

1 SB495
2 118041-4
3 By Senator Denton
4 RFD: Banking and Insurance
5 First Read: 04-MAR-10

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Sections 5-2A-12, 5-3A-6, 5-5A-44, 5-8A-20,
12 5-8A-24, 5-13B-3, 5-13B-4, 5-13B-5, and 5-13B-6, Code of
13 Alabama 1975, relating to banks; to specify that the Banking
14 Board may order the removal of and civil penalties against a
15 person who has caused a bank to suffer a substantial financial
16 loss; to allow the Banking Department to remove and prohibit a
17 person who has caused a bank to suffer a substantial financial
18 loss from participating in the affairs of any Alabama state
19 bank or a holding company that controls an Alabama state bank,
20 including after the person is no longer employed by a state
21 chartered bank; to remove the exemption from prior approval by
22 the Superintendent of Banking for transactions requiring the
23 prior approval of the Board of Governors of the Federal
24 Reserve System under the Bank Holding Company Act of 1956 and
25 to further provide for the review of applications; to provide
26 that, for certain purposes, a quorum of the Banking Board
27 shall be a majority of those present and entitled to vote; to

1 remove the requirement that the Federal Deposit Insurance
2 Corporation apply for an order confirming appointment as
3 receiver from the receivership court; and to further provide
4 for the conditions under which an Alabama bank holding company
5 may acquire an out-of-state bank or a bank holding company.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

10 "§5-2A-12.

11 "(a) The superintendent may order a bank, the board
12 of directors, any director or directors, and any officer or
13 officers of any bank, individually or collectively (hereafter
14 affected person, whether one or more) to correct any matters
15 in the conduct of the affairs of the bank which in the opinion
16 of the superintendent are unsafe and unsound. The Banking
17 Board may, after at least 20 days' written notice by the
18 superintendent to the bank and any affected person, and a
19 hearing before the Banking Board, ~~impose, by order,~~ to direct
20 the superintendent to issue an order that imposes civil money
21 penalties on the bank ~~or~~ and affected person ~~or may remove~~
22 and, if so determined by the Banking Board, that removes any
23 affected person ~~which:~~

24 "(1) Who does not comply with the superintendent's
25 order to correct unsafe and unsound matters if the Banking
26 Board by written order enters a finding that the bank has
27 thereby suffered or will probably suffer substantial financial

1 loss and that such practice is one involving personal
2 dishonesty on the part of such affected person or one which
3 demonstrates a willful and continuing disregard for the safety
4 and soundness of the bank, the result of which has caused the
5 bank to suffer or which is likely to cause the bank to suffer
6 substantial financial loss; or

7 "(2) Whose conduct a. demonstrates personal
8 dishonesty in connection with the business, operations,
9 assets, or liabilities of the bank; or b. demonstrates a
10 willful and continuing disregard for the safety and soundness
11 of the bank, the result of which has caused or is likely to
12 cause the bank to suffer substantial financial loss.

13 "(b) The amount of civil money penalties imposed
14 shall not exceed one thousand dollars (\$1,000) per day with a
15 maximum amount of one hundred thousand dollars (\$100,000) in
16 the aggregate for all violations of an order of the
17 superintendent. An order of removal also may prohibit the
18 affected person from participating in the affairs of any
19 Alabama state bank or any holding company that controls an
20 Alabama state bank. In the superintendent's ~~written notice~~
21 order to the bank or affected person of the imposition of
22 civil money penalties or removal, the superintendent shall
23 include a specific statement of the facts constituting the
24 alleged unsafe and unsound conduct to be made the basis of the
25 imposition of civil money penalties or removal. At the hearing
26 ~~thereof~~ thereon before the Banking Board, the board of
27 directors of the bank or the affected person shall have the

1 right to appear in person or by counsel. No member of the
2 Banking Board, other than the superintendent, may participate
3 in the hearing if such member is affiliated with the bank or
4 affected person or has previously been involved in a
5 determination to institute the proceedings leading to the
6 hearing. Any order of the superintendent as directed by the
7 Banking Board, imposing civil money penalties or directing
8 removal of an affected person shall within ~~15~~ 28 days of the
9 date of entry thereof be appealable to the Circuit Court of
10 Montgomery County, which appeal shall be conducted de novo.
11 Pending expiration of the time for appeal, the order imposing
12 civil money penalties or of removal shall not become effective
13 and neither the superintendent nor the Banking Board shall
14 publicly disclose such order except in connection with the
15 appeal. All proceedings before the Banking Board shall be
16 confidential. Any person violating this section by disclosure
17 of nonpublic information presented at a confidential hearing
18 before the Banking Board, other than the disclosure that may
19 result in connection with an appeal thereof, shall be guilty
20 of a Class A misdemeanor.

21 "§5-3A-6.

22 "(a) The superintendent and every examiner acting
23 under the superintendent may administer oaths and may examine
24 under oath any person whose testimony may be required on the
25 examination of any bank, on the examination of any affiliate
26 of a bank, or on the examination of any agency of any foreign
27 bank and shall have authority and power to compel the

1 appearance and attendance of any such person or the production
2 of any records and documents of any bank, any affiliate of a
3 bank, or any agency of a foreign bank for the purpose of any
4 examination and attendance or production may be enforced by
5 order of a circuit court. Production of records and documents
6 or testimony, whether or not made under oath, required by the
7 superintendent on the examination of any bank shall not
8 constitute a waiver by the bank, or by any director, officer,
9 employee, advisor, consultant, attorney, or accountant of or
10 for the bank, of any attorney-client privilege or other
11 privilege to which they may be entitled under law.

12 " (b) Any officer, director, agent, or employee of
13 any bank, any affiliate of any bank, or any agency of any
14 foreign bank, or any affected person, whether one or more, who
15 (1) makes any false entry or omission with intent to mislead
16 in any book, report, or statement of such bank, affiliate of
17 such bank, or agency of such foreign bank or (2) makes a false
18 statement, whether or not made under oath, to the
19 superintendent, an examiner acting under the superintendent,
20 or to any officer of such bank, affiliate of any bank, or
21 agency of any foreign bank with intent to injure or defraud
22 such bank, affiliate, or agency or with the intent to
23 influence in any way the action of the superintendent or an
24 examiner acting under the superintendent, shall be subject to
25 removal ~~or~~ and the imposition of civil money penalties by the
26 superintendent when so directed by the Banking Board as
27 provided in this title. An order of removal may prohibit the

1 affected person from participating in the affairs of any
2 Alabama state bank or any holding company that controls an
3 Alabama state bank. Any action of the superintendent or
4 examiner acting under the superintendent taken in reliance
5 upon such false entry, omission, or statement may be rescinded
6 and withdrawn.

7 "(c) In taking an action to prohibit participation
8 by, remove, or impose civil money penalties upon, any officer,
9 director, or employee of any bank, any affiliate of any bank,
10 or any agency of any foreign bank under this section, the
11 superintendent and Banking Board shall not be required to
12 establish that the bank, affiliate of the bank, or agency of a
13 foreign bank suffered or probably will suffer financial loss
14 and shall not be required to establish that the superintendent
15 or examiner acting under the superintendent was influenced by
16 such false entry, omission, or statement.

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

27 "§5-5A-44.

1 "(a) No person may acquire any voting security of a
2 state bank or of any corporation or other entity owning voting
3 securities of a state bank if after the acquisition such
4 person would own or possess the power to vote a majority of
5 the voting securities of such bank, unless an application is
6 filed with the superintendent for ~~his~~ review of the proposed
7 transaction and for his or her action, if any, as provided in
8 this section.

9 "(b) The application shall be on a form prescribed
10 by the superintendent and shall be made under oath. The
11 application must contain all information that the
12 superintendent by regulation requires to be furnished in an
13 application, as well as any information that the
14 superintendent orders to be included in the particular
15 application being filed and shall be accompanied by the filing
16 fee prescribed by the Banking Board. No acquiring party may
17 acquire control of a bank unless the superintendent has
18 approved the acquiring party's acquisition plan. The acquiring
19 party shall file its application with the superintendent, and
20 the application shall, except to the extent expressly waived
21 by the superintendent, contain the following information:

22 "(1) The identity, personal history, business
23 background, and experience of each person by whom or on whose
24 behalf the acquisition is to be made, including his material
25 business activities and affiliations during the past five
26 years, and a description of any material pending legal or
27 administrative proceedings in which he is a party and any

1 criminal indictment or conviction of such person by a state or
2 federal court.

3 "(2) A statement of the assets and liabilities of
4 each person by whom or on whose behalf the acquisition is to
5 be made, as of the end of the fiscal year for each of the five
6 fiscal years immediately preceding the date of the notice,
7 together with related statements of income and source and
8 application of funds for each of the fiscal years then
9 concluded, all prepared in accordance with generally accepted
10 accounting principles consistently applied, and an interim
11 statement of the assets and liabilities for each such person,
12 together with related statements of income and source and
13 application of funds, as of a date not more than 90 days prior
14 to the date of the filing of the notice.

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

18 "(4) The identity, source, and amount of the funds
19 or other consideration used or to be used in making the
20 acquisition, and if any part of these funds or other
21 consideration has been or is to be borrowed or otherwise
22 obtained for the purpose of making the acquisition, a
23 description of the transaction, the names of the parties, and
24 any arrangements, agreements, or understandings with such
25 persons.

26 "(5) Any plans or proposals which any acquiring
27 party making the acquisition may have to liquidate the bank,

1 to sell its assets or merge it with any company or to make any
2 other major change in its business or corporate structure or
3 management.

4 "(6) The identification of any person employed,
5 retained, or to be compensated by the acquiring party, or by
6 any person on his behalf, to make solicitations or
7 recommendations to stockholders for the purpose of assisting
8 in the acquisition, and a brief description of the terms of
9 such employment, retainer, or arrangement for compensation.

10 "(7) Copies of all invitations or tenders or
11 advertisements making a tender offer to stockholders for
12 purchase of their stock to be used in connection with the
13 proposed acquisition.

14 "(8) If any tender offer, request, or invitation for
15 tenders, or other agreement to acquire control is proposed to
16 be made by means of a registration statement under the Federal
17 Securities Act of 1933, as amended, or under circumstances
18 requiring the disclosure of similar information under the
19 Federal Securities Exchange Act of 1934, as amended, or in an
20 application filed with the Federal Deposit Insurance
21 Corporation, the Board of Governors of the Federal Reserve
22 System, or the Securities Commissioner of Alabama requiring
23 similar disclosure, the superintendent may accept the
24 registration statement or application with any additional
25 information as the superintendent may require in lieu of the
26 requirements of this section.

1 "(9) If, while an application is pending, any
2 material change occurs in the facts stated in the application,
3 the acquiring party within 10 days after the change shall file
4 with the superintendent an amendment to the application
5 describing the change in accordance with rules the
6 superintendent may adopt.

7 "For the purposes of this section, the term "person"
8 means an individual or a corporation, partnership, trust,
9 association, joint venture, pool, syndicate, sole
10 proprietorship, unincorporated organization, or any other form
11 of entity not specifically listed herein.

12 "Information obtained by the superintendent under
13 this section is confidential and may not be disclosed by the
14 superintendent or any officer or employee of the State Banking
15 Department, except that the superintendent may in his or her
16 discretion, if ~~he~~ the superintendent deems it necessary or
17 proper to the enforcement of the laws of this state or the
18 United States and to the best interest of the public, divulge
19 such information to any department, agency, or instrumentality
20 of the state or federal government.

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

23 "(1) The financial condition of any acquiring person
24 is such as might jeopardize the financial stability of the
25 bank or prejudice the interests of the depositors or
26 stockholders of the bank;

1 "(2) The competence, experience, or integrity of any
2 acquiring person or of any of the proposed management
3 personnel indicates that it would not be in the interest of
4 the depositors or stockholders of the bank, or in the interest
5 of the public to permit such person to control the bank; or

6 "(3) Any acquiring person neglects, fails, or
7 refuses to furnish the superintendent all the information
8 required by him.

9 "~~(d) If an application filed under this section is~~
10 ~~not denied by the superintendent within 30 days after it is~~
11 ~~filed, the transaction may be consummated. The superintendent~~
12 ~~may, before the expiration of the 30-day period, give the~~
13 ~~applicant written notice that the application will not be~~
14 ~~denied, in which case the transaction may be consummated. The~~
15 ~~superintendent shall approve or deny a change of control under~~
16 ~~this section within 60 days after receipt of a completed~~
17 ~~application; provided that if the superintendent requests~~
18 ~~additional information from the applicant following receipt of~~
19 ~~a completed application, the time limit for the decision by~~
20 ~~the superintendent shall be the later of (1) the date set~~
21 ~~forth above in this subsection; or (2) 30 days after the~~
22 ~~receipt by the superintendent of the requested additional~~
23 ~~information.~~ Any agreement entered into by the applicants and
24 the superintendent as a condition that the application will
25 not be denied is enforceable against the applicant and the
26 bank.

1 "(e) From any final order denying the application
2 the applicant may appeal the decision in the manner and
3 through the procedures established in Sections 5-5A-8 and
4 5-5A-9 for the denial of incorporation of a bank.

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

6 "(1) The acquisition of securities in connection
7 with the exercise of a security interest or otherwise by way
8 of foreclosure on default in the payment of a debt previously
9 contracted for in good faith;

10 "~~(2) Transactions requiring the prior approval of
11 the Board of Governors of the Federal Reserve System under the
12 Bank Holding Company Act of 1956, as amended (12 U.S.C.A.
13 §1841, et seq., and 26 U.S.C.A. §1101, et seq.);~~

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

17 "~~(4)~~ (2) Acquisitions or transfers by gift, operation
18 of law or by will or intestate succession; or

19 "~~(5)~~ (3) Any transaction which the superintendent by
20 regulation or order may exempt as not being contemplated by
21 the purposes of this section or the regulation of which is not
22 necessary or appropriate for the protection of the bank.

23 "(g) If it appears to the superintendent that any
24 person has committed or is about to commit a violation of this
25 section or any regulation or order of the superintendent
26 adopted under it, the attorney general on behalf of the
27 superintendent may apply to the Circuit Court of Montgomery

1 County for an order enjoining the violation and for any other
2 equitable relief as the nature of the case may require.

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

6 "§5-8A-20.

7 "Whenever it shall appear to the superintendent that
8 any bank has violated its charter or any law of the state, or
9 is conducting business in any unauthorized manner, or that the
10 bank may suspend payment of its obligations, or if its capital
11 is impaired and not made good under the requirement of the
12 superintendent within the required time, or if any such bank
13 or an affiliate of such bank as defined in Section 5-3A-1
14 shall refuse to submit its papers, books and concerns to the
15 inspection of the superintendent or any examiner, or if any
16 officer thereof shall refuse to be examined on oath touching
17 the conducting of any such bank, or if any such bank shall
18 suspend payment of its obligations, or if from any examination
19 the superintendent shall have reason to conclude that such
20 bank is in an unsound or unsafe condition to transact the
21 business for which it was organized, or that it is unsafe for
22 it to continue business, or if any such bank shall neglect or
23 refuse to observe any order of the superintendent directing or
24 requiring the doing or cessation of any particular thing
25 required to be done or not to be done by law, the
26 superintendent may call a meeting of the Banking Board and
27 submit to ~~said~~ the board matters of default or misconduct in

1 the affairs of the bank, of which the bank shall have notice
2 and upon which the bank may be heard in person or by counsel,
3 and if ~~said~~ the board or a majority of ~~said~~ the board so
4 directs, the superintendent shall forthwith take possession of
5 the property and business of such bank and retain such
6 possession until such bank shall resume business or a receiver
7 is appointed, as provided in this chapter. Notwithstanding the
8 provisions of Section 5-2A-43, for purposes of this section, a
9 quorum of the board shall be a majority of those present and
10 entitled to vote.

11 "§5-8A-24.

12 "The superintendent may under his or her hand and
13 official seal appoint a receiver to liquidate and distribute
14 the assets of any bank taken possession of by the
15 superintendent under the provisions of this chapter, the
16 certificate of appointment to be filed in the office of the
17 superintendent and a certified copy in the office of the
18 probate judge in the county in which the principal office of
19 such bank is located. The receiver may be the Federal Deposit
20 Insurance Corporation or any other agency or corporation
21 created by the United States to act in such capacity or any
22 person selected by the superintendent; provided, however, no
23 examiner shall be appointed receiver of any bank whose books,
24 papers, and affairs ~~he~~ the examiner shall have examined within
25 one year next preceding the appointment of such receiver. ~~Any~~
26 ~~receiver~~ Any receiver appointed other than the Federal Deposit
27 Insurance Corporation, or any other agency or corporation

1 created by the United States to act in such capacity shall
2 apply for and shall be entitled to an ex parte order
3 confirming his or her appointment as receiver from the
4 receivership court.

5 "§5-13B-3.

6 "This article sets forth the conditions under which
7 a company may acquire an Alabama bank or an Alabama bank
8 holding company or an Alabama bank holding company may acquire
9 an out-of-state bank or bank holding company. This article is
10 intended not to discriminate against out-of-state bank holding
11 companies or against foreign bank holding companies in any
12 manner that would violate Section 3(d) of the Bank Holding
13 Company Act, as amended effective September 29, 1995, by
14 Section 101 of the Riegle-Neal Interstate Banking and
15 Branching Efficiency Act of 1994, Public Law No. 103-328.

16 "§5-13B-4.

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

21 "(b) The approval of the superintendent under
22 subsection (a) shall not be required where the acquisition is
23 made:

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

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

4 "~~(3)~~(2) In a transaction in which a bank forms its
5 own bank holding company, if the ownership rights of the
6 former bank shareholders are substantially similar to those of
7 the shareholders of the new bank holding company.

8 "(c) No Alabama bank holding company may acquire an
9 out-of-state bank or bank holding company without the prior
10 approval of the superintendent.

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

17 "§5-13B-5.

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

20 "(1) File with the superintendent a copy of the
21 application that such company has filed with the responsible
22 federal bank supervisory agency together with such additional
23 information as the superintendent may prescribe; and

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

26 "(b) To the extent consistent with the effective
27 discharge of the superintendent's responsibilities, the forms

1 established under this article for application and reporting
2 shall conform to those established by the Board of Governors
3 of the Federal Reserve System under the Bank Holding Company
4 Act.

5 "(c) In connection with an application received
6 under this article, the superintendent shall require that
7 prior notice of the application be published one time in a
8 daily newspaper of general circulation and provide an
9 opportunity for public comment.

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

13 ~~"(2) Make the application available for public~~
14 ~~inspection to the extent required or permitted under~~
15 ~~applicable state or federal law.~~

16 "(d) If the applicant is an out-of-state bank
17 holding company that is not incorporated under the laws of
18 this state, it shall submit with the application evidence
19 satisfactory to the superintendent that the applicant has
20 complied with or is exempted from the requirements of Sections
21 10-2B-15.01 et seq.

22 "§5-13B-6.

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

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

4 "(2) Result in a substantial reduction of
5 competition in this state; or

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

10 "(b) Except as otherwise expressly provided in this
11 section, the superintendent shall not approve an acquisition
12 under this article if upon consummation of the transaction the
13 applicant, including any depository institution affiliated
14 with the applicant, would control 30 percent or more of the
15 total amount of deposits held by depository institutions in
16 this state.

17 "(c) The superintendent may by regulation, with the
18 concurrence of a majority of the members of the Alabama State
19 Banking Board, adopt a procedure whereby the limitation on
20 control of deposits set forth in subsection (b) may be waived
21 for good cause shown.

22 "(d) The superintendent shall not approve an
23 application for an acquisition under this article unless the
24 Alabama bank to be acquired, or all Alabama bank subsidiaries
25 of the bank holding company to be acquired, have as of the
26 proposed date of acquisition been in existence and in
27 continuous operation for five years or more.

1 "(e) The five-year requirement shall be met if the
2 superintendent determines that either the Alabama bank or the
3 subsidiaries of the Alabama bank holding company to be
4 acquired:

5 "(1) Were organized solely for the purpose of
6 facilitating the acquisition of a bank that has been in
7 existence and continuously operating for more than five years,
8 or

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

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

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Senate

Read for the first time and referred to the Senate committee on Banking and Insurance	04-MAR-10
Read for the second time and placed on the calen- dar 1 amendment	11-MAR-10
Read for the third time and passed as amended ...	08-APR-10

Yeas 21
Nays 0

McDowell Lee
Secretary