

1 HB529  
2 151113-1  
3 By Representative Hill  
4 RFD: Financial Services  
5 First Read: 02-APR-13

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8 SYNOPSIS: Under existing law, the State Banking  
9 Department regulates state banks and state bank  
10 holding companies and related entities, except for  
11 national banks. The existing law specifies that an  
12 examination of a bank or bank holding company by  
13 the department may be conducted in the interest of  
14 the public.

15 This bill would specify that a state bank or  
16 state bank holding company and related entities  
17 regulated by the department may be examined if  
18 there is reason to believe the bank or bank holding  
19 company is not being operated in compliance with  
20 state law or safe and sound banking practices. The  
21 bill would also specify the application of the law  
22 to other forms of banking entities.

23  
24 A BILL  
25 TO BE ENTITLED  
26 AN ACT  
27

1                   Relating to banks and banking; to amend Sections  
2                   5-2A-8, 5-3A-1, 5-3A-3, and 5-3A-11, Code of Alabama 1975,  
3                   relating to the regulation of state banks and state bank  
4                   holding companies and certain other forms of banking related  
5                   entities by the State Banking Department; to further provide  
6                   for the examination of the banks, bank holding companies, or  
7                   bank-related entities by the department; and to further  
8                   specify the forms of other bank related entities.

9                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10                   Section 1. Sections 5-2A-8, 5-3A-1, 5-3A-3, and  
11                   5-3A-11, Code of Alabama 1975, are amended to read as follows:

12                   "§5-2A-8.

13                   "The superintendent may, with the concurrence of a  
14                   majority of the members of the State Banking Board or as  
15                   otherwise provided in this title, promulgate such reasonable  
16                   regulations, consistent with the laws of this state, as may be  
17                   necessary to carry out the provisions ~~of Chapters 1A through~~  
18                   ~~13B and Chapter 20~~ of this title over which the State Banking  
19                   Department has jurisdiction. The superintendent shall, in  
20                   addition, issue written interpretations of banking laws and  
21                   regulations. Any bank or bank holding company and any officer  
22                   or director thereof relying on any regulation or  
23                   interpretation shall be fully protected even though the same  
24                   shall be thereafter ruled invalid for any reason by a court of  
25                   competent jurisdiction.

26                   "§5-3A-1.

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           "(b) Every bank other than national banks shall be  
7 subject to the supervision and inspection of the  
8 superintendent and the regulations and supervision thereof.  
9 The superintendent shall, by competent examiner appointed by  
10 him or her, visit and examine every bank organized under the  
11 laws of Alabama at least once in each eighteen-month period.  
12 The examination of banks shall be at irregular intervals. On  
13 every examination, inquiry shall be made as to the conditions  
14 and resources of the bank, the mode of conducting and managing  
15 the affairs of the bank, the action of its directors, the  
16 investment of the funds of the bank, the safety and prudence  
17 of the management of the bank, whether the requirements of its  
18 charter and of law have been complied with in the  
19 administration of the affairs of the bank, and such other  
20 matters as the superintendent may prescribe. In addition, the  
21 superintendent may in like manner examine or cause to be  
22 examined the affairs of every bank, every bank holding  
23 company, and every subsidiary or other affiliate or bank  
24 service company as defined pursuant to 12 U.S.C. §§1861-1867  
25 of the bank or bank holding company, except a national bank or  
26 a subsidiary or other affiliate of a national bank, whenever,  
27 in the judgment of the superintendent, the management and

1 condition of the bank, bank holding company, or ~~affiliate~~ the  
2 affiliates or bank service companies of either ~~renders~~ render  
3 an examination of ~~its~~ the affairs of any of these entities  
4 necessary or expedient, or whenever, ~~in the opinion of the~~  
5 ~~superintendent, the interest of the public demands an~~  
6 ~~examination~~ the superintendent has reason to believe that a  
7 bank, bank holding company, or an affiliate or bank service  
8 company of either is not being operated in compliance with the  
9 laws of this state or in accordance with safe and sound  
10 banking practices.

11 "(c) The term "affiliate" shall include any  
12 corporation, business trust, association, or other ~~similar~~  
13 entity or organization under any of the following conditions:

14 "(1) When a bank or a bank holding company, directly  
15 or indirectly, owns or controls either a majority of the  
16 voting shares or more than 50 percent of the number of shares  
17 voted for the election of ~~its~~ the organization's directors,  
18 trustees, or other persons exercising similar functions at the  
19 preceding election, or controls in any manner the election of  
20 a majority of ~~its~~ the organization's directors, trustees, or  
21 other persons exercising similar functions.

22 "(2) When control of a bank or bank holding company  
23 is held, directly or indirectly, through stock ownership or in  
24 any other manner, by the shareholders of a bank or bank  
25 holding company who own or control either a majority of the  
26 shares of the bank or bank holding company or more than 50  
27 percent of the number of shares voted for the election of

1 directors of the bank or bank holding company at the preceding  
2 election, or by trustees for the benefit of the shareholders  
3 of the bank or bank holding company.

4 "(3) When a majority of the directors of the bank or  
5 bank holding company comprise a majority of the directors,  
6 trustees, or other persons exercising similar functions of the  
7 organization.

8 "(4) When the organization owns or controls,  
9 directly or indirectly, either a majority of the shares of  
10 capital stock of a bank or bank holding company or more than  
11 50 percent of the number of shares voted for the election of  
12 directors of a bank or bank holding company at the preceding  
13 election, or controls in any manner the election of a majority  
14 of the directors of a bank or bank holding company at the  
15 preceding election, or controls in any manner the election of  
16 a majority of the directors of a bank or bank holding company,  
17 or for the benefit of whose shareholders or members all or  
18 substantially all the capital stock of a bank or bank holding  
19 company is held by trustees.

20 "§5-3A-3.

21 "(a) Neither the superintendent, any member of the  
22 Banking Board, nor any bank examiner or other state employee  
23 shall disclose the condition and affairs of any bank or bank  
24 holding company, or their subsidiaries or other affiliates,  
25 ascertained by an examination of such bank, or bank holding  
26 company, or affiliates, or report or give information as to  
27 persons who are depositors or debtors of a bank, except as

1 authorized or required by law; provided, that this section  
2 shall not be construed to prevent bank examiners and other  
3 employees from reporting such information to the  
4 superintendent or such persons as the superintendent may  
5 lawfully designate.

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

14 "(c) The superintendent may furnish to the Federal  
15 Reserve, Federal Deposit Insurance Corporation, ~~the Office of~~  
16 ~~Thrift Supervision,~~ the Comptroller of the Currency, or to any  
17 successor banking supervisory agency of the United States  
18 reports of examination and other data as the superintendent  
19 deems advisable. The Federal Reserve, Federal Deposit  
20 Insurance Corporation, ~~Office of Thrift Supervision,~~ or the  
21 Comptroller of the Currency, or any successor banking  
22 supervisory agency of the United States may use such reports  
23 of examination and other information in taking their  
24 enforcement and other supervisory actions. Any disclosure by  
25 these agencies to third parties must be made with the prior  
26 consent of the superintendent and subject to such

1 confidentiality restrictions required by this title or as the  
2 superintendent may require.

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

8 "(e) Any reports or information furnished or  
9 disclosed under subsection (a), (b), (c), or (d) shall remain  
10 the property of the Banking Department and, except as provided  
11 in this section and Section 5-3A-11, may not be disclosed to  
12 any person other than the officers, directors, attorneys, and  
13 auditors of such bank or bank holding company or affiliate,  
14 consultants or advisors to such bank, ~~or~~ bank holding company, ~~or~~  
15 affiliate, and, subject to appropriate confidentiality  
16 agreements, persons considering the possible acquisition of,  
17 merger with, or investment in such bank, ~~or~~ bank holding  
18 company, or affiliate. No person receiving such reports or  
19 information may (1) use such report or information other than  
20 in connection with the bank, ~~or~~ bank holding company, or  
21 affiliate, and its business and affairs, (2) retain that  
22 report or information or copies thereof, or (3) except as  
23 expressly permitted by law, disclose such report or  
24 information to any person not authorized to receive the same  
25 under this subsection. For purposes of this title, a bank  
26 service company pursuant to 12 U.S.C. §§1861-1867 shall be

1 subject to the same confidentiality requirements as an  
2 affiliate or a bank or bank holding company.

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

5 "§5-3A-11.

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

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