

1 HB644
2 118041-3
3 By Representative Hill
4 RFD: Banking and Insurance
5 First Read: 02-MAR-10

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8 SYNOPSIS: Existing law provides certain procedures
9 for the acquisition of a majority share of a bank
10 and for the course of action that the
11 Superintendent of Banking must take as to the
12 default or misconduct of a bank or an officer or
13 director of a bank.

14 This bill would specify that the Banking
15 Board may direct the superintendent to order the
16 removal of an officer of a bank or to issue civil
17 money penalties.

18 This bill would further allow the Banking
19 Department to remove and prohibit a person who
20 caused a bank to suffer substantial financial loss
21 from participating in the affairs of any Alabama
22 state bank or a holding company that controls an
23 Alabama state bank regardless of whether the person
24 is still employed by a state chartered bank.

25 This bill would remove the exemption from
26 the requirement of prior approval by the
27 Superintendent of Banking for transactions

1 requiring the prior approval of the Board of
2 Governors of the Federal Reserve System under the
3 Bank Holding Company Act of 1956. The bill would
4 also allow the superintendent more time to review
5 an application under this section.

6 This bill would provide that, for certain
7 purposes, a quorum of the Banking Board shall be a
8 majority of those present and entitled to vote.

9 This bill would eliminate the requirement
10 for the FDIC to apply for an order confirming
11 appointment as the receiver of a bank from the
12 receivership court when the FDIC is appointed
13 receiver of the bank.

14 This bill would further provide the
15 conditions under which an Alabama bank holding
16 company may acquire an out-of-state bank or a bank
17 holding company.

18
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22
23 To amend Sections 5-2A-12, 5-3A-6, 5-5A-44, 5-8A-20,
24 5-8A-24, 5-13B-3, 5-13B-4, 5-13B-5, and 5-13B-6, Code of
25 Alabama 1975, relating to banks; to specify that the Banking
26 Board may order the removal of and civil penalties against a
27 person who has caused a bank to suffer a substantial financial

1 loss; to allow the Banking Department to remove and prohibit a
2 person who has caused a bank to suffer a substantial financial
3 loss from participating in the affairs of any Alabama state
4 bank or a holding company that controls an Alabama state bank,
5 including after the person is no longer employed by a state
6 chartered bank; to remove the exemption from prior approval by
7 the Superintendent of Banking for transactions requiring the
8 prior approval of the Board of Governors of the Federal
9 Reserve System under the Bank Holding Company Act of 1956 and
10 to further provide for the review of applications; to provide
11 that, for certain purposes, a quorum of the Banking Board
12 shall be a majority of those present and entitled to vote; to
13 remove the requirement that the Federal Deposit Insurance
14 Corporation apply for an order confirming appointment as
15 receiver from the receivership court; and to further provide
16 for the conditions under which an Alabama bank holding company
17 may acquire an out-of-state bank or a bank holding company.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 5-2A-12, 5-3A-6, 5-5A-44,
20 5-8A-20, 5-8A-24, 5-13B-3, 5-13B-4, 5-13B-5, and 5-13B-6, Code
21 of Alabama 1975, are amended to read as follows:

22 "§5-2A-12.

23 "(a) The superintendent may order a bank, the board
24 of directors, any director or directors, and any officer or
25 officers of any bank, individually or collectively (hereafter
26 affected person, whether one or more) to correct any matters
27 in the conduct of the affairs of the bank which in the opinion

1 of the superintendent are unsafe and unsound. The Banking
2 Board may, after at least 20 days' written notice by the
3 superintendent to the bank and any affected person, and a
4 hearing before the Banking Board, ~~impose, by order,~~ to direct
5 the superintendent to issue an order that imposes civil money
6 penalties on the bank ~~or and~~ affected person ~~or may remove~~
7 and, if so determined by the Banking Board, that removes any
8 affected person ~~which:~~

9 "(1) Who does not comply with the superintendent's
10 order to correct unsafe and unsound matters if the Banking
11 Board by written order enters a finding that the bank has
12 thereby suffered or will probably suffer substantial financial
13 loss and that such practice is one involving personal
14 dishonesty on the part of such affected person or one which
15 demonstrates a willful and continuing disregard for the safety
16 and soundness of the bank, the result of which has caused the
17 bank to suffer or which is likely to cause the bank to suffer
18 substantial financial loss; or

19 "(2) Whose conduct a. demonstrates personal
20 dishonesty in connection with the business, operations,
21 assets, or liabilities of the bank; or b. demonstrates a
22 willful and continuing disregard for the safety and soundness
23 of the bank, the result of which has caused or is likely to
24 cause the bank to suffer substantial financial loss.

25 "(b) The amount of civil money penalties imposed
26 shall not exceed one thousand dollars (\$1,000) per day with a
27 maximum amount of one hundred thousand dollars (\$100,000) in

1 the aggregate for all violations of an order of the
2 superintendent. An order of removal also may prohibit the
3 affected person from participating in the affairs of any
4 Alabama state bank or any holding company that controls an
5 Alabama state bank. In the superintendent's ~~written notice~~
6 order to the bank or affected person of the imposition of
7 civil money penalties or removal, the superintendent shall
8 include a specific statement of the facts constituting the
9 alleged unsafe and unsound conduct to be made the basis of the
10 imposition of civil money penalties or removal. At the hearing
11 ~~thereof~~ thereon before the Banking Board, the board of
12 directors of the bank or the affected person shall have the
13 right to appear in person or by counsel. No member of the
14 Banking Board, other than the superintendent, may participate
15 in the hearing if such member is affiliated with the bank or
16 affected person or has previously been involved in a
17 determination to institute the proceedings leading to the
18 hearing. Any order of the superintendent as directed by the
19 Banking Board, imposing civil money penalties or directing
20 removal of an affected person shall within ~~15~~ 28 days of the
21 date of entry thereof be appealable to the Circuit Court of
22 Montgomery County, which appeal shall be conducted de novo.
23 Pending expiration of the time for appeal, the order imposing
24 civil money penalties or of removal shall not become effective
25 and neither the superintendent nor the Banking Board shall
26 publicly disclose such order except in connection with the
27 appeal. All proceedings before the Banking Board shall be

1 confidential. Any person violating this section by disclosure
2 of nonpublic information presented at a confidential hearing
3 before the Banking Board, other than the disclosure that may
4 result in connection with an appeal thereof, shall be guilty
5 of a Class A misdemeanor.

6 "§5-3A-6.

7 "(a) The superintendent and every examiner acting
8 under the superintendent may administer oaths and may examine
9 under oath any person whose testimony may be required on the
10 examination of any bank, on the examination of any affiliate
11 of a bank, or on the examination of any agency of any foreign
12 bank and shall have authority and power to compel the
13 appearance and attendance of any such person or the production
14 of any records and documents of any bank, any affiliate of a
15 bank, or any agency of a foreign bank for the purpose of any
16 examination and attendance or production may be enforced by
17 order of a circuit court. Production of records and documents
18 or testimony, whether or not made under oath, required by the
19 superintendent on the examination of any bank shall not
20 constitute a waiver by the bank, or by any director, officer,
21 employee, advisor, consultant, attorney, or accountant of or
22 for the bank, of any attorney-client privilege or other
23 privilege to which they may be entitled under law.

24 "(b) Any officer, director, agent, or employee of
25 any bank, any affiliate of any bank, or any agency of any
26 foreign bank, or any affected person, whether one or more, who
27 (1) makes any false entry or omission in any book, report, or

1 statement of such bank, affiliate of such bank, or agency of
2 such foreign bank or (2) makes a false statement, whether or
3 not made under oath, to the superintendent, an examiner acting
4 under the superintendent, or to any officer of such bank,
5 affiliate of any bank, or agency of any foreign bank with
6 intent to injure or defraud such bank, affiliate, or agency or
7 with the intent to influence in any way the action of the
8 superintendent or an examiner acting under the superintendent,
9 shall be subject to removal ~~or~~ and the imposition of civil
10 money penalties by the superintendent when so directed by the
11 Banking Board as provided in this title. An order of removal
12 may prohibit the affected person from participating in the
13 affairs of any Alabama state bank or any holding company that
14 controls an Alabama state bank. Any action of the
15 superintendent or examiner acting under the superintendent
16 taken in reliance upon such false entry, omission, or
17 statement may be rescinded and withdrawn.

18 "(c) In taking an action to prohibit participation
19 by, remove, or impose civil money penalties upon, any officer,
20 director, or employee of any bank, any affiliate of any bank,
21 or any agency of any foreign bank under this section, the
22 superintendent and Banking Board shall not be required to
23 establish that the bank, affiliate of the bank, or agency of a
24 foreign bank suffered or probably will suffer financial loss
25 and shall not be required to establish that the superintendent
26 or examiner acting under the superintendent was influenced by
27 such false entry, omission, or statement.

1 "(d) The resignation, termination of employment or
2 participation, or separation of any director, officer, or
3 employee of a bank for any reason whatsoever shall not affect
4 the jurisdiction and authority of the superintendent or the
5 Banking Board to issue any notice or order and proceed under
6 this title against any such person, including, without
7 limitation, Sections 5-2A-12 and 5-3A-6, if such notice or
8 order is served before the end of the six-year period
9 beginning on the last date that such person ceased to be a
10 director, officer, or employee of any bank.

11 "§5-5A-44.

12 "(a) No person may acquire any voting security of a
13 state bank or of any corporation or other entity owning voting
14 securities of a state bank if after the acquisition such
15 person would own or possess the power to vote a majority of
16 the voting securities of such bank, unless an application is
17 filed with the superintendent for ~~his~~ review of the proposed
18 transaction and for his or her action, if any, as provided in
19 this section.

20 "(b) The application shall be on a form prescribed
21 by the superintendent and shall be made under oath. The
22 application must contain all information that the
23 superintendent by regulation requires to be furnished in an
24 application, as well as any information that the
25 superintendent orders to be included in the particular
26 application being filed and shall be accompanied by the filing
27 fee prescribed by the Banking Board. No acquiring party may

1 acquire control of a bank unless the superintendent has
2 approved the acquiring party's acquisition plan. The acquiring
3 party shall file its application with the superintendent, and
4 the application shall, except to the extent expressly waived
5 by the superintendent, contain the following information:

6 "(1) The identity, personal history, business
7 background, and experience of each person by whom or on whose
8 behalf the acquisition is to be made, including his material
9 business activities and affiliations during the past five
10 years, and a description of any material pending legal or
11 administrative proceedings in which he is a party and any
12 criminal indictment or conviction of such person by a state or
13 federal court.

14 "(2) A statement of the assets and liabilities of
15 each person by whom or on whose behalf the acquisition is to
16 be made, as of the end of the fiscal year for each of the five
17 fiscal years immediately preceding the date of the notice,
18 together with related statements of income and source and
19 application of funds for each of the fiscal years then
20 concluded, all prepared in accordance with generally accepted
21 accounting principles consistently applied, and an interim
22 statement of the assets and liabilities for each such person,
23 together with related statements of income and source and
24 application of funds, as of a date not more than 90 days prior
25 to the date of the filing of the notice.

1 "(3) The terms and conditions of the proposed
2 acquisition and the manner in which the acquisition is to be
3 made.

4 "(4) The identity, source, and amount of the funds
5 or other consideration used or to be used in making the
6 acquisition, and if any part of these funds or other
7 consideration has been or is to be borrowed or otherwise
8 obtained for the purpose of making the acquisition, a
9 description of the transaction, the names of the parties, and
10 any arrangements, agreements, or understandings with such
11 persons.

12 "(5) Any plans or proposals which any acquiring
13 party making the acquisition may have to liquidate the bank,
14 to sell its assets or merge it with any company or to make any
15 other major change in its business or corporate structure or
16 management.

17 "(6) The identification of any person employed,
18 retained, or to be compensated by the acquiring party, or by
19 any person on his behalf, to make solicitations or
20 recommendations to stockholders for the purpose of assisting
21 in the acquisition, and a brief description of the terms of
22 such employment, retainer, or arrangement for compensation.

23 "(7) Copies of all invitations or tenders or
24 advertisements making a tender offer to stockholders for
25 purchase of their stock to be used in connection with the
26 proposed acquisition.

1 "(8) If any tender offer, request, or invitation for
2 tenders, or other agreement to acquire control is proposed to
3 be made by means of a registration statement under the Federal
4 Securities Act of 1933, as amended, or under circumstances
5 requiring the disclosure of similar information under the
6 Federal Securities Exchange Act of 1934, as amended, or in an
7 application filed with the Federal Deposit Insurance
8 Corporation, the Board of Governors of the Federal Reserve
9 System, or the Securities Commissioner of Alabama requiring
10 similar disclosure, the superintendent may accept the
11 registration statement or application with any additional
12 information as the superintendent may require in lieu of the
13 requirements of this section.

14 "(9) If, while an application is pending, any
15 material change occurs in the facts stated in the application,
16 the acquiring party within 10 days after the change shall file
17 with the superintendent an amendment to the application
18 describing the change in accordance with rules the
19 superintendent may adopt.

20 "For the purposes of this section, the term "person"
21 means an individual or a corporation, partnership, trust,
22 association, joint venture, pool, syndicate, sole
23 proprietorship, unincorporated organization, or any other form
24 of entity not specifically listed herein.

25 "Information obtained by the superintendent under
26 this section is confidential and may not be disclosed by the
27 superintendent or any officer or employee of the State Banking

1 Department, except that the superintendent may in his or her
2 discretion, if ~~he~~ the superintendent deems it necessary or
3 proper to the enforcement of the laws of this state or the
4 United States and to the best interest of the public, divulge
5 such information to any department, agency, or instrumentality
6 of the state or federal government.

7 "(c) The superintendent shall issue an order denying
8 an application if he or she finds that:

9 "(1) The financial condition of any acquiring person
10 is such as might jeopardize the financial stability of the
11 bank or prejudice the interests of the depositors or
12 stockholders of the bank;

13 "(2) The competence, experience, or integrity of any
14 acquiring person or of any of the proposed management
15 personnel indicates that it would not be in the interest of
16 the depositors or stockholders of the bank, or in the interest
17 of the public to permit such person to control the bank; or

18 "(3) Any acquiring person neglects, fails, or
19 refuses to furnish the superintendent all the information
20 required by him.

21 "~~(d) If an application filed under this section is~~
22 ~~not denied by the superintendent within 30 days after it is~~
23 ~~filed, the transaction may be consummated. The superintendent~~
24 ~~may, before the expiration of the 30-day period, give the~~
25 ~~applicant written notice that the application will not be~~
26 ~~denied, in which case the transaction may be consummated. The~~
27 ~~superintendent shall approve or deny a change of control under~~

1 this section within 60 days after receipt of a completed
2 application; provided that if the superintendent requests
3 additional information from the applicant following receipt of
4 a completed application, the time limit for the decision by
5 the superintendent shall be the later of (1) the date set
6 forth above in this subsection; or (2) 30 days after the
7 receipt by the superintendent of the requested additional
8 information. Any agreement entered into by the applicants and
9 the superintendent as a condition that the application will
10 not be denied is enforceable against the applicant and the
11 bank.

12 "(e) From any final order denying the application
13 the applicant may appeal the decision in the manner and
14 through the procedures established in Sections 5-5A-8 and
15 5-5A-9 for the denial of incorporation of a bank.

16 "(f) This section does not apply to:

17 "(1) The acquisition of securities in connection
18 with the exercise of a security interest or otherwise by way
19 of foreclosure on default in the payment of a debt previously
20 contracted for in good faith;

21 ~~"(2) Transactions requiring the prior approval of~~
22 ~~the Board of Governors of the Federal Reserve System under the~~
23 ~~Bank Holding Company Act of 1956, as amended (12 U.S.C.A.~~
24 ~~§1841, et seq., and 26 U.S.C.A. §1101, et seq.);~~

25 ~~"(3) Transactions requiring prior approval of the~~
26 ~~bank supervisory authorities under the Bank Merger Act, as~~
27 ~~amended (12 U.S.C.A. §1828(c));~~

1 "~~(4)~~(2) Acquisitions or transfers by gift, operation
2 of law or by will or intestate succession; or

3 "~~(5)~~(3) Any transaction which the superintendent by
4 regulation or order may exempt as not being contemplated by
5 the purposes of this section or the regulation of which is not
6 necessary or appropriate for the protection of the bank.

7 "(g) If it appears to the superintendent that any
8 person has committed or is about to commit a violation of this
9 section or any regulation or order of the superintendent
10 adopted under it, the attorney general on behalf of the
11 superintendent may apply to the Circuit Court of Montgomery
12 County for an order enjoining the violation and for any other
13 equitable relief as the nature of the case may require.

14 "(h) Fees collected under this section shall be paid
15 into the special fund established by the State Treasurer
16 pursuant to Section 5-2A-20.

17 "§5-8A-20.

18 "Whenever it shall appear to the superintendent that
19 any bank has violated its charter or any law of the state, or
20 is conducting business in any unauthorized manner, or that the
21 bank may suspend payment of its obligations, or if its capital
22 is impaired and not made good under the requirement of the
23 superintendent within the required time, or if any such bank
24 or an affiliate of such bank as defined in Section 5-3A-1
25 shall refuse to submit its papers, books and concerns to the
26 inspection of the superintendent or any examiner, or if any
27 officer thereof shall refuse to be examined on oath touching

1 the conducting of any such bank, or if any such bank shall
2 suspend payment of its obligations, or if from any examination
3 the superintendent shall have reason to conclude that such
4 bank is in an unsound or unsafe condition to transact the
5 business for which it was organized, or that it is unsafe for
6 it to continue business, or if any such bank shall neglect or
7 refuse to observe any order of the superintendent directing or
8 requiring the doing or cessation of any particular thing
9 required to be done or not to be done by law, the
10 superintendent may call a meeting of the Banking Board and
11 submit to ~~said~~ the board matters of default or misconduct in
12 the affairs of the bank, of which the bank shall have notice
13 and upon which the bank may be heard in person or by counsel,
14 and if ~~said~~ the board or a majority of ~~said~~ the board so
15 directs, the superintendent shall forthwith take possession of
16 the property and business of such bank and retain such
17 possession until such bank shall resume business or a receiver
18 is appointed, as provided in this chapter. Notwithstanding the
19 provisions of Section 5-2A-43, for purposes of this section, a
20 quorum of the board shall be a majority of those present and
21 entitled to vote.

22 "§5-8A-24.

23 "The superintendent may under his or her hand and
24 official seal appoint a receiver to liquidate and distribute
25 the assets of any bank taken possession of by the
26 superintendent under the provisions of this chapter, the
27 certificate of appointment to be filed in the office of the

1 superintendent and a certified copy in the office of the
2 probate judge in the county in which the principal office of
3 such bank is located. The receiver may be the Federal Deposit
4 Insurance Corporation or any other agency or corporation
5 created by the United States to act in such capacity or any
6 person selected by the superintendent; provided, however, no
7 examiner shall be appointed receiver of any bank whose books,
8 papers, and affairs ~~he~~ the examiner shall have examined within
9 one year next preceding the appointment of such receiver. ~~Any~~
10 ~~receiver~~ Any receiver appointed other than the Federal Deposit
11 Insurance Corporation, or any other agency or corporation
12 created by the United States to act in such capacity shall
13 apply for and shall be entitled to an ex parte order
14 confirming his or her appointment as receiver from the
15 receivership court.

16 "§5-13B-3.

17 "This article sets forth the conditions under which
18 a company may acquire an Alabama bank or an Alabama bank
19 holding company or an Alabama bank holding company may acquire
20 an out-of-state bank or bank holding company. This article is
21 intended not to discriminate against out-of-state bank holding
22 companies or against foreign bank holding companies in any
23 manner that would violate Section 3(d) of the Bank Holding
24 Company Act, as amended effective September 29, 1995, by
25 Section 101 of the Riegle-Neal Interstate Banking and
26 Branching Efficiency Act of 1994, Public Law No. 103-328.

27 "§5-13B-4.

1 "~~(a) Except as otherwise expressly permitted by~~
2 ~~federal law, no~~ No company may acquire an Alabama bank holding
3 company or an Alabama state bank without the prior approval of
4 the superintendent.

5 "(b) The approval of the superintendent under
6 subsection (a) shall not be required where the acquisition is
7 made:

8 "~~(1) Solely for the purpose of facilitating an~~
9 ~~acquisition otherwise permitted under this article which does~~
10 ~~not require the approval of the superintendent;~~

11 "~~(2)~~ (1) In a transaction arranged by the
12 superintendent or another bank supervisory agency to prevent
13 the insolvency or closing of the acquired bank; or

14 "~~(3)~~ (2) In a transaction in which a bank forms its
15 own bank holding company, if the ownership rights of the
16 former bank shareholders are substantially similar to those of
17 the shareholders of the new bank holding company.

18 "(c) No Alabama bank holding company may acquire an
19 out-of-state bank or bank holding company without the prior
20 approval of the superintendent.

21 "~~(c)~~ (d) In a transaction for which the
22 superintendent's approval is not required under this section,
23 the parties shall give written notice to the superintendent at
24 least 15 days before the effective date of the acquisition,
25 unless a shorter period of notice is expressly permitted or
26 required under applicable federal law.

27 "§5-13B-5.

1 "(a) A company that proposes to make an acquisition
2 under this article shall:

3 "(1) File with the superintendent a copy of the
4 application that such company has filed with the responsible
5 federal bank supervisory agency together with such additional
6 information as the superintendent may prescribe; and

7 "(2) Pay to the superintendent the application fee,
8 if any, prescribed by the superintendent.

9 "(b) To the extent consistent with the effective
10 discharge of the superintendent's responsibilities, the forms
11 established under this article for application and reporting
12 shall conform to those established by the Board of Governors
13 of the Federal Reserve System under the Bank Holding Company
14 Act.

15 "(c) In connection with an application received
16 under this article, the superintendent shall require that
17 prior notice of the application be published one time in a
18 daily newspaper of general circulation and provide an
19 opportunity for public comment.

20 ~~"(1) Require that prior notice of the application be~~
21 ~~published one time in a daily newspaper of general circulation~~
22 ~~and provide an opportunity for public comment; and~~

23 ~~"(2) Make the application available for public~~
24 ~~inspection to the extent required or permitted under~~
25 ~~applicable state or federal law.~~

26 "(d) If the applicant is an out-of-state bank
27 holding company that is not incorporated under the laws of

1 this state, it shall submit with the application evidence
2 satisfactory to the superintendent that the applicant has
3 complied with or is exempted from the requirements of Sections
4 10-2B-15.01 et seq.

5 "§5-13B-6.

6 "(a) In deciding whether to approve an application
7 for a proposed acquisition under this article, the
8 superintendent shall consider whether the acquisition may:

9 "(1) Be detrimental to the safety and soundness of
10 the Alabama state bank or the Alabama bank holding company ~~to~~
11 ~~be acquired;~~

12 "(2) Result in a substantial reduction of
13 competition in this state; or

14 "(3) Have a significantly adverse effect on the
15 convenience and needs of the community or communities in this
16 state that are served by the Alabama state bank or the Alabama
17 bank holding company to be acquired.

18 "(b) Except as otherwise expressly provided in this
19 section, the superintendent shall not approve an acquisition
20 under this article if upon consummation of the transaction the
21 applicant, including any depository institution affiliated
22 with the applicant, would control 30 percent or more of the
23 total amount of deposits held by depository institutions in
24 this state.

25 "(c) The superintendent may by regulation, with the
26 concurrence of a majority of the members of the Alabama State
27 Banking Board, adopt a procedure whereby the limitation on

1 control of deposits set forth in subsection (b) may be waived
2 for good cause shown.

3 "(d) The superintendent shall not approve an
4 application for an acquisition under this article unless the
5 Alabama bank to be acquired, or all Alabama bank subsidiaries
6 of the bank holding company to be acquired, have as of the
7 proposed date of acquisition been in existence and in
8 continuous operation for five years or more.

9 "(e) The five-year requirement shall be met if the
10 superintendent determines that either the Alabama bank or the
11 subsidiaries of the Alabama bank holding company to be
12 acquired:

13 "(1) Were organized solely for the purpose of
14 facilitating the acquisition of a bank that has been in
15 existence and continuously operating for more than five years,
16 or

17 "(2) Resulted from the merger or consolidation of
18 two or more banks at least one of which had been in existence
19 and continuously operating for more than five years."

20 Section 2. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.