SB385
176215-3
By Senator Blackwell
RFD: Banking and Insurance
First Read: 05-APR-16
ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§5-5A-44.

(a) No person, acting directly or indirectly or through or in concert with one or more persons, may acquire control any voting security of a state bank or of any corporation or other entity owning voting securities of having control of a state bank if after the acquisition such person would own or possess the power to vote a majority of the voting securities of such bank, unless an application is filed with the superintendent for review of the proposed transaction and for his or her action, if any, as provided in this section.
"(b) The application shall be on a form prescribed by the superintendent and shall be made under oath. The application must contain all information that the superintendent by regulation requires to be furnished in an application, as well as any information that the superintendent orders to be included in the particular application being filed and shall be accompanied by the filing fee prescribed by the Banking Board. For the purposes of this section, the Banking Board may reduce or waive any prescribed fees for applications where a change of control application must also be filed with a responsible federal bank supervisory agency, and the superintendent may accept a copy of the application filed with the responsible federal bank supervisory agency. The superintendent is authorized to waive any prescribed application fees for transactions which the superintendent exempts under subsection (g) (3). No acquiring party may acquire control of a bank unless the superintendent has approved the acquiring party's acquisition plan. All persons with whom the acquiring party acts directly, indirectly, through, or in concert with to acquire control shall be identified in the application and shall provide all information required by the superintendent. The acquiring party shall file its application with the superintendent, and the application shall, except to the extent expressly waived by the superintendent, contain the following information:
"(1) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his or her material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he or she is a party and any criminal indictment or conviction of such person by a state or federal court.

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

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

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

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

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

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

"(8) If any tender offer, request, or invitation for
tenders, or other agreement to acquire control is proposed to
be made by means of a registration statement under the Federal
Securities Act of 1933, as amended, or under circumstances
requiring the disclosure of similar information under the
Federal Securities Exchange Act of 1934, as amended, or in an
application filed with the Federal Deposit Insurance
Corporation, the Board of Governors of the Federal Reserve
System, or the Securities Commissioner of Alabama requiring
similar disclosure, the superintendent may accept the
registration statement or application with any additional
information as the superintendent may require in lieu of the
requirements of this section.

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

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

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

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

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

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

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

"b. Ten percent or more of any class of the voting
securities of a state bank or of any corporation or other
entity having control of a state bank if no other person will
own, control, or hold the power to vote a majority of that
class of voting securities immediately after the transaction.
"(3) PERSON. An individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein.

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

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

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

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

"(4) The plans or proposals which any acquiring person may have to make any major change in the business or corporate structure or management may be detrimental to the safety and soundness of the state bank or of any corporation or other entity having control of the state bank.
"(5) The effect of the proposed acquisition of control may result in a substantial reduction of competition in this state or communities served by the state bank to be acquired.

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

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

"(f) From any final order denying the application the applicant may appeal the decision in the manner and through the procedures established in Sections 5-5A-8 and 5-5A-9 for the denial of incorporation of a bank.
"(f) This section does not apply to any of the following:

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

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

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

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

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

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

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

Section 3. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming law.
President and Presiding Officer of the Senate

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 Senator Blackwell 4:00 PM

Robert Bentley
GOVERNOR

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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 365.

yeas □ nays □ abstain □

PATRICK HARRIS, Secretary

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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

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RE-REFERRED [ ] RE-COMMITTED [ ]

Committee__________________________

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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