

By Senator Alexander

17-1577-04

1 A bill to be entitled
2 An act relating to banking; amending s.
3 494.0025, F.S.; prohibiting the use of the name
4 or logo of a financial institution or its
5 affiliates or subsidiaries under certain
6 circumstances without written consent; amending
7 s. 516.07, F.S.; providing that the use of the
8 name or logo of a financial institution or its
9 affiliates or subsidiaries under certain
10 circumstances without written consent is
11 grounds for denial of license or for
12 disciplinary action; amending s. 520.995, F.S.;
13 providing that the use of the name or logo of a
14 financial institution or its affiliates or
15 subsidiaries under certain circumstances
16 without written consent is grounds for
17 disciplinary action; amending s. 626.9541,
18 F.S.; providing that the deceptive use of a
19 name is an unfair method of competition and an
20 unfair or deceptive act or practice; amending
21 s. 655.005, F.S.; revising certain definitions
22 relating to financial institutions to include
23 the term "international branch"; amending s.
24 655.0322, F.S.; revising the definition of the
25 term "financial institution" to include an
26 international branch; amending s. 655.0385,
27 F.S.; clarifying requirements for notification
28 of the appointment of an executive director or
29 equivalent by state financial institutions;
30 requiring a nonrefundable fee to accompany
31 notification; amending s. 655.045, F.S.;

1 providing an exemption from audit requirements;
2 amending s. 655.059, F.S.; providing for the
3 inspection and examination of financial
4 institution records and books pursuant to
5 subpoena; providing for reimbursement of
6 reasonable costs and fees for compliance;
7 providing for setting the reimbursement amount
8 when charges are contested; amending s.
9 655.921, F.S.; prohibiting certain out-of-state
10 financial institutions from locating branch
11 offices in the state in order to qualify for
12 certain exempt transactions; deleting
13 provisions relating to authorization of offices
14 in the state; amending s. 655.922, F.S.;
15 clarifying provisions authorizing financial
16 institutions under another state's financial
17 codes to transact business in this state;
18 expanding the names or titles under which only
19 a financial institution may transact business;
20 prohibiting the use of the name or logo of a
21 financial institution or its affiliates or
22 subsidiaries under certain circumstances
23 without written consent; requiring the
24 Financial Services Commission to adopt rules;
25 amending s. 655.94, F.S.; deleting a
26 prohibition against certain notary publics
27 being involved in opening safety deposit boxes
28 for nonpayment of rent; requiring use of
29 certified mail instead of registered mail;
30 amending. s. 658.16, F.S.; providing criteria
31 for a bank or trust company chartered as a

1 limited liability company to be considered
2 "incorporated" under the financial institutions
3 codes; providing definitions; amending s.
4 658.23, F.S.; correcting terminology; deleting
5 a requirement for a current copy of the bylaws
6 of a bank or trust company to be on file with
7 the Office of Financial Regulation; amending s.
8 658.26, F.S.; providing for state banks to
9 relocate offices upon approval; providing that
10 certain financial institutions may establish or
11 relocate an office upon written notification;
12 providing requirements for notification and a
13 fee; requiring an application for relocation of
14 a main office outside the state; exempting
15 applications from publication in the Florida
16 Administrative Weekly; modifying requirements
17 for applications for branch offices by a bank
18 ineligible for branch notification; deleting a
19 requirement that such applications be published
20 in the Florida Administrative Weekly and be
21 subject to ch. 120, F.S.; requiring a
22 relocation application to be filed with the
23 Office of Financial Regulation; providing for a
24 filing fee, investigations, and restrictions
25 relating to such applications; amending s.
26 658.33, F.S.; adding to the list of persons who
27 must meet certain qualification levels;
28 providing for a waiver of qualification
29 requirements; amending s. 658.37, F.S.;
30 prohibiting an imminently insolvent bank from
31 paying dividends; amending s. 658.48, F.S.;

1 specifying limitations on making loans and
2 extending credit by a bank declared to be
3 imminently insolvent; amending s. 658.67, F.S.;
4 providing multiple dates for the assessment of
5 the value of property acquisition as security;
6 amending s. 658.73, F.S.; delineating which
7 entities or individuals must pay a fee for a
8 certificate of good standing; amending s.
9 663.16, F.S.; revising definitions to include
10 the term "branch" and to reduce the percentage
11 of voting stock necessary for consideration as
12 control; amending s. 663.304, F.S.; deleting a
13 requirement for reservation of a proposed
14 corporate name with the Department of State;
15 amending s. 665.034, F.S.; revising a
16 percentage designating control of an
17 association; amending s. 674.406, F.S.;
18 reducing the time that banks must retain
19 receipts of items; reducing the time within
20 which one must report unauthorized signatures;
21 providing a time limitation within which to
22 assert claims against a bank for an
23 unauthorized endorsement; repealing s. 658.68,
24 F.S., relating to liquidity requirements for a
25 state bank; providing an effective date.

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

28
29 Section 1. Subsection (10) is added to section
30 494.0025, Florida Statutes, to read:

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1 494.0025 Prohibited practices.--It is unlawful for any
2 person:

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

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

14 516.07 Grounds for denial of license or for
15 disciplinary action.--

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

20 (o) Using the name or logo of a financial institution
21 or its affiliates or subsidiaries when marketing or soliciting
22 existing or prospective customers if such marketing materials
23 are used without the written consent of the financial
24 institution and in a manner that would lead a reasonable
25 person to believe that the material or solicitation originated
26 from, was endorsed by, or is related to or the responsibility
27 of the financial institution or its affiliates or
28 subsidiaries.

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

31 520.995 Grounds for disciplinary action.--

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

4 (j) Using the name or logo of a financial institution
5 or its affiliates or subsidiaries when marketing or soliciting
6 existing or prospective customers if such marketing materials
7 are used without the written consent of the financial
8 institution and in a manner that would lead a reasonable
9 person to believe that the material or solicitation originated
10 from, was endorsed by, or is related to or the responsibility
11 of the financial institution or its affiliates or
12 subsidiaries.

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

15 626.9541 Unfair methods of competition and unfair or
16 deceptive acts or practices defined.--

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

20 (bb) Deceptive use of name.--Using the name or logo of
21 a financial institution or its affiliates or subsidiaries when
22 marketing or soliciting existing or prospective customers if
23 such marketing materials are used without the written consent
24 of the financial institution and in a manner that would lead a
25 reasonable person to believe that the material or solicitation
26 originated from, was endorsed by, or is related to or the
27 responsibility of the financial institution or its affiliates
28 or subsidiaries.

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

31 655.005 Definitions.--

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

3 (h) "Financial institution" means a state or federal
4 association, bank, savings bank, trust company, international
5 bank agency, international branch, representative office or
6 international administrative office, or credit union.

7 (p) "State financial institution" means a
8 state-chartered or state-organized association, bank,
9 investment company, trust company, international bank agency,
10 international branch, international representative office,
11 international administrative office, or credit union.

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

14 655.0322 Prohibited acts and practices; criminal
15 penalties.--

16 (1) As used in this section, the term "financial
17 institution" means a financial institution as defined in s.
18 655.50 which includes a state trust company, state or national
19 bank, state or federal association, state or federal savings
20 bank, state or federal credit union, Edge Act or agreement
21 corporation, international bank agency, international branch,
22 representative office or administrative office or other
23 business entity as defined by the commission by rule, whether
24 organized under the laws of this state, the laws of another
25 state, or the laws of the United States, which institution is
26 located in this state.

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

29 655.0385 Disapproval of directors and executive
30 officers.--

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

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

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

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

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

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

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

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

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1 (5)~~(4)~~ The commission may adopt rules to implement
2 this section.

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

5 655.045 Examinations, reports, and internal audits;
6 penalty.--

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

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

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

6 Section 9. Subsection (1) of section 655.059, Florida
7 Statutes, is amended to read:

8 655.059 Access to books and records; confidentiality;
9 penalty for disclosure.--

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

13 (a) To the office or its duly authorized
14 representative;

15 (b) To any person duly authorized to act for the
16 financial institution;

17 (c) To any federal or state instrumentality or agency
18 authorized to inspect or examine the books and records of an
19 insured financial institution;

20 (d) With respect to an international banking
21 corporation, to the home-country supervisor of the
22 corporation, provided:

23 1. The supervisor provides advance notice to the
24 office that the supervisor intends to examine the Florida
25 office of the corporation.

26 2. The supervisor confirms to the office that the
27 purpose of the examination is to ensure the safety and
28 soundness of the corporation.

29 3. The books and records pertaining to customer
30 deposit, investment, and custodial accounts are not disclosed
31 to the supervisor.

1 4. At any time during the conduct of the examination,
2 the office reserves the right to have an examiner present or
3 to participate jointly in the examination.

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5 For purposes of this paragraph, "home-country supervisor"
6 means the governmental entity in the corporation's home
7 country with responsibility for the supervision and regulation
8 of the corporation;

9 (e) As compelled by a court of competent jurisdiction,
10 pursuant to a subpoena issued pursuant to the Florida Rules of
11 Civil or Criminal Procedure or the Federal Rules of Civil
12 Procedure, or pursuant to a subpoena issued in accordance with
13 state or federal law. Prior to the production of the books and
14 records of a financial institution, the party seeking
15 production must reimburse the financial institution for the
16 reasonable costs and fees incurred in compliance with the
17 production. If the parties disagree regarding the amount of
18 reimbursement, the party seeking the records may request the
19 court or agency having jurisdiction to set the amount of
20 reimbursement;

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

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

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

28 (i) As provided in subsection (2).

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

1 655.921 Transaction of business by out-of-state
2 financial institutions; exempt transactions in the financial
3 institutions codes.--

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

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

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

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

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

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

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

9 655.922 Banking business by unauthorized persons; use
10 of name.--

11 (1) No person other than a financial institution
12 authorized to do business in this state pursuant to the
13 financial institutions codes of any state or federal law
14 shall, in this state, engage in the business of soliciting or
15 receiving funds for deposit or of issuing certificates of
16 deposit or of paying checks; and no person shall establish or
17 maintain a place of business in this state for any of the
18 functions, transactions, or purposes mentioned in this
19 subsection. Any person who violates the provisions of this
20 subsection is guilty of a felony of the third degree,
21 punishable as provided in s. 775.082, s. 775.083, or s.
22 775.084. This subsection does not prohibit the issuance or
23 sale by a financial institution of traveler's checks, money
24 orders, or other instruments for the transmission or payment
25 of money, by or through employees or agents of the financial
26 institution off the financial institution's premises.

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

29 (a) Transact business under any name or title,
30 including a corporate or fictitious name, trademark, or other
31 manner, that contains the words "bank," "banco," "banque,"

1 "banker," "banking," "trust ~~company~~," "savings and loan
2 association," "savings bank," or "credit union," or words of
3 similar import, in any context or in any manner;
4 (b) Use any name, word, sign, symbol, or device in any
5 context or in any manner; or
6 (c) Circulate or use any letterhead, billhead,
7 circular, paper, or writing of any kind or otherwise advertise
8 or represent in any manner,
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10 which indicates or reasonably implies that the business being
11 conducted or advertised is the kind or character of business
12 transacted or conducted by a financial institution or which is
13 likely to lead any person to believe that such business is
14 that of a financial institution; however, the words "bank,"
15 "banker," "banking," "trust company," "savings and loan
16 association," "savings bank," or "credit union," or the plural
17 of any thereof, may be used by, and in the corporate or other
18 name or title of, any company which is or becomes a financial
19 institution holding company pursuant to federal law; any
20 subsidiary of any such financial institution holding company
21 which includes as a part of its name or title all or any part,
22 or abbreviations, of the name or title of the financial
23 institution holding company of which it is a subsidiary; any
24 trade organization or association, whether or not
25 incorporated, functioning for the purpose of promoting the
26 interests of financial institutions or financial institution
27 holding companies, the active members of which are financial
28 institutions or financial institution holding companies; and
29 any international development bank chartered pursuant to part
30 II of chapter 663.
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1 (3) No person may use the name or logo of any
2 financial institution or an affiliate or subsidiary thereof,
3 or use a name similar to that of a financial institution or an
4 affiliate or subsidiary thereof, to market or solicit business
5 from a customer or prospective customer of such institution
6 if:

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

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

14 ~~(4)(3)~~ Any court, in a proceeding brought by the
15 office, by any financial institution the principal place of
16 business of which is in this state, or by any other person
17 residing, or whose principal place of business is located, in
18 this state and whose interests are substantially affected
19 thereby, may enjoin any person from violating any of the
20 provisions of this section. For the purposes of this
21 subsection, the interests of a trade organization or
22 association are deemed to be substantially affected if the
23 interests of any of its members are so affected. In addition,
24 the office may issue and serve upon any person who violates
25 any of the provisions of this section a complaint seeking a
26 cease and desist order in accordance with the procedures and
27 in the manner prescribed by s. 655.033.

28 ~~(5)(4)~~ Nothing in this section shall be construed to
29 prohibit the lawful establishment or the lawful operations of
30 a financial institution and nothing in this code shall be
31 construed to prohibit any advertisement or other activity in

1 this state by any person if such prohibition would contravene
2 any applicable federal law which preempts the law of this
3 state.

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

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

8 655.94 Special remedies for nonpayment of rent.--

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

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

3 658.16 Creation of banking or trust corporation.--

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

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

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

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

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

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

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

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

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

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

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

16 (d) "Stock," "voting stock," "voting shares," and
17 "voting securities" includes similar ownership interests in a
18 bank or trust company chartered as a limited liability
19 company, including certificates or other evidence of ownership
20 interests;

21 (e) "Articles of incorporation" or "bylaws" of a bank
22 or trust company chartered as a limited liability company
23 means the institution's articles of organization and operating
24 agreement or other organizational documentation that is
25 substantially similar to that of a corporation;

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

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1 (g) "Dividend" includes distributions of earnings to
2 the owners of a bank or trust company chartered as a limited
3 liability company.

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

6 658.23 Submission of articles of incorporation;
7 contents; form; approval; filing; commencement of corporate
8 existence; bylaws.--

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

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

19 658.26 Places of transacting business; branches;
20 facilities.--

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

24 (2)(a) In addition, with the approval of the office
25 and upon such conditions as the commission or office
26 prescribes, any state bank or trust company may establish
27 branches or relocate offices within or outside the state. With
28 the approval of the office upon a determination that the
29 resulting bank or trust company will be of sound financial
30 condition, any bank or trust company incorporated pursuant to

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1 this chapter may establish branches by merger with any other
2 bank or trust company.

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

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

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

30 1. The sufficiency of capital accounts in relation to
31 the deposit liabilities of the bank, or in relation to the

1 number and valuation of fiduciary accounts of the trust
2 company, including the proposed branch, and the additional
3 fixed assets, if any, which are proposed for the branch and
4 its operations, without undue risk to the bank or its
5 depositors, or undue risk to the trust company or its
6 fiduciary accounts;

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

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

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

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

18 ~~(e)(c)~~ A state bank that is not eligible for
19 notification of a branch relocation must file an application
20 in the form required by the commission. Upon the filing of a
21 relocation application and a nonrefundable filing fee, the
22 office shall investigate to determine whether the financial
23 institution has substantially complied with applicable law
24 governing its operations. Additional investments in land,
25 buildings, leases, and leasehold improvements resulting from
26 such relocation must comply with the limitations imposed by s.
27 658.67(7)(a). A main office may not be moved outside this
28 state unless the move is expressly authorized by the financial
29 institutions codes or by federal law. A financial institution
30 that has been in operation for less than 24 months must
31 provide evidence that the criteria of s. 658.21(1) will be

1 ~~met. As provided by commission rule, a financial institution~~
2 ~~operating in a safe and sound manner may establish a branch by~~
3 ~~filing a written notice with the office at least 30 days~~
4 ~~before opening that branch. In such case, the financial~~
5 ~~institution need not file a branch application or pay a branch~~
6 ~~application fee.~~

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

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

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

30 ~~(d) In addition to the application required by~~
31 ~~paragraph (a), a financial institution whose main office in~~

1 ~~this state has been in operation less than 24 months must~~
2 ~~provide evidence that the criteria of s. 658.21(1) will be~~
3 ~~met.~~

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

7 (3)~~(4)~~ With prior written notification to the office,
8 any bank may operate facilities which are not physically
9 connected to the main or branch office of the bank, provided
10 that the facilities are situated on the property of the main
11 or branch office or property contiguous thereto. Property
12 which is separated from the main or branch office of a bank by
13 only a street, and one or more walkways and alleyways are
14 determined to be, for purposes of this subsection, contiguous
15 to the property of the main or branch office.

16 (4)~~(5)~~ A bank may provide, directly or through a
17 contract with another company, off-premises armored car
18 service to its customers. Armored car services shall not be
19 considered a branch for the purposes of subsection (2).

20 (5)~~(6)~~(a) Any state bank that is a subsidiary of a
21 bank holding company may agree to receive deposits, renew time
22 deposits, close loans, service loans, and receive payments on
23 loans and other obligations, as an agent for an affiliated
24 depository institution.

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

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

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

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

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

19 658.33 Directors, number, qualifications; officers.--

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

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

1 658.37 Dividends and surplus.--
2 (1) The directors of any bank or trust company, after
3 charging off bad debts, depreciation, and other worthless
4 assets if any, and making provision for reasonably anticipated
5 future losses on loans and other assets, may quarterly,
6 semiannually, or annually declare a dividend of so much of the
7 aggregate of the net profits of that period combined with its
8 retained net profits of the preceding 2 years as they shall
9 judge expedient, and, with the approval of the office, any
10 bank or trust company may declare a dividend from retained net
11 profits which accrued prior to the preceding 2 years, but each
12 bank or trust company shall, before the declaration of a
13 dividend on its common stock, carry 20 percent of its net
14 profits for such preceding period as is covered by the
15 dividend to its surplus fund, until the same shall at least
16 equal the amount of its common and preferred stock then issued
17 and outstanding. No bank or trust company shall declare any
18 dividend at any time at which its net income from the current
19 year combined with the retained net income from the preceding
20 2 years is a loss or which would cause the capital accounts of
21 the bank or trust company to fall below the minimum amount
22 required by law, regulation, order, or any written agreement
23 with the office or a state or federal regulatory agency. A
24 bank or trust company may, however, split up or divide the
25 issued shares of capital stock into a greater number of shares
26 without increasing or decreasing the capital accounts of the
27 bank or trust company, and such shall not be construed to be a
28 dividend within the meaning of this section.
29 (2) A bank that has been determined to be imminently
30 insolvent may not pay a dividend.
31

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

4 658.48 Loans.--A state bank may make loans and
5 extensions of credit, with or without security, subject to the
6 following limitations and provisions:

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

11 Section 19. Paragraph (a) of subsection (9) of section
12 658.67, Florida Statutes, is amended to read:

13 658.67 Investment powers and limitations.--A bank may
14 invest its funds, and a trust company may invest its corporate
15 funds, subject to the following definitions, restrictions, and
16 limitations:

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

23 (a) The book entry shall be the lesser of the balance
24 of the loan or investment plus acquisition costs and accrued
25 interest or the appraisal value or market value of the
26 property acquired which shall be determined and dated within 1
27 year prior to or 90 days after the date of acquisition and in
28 compliance with s. 655.60.

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

31 658.73 Fees and assessments.--

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

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

12 663.16 Definitions; ss. 663.17-663.181.--As used in
13 ss. 663.17-663.181, the term:

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

17 (7) "Control" means any person or group of persons
18 acting in concert, directly or indirectly, owning,
19 controlling, or holding the power to vote 25 more than 50
20 percent or more of the voting stock of a company, or having
21 the ability in any manner to elect a majority of directors of
22 a corporation, or otherwise exercising a controlling influence
23 over the management and policies of a corporation as
24 determined by the office.

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

27 663.304 Application for authority to organize an
28 international development bank.--

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

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

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

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

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

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

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

19 Section 23. Paragraph (a) of subsection (4) of section
20 665.034, Florida Statutes, is amended to read:

21 665.034 Acquisition of assets of or control over an
22 association.--

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

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

31

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

3 674.406 Customer's duty to discover and report
4 unauthorized signature or alteration.--

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

14 (6) Without regard to care or lack of care of either
15 the customer or the bank, a customer who does not within 90
16 days ~~1 year~~ after the statement or items are made available to
17 the customer (subsection (1)) discover and report the
18 customer's unauthorized signature on or any alteration on the
19 item or who does not, within 1 year after that time, discover,
20 and report any unauthorized endorsement is precluded from
21 asserting against the bank the unauthorized signature or
22 alteration. If there is a preclusion under this subsection,
23 the payor bank may not recover for breach of warranty under s.
24 674.2081 with respect to the unauthorized signature or
25 alteration to which the preclusion applies.

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

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

Prohibits the unauthorized use of the names or logos of certain financial institutions and provides penalties for such use. Revises certain definitions to include the term "international branch." Clarifies certain provisions regarding notification of the appointment of directors and others. Provides for a fee. Provides an exemption from audit requirements. Provides for records inspections pursuant to subpoenas. Provides for cost reimbursement for such inspections. Prohibits certain institutions from locating offices in this state under certain circumstances. Conforms provisions. Provides additional names under which financial institutions may operate. Provides for the Financial Services Commission to adopt rules. Deletes provisions prohibiting certain notaries from opening safe deposit boxes. Revises mailing requirements. Prohibits certain limited liability companies from operating as corporations. Deletes certain bylaws concerning filing requirements. Provides for the relocation of certain offices upon written notification. Exempts certain applications from publication requirements. Modifies certain branch office application requirements. Provides for certain persons to meet specified qualification levels. Provides for a waiver. Prohibits imminently insolvent banks from taking certain actions and limits their operational powers. Provides for a fee and revises certain definitions to include branches. Deletes a name reservation requirement. Revises a percentage requirement for control of an association. Reduces the time within which a person can report unauthorized endorsements or assert claims for such acts. Repeals certain state bank liquidity requirements. (See bill for details.)