

1 SB495
2 118041-5
3 By Senator Denton
4 RFD: Banking and Insurance
5 First Read: 04-MAR-10

1 SB495

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3
4 ENROLLED, An Act,

5 To amend Sections 5-2A-12, 5-3A-6, 5-5A-44, 5-8A-20,
6 5-8A-24, 5-13B-3, 5-13B-4, 5-13B-5, and 5-13B-6, Code of
7 Alabama 1975, relating to banks; to specify that the Banking
8 Board may order the removal of and civil penalties against a
9 person who has caused a bank to suffer a substantial financial
10 loss; to allow the Banking Department to remove and prohibit a
11 person who has caused a bank to suffer a substantial financial
12 loss from participating in the affairs of any Alabama state
13 bank or a holding company that controls an Alabama state bank,
14 including after the person is no longer employed by a state
15 chartered bank; to remove the exemption from prior approval by
16 the Superintendent of Banking for transactions requiring the
17 prior approval of the Board of Governors of the Federal
18 Reserve System under the Bank Holding Company Act of 1956 and
19 to further provide for the review of applications; to provide
20 that, for certain purposes, a quorum of the Banking Board
21 shall be a majority of those present and entitled to vote; to
22 remove the requirement that the Federal Deposit Insurance
23 Corporation apply for an order confirming appointment as
24 receiver from the receivership court; and to further provide

1 for the conditions under which an Alabama bank holding company
2 may acquire an out-of-state bank or a bank holding company.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 5-2A-12, 5-3A-6, 5-5A-44,
5 5-8A-20, 5-8A-24, 5-13B-3, 5-13B-4, 5-13B-5, and 5-13B-6, Code
6 of Alabama 1975, are amended to read as follows:

7 "§5-2A-12.

8 "(a) The superintendent may order a bank, the board
9 of directors, any director or directors, and any officer or
10 officers of any bank, individually or collectively (hereafter
11 affected person, whether one or more) to correct any matters
12 in the conduct of the affairs of the bank which in the opinion
13 of the superintendent are unsafe and unsound. The Banking
14 Board may, after at least 20 days' written notice by the
15 superintendent to the bank and any affected person, and a
16 hearing before the Banking Board, to direct the superintendent
17 to issue an order that imposes civil money penalties on the
18 bank and affected person and, if so determined by the Banking
19 Board, that removes any affected person :

20 "(1) Who does not comply with the superintendent's
21 order to correct unsafe and unsound matters if the Banking
22 Board by written order enters a finding that the bank has
23 thereby suffered or will probably suffer substantial financial
24 loss and that such practice is one involving personal
25 dishonesty on the part of such affected person or one which

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

5 "(2) Whose conduct a. demonstrates personal
6 dishonesty in connection with the business, operations,
7 assets, or liabilities of the bank; or b. demonstrates a
8 willful and continuing disregard for the safety and soundness
9 of the bank, the result of which has caused or is likely to
10 cause the bank to suffer substantial financial loss.

11 "(b) The amount of civil money penalties imposed
12 shall not exceed one thousand dollars (\$1,000) per day with a
13 maximum amount of one hundred thousand dollars (\$100,000) in
14 the aggregate for all violations of an order of the
15 superintendent. An order of removal also may prohibit the
16 affected person from participating in the affairs of any
17 Alabama state bank or any holding company that controls an
18 Alabama state bank. In the superintendent's order to the bank
19 or affected person of the imposition of civil money penalties
20 or removal, the superintendent shall include a specific
21 statement of the facts constituting the alleged unsafe and
22 unsound conduct to be made the basis of the imposition of
23 civil money penalties or removal. At the hearing thereon
24 before the Banking Board, the board of directors of the bank
25 or the affected person shall have the right to appear in

1 person or by counsel. No member of the Banking Board, other
2 than the superintendent, may participate in the hearing if
3 such member is affiliated with the bank or affected person or
4 has previously been involved in a determination to institute
5 the proceedings leading to the hearing. Any order of the
6 superintendent as directed by the Banking Board, imposing
7 civil money penalties or directing removal of an affected
8 person shall within 28 days of the date of entry thereof be
9 appealable to the Circuit Court of Montgomery County, which
10 appeal shall be conducted de novo. Pending expiration of the
11 time for appeal, the order imposing civil money penalties or
12 of removal shall not become effective and neither the
13 superintendent nor the Banking Board shall publicly disclose
14 such order except in connection with the appeal. All
15 proceedings before the Banking Board shall be confidential.
16 Any person violating this section by disclosure of nonpublic
17 information presented at a confidential hearing before the
18 Banking Board, other than the disclosure that may result in
19 connection with an appeal thereof, shall be guilty of a Class
20 A misdemeanor.

21 "§5-3A-6.

22 "(a) 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, on the examination of any affiliate

1 of a bank, or on the examination of any agency of any foreign
2 bank and shall have authority and power to compel the
3 appearance and attendance of any such person or the production
4 of any records and documents of any bank, any affiliate of a
5 bank, or 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 shall not
10 constitute a waiver by the bank, or by any director, officer,
11 employee, advisor, consultant, attorney, or accountant of or
12 for the bank, of any attorney-client privilege or other
13 privilege to which they may be entitled under law.

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

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

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

21 "(d) The resignation, termination of employment or
22 participation, or separation of any director, officer, or
23 employee of a bank for any reason whatsoever shall not affect
24 the jurisdiction and authority of the superintendent or the
25 Banking Board to issue any notice or order and proceed under

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

6 "§5-5A-44.

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

15 "(b) The application shall be on a form prescribed
16 by the superintendent and shall be made under oath. The
17 application must contain all information that the
18 superintendent by regulation requires to be furnished in an
19 application, as well as any information that the
20 superintendent orders to be included in the particular
21 application being filed and shall be accompanied by the filing
22 fee prescribed by the Banking Board. No acquiring party may
23 acquire control of a bank unless the superintendent has
24 approved the acquiring party's acquisition plan. The acquiring
25 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 material
6 business activities and affiliations during the past five
7 years, and a description of any material pending legal or
8 administrative proceedings in which he is a party and any
9 criminal indictment or conviction of such person by a state or
10 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.

1 "(4) The identity, source, and amount of the funds
2 or other consideration used or to be used in making the
3 acquisition, and if any part of these funds or other
4 consideration has been or is to be borrowed or otherwise
5 obtained for the purpose of making the acquisition, a
6 description of the transaction, the names of the parties, and
7 any arrangements, agreements, or understandings with such
8 persons.

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

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

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

24 "(8) If any tender offer, request, or invitation for
25 tenders, or other agreement to acquire control is proposed to

1 be made by means of a registration statement under the Federal
2 Securities Act of 1933, as amended, or under circumstances
3 requiring the disclosure of similar information under the
4 Federal Securities Exchange Act of 1934, as amended, or in an
5 application filed with the Federal Deposit Insurance
6 Corporation, the Board of Governors of the Federal Reserve
7 System, or the Securities Commissioner of Alabama requiring
8 similar disclosure, the superintendent may accept the
9 registration statement or application with any additional
10 information as the superintendent may require in lieu of the
11 requirements of this section.

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

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

23 "Information obtained by the superintendent under
24 this section is confidential and may not be disclosed by the
25 superintendent or any officer or employee of the State Banking

1 Department, except that the superintendent may in his or her
2 discretion, if the superintendent deems it necessary or proper
3 to the enforcement of the laws of this state or the United
4 States and to the best interest of the public, divulge such
5 information to any department, agency, or instrumentality of
6 the state or federal government.

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

9 "(1) The financial condition of any acquiring person
10 is such as might jeopardize the financial stability of the
11 bank or prejudice the interests of the depositors or
12 stockholders of the bank;

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

18 "(3) Any acquiring person neglects, fails, or
19 refuses to furnish the superintendent all the information
20 required by him.

21 "(d) The superintendent shall approve or deny a
22 change of control under this section within 60 days after
23 receipt of a completed application; provided that if the
24 superintendent requests additional information from the
25 applicant following receipt of a completed application, the

1 time limit for the decision by the superintendent shall be the
2 later of (1) the date set forth above in this subsection; or
3 (2) 30 days after the receipt by the superintendent of the
4 requested additional information. Any agreement entered into
5 by the applicants and the superintendent as a condition that
6 the application will not be denied is enforceable against the
7 applicant and the bank.

8 "(e) From any final order denying the application
9 the applicant may appeal the decision in the manner and
10 through the procedures established in Sections 5-5A-8 and
11 5-5A-9 for the denial of incorporation of a bank.

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

13 "(1) The acquisition of securities in connection
14 with the exercise of a security interest or otherwise by way
15 of foreclosure on default in the payment of a debt previously
16 contracted for in good faith;

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

19 "(3) Any transaction which the superintendent by
20 regulation or order may exempt as not being contemplated by
21 the purposes of this section or the regulation of which is not
22 necessary or appropriate for the protection of the bank.

23 "(g) If it appears to the superintendent that any
24 person has committed or is about to commit a violation of this
25 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 "§5-8A-20.

9 "Whenever it shall appear to the superintendent that
10 any bank has violated its charter or any law of the state, or
11 is conducting business in any unauthorized manner, or that the
12 bank may suspend payment of its obligations, or if its capital
13 is impaired and not made good under the requirement of the
14 superintendent within the required time, or if any such bank
15 or an affiliate of such bank as defined in Section 5-3A-1
16 shall refuse to submit its papers, books and concerns to the
17 inspection of the superintendent or any examiner, or if any
18 officer thereof shall refuse to be examined on oath touching
19 the conducting of any such bank, or if any such bank shall
20 suspend payment of its obligations, or if from any examination
21 the superintendent shall have reason to conclude that such
22 bank is in an unsound or unsafe condition to transact the
23 business for which it was organized, or that it is unsafe for
24 it to continue business, or if any such bank shall neglect or
25 refuse to observe any order of the superintendent directing or

1 requiring the doing or cessation of any particular thing
2 required to be done or not to be done by law, the
3 superintendent may call a meeting of the Banking Board and
4 submit to the board matters of default or misconduct in the
5 affairs of the bank, of which the bank shall have notice and
6 upon which the bank may be heard in person or by counsel, and
7 if the board or a majority of the board so directs, the
8 superintendent shall forthwith take possession of the property
9 and business of such bank and retain such possession until
10 such bank shall resume business or a receiver is appointed, as
11 provided in this chapter. Notwithstanding the provisions of
12 Section 5-2A-43, for purposes of this section, a quorum of the
13 board shall be a majority of those present and entitled to
14 vote.

15 "§5-8A-24.

16 "The superintendent may under his or her hand and
17 official seal appoint a receiver to liquidate and distribute
18 the assets of any bank taken possession of by the
19 superintendent under the provisions of this chapter, the
20 certificate of appointment to be filed in the office of the
21 superintendent and a certified copy in the office of the
22 probate judge in the county in which the principal office of
23 such bank is located. The receiver may be the Federal Deposit
24 Insurance Corporation or any other agency or corporation
25 created by the United States to act in such capacity or any

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

10 "§5-13B-3.

11 "This article sets forth the conditions under which
12 a company may acquire an Alabama bank or an Alabama bank
13 holding company or an Alabama bank holding company may acquire
14 an out-of-state bank or bank holding company. This article is
15 intended not to discriminate against out-of-state bank holding
16 companies or against foreign bank holding companies in any
17 manner that would violate Section 3(d) of the Bank Holding
18 Company Act, as amended effective September 29, 1995, by
19 Section 101 of the Riegle-Neal Interstate Banking and
20 Branching Efficiency Act of 1994, Public Law No. 103-328.

21 "§5-13B-4.

22 "(a) No company may acquire an Alabama bank holding
23 company or an Alabama state bank without the prior approval of
24 the superintendent.

1 "(b) The approval of the superintendent under
2 subsection (a) shall not be required where the acquisition is
3 made:

4 "(1) In a transaction arranged by the superintendent
5 or another bank supervisory agency to prevent the insolvency
6 or closing of the acquired bank; or

7 "(2) In a transaction in which a bank forms its own
8 bank holding company, if the ownership rights of the former
9 bank shareholders are substantially similar to those of the
10 shareholders of the new bank holding company.

11 "(c) No Alabama bank holding company may acquire an
12 out-of-state bank or bank holding company without the prior
13 approval of the superintendent.

14 "(d) In a transaction for which the superintendent's
15 approval is not required under this section, the parties shall
16 give written notice to the superintendent at least 15 days
17 before the effective date of the acquisition, unless a shorter
18 period of notice is expressly permitted or required under
19 applicable federal law.

20 "§5-13B-5.

21 "(a) A company that proposes to make an acquisition
22 under this article shall:

23 "(1) File with the superintendent a copy of the
24 application that such company has filed with the responsible

1 federal bank supervisory agency together with such additional
2 information as the superintendent may prescribe; and

3 "(2) Pay to the superintendent the application fee,
4 if any, prescribed by the superintendent.

5 "(b) To the extent consistent with the effective
6 discharge of the superintendent's responsibilities, the forms
7 established under this article for application and reporting
8 shall conform to those established by the Board of Governors
9 of the Federal Reserve System under the Bank Holding Company
10 Act.

11 "(c) In connection with an application received
12 under this article, the superintendent shall require that
13 prior notice of the application be published one time in a
14 daily newspaper of general circulation and provide an
15 opportunity for public comment.

16 "(d) If the applicant is an out-of-state bank
17 holding company that is not incorporated under the laws of
18 this state, it shall submit with the application evidence
19 satisfactory to the superintendent that the applicant has
20 complied with or is exempted from the requirements of Sections
21 10-2B-15.01 et seq.

22 "§5-13B-6.

23 "(a) In deciding whether to approve an application
24 for a proposed acquisition under this article, the
25 superintendent shall consider whether the acquisition may:

1 "(1) Be detrimental to the safety and soundness of
2 the Alabama state bank or the Alabama bank holding company ;

3 "(2) Result in a substantial reduction of
4 competition in this state; or

5 "(3) Have a significantly adverse effect on the
6 convenience and needs of the community or communities in this
7 state that are served by the Alabama state bank or the Alabama
8 bank holding company to be acquired.

9 "(b) Except as otherwise expressly provided in this
10 section, the superintendent shall not approve an acquisition
11 under this article if upon consummation of the transaction the
12 applicant, including any depository institution affiliated
13 with the applicant, would control 30 percent or more of the
14 total amount of deposits held by depository institutions in
15 this state.

16 "(c) The superintendent may by regulation, with the
17 concurrence of a majority of the members of the Alabama State
18 Banking Board, adopt a procedure whereby the limitation on
19 control of deposits set forth in subsection (b) may be waived
20 for good cause shown.

21 "(d) The superintendent shall not approve an
22 application for an acquisition under this article unless the
23 Alabama bank to be acquired, or all Alabama bank subsidiaries
24 of the bank holding company to be acquired, have as of the

1 proposed date of acquisition been in existence and in
2 continuous operation for five years or more.

3 "(e) The five-year requirement shall be met if the
4 superintendent determines that either the Alabama bank or the
5 subsidiaries of the Alabama bank holding company to be
6 acquired:

7 "(1) Were organized solely for the purpose of
8 facilitating the acquisition of a bank that has been in
9 existence and continuously operating for more than five years,
10 or

11 "(2) Resulted from the merger or consolidation of
12 two or more banks at least one of which had been in existence
13 and continuously operating for more than five years."

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB495

Senate 08-APR-10

I hereby certify that the within Act originated in and passed the Senate, as amended.

McDowell Lee
Secretary

House of Representatives
Passed: 14-APR-10

By: Senator Denton