

1 SB385
2 176215-1
3 By Senator Blackwell
4 RFD: Banking and Insurance
5 First Read: 05-APR-16

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, the acquisition of
9 ownership of, or the right to vote, a majority of
10 the voting securities of a state bank constitutes
11 the acquisition of control of a state bank. Under
12 existing law, the acquisition of control of a state
13 bank requires the person who seeks to acquire
14 control to file an application with and obtain the
15 prior approval of the Superintendent of the State
16 Banking Department.

17 Under existing federal law, an application
18 must be filed with and approval obtained from the
19 applicable federal agency upon the acquisition of
20 25 percent of the voting securities of a bank and,
21 under certain conditions, upon the acquisition of
22 10 percent of the voting securities.

23 This bill would require a person to also
24 file an application with, and obtain the prior
25 approval of, the Superintendent of the State
26 Banking Department, when the person seeks to
27 acquire 25 percent of the voting securities of a

1 state bank and in certain conditions, upon the
2 proposed acquisition of 10 percent of the voting
3 securities of a state bank.

4
5 A BILL
6 TO BE ENTITLED
7 AN ACT

8
9 To amend Section 5-5A-44, Code of Alabama 1975,
10 relating to acquisition of control of state banks; to require
11 the application to and approval of the Superintendent of the
12 State Banking Department for certain conditions that
13 constitute acquisition of control of a certain percent of the
14 voting securities of a state bank; and to provide for
15 prospective effect.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Section 5-5A-44 of the Code of Alabama
18 1975, is amended to read as follows:

19 "§5-5A-44.

20 "(a) No person, acting directly or indirectly or
21 through or in concert with one or more persons, may acquire
22 control ~~any voting security~~ of a state bank or of any
23 corporation or other entity ~~owning voting securities of~~ having
24 control of a state bank ~~if after the acquisition such person~~
25 ~~would own or possess the power to vote a majority of the~~
26 ~~voting securities of such bank,~~ unless an application is filed
27 with the superintendent for review of the proposed transaction

1 and for his or her action, if any, as provided in this
2 section.

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

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

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

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

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

24 "(5) Any plans or proposals which any acquiring
25 party making the acquisition may have to liquidate the bank,
26 to sell its assets or merge it with any company or to make any

1 other major change in its business or corporate structure or
2 management.

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

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

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

26 "(9) If, while an application is pending, any
27 material change occurs in the facts stated in the application,

1 the acquiring party within 10 days after the change shall file
2 with the superintendent an amendment to the application
3 describing the change in accordance with rules the
4 superintendent may adopt.

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

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

19 "(c) For purposes of this section, the following
20 terms shall have the following meanings:

21 "(1) ACTING THROUGH OR IN CONCERT. Knowing
22 participation in a joint activity or parallel action towards a
23 common goal of acquiring control of a state bank or any
24 corporation or other entity having control of a state bank
25 whether or not pursuant to an express agreement.

26 "(2) CONTROL. The power, directly or indirectly, to
27 direct the management of policies of a state bank or of any

1 corporation or other entity having that power or ownership of
2 or power to vote (whether through the exercise of proxies or
3 otherwise) the lesser of either of the following:

4 "a. Twenty-five percent or more of any class of the
5 voting securities of a state bank or of any corporation or
6 other entity having control of a state bank.

7 "b. Ten percent or more of any class of the voting
8 securities of a state bank or of any corporation or other
9 entity having control of a state bank if no other person will
10 own, control, or hold the power to vote a majority of that
11 class of voting securities immediately after the transaction.

12 "(3) PERSON. An individual or a corporation,
13 partnership, trust, association, joint venture, pool,
14 syndicate, sole proprietorship, unincorporated organization,
15 or any other form of entity not specifically listed herein.

16 "~~(c)~~(d) The superintendent shall issue an order
17 denying an application if he or she finds that any of the
18 following circumstances exist:

19 "(1) The financial condition of any acquiring person
20 is such as might jeopardize the financial stability of the
21 bank or prejudice the interests of the depositors or
22 stockholders of the bank~~;~~.

23 "(2) The competence, experience, or integrity of any
24 acquiring person or of any of the proposed management
25 personnel indicates that it would not be in the interest of
26 the depositors or stockholders of the bank, or in the interest
27 of the public to permit such person to control the bank~~;~~~~or~~.

1 "(3) Any acquiring person neglects, fails, or
2 refuses to furnish the superintendent all the information
3 required by ~~him or her~~ the superintendent.

4 "(4) The plans or proposals which any acquiring
5 person may have to make any major change in the business or
6 corporate structure or management may be detrimental to the
7 safety and soundness of the state bank or of any corporation
8 or other entity having control of the state bank.

9 "(5) The effect of the proposed acquisition of
10 control may result in a substantial reduction of competition
11 in this state or communities served by the state bank to be
12 acquired.

13 "(6) The proposed acquisition of control may have a
14 significantly adverse effect on the convenience and needs of
15 the community or communities that are served by the state
16 bank.

17 "~~(d)~~ (e) The superintendent shall approve or deny a
18 change of control under this section within 60 days after
19 receipt of a completed application; provided that if the
20 superintendent requests additional information from the
21 applicant following receipt of a completed application, the
22 time limit for the decision by the superintendent shall be the
23 later of (1) the date set forth above in this subsection; or
24 (2) 30 days after the receipt by the superintendent of the
25 requested additional information. Any agreement entered into
26 by the applicants and the superintendent as a condition that

1 the application will not be denied is enforceable against the
2 applicant and the bank.

3 "~~(e)~~ (f) From any final order denying the application
4 the applicant may appeal the decision in the manner and
5 through the procedures established in Sections 5-5A-8 and
6 5-5A-9 for the denial of incorporation of a bank.

7 "~~(f)~~ (g) This section does not apply to any of the
8 following:

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

13 "(2) Acquisitions or transfers by gift, ~~operation of~~
14 ~~law or~~ by will~~7~~, or intestate succession~~7 or~~.

15 "(3) Any transaction which the superintendent by
16 regulation~~7~~, ~~or~~ order~~7~~, or written interpretation may exempt as
17 not being contemplated by the purposes of this section or the
18 regulation of which is not necessary or appropriate for the
19 protection of the bank.

20 "However, in any change of control transaction
21 exempted from filing an application pursuant to this
22 subsection, the acquiring person shall notify the
23 superintendent within 60 days of obtaining control, shall
24 submit a business plan including management structure within
25 90 days of obtaining control for approval by the
26 superintendent, and shall obtain the superintendent's prior

1 approval for any changes to the business plan during the first
2 three years from the date of change of control.

3 "~~(g)~~ (h) If it appears to the superintendent that any
4 person has committed or is about to commit a violation of this
5 section or any regulation or order of the superintendent
6 adopted under it, the Attorney General on behalf of the
7 superintendent may apply to the Circuit Court of Montgomery
8 County for an order enjoining the violation and for any other
9 equitable relief as the nature of the case may require.

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

13 Section 2. This act applies to acquisitions subject
14 to this act that occur on or after the effective date of this
15 act.

16 Section 3. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.