

1 HB574
2 117114-1
3 By Representative Hill
4 RFD: Banking and Insurance
5 First Read: 16-FEB-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.

13 This bill would provide that transactions
14 involving holding companies that previously have
15 not held ownership of a bank that is insured by the
16 bank insurance fund of the Federal Deposit
17 Insurance Corporation would not be subject to
18 review by the Superintendent of Banking.

19 This bill would allow the Superintendent of
20 Banking to declare a bank in default or misconduct
21 if it appears that the bank may suspend payment of
22 its obligations.

23 This bill would provide that if a receiver
24 is a person other than the Federal Deposit
25 Insurance Corporation, the receiver shall apply for
26 and shall be entitled to an ex parte order

1 confirming his or her appointment as receiver from
2 the receivership court.

3 This bill would prohibit a company from
4 acquiring an Alabama bank holding company or an
5 Alabama state bank without the prior approval of
6 the superintendent.

7
8 A BILL

9 TO BE ENTITLED

10 AN ACT

11
12 To amend Sections 5-5A-44, 5-8A-20, 5-8A-24, and
13 5-13B-4, Code of Alabama 1975, relating to banks; to provide
14 that transactions involving holding companies that previously
15 have not held ownership of a bank that is insured by the bank
16 insurance fund of the Federal Deposit Insurance Corporation
17 would not be subject to review by the Superintendent of
18 Banking; to allow the Superintendent of Banking to declare a
19 bank in default or misconduct if it appears that the bank may
20 suspend payment of its obligations; to provide that if a
21 receiver is a person other than the Federal Deposit Insurance
22 Corporation, the receiver shall apply for and shall be
23 entitled to an ex parte order confirming his or her
24 appointment as receiver from the receivership court; and to
25 prohibit a company from acquiring an Alabama bank holding
26 company or an Alabama state bank without the prior approval of
27 the superintendent.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

4 "§5-5A-44.

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

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

26 "(1) The identity, personal history, business
27 background, and experience of each person by whom or on whose

1 behalf the acquisition is to be made, including his material
2 business activities and affiliations during the past five
3 years, and a description of any material pending legal or
4 administrative proceedings in which he is a party and any
5 criminal indictment or conviction of such person by a state or
6 federal court.

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

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

22 "(4) The identity, source, and amount of the funds
23 or other consideration used or to be used in making the
24 acquisition, and if any part of these funds or other
25 consideration has been or is to be borrowed or otherwise
26 obtained for the purpose of making the acquisition, a
27 description of the transaction, the names of the parties, and

1 any arrangements, agreements, or understandings with such
2 persons.

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

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

14 "(7) Copies of all invitations or tenders or
15 advertisements making a tender offer to stockholders for
16 purchase of their stock to be used in connection with the
17 proposed acquisition.

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

1 registration statement or application with any additional
2 information as the superintendent may require in lieu of the
3 requirements of this section.

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

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

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

24 "(c) The superintendent shall issue an order denying
25 an application if he finds that:

26 "(1) The financial condition of any acquiring person
27 is such as might jeopardize the financial stability of the

1 bank or prejudice the interests of the depositors or
2 stockholders of the bank;

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

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

11 "(d) If an application filed under this section is
12 not denied by the superintendent within 30 days after it is
13 filed, the transaction may be consummated. The superintendent
14 may, before the expiration of the 30-day period, give the
15 applicant written notice that the application will not be
16 denied, in which case the transaction may be consummated. Any
17 agreement entered into by the applicants and the
18 superintendent as a condition that the application will not be
19 denied is enforceable against the applicant and the bank.

20 "(e) From any final order denying the application
21 the applicant may appeal the decision in the manner and
22 through the procedures established in Sections 5-5A-8 and
23 5-5A-9 for the denial of incorporation of a bank.

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

25 "(1) The acquisition of securities in connection
26 with the exercise of a security interest or otherwise by way

1 of foreclosure on default in the payment of a debt previously
2 contracted for in good faith;

3 "(2) Transactions requiring the prior approval of
4 the Board of Governors of the Federal Reserve System under the
5 Bank Holding Company Act of 1956, as amended (12 U.S.C.A.
6 §1841, et seq., and 26 U.S.C.A. §1101, et seq.), other than
7 transactions involving holding companies that previously have
8 not held ownership of a bank that is insured by the bank
9 insurance fund of the Federal Deposit Insurance Corporation;

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

13 "(4) Acquisitions or transfers by gift, operation of
14 law or by will or intestate succession; or

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

19 "(g) If it appears to the superintendent that any
20 person has committed or is about to commit a violation of this
21 section or any regulation or order of the superintendent
22 adopted under it, the attorney general on behalf of the
23 superintendent may apply to the Circuit Court of Montgomery
24 County for an order enjoining the violation and for any other
25 equitable relief as the nature of the case may require.

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

4 "§5-8A-20.

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

1 upon which the bank may be heard in person or by counsel, and
2 if said board or a majority of said board so directs, the
3 superintendent shall forthwith take possession of the property
4 and business of such bank and retain such possession until
5 such bank shall resume business or a receiver is appointed, as
6 provided in this chapter. However, should the superintendent,
7 in his discretion, determine that a bank is in immediate
8 danger of failure, the superintendent, with 48 hours notice to
9 the Banking Board, may take possession of the property and
10 business of the bank and retain such possession until such
11 bank shall resume business or a receiver is appointed,
12 provided no member of the Banking Board files a written
13 objection to the closing with the superintendent within that
14 48-hour period. Should an objection to the closure be filed
15 with the superintendent, a hearing as outlined above must be
16 held. For purposes of this section, a quorum of the Banking
17 Board shall be a majority of those present and entitled to
18 vote.

19 "§5-8A-24.

20 "The superintendent may under his hand and official
21 seal appoint a receiver to liquidate and distribute the assets
22 of any bank taken possession of by the superintendent under
23 the provisions of this chapter, the certificate of appointment
24 to be filed in the office of the superintendent and a
25 certified copy in the office of the probate judge in the
26 county in which the principal office of such bank is located.
27 The receiver may be the Federal Deposit Insurance Corporation

1 or any other agency or corporation created by the United
2 States to act in such capacity or any person selected by the
3 superintendent; provided, however, no examiner shall be
4 appointed receiver of any bank whose books, papers, and
5 affairs he shall have examined within one year next preceding
6 the appointment of such receiver. Any receiver Should the
7 receiver be any person other than the Federal Deposit
8 Insurance Corporation, the receiver shall apply for and shall
9 be entitled to an ex parte order confirming his appointment as
10 receiver from the receivership court.

11 "§5-13B-4.

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

16 "(b) The approval of the superintendent under
17 subsection (a) shall not be required where the acquisition is
18 made:

19 "(1) Solely for the purpose of facilitating an
20 acquisition otherwise permitted under this article which does
21 not require the approval of the superintendent;

22 "(2) In a transaction arranged by the superintendent
23 or another bank supervisory agency to prevent the insolvency
24 or closing of the acquired bank; or

25 "(3) In a transaction in which a bank forms its own
26 bank holding company, if the ownership rights of the former

1 bank shareholders are substantially similar to those of the
2 shareholders of the new bank holding company.

3 "(c) In a transaction for which the superintendent's
4 approval is not required under this section, the parties shall
5 give written notice to the superintendent at least 15 days
6 before the effective date of the acquisition, unless a shorter
7 period of notice is expressly permitted or required under
8 applicable federal law."

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