating a branch must submit a written application in such form and supported by such information, data, and records as the commission or office may require to make all findings necessary for approval. Upon receiving the application and a nonrefundable filing fee for the establishment of the branch, the office shall consider the following in determining whether to reject or approve the application:

1. The sufficiency of the net worth of the credit union in relation to its deposit liabilities, including the proposed branch, and the additional fixed assets, if any, which are proposed for the branch and its operations without undue risk to the credit union or its depositors;

2. The sufficiency of earnings and earnings prospects of the credit union necessary to support the anticipated expenses and operating losses of the branch during its formative or initial years;

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

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

5. The substantial compliance of the applicant with the applicable law governing its operations.

(b) If any branch is located outside this state, the cost of examining such branch shall be borne by the credit union. Such cost ~~includes~~ shall include, but is ~~is~~ shall not be limited to, examiner travel expense and per diem.

(3) A credit union may share office space with one or more credit unions and contract with any person or corporation to provide facilities or personnel.

(4) ~~A~~ Any credit union organized under this state or federal law, the members of which are presently, or were at the time of admission into the credit union, employees of the state or a political subdivision or municipality thereof, or members of the immediate families of such employees, may apply

for space in any building owned or leased by the state or respective political subdivision or municipality in the community or district in which the credit union does business.

(a) The application shall be addressed to the officer charged with the allotment of space in such building. If space is available, the officer may allot space to the credit union at a reasonable charge for rent or services.

(b) If the governing body having jurisdiction over the building determines that the services rendered by the credit union to the employees of the governing body are equivalent to a reasonable charge for rent or services, available space may be allotted to the credit union without charge for rent or services.

(5)(a) The office may authorize foreign credit unions to establish branches in this state Florida if all of the following criteria are met:

1. The state in which the foreign credit union's home office is located permits Florida credit unions to do business in the state under restrictions that are no greater than those placed upon a domestic credit union doing business in that state. For this purpose, such restrictions must ~~shall~~ include, ~~but are not limited to,~~ any fees, bonds, or other charges levied on domestic credit unions doing business in that state.

2. The deposits of such foreign credit union and its proposed Florida branch must ~~shall~~ have insurance of accounts with the National Credit Union Administration.

3. The credit union's field of membership is so limited as to be within that meaning of that term as defined in s. 657.002.

(b) Every foreign credit union operating in this state ~~must~~ Florida ~~shall~~ keep the office informed of every location at which it is operating.

(c) If the office has reason to believe that a foreign credit union is operating a branch in this state in an unsafe and unsound manner, it shall have the right to examine such branch. If, upon examination, the office finds that such branch is operating in an unsafe and unsound manner, it shall require the branch office to make appropriate modifications to bring the ~~such~~ branch operations into compliance with generally accepted credit union operation in this state. ~~The~~ Such foreign credit union shall reimburse the office for the full cost of such ~~this~~ examination. Costs ~~shall~~ include examiner salaries, per diem, and travel expenses.

(d) Any foreign credit union operating in this state shall, in any connection therewith, be subject to suit in the courts of this state, by this state and by the residents ~~citizens~~ of this state.

(6) A credit union may provide, directly or through a contract with another company, off-premises armored car services to its members.

Armored car services do not constitute a branch for the purposes of this section.

Section 19. Section 657.028, Florida Statutes, is amended to read:

657.028 Activities of directors, officers, committee members, employees, and agents.—

(1) An individual may not disburse funds of the credit union for any extension of credit approved by her or him.

(2) An elected officer, ~~or~~ director, ~~or any~~ committee member, other than the chief executive officer, may not be compensated for her or his service as such.

(3) Except with the prior approval of the office, a person may not serve as an officer, director, or committee member of a credit union if she or he:

(a) Has been convicted of a felony or of an offense involving dishonesty, a breach of trust, a violation of this chapter, or fraud, ~~except with the prior approval of the office;~~

(b) Has been adjudicated bankrupt within the previous 7 years;

(c) Has been removed by any regulatory agency as a director, officer, committee member, or employee of a any financial institution, ~~except with the prior approval of the office;~~

(d) Has performed acts of fraud or dishonesty, or has failed to perform duties, resulting in a loss that ~~which~~ was subject to a paid claim under a fidelity bond, ~~except with the prior approval of the office; or~~

(e) Has been found guilty of a violation of s. 655.50, relating to the Florida control of money laundering and terrorist financing in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law; or

(f) Has defaulted on a debt or obligation to a financial institution which resulted in a material loss to the financial institution.

(4) A person may not serve as a director of a credit union if she or he is an employee of the credit union, other than the chief executive officer of the credit union.

(5) A director, officer, committee member, ~~officer~~, agent, or employee of the credit union may not in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting her or his pecuniary interest or the pecuniary interest of any corporation, partnership, or association, other than the credit union, in which she or he or a member of her or his immediate family is directly or indirectly interested.

(6) Within 30 days after election or appointment, a record of the names and addresses of the members of the board, members of committees, ~~and~~ all officers of the credit union, and the credit manager shall be filed with the office on forms prescribed by the commission.

Section 20. Section 657.041, Florida Statutes, is amended to read:

657.041 Insurance; employee benefit plans.—

(1) A credit union may purchase for or make available to its members credit life insurance, credit disability insurance, life savings or depositors life insurance, or any other insurance coverage which may be directly related to the extension of credit or to the receipt of shares or deposits in amounts related to the members' respective ages, shares, deposits, or credit balances, or to any combination thereof.

(2) A credit union may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the credit union, or who is or was serving at the request of the credit union as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability arising out of such person's capacity or status with the credit union, whether or not the credit union would have the power to indemnify such person against the asserted liability.

(3) With the prior approval of members of a credit union and the office, the credit union may pay the premiums for reasonable health, accident, and related types of insurance protection for members of the credit union's board of directors, credit committee, supervisory committee, or other volunteer committee established by the board. Any insurance protection purchased must cease upon the insured person's leaving office without residual benefits other than from pending claims, if any, except that the credit union must comply with federal and state laws providing departing officials the right to maintain health insurance coverage at their own expense. The office shall consider the credit union's size and financial condition and the duties of the board or other officials in its consideration of the request for approval for insurance coverage and may withhold approval if the request would create an unsafe or unsound practice or condition for the credit union.

(4) With the prior approval of the board of a credit union and the office, the credit union may fund employee benefit plans. The office shall consider the credit union's size and financial condition and the duties of the employees and may withhold approval if the request would create an unsafe or unsound practice or condition for the credit union.

Section 21. Subsection (20) of section 658.12, Florida Statutes, is amended to read:

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

(20) “Trust business” means the business of acting as a fiduciary when such business is conducted by a bank, a state or federal association, or a trust company, or ~~and also~~ when conducted by any other business organization for compensation that the office does not consider to be de minimis as its sole or principal business.

Section 22. Subsection (4) of section 658.21, Florida Statutes, is amended to read:

658.21 Approval of application; findings required.—The office shall approve the application if it finds that:

(4) The proposed officers have sufficient financial institution experience, ability, standing, and reputation and the proposed directors have sufficient business experience, ability, standing, and reputation to indicate reasonable promise of successful operation, and none of the proposed officers or directors has been convicted of, or pled guilty or nolo contendere to, any violation of s. 655.50, relating to the Florida control of money laundering and terrorist financing in Financial Institutions Act; chapter 896, relating to offenses related to financial institutions; or ~~any~~ similar state or federal law. At least two of the proposed directors who are not also proposed officers must shall have had at least 1 year direct experience as an executive officer, regulator, or director of a financial institution within the 3 years before ~~of~~ the date of the application. However, if the applicant demonstrates that at least one of the proposed directors has very substantial experience as an executive officer, director, or regulator of a financial institution more than 3 years before the date of the application, the office may modify the requirement and allow only one director to have direct financial institution experience within the last 3 years. The proposed president or chief executive officer must shall have had at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 3 years.

Section 23. Subsection (2) of section 658.235, Florida Statutes, is amended to read:

658.235 Subscriptions for stock; approval of major shareholders.—

(2) The directors shall also provide such detailed financial, business, and biographical information as the commission or office may reasonably require for each person who, together with related interests, subscribes to 10 percent or more of the voting stock or nonvoting stock that which is convertible into voting stock of the proposed bank or trust company. The office shall make an investigation of the character, financial responsibility, and financial standing of each such person in order to determine whether he or she is likely to control the bank or trust company in a manner that which would jeopardize the interests of the depositors and creditors of the bank or trust company, the other stockholders, or the general public. ~~The~~ This investigation must shall include a determination of whether ~~any~~ such person 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 and terrorist financing in Financial

~~Institutions—Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.~~

Section 24. Section 658.49, Florida Statutes, is repealed.

Section 25. Subsection (1) of section 663.02, Florida Statutes, is amended to read:

663.02 Applicability of state banking laws.—

(1) International banking corporations having offices in this state ~~are~~ shall be subject to all the provisions of the financial institutions codes and chapter 655 as though such ~~international banking~~ corporations were state banks or trust companies, except where it may appear, from the context or otherwise, that such provisions are clearly applicable only to banks or trust companies organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions are applicable to such banks or trust companies: s. 655.031, relating to administrative enforcement guidelines; s. 655.032, relating to investigations, subpoenas, hearings, and witnesses; s. 655.0321, relating to hearings, proceedings, and related documents and restricted access thereto; s. 655.033, relating to cease and desist orders; s. 655.037, relating to removal by the office of an officer, director, committee member, employee, or other person; s. 655.041, relating to administrative fines and enforcement; s. 655.50, relating to the control of money laundering and terrorist financing; ~~s. 658.49, relating to loans by banks not exceeding \$50,000; and any provision of law for which the penalty is increased under s. 775.31 for facilitating or furthering terrorism.~~ International banking corporations ~~do~~ shall not have the powers conferred on domestic banks by the provisions of s. 658.60, relating to deposits of public funds. ~~The provisions of Chapter 687, relating to interest and usury, applies~~ shall apply to all bank loans not subject to ~~s. 658.49~~.

Section 26. Subsection (1) of section 663.09, Florida Statutes, is amended to read:

663.09 Reports; records.—

(1) ~~An Every~~ international banking corporation doing business in this state shall, at such times and in such form as the commission prescribes, make written reports in the English language to the office, under the oath of one of its officers, managers, or agents transacting business in this state, showing the amount of its assets and liabilities and containing such other matters as the commission or office requires. An international banking corporation that maintains two or more offices may consolidate such information in one report unless the office otherwise requires for purposes of its supervision of the condition and operations of each such office. The late filing of such reports ~~is~~ shall be subject to an ~~the imposition of~~ the administrative fine as prescribed under by s. 655.045(2)(b). If ~~any~~ such international banking corporation ~~fails~~ shall fail to make ~~any~~ such report, as

directed by the office, or if ~~any~~ such report contains a ~~shall contain any~~ false statement knowingly made, the same shall be grounds for revocation of the license of the international banking corporation.

Section 27. Subsection (2) of section 663.12, Florida Statutes, is amended to read:

663.12 Fees; assessments; fines.—

(2) Each international bank agency, international branch, and state-chartered investment company shall pay to the office a ~~semiannual assessment, payable on or before January 31 and July 31 of each year, a semiannual assessment~~ in an amount determined ~~by rule~~ by the commission by rule and calculated ~~in a manner so as~~ to recover the costs of the office incurred in connection with the supervision of international banking activities licensed under this part. ~~The~~ These rules must ~~shall~~ provide for uniform rates of assessment for all licenses of the same type and, ~~shall~~ provide for declining rates of assessment in relation to the total assets of the licensee held in the state, but may ~~shall not result~~, in any event, ~~provide for~~ rates of assessment which exceed the rate applicable to state banks pursuant to s. 658.73, unless the rate of assessment would result in a semiannual assessment of less than \$1,000. For the purposes of this subsection, the total assets of an international bank agency, international branch, or state-chartered investment company must ~~shall~~ include amounts due the agency or branch or state investment company from other offices, branches, or subsidiaries of the international banking corporations or other corporations of which the agency, branch, or state-chartered investment company is a part or from entities related to that international banking corporation. ~~Each international representative office, international administrative office, or international trust company representative office shall pay to the office an annual assessment in the amount of \$2,000, payable on or before January 31 of each year.~~

Section 28. Subsection (3) of section 663.306, Florida Statutes, is amended to read:

663.306 Decision by office.—The office may, in its discretion, approve or disapprove the application, but it shall not approve the application unless it finds that:

(3) The proposed officers and directors have sufficient experience, ability, standing, and reputation to indicate reasonable promise of successful operation and none of the proposed officers or directors have been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida control of money laundering and terrorist financing in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or ~~any~~ similar state or federal law.

Section 29. Subsection (28) of section 665.013, Florida Statutes, is amended to read:

665.013 Applicability of chapter 658.—The following sections of chapter 658, relating to banks and trust companies, are applicable to an association to the same extent as if the association were a “bank” operating thereunder:

~~(28) Section 658.49, relating to loans by banks not exceeding \$50,000.~~

Section 30. Paragraph (c) of subsection (1) of section 665.033, Florida Statutes, is amended to read:

665.033 Conversion of state or federal mutual association to capital stock association.—

(1) CONVERSION INTO CAPITAL STOCK ASSOCIATION.—Any state or federal mutual association may apply to the office for permission to convert itself into an association operated under the provisions of this chapter in accordance with the following procedures:

(c) The office may approve or disapprove the plan ~~in its discretion~~, but may it shall not approve the plan unless it finds that the association will comply sufficiently with the requirements of the financial institutions codes after conversion to entitle it to become an association operating under the financial institutions codes and the rules of the commission. The office may deny an ~~any~~ application from any federal association that is subject to a ~~any~~ cease and desist order or other supervisory restriction or order imposed by any state or the federal supervisory authority, or insurer, or guarantor or that 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 and terrorist financing in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or ~~any~~ similar state or federal law.

Section 31. Paragraph (a) of subsection (2) of section 665.034, Florida Statutes, is amended to read:

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

(2) The office shall issue the certificate of approval only after it has made an investigation and determined that:

(a) The proposed new owner or owners of voting capital stock are qualified by character, experience, and financial responsibility to control the association in a legal and proper manner and none of the proposed new owners have been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the Florida control of money laundering and terrorist financing in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or ~~any~~ similar state or federal law.

Section 32. Subsection (29) of section 667.003, Florida Statutes, is amended to read:

667.003 Applicability of chapter 658.—Any state savings bank is subject to all the provisions, and entitled to all the privileges, of the financial

institutions codes except where it appears, from the context or otherwise, that such provisions clearly apply only to banks or trust companies organized under the laws of this state or the United States. Without limiting the foregoing general provisions, it is the intent of the Legislature that the following provisions apply to a savings bank to the same extent as if the savings bank were a “bank” operating under such provisions:

~~(29) Section 658.49, relating to loans by banks not exceeding \$50,000.~~

Section 33. Paragraph (c) of subsection (1) of section 667.006, Florida Statutes, is amended to read:

667.006 Conversion of state or federal mutual savings bank or state or federal mutual association to capital stock savings bank.—

(1) CONVERSION INTO CAPITAL STOCK SAVINGS BANK.—Any state or federal mutual savings bank or state or federal mutual association may apply to the office for permission to convert itself into a capital stock savings bank operated under the provisions of this chapter in accordance with the following procedures:

(c) The office may approve or disapprove the plan ~~in its discretion~~, but ~~may it shall~~ not approve the plan unless it finds that the savings bank will comply sufficiently with the requirements of the financial institutions codes after conversion to entitle it to become a savings bank operating under the financial institutions codes and the rules of the commission. The office may deny any application from ~~a~~ any federal savings bank that is subject to ~~a~~ any cease and desist order or other supervisory restriction or order imposed by any state or the federal supervisory authority, or insurer, or guarantor or that 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 and terrorist financing in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

Section 34. Paragraph (a) of subsection (2) of section 667.008, Florida Statutes, is amended to read:

667.008 Acquisition of assets of or control over a savings bank.—

(2) The office shall issue the certificate of approval only after it has made an investigation and determined that:

(a) The proposed new owner or owners of voting capital stock are qualified by character, experience, and financial responsibility to control the savings bank in a legal and proper manner and none of the proposed new owners have been convicted of, or pled guilty or nolo contendere to, a violation of s. 655.50, relating to the ~~Florida~~ control of money laundering and terrorist financing in Financial Institutions Act; chapter 896, relating to offenses related to financial transactions; or any similar state or federal law.

Section 35. Subsections (12) through (36) of section 494.001, Florida Statutes, are renumbered as subsections (13) through (37), respectively, a new subsection (12) is added, and present subsection (15) of that section is amended, to read:

494.001 Definitions.—As used in ss. 494.001-494.0077, the term:

(12) “Indirect owner” means, with respect to direct owners and other indirect owners in a multilayered organization:

(a) For an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25 percent or more of voting security of the corporation.

(b) For an owner that is a partnership, each general partner and each limited or special partner that has the right to receive upon dissolution, or has contributed, 25 percent or more of the partnership’s capital.

(c) For an owner that is a trust, the trust and each trustee.

(d) For an owner that is a limited liability company:

1. Each member that has the right to receive upon dissolution, or that has contributed, 25 percent or more of the limited liability company’s capital; and

2. If managed by elected managers or appointed managers, each elected or appointed manager.

(e) For an indirect owner, each parent owner of 25 percent or more of its subsidiary.

~~(16)(15) “Loan origination fee” means the total compensation from any source received by a mortgage broker acting as a loan originator. Any payment for processing mortgage loan applications must be included in the fee and must be paid to the mortgage broker.~~

Section 36. Subsection (4) is added to section 494.0012, Florida Statutes, to read:

494.0012 Investigations; complaints; examinations.—

(4) To reduce the burden on persons subject to this chapter, the office may conduct a joint or concurrent examination with a state or federal regulatory agency and may furnish a copy of all examinations to an appropriate regulator if the regulator agrees to abide by the confidentiality provisions in chapter 119 and this chapter. The office may also accept an examination from an appropriate regulator.

Section 37. Paragraph (y) of subsection (1) of section 494.00255, Florida Statutes, is amended, and paragraph (m) of that subsection is reenacted, to read:

494.00255 Administrative penalties and fines; license violations.—

(1) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (2) may be taken against a person licensed or required to be licensed under part II or part III of this chapter:

(m) In any mortgage transaction, violating any provision of the federal Real Estate Settlement Procedures Act, as amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted under such acts.

(y) Pursuant to an investigation by the Mortgage Testing and Education Board acting on behalf of the registry, being found in violation of Nationwide Mortgage Licensing System and Registry Rules of Conduct.

Section 38. Section 494.0028, Florida Statutes, is repealed.

Section 39. Subsection (3) is added to section 494.00313, Florida Statutes, to read:

494.00313 Loan originator license renewal.—

(3) If a licensed loan originator fails to meet the requirements of this section for annual license renewal on or before December 31 but meets such requirements before March 1, the loan originator's license status shall be changed to "failed to renew" pending review and renewal by the office. A nonrefundable reinstatement fee of \$150 shall be charged in addition to registry fees. The license status shall not be changed until the requirements of this section are met and all fees are paid. If the licensee fails to meet the requirements of this section and pay all required fees before March 1, such license is expired and such loan originator must apply for a new loan originator license under s. 494.00312.

Section 40. Subsection (3) is added to section 494.00322, Florida Statutes, to read:

494.00322 Mortgage broker license renewal.—

(3) If a licensed mortgage broker fails to meet the requirements of this section for annual license renewal on or before December 31 but meets such requirements before March 1, the mortgage broker's license status shall be changed to "failed to renew" pending review and renewal by the office. A nonrefundable reinstatement fee of \$250 shall be charged in addition to registry fees. The license status shall not be changed until the requirements of this section are met and all fees are paid. If the licensee fails to meet the requirements of this section and pay all required fees before March 1, such license is expired and such mortgage broker must apply for a new mortgage broker license under s. 494.00321.

Section 41. Subsection (3) of section 494.0036, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

494.0036 Mortgage broker branch office license.—

(3) A branch office license must be renewed annually at the time of renewing the mortgage broker license under s. 494.00322. A nonrefundable branch renewal fee of \$225 per branch office must be submitted at the time of renewal. To renew a branch office license, a mortgage broker must:

(a) Submit a completed license renewal form as prescribed by commission rule.

(b) Submit a nonrefundable renewal fee.

(c) Submit any additional information or documentation requested by the office and required by rule concerning the licensee. Additional information may include documents that may provide the office with the appropriate information to determine eligibility for license renewal.

(4) The office may not renew a branch office license unless the branch office continues to meet the minimum requirements for initial licensure under this section and adopted rule.

(5) If a licensed branch office fails to meet the requirements of this section for annual license renewal on or before December 31 but meets such requirements before March 1, the branch office's license status shall be changed to "failed to renew" pending review and renewal by the office. A nonrefundable reinstatement fee of \$225 shall be charged in addition to registry fees. The license status shall not be changed until the requirements of this section are met and all fees are paid. If the licensee fails to meet the requirements of this section and pay all required fees before March 1, such license is expired and such branch office must apply for a new mortgage broker branch office license under this section.

Section 42. Section 494.0038, Florida Statutes, is amended to read:

~~494.0038 Loan origination and Mortgage broker fees and disclosures.—~~

~~(1) A loan origination fee may not be paid except pursuant to a written mortgage broker agreement between the mortgage broker and the borrower which is signed and dated by the principal loan originator or branch manager, and the borrower. The unique registry identifier of each loan originator responsible for providing loan originator services must be printed on the mortgage broker agreement.~~

~~(a) The written mortgage broker agreement must describe the services to be provided by the mortgage broker and specify the amount and terms of the loan origination fee that the mortgage broker is to receive.~~

~~1.— Except for application and third-party fees, all fees received by a mortgage broker from a borrower must be identified as a loan origination fee.~~

~~2.— All fees on the mortgage broker agreement must be disclosed in dollar amounts.~~

~~3.— All loan origination fees must be paid to a mortgage broker.~~

~~(b)—The agreement must be executed within 3 business days after a mortgage loan application is accepted if the borrower is present when the mortgage loan application is accepted. If the borrower is not present, the licensee shall forward the agreement to the borrower within 3 business days after the licensee's acceptance of the application and the licensee bears the burden of proving that the borrower received and approved the agreement.~~

~~(2)— If the mortgage broker is to receive any payment of any kind from the mortgage lender, the maximum total dollar amount of the payment must be disclosed to the borrower in the written mortgage broker agreement as described in paragraph (1)(a). The commission may prescribe by rule an acceptable form for disclosure of brokerage fees received from the lender. The agreement must state the nature of the relationship with the lender, describe how compensation is paid by the lender, and describe how the mortgage interest rate affects the compensation paid to the mortgage broker.~~

~~(a)—The exact amount of any payment of any kind by the lender to the mortgage broker must be disclosed in writing to the borrower within 3 business days after the mortgage broker is made aware of the exact amount of the payment from the lender but not less than 3 business days before the execution of the closing or settlement statement. The licensee bears the burden of proving such notification was provided to the borrower. Notification is waived if the exact amount of the payment is accurately disclosed in the written mortgage broker agreement.~~

~~(b)—The commission may prescribe by rule the form of disclosure of brokerage fees.~~

~~(3)—At the time a written mortgage broker agreement is signed by the borrower or forwarded to the borrower for signature, or at the time the mortgage broker business accepts an application fee, credit report fee, property appraisal fee, or any other third-party fee, but at least 3 business days before execution of the closing or settlement statement, the mortgage broker shall disclose in writing to any applicant for a mortgage loan the following information:~~

~~(a)—That the mortgage broker may not make mortgage loans or commitments. The mortgage broker may make a commitment and may furnish a lock-in of the rate and program on behalf of the lender if the mortgage broker has obtained a written commitment or lock-in for the loan from the lender on behalf of the borrower for the loan. The commitment must be in the same form and substance as issued by the lender.~~

~~(b) That the mortgage broker cannot guarantee acceptance into any particular loan program or promise any specific loan terms or conditions.~~

~~(c) A good faith estimate that discloses settlement charges and loan terms.~~

~~1. Any amount collected in excess of the actual cost shall be returned within 60 days after rejection, withdrawal, or closing.~~

~~2. At the time a good faith estimate is provided to the borrower, the loan originator must identify in writing an itemized list that provides the recipient of all payments charged the borrower, which, except for all fees to be received by the mortgage broker, may be disclosed in generic terms, such as, but not limited to, paid to lender, appraiser, officials, title company, or any other third-party service provider. This requirement does not supplant or is not a substitute for the written mortgage broker agreement described in subsection (1). The disclosure required under this subparagraph must be signed and dated by the borrower.~~

~~(4) The disclosures required by this subsection must be furnished in writing at the time an adjustable rate mortgage loan is offered to the borrower and whenever the terms of the adjustable rate mortgage loan offered materially change prior to closing. The mortgage broker shall furnish the disclosures relating to adjustable rate mortgages in a format prescribed by ss. 226.18 and 226.19 of Regulation Z of the Board of Governors of the Federal Reserve System, as amended; its commentary, as amended; and the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as amended; together with the Consumer Handbook on Adjustable Rate Mortgages, as amended; published by the Federal Reserve Board and the Federal Home Loan Bank Board. The licensee bears the burden of proving such disclosures were provided to the borrower.~~

~~(5) If the mortgage broker agreement includes a nonrefundable application fee, the following requirements are applicable:~~

~~(a) The amount of the application fee, which must be clearly denominated as such, must be clearly disclosed.~~

~~(b) The specific services that will be performed in consideration for the application fee must be disclosed.~~

~~(c) The application fee must be reasonably related to the services to be performed and may not be based upon a percentage of the principal amount of the loan or the amount financed.~~

~~(6) A mortgage broker may not accept any fee in connection with a mortgage loan other than an application fee, credit report fee, property appraisal fee, or other third-party fee before obtaining a written commitment from a qualified lender.~~

(1)(7) Any third-party fee entrusted to a mortgage broker must immediately, upon receipt, be placed into a segregated account with a financial institution located in the state the accounts of which are insured by the Federal Government. Such funds shall be held in trust for the payor and shall be kept in the account until disbursement. Such funds may be placed in one account if adequate accounting measures are taken to identify the source of the funds.

(2)(8) A mortgage broker may not pay a commission to any person not licensed pursuant to this chapter.

(3)(9) This section does not prohibit a mortgage broker from offering products and services, in addition to those offered in conjunction with the loan origination process, for a fee or commission.

Section 43. Subsections (2) and (3) of section 494.004, Florida Statutes, are amended to read:

494.004 Requirements of licensees.—

~~(2) In every mortgage loan transaction, each licensee under this part must notify a borrower of any material changes in the terms of a mortgage loan previously offered to the borrower within 3 business days after being made aware of such changes by the mortgage lender but at least 3 business days before the signing of the settlement or closing statement. The licensee bears the burden of proving such notification was provided and accepted by the borrower. A borrower may waive the right to receive notice of a material change if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and the right to receive notice would delay the closing of the mortgage loan. The imminent sale of the borrower's home at foreclosure during the 3-day period before the signing of the settlement or closing statement is an example of a bona fide personal financial emergency. In order to waive the borrower's right to receive notice, the borrower must provide the licensee with a dated written statement that describes the personal financial emergency, waives the right to receive the notice, bears the borrower's signature, and is not on a printed form prepared by the licensee for the purpose of such a waiver.~~

(2)(3) Each mortgage broker shall submit to the registry reports of condition, which must be in such form and shall contain such information as the registry may require. The commission may adopt rules prescribing the time by which a mortgage broker must file a report of condition. For purposes of this section, the report of condition is synonymous with the registry's Mortgage Call Report.

Section 44. Subsection (3) of section 494.0042, Florida Statutes, is amended to read:

494.0042 Loan origination fees.—

(3) At the time of accepting a mortgage loan application, a mortgage broker may receive from the borrower a nonrefundable application fee. If the mortgage loan is funded, the nonrefundable application fee shall be credited against the amount owed as a result of the loan being funded. A person may not receive any form of compensation for acting as a loan originator other than a nonrefundable application fee, a fee based on the mortgage amount being funded, ~~or a fee which complies with s. 494.00421.~~

Section 45. Section 494.00421, Florida Statutes, is repealed.

Section 46. Paragraph (b) of subsection (2) of section 494.00611, Florida Statutes, is amended to read:

494.00611 Mortgage lender license.—

(2) In order to apply for a mortgage lender license, an applicant must:

(b) Designate a qualified principal loan originator who meets the requirements of s. ~~494.00665~~ 494.0035 on the application form.

Section 47. Subsection (3) is added to section 494.00612, Florida Statutes, to read:

494.00612 Mortgage lender license renewal.—

(3) If a licensed mortgage lender fails to meet the requirements of this section for annual license renewal on or before December 31 but meets such requirements before March 1, the mortgage lender's license status shall be changed to "failed to renew" pending review and renewal by the office. A nonrefundable reinstatement fee of \$475 shall be charged in addition to registry fees. The license status shall not be changed until the requirements of this section are met and all fees are paid. If the licensee fails to meet the requirements of this section and pay all required fees before March 1, such license is expired and such mortgage lender must apply for a new mortgage lender license under s. 494.00611.

Section 48. Subsection (3) of section 494.0066, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

494.0066 Branch offices.—

(3) A branch office license must be renewed at the time of renewing the mortgage lender license. A nonrefundable fee of \$225 per branch office must be submitted at the time of renewal. To renew a branch office license, a mortgage lender must:

(a) Submit a completed license renewal form as prescribed by commission rule.

(b) Submit a nonrefundable renewal fee.

(c) Submit any additional information or documentation requested by the office and required by rule concerning the licensee. Additional information may include documents that may provide the office with the appropriate information to determine eligibility for license renewal.

(4) The office may not renew a branch office license unless the branch office continues to meet the minimum requirements for initial licensure under this section and adopted rule.

(5) If a licensed branch office fails to meet the requirements of this section for annual license renewal on or before December 31 but meets such requirements before March 1, the branch office's license status shall be changed to "failed to renew" pending review and renewal by the office. A nonrefundable reinstatement fee of \$225 shall be charged in addition to registry fees. The license status shall not be changed until the requirements of this section are met and all fees are paid. If the licensee fails to meet the requirements of this section and pay all required fees before March 1, such license is expired and such branch office must apply for a new mortgage lender branch office license under this section.

Section 49. Subsections (8) through (13) of section 494.0067, Florida Statutes, are amended to read:

494.0067 Requirements of mortgage lenders.—

~~(8) Each mortgage lender shall provide an applicant for a mortgage loan a good faith estimate of the costs the applicant can reasonably expect to pay in obtaining a mortgage loan. The good faith estimate of costs must be mailed or delivered to the applicant within 3 business days after the licensee receives a written loan application from the applicant. The estimate of costs may be provided to the applicant by a person other than the licensee making the loan. The good faith estimate must identify the recipient of all payments charged to the borrower and, except for all fees to be received by the mortgage broker and the mortgage lender, may be disclosed in generic terms, such as, but not limited to, paid to appraiser, officials, title company, or any other third-party service provider. The licensee bears the burden of proving such disclosures were provided to the borrower. The commission may adopt rules that set forth the disclosure requirements of this section.~~

~~(9) The disclosures in this subsection must be furnished in writing at the time an adjustable rate mortgage loan is offered to the borrower and whenever the terms of the adjustable rate mortgage loan offered have a material change prior to closing. The lender shall furnish the disclosures relating to adjustable rate mortgages in a format prescribed by ss. 226.18 and 226.19 of Regulation Z of the Board of Governors of the Federal Reserve System, as amended; its commentary, as amended; and the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., as amended; together with the Consumer Handbook on Adjustable Rate Mortgages, as amended; published by the Federal Reserve Board and the Federal Home Loan Bank Board. The~~

licensee bears the burden of proving such disclosures were provided to the borrower.

~~(10) In every mortgage loan transaction, each mortgage lender shall notify a borrower of any material changes in the terms of a mortgage loan previously offered to the borrower within 3 business days after being made aware of such changes by the lender but at least 3 business days before signing the settlement or closing statement. The licensee bears the burden of proving such notification was provided and accepted by the borrower. A borrower may waive the right to receive notice of a material change if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and the right to receive notice would delay the closing of the mortgage loan. The imminent sale of the borrower's home at foreclosure during the 3-day period before the signing of the settlement or closing statement constitutes an example of a bona fide personal financial emergency. In order to waive the borrower's right to receive notice, the borrower must provide the licensee with a dated written statement that describes the personal financial emergency, waives the right to receive the notice, bears the borrower's signature, and is not on a printed form prepared by the licensee for the purpose of such a waiver.~~

~~(8)(11)~~ A mortgage lender may close loans in its own name but may not service the loan for more than 6 4 months unless the lender has a servicing endorsement. Only a mortgage lender who continuously maintains a net worth of at least \$250,000 may obtain a servicing endorsement.

~~(9)(12)~~ A mortgage lender must report to the office the failure to meet the applicable net worth requirements of s. 494.00611 within 2 days after the mortgage lender's knowledge of such failure or after the mortgage lender should have known of such failure.

~~(10)(13)~~ Each mortgage lender shall submit to the registry reports of condition which are in a form and which contain such information as the registry may require. The commission may adopt rules prescribing the time by which a mortgage lender must file a report of condition. For purposes of this section, the report of condition is synonymous with the registry's Mortgage Call Report.

Section 50. Section 494.0068, Florida Statutes, is repealed.

Section 51. Paragraphs (c), (d), and (e) of subsection (1) of section 494.007, Florida Statutes, are amended to read:

494.007 Commitment process.—

(1) If a commitment is issued, the mortgage lender shall disclose in writing:

(c) If the interest rate or other terms are subject to change before expiration of the commitment:

1. The basis, index, or method, if any, which will be used to determine the rate at closing. Such basis, index, or method shall be established and disclosed with direct reference to the movement of an interest rate index or of a national or regional index that is available to and verifiable by the borrower and beyond the control of the lender; or

2. The following statement, in at least 10-point bold type: “The interest rate will be the rate established by the lender in its discretion as its prevailing rate . . . days before closing.”; and

~~(d) The amount of the commitment fee, if any, and whether and under what circumstances the commitment fee is refundable; and~~

~~(d)(e)~~ The time, if any, within which the commitment must be accepted by the borrower.

Section 52. Section 494.0073, Florida Statutes, is amended to read:

494.0073 Mortgage lender when acting as a mortgage broker.—The provisions of this part do not prohibit a mortgage lender from acting as a mortgage broker. However, in mortgage transactions in which a mortgage lender acts as a mortgage broker, the provisions of ss. 494.0038, ~~494.004(2)~~, 494.0042, and 494.0043(1), (2), and (3) apply.

Section 53. Part IV of chapter 494, Florida Statutes, consisting of ss. 494.0078, 494.0079, 494.00791, 494.00792, 494.00793, 494.00794, 494.00795, 494.00796, and 494.00797, is repealed.

Section 54. Section 494.008, Florida Statutes, is repealed.

Section 55. This act shall take effect July 1, 2014.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.