ACT No. 2011 - 589

HB544

129689-4

By Representative Hill

RFD: Financial Services

First Read: 19-APR-11

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GOVERNOR'S OFFICE

ENROLLED, An Act,

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§5-2A-12.

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

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

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

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

"(2) Whose conduct:

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

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

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

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

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

"§5-3A-1.

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

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

every examination, inquiry shall be made as to the conditions and resources of the bank, the mode of conducting and managing the affairs of the bank, the action of its directors, the investment of the funds of the bank, the safety and prudence of the management of the bank, whether the requirements of its charter and of law have been complied with in the administration of the affairs of the bank, and such other matters as the superintendent may prescribe. In addition, the superintendent may in like manner examine or cause to be examined the affairs of every bank, every bank holding company, and every affiliate of the bank except a national bank~~,~~ or a subsidiary of a national bank ~~or a bank holding company, or a subsidiary of a bank holding company other than a bank organized under the laws of Alabama,~~ whenever, in the judgment of the superintendent, the management and condition of the bank, bank holding company, or affiliate renders an examination of its affairs necessary or expedient, or whenever, in the opinion of the superintendent, the interest of the public demands an examination.

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

"(1) When a bank, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of

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

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

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

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

"§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.

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

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

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

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

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

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

"§5-3A-11.

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

"§5-5A-1.

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

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

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

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

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

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

"§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

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

"(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.

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

"§5-13B-11.

"~~(a)~~ In order to carry out the purposes of this title, in addition to and cumulative with the authority and powers of the superintendent set forth elsewhere in this title, the superintendent may:

"(1) Adopt regulations;

"(2) Enter into cooperative, coordinating, or information-sharing agreements with any other bank supervisory agency or any organization affiliated with or representing one or more bank supervisory agencies;

"(3) Accept any report of examination or investigation by another bank supervisory agency having concurrent jurisdiction over an Alabama state bank or a bank holding company that controls an Alabama state bank in lieu of

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

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

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

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

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

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

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

1

2

3 _____

4 Speaker of the House of Representatives

5 Kay Ivey

6 President and Presiding Officer of the Senate

7 House of Representatives

8 I hereby certify that the within Act originated in
9 and was passed by the House 05-MAY-11, as amended.
10
11 Greg Pappas
12 Clerk
13

14 _____

15

16 Senate 02-JUN-11 Passed

17

APPROVED June 9, 2011
TIME 10:50 am
Robert Bentley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2011-589
Bill Num...: H-544

Recv'd 06/09/11 04:17pmJJB