

ACT #2016-278

1 SB385
2 176215-3
3 By Senator Blackwell
4 RFD: Banking and Insurance
5 First Read: 05-APR-16



1 SB385

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4 ENROLLED, An Act,

5 To amend Section 5-5A-44, Code of Alabama 1975,
6 relating to acquisition of control of state banks; to require
7 the application to and approval of the Superintendent of the
8 State Banking Department for certain conditions that
9 constitute acquisition of control of a certain percent of the
10 voting securities of a state bank; and to provide for
11 prospective effect.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Section 5-5A-44 of the Code of Alabama
14 1975, is amended to read as follows:

15 "§5-5A-44.

16 "(a) No person, acting directly or indirectly or
17 through or in concert with one or more persons, may acquire
18 control ~~any voting security~~ of a state bank or of any
19 corporation or other entity ~~owning voting securities of~~ having
20 control of a state bank ~~if after the acquisition such person~~
21 ~~would own or possess the power to vote a majority of the~~
22 ~~voting securities of such bank~~, unless an application is filed
23 with the superintendent for review of the proposed transaction
24 and for his or her action, if any, as provided in this
25 section.

1 "(b) The application shall be on a form prescribed
2 by the superintendent and shall be made under oath. The
3 application must contain all information that the
4 superintendent by regulation requires to be furnished in an
5 application, as well as any information that the
6 superintendent orders to be included in the particular
7 application being filed and shall be accompanied by the filing
8 fee prescribed by the Banking Board. For the purposes of this
9 section, the Banking Board may reduce or waive any prescribed
10 fees for applications where a change of control application
11 must also be filed with a responsible federal bank supervisory
12 agency, and the superintendent may accept a copy of the
13 application filed with the responsible federal bank
14 supervisory agency. The superintendent is authorized to waive
15 any prescribed application fees for transactions which the
16 superintendent exempts under subsection (g) (3). No acquiring
17 party may acquire control of a bank unless the superintendent
18 has approved the acquiring party's acquisition plan. All
19 persons with whom the acquiring party acts directly,
20 indirectly, through, or in concert with to acquire control
21 shall be identified in the application and shall provide all
22 information required by the superintendent. The acquiring
23 party shall file its application with the superintendent, and
24 the application shall, except to the extent expressly waived
25 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

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

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

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

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

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

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

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

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

21 "Information obtained by the superintendent under
22 this section is confidential and may not be disclosed by the
23 superintendent or any officer or employee of the State Banking
24 Department, except that the superintendent may in his or her
25 discretion, if the superintendent deems it necessary or proper

1 to the enforcement of the laws of this state or the United
2 States and to the best interest of the public, divulge such
3 information to any department, agency, or instrumentality of
4 the state or federal government.

5 "(c) For purposes of this section, the following
6 terms shall have the following meanings:

7 "(1) ACTING THROUGH OR IN CONCERT. Knowing
8 participation in a joint activity or parallel action towards a
9 common goal of acquiring control of a state bank or any
10 corporation or other entity having control of a state bank
11 whether or not pursuant to an express agreement.

12 "(2) CONTROL. The power, directly or indirectly, to
13 direct the management or policies of a state bank or of any
14 corporation or other entity having that power or ownership of
15 or power to vote (whether through the exercise of proxies or
16 otherwise) the lesser of either of the following:

17 "a. Twenty-five percent or more of any class of the
18 voting securities of a state bank or of any corporation or
19 other entity having control of a state bank.

20 "b. Ten percent or more of any class of the voting
21 securities of a state bank or of any corporation or other
22 entity having control of a state bank if no other person will
23 own, control, or hold the power to vote a majority of that
24 class of voting securities immediately after the transaction.

1 "(3) PERSON. An individual or a corporation,
2 partnership, trust, association, joint venture, pool,
3 syndicate, sole proprietorship, unincorporated organization,
4 or any other form of entity not specifically listed herein.

5 "~~(c)~~(d) The superintendent shall issue an order
6 denying an application if he or she finds that any of the
7 following circumstances exist:

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

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

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

20 "(4) The plans or proposals which any acquiring
21 person may have to make any major change in the business or
22 corporate structure or management may be detrimental to the
23 safety and soundness of the state bank or of any corporation
24 or other entity having control of the state bank.

1 "(5) The effect of the proposed acquisition of
2 control may result in a substantial reduction of competition
3 in this state or communities served by the state bank to be
4 acquired.

5 "(6) The proposed acquisition of control may have a
6 significantly adverse effect on the convenience and needs of
7 the community or communities that are served by the state
8 bank.

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

21 "~~(e)~~(f) From any final order denying the application
22 the applicant may appeal the decision in the manner and
23 through the procedures established in Sections 5-5A-8 and
24 5-5A-9 for the denial of incorporation of a bank.

1 "~~(f)~~(g) This section does not apply to any of the
2 following:

3 "(1) The acquisition of securities in connection
4 with the exercise of a security interest or otherwise by way
5 of foreclosure on default in the payment of a debt previously
6 contracted for in good faith~~;~~.

7 "(2) Acquisitions or transfers by gift, ~~operation of~~
8 ~~law or~~ by will, or intestate succession~~;~~ ~~or~~.

9 "(3) Any transaction which the superintendent by
10 regulation, ~~or~~ order, or written interpretation may exempt as
11 not being contemplated by the purposes of this section or the
12 regulation of which is not necessary or appropriate for the
13 protection of the bank.

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

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

8 Section 2. This act applies to acquisitions subject
9 to this act that occur on or after the effective date of this
10 act.

11 Section 3. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.

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Kay Ivey

President and Presiding Officer of the Senate

[Signature]

Speaker of the House of Representatives

SB385

Senate 19-APR-16

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

Patrick Harris
Secretary

House of Representatives
Amended and passed 04-MAY-16

Senate concurred in House amendment 04-MAY-16

APPROVED

5-5-2016

By **TIME** Senator Blackwell

4:00 PM

Robert Bentley

GOVERNOR

Alabama Secretary Of State

Act Num.....: 2016-278
Bill Num....: S-385

Recv'd 05/06/16 02:57pm SLF

SPONSOR

Blackwell
CO-SPONSORS

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SENATE ACTION

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB 385.

years 30 nays abstain

PATRICK HARRIS,
Secretary

I hereby certify that the notice & proof is attached to the Bill, SB _____ as required in the General Acts of Alabama, 1975 Act No. 919.

PATRICK HARRIS,
Secretary

CONFERENCE COMMITTEE

Senate Conferees _____

FURTHER HOUSE ACTION (OVER)

DATE: 4-20 2016

RD 1 RFD F3

REPORT OF STANDING COMMITTEE

This bill having been referred by the House to its standing committee on Financial Services was acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be Passed w/amend(s) w/sub

This 27 day of April, 2016.
Ken Johnson, Chairperson

DATE: 4-27 2016

RF RD 2 CAL

DATE: _____ 20____

RE-REFERRED RE-COMMITTED

Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, SB _____

YEAS _____ NAYS _____

JEFF WOODARD,
Clerk