

HB 1121

2011

1 A bill to be entitled
2 An act relating to financial institutions; amending s.
3 655.005, F.S.; revising definitions relating to the
4 financial institutions codes; amending s. 655.013, F.S.;
5 updating a reference; creating s. 655.03855, F.S.;
6 authorizing the office to appoint provisional directors or
7 executive officers; specifying the rights, qualifications,
8 and reporting requirements of such directors and officers;
9 clarifying the liability of such directors and officers
10 and of the office; amending s. 655.044, F.S.; specifying
11 which accounting practice must be followed by financial
12 institutions; amending s. 655.045, F.S.; authorizing the
13 office to conduct additional examinations of financial
14 institutions if warranted; providing for the use of
15 certain examination methods; authorizing the office to
16 enter into agreements with other regulatory agencies
17 relating to examinations; amending s. 655.41, F.S.;
18 revising definitions to conform provisions to changes made
19 by the act; amending s. 655.411, F.S.; revising the
20 criteria for approval of a financial entity's plan of
21 conversion; amending s. 655.414, F.S.; providing for the
22 transfer of assets from a federally chartered or out-of-
23 state chartered institution; amending ss. 655.416,
24 655.417, and 655.418, F.S.; conforming provisions to
25 changes made by the act; amending s. 655.4185, F.S.;
26 revising provisions relating to emergency actions that may
27 be taken for a failing financial institution; authorizing
28 the office to provide prior approval for the chartering of

29 | an entity acquiring control of a failing institution;
30 | amending s. 655.419, F.S.; deleting a provision relating
31 | to actions conducted outside this state; amending s.
32 | 655.947, F.S.; conforming a cross-reference; amending s.
33 | 657.038, F.S.; specifying the loan factors that must be
34 | considered when computing a person's total obligations for
35 | purposes of extending credit; amending s. 657.042, F.S.;
36 | revising criteria that limit a credit union's investment
37 | of funds; requiring a credit union to establish policies
38 | and procedures for evaluating risk; amending ss. 657.063
39 | and 657.064, F.S.; conforming cross-references; amending
40 | s. 658.12, F.S.; conforming a cross-reference; deleting a
41 | provision relating to the application of definitions in
42 | the financial institutions codes; repealing s. 658.20(3),
43 | F.S., relating to applications for prior approval of
44 | officers or directors; amending s. 658.28, F.S.; providing
45 | additional limitations on acquiring or controlling another
46 | bank; repealing s. 658.295, F.S., relating to the Florida
47 | Interstate Banking Act; amending s. 658.2953, F.S.;
48 | revising and updating provisions relating to Florida bank
49 | mergers with out-of-state banks; deleting legislative
50 | intent; repealing s. 658.296, F.S., relating to the
51 | control of deposit-taking institutions; amending s.
52 | 658.36, F.S.; authorizing the office to approve a special
53 | stock offering plan under certain circumstances; amending
54 | s. 658.41, F.S.; clarifying that state laws do not
55 | restrict the right of a state bank or trust company to
56 | merge with an out-of-state bank; amending s. 658.48, F.S.;

57 | revising provisions relating to bank loans; specifying the
 58 | process for computing the liabilities of a person seeking
 59 | a loan; amending s. 658.53, F.S.; deleting a provision
 60 | providing that unpaid proceeds of sales are used to
 61 | evaluate the adequacy of a bank's capital; repealing ss.
 62 | 658.65, 665.013(33), and 667.003(35), F.S., relating to
 63 | remote financial service units; amending s. 658.67, F.S.;
 64 | updating provisions relating to the investment powers of a
 65 | bank or trust company; requiring banks and trust companies
 66 | to establish procedures for evaluating risk; amending ss.
 67 | 288.772, 288.99, 440.12, 440.20, 445.051, 489.503,
 68 | 501.005, 501.165, 624.605, 626.321, 626.730, and 626.9885,
 69 | F.S.; conforming cross-references; providing an effective
 70 | date.

71 |

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

73 |

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

76 | 655.005 Definitions.—

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

79 | (a) "Affiliate" means a holding company of a ~~any~~ financial
 80 | institution established holding company pursuant to state or
 81 | federal law, a ~~or any~~ subsidiary or service corporation of such
 82 | a holding company, or a subsidiary or service corporation of a
 83 | financial institution.

84 | (b) "Appropriate federal regulatory agency" means the

HB 1121

2011

85 federal ~~financial institution~~ regulatory agency that has ~~granted~~
 86 ~~federal~~ statutory authority over a financial institution.

87 (c) "Bank holding company" means a business organization
 88 that is a bank holding company under the Bank Holding Company
 89 Act of 1956, as amended, 12 U.S.C. ss. 1841 et seq., or is
 90 otherwise determined or authorized by the office to be a holding
 91 company of a financial institution pursuant to ss. 658.27-
 92 658.29.

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

101 (e) ~~(d)~~ "Capital stock" means the aggregate of shares of
 102 stock issued to create nonwithdrawable capital ~~issued.~~

103 (f) ~~(e)~~ "Commission" means the Financial Services
 104 Commission.

105 (h) ~~(f)~~ "Executive officer" means an individual, whether or
 106 not the individual has an official title or receives a salary or
 107 other compensation, who participates or has authority to
 108 participate, other than in the capacity of a director, in the
 109 major policymaking functions of a ~~the~~ financial institution. ~~†~~
 110 The term does not include an individual who may have an official
 111 title and may exercise discretion in the performance of duties
 112 and functions, including discretion in the making of loans, but

HB 1121

2011

113 | who does not participate in the determination of major policies
 114 | of the financial institution and whose decisions are limited by
 115 | policy standards established by other officers ~~other than such~~
 116 | ~~individual~~, whether or not the ~~such~~ policy standards have been
 117 | adopted by the board of directors. The chair of the board of of
 118 | directors, the president, the chief executive officer, the chief
 119 | financial officer, the senior loan officer, and every executive
 120 | vice president of a financial institution, and the senior trust
 121 | officer of a trust company, are presumed to be executive
 122 | officers unless ~~any~~ such officer is excluded, by resolution of
 123 | the board of directors or by the bylaws of the financial
 124 | institution, from participating, other than in the capacity of a
 125 | director, in major policymaking functions of the financial
 126 | institution and the individual holding such office so excluded
 127 | does not actually participate therein.

128 | (i)~~(g)~~ "Federal financial institution" means a federally
 129 | or nationally chartered or organized financial institution.

130 | (j)~~(h)~~ "Financial institution" means a state or federal
 131 | savings or thrift association, bank, savings bank, trust
 132 | company, international bank agency, international banking
 133 | corporation, international branch, international representative
 134 | office, international administrative office, international trust
 135 | company representative office, ~~or~~ credit union, or an agreement
 136 | corporation operating pursuant to s. 25 of the Federal Reserve
 137 | Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized
 138 | pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss.
 139 | 611 et seq.

140 | (k)~~(i)~~ "Financial institution-affiliated party" means:

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

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

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

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

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

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

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

159

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

163 (1) ~~(j)~~ "Financial institutions codes" means:

164 1. Chapter 655, relating to financial institutions
 165 generally;

166 2. Chapter 657, relating to credit unions;

167 3. Chapter 658, relating to banks and trust companies;

168 4. Chapter 660, relating to trust business;

HB 1121

2011

169 5. Chapter 663, relating to international banking
170 ~~corporations~~;

171 6. Chapter 665, relating to associations; and

172 7. Chapter 667, relating to savings banks.

173 (m) "Home state" means:

174 1. The state where a financial institution is chartered.

175 2. The state where the main office of a federal financial
176 institution is located.

177 3. The state determined to be the home state of an
178 international banking corporation pursuant to 12 U.S.C. s.
179 3103(c).

180 (n) "Home state regulator" means, with respect to an out-
181 of-state state financial institution, the financial institution
182 regulatory agency of the state in which the institution is
183 chartered.

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

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

191 (q) ~~(l)~~ "Insolvent" means a condition in which:

192 1. The capital accounts, or equity in the case of a credit
193 union, and all assets of a financial institution are
194 insufficient to meet liabilities;

195 2. The financial institution is unable to meet current
196 obligations as they mature, even though assets may exceed

HB 1121

2011

197 liabilities; or

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

202 ~~(r)-(m)~~ "Main office" or "principal office" of a financial
 203 institution means the main business office designated ~~or~~
 204 ~~provided for~~ in its the articles of incorporation or bylaws ~~of a~~
 205 ~~financial institution~~ at an such identified location ~~as has been~~
 206 ~~or is hereafter~~ approved by the office ~~of Financial Regulation,~~
 207 in the case of a state financial institution, or by the
 208 appropriate federal regulatory agency, ~~in the case of a federal~~
 209 ~~financial institution.~~ ~~and,~~ With respect to the trust
 210 department of a bank or association that has trust powers, the
 211 ~~each of these terms mean~~ means the office or place of business
 212 of the trust department at an such identified location, which
 213 need not be the same location as the main office of the bank or
 214 association ~~exclusive of the trust department, as has been or is~~
 215 ~~hereafter~~ approved by the office ~~of Financial Regulation,~~ in the
 216 case of a state bank or association ~~that has a trust department,~~
 217 or by the appropriate federal regulatory agency, ~~in the case of~~
 218 a national bank or federal association ~~that has a trust~~
 219 ~~department.~~ The "main office" or "principal office" of a trust
 220 company means the office designated or provided for ~~as such~~ in
 221 its articles of incorporation, at an such identified location as
 222 ~~has been or is hereafter~~ approved by the relevant chartering
 223 authority.

224 ~~(t)-(n)~~ "Officer" of a financial institution means an any

225 individual ~~du~~y elected or appointed to, or otherwise performing
 226 the duties and functions appropriate to, any position or office
 227 having the designation or title of chair of the board of
 228 directors, vice chair of the board of directors, chair of the
 229 executive committee, president, vice president, assistant vice
 230 president, cashier or assistant cashier, comptroller, assistant
 231 comptroller, trust officer, assistant trust officer, secretary
 232 or assistant secretary ~~(of a trust company)~~, or any other office
 233 or officer designated in, or as provided by, the articles of
 234 incorporation or bylaws, or as determined by the office.

235 (u) "Out-of-state financial institution" means a financial
 236 institution whose home state is a state other than this state.

237 (v) "Related interest" means, with respect to any person,
 238 the person's spouse, partner, sibling, parent, child, or other
 239 individual residing in the same household as the person. With
 240 respect to any person, the term means a company, partnership,
 241 corporation, or other business organization controlled by the
 242 person. A person has control if the person:

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

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

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

249 (w)~~(o)~~ "Service corporation" means a corporation that is
 250 organized to perform, for two or more financial institutions,
 251 services related or incidental to the business of a financial
 252 institution and that is wholly or partially owned or controlled

253 | by one or more financial institutions.

254 | (x) "State," when used in the context of a state other
 255 | than this state, means any other state of the United States, the
 256 | District of Columbia, and any territories of the United States.

257 | (y)~~(p)~~ "State financial institution" means a state-
 258 | chartered or state-organized financial institution ~~association,~~
 259 | ~~bank, investment company, trust company, international bank~~
 260 | ~~agency, international branch, international representative~~
 261 | ~~office, international administrative office, international trust~~
 262 | ~~company representative office, or credit union.~~

263 | (z)~~(q)~~ "Subsidiary" means an ~~any~~ organization that
 264 | ~~permitted by the office which~~ is controlled by a financial
 265 | institution or a holding company of a financial institution.

266 | (aa)~~(r)~~ "Unsafe or unsound practice" means any practice or
 267 | conduct found by the office to be contrary to generally accepted
 268 | standards applicable to a ~~the specific~~ financial institution, or
 269 | a violation of any prior agreement in writing or order of a
 270 | state or federal regulatory agency, which practice, conduct, or
 271 | violation creates the likelihood of loss, insolvency, or
 272 | dissipation of assets or otherwise prejudices the interest of
 273 | the ~~specific~~ financial institution or its depositors or members.
 274 | In making this determination, the office must consider the size
 275 | and condition of the financial institution, the gravity of the
 276 | violation, and the prior conduct of the person or institution
 277 | involved.

278 | (bb)~~(s)~~ "Office" means the Office of Financial Regulation.

279 | (cc)~~(t)~~ "Debt cancellation products" means loan, lease, or
 280 | retail installment contract terms, or modifications or addenda

HB 1121

2011

281 to such ~~loan, lease, or retail installment~~ contracts, under
282 which a creditor agrees to cancel or suspend all or part of a
283 customer's obligation to make payments upon the occurrence of
284 specified events and includes, but is not limited to, debt
285 cancellation contracts, debt suspension agreements, and
286 guaranteed asset protection contracts offered by financial
287 institutions, insured depository institutions as defined in 12
288 U.S.C. s. 1813(c), and subsidiaries of such institutions.
289 ~~However,~~ The term "~~debt cancellation products~~" does not include
290 title insurance as defined in s. 624.608.

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

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

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

300 655.013 Effect on existing financial institutions.—The
301 charters of state financial institutions existing on July 1,
302 1992, ~~at the time of the adoption of this act~~ shall continue in
303 full force and effect. However, after that date, all state
304 financial institutions and, to the extent applicable, all
305 financial institutions shall operate ~~hereafter be operated~~ in
306 accordance with ~~the provisions of~~ the financial institutions
307 codes.

308 Section 3. Section 655.03855, Florida Statutes, is created

HB 1121

2011

309 to read:

310 655.03855 Provisional directors and executive officers.-

311 (1) If a state financial institution has an insufficient
312 number of directors to meet the minimum requirements of s.
313 657.021 or s. 658.33 for 30 days or longer, there are an
314 insufficient number of executive officers, or the qualifications
315 of the executive officers are insufficient to operate the
316 financial institution in a safe and sound manner, the office may
317 appoint one or more provisional directors or executive officers
318 by order.

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

332 (3) A provisional director or executive officer is not
333 liable for any action taken or decision made, except as provided
334 in the financial institutions codes and s. 607.0831. If directed
335 by the office, provisional directors and executive officers must
336 submit reports to the office as to the financial and operating

HB 1121

2011

337 condition of the financial institution and recommendations as to
 338 appropriate corrective actions to be taken by the institution.

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

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

348 655.044 Accounting practices; bad debts ineligible to be
 349 carried as assets.—

350 (1) Except as otherwise provided by law, a state financial
 351 institution shall observe United States generally accepted
 352 accounting principles and practices. The commission may
 353 authorize ~~by rule~~ exceptions to such accounting practices by
 354 rule as necessary.

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

357 655.045 Examinations, reports, and internal audits;
 358 penalty.—

359 (1)~~(a)~~ The office shall conduct an examination of the
 360 condition of each state financial institution during each 18-
 361 month period, ~~beginning July 1, 1981.~~ The office may conduct
 362 more frequent examinations based upon the risk profile of the
 363 financial institution, prior examination results, or significant
 364 changes in the institution or its operations. The office may use

HB 1121

2011

365 continuous, phase, or other flexible scheduling examinations
366 methods for very large or complex state financial institutions
367 and financial institutions owned or controlled by a multi-
368 financial institution holding company. The office shall consider
369 examination guidelines from federal regulatory agencies in order
370 to facilitate, coordinate, and standardize examination
371 processes. ~~The office may accept an examination made by the~~
372 ~~appropriate federal regulator, insuring or guaranteeing~~
373 ~~corporation, or agency with respect to the condition of the~~
374 ~~state financial institution or may make a joint or concurrent~~
375 ~~examination with the appropriate federal regulator, insuring or~~
376 ~~guaranteeing corporation, or agency. However, at least once~~
377 ~~during each 36-month period beginning on July 3, 1992, the~~
378 ~~office shall conduct an examination of each state financial~~
379 ~~institution in such a manner as to allow the preparation of a~~
380 ~~complete examination report not subject to the right of any~~
381 ~~federal or other non-Florida entity to limit access to the~~
382 ~~information contained therein.~~

383 (a) With respect to, and examination of, the condition of
384 a state institution, the office may accept an examination made
385 by an appropriate federal regulatory agency, or may make a joint
386 or concurrent examination with the federal agency. The office
387 may furnish a copy of all examinations or reviews made of
388 financial institutions or their affiliates to the state or
389 federal agencies participating in the examination,
390 investigation, or review, or as otherwise authorized by s.
391 655.057. The office may also enter into agreements with other
392 appropriate state and federal financial regulatory agencies to

HB 1121

2011

393 facilitate the efficient utilization and coordination of
394 resources in the examinations.

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

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

421 or service corporation.

422 (d)~~(e)~~ For the purposes of this section, the term "costs"
 423 means the salary and travel expenses directly attributable to
 424 the field staff examining the state financial institution,
 425 subsidiary, or service corporation, and the travel expenses of
 426 any supervisory staff required as a result of examination
 427 findings. The mailing of any costs incurred under this
 428 subsection must be postmarked within ~~not later than~~ 30 days
 429 after the date of receipt of a notice stating that such costs
 430 are due. The office may levy a late payment of up to \$100 per
 431 day or part thereof that a payment is overdue, unless ~~it is~~
 432 excused for good cause. However, for intentional late payment of
 433 costs, the office may levy an administrative fine of up to
 434 \$1,000 per day for each day the payment is overdue.

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

447 (4) A copy of the report of each examination must be
 448 furnished to the entity ~~financial institution~~ examined. Such

HB 1121

2011

449 report ~~of examination~~ shall be presented to the board of
 450 directors at its next regular or special meeting.

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

453 655.41 ~~Cross-industry Conversions, mergers,~~
 454 ~~consolidations, and acquisitions;~~ Definitions used in ss.

455 ~~655.41-655.419.~~—As used in ss. 655.41-655.419, the
 456 term:

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

463 (2) "Capital stock financial institution" means a
 464 financial entity that ~~which~~ is authorized to issue capital
 465 stock.

466 (3) "Mutual financial institution" means a financial
 467 institution that ~~entity which~~ is not authorized to issue stock
 468 and the assets of which are owned by its members.

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

471 655.411 Conversion of charter.—

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

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

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

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

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

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

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

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

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

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

503 3. The officers and directors have sufficient experience,
 504 ability, and standing to indicate a reasonable promise for the

505 successful operation of the resulting financial entity.

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

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

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

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

522
 523 If the office disapproves the plan, it shall state its
 524 objections and give the financial entity an opportunity ~~to the~~
 525 ~~parties~~ to amend the plan to overcome such objections. The
 526 office may deny an application by an ~~any~~ financial entity that
 527 ~~which~~ is subject to a cease and desist order or other
 528 supervisory restriction or order imposed by a ~~any~~ state or
 529 federal supervisory authority, insurer, or guarantor.

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

532 655.414 Acquisition of assets; assumption of liabilities.-

HB 1121

2011

533 With prior approval of the office and upon such conditions as
534 the commission prescribes by rule, a ~~any~~ financial entity may
535 acquire all or substantially all of the assets of, or assume all
536 or any part of the liabilities of, any other financial
537 institution ~~entity~~ in accordance with the procedures and subject
538 to the following conditions and limitations:

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

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

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

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

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

559 (e) If a stock financial institution is the transferring
560 financial institution ~~entity~~ and the proposed sale is not ~~to be~~

HB 1121

2011

561 for cash, a clear and concise statement that dissenting
562 stockholders of the institution ~~such financial entity~~ are
563 entitled to the rights set forth in s. 658.44(4) and (5).

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

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

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

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

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

580

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

584 (3) VOTE OF MEMBERS OR STOCKHOLDERS.—If the office
585 approves the plan, it may be submitted to the members or
586 stockholders of the transferring financial institution ~~entity~~ at
587 an annual meeting or at a ~~any~~ special meeting called to consider
588 such action. Upon a majority ~~favorable~~ vote of ~~51 percent~~ or

HB 1121

2011

589 ~~more~~ of the total number of votes eligible to be cast or, in the
 590 case of a credit union, a majority vote ~~51 percent or more~~ of
 591 the members present at the meeting, the plan is adopted.

592 (4) ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

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

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

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

611 (5) FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A
 612 PARTICIPANT.—If one of the participants in a transaction under
 613 this section is a federally chartered financial institution or
 614 an out-of-state financial institution ~~entity~~, all participants
 615 must also comply with ~~such~~ requirements ~~as may be~~ imposed by
 616 federal and other state law for the ~~such an~~ acquisition,

HB 1121

2011

617 assumption, or sale and provide evidence of such compliance to
618 the office as a condition precedent to the issuance of a
619 certificate authorizing the transaction; however, if the
620 purchasing or assuming financial institution ~~entity~~ is a federal
621 or out-of-state state-chartered ~~federally chartered~~ financial
622 institution and the transferring state financial entity will be
623 liquidated, approval of the office is not required.

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

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

635 655.416 Book value of assets.—Upon the effective date of a
636 merger, consolidation, conversion, or acquisition pursuant to
637 ss. 655.41–655.419, an asset may not be carried on the books of
638 the resulting financial entity at a valuation higher than that
639 at which it was carried on the books of a participating or
640 converting financial institution ~~entity~~ at the time of its last
641 examination by a state or federal examiner before such ~~the~~
642 ~~effective date of such merger, consolidation, conversion, or~~
643 ~~acquisition~~, without written approval from the office.

644 Section 10. Section 655.417, Florida Statutes, is amended

HB 1121

2011

645 to read:

646 655.417 Effect of merger, consolidation, conversion, or
647 acquisition.—From and after the effective date of a merger,
648 consolidation, conversion, or acquisition, the resulting
649 financial entity or entities may conduct business in accordance
650 with the terms of the plan as approved, subject to the following
651 conditions and limitations; ~~provided that:~~

652 (1) CONTINUING ENTITY.—Even though the charter of a
653 participating or converting financial institution may have
654 ~~entity has~~ been terminated, the resulting financial entity is
655 deemed to be a continuation of the participating or converting
656 financial institution ~~entity~~ such that all acquired property of
657 the participating or converting institution ~~financial entity~~,
658 including rights, titles, and interests in and to all property
659 of whatsoever kind, whether real, personal, or mixed, and things
660 in action, and all rights, privileges, interests, and assets of
661 any conceivable value or benefit which are then existing, or
662 pertaining to it, or which would inure to it, are immediately
663 vested in and continue to be the property of the resulting
664 financial entity, by act of law and without any conveyance or
665 transfer and without further act or deed. The resulting; ~~and~~
666 ~~such~~ financial entity has, holds, and enjoys the same in its own
667 right as fully and to the same extent as the same was possessed,
668 held, and enjoyed by the participating or converting financial
669 institution ~~entity;~~ and, at the time ~~of the taking effect of~~
670 such merger, consolidation, conversion, or acquisition takes
671 effect, the resulting financial entity has and succeeds to all
672 the rights, obligations, and relations of the participating or

HB 1121

2011

673 converting institution ~~financial entity~~.

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

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

699 (4) EXCEPTION.—In the case of an acquisition of assets or
 700 assumption of liabilities pursuant to s. 655.414, ~~the provisions~~

HB 1121

2011

701 ~~of~~ subsections (1), (2), and (3) apply only to the assets
 702 acquired and the liabilities assumed by the resulting financial
 703 entity if, ~~provided~~ sufficient assets to satisfy all liabilities
 704 not assumed by the resulting financial entity are retained by
 705 the transferring financial institution entity.

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

708 655.418 Nonconforming activities; cessation.—If, as a
 709 result of a merger, consolidation, conversion, or acquisition
 710 ~~pursuant to ss. 655.41–655.419~~, the resulting financial entity
 711 is to be of a different type or of a different character than
 712 any one or all of the participating or converting financial
 713 institutions ~~entities~~, such resulting financial entity is ~~will~~
 714 ~~be~~ subject to the following conditions and limitations:

715 (1) PLAN FOR TERMINATION.—The plan of merger,
 716 consolidation, conversion, or acquisition must set forth the
 717 method and schedule for terminating those activities that are
 718 not permitted by the laws of this state for the resulting
 719 financial entity but ~~that~~ were authorized for ~~any of~~ the
 720 participating or converting financial institutions ~~entities~~.

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

728 (3) COMPLIANCE WITH LENDING AND INVESTMENT LIMITATIONS.—

HB 1121

2011

729 If, as a result of such merger, consolidation, conversion, or
 730 acquisition, the resulting financial entity will exceed any
 731 lending, investment, or other limitations imposed by law, the
 732 financial entity must ~~shall~~ conform to such limitations within
 733 such period of time as is established by the office.

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

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

741 655.4185 Emergency action.—

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

HB 1121

2011

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

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

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

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

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

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

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

783 (2) Any ~~such~~ finding by the office must be based upon
784 reports or other information furnished to it by the failing

HB 1121

2011

785 financial institution, by a state or federal financial
786 institution examiner or regulatory entity, or upon other
787 evidence from which it is reasonable to conclude that the
788 failing such financial institution is insolvent, ~~or~~ is
789 threatened with imminent insolvency, or lacks a board of
790 directors or executive management that can operate the entity in
791 a safe and sound manner. The office may disallow intangible
792 assets, deferred tax assets, loan or lease loss reserves,
793 subordinated debt, and illegally obtained currency, monetary
794 instruments, funds, or other financial resources from the
795 capitalization requirements of the financial institutions codes.
796 The stockholders of a failing institution ~~bank, association, or~~
797 ~~trust company~~ that is acquired by another financial institution
798 ~~bank or trust company under this section~~ are entitled to the
799 same procedural rights and ~~to~~ compensation for the remaining
800 value of their shares as is provided for dissenters in s.
801 658.44, except that they may not ~~have no right to~~ vote against
802 the transaction. Any transaction authorized by this section may
803 be accomplished through the organization of a successor
804 financial institution.

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

812 Section 13. Section 655.419, Florida Statutes, is amended

HB 1121

2011

813 to read:

814 655.419 Effect.—The provisions of ss. 655.41- 655.419
 815 relating to merger, consolidation, conversion, or acquisition of
 816 assets of any financial institution ~~entity~~ are cumulative with
 817 all other provisions of the financial institutions codes and do
 818 not modify, limit, or repeal any ~~of such~~ other provisions except
 819 as expressly provided in the codes or as stated in an emergency
 820 order issued by the office pursuant to s. 655.4185 ~~stated~~
 821 ~~herein. Additionally, the provisions of ss. 655.41- 655.419~~
 822 ~~do not grant any authority, directly or indirectly, for any~~
 823 ~~bank, association, trust company, association holding company,~~
 824 ~~or bank holding company, the operations of which are principally~~
 825 ~~conducted outside this state, to acquire, convert to, or merge~~
 826 ~~or consolidate with any financial entity.~~

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

829 655.947 Debt cancellation products.—

830 (1) Debt cancellation products may be offered, and a fee
 831 may be charged, by financial institutions and subsidiaries of
 832 financial institutions subject to ~~the provisions of~~ this section
 833 and the rules and orders of the commission or office. As used in
 834 this section, the term "financial institutions" includes those
 835 defined in s. 655.005-~~(1)-(h)~~, insured depository institutions as
 836 defined in 12 U.S.C. s. 1813, and subsidiaries of such
 837 institutions.

838 Section 15. Present subsections (8) through (16) of
 839 section 657.038, Florida Statutes, are redesignated as
 840 subsections (7) through (15), respectively, and subsections (6)

HB 1121

2011

841 and (7) of that section are amended, to read:

842 657.038 Loan powers.—

843 ~~(6) As used in this section, the term "related interest"~~
 844 ~~means a person's interest in a partnership as a general partner,~~
 845 ~~and any limited partnership, corporation, or other business~~
 846 ~~organization controlled by that person. A limited partnership,~~
 847 ~~corporation, or other business organization is controlled by a~~
 848 ~~person who:~~

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

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

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

856 (6) ~~(7)~~ In computing a person's the total obligations
 857 outstanding liabilities of any person, all loans endorsed or
 858 guaranteed as to repayment by that such person and ~~by~~ any
 859 related interest of such person must be included. The credit
 860 union must also include all of the person's potential
 861 liabilities and obligations resulting from the person's
 862 derivatives transactions, repurchase agreements, securities
 863 lending and borrowing transactions, credit default swaps, and
 864 similar contracts.

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

867 657.042 Investment powers and limitations.—A credit union
 868 may invest its funds subject to the following definitions,

869 restrictions, and limitations:

870 (7) SPECIAL PROVISIONS.—

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

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

892 (c) ~~(b)~~ With prior office approval ~~of the office~~, any
 893 investment permitted in this section may also be made indirectly
 894 by investment in a trust or mutual fund, the investments of
 895 which are limited as set forth in this section., ~~provided that~~
 896 The credit union must maintain a current file on each investment

HB 1121

2011

897 | which contains sufficient information to determine whether the
 898 | investment complies with the requirements of this section. If
 899 | the investment fails to comply ~~with the requirements of this~~
 900 | ~~section~~, the credit union must divest itself of its investment,
 901 | unless otherwise approved by the office.

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

904 | 657.063 Involuntary liquidation.—

905 | (5) When the liquidating agent of the credit union has
 906 | been appointed, the office may waive or deem inapplicable the
 907 | fees required by this chapter and the examination required by s.
 908 | 655.045(1) ~~(a) if, provided~~ the liquidating agent submits
 909 | periodic reports to the office on the status of the liquidation.

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

912 | 657.064 Voluntary liquidation.—A credit union may elect to
 913 | dissolve voluntarily and liquidate its affairs in the following
 914 | manner:

915 | (8) When the liquidating agent of the credit union has
 916 | been appointed, the office may waive or hold inapplicable the
 917 | fees required by this chapter and the examination required by s.
 918 | 655.045(1) ~~(a) if, provided~~ the liquidating agent submits
 919 | periodic reports to the office on the status of the liquidation.

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

922 | 658.12 Definitions.—Subject to other definitions contained
 923 | in the financial institutions codes and unless the context
 924 | otherwise requires:

HB 1121

2011

925 (4) "Branch" or "branch office" of a bank means any office
 926 or place of business of a bank, other than its main office and
 927 the facilities and operations authorized by ss. 658.26(4),
 928 ~~658.65~~, and 660.33, at which deposits are received, checks are
 929 paid, or money is lent. With respect to a bank that ~~which~~ has a
 930 trust department, the terms "~~branch~~" and "~~branch office~~" have
 931 the meanings herein ascribed to a branch or a branch office of a
 932 trust company and mean. "~~Branch~~" or "~~branch office~~" of a trust
 933 ~~company means~~ any office or place of business of a trust
 934 company, other than its main office and its trust service
 935 offices established pursuant to s. 660.33, where trust business
 936 is transacted with its customers.

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

942 Section 20. Subsection (3) of section 658.20, Florida
 943 Statutes, is repealed.

944 Section 21. Subsection (1) of section 658.28, Florida
 945 Statutes, is amended to read:

946 658.28 Acquisition of control of a bank or trust company.—

947 (1) If ~~In any case in which~~ a person or a group of
 948 persons, directly or indirectly or acting by or through one or
 949 more persons, proposes to purchase or acquire a controlling
 950 interest in a ~~any~~ state bank or state trust company, and ~~thereby~~
 951 ~~to~~ change the control of that bank or trust company, such ~~each~~
 952 ~~person or group of persons~~ must ~~shall~~ first submit an ~~make~~

HB 1121

2011

953 application to the office for a certificate of approval of such
 954 proposed change ~~of control of the bank or trust company.~~

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

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

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

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

981 Section 22. Section 658.295, Florida Statutes, is
 982 repealed.

983 Section 23. Section 658.2953, Florida Statutes, is amended
 984 to read:

985 658.2953 Interstate branching.—

986 (1) SHORT TITLE.—This section may be cited as the "Florida
 987 Interstate Branching Act."

988 (2) PURPOSE.—The purpose of this section is to provide for
 989 the regulation of ~~permit~~ interstate branching, ~~effective May 31,~~
 990 ~~1997, by a merger transaction under s. 102 of the Riegle-Neal~~
 991 ~~Interstate Banking and Branching Efficiency Act of 1994, Pub. L.~~
 992 ~~No. 103-328,~~ in accordance with this section and consistent with
 993 the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss.
 994 1811 et seq.; the Bank Holding Company Act of 1956, as amended,
 995 12 U.S.C. ss. 1841 et seq., and 12 U.S.C. s. 5451; and Pub. L.
 996 No. 111-203.

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

1000 ~~(a) Supervise, regulate, and examine persons, firms,~~
 1001 ~~corporations, associations, and other business entities~~
 1002 ~~furnishing depository, lending, and associated financial~~
 1003 ~~services in this state.~~

1004 ~~(b) Protect the interests of shareholders, members,~~
 1005 ~~depositors, and other customers of financial institutions~~
 1006 ~~operating in this state.~~

1007 ~~(c) Preserve the competitive equality of state financial~~
 1008 ~~institutions as compared with federal financial institutions.~~

1009 ~~(d) Promote the availability, efficiency, and~~
 1010 ~~profitability of financial services in the communities of this~~
 1011 ~~state.~~

1012 ~~(e) Preserve the advantages of the dual banking system.~~

1013 ~~(f) Cooperate with federal regulators and regulators from~~
 1014 ~~other states in regulating financial institutions, in improving~~
 1015 ~~the quality of regulation, and in promoting the interests of~~
 1016 ~~this state in interstate matters.~~

1017 ~~(g) Provide the commission and office sufficient powers~~
 1018 ~~and responsibilities to carry out such purposes.~~

1019 ~~(3) (4) DEFINITIONS.—As used in this section, the term~~
 1020 ~~unless a different meaning is required by the context:~~

1021 ~~(a) "Bank" has the meaning set forth in 12 U.S.C. s.~~
 1022 ~~1813(h), provided the term "bank" does not include any "foreign~~
 1023 ~~bank" as defined in 12 U.S.C. s. 3101(7), except such term~~
 1024 ~~includes any foreign bank organized under the laws of a~~
 1025 ~~territory of the United States, Puerto Rico, Guam, American~~
 1026 ~~Samoa, or the Virgin Islands, the deposits of which are insured~~
 1027 ~~by the Federal Deposit Insurance Corporation.~~

1028 ~~(b) "Bank holding company" has the meaning set forth in 12~~
 1029 ~~U.S.C. s. 1841(a) (1).~~

1030 ~~(c) "Bank regulatory agency" means:~~

1031 ~~1. Any agency of another state with primary responsibility~~
 1032 ~~for chartering and regulating banks.~~

1033 ~~2. The Office of the Comptroller of the Currency, the~~
 1034 ~~Federal Deposit Insurance Corporation, the Board of Governors of~~
 1035 ~~the Federal Reserve System, and any successor to such agencies.~~

1036 ~~(d) "Branch" has the meaning set forth in s. 658.12.~~

HB 1121

2011

1037 ~~(e) "De novo branch" means a branch of a bank located in a~~
 1038 ~~host state which:~~

1039 ~~1. Is originally established by the bank as a branch.~~

1040 ~~2. Does not become a branch of the bank as a result of:~~

1041 ~~a. The acquisition of another bank or a branch of another~~
 1042 ~~bank; or~~

1043 ~~b. The merger, consolidation, or conversion involving any~~
 1044 ~~such bank or branch.~~

1045 ~~(f) "Control" shall be construed consistently with the~~
 1046 ~~provisions of 12 U.S.C. s. 1841(a)(2).~~

1047 ~~(g) "Failing financial entity" means an out-of-state state~~
 1048 ~~bank that has been determined by its home state regulator or the~~
 1049 ~~appropriate federal regulatory agency to be imminently insolvent~~
 1050 ~~or to require immediate action to prevent its probable failure.~~

1051 ~~(h) "Home state" means:~~

1052 ~~1. With respect to a state bank, the state by which the~~
 1053 ~~bank is chartered.~~

1054 ~~2. With respect to a national bank, the state in which the~~
 1055 ~~main office of the bank is located.~~

1056 ~~3. With respect to a foreign bank, the state determined to~~
 1057 ~~be the home state of such foreign bank under 12 U.S.C. s.~~
 1058 ~~3103(e).~~

1059 ~~(i) "Home state regulator" means, with respect to an out-~~
 1060 ~~of-state state bank, the bank's regulatory agency of the state~~
 1061 ~~in which such bank is chartered.~~

1062 ~~(j) "Host state" means a state, other than the home state~~
 1063 ~~of a bank, in which the bank maintains or seeks to establish and~~
 1064 ~~maintain a branch.~~

HB 1121

2011

1065 ~~(k) "Insured depository institution" has the meaning set~~
 1066 ~~forth in 12 U.S.C. s. 1813(e) (2) and (3).~~

1067 (a)~~(1)~~ "Interstate merger transaction" means the merger or
 1068 consolidation of banks with different home states, and the
 1069 conversion of branches of any bank involved in the merger or
 1070 consolidation into branches of the resulting bank.

1071 ~~(m) "Out-of-state bank" means a bank whose home state is a~~
 1072 ~~state other than this state.~~

1073 ~~(n) "Out-of-state state bank" means a bank chartered under~~
 1074 ~~the laws of any state other than this state.~~

1075 (b)~~(e)~~ "Resulting bank" means a bank that results ~~has~~
 1076 ~~resulted~~ from an interstate merger transaction under this
 1077 section.

1078 ~~(p) "State" means any state of the United States, the~~
 1079 ~~District of Columbia, any territory of the United States, Puerto~~
 1080 ~~Rico, Guam, American Samoa, the Trust Territory of the Pacific~~
 1081 ~~Islands, the Virgin Islands, and the Northern Mariana Islands.~~

1082 (c)~~(g)~~ "Florida bank" means a bank whose home state is
 1083 this state.

1084 ~~(r) "State bank" means a bank chartered under the laws of~~
 1085 ~~this state.~~

1086 ~~(5) INTERSTATE BRANCHING BY DE NOVO ENTRY PROHIBITED.—An~~
 1087 ~~out-of-state bank that does not operate a branch in this state~~
 1088 ~~is prohibited from establishing a de novo branch in this state.~~

1089 (4)~~(6)~~ AUTHORITY OF STATE BANKS TO ESTABLISH INTERSTATE
 1090 BRANCHES BY MERGER.—With the prior written approval of the
 1091 office, a state bank may establish, maintain, and operate one or
 1092 more branches in a state other than this state pursuant to an

HB 1121

2011

1093 interstate merger transaction in which the state bank is the
 1094 resulting bank. No later than the date on which the required
 1095 application for the interstate merger transaction is filed with
 1096 the appropriate ~~responsible~~ federal bank regulatory agency, the
 1097 applicant state bank shall file an application on a form
 1098 prescribed by the commission accompanied by the required fee
 1099 pursuant to s. 658.73. The applicant must ~~shall~~ also comply with
 1100 the provisions of ss. 658.40-658.45.

1101 (5) ~~(7)~~ INTERSTATE MERGER TRANSACTIONS AND BRANCHING
 1102 PERMITTED.—

1103 (a) One or more Florida banks may enter into an interstate
 1104 merger transaction with one or more out-of-state banks. An out-
 1105 of-state bank resulting from such transaction may maintain and
 1106 operate the branches of a Florida bank that participated in such
 1107 transaction if, ~~provided that~~ the conditions and filing
 1108 requirements of this section are met.

1109 (b) Except as otherwise expressly provided in this
 1110 section, an interstate merger transaction is ~~shall~~ not be
 1111 permitted if, upon consummation of such transaction, the
 1112 resulting bank, including all insured depository institutions
 1113 that would be "affiliates," as defined in 12 U.S.C. s. 1841(k),
 1114 of the resulting bank, would control 30 percent or more of the
 1115 total amount of deposits held by all insured depository
 1116 institutions in this state. However, this paragraph does not
 1117 apply to initial entry into this state by an out-of-state bank
 1118 or bank holding company.

1119 ~~(c) An interstate merger transaction resulting in the~~
 1120 ~~acquisition by an out-of-state bank of a Florida bank shall not~~

HB 1121

2011

1121 ~~be permitted under this section unless such Florida bank has~~
 1122 ~~been in existence and continuously operating, on the date of~~
 1123 ~~such acquisition, for more than 3 years.~~

1124 (6)~~(8)~~ NOTICE AND FILING REQUIREMENTS.—An ~~Any~~ out-of-state
 1125 bank that will be the resulting bank pursuant to an interstate
 1126 merger transaction involving a Florida bank must ~~shall~~ notify
 1127 the office of the proposed merger within 15 days after the date
 1128 ~~on which~~ it files an application for an interstate merger
 1129 transaction with the appropriate federal regulatory agency and
 1130 the home state regulatory agency, if applicable. Thereafter, the
 1131 out-of-state bank and the Florida bank must, upon request of the
 1132 office, submit status updates with such information as the
 1133 office specifies until the merger transaction is completed or
 1134 the merger application is withdrawn or denied.

1135 (7)~~(9)~~ EXAMINATIONS; PERIODIC REPORTS; COOPERATIVE
 1136 AGREEMENTS; ASSESSMENT OF FEES.—

1137 (a) The office may examine any Florida branch of an out-
 1138 of-state state bank which the office deems necessary for the
 1139 purpose of determining whether the branch is being operated in
 1140 compliance with the laws of this state and in accordance with
 1141 safe and sound banking practices.

1142 (b) The office may enter into cooperative, coordinating,
 1143 or information-sharing agreements with other bank regulatory
 1144 agencies or any organization affiliated with or representing one
 1145 or more bank regulatory agencies to facilitate the regulation of
 1146 out-of-state state branches doing business in this state.

1147 (c) The office may accept reports of examinations or
 1148 investigations, or other records from other regulatory agencies

HB 1121

2011

1149 | having concurrent jurisdiction over a state bank or a bank
 1150 | holding company that controls out-of-state state banks that
 1151 | operate branches in this state in lieu of conducting its own
 1152 | examinations or investigations.

1153 | (d) The office may assess supervisory and examination fees
 1154 | that are ~~shall be~~ payable by state banks and out-of-state state
 1155 | bank holding companies doing business in this state in
 1156 | connection with the office's performance of its duties under
 1157 | this section and as prescribed by the commission. Such fees may
 1158 | be shared with other bank regulatory agencies or ~~any~~
 1159 | organizations affiliated with or representing one or more bank
 1160 | regulatory agencies in accordance with agreements between them
 1161 | and the office.

1162 | (8) ~~(10)~~ LAWS APPLICABLE TO INTERSTATE BRANCHING
 1163 | OPERATIONS.—Laws of this state regarding consumer protection,
 1164 | fair lending, and establishment of intrastate branches apply to
 1165 | any out-of-state bank branch doing business in this state to the
 1166 | same extent as the laws of this state apply to a state bank,
 1167 | unless ~~except~~:

1168 | (a) ~~When~~ Federal law preempts the application of the laws
 1169 | of this state.

1170 | (b) ~~When~~ The Comptroller of the Currency determines that
 1171 | the application of the ~~such~~ laws of this state would have a
 1172 | discriminatory effect on the branch of a national bank in
 1173 | comparison with the effect the application of such state laws
 1174 | would have with respect to branches of a state bank.

1175 | (9) ~~(11)~~ ENFORCEMENT.—

1176 | (a) If the office determines that a branch maintained by

HB 1121

2011

1177 an out-of-state state bank in this state is being operated in
 1178 violation of any ~~provision of~~ law of this state, or that such
 1179 branch is being operated in an unsafe and unsound manner, the
 1180 office may take all such enforcement actions as it would be
 1181 empowered to take if the branch were a state bank if, ~~provided~~
 1182 ~~that~~ the office ~~shall~~ promptly gives ~~give~~ notice to the home
 1183 state regulator of each enforcement action taken against the an
 1184 out-of-state state bank and, to the extent practicable, consults
 1185 and cooperates ~~shall consult and cooperate~~ with the home state
 1186 regulator in pursuing and resolving the said enforcement action.

1187 (b) The office may take any action jointly with other
 1188 regulatory agencies having concurrent jurisdiction over out-of-
 1189 state banks and bank holding companies that operate branches in
 1190 this state, or take such action independently, to carry out its
 1191 responsibilities.

1192 (10) ~~(12)~~ NOTICE OF SUBSEQUENT MERGER.—

1193 (a) Each out-of-state state bank that has established and
 1194 maintains a branch in this state must ~~pursuant to this section~~
 1195 ~~shall~~ give at least 30 days' prior written notice to the office
 1196 of any merger, consolidation, or other transaction that would
 1197 cause a change of control pursuant to home state or federal law
 1198 with respect to such bank or any bank holding company that
 1199 controls such bank.

1200 (b) ~~Notwithstanding any other provisions of the financial~~
 1201 ~~institutions codes or of chapter 120,~~ In the case of a failing
 1202 financial institution ~~entity,~~ the office ~~shall have the power,~~
 1203 with the concurrence of the appropriate regulatory agencies
 1204 ~~agency,~~ may ~~to~~ issue an emergency order authorizing any

1205 necessary interstate banking or branching transaction pursuant
 1206 to s. 655.4185.†

1207 ~~1. The merger or interstate merger transaction of any such~~
 1208 ~~failing financial entity with a state bank or bank holding~~
 1209 ~~company that controls a state bank;~~

1210 ~~2. Any bank to acquire assets and assume liabilities of~~
 1211 ~~the Florida branches of any such failing financial entity;~~

1212 ~~3. The conversion of any such failing financial entity~~
 1213 ~~into a state bank or trust company;~~

1214 ~~4. The chartering of a new state bank to acquire the~~
 1215 ~~Florida branches of any such failing financial entity; or~~

1216 ~~5. The chartering of a new state trust company to acquire~~
 1217 ~~assets and assume liabilities and rights, powers, and~~
 1218 ~~responsibilities as fiduciary of such failing financial entity.~~

1219 (11) ~~(13)~~ DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

1220 (a) With the prior approval of the office, a ~~any~~ state
 1221 bank may establish and maintain a de novo branch or acquire a
 1222 branch in a state other than this state by submitting an
 1223 application with the office pursuant to s. 658.26.

1224 (b) A state bank desiring to establish and maintain a
 1225 branch in another state ~~pursuant to s. 658.26~~ shall pay the
 1226 branch application fee set forth in s. 658.73. In acting on the
 1227 application, the office shall consider the views of the
 1228 appropriate bank regulatory agencies.

1229 (c) An out-of-state bank may establish and maintain a de
 1230 novo branch or acquire a branch in this state upon compliance
 1231 with chapter 607 or chapter 608 relating to doing business in
 1232 this state as a foreign business entity, including maintaining a

HB 1121

2011

1233 registered agent for service of process and other legal notice
 1234 pursuant to s. 655.0201.

1235 (12)-(14) ADDITIONAL BRANCHES; POWERS.—

1236 (a) An out-of-state bank that has lawfully acquired or
 1237 established a branch in this state ~~or bank holding company that~~
 1238 ~~has acquired a bank in this state pursuant to s. 658.295, or by~~
 1239 ~~interstate merger pursuant to this section,~~ may establish an
 1240 ~~additional branch or~~ additional branches in this state to the
 1241 same extent that any Florida bank may establish ~~a branch or~~
 1242 branches in this state.

1243 (b) An out-of-state bank may conduct only those activities
 1244 at its Florida branch or branches which ~~that~~ are authorized
 1245 under the laws of this state or of the United States. However,
 1246 an out-of-state bank with trust powers ~~resulting from an~~
 1247 ~~interstate merger transaction with one or more Florida banks~~
 1248 ~~with trust powers shall be entitled to and~~ may exercise all
 1249 trust powers in this state as a Florida bank with trust powers
 1250 ~~that participated in the transaction.~~

1251 Section 24. Section 658.296, Florida Statutes, is
 1252 repealed.

1253 Section 25. Section 658.36, Florida Statutes, is amended
 1254 to read:

1255 658.36 Changes in capital.—

1256 (1) A ~~No~~ state bank or trust company may not ~~shall~~ reduce
 1257 the number of shares of its outstanding capital stock without
 1258 first obtaining the approval of the office, ~~and such~~ Approval
 1259 shall be withheld if the reduction will cause ~~the outstanding~~
 1260 capital accounts ~~stock~~ to be less than the minimum required

HB 1121

2011

1261 pursuant to the financial institutions codes.

1262 (2) A ~~Any~~ state bank or trust company may provide for an
1263 increase in its number of outstanding shares of capital stock
1264 after filing a written notice with the office at least 15 days
1265 before ~~prior to~~ making such increase. The office may waive the
1266 time requirement upon a demonstration of good cause.

1267 (3) If a bank or trust company's capital accounts have been
1268 diminished by losses to less than the minimum required pursuant
1269 to the financial institutions codes, the market value of its
1270 shares of capital stock is less than the present par value, and
1271 the bank or trust company cannot reasonably issue and sell new
1272 shares of stock to restore its capital accounts at a share price
1273 of par value or greater of the previously issued capital stock,
1274 the office, notwithstanding any other provisions of chapter 607
1275 or the financial institutions codes, may approve special stock
1276 offering plans.

1277 (a) Such plans may include, but are not limited to,
1278 mechanisms for stock splits including reverse splits;
1279 revaluations of par value of outstanding stock; changes in
1280 voting rights, dividends, or other preferences; and creation of
1281 new classes of stock.

1282 (b) The plan must be approved by majority vote of the bank
1283 or trust company's entire board of directors and by holders of
1284 two-thirds of the outstanding shares of stock.

1285 (c) The office shall disapprove a plan that provides
1286 unfair or disproportionate benefits to existing shareholders,
1287 directors, executive officers, or their related interests. The
1288 office shall also disapprove any plan that is not likely to

HB 1121

2011

1289 restore the capital accounts to sufficient levels to achieve a
 1290 sustainable, safe, and sound financial institution.

1291 (d) For any bank or trust company that the office
 1292 determines to be a failing financial institution pursuant to s.
 1293 655.4185, the office may approve special stock offering plans
 1294 without a vote of the shareholders.

1295 Section 26. Subsection (2) of section 658.41, Florida
 1296 Statutes, is amended to read:

1297 658.41 Merger; resulting state or national bank.—

1298 (2) ~~Nothing in~~ The laws ~~law~~ of this state do not shall
 1299 restrict the right of a state bank or state trust company to
 1300 merge with a resulting national bank or out-of-state bank. In
 1301 such case the action to be taken by a constituent state bank or
 1302 state trust company, and its rights and liabilities and those of
 1303 its shareholders, are shall be the same as those prescribed for
 1304 constituent national banks at the time of the action by the
 1305 applicable federal ~~law of the United States~~ and not ~~by~~ the law
 1306 of this state.

1307 Section 27. Subsections (3) through (11) of section
 1308 658.48, Florida Statutes, are amended to read:

1309 658.48 Loans.—A state bank may make loans and extensions
 1310 of credit, with or without security, subject to the following
 1311 limitations and provisions:

1312 (3) LOANS TO OTHER PERSONS.—A ~~No~~ bank may not shall extend
 1313 credit, including the granting of a line of credit, to any ~~other~~
 1314 person ~~not included in subsection (2)~~, including a any related
 1315 interest of that person, which that, if when aggregated with the
 1316 amount of all other extensions of credit to that person and any

1317 related interest of that person, exceeds 15 percent of the
 1318 capital accounts of the lending bank, unless the extension of
 1319 credit has been approved in advance by a majority of the entire
 1320 board of directors or by all members of an authorized committee
 1321 thereof within ~~not more than~~ 1 year before ~~prior to~~ the time
 1322 ~~when~~ such credit is extended.

1323 ~~(4) RELATED INTERESTS. As used in this section, the term~~
 1324 ~~"related interest" means, with respect to any person, any~~
 1325 ~~partnership, corporation, or other business organization~~
 1326 ~~controlled by that person. A corporation is controlled by a~~
 1327 ~~person who:~~

1328 ~~(a) Owns, controls, or has the power to vote 25 percent or~~
 1329 ~~more of any class of voting securities of the corporation;~~

1330 ~~(b) Controls in any manner the election of a majority of~~
 1331 ~~the directors of the corporation; or~~

1332 ~~(c) Has the power to exercise a controlling influence over~~
 1333 ~~the management or policies of the corporation.~~

1334 (4) ~~(5)~~ SPECIAL PROVISIONS.—

1335 (a) A limitation of 25 percent of the capital accounts of
 1336 the lending bank applies to the aggregate of all loans made to a
 1337 corporation, together with all loans secured by shares of stock,
 1338 bonds, or other obligations of the same corporation, unless the
 1339 stocks or bonds are listed and traded on a recognized stock
 1340 exchange, or are ~~or are~~ registered under the Securities Exchange Act of
 1341 1934, or are ~~are~~ registered with the Board of Governors of the
 1342 Federal Reserve System, ~~with~~ the Federal Deposit Insurance
 1343 Corporation, or ~~with~~ the Comptroller of the Currency, in which
 1344 case no aggregate loan limit applies.

HB 1121

2011

1345 (b) A limitation of 15 percent of the capital accounts of
 1346 the lending bank applies to loans made to any one borrower on
 1347 the security of shares of capital stock listed and traded on a
 1348 recognized exchange. A limitation of 10 percent of the capital
 1349 accounts of the lending bank applies to loans made to any one
 1350 borrower on the security of shares of capital stock not listed
 1351 on a recognized exchange or the obligations subordinate to
 1352 deposits of another bank. A limitation of 25 percent of the
 1353 capital accounts of the lending state bank applies to the
 1354 aggregate of all loans secured by the shares of capital stock or
 1355 the obligations subordinate to deposits of any one bank.

1356 (c) A ~~No~~ loan may not ~~shall~~ be made by a bank:

1357 1. On the security of the shares of its own capital stock
 1358 or of its obligations subordinate to deposits.

1359 2. On an unsecured basis for the purpose of purchasing ~~the~~
 1360 ~~purchase of~~ shares of its own capital stock or its obligations
 1361 subordinate to deposits.

1362 3. On a secured or unsecured basis for the purpose of
 1363 purchasing ~~the purchase of~~ shares of the stock of its one-bank
 1364 holding company.

1365 (d) A one-bank holding company bank may make loans on its
 1366 own one-bank holding company stock. For capital stock that is
 1367 listed and traded on a recognized exchange, the stock may not be
 1368 valued at more than 70 percent of its current market value, and
 1369 for capital stock that is not listed and traded on a recognized
 1370 exchange, the stock may not be valued at more than 70 percent of
 1371 its current book value.

1372 ~~(e) Loans based upon the security of real estate mortgages~~

1373 ~~shall be documented as first liens, except that liens other than~~
 1374 ~~first liens may be taken:~~

1375 ~~1. To protect a loan previously made in good faith;~~
 1376 ~~2. To further secure a loan otherwise amply and entirely~~
 1377 ~~secured;~~

1378 ~~3. As additional security for Federal Housing~~
 1379 ~~Administration Title 1 loans or loans made with participation or~~
 1380 ~~guaranty by the Small Business Administration;~~

1381 ~~4. To secure a loan not in excess of 15 percent of the~~
 1382 ~~capital accounts of the bank; or~~

1383 ~~5. As provided by rules of the commission.~~

1384 ~~(e)(f)~~ In computing the total liabilities of any person,
 1385 ~~there shall be included~~ all loans or lines of credit endorsed or
 1386 guaranteed as to repayment by such person and ~~by~~ any related
 1387 interest of such person must be included. Purchased
 1388 participations in pools of loans which are carried as loans
 1389 subject to the limits of this section must be aggregated when
 1390 computing the total liabilities of a person who is a borrower,
 1391 originator, seller, broker, or guarantor, or has a repurchase
 1392 agreement obligation for the individual and pooled loans. The
 1393 computation of total liabilities must also include all potential
 1394 liabilities and obligations of the person, and any related
 1395 interest, resulting from the person's derivatives transactions,
 1396 repurchase agreements, securities lending and borrowing
 1397 transactions, credit default swaps, and similar contracts.

1398 ~~(f)(g)~~ All loan documentation must ~~shall~~ be written in ~~the~~
 1399 English language or contain an English translation of foreign
 1400 language provisions.

HB 1121

2011

1401 (5)~~(6)~~ APPLICABILITY OF LOAN LIMITATIONS.—The loan
 1402 limitations ~~otherwise~~ provided in this section do not apply to:
 1403 (a) Loans that ~~which~~ are fully secured by assignment of a
 1404 savings account or certificate of deposit of the lending bank;
 1405 (b) Loans that ~~which~~ are fully secured by notes, bonds, or
 1406 other evidences of indebtedness issued by the United States
 1407 Government or fully guaranteed as to repayment by the United
 1408 States Government or its agencies, bureaus, boards, or
 1409 commissions; ~~or~~
 1410 (c) Loans made to district school boards if ~~when~~ such
 1411 loans are secured by the assignment of revenues reasonably
 1412 expected to be received from the state and are otherwise made in
 1413 compliance with statutes governing borrowings by such boards;
 1414 or~~-~~
 1415 (d) Purchased participations in pools of loans which are
 1416 carried as investments subject to the limitations of s. 658.67.
 1417 (6)~~(7)~~ APPROVAL BY BOARD.—The requirements of this section
 1418 concerning approval of lending activities by the board of
 1419 directors or an authorized committee therefrom are ~~have been~~ met
 1420 only if ~~when~~ such approvals are recorded in the formal minutes
 1421 of the actions of the board and its committees by name of
 1422 borrower, amount of loan, maturity of loan, and general type of
 1423 collateral. If, at the time of approval of a line of credit,
 1424 such information is not available, the name of the borrower and
 1425 the amount of the approved line of credit must ~~shall~~ be recorded
 1426 in the minutes. Any action required by this section ~~to be taken~~
 1427 ~~by the board of directors or an authorized committee therefrom~~
 1428 may be taken pursuant to s. 607.0820(4) if the minutes of the

HB 1121

2011

1429 proceedings of the board or of the committee reflect such action
 1430 and each director taking such action signs the minutes
 1431 reflecting such action at the next regular meeting of the board
 1432 or committee attended by such director.

1433 (7)~~(8)~~ LIABILITY OF OFFICERS AND DIRECTORS.—Officers and
 1434 directors are personally liable, jointly and severally, for any
 1435 loss that may be occasioned by a ~~any~~ willful violation of this
 1436 section.

1437 (8)~~(9)~~ If ~~When~~ a bank's capital has been diminished by
 1438 losses so that its ability to honor legally binding written loan
 1439 commitments is impaired, the office may approve limited
 1440 expansion of the lending limitations set forth in this section.

1441 ~~(10) IMMEDIATELY INSOLVENT BANK.—When the office has~~
 1442 ~~determined that a state bank is imminently insolvent, the bank~~
 1443 ~~may not make any new loans or discounts other than by~~
 1444 ~~discounting or purchasing bills of exchange payable at sight.~~

1445 (9)~~(11)~~ FEDERAL RESTRICTIONS AND LIMITATIONS.—~~Nothing in~~
 1446 This section does not expand, enlarge ~~shall be construed as~~
 1447 ~~expanding, enlarging,~~ or otherwise affect ~~affecting~~ any lending
 1448 limits, restrictions, or procedures now provided by federal law
 1449 applicable to state banks in conjunction with any loan or loans
 1450 to any borrower or class of borrowers.

1451 Section 28. Subsection (4) of section 658.53, Florida
 1452 Statutes, is amended to read:

1453 658.53 Borrowing; limits of indebtedness.—

1454 (4) Unrepaid proceeds of sales of capital notes and
 1455 capital debentures are, ~~as provided herein,~~ shall be considered
 1456 ~~as~~ a part of the aggregate amount of capital and surplus in

HB 1121

2011

1457 computing loan and investment limitations ~~and in evaluating~~
 1458 ~~adequacy of capital of the issuing bank~~ if the issuing bank is
 1459 not in default ~~thereunder.~~

1460 Section 29. Section 658.65, subsection (33) of section
 1461 665.013, and subsection (35) of section 667.003, Florida
 1462 Statutes, are repealed.

1463 Section 30. Paragraph (c) of subsection (5) and
 1464 subsections (6) and (10) of section 658.67, Florida Statutes,
 1465 are amended to read:

1466 658.67 Investment powers and limitations.—A bank may
 1467 invest its funds, and a trust company may invest its corporate
 1468 funds, subject to the following definitions, restrictions, and
 1469 limitations:

1470 (5) INVESTMENTS IN RELATED COMPANIES.—A bank or trust
 1471 company may invest in the stock of incorporated companies to the
 1472 extent hereinafter defined:

1473 (c) Up to 10 percent of the capital accounts of a bank may
 1474 be invested in a clearing corporation as defined in s. 678.1021
 1475 ~~678.102(3).~~

1476 (6) INVESTMENTS IN CORPORATIONS.—Up to an aggregate of 10
 1477 percent of the total assets of a bank may be invested in the
 1478 stock, obligations, or other securities of subsidiary
 1479 corporations or other corporations or entities, except as
 1480 limited or prohibited by federal law, and except that during the
 1481 first 3 years of existence of a bank, such investments are
 1482 limited to 5 percent of the total assets. ~~Any bank whose~~
 1483 ~~aggregate investment on June 30, 1992, exceeds the limitation in~~
 1484 ~~this subsection has 5 years within which to achieve compliance;~~

HB 1121

2011

1485 ~~additional time may be approved by the office if the office~~
 1486 ~~finds that compliance with this subsection will result in more~~
 1487 ~~than a minimal loss to the bank.~~ The commission ~~may,~~ by rule, or
 1488 the office by order, may further limit any type of investment
 1489 made pursuant to this subsection if it finds that such
 1490 investment would constitute an unsafe or unsound practice.

1491 (10) SPECIAL PROVISIONS.—

1492 (a) ~~None of~~ The bonds or other obligations described in
 1493 this section are not ~~shall be~~ eligible for investment ~~in any~~
 1494 ~~amount~~ unless current as to all payments of principal and
 1495 interest and ~~unless rated in one of the four highest~~
 1496 ~~classifications, or, in the case of commercial paper, unless it~~
 1497 ~~is of prime quality and of the highest letter and numerical~~
 1498 ~~rating, as established by a nationally recognized rating service~~
 1499 ~~or any comparable rating as determined by the office. Bonds or~~
 1500 ~~other obligations which are unrated shall not be eligible for~~
 1501 ~~investment unless~~ otherwise supported as to investment quality
 1502 and marketability by a credit rating file compiled and
 1503 maintained in current status by the purchasing bank or trust
 1504 company. Banks and trust companies shall establish written
 1505 policies and procedures to evaluate the systemic and specific
 1506 risks and benefits associated with all investments authorized in
 1507 this section before making such investments and must provide for
 1508 appropriate risk management and monitoring for the duration of
 1509 the investment. An investment decision may not be based solely
 1510 on the rating of the bond or other obligation by an investment
 1511 rating service. The office may require a bank or trust company
 1512 to divest itself of any investment that the office determines

HB 1121

2011

1513 creates excessive risk or that has an associated risk that
 1514 exceeds the ability of the bank or trust company to properly
 1515 evaluate and manage.

1516 (b) Investment securities shall be entered on the books of
 1517 the bank or trust company at the fair market value on the date
 1518 of acquisition. Premiums paid in excess of par value shall be
 1519 amortized ~~either~~ over the life of the security or to the first
 1520 call date at its call price and thereafter to subsequent call
 1521 dates at their respective call prices until maturity. Discount
 1522 may be accredited over the life of the security.

1523 Section 31. Subsection (5) of section 288.772, Florida
 1524 Statutes, is amended to read:

1525 288.772 Definitions.—For purposes of ss. 288.771–288.778:

1526 (5) "Financial institution" shall have the same meaning as
 1527 that term is defined in s. 655.005~~(1)(h)~~.

1528 Section 32. Paragraph (b) of subsection (5) of section
 1529 288.99, Florida Statutes, is amended to read:

1530 288.99 Certified Capital Company Act.—

1531 (5) INVESTMENTS BY CERTIFIED CAPITAL COMPANIES.—

1532 (b) All capital not invested in qualified investments by
 1533 the certified capital company:

1534 1. Must be held in a financial institution as defined in
 1535 ~~by~~ s. 655.005~~(1)(h)~~ or held by a broker-dealer registered under
 1536 s. 517.12, except as set forth in sub-subparagraph 3.g.

1537 2. Must not be invested in a certified investor of the
 1538 certified capital company or any affiliate of the certified
 1539 investor of the certified capital company, except for an
 1540 investment permitted by sub-subparagraph 3.g. if, ~~provided~~

1541 repayment terms do not permit the obligor to directly or
 1542 indirectly manage or control the investment decisions of the
 1543 certified capital company.

1544 3. Must be invested only in:

1545 a. ~~Any~~ United States Treasury obligations;

1546 b. Certificates of deposit or other obligations, maturing
 1547 within 3 years after acquisition of such certificates or
 1548 obligations, issued by any financial institution or trust
 1549 company incorporated under the laws of the United States;

1550 c. Marketable obligations, maturing within 10 years or
 1551 less after the acquisition of such obligations, which are rated
 1552 "A" or better by any nationally recognized credit rating agency;

1553 d. Mortgage-backed securities that have, ~~with~~ an average
 1554 life of 5 years or less, after the acquisition of such
 1555 securities, which are rated "A" or better by a ~~any~~ nationally
 1556 recognized credit rating agency;

1557 e. Collateralized mortgage obligations and real estate
 1558 mortgage investment conduits that are direct obligations of an
 1559 agency of the United States Government; are not private-label
 1560 issues; are in book-entry form; and do not include the classes
 1561 of interest only, principal only, residual, or zero;

1562 f. Interests in money market funds, the portfolio of which
 1563 is limited to cash and obligations described in sub-
 1564 subparagraphs a.-d.; or

1565 g. Obligations that are issued by an insurance company
 1566 that is not a certified investor of the certified capital
 1567 company making the investment, that has provided a guarantee
 1568 indemnity bond, insurance policy, or other payment undertaking

HB 1121

2011

1569 in favor of the certified capital company's certified investors
 1570 as permitted by subparagraph (3)(1)1. or an affiliate of such
 1571 insurance company as defined by subparagraph (3)(a)3. that is
 1572 not a certified investor of the certified capital company making
 1573 the investment, provided that such obligations are:

1574 (I) Issued or guaranteed as to principal by an entity
 1575 whose senior debt is rated "AA" or better by Standard & Poor's
 1576 Ratings Group or such other nationally recognized credit rating
 1577 agency as the commission may determine by rule ~~determine~~.

1578 (II) Not subordinated to other unsecured indebtedness of
 1579 the issuer or the guarantor.

1580 (III) Invested by such issuing entity in accordance with
 1581 sub-subparagraphs 3.a.-f.

1582 (IV) Readily convertible into cash within 5 business days
 1583 for the purpose of making a qualified investment unless such
 1584 obligations are held to provide a guarantee, indemnity bond,
 1585 insurance policy, or other payment undertaking in favor of the
 1586 certified capital company's certified investors as permitted by
 1587 subparagraph (3)(1)1.

1588 Section 33. Subsection (1) of section 440.12, Florida
 1589 Statutes, is amended to read:

1590 440.12 Time for commencement and limits on weekly rate of
 1591 compensation.—

1592 (1) ~~No~~ Compensation is not ~~shall be~~ allowed for the first
 1593 7 days of the disability, except for benefits provided for in s.
 1594 440.13. However, if the injury results in ~~disability of~~ more
 1595 than 21 days of disability, compensation is ~~shall be~~ allowed
 1596 from the commencement of the disability. All weekly compensation

HB 1121

2011

1597 | payments, except for the first payment, must ~~shall~~ be paid by
 1598 | check or, if authorized by the employee, deposited directly into
 1599 | the employee's account at a financial institution. ~~As used in~~
 1600 | ~~this subsection, the term "financial institution" means a~~
 1601 | ~~financial institution~~ as defined in s. 655.005(1)(h).

1602 | Section 34. Paragraph (a) of subsection (1) of section
 1603 | 440.20, Florida Statutes, is amended to read:

1604 | 440.20 Time for payment of compensation and medical bills;
 1605 | penalties for late payment.—

1606 | (1) (a) Unless the carrier ~~it~~ denies compensability or
 1607 | entitlement to benefits, the carrier shall pay compensation
 1608 | directly to the employee as required by ss. 440.14, 440.15, and
 1609 | 440.16, in accordance with those ~~the obligations set forth in~~
 1610 | ~~such~~ sections. If authorized by the employee, the carrier's
 1611 | obligation to pay compensation directly to the employee is
 1612 | satisfied when the carrier directly deposits, by electronic
 1613 | transfer or other means, compensation into the employee's
 1614 | account at a financial institution. ~~As used in this paragraph,~~
 1615 | ~~the term "financial institution" means a financial institution~~
 1616 | as defined in s. 655.005(1)(h). Compensation by direct deposit
 1617 | is considered paid on the date the funds become available for
 1618 | withdrawal by the employee.

1619 | Section 35. Paragraph (c) of subsection (2) of section
 1620 | 445.051, Florida Statutes, is amended to read:

1621 | 445.051 Individual development accounts.—

1622 | (2) As used in this section, the term:

1623 | (c) "Financial institution" has the same meaning ~~means a~~
 1624 | ~~financial institution~~ as defined in s. 655.005(1)(h).

HB 1121

2011

1625 Section 36. Subsection (18) of section 489.503, Florida
 1626 Statutes, is amended to read:

1627 489.503 Exemptions.—This part does not apply to:

1628 (18) The monitoring of an alarm system by a direct
 1629 employee of any state or federally chartered financial
 1630 institution, as defined in s. 655.005(1)(h), or any parent,
 1631 affiliate, or subsidiary thereof, so long as:

1632 (a) The institution is subject to, and in compliance with,
 1633 s. 3 of the Federal Bank Protection Act of 1968, 12 U.S.C. s.
 1634 1882;

1635 (b) The alarm system is in compliance with all applicable
 1636 firesafety standards as set forth in chapter 633; and

1637 (c) The monitoring is limited to an alarm system
 1638 associated with:

1639 1. The commercial property where banking operations are
 1640 housed or ~~where~~ other operations are conducted by a state or
 1641 federally chartered financial institution, ~~as defined in s.~~
 1642 ~~655.005(1)(h)~~, or any parent, affiliate, or subsidiary thereof;
 1643 or

1644 2. The private property occupied by the institution's
 1645 executive officers, as defined in s. 655.005(1)(f),
 1646
 1647 and does not otherwise extend to the monitoring of residential
 1648 systems.

1649 Section 37. Paragraph (b) of subsection (15) of section
 1650 501.005, Florida Statutes, is amended to read:

1651 501.005 Consumer report security freeze.—

1652 (15) The provisions of this section do not apply to the

1653 following entities:

1654 (b) A deposit account information service company that,
 1655 ~~which~~ issues reports regarding account closures due to fraud,
 1656 substantial overdrafts, automatic teller machine abuse, or
 1657 similar negative information regarding a consumer to an
 1658 inquiring ~~banks or other~~ financial institution as defined in s.
 1659 655.005 institutions for use only in reviewing a consumer
 1660 request for a deposit account at the inquiring ~~bank or~~ financial
 1661 institution, as defined in s. 655.005(1)(g) ~~or (h)~~, or in
 1662 federal law.

1663 Section 38. Paragraph (d) of subsection (2) of section
 1664 501.165, Florida Statutes, is amended to read:

1665 501.165 Automatic renewal of service contracts.—

1666 (2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

1667 (d) This subsection does not apply to:

1668 1. A financial institution as defined in s. 655.005(1)(h)
 1669 or any depository institution as defined in 12 U.S.C. s.
 1670 1813(c)(2).

1671 2. A foreign bank maintaining a branch or agency licensed
 1672 under the laws of any state of the United States.

1673 3. Any subsidiary or affiliate of an entity described in
 1674 subparagraph 1. or subparagraph 2.

1675 4. A health studio as defined in s. 501.0125(1).

1676 5. Any entity licensed under chapter 624, chapter 627,
 1677 chapter 634, chapter 636, or chapter 641.

1678 6. Any electric utility as defined in s. 366.02(2).

1679 7. Any private company as defined in s. 180.05 providing
 1680 services described in chapter 180 which ~~that~~ is competing

1681 against a governmental entity or has a governmental entity
 1682 providing billing services on its behalf.

1683 Section 39. Paragraph (r) of subsection (1) of section
 1684 624.605, Florida Statutes, is amended to read:

1685 624.605 "Casualty insurance" defined.—

1686 (1) "Casualty insurance" includes:

1687 (r) *Insurance for debt cancellation products.*—Insurance
 1688 that a creditor may purchase against the risk of financial loss
 1689 from the use of debt cancellation products with consumer loans
 1690 or leases or retail installment contracts. Insurance for debt
 1691 cancellation products is not liability insurance but is ~~shall be~~
 1692 considered credit insurance only for the purposes of s.
 1693 631.52(4).

1694 1. For purposes of this paragraph, the term "debt
 1695 cancellation products" means loan, lease, or retail installment
 1696 contract terms, or modifications to loan, lease, or retail
 1697 installment contracts, under which a creditor agrees to cancel
 1698 or suspend all or part of a customer's obligation to make
 1699 payments upon the occurrence of specified events and includes,
 1700 but is not limited to, debt cancellation contracts, debt
 1701 suspension agreements, and guaranteed asset protection
 1702 contracts. However, the term "~~debt cancellation products~~" does
 1703 not include title insurance as defined in s. 624.608.

1704 2. Debt cancellation products may be offered by financial
 1705 institutions, ~~as defined in s. 655.005(1)(h)~~, insured depository
 1706 institutions as defined in 12 U.S.C. s. 1813(c), and
 1707 subsidiaries of such institutions, as provided in the financial
 1708 institutions codes; by sellers as defined in s. 721.05, or by

HB 1121

2011

1709 the parents, subsidiaries, or affiliated entities of sellers, in
 1710 connection with the sale of timeshare interests; or by other
 1711 business entities as ~~may be~~ specifically authorized by law, and
 1712 such products are ~~shall not constitute~~ insurance for purposes of
 1713 the Florida Insurance Code.

1714 Section 40. Paragraph (g) of subsection (1) of section
 1715 626.321, Florida Statutes, is amended to read:

1716 626.321 Limited licenses.—

1717 (1) The department shall issue to a qualified individual,
 1718 or a qualified individual or entity under paragraphs (c), (d),
 1719 (e), and (i), a license as agent authorized to transact a
 1720 limited class of business in any of the following categories:

1721 (g) *Credit property insurance.*—A license covering only
 1722 credit property insurance may be issued to any individual except
 1723 an individual employed by or associated with a ~~lending or~~
 1724 financial institution as defined in s. 655.005 ~~(1) (g), (h), or~~
 1725 ~~(p)~~ and authorized to sell such insurance only with respect to a
 1726 borrower or debtor, not to exceed the amount of the loan.

1727 Section 41. Subsection (4) of section 626.730, Florida
 1728 Statutes, is amended to read:

1729 626.730 Purpose of license.—

1730 (4) This section does not ~~shall not be deemed to~~ prohibit
 1731 the licensing under a limited license as to motor vehicle
 1732 physical damage and mechanical breakdown insurance or ~~the~~
 1733 ~~licensing under a limited license for~~ credit property insurance
 1734 of any person employed by or associated with a motor vehicle
 1735 sales or financing agency, a retail sales establishment, or a
 1736 consumer loan office, other than a consumer loan office owned by

HB 1121

2011

1737 or affiliated with a financial institution as defined in s.
 1738 655.005(1) ~~(g), (h), or (p)~~, with respect to insurance of the
 1739 interest of such agency in a motor vehicle sold or financed by
 1740 it or in personal property if ~~when~~ used as collateral for a
 1741 loan. This section does not apply with respect to the interest
 1742 of a real estate mortgagee in or as to insurance covering such
 1743 interest or in the real estate subject to such mortgage.

1744 Section 42. Section 626.9885, Florida Statutes, is amended
 1745 to read:

1746 626.9885 Financial institutions conducting insurance
 1747 transactions.—A financial institution, as defined in s.
 1748 655.005(1) ~~(g), (h), or (p)~~, may conduct insurance transactions
 1749 only through Florida-licensed insurance agents representing
 1750 Florida-authorized insurers or representing Florida-eligible
 1751 surplus lines insurers.

1752 Section 43. This act shall take effect July 1, 2011.