

1 HB544  
2 129689-3  
3 By Representative Hill  
4 RFD: Financial Services  
5 First Read: 19-APR-11

1 ENGROSSED

2  
3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

8 Relating to the State Banking Department; to amend  
9 Sections 5-2A-12, 5-3A-1, 5-3A-3, 5-3A-4, 5-3A-6, 5-3A-11,  
10 5-5A-1, 5-5A-22, 5-5A-44, and 5-13B-11, Code of Alabama 1975,  
11 to provide for the regulation of bank holding companies; to  
12 provide for confidential reports; to provide further for the  
13 incorporation of a bank; and to require certain notification  
14 when change of voting shares occurs through inheritance.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 5-2A-12, 5-3A-1, 5-3A-3, 5-3A-4,  
17 5-3A-6, 5-3A-11, 5-5A-1, 5-5A-22, 5-5A-44, and 5-13B-11, Code  
18 of Alabama 1975, are amended to read as follows:

19 "§5-2A-12.

20 "(a) For purposes of this section, a bank holding  
21 company is a holding company organized under the laws of  
22 Alabama or another state in the United States that directly  
23 owns a majority of the voting securities of an Alabama state  
24 bank.

25 "~~(a)~~ (b) The superintendent may order a bank, a bank  
26 holding company, the board of directors, any director or

1 directors, and any officer or officers of any bank or bank  
2 holding company, individually or collectively (hereafter  
3 affected person, whether one or more) to correct any matters  
4 in the conduct of the affairs of the bank which in the opinion  
5 of the superintendent are unsafe and unsound. The Banking  
6 Board, after at least 20 days' written notice by the  
7 superintendent to the bank and any affected person, and a  
8 hearing before the Banking Board, may direct the  
9 superintendent to issue an order that imposes civil money  
10 penalties on the bank or bank holding company and affected  
11 person and, if so determined by the Banking Board, that  
12 removes any affected person:

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

23 "(2) Whose conduct:

24 "a. demonstrates personal dishonesty in connection  
25 with the business, operations, assets, or liabilities of the  
26 bank or bank holding company; or

1            "b. demonstrates a willful and continuing disregard  
2        for the safety and soundness of the bank, the result of which  
3        has caused or is likely to cause the bank or bank holding  
4        company to suffer substantial financial loss.

5            "~~(b)~~ (c) The amount of civil money penalties imposed  
6        shall not exceed one thousand dollars (\$1,000) per day with a  
7        maximum amount of one hundred thousand dollars (\$100,000) in  
8        the aggregate for all violations of an order of the  
9        superintendent. An order of removal also may prohibit the  
10       affected person from participating in the affairs of any  
11       Alabama state bank or any holding company that controls an  
12       Alabama state bank. In the superintendent's order to the bank  
13       or affected person of the imposition of civil money penalties  
14       or removal, the superintendent shall include a specific  
15       statement of the facts constituting the alleged unsafe and  
16       unsound conduct to be made the basis of the imposition of  
17       civil money penalties or removal. At the hearing thereon  
18       before the Banking Board, the board of directors of the bank  
19       or the affected person shall have the right to appear in  
20       person or by counsel. No member of the Banking Board, other  
21       than the superintendent, may participate in the hearing if  
22       such member is affiliated with the bank or affected person or  
23       has previously been involved in a determination to institute  
24       the proceedings leading to the hearing. Any order of the  
25       superintendent as directed by the Banking Board, imposing  
26       civil money penalties or directing removal of an affected

1 person shall within 28 days of the date of entry thereof be  
2 appealable to the Circuit Court of Montgomery County, which  
3 appeal shall be conducted de novo. Pending expiration of the  
4 time for appeal, the order imposing civil money penalties or  
5 of removal shall not become effective and neither the  
6 superintendent nor the Banking Board shall publicly disclose  
7 such order except in connection with the appeal. All  
8 proceedings before the Banking Board shall be confidential.  
9 Any person violating this section by disclosure of nonpublic  
10 information presented at a confidential hearing before the  
11 Banking Board, other than the disclosure that may result in  
12 connection with an appeal thereof, shall be guilty of a Class  
13 A misdemeanor.

14 "§5-3A-1.

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

20 "~~(a)~~ (b) Every bank other than national banks shall  
21 be subject to the supervision and inspection of the  
22 superintendent and the regulations and supervision thereof.  
23 The superintendent shall, by competent examiner appointed by  
24 him or her, visit and examine every bank organized under the  
25 laws of Alabama at least once in each eighteen-month period.  
26 The examination of banks shall be at irregular intervals. On

1 every examination, inquiry shall be made as to the conditions  
2 and resources of the bank, the mode of conducting and managing  
3 the affairs of the bank, the action of its directors, the  
4 investment of the funds of the bank, the safety and prudence  
5 of the management of the bank, whether the requirements of its  
6 charter and of law have been complied with in the  
7 administration of the affairs of the bank, and such other  
8 matters as the superintendent may prescribe. In addition, the  
9 superintendent may in like manner examine or cause to be  
10 examined the affairs of every bank, every bank holding  
11 company, and every affiliate of the bank except a national  
12 bank, or a subsidiary of a national bank ~~or a bank holding~~  
13 ~~company, or a subsidiary of a bank holding company other than~~  
14 ~~a bank organized under the laws of Alabama,~~ whenever, in the  
15 judgment of the superintendent, the management and condition  
16 of the bank, bank holding company, or affiliate renders an  
17 examination of its affairs necessary or expedient, or  
18 whenever, in the opinion of the superintendent, the interest  
19 of the public demands an examination.

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

23 "(1) When a bank, directly or indirectly, owns or  
24 controls either a majority of the voting shares or more than  
25 50 percent of the number of shares voted for the election of  
26 its directors, trustees, or other persons exercising similar

1 functions at the preceding election, or controls in any manner  
2 the election of a majority of its directors, trustees, or  
3 other persons exercising similar functions.

4 "(2) When control of a bank is held, directly or  
5 indirectly, through stock ownership or in any other manner, by  
6 the shareholders of a bank who own or control either a  
7 majority of the shares of the bank or more than 50 percent of  
8 the number of shares voted for the election of directors of  
9 the bank at the preceding election, or by trustees for the  
10 benefit of the shareholders of the bank.

11 "(3) When a majority of the directors of the bank  
12 comprise a majority of the directors, trustees, or other  
13 persons exercising similar functions of the organization.

14 "(4) When the organization owns or controls,  
15 directly or indirectly, either a majority of the shares of  
16 capital stock of a bank or more than 50 percent of the number  
17 of shares voted for the election of directors of a bank at the  
18 preceding election, or controls in any manner the election of  
19 a majority of the directors of a bank at the preceding  
20 election, or controls in any manner the election of a majority  
21 of the directors of a bank, or for the benefit of whose  
22 shareholders or members all or substantially all the capital  
23 stock of a bank is held by trustees.

24 "§5-3A-3.

25 "(a) Neither the superintendent, any member of the  
26 Banking Board, nor any bank examiner or other state employee

1 shall disclose the condition and affairs of any bank or bank  
2 holding company ascertained by an examination of such bank, or  
3 bank holding company, or report or give information as to  
4 persons who are depositors or debtors of a bank, except as  
5 authorized or required by law; provided, that this section  
6 shall not be construed to prevent bank examiners and other  
7 employees from reporting such information to the  
8 superintendent or such persons as the superintendent may  
9 lawfully designate.

10 "(b) Notwithstanding the provisions of subsection  
11 (a), the superintendent, at the superintendent's discretion,  
12 may disclose any information, otherwise protected under this  
13 section, to the members of the Banking Board and confer with  
14 the members of the Banking Board regarding the same and may  
15 disclose such information as is necessary in taking  
16 enforcement actions or other supervisory actions pursuant to  
17 this title.

18 "(c) The superintendent may furnish to the Federal  
19 Reserve, Federal Deposit Insurance Corporation, the Office of  
20 Thrift Supervision, the Comptroller of the Currency, or to any  
21 successor banking supervisory agency of the United States  
22 reports of examination and other data as the superintendent  
23 deems advisable. The Federal Reserve, Federal Deposit  
24 Insurance Corporation, Office of Thrift Supervision, or the  
25 Comptroller of the Currency, or any supervisory agency of the  
26 United States may use such reports of examination and other



1 information in taking their enforcement and other supervisory  
2 actions. Any disclosure by these agencies to third parties  
3 must be made with the prior consent of the superintendent and  
4 subject to such confidentiality restrictions required by this  
5 title or as the superintendent may require.

6 "(d) The superintendent may also furnish copies of  
7 his or her reports of examination and any other information to  
8 the board of directors of the bank which was examined and to  
9 any bank holding company owning more than 50 percent of the  
10 capital stock of such bank.

11 "(e) Any reports or information furnished or  
12 disclosed under subsection (a), (b), (c), or (d) shall remain  
13 the property of the Banking Department and, except as provided  
14 in this section and Section 5-3A-11, may not be disclosed to  
15 any person other than the officers, directors, attorneys, and  
16 auditors of such bank or bank holding company, consultants or  
17 advisors to such bank or bank holding company and, subject to  
18 appropriate confidentiality agreements, persons considering  
19 the possible acquisition of, merger with, or investment in  
20 such bank or bank holding company. No person receiving such  
21 reports or information may (1) use such report or information  
22 other than in connection with the bank or bank holding company  
23 and its business and affairs, (2) retain that report or  
24 information or copies thereof, or (3) except as expressly  
25 permitted by law, disclose such report or information to any

1 person not authorized to receive the same under this  
2 subsection.

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

5 "§5-3A-4.

6 "The expenses incidental to any special examination  
7 of banks, bank holding companies, or their affiliates shall be  
8 borne by the bank or bank holding company so examined, and  
9 such bank or bank holding company shall, on the call of the  
10 superintendent, pay into the Treasury of Alabama, earmarked  
11 for the use of the Banking Department, within 10 days after  
12 said examination, an amount not exceeding the actual expenses  
13 of such examination, including per diem, travel expenses and  
14 the pro rata portion of the salaries of the state employees  
15 engaged in making such examination.

16 "§5-3A-6.

17 "(a) For purposes of this section, a bank holding  
18 company is a holding company organized under the laws of  
19 Alabama or another state in the United States that directly  
20 owns a majority of the voting securities of an Alabama state  
21 bank.

22 "~~(a)~~ (b) 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 or any bank holding company, on the  
26 examination of any affiliate of a bank, or on the examination

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

15 "~~(b)~~ (c) Any officer, director, agent, or employee of  
16 any bank, any bank holding company, any affiliate of any bank,  
17 or any agency of any foreign bank, or any affected person,  
18 whether one or more, who (1) makes any false entry or omission  
19 with intent to mislead in any book, report, or statement of  
20 such bank, bank holding company, affiliate of such bank, or  
21 agency of such foreign bank or (2) makes a false statement,  
22 whether or not made under oath, to the superintendent, an  
23 examiner acting under the superintendent, or to any officer of  
24 such bank, bank holding company, affiliate of any bank, or  
25 agency of any foreign bank with intent to injure or defraud  
26 such bank, bank holding company, affiliate, or agency or with

1 the intent to influence in any way the action of the  
2 superintendent or an examiner acting under the superintendent,  
3 shall be subject to removal and the imposition of civil money  
4 penalties by the superintendent when so directed by the  
5 Banking Board as provided in this title. An order of removal  
6 may prohibit the affected person from participating in the  
7 affairs of any Alabama state bank or any holding company that  
8 controls an Alabama state bank. Any action of the  
9 superintendent or examiner acting under the superintendent  
10 taken in reliance upon such false entry, omission, or  
11 statement may be rescinded and withdrawn.

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

23 ~~"(d)"~~ (e) The resignation, termination of employment  
24 or participation, or separation of any director, officer, or  
25 employee of a bank or bank holding company for any reason  
26 whatsoever shall not affect the jurisdiction and authority of

1 the superintendent or the Banking Board to issue any notice or  
2 order and proceed under this title against any such person,  
3 including, without limitation, Sections 5-2A-12 and 5-3A-6, if  
4 such notice or order is served before the end of the six-year  
5 period beginning on the last date that such person ceased to  
6 be a director, officer, or employee of any bank or bank  
7 holding company.

8 "§5-3A-11.

9 "All reports of examination, records reflecting  
10 action of ~~the~~ a bank or bank holding company taken pursuant  
11 thereto, and records and minutes of meetings of the Banking  
12 Board relating to a bank or several banks or a bank holding  
13 company shall be confidential and shall not be subject to  
14 subpoena or inspection except by subpoena from a grand jury  
15 served on the superintendent.

16 "§5-5A-1.

17 "(a) The proposed incorporators of a bank shall  
18 execute and acknowledge an application for a permit in writing  
19 in the form prescribed by the superintendent and shall file  
20 the same in the office of the State Banking Department, which  
21 application shall be signed by all of the incorporators  
22 requesting a certificate authorizing the proposed bank to  
23 transact business at the place, time and under the name stated  
24 in said application.

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

1           "(c) The application shall name at a minimum five  
2 directors, and a majority of all directors shall be outside  
3 directors unless a written waiver is obtained from the  
4 superintendent. A director shall be deemed to be an outside  
5 director if the director will not serve as an officer, other  
6 than the chair, or an employee of the bank.

7           "(d) The application shall name a chair, chief  
8 executive officer, a chief financial/operations officer, and a  
9 chief lending officer of the bank. The chair must be an  
10 outside director. The superintendent may exercise discretion  
11 and waive any of the above requirements by written notice.

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

15           "§5-5A-22.

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

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

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

24           "(b) No loans which would exceed the limitation set  
25 forth in subsection (a)(1) shall be made unless duly  
26 authorized or approved in advance by the board of directors of

1 the bank, a committee of the board of directors of the bank,  
2 or a loan committee, with such authorization or approval  
3 recorded in minutes of the meeting at which the authority was  
4 given.

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

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

15 "a. In computing the total liabilities of any person  
16 to a bank, there shall be included all liabilities to the bank  
17 as maker or acceptor of paper discounted with or sold to such  
18 bank and the liability of the indorser, drawer, or guarantor  
19 who obtains a loan from or discounts paper with or sells paper  
20 under his or her guaranty or repurchase agreement to such  
21 bank.

22 "b. In computing the total liabilities of any person  
23 to a bank, there shall be included all liabilities to the bank  
24 of any partnership or any unincorporated association of which  
25 such person is a member, any loans made for such person's  
26 benefit or for the benefit of such partnership or

1       unincorporated association, and any loans made to, or for the  
2       benefit of, a corporation of which such person owns 35 percent  
3       or more of the capital.

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

11              "d. In computing the total liabilities of any  
12      corporation to a bank, there shall be included all loans made  
13      for the benefit of the corporation, and all loans to, or for  
14      the benefit of any partnership or unincorporated association,  
15      or any member thereof, who owns 35 percent or more of the  
16      capital of such corporation.

17              "e. In computing the total liabilities of any person  
18      to a bank, direct or indirect loans to such person's spouse  
19      will be aggregated and treated as loans to such person until  
20      the bank can satisfy the superintendent that each spouse has a  
21      separate net worth and available assets or cash flow to  
22      independently repay and service each individual spouse's  
23      debts, and such net worth, assets, or cash flow of each is not  
24      dependent on decisions made or actions taken by the other.

25              "f. In computing total liabilities of any person to  
26      a bank, any credit exposure to a person arising from a



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

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

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

18 "(2) Deposits in a reserve depository or a Federal  
19 Reserve Bank;

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

21 "a. Obligations of, and obligations guaranteed by  
22 the United States, the State of Alabama, any political  
23 subdivision of the State of Alabama, any public body of the  
24 State of Alabama, or a public body of any political  
25 subdivision of the State of Alabama if the obligations or  
26 guarantees are general obligations thereof;

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

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

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

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

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

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

1 complied with, the superintendent may proceed as in other  
2 cases provided for violation of the orders of the  
3 superintendent, and the bank shall have the same rights to a  
4 hearing and of appeal as are provided in Section 5-2A-12.

5 "§5-5A-44.

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

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

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

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

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

24           "(4) The identity, source, and amount of the funds  
25 or other consideration used or to be used in making the  
26 acquisition, and if any part of these funds or other

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

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

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

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

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

1 information to any department, agency, or instrumentality of  
2 the state or federal government.

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

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

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

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

17 "(d) 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) 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) This section does not apply to:

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

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

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

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



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

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

11           "§5-13B-11.

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

16           "(1) Adopt regulations;

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

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

1           "(4) Enter into contracts with any bank supervisory  
2 agency having concurrent jurisdiction over an Alabama state  
3 bank or a bank holding company that controls an Alabama state  
4 bank to engage the services of the agency's examiners at a  
5 reasonable rate of compensation, or to provide the services of  
6 the superintendent's examiners to the agency at a reasonable  
7 rate of compensation; which contract shall be deemed a sole  
8 source, one vendor and one supplier contract under the  
9 procurement laws of this state and shall be exempt from  
10 competitive bidding requirements;

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

1 responsibility of the home state regulator with respect to  
2 safety and soundness matters; and

3 "(6) Assess supervisory and examination fees that  
4 shall be payable by Alabama banks in connection with the  
5 performance of the duties of the superintendent under this  
6 title. Such fees may be shared with other bank supervisory  
7 agencies or any organizations affiliated with or representing  
8 one or more bank supervisory agencies in accordance with  
9 agreements between them and the superintendent.

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

14 Section 2. This act shall become effective  
15 immediately following its passage and approval by the  
16 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Financial Ser-  
vices..... . . . . 19-APR-11

Read for the second time and placed  
on the calendar..... . . . . 26-APR-11

Read for the third time and passed  
as amended..... . . . . 05-MAY-11

Yeas 91, Nays 0, Abstains 0

Greg Pappas  
Clerk