



General Assembly

Substitute Bill No. 983

January Session, 2003

**AN ACT CONCERNING FOREIGN BANKS AND RECEIVERSHIPS AND
CONSERVATORSHIPS FOR CONNECTICUT BANKS AND
CONNECTICUT CREDIT UNIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 36a-223 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) In all cases in which the appointment of a receiver or conservator
4 for any Connecticut bank or Connecticut credit union is sought, if it is
5 found that a receiver or conservator should be appointed, the Superior
6 Court shall appoint [the commissioner] as a receiver or conservator [,
7 except that the commissioner may request that] the commissioner or, if
8 requested by the commissioner, the Federal Deposit Insurance
9 Corporation or the National Credit Union Administration, or their
10 successor agencies [, be appointed receiver or conservator. If the
11 commissioner requests appointment of either the Federal Deposit
12 Insurance Corporation or the National Credit Union Administration,
13 or their successor agencies, the Superior Court shall make such
14 appointment] or, if extraordinary circumstances exist, another
15 competent person. The Superior Court may appoint the receiver or
16 conservator on an ex parte basis upon a sufficient affidavit of the
17 commissioner or the commissioner's authorized representative
18 indicating reasonable likelihood that an unsafe or unsound condition
19 exists which is likely to have an adverse effect upon depositors, share

20 account holders or creditors. The commissioner may organize a
21 separate division within the Department of Banking for liquidating
22 and administering the affairs of the banks or credit unions for which
23 the commissioner is acting as receiver or conservator, and the
24 commissioner may appoint such employees as the commissioner
25 deems necessary for the liquidation or administration of the affairs of
26 such banks or credit unions. Any salaries and expenses shall be paid
27 out of the funds of the bank or credit union in the possession of the
28 commissioner, subject to the approval of the court having jurisdiction.
29 The commissioner may appoint an agent, who may be an employee of
30 the Department of Banking or such other person as the commissioner
31 may deem appropriate and who, in the absence or incapacity of the
32 commissioner and of the commissioner's deputy, shall have authority
33 to act for or represent the commissioner in all matters pertaining to the
34 duties of the commissioner as the receiver or conservator of any
35 Connecticut bank or Connecticut credit union. Such agent may execute
36 and sign for the commissioner as the receiver or conservator any
37 documents, instruments or reports necessary in the administration of
38 the receivership or conservatorship. The state shall be reimbursed for
39 any costs or expenses incurred by the Department of Banking in the
40 administration of the receivership or conservatorship, and the
41 commissioner may collect from each such estate in receivership or
42 conservatorship such charges as, in the commissioner's opinion, are
43 fair and equitable. Any such costs or expenses so collected shall be
44 deposited with the State Treasurer and shall be credited to the State
45 Banking Fund. All legal services required by the commissioner or the
46 commissioner's deputy, agent or employees in connection with such
47 receivership proceedings or the administration or reorganization of
48 any such Connecticut bank or Connecticut credit union shall be
49 performed by the Attorney General, and any salaries and expenses for
50 such legal assistance shall be paid out of the funds of the estate in
51 receivership or conservatorship with the approval of the superior court
52 having jurisdiction. Such salaries and expenses shall be allocated by
53 the commissioner as nearly as possible to the estate in receivership or
54 conservatorship for which the services were rendered, and the funds in

55 payment of the same shall be deposited with the State Treasurer and
56 shall be credited to the appropriation for the Attorney General. The
57 commissioner shall keep on file in the commissioner's office an
58 executed copy of each report required to be filed by the commissioner,
59 as the receiver or conservator, with the clerk of the Superior Court and
60 shall include a report of each bank or credit union for which the
61 commissioner is acting as receiver or conservator in the
62 commissioner's annual report to the Governor. If the commissioner,
63 the Federal Deposit Insurance Corporation or the National Credit
64 Union Administration, or their successor agencies, accepts the
65 appointment as receiver or conservator, no bond shall be required to
66 be posted.

67 (b) Upon the appointment of a receiver pursuant to subsection (a) of
68 this section, possession of and title to all assets, business and property
69 of the Connecticut bank or Connecticut credit union shall pass to and
70 vest in the receiver without the execution of any instruments of
71 conveyance, assignment, transfer or endorsement.

72 (c) A receiver or conservator appointed pursuant to subsection (a) of
73 this section shall have the following powers: (1) To take possession of
74 the books, records and assets of every description of the Connecticut
75 bank or Connecticut credit union and collect all debts due and claims
76 belonging to it; (2) to sue and defend all rights and claims involving
77 the bank or credit union; (3) to exercise any and all fiduciary functions
78 of the bank or credit union as of the date of the commencement of the
79 receivership or conservatorship; (4) to borrow such sums of money as
80 may be necessary or desirable in the performance of the duties of the
81 receiver or conservator, and in connection therewith, to secure such
82 borrowings by the pledge, hypothecation or mortgage of the assets of
83 the bank or credit union; (5) [to sell,] subject to the approval of the
84 appointing court, unless such approval is not required under
85 subsection (d) of this section, to sell or otherwise dispose of any and all
86 real and personal property [and, on like order, to] of the bank or credit
87 union; sell, assign, compromise, [and settle] or otherwise dispose of all
88 bad or doubtful debts; and compromise all doubtful claims for or

89 against the bank or credit union; (6) to exercise all of the power and
90 authority of the corporators, shareholders, directors, trustees, officers,
91 depositors and share account holders of such bank or credit union in
92 carrying out the duty of the receiver or conservator; (7) to exercise such
93 other powers and duties as may be reasonably necessary or desirable
94 to effectively and efficiently perform the functions of receiver or
95 conservator in accordance with federal and state banking and credit
96 union laws and regulations.

97 (d) Notwithstanding the provisions of subsection (a) of this section,
98 in all cases in which the commissioner is appointed receiver or
99 conservator, the commissioner, without the approval of the appointing
100 court, may, upon such terms as the commissioner deems in the best
101 interest of the Connecticut bank or Connecticut credit union: (1) Sell,
102 assign, compromise or otherwise dispose of any bad or doubtful debt
103 held by the bank or credit union, the value of which does not exceed
104 fifty thousand dollars; (2) compromise any claim, other than a deposit
105 claim, against the bank or credit union when the amount proposed to
106 be paid in compromise does not exceed fifty thousand dollars,
107 provided no claim in favor of the bank or credit union against any
108 director, trustee or other officer for breach or neglect of official duty
109 shall be compromised without the approval of the court; and (3) sell or
110 otherwise dispose of any personal property of the bank or credit union
111 the value of which does not exceed fifty thousand dollars. For
112 purposes of this subsection, the value of any bad or doubtful debt shall
113 be its current value, as determined by the commissioner in good faith,
114 and the value of any personal property shall be (A) in the case of any
115 single class of a security or any commodity, or other property or claim
116 that has a readily ascertainable market value, such market value, and
117 (B) in any other case, its current value as determined by the
118 commissioner in good faith.

119 Sec. 2. Section 36a-226 of the general statutes is repealed and the
120 following is substituted in lieu thereof (*Effective from passage*):

121 The receiver shall, as soon after the receiver's appointment as is

122 practicable, make and return to the court an inventory and appraisal of
123 the assets of the Connecticut bank or Connecticut credit union or estate
124 in receivership, verified by oath according to the receiver's best
125 knowledge, information and belief, and shall, from time to time
126 thereafter, make and return such additional or supplementary
127 inventories and valuations, and render such reports of the receiver's
128 actions and statements of accounts, as are necessary for the
129 information of the court or as are required by the order of the court.
130 The receiver shall hold all the assets which come into the receiver's
131 possession as such receiver, subject to the order of the court, and shall
132 convert such assets into money with all reasonable dispatch [, and for
133 that purpose may sell and dispose of such assets, and make all proper
134 conveyances thereof, and may compromise all doubtful claims for or
135 against such bank or credit union; provided no claim in favor of such
136 bank or credit union against any director, trustee or other officer
137 thereof, for breach or neglect of official duty, shall be compromised
138 without the special authority and approval of the court] in accordance
139 with section 36a-223, as amended by this act. In cases of doubt or
140 difficulty the receiver may, upon written application, ask the advice of
141 the court as to the manner in which the receiver shall execute the
142 receiver's trust. The court may, from time to time, on its own motion,
143 or on complaint of any interested party, make all necessary and proper
144 orders as to the proceedings and actions of the receiver.

145 Sec. 3. Section 36a-428n of the general statutes is repealed and the
146 following is substituted in lieu thereof (*Effective from passage*):

147 (a) As used in this section:

148 (1) "Branch or agency net payment entitlement" means, with respect
149 to a qualified financial contract, the amount, if any, that would have
150 been owed by a party to a foreign bank after netting only those
151 transactions entered into by the branch or agency of the foreign bank
152 in this state and such party under such qualified financial contract.

153 (2) "Branch or agency net payment obligation" means, with respect

154 to a qualified financial contract, the amount, if any, that would have
155 been owed by the foreign bank to a party after netting only those
156 transactions entered into by the branch or agency of the foreign bank
157 in this state and such party under such qualified financial contract.

158 (3) "Business and property in this state" includes, but is not limited
159 to, all property of the foreign bank, real, personal or mixed, whether
160 tangible or intangible, (A) wherever situated, constituting part of the
161 business of the state agency or state branch of the foreign bank in this
162 state and appearing on its books as such, and (B) situated within this
163 state whether or not constituting part of the business of such state
164 agency or state branch in this state or so appearing on its books.

165 (4) "Global net payment entitlement" means the amount, if any,
166 owed by a party or that would be owed if the relevant agreements
167 provided for payments to either party, upon termination thereof under
168 any and all circumstances, to the foreign bank as a whole after giving
169 effect to the netting provisions of a qualified financial contract with
170 respect to all transactions subject to netting under such qualified
171 financial contract.

172 (5) "Global net payment obligation" means the amount, if any, owed
173 by the foreign bank as a whole to a party after giving effect to the
174 netting provisions of a qualified financial contract with respect to all
175 transactions subject to netting under such qualified financial contract.

176 (6) "Qualified financial contract" means any securities contract,
177 commodity contract, forward contract [,] including any spot and
178 forward foreign exchange, [contract,] repurchase agreement, swap
179 agreement, and any similar agreement, any option to enter into any
180 such agreement, including any combination of the foregoing, [any
181 other agreement determined by the commissioner by regulation or
182 order to be a qualified financial contract] and any master agreement
183 for such agreements. Such master agreement, together with all
184 supplements thereto, shall be treated as one qualified financial
185 contract, provided, such contract, option or agreement, or combination

186 of contracts, options or agreements is reflected in the books, accounts
187 or records of the foreign bank or a party provides documentary
188 evidence of such agreement. The commissioner may by regulation or
189 order determine any other agreement to be a qualified financial
190 contract.

191 (b) The commissioner may, by order, immediately take possession
192 of the business and property in this state of any foreign bank with a
193 state branch or state agency in this state upon the commissioner's
194 determination that such action is necessary for the protection of the
195 interests of the creditors of such foreign bank's business in this state or
196 for the protection of the public interest, and that such foreign bank: (1)
197 Has violated any applicable law, regulation or order; (2) is conducting
198 its business in an unauthorized or unsafe manner; (3) is in an unsafe or
199 unsound condition to transact its business; (4) cannot with safety and
200 expediency continue business; (5) has ceased to operate its state branch
201 or state agency in this state; (6) has an impairment of its capital; (7) has
202 suspended payment of its obligations, made an assignment for the
203 benefit of its creditors, or admitted in writing its inability to pay its
204 debts as they become due; (8) has neglected, refused or failed to take or
205 continue proceedings for voluntary liquidation in accordance with
206 section 36a-428k; (9) is insolvent in that it has ceased to pay its debts in
207 the ordinary course of business, cannot pay its debts as they become
208 due, or has liabilities exceeding its assets; (10) has applied for an
209 adjudication of bankruptcy, reorganization, arrangement, or other
210 relief under any bankruptcy, reorganization, insolvency or
211 moratorium law, or, that any person has applied for any such relief
212 under any such law against the foreign bank, and the foreign bank has
213 by any affirmative act approved of or consented to such action or such
214 relief has been granted; (11) is no longer in existence or its authority to
215 transact banking business under the laws of the place where it is
216 domiciled has been suspended or terminated; (12) is in liquidation,
217 receivership or conservatorship at its domicile or elsewhere, or that
218 any proceeding for appointment of a liquidator, receiver or
219 conservator or any similar proceeding has been initiated against it, or

220 there is reason to doubt its ability or willingness to pay in full the
221 claims of creditors; (13) has otherwise had its license revoked,
222 suspended, cancelled, terminated or otherwise not renewed pursuant
223 to the provisions of section 36a-428j; or (14) is in a condition, or facts or
224 circumstances relating to such foreign bank exist, which, if existing at
225 the time such foreign bank applied for its license to establish a state
226 branch or state agency in this state, would have been grounds for
227 denying such application.

228 (c) Title to such business and property in this state of a foreign bank
229 shall vest by operation of law in the commissioner and his successors
230 upon taking possession, without the execution of any instruments of
231 conveyance, assignment, transfer or endorsement. The commissioner
232 shall promptly apply to the superior court for the judicial district of
233 Hartford for appointment as receiver of such foreign bank with effect
234 from the time of taking possession, and the superior court shall make
235 such appointment. Thereafter, except as otherwise provided in this
236 section, the commissioner shall liquidate or otherwise deal with such
237 business and property in this state of a foreign bank in accordance
238 with the provisions of sections 36a-223 to 36a-239, inclusive, provided,
239 (1) "debts", "liabilities", "deposits", "claims" and other similar terms
240 used in sections 36a-223 to 36a-239, inclusive, refer to the claims that
241 the commissioner shall accept pursuant to subsection (e) of this
242 section; (2) "creditors" and "depositors", as used in such sections, refer
243 to the owners of such accepted claims; (3) except as the context
244 otherwise requires, "Connecticut bank", as used in such sections, refers
245 to the state branches or state agencies in this state; and (4) "officer", as
246 used in such sections, includes any person in charge of or who is an
247 officer of such state branches and the agent or other person in charge
248 of such state agencies. Notwithstanding any contrary provision of law,
249 including chapters 55a and 67, the commissioner may employ or
250 contract with such legal counsel and expert assistants under such titles
251 as the commissioner may assign to them and may retain such of the
252 officers or employees of such foreign bank as the commissioner deems
253 necessary in the liquidation and distribution of the assets of such

254 foreign bank, without the prior approval of any other state agency or
255 elective officers. The commissioner shall be entitled to the appointment
256 of a single judge to supervise the liquidation upon request to the
257 administrative judge of the superior court for the judicial district of
258 Hartford. Said judge shall have the power to order expedited or
259 simplified procedures whenever necessary to resolve a matter in such
260 liquidation.

261 (d) At any time within ten days after the commissioner has taken
262 possession of the business and property in this state of a foreign bank,
263 such foreign bank may apply to the superior court for the judicial
264 district of Hartford for an order requiring the commissioner to show
265 cause why the commissioner should not be enjoined from continuing
266 such possession. The court may, upon good cause shown, direct the
267 commissioner to refrain from further proceedings and to surrender
268 such possession.

269 [(e) Only the claims of creditors of such foreign bank arising out of
270 transactions entered into by such creditors with its state branches or
271 state agencies in this state, shall be accepted by the commissioner for]

272 (e) (1) The only claims that the commissioner shall accept for
273 payment out of such business and property in this state of a foreign
274 bank as provided in this section are claims of creditors of such foreign
275 bank arising out of transactions entered into by such creditors with its
276 state branches or state agencies in this state that still exist as liabilities
277 of such state branches and state agencies as shown in the books and
278 records of such state branches and state agencies at the time the
279 commissioner takes possession of the business and property of the
280 foreign bank. Acceptance or rejection of such claims by the
281 commissioner shall not prejudice such creditors' rights to otherwise
282 share in the assets of such foreign bank. The following claims shall not
283 be accepted by the commissioner for payment out of such business and
284 property in this state of a foreign bank: [(1)] (A) Claims which would
285 not represent an enforceable legal obligation against such state branch
286 or state agency if such branch or agency were a separate and

287 independent legal entity; and [(2)] (B) amounts due and other liabilities
288 to other offices, agencies, branches and affiliates of such foreign bank.
289 [Whenever the principal amount of any such claim owed by or owing
290 to such foreign bank does not exceed fifty thousand dollars, the
291 commissioner may sell, assign, compromise or otherwise dispose of
292 the same upon such terms as the commissioner may deem for the best
293 interest of such foreign bank without obtaining the approval of the
294 court otherwise having jurisdiction of the matter.] All wages actually
295 owing to the employees of a foreign bank in the possession of the
296 commissioner for services rendered within three months prior to the
297 date when possession was taken, not exceeding two thousand dollars
298 to each employee, shall be paid prior to the payment of every other
299 debt or claim, and in the discretion of the commissioner may be paid
300 as soon as practicable after taking possession, except that at all times
301 the commissioner shall reserve such funds as will in the
302 commissioner's opinion be sufficient for the expenses of
303 administration.

304 (2) Nothing in this section shall be construed to adversely affect a
305 valid lien or perfected security interest of the New York Federal
306 Reserve Bank against property of the foreign bank in this state.

307 (f) Whenever the accepted claims, together with interest thereon,
308 and the expenses of the liquidation have been paid in full or properly
309 provided for, the commissioner, upon the order of the superior court
310 for the judicial district of Hartford, shall [turn over] pay, from the
311 remaining assets, [to] other offices of the foreign bank that are being
312 liquidated in the United States, upon the request of the liquidators of
313 such offices, in amounts which the liquidators of such offices
314 demonstrate to the commissioner are needed to pay the claims
315 accepted by such liquidators and any expenses incurred by such
316 liquidators in liquidating such offices of the foreign bank. After such
317 payments, if any, have been made, the commissioner shall turn over
318 any remaining assets of the foreign bank to the principal office of such
319 foreign bank, or to the duly appointed domiciliary liquidator or
320 receiver of such foreign bank.

321 (g) After taking possession of the business and property in this state
322 of any foreign bank: (1) The commissioner shall immediately give
323 notice of such fact to all persons known to the commissioner to hold
324 any assets of such foreign bank. No person having notice or
325 knowledge that the commissioner has taken possession of the business
326 and property in this state of such foreign bank, shall have a lien or
327 charge for any payment, advance or clearance thereafter made against
328 any of the assets of such foreign bank for liability thereafter incurred.
329 (2) Upon the written demand of the commissioner, any person holding
330 assets of such foreign bank shall deliver such assets to the
331 commissioner and shall thereupon be discharged from liability with
332 respect to any claim upon such assets, provided, such demand shall
333 not affect the right of a secured creditor with a perfected security
334 interest, or other valid lien or security interest enforceable against third
335 parties, to retain collateral, including any right of such secured creditor
336 under any security arrangement related to a qualified financial
337 contract to retain collateral and apply such collateral in accordance
338 with this section. Nothing in this section shall affect any right of set-off
339 permitted under applicable law, provided, no person may set off the
340 business and property in this state of a foreign bank against liabilities
341 of such foreign bank other than those that arise out of transactions
342 entered into by such person with the state branch or state agency of the
343 foreign bank in this state, which liabilities shall be deemed to include
344 in the case of qualified financial contracts the lesser of the two amounts
345 calculated with respect to any such qualified financial contract
346 pursuant to subdivision (2) of subsection (i) of this section.

347 (h) (1) The commissioner shall, after taking possession of the
348 business and property in this state of a foreign bank, cause to be
349 mailed or sent to each person claiming to be, or appearing upon the
350 books of such foreign bank to be (A) the owner of any personal
351 property in the custody or possession of such foreign bank as bailee or
352 depositary for hire or otherwise, including securities, whether held in
353 custody directly or in book-entry form by such foreign bank, its
354 nominee, subcustodian, clearing corporation or similar entity, and the

355 contents of any safe, vault or box opened for nonpayment of rental in
356 accordance with the provisions of this subsection, or (B) the lessee of
357 any safe, vault or box, a notice in writing sent by registered mail,
358 return receipt requested, or by any express delivery carrier that
359 provides a dated delivery receipt, to such person at such person's last
360 address as it appears on the books of such foreign bank or at such
361 person's last known address if no address appears on such books,
362 notifying such person to remove all such property or the contents of
363 any such safe, vault or box, within a period stated in such notice,
364 which period shall be not less than sixty days from the date of such
365 notice, and further notifying such person of the terms and provisions
366 of this subsection and any regulations that may be adopted under this
367 section by the commissioner pursuant to chapter 54. The contract of
368 bailment or of deposit for hire, or the lease of such safe, vault or box, if
369 any, between the person to whom such notice is mailed and such
370 foreign bank shall terminate upon the date for removal fixed in such
371 notice. Such person shall have a claim against such foreign bank for the
372 amount of unearned rent or charges, if any, paid by such person from
373 the date fixed in such notice if the property or contents are removed on
374 or before such date, or from the date of actual removal if the property
375 or contents are removed after such date.

376 (2) If such property or contents are not removed, and all accrued
377 rental or storage and other charges, if any, are not paid, within the
378 time fixed by such notice, the commissioner shall inventory and deal
379 with such property and contents in accordance with any regulations
380 that may be adopted under this section by the commissioner pursuant
381 to chapter 54. The commissioner shall deal with such property and
382 contents at the expense and risk of the person in whose name it stands.
383 The commissioner shall be held harmless and shall not be liable to any
384 subsequent claimant for any delivery or transfer made by the
385 commissioner in good faith to the claimant appearing to be entitled to
386 such property from the records available to the commissioner. If the
387 commissioner is in doubt concerning the person entitled to property in
388 the possession of the commissioner, or there are conflicting claims

389 thereto, the commissioner may require of the claimant an order of the
390 superior court of the judicial district of Hartford authorizing and
391 directing the delivery of such property.

392 (3) After the expiration of one year from the date of mailing the
393 notice required by subdivision (1) of this subsection, the commissioner
394 may apply to the superior court for the judicial district of Hartford for
395 an order authorizing the commissioner to sell, destroy or otherwise
396 dispose of any personal property which had been in the custody or
397 possession of such foreign bank as bailee or depositary for hire or
398 otherwise and which remains in the possession of the commissioner.
399 The court may require that the commissioner provide notice to the
400 person in whose name such property stands and to any other person
401 claiming or appearing to have an interest therein, by publication,
402 mailing or in such other manner as the court may prescribe. Whenever
403 the commissioner is given the power to sell such property, such power
404 to sell shall be deemed a power to sell in satisfaction of a lien for
405 nonpayment of accrued rental or storage charges and all other charges
406 and expenses paid or incurred to the date of sale with respect to such
407 property. Such power to sell, destroy or otherwise dispose of, when
408 authorized pursuant to this subsection or any regulations that may be
409 adopted under this section by the commissioner pursuant to chapter
410 54, shall be deemed to include the power to sell, destroy or otherwise
411 dispose of any bonds, stock certificates, promissory notes, choses in
412 action or other securities, and any other tangible or intangible property
413 contained in any package, regardless of whether or not it shall appear
414 from such securities or properties that the person in whose name the
415 package stands possesses title to or interest in such securities or other
416 properties or the power to transfer such title or interest, and any sale of
417 such securities or properties pursuant to this subsection shall vest
418 good title thereto in the purchaser thereof.

419 (4) The provisions of this subsection shall not (A) affect or preclude
420 any other remedy, by civil action or otherwise, for the enforcement of
421 the claims or rights of the commissioner or of such foreign bank
422 against the person in whose name any property, or any safe, vault,

423 box, package, parcel or receptacle stands, or (B) affect or bar the right
424 of the commissioner or the foreign bank to recover, before sale, any
425 debt or claim due the commissioner or such foreign bank, or, after sale,
426 the portion of the debt or claim that was not paid by the proceeds of
427 the sale.

428 (i) (1) Except as otherwise provided in this subsection, after taking
429 possession of the business and property in this state of a foreign bank,
430 the commissioner may assume or repudiate any contract, including an
431 unexpired lease, of such foreign bank, relating to the business and
432 property in this state of such foreign bank and to which such foreign
433 bank is a party, the performance of which the commissioner
434 determines to be burdensome and the repudiation of which the
435 commissioner determines will promote the orderly administration of
436 the foreign bank's affairs in this state. After the expiration of ninety
437 days from the date that the commissioner takes possession, any party
438 to a contract with the foreign bank relating to the business and
439 property in this state of such foreign bank may demand in writing that
440 the commissioner assume or repudiate such contract. If the
441 commissioner has not assumed or repudiated the contract within
442 fifteen days from the date of receipt of the demand, the affected party
443 may bring an action in the superior court for the judicial district of
444 Hartford to obtain an order requiring the commissioner to decide
445 whether to assume or repudiate such contract. If the commissioner has
446 not assumed or repudiated a contract not later than one month before
447 the last date for filing claims against such foreign bank established
448 pursuant to section 36a-225, such contract shall be deemed repudiated.
449 Notwithstanding the provisions of this subdivision, with respect to an
450 unexpired lease of the foreign bank for the rental of real property
451 under which the foreign bank was a lessee, if the commissioner
452 remains in possession of the leasehold, the commissioner shall not be
453 required to assume or repudiate such lease and may continue in
454 possession of such leasehold for the remainder of the term of the lease
455 in accordance with the terms of the lease, provided, if the
456 commissioner later repudiates the lease before the end of the lease

457 term, any amounts that may be due the lessor as a result of such
458 repudiation shall be calculated according to the provisions of
459 subparagraph (A) of subdivision (3) of this subsection.
460 Notwithstanding any contrary provision of this subsection, in
461 liquidating a state branch or state agency of a foreign bank in this state,
462 the commissioner shall not assume or repudiate any qualified financial
463 contract that such state branch or state agency entered into which is
464 subject to a multibranch netting agreement or arrangement that
465 provides for netting present or future payment obligations or payment
466 entitlements, including termination or closeout values relating to the
467 obligations or entitlements, among the parties to the contract,
468 agreement or arrangement, and the commissioner shall not be required
469 to assume or repudiate any other qualified financial contract that such
470 state branch or state agency entered into, provided, upon any
471 repudiation of any qualified financial contract or the termination or
472 liquidation of any qualified financial contract in accordance with its
473 terms, the liability under such qualified financial contract shall be
474 determined in accordance with subparagraph (B) of subdivision (2) of
475 this subsection.

476 (2) (A) Except as otherwise provided in this subsection, upon the
477 repudiation or termination of any contract pursuant to subdivision (1)
478 of this subsection, liability shall be limited to the actual direct
479 compensatory damages of the parties to the contract, determined as of
480 the date the commissioner took possession. The commissioner shall not
481 be liable for any future wages, other than reasonable severance
482 payments, or for payments for future services, costs of cover, any
483 consequential, punitive or exemplary damages, damages for lost
484 profits or lost opportunity, or any other damages except as allowed by
485 this subparagraph.

486 (B) Except as otherwise provided in this subsection, the liability of
487 the commissioner upon the repudiation of any qualified financial
488 contract, or in connection with the termination or liquidation of any
489 qualified financial contract in accordance with the terms thereof, shall
490 be limited as provided in subparagraph (A) of this subdivision, except

491 that compensatory damages shall be deemed to include normal and
492 reasonable costs of cover or other reasonable measures of damages
493 utilized among participants in the market for qualified financial
494 contract claims, calculated as of the date of repudiation or the date of
495 the termination of such qualified financial contract in accordance with
496 its terms. Upon the repudiation of any qualified financial contract or in
497 connection with the termination or liquidation of any qualified
498 financial contract in accordance with the terms thereof, if the
499 commissioner is entitled to damages, such damages shall be paid by
500 the party to the commissioner upon written demand pursuant to
501 subdivision (2) of subsection (g) of this section, notwithstanding any
502 provision in any such contract that purports to effect a forfeiture of
503 such damages.

504 (C) In the case of the liquidation of a state branch or state agency of
505 a foreign bank by the commissioner, with respect to qualified financial
506 contracts subject to netting agreements or arrangements that provide
507 for netting present or future payment obligations or payment
508 entitlements, including termination or closeout values relating to the
509 obligations or entitlements, among the parties to the contracts and
510 agreements or arrangements, the liability of the commissioner to any
511 party to any such qualified financial contract upon repudiation or in
512 connection with the termination or liquidation of such qualified
513 financial contract in accordance with the terms thereof, shall be
514 calculated as of the date of repudiation or the date of the termination
515 of such qualified financial contract in accordance with its terms and
516 shall be limited to the lesser of (i) the global net payment obligation or
517 (ii) the branch or agency net payment obligation. The liability of the
518 commissioner under this subparagraph shall be reduced by any
519 amount otherwise paid to or received by the party in respect of the
520 global net payment obligation pursuant to such qualified financial
521 contract which, if added to the liability of the commissioner under this
522 subdivision, would exceed the global net payment obligation. The
523 liability of the commissioner under this subparagraph to a party to a
524 qualified financial contract also shall be reduced by the fair market

525 value or the amount of any proceeds of collateral that secures and has
526 been applied to satisfy the obligations of the foreign bank to the party
527 pursuant to such qualified financial contract. In the event that netting
528 under any applicable netting agreement or arrangement results in a
529 branch or agency net payment entitlement, notwithstanding any
530 provision in any such contract that purports to effect a forfeiture of
531 such entitlement, the commissioner may make written demand upon
532 the party to such contract under subdivision (2) of subsection (g) of
533 this section for an amount not to exceed the lesser of the global net
534 payment entitlement or the branch or agency net payment entitlement.
535 The liability of the party under this subparagraph shall be reduced by
536 any amount otherwise paid to or received by the commissioner or any
537 other liquidator or receiver of the foreign bank with respect to the
538 global net payment entitlement pursuant to such qualified financial
539 contract which, if added to the liability of the party under this
540 subparagraph, would exceed the global net payment entitlement. The
541 liability of the party under this subparagraph to the commissioner
542 pursuant to such qualified financial contract shall also be reduced by
543 the fair market value or the amount of any proceeds of collateral that
544 secures and has been applied to satisfy the obligations of the party to
545 the foreign bank pursuant to such qualified financial contract.

546 (D) A party to a qualified financial contract with [the] a foreign bank
547 whose state branch or state agency [in this state of the foreign bank]
548 the commissioner is liquidating, which party has a perfected security
549 interest in collateral [,] or other valid lien or security interest in
550 collateral enforceable against third parties pursuant to a security
551 arrangement related to such qualified financial contract, may retain all
552 such collateral and [,] upon repudiation [or termination] of that
553 qualified financial contract, or in connection with the termination or
554 liquidation of that qualified financial contract in accordance with its
555 terms, apply such collateral in satisfaction of any claims secured by the
556 collateral, provided the total amount so applied to such claims shall
557 not exceed the global net payment obligation, if any.

558 (3) (A) If the commissioner repudiates a lease of the foreign bank for

559 the rental of real or personal property under which the foreign bank
560 was a lessee, the lessor under such lease shall be entitled to file a claim
561 with the commissioner for whichever is the least of: (i) The amount
562 designated as liquidated damages contained in the agreement between
563 the foreign bank and the lessor, (ii) an amount equal to one year's rent
564 under the terms of the repudiated lease, or (iii) an amount equal to the
565 rent for the remaining term of the lease.

566 (B) If the commissioner repudiates a lease of the foreign bank for the
567 rental of real property under which the foreign bank was a lessor, and
568 the lessee was not in default at the time of repudiation, the lessee
569 under such repudiated lease may either (i) treat the lease as terminated
570 by such repudiation and vacate the premises, or (ii) remain in
571 possession of the leasehold interest for the balance of the term of the
572 lease, and for any renewal or extension of such term that is enforceable
573 by such lessee under applicable law other than any law relating to
574 insolvency, unless the lessee defaults under the terms of the lease after
575 the date of such repudiation. If the lessee remains in possession of the
576 leasehold interest, the lessee shall continue to pay to the commissioner
577 the contractual rent pursuant to the terms of the lease after the date of
578 the repudiation of such lease and may offset against such rent payment
579 any damages which may accrue due to the nonperformance of any
580 obligation of the foreign bank under the lease after the date of
581 repudiation. The commissioner shall not be liable to the lessee for any
582 damages arising after such date as a result of the repudiation other
583 than the amount of any offset allowed under this subdivision. Nothing
584 in this subsection shall prohibit the commissioner from entering into a
585 new contract with the lessee for the rental of the leasehold which was
586 the subject of the repudiated lease.

587 (4) Except as otherwise provided in this subsection, notwithstanding
588 any provision in an unexpired lease or other contract and
589 notwithstanding any applicable law to the contrary, a contract or
590 unexpired lease of the foreign bank that is subject to assumption or
591 repudiation by the commissioner under this subsection may not be
592 terminated or modified by any party other than the commissioner

593 without the concurrence of the commissioner. Any right or obligation
594 under such contract or lease may not be terminated or modified, at any
595 time after the commissioner takes possession, solely pursuant to a
596 provision in such contract or lease that is conditioned on (A) the
597 commissioner taking possession, or (B) the insolvency, financial
598 condition or liquidation of the foreign bank.

599 (5) Nothing in this subsection shall affect the right of a party to a
600 contract of a foreign bank to seek performance of such contract or
601 damages thereon in any other jurisdiction, provided, the commissioner
602 shall not be liable for the performance of such contract or damages
603 thereon in any other jurisdiction.

604 (6) The rights granted in this subsection are in addition to any other
605 rights available to the commissioner under any other law.

606 (j) Where, by any agreement, a period of limitation is fixed for
607 instituting an action upon any claim or for presenting or filing any
608 claim, proof of claim, proof of loss, demand, notice or the like, or
609 where, in any action or by statute or ordinance, a period of limitation is
610 fixed for serving or filing any claim or pleading, taking any appeal or
611 doing any other act, and where in any such case such period had not
612 expired as of the date the commissioner took possession of the
613 business and property in this state of the foreign bank, the
614 commissioner may for the benefit of such foreign bank institute any
615 such action, serve or file any such claim or pleading, take any such
616 appeal, or do any such other act, required or permitted to such foreign
617 bank within a period of one year subsequent to the date of taking
618 possession, or within such further period as may be permitted by the
619 agreement, or in the action, or by statute or ordinance, as the case may
620 be.

621 (k) (1) Except as provided in this subsection, the commissioner's
622 taking possession of the business and property in this state of a foreign
623 bank shall operate as a stay of and as an injunction against the
624 following, as of the date the commissioner takes possession: (A) The

625 commencement or continuation, including the issuance or
626 employment of process, of a judicial, administrative or other action or
627 proceeding against the foreign bank that was or could have been
628 commenced before the taking of possession, or to recover a claim
629 against the foreign bank that arose before the taking of possession; (B)
630 the enforcement against the foreign bank or its business and property
631 in this state of a judgment obtained before the taking of possession; (C)
632 any act to obtain possession of property of the foreign bank or of
633 property from the foreign bank or to exercise control over property of
634 the foreign bank; (D) any act to create, perfect, or enforce any lien
635 against property of the foreign bank, including any lien that secures a
636 claim that arose before the taking of possession; and (E) any act to
637 collect, assess, or recover a claim against the foreign bank that arose
638 before the taking of possession.

639 (2) The commissioner's taking possession of the business and
640 property in this state of a foreign bank shall not operate as a stay of or
641 as injunction against: (A) The filing of a claim pursuant to subsection
642 (e) of this section in the liquidation of the foreign bank; the making of a
643 demand upon the commissioner pursuant to subsection (i) of this
644 section to decide whether to assume or repudiate a contract of the
645 foreign bank; the exercise of any set-off otherwise permissible under
646 applicable law except as limited by subdivision (2) of subsection (g) of
647 this section; the right of any secured creditor with a perfected security
648 interest or other valid lien or security interest enforceable against third
649 parties to retain collateral, including any right of such secured creditor
650 under any security arrangement related to a qualified financial
651 contract, to retain collateral and to apply such collateral in accordance
652 with subparagraph (D) of subdivision (2) of subsection (i) of this
653 section; any automatic termination in accordance with the terms of any
654 qualified financial contract or any right to cause the termination or
655 liquidation of any qualified financial contract, in accordance with the
656 terms thereof; any right to offset or net out any termination value,
657 payment amount, or other transfer obligation arising under or in
658 connection with one or more such qualified financial contracts; or the

659 commencement of an action under subsection (d) of this section or any
660 other action relating to the liquidation before the Superior Court judge
661 overseeing the liquidation of the foreign bank; (B) the commencement
662 or continuation of a criminal action or proceeding against the foreign
663 bank; (C) the commencement or continuation of an action or
664 proceeding by a governmental unit to enforce such governmental
665 unit's police or regulatory power; (D) the enforcement of a judgment,
666 other than a money judgment, obtained in an action or proceeding by a
667 governmental unit to enforce such governmental unit's police or
668 regulatory power; (E) the issuance to the foreign bank by a
669 governmental unit of a notice of tax deficiency; and (F) the
670 commencement or continuation of a judicial action or proceeding by a
671 secured creditor with a perfected security interest, or other valid lien
672 or security interest enforceable against third parties, including any
673 right of such secured creditor under any security arrangement related
674 to a qualified financial contract, to enforce such security interest or
675 lien.

676 (3) Except as otherwise provided in this subsection: (A) The stay or
677 enjoining of an act against property of the foreign bank under this
678 subsection shall continue until such property is no longer the property
679 of the commissioner in possession of the foreign bank; and (B) the stay
680 or enjoining of any other act under this subsection shall continue until
681 the commissioner has concluded the liquidation.

682 (4) For good cause shown, on request of a party in interest and after
683 notice and a hearing, the Superior Court judge overseeing the
684 liquidation may grant relief from the stay or injunction provided under
685 this subsection by terminating, annulling, modifying or conditioning
686 such stay or injunction.

687 (5) In the case of any wilful violation of a stay or injunction
688 provided in this subsection by any person or entity who has
689 knowledge of the commissioner taking possession of the business and
690 property in this state of a foreign bank that is the subject of the stay or
691 injunction, the commissioner shall recover actual damages, including

692 costs and reasonable attorneys' fees and, in appropriate circumstances,
693 may recover punitive damages.

694 (l) The commissioner shall not accept any claim based on an
695 agreement with the foreign bank unless the agreement is either
696 reflected on the accounts, books or records of the foreign bank or a
697 creditor provides documentary evidence of such agreement.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>
Sec. 3	<i>from passage</i>

Statement of Legislative Commissioners:

The "notwithstanding" clause was inserted at the beginning of subsection (d) of section 1 for statutory consistency.

BA *Joint Favorable Subst.-LCO*