

1 SB426
2 129689-1
3 By Senator Blackwell
4 RFD: Banking and Insurance
5 First Read: 21-APR-11

SYNOPSIS: Under existing law, the Superintendent of Banks and the State Banking Department regulate the banking industry in Alabama.

This bill would provide for the regulation of bank holding companies.

This bill would require that reports of examination meetings of bank boards concerning bank holding companies would be confidential.

This bill would provide further for the incorporation of a bank.

This bill would require certain notification when a change of control of voting shares of a bank occurs through inheritance.

A BILL

TO BE ENTITLED

AN ACT

Relating to the State Banking Department; to amend Sections 5-2A-12, 5-3A-1, 5-3A-3, 5-3A-4, 5-3A-6, 5-3A-11,

1 5-5A-1, 5-5A-22, 5-5A-44, and 5-13B-11, Code of Alabama 1975,
2 to provide for the regulation of bank holding companies; to
3 provide for confidential reports; to provide further for the
4 incorporation of a bank; and to require certain notification
5 when change of voting shares occurs through inheritance.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 5-2A-12, 5-3A-1, 5-3A-3, 5-3A-4,
8 5-3A-6, 5-3A-11, 5-5A-1, 5-5A-22, 5-5A-44, and 5-13B-11, Code
9 of Alabama 1975, are amended to read as follows:

10 "§5-2A-12.

11 "(a) For purposes of this section, a bank holding
12 company is a holding company organized under the laws of
13 Alabama or another state in the United States that directly
14 owns a majority of the voting securities of an Alabama state
15 bank.

16 "~~(a)~~ (b) The superintendent may order a bank, a bank
17 holding company, the board of directors, any director or
18 directors, and any officer or officers of any bank or bank
19 holding company, individually or collectively (hereafter
20 affected person, whether one or more) to correct any matters
21 in the conduct of the affairs of the bank which in the opinion
22 of the superintendent are unsafe and unsound. The Banking
23 Board, after at least 20 days' written notice by the
24 superintendent to the bank and any affected person, and a
25 hearing before the Banking Board, may direct the
26 superintendent to issue an order that imposes civil money
27 penalties on the bank or bank holding company and affected

1 person and, if so determined by the Banking Board, that
2 removes any affected person:

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

13 "(2) Whose conduct:

14 "a. demonstrates personal dishonesty in connection
15 with the business, operations, assets, or liabilities of the
16 bank or bank holding company; or

17 "b. demonstrates a willful and continuing disregard
18 for the safety and soundness of the bank, the result of which
19 has caused or is likely to cause the bank or bank holding
20 company to suffer substantial financial loss.

21 "~~(b)~~ (c) The amount of civil money penalties imposed
22 shall not exceed one thousand dollars (\$1,000) per day with a
23 maximum amount of one hundred thousand dollars (\$100,000) in
24 the aggregate for all violations of an order of the
25 superintendent. An order of removal also may prohibit the
26 affected person from participating in the affairs of any
27 Alabama state bank or any holding company that controls an

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

1 connection with an appeal thereof, shall be guilty of a Class
2 A misdemeanor.

3 "§5-3A-1.

4 "(a) For purposes of this section, a bank holding
5 company is a holding company organized under the laws of
6 Alabama or another state in the United States that directly
7 owns a majority of the voting securities of an Alabama state
8 bank.

9 "~~(a)~~ (b) Every bank other than national banks shall
10 be subject to the supervision and inspection of the
11 superintendent and the regulations and supervision thereof.
12 The superintendent shall, by competent examiner appointed by
13 him or her, visit and examine every bank organized under the
14 laws of Alabama at least once in each eighteen-month period.
15 The examination of banks shall be at irregular intervals. On
16 every examination, inquiry shall be made as to the conditions
17 and resources of the bank, the mode of conducting and managing
18 the affairs of the bank, the action of its directors, the
19 investment of the funds of the bank, the safety and prudence
20 of the management of the bank, whether the requirements of its
21 charter and of law have been complied with in the
22 administration of the affairs of the bank, and such other
23 matters as the superintendent may prescribe. In addition, the
24 superintendent may in like manner examine or cause to be
25 examined the affairs of every bank, every bank holding
26 company, and every affiliate of the bank except a national
27 bank, or a subsidiary of a national bank ~~or a bank holding~~

1 ~~company, or a subsidiary of a bank holding company other than~~
2 ~~a bank organized under the laws of Alabama,~~ whenever, in the
3 judgment of the superintendent, the management and condition
4 of the bank, bank holding company, or affiliate renders an
5 examination of its affairs necessary or expedient, or
6 whenever, in the opinion of the superintendent, the interest
7 of the public demands an examination.

8 "~~(b)~~ (c) The term "affiliate" shall include any
9 corporation, business trust, association, or other similar
10 organization under any of the following conditions:

11 "(1) When a bank, directly or indirectly, owns or
12 controls either a majority of the voting shares or more than
13 50 percent of the number of shares voted for the election of
14 its directors, trustees, or other persons exercising similar
15 functions at the preceding election, or controls in any manner
16 the election of a majority of its directors, trustees, or
17 other persons exercising similar functions.

18 "(2) When control of a bank is held, directly or
19 indirectly, through stock ownership or in any other manner, by
20 the shareholders of a bank who own or control either a
21 majority of the shares of the bank or more than 50 percent of
22 the number of shares voted for the election of directors of
23 the bank at the preceding election, or by trustees for the
24 benefit of the shareholders of the bank.

25 "(3) When a majority of the directors of the bank
26 comprise a majority of the directors, trustees, or other
27 persons exercising similar functions of the organization.

1 "(4) When the organization owns or controls,
2 directly or indirectly, either a majority of the shares of
3 capital stock of a bank or more than 50 percent of the number
4 of shares voted for the election of directors of a bank at the
5 preceding election, or controls in any manner the election of
6 a majority of the directors of a bank at the preceding
7 election, or controls in any manner the election of a majority
8 of the directors of a bank, or for the benefit of whose
9 shareholders or members all or substantially all the capital
10 stock of a bank is held by trustees.

11 "§5-3A-3.

12 "(a) Neither the superintendent, any member of the
13 Banking Board, nor any bank examiner or other state employee
14 shall disclose the condition and affairs of any bank or bank
15 holding company ascertained by an examination of such bank, or
16 bank holding company, or report or give information as to
17 persons who are depositors or debtors of a bank, except as
18 authorized or required by law; provided, that this section
19 shall not be construed to prevent bank examiners and other
20 employees from reporting such information to the
21 superintendent or such persons as the superintendent may
22 lawfully designate.

23 "(b) Notwithstanding the provisions of subsection
24 (a), the superintendent, at the superintendent's discretion,
25 may disclose any information, otherwise protected under this
26 section, to the members of the Banking Board and confer with
27 the members of the Banking Board regarding the same and may

1 disclose such information as is necessary in taking
2 enforcement actions or other supervisory actions pursuant to
3 this title.

4 "(c) The superintendent may furnish to the Federal
5 Reserve, Federal Deposit Insurance Corporation, the Office of
6 Thrift Supervision, the Comptroller of the Currency, or to any
7 successor banking supervisory agency of the United States
8 reports of examination and other data as the superintendent
9 deems advisable. The Federal Reserve, Federal Deposit
10 Insurance Corporation, Office of Thrift Supervision, or the
11 Comptroller of the Currency, or any supervisory agency of the
12 United States may use such reports of examination and other
13 information in taking their enforcement and other supervisory
14 actions. Any disclosure by these agencies to third parties
15 must be made with the prior consent of the superintendent and
16 subject to such confidentiality restrictions required by this
17 title or as the superintendent may require.

18 "(d) The superintendent may also furnish copies of
19 his or her reports of examination and any other information to
20 the board of directors of the bank which was examined and to
21 any bank holding company owning more than 50 percent of the
22 capital stock of such bank.

23 "(e) Any reports or information furnished or
24 disclosed under subsection (a), (b), (c), or (d) shall remain
25 the property of the Banking Department and, except as provided
26 in this section and Section 5-3A-11, may not be disclosed to
27 any person other than the officers, directors, attorneys, and

1 auditors of such bank or bank holding company, consultants or
2 advisors to such bank or bank holding company and, subject to
3 appropriate confidentiality agreements, persons considering
4 the possible acquisition of, merger with, or investment in
5 such bank or bank holding company. No person receiving such
6 reports or information may (1) use such report or information
7 other than in connection with the bank or bank holding company
8 and its business and affairs, (2) retain that report or
9 information or copies thereof, or (3) except as expressly
10 permitted by law, disclose such report or information to any
11 person not authorized to receive the same under this
12 subsection.

13 "(f) Any person violating this section shall be
14 guilty of a Class A misdemeanor.

15 "§5-3A-4.

16 "The expenses incidental to any special examination
17 of banks, bank holding companies, or their affiliates shall be
18 borne by the bank or bank holding company so examined, and
19 such bank or bank holding company shall, on the call of the
20 superintendent, pay into the Treasury of Alabama, earmarked
21 for the use of the Banking Department, within 10 days after
22 said examination, an amount not exceeding the actual expenses
23 of such examination, including per diem, travel expenses and
24 the pro rata portion of the salaries of the state employees
25 engaged in making such examination.

26 "§5-3A-6.

1 "(a) For purposes of this section, a bank holding
2 company is a holding company organized under the laws of
3 Alabama or another state in the United States that directly
4 owns a majority of the voting securities of an Alabama state
5 bank.

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

25 "~~(b)~~ (c) Any officer, director, agent, or employee of
26 any bank, any bank holding company, any affiliate of any bank,
27 or any agency of any foreign bank, or any affected person,

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

21 "~~(c)~~ (d) In taking an action to prohibit
22 participation by, remove, or impose civil money penalties
23 upon, any officer, director, or employee of any bank, any bank
24 holding company, any affiliate of any bank, or any agency of
25 any foreign bank under this section, the superintendent and
26 Banking Board shall not be required to establish that the
27 bank, bank holding company, affiliate of the bank, or agency

1 of a foreign bank suffered or probably will suffer financial
2 loss and shall not be required to establish that the
3 superintendent or examiner acting under the superintendent was
4 influenced by such false entry, omission, or statement.

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

16 "§5-3A-11.

17 "All reports of examination, records reflecting
18 action of ~~the~~ a bank or bank holding company taken pursuant
19 thereto, and records and minutes of meetings of the Banking
20 Board relating to a bank or several banks or a bank holding
21 company shall be confidential and shall not be subject to
22 subpoena or inspection except by subpoena from a grand jury
23 served on the superintendent.

24 "§5-5A-1.

25 "(a) The proposed incorporators of a bank shall
26 execute and acknowledge an application for a permit in writing
27 in the form prescribed by the superintendent and shall file

1 the same in the office of the State Banking Department, which
2 application shall be signed by all of the incorporators
3 requesting a certificate authorizing the proposed bank to
4 transact business at the place, time and under the name stated
5 in said application.

6 "(b) At the time of filing said application, the
7 applicant shall pay to the superintendent a filing fee.

8 "(c) The application shall name at a minimum five
9 directors, and a majority of all directors shall be outside
10 directors unless a written waiver is obtained from the
11 superintendent. A director shall be deemed to be an outside
12 director if the director will not serve as an officer or an
13 employee of the bank.

14 "(d) The application shall name a chair, chief
15 executive officer, a chief financial/operations officer, and a
16 chief lending officer of the bank. The chair must be an
17 outside director. The superintendent may exercise discretion
18 and waive any of the above requirements by written notice.

19 "~~(c)~~ (e) The superintendent shall designate the
20 newspaper in which notice of intention to organize shall be
21 published as required by Section 5-5A-2.

22 "§5-5A-22.

23 "(a) No bank shall make a loan to any one person
24 which, when combined with all other loans to such person,
25 would cause total loans to that person to exceed:

26 "(1) Ten percent of the capital accounts of the
27 bank, if such loans are not secured, or

1 "(2) Twenty percent of the capital accounts of the
2 bank, if loans in excess of 10 percent of capital are fully
3 secured.

4 "(b) No loans which would exceed the limitation set
5 forth in subsection (a)(1) shall be made unless duly
6 authorized or approved in advance by the board of directors of
7 the bank, a committee of the board of directors of the bank,
8 or a loan committee, with such authorization or approval
9 recorded in minutes of the meeting at which the authority was
10 given.

11 "(c) (1) As used in this section, the term "capital
12 accounts" shall include capital, surplus, and undivided
13 profits as defined in Section 5-1A-2, together with
14 obligations of the bank subordinated in priority upon
15 liquidation or dissolution to the claims of depositors of the
16 bank. The term shall also include such reserves as may from
17 time to time be permitted to be included by the
18 superintendent.

19 "(2) In calculating total loans to a person under
20 this section the following rules shall govern:

21 "a. In computing the total liabilities of any person
22 to a bank, there shall be included all liabilities to the bank
23 as maker or acceptor of paper discounted with or sold to such
24 bank and the liability of the indorser, drawer, or guarantor
25 who obtains a loan from or discounts paper with or sells paper
26 under his or her guaranty or repurchase agreement to such
27 bank.

1 "b. In computing the total liabilities of any person
2 to a bank, there shall be included all liabilities to the bank
3 of any partnership or any unincorporated association of which
4 such person is a member, any loans made for such person's
5 benefit or for the benefit of such partnership or
6 unincorporated association, and any loans made to, or for the
7 benefit of, a corporation of which such person owns 35 percent
8 or more of the capital.

9 "c. In computing the total liabilities of any
10 partnership or unincorporated association to a bank, there
11 shall be included all liabilities of its individual members to
12 such bank, loans made for the benefit of such partnership or
13 unincorporated association or any member thereof, and any loan
14 made to, or for the benefit of, any corporation of which any
15 member owns 35 percent or more of the capital.

16 "d. In computing the total liabilities of any
17 corporation to a bank, there shall be included all loans made
18 for the benefit of the corporation, and all loans to, or for
19 the benefit of any partnership or unincorporated association,
20 or any member thereof, who owns 35 percent or more of the
21 capital of such corporation.

22 "e. In computing the total liabilities of any person
23 to a bank, direct or indirect loans to such person's spouse
24 will be aggregated and treated as loans to such person until
25 the bank can satisfy the superintendent that each spouse has a
26 separate net worth and available assets or cash flow to
27 independently repay and service each individual spouse's

1 debts, and such net worth, assets, or cash flow of each is not
2 dependent on decisions made or actions taken by the other.

3 "f. In computing total liabilities of any person to
4 a bank, any credit exposure to a person arising from a
5 derivative transaction, repurchase agreement, reverse
6 repurchase agreement, securities lending transaction or
7 securities borrowing transaction between the bank and the
8 person shall be included. For the purposes of this paragraph
9 the term derivative transaction shall include any transaction
10 that is a contract, agreement, swap, warrant, note, or option
11 that is based, in whole or in part, on the value of, any
12 interest in, or any quantitative measure or the occurrence of
13 any event relating to, one or more commodities, securities,
14 currencies, interest or other rates, indices, or other assets.

15 "(d) There shall be excluded from the limits set
16 forth in subsection (a) the following:

17 "(1) Indebtedness evidenced by commercial paper
18 drawn in good faith against actually existing values and
19 secured by a security interest upon goods in transit with
20 shippers' order, bills of lading, or comparable instruments
21 attached;

22 "(2) Deposits in a reserve depository or a Federal
23 Reserve Bank;

24 "(3) Loans to the extent secured by:

25 "a. Obligations of, and obligations guaranteed by
26 the United States, the State of Alabama, any political
27 subdivision of the State of Alabama, any public body of the

1 State of Alabama, or a public body of any political
2 subdivision of the State of Alabama if the obligations or
3 guarantees are general obligations thereof;

4 "b. Obligations which the bank would be authorized
5 to acquire without limit as investment securities;

6 "c. Guarantees or commitments or agreements to take
7 over or purchase made by any department, bureau, board,
8 commission, or establishment of the United States or any
9 corporation owned directly or indirectly by the United States;
10 or

11 "d. At least a like amount of cash or deposits held
12 by the lending bank.

13 "(4) Investment securities acquired by the bank;

14 "(5) Such other loans, liabilities, or transactions
15 as shall from time to time be established by regulations of
16 the State Banking Department.

17 "(e) It shall be the duty of the superintendent to
18 order any loans in excess of the amount fixed in this section
19 reduced to the legal limit within 30 days of the
20 superintendent's issuance of a written report of examination
21 detailing such excess. If such reduction is not made by the
22 bank within 30 days of the superintendent's order, the
23 superintendent may take appropriate action, including ordering
24 the excess charged to profit and loss if, in his or her
25 opinion, such excess is not well secured, or may by order
26 impose civil money penalties against the bank not to exceed
27 the amount of interest and fees paid or contracted to be paid

1 to the bank on the loan or loans in excess of the amount fixed
2 in this section. If such order of the superintendent is not
3 complied with, the superintendent may proceed as in other
4 cases provided for violation of the orders of the
5 superintendent, and the bank shall have the same rights to a
6 hearing and of appeal as are provided in Section 5-2A-12.

7 "§5-5A-44.

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

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

1 the application shall, except to the extent expressly waived
2 by the superintendent, contain the following information:

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

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

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

26 "(4) The identity, source, and amount of the funds
27 or other consideration used or to be used in making the

1 acquisition, and if any part of these funds or other
2 consideration has been or is to be borrowed or otherwise
3 obtained for the purpose of making the acquisition, a
4 description of the transaction, the names of the parties, and
5 any arrangements, agreements, or understandings with such
6 persons.

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

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

18 "(7) Copies of all invitations or tenders or
19 advertisements making a tender offer to stockholders for
20 purchase of their stock to be used in connection with the
21 proposed acquisition.

22 "(8) If any tender offer, request, or invitation for
23 tenders, or other agreement to acquire control is proposed to
24 be made by means of a registration statement under the Federal
25 Securities Act of 1933, as amended, or under circumstances
26 requiring the disclosure of similar information under the
27 Federal Securities Exchange Act of 1934, as amended, or in an

1 application filed with the Federal Deposit Insurance
2 Corporation, the Board of Governors of the Federal Reserve
3 System, or the Securities Commissioner of Alabama requiring
4 similar disclosure, the superintendent may accept the
5 registration statement or application with any additional
6 information as the superintendent may require in lieu of the
7 requirements of this section.

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

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

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

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

3 "(1) The financial condition of any acquiring person
4 is such as might jeopardize the financial stability of the
5 bank or prejudice the interests of the depositors or
6 stockholders of the bank;

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

12 "(3) Any acquiring person neglects, fails, or
13 refuses to furnish the superintendent all the information
14 required by him or her.

15 "(d) The superintendent shall approve or deny a
16 change of control under this section within 60 days after
17 receipt of a completed application; provided that if the
18 superintendent requests additional information from the
19 applicant following receipt of a completed application, the
20 time limit for the decision by the superintendent shall be the
21 later of (1) the date set forth above in this subsection; or
22 (2) 30 days after the receipt by the superintendent of the
23 requested additional information. Any agreement entered into
24 by the applicants and the superintendent as a condition that
25 the application will not be denied is enforceable against the
26 applicant and the 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) Acquisitions or transfers by gift, operation of
11 law or by will or intestate succession; or

12 "(3) Any transaction which the superintendent by
13 regulation or order may exempt as not being contemplated by
14 the purposes of this section or the regulation of which is not
15 necessary or appropriate for the protection of the bank.

16 "However, in any change of control transaction
17 exempted from filing an application pursuant to this
18 subsection, the acquiring person shall notify the
19 superintendent within 60 days of obtaining control, shall
20 submit a business plan including management structure within
21 90 days of obtaining control for approval by the
22 superintendent and shall obtain the superintendent's prior
23 approval for any changes to the business plan during the first
24 three years from the date of change of control.

25 "(g) If it appears to the superintendent that any
26 person has committed or is about to commit a violation of this
27 section or any regulation or order of the superintendent

1 adopted under it, the Attorney General on behalf of the
2 superintendent may apply to the Circuit Court of Montgomery
3 County for an order enjoining the violation and for any other
4 equitable relief as the nature of the case may require.

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

8 "§5-13B-11.

9 "~~(a)~~ In order to carry out the purposes of this
10 title, in addition to and cumulative with the authority and
11 powers of the superintendent set forth elsewhere in this
12 title, the superintendent may:

13 "(1) Adopt regulations;

14 "(2) Enter into cooperative, coordinating, or
15 information-sharing agreements with any other bank supervisory
16 agency or any organization affiliated with or representing one
17 or more bank supervisory agencies;

18 "(3) Accept any report of examination or
19 investigation by another bank supervisory agency having
20 concurrent jurisdiction over an Alabama state bank or a bank
21 holding company that controls an Alabama state bank in lieu of
22 conducting the superintendent's own examination or
23 investigation of such bank holding company or bank;

24 "(4) Enter into contracts with any bank supervisory
25 agency having concurrent jurisdiction over an Alabama state
26 bank or a bank holding company that controls an Alabama state
27 bank to engage the services of the agency's examiners at a

1 reasonable rate of compensation, or to provide the services of
2 the superintendent's examiners to the agency at a reasonable
3 rate of compensation; which contract shall be deemed a sole
4 source, one vendor and one supplier contract under the
5 procurement laws of this state and shall be exempt from
6 competitive bidding requirements;

7 "(5) Enter into joint examinations or joint
8 enforcement actions with any other bank supervisory agency
9 having concurrent jurisdiction over any Alabama state bank, or
10 any bank holding company that controls an Alabama state bank;
11 provided, however, that the superintendent may take any such
12 action independently only with respect to any Alabama state
13 bank or bank holding company organized under the laws of
14 Alabama or another state in the United States that directly
15 owns a majority of the voting securities of an Alabama state
16 bank. If the superintendent determines that examination of an
17 out-of-state bank or bank holding company is necessary to
18 carry out his or her responsibilities under this title or to
19 enforce compliance with the laws of this state, the
20 superintendent shall recognize the exclusive authority of the
21 home state regulator over corporate governance and other
22 matters as provided in federal law and the primary
23 responsibility of the home state regulator with respect to
24 safety and soundness matters; and

25 "(6) Assess supervisory and examination fees that
26 shall be payable by Alabama banks in connection with the
27 performance of the duties of the superintendent under this

1 title. Such fees may be shared with other bank supervisory
2 agencies or any organizations affiliated with or representing
3 one or more bank supervisory agencies in accordance with
4 agreements between them and the superintendent.

5 ~~"(b) Except as specifically provided elsewhere in~~
6 ~~this title, nothing contained in this section shall give the~~
7 ~~superintendent any independent right to regulate, supervise,~~
8 ~~or examine any bank holding company."~~

9 Section 2. This act shall become effective
10 immediately following its passage and approval by the
11 Governor, or its otherwise becoming law.