

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

1  
2 ENROLLED, An Act,

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

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

14           "§5-2A-12.

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) The superintendent may order a bank, a bank  
21 holding company, the board of directors, any director or  
22 directors, and any officer or officers of any bank or bank  
23 holding company, individually or collectively (hereafter  
24 affected person, whether one or more) to correct any matters  
25 in the conduct of the affairs of the bank which in the opinion

1 of the superintendent are unsafe and unsound. The Banking  
2 Board, after at least 20 days' written notice by the  
3 superintendent to the bank and any affected person, and a  
4 hearing before the Banking Board, may direct the  
5 superintendent to issue an order that imposes civil money  
6 penalties on the bank or bank holding company and affected  
7 person and, if so determined by the Banking Board, that  
8 removes any affected person:

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

19 "(2) Whose conduct:

20 "a. demonstrates personal dishonesty in connection  
21 with the business, operations, assets, or liabilities of the  
22 bank or bank holding company; or

23 "b. demonstrates a willful and continuing disregard  
24 for the safety and soundness of the bank, the result of which

1 has caused or is likely to cause the bank or bank holding  
2 company to suffer substantial financial loss.

3 "~~(b)~~ (c) The amount of civil money penalties imposed  
4 shall not exceed one thousand dollars (\$1,000) per day with a  
5 maximum amount of one hundred thousand dollars (\$100,000) in  
6 the aggregate for all violations of an order of the  
7 superintendent. An order of removal also may prohibit the  
8 affected person from participating in the affairs of any  
9 Alabama state bank or any holding company that controls an  
10 Alabama state bank. In the superintendent's order to the bank  
11 or affected person of the imposition of civil money penalties  
12 or removal, the superintendent shall include a specific  
13 statement of the facts constituting the alleged unsafe and  
14 unsound conduct to be made the basis of the imposition of  
15 civil money penalties or removal. At the hearing thereon  
16 before the Banking Board, the board of directors of the bank  
17 or the affected person shall have the right to appear in  
18 person or by counsel. No member of the Banking Board, other  
19 than the superintendent, may participate in the hearing if  
20 such member is affiliated with the bank or affected person or  
21 has previously been involved in a determination to institute  
22 the proceedings leading to the hearing. Any order of the  
23 superintendent as directed by the Banking Board, imposing  
24 civil money penalties or directing removal of an affected  
25 person shall within 28 days of the date of entry thereof be

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

13                "§5-3A-1.

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

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

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

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

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

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

25 "§5-3A-3.

1           "(a) Neither the superintendent, any member of the  
2 Banking Board, nor any bank examiner or other state employee  
3 shall disclose the condition and affairs of any bank or bank  
4 holding company ascertained by an examination of such bank, or  
5 bank holding company, or report or give information as to  
6 persons who are depositors or debtors of a bank, except as  
7 authorized or required by law; provided, that this section  
8 shall not be construed to prevent bank examiners and other  
9 employees from reporting such information to the  
10 superintendent or such persons as the superintendent may  
11 lawfully designate.

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

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



1 Insurance Corporation, Office of Thrift Supervision, or the  
2 Comptroller of the Currency, or any supervisory agency of the  
3 United States may use such reports of examination and other  
4 information in taking their enforcement and other supervisory  
5 actions. Any disclosure by these agencies to third parties  
6 must be made with the prior consent of the superintendent and  
7 subject to such confidentiality restrictions required by this  
8 title or as the superintendent may require.

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

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

1 and its business and affairs, (2) retain that report or  
2 information or copies thereof, or (3) except as expressly  
3 permitted by law, disclose such report or information to any  
4 person not authorized to receive the same under this  
5 subsection.

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

8 "§5-3A-4.

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

19 "§5-3A-6.

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.

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

20           "~~(b)~~ (c) Any officer, director, agent, or employee of  
21 any bank, any bank holding company, any affiliate of any bank,  
22 or any agency of any foreign bank, or any affected person,  
23 whether one or more, who (1) makes any false entry or omission  
24 with intent to mislead in any book, report, or statement of  
25 such bank, bank holding company, affiliate of such bank, or

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

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

1 loss and shall not be required to establish that the  
2 superintendent or examiner acting under the superintendent was  
3 influenced by such false entry, omission, or statement.

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

15 "§5-3A-11.

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

23 "§5-5A-1.

24 "(a) The proposed incorporators of a bank shall  
25 execute and acknowledge an application for a permit in writing

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

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

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

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

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

23 "§5-5A-22.

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

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

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

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

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

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

1           "a. In computing the total liabilities of any person  
2 to a bank, there shall be included all liabilities to the bank  
3 as maker or acceptor of paper discounted with or sold to such  
4 bank and the liability of the indorser, drawer, or guarantor  
5 who obtains a loan from or discounts paper with or sells paper  
6 under his or her guaranty or repurchase agreement to such  
7 bank.

8           "b. In computing the total liabilities of any person  
9 to a bank, there shall be included all liabilities to the bank  
10 of any partnership or any unincorporated association of which  
11 such person is a member, any loans made for such person's  
12 benefit or for the benefit of such partnership or  
13 unincorporated association, and any loans made to, or for the  
14 benefit of, a corporation of which such person owns 35 percent  
15 or more of the capital.

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

23           "d. In computing the total liabilities of any  
24 corporation to a bank, there shall be included all loans made  
25 for the benefit of the corporation, and all loans to, or for



1 the benefit of any partnership or unincorporated association,  
2 or any member thereof, who owns 35 percent or more of the  
3 capital of such corporation.

4 "e. In computing the total liabilities of any person  
5 to a bank, direct or indirect loans to such person's spouse  
6 will be aggregated and treated as loans to such person until  
7 the bank can satisfy the superintendent that each spouse has a  
8 separate net worth and available assets or cash flow to  
9 independently repay and service each individual spouse's  
10 debts, and such net worth, assets, or cash flow of each is not  
11 dependent on decisions made or actions taken by the other.

12 "f. In computing total liabilities of any person to  
13 a bank, any credit exposure to a person arising from a  
14 derivative transaction, repurchase agreement, reverse  
15 repurchase agreement, securities lending transaction or  
16 securities borrowing transaction between the bank and the  
17 person shall be included. For the purposes of this paragraph  
18 the term derivative transaction shall include any transaction  
19 that is a contract, agreement, swap, warrant, note, or option  
20 that is based, in whole or in part, on the value of, any  
21 interest in, or any quantitative measure or the occurrence of  
22 any event relating to, one or more commodities, securities,  
23 currencies, interest or other rates, indices, or other assets.

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

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

6           "(2) Deposits in a reserve depository or a Federal  
7 Reserve Bank;

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

9           "a. Obligations of, and obligations guaranteed by  
10 the United States, the State of Alabama, any political  
11 subdivision of the State of Alabama, any public body of the  
12 State of Alabama, or a public body of any political  
13 subdivision of the State of Alabama if the obligations or  
14 guarantees are general obligations thereof;

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

17           "c. Guarantees or commitments or agreements to take  
18 over or purchase made by any department, bureau, board,  
19 commission, or establishment of the United States or any  
20 corporation owned directly or indirectly by the United States;  
21 or

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

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

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

4           "(e) It shall be the duty of the superintendent to  
5 order any loans in excess of the amount fixed in this section  
6 reduced to the legal limit within 30 days of the  
7 superintendent's issuance of a written report of examination  
8 detailing such excess. If such reduction is not made by the  
9 bank within 30 days of the superintendent's order, the  
10 superintendent may take appropriate action, including ordering  
11 the excess charged to profit and loss if, in his or her  
12 opinion, such excess is not well secured, or may by order  
13 impose civil money penalties against the bank not to exceed  
14 the amount of interest and fees paid or contracted to be paid  
15 to the bank on the loan or loans in excess of the amount fixed  
16 in this section. If such order of the superintendent is not  
17 complied with, the superintendent may proceed as in other  
18 cases provided for violation of the orders of the  
19 superintendent, and the bank shall have the same rights to a  
20 hearing and of appeal as are provided in Section 5-2A-12.

21           "§5-5A-44.

22           "(a) No person may acquire any voting security of a  
23 state bank or of any corporation or other entity owning voting  
24 securities of a state bank if after the acquisition such  
25 person would own or possess the power to vote a majority of

1 the voting securities of such bank, unless an application is  
2 filed with the superintendent for review of the proposed  
3 transaction and for his or her action, if any, as provided in  
4 this section.

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

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

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

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

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

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

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

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

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

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

1 information as the superintendent may require in lieu of the  
2 requirements of this section.

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

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

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

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

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

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

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

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

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

1 conducting the superintendent's own examination or  
2 investigation of such bank holding company or bank;

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

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

1 superintendent shall recognize the exclusive authority of the  
2 home state regulator over corporate governance and other  
3 matters as provided in federal law and the primary  
4 responsibility of the home state regulator with respect to  
5 safety and soundness matters; and

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

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

17 Section 2. This act shall become effective  
18 immediately following its passage and approval by the  
19 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 05-MAY-11, as amended.

Greg Pappas  
Clerk

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Senate

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02-JUN-11

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Passed