To: Business and Financial Institutions

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2014

By: Senator(s) Jackson (15th)

SENATE BILL NO. 2558

AN ACT TO AMEND SECTION 81-1-81, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE COMMISSIONER OF BANKING AND CONSUMER FINANCE TO EXAMINE A BANK HOLDING COMPANY IN THE SAME MANNER AS A BANK; TO AMEND SECTION 81-3-1, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE TERM "BANK," WHEN USED IN TITLE 81 OF THE MISSISSIPPI CODE, INCLUDES A BANK HOLDING COMPANY FOR THE PURPOSES OF SUPERVISION AND REGULATION BY THE COMMISSIONER; TO AMEND SECTION 81-5-28, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE COMMISSIONER SHALL HAVE GENERAL SUPERVISION OVER BANK HOLDING COMPANIES AND THE OPERATION AND BUSINESS OF BANK HOLDING COMPANIES TO THE SAME EXTENT AS THE COMMISSIONER IS AUTHORIZED TO SUPERVISE AND REGULATE STATE BANKS; TO AMEND SECTION 81-14-401, MISSISSIPPI CODE OF 1972, TO REMOVE THE PROHIBITION ON THE DEPARTMENT SUPERVISING CERTAIN BANK HOLDING COMPANIES OF SAVINGS BANKS; TO AMEND SECTION 81-1-127, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A BANK OFFICER OR EMPLOYEE WHO HAS BEEN PERMANENTLY REMOVED BY THE COMMISSIONER SHALL NOT BE ELIGIBLE TO HOLD A POSITION AT A BANK SUBSIDIARY, BANK HOLDING COMPANY OR ANY OTHER ENTITY REGULATED BY THE DEPARTMENT; TO AMEND SECTION 81-5-29, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT FROM AND AFTER JULY 1, 2014, ANY PROPOSED TRANSFER OF BANK ASSETS TO BE PURCHASED, HELD OR OWNED BY A BANK SECURITIES CORPORATION SHALL BE SUBJECT TO THE PRIOR CONSENT AND APPROVAL OF THE COMMISSIONER; TO CREATE NEW SECTION 81-1-137, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE DEPARTMENT OF BANKING AND CONSUMER FINANCE TO ESTABLISH PROGRAMS FOR THE EDUCATION OF THE PUBLIC WITH RESPECT TO FINANCIAL LITERACY, ANY PROVISION OF THIS TITLE 81 OF THE MISSISSIPPI CODE, OR ANY INDUSTRY REGULATED BY THE DEPARTMENT; TO AUTHORIZE THE DEPARTMENT AND THE OFFICE OF CONSUMER PROTECTION TO COORDINATE THEIR EFFORTS FOR THE EDUCATION PROGRAMS AUTHORIZED FOR THE DEPARTMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:
SECTION 1. Section 81-1-81, Mississippi Code of 1972, is amended as follows:

81-1-81. It shall be the duty of the commissioner to apportion the work of examining banks among the examiners in such a way that each bank, under the provisions of law, shall be examined at least once during an eighteen-month period and more often, if necessary, in the discretion of the commissioner, at irregular intervals and without prior notice. However, neither the commissioner nor any examiner shall examine one (1) bank twice in succession unless the commissioner, for cause, so determines. ** If the commissioner's office, because of work load or other good sufficient cause, is unable to conduct an examination of a bank as provided for in this section, the commissioner is ** authorized to accept the examination of any state bank performed by the Federal Deposit Insurance Corporation or the Federal Reserve Bank in lieu of the examination provided for in this section. However, in no case shall the commissioner be authorized to accept any such examination of any state bank performed by either the Federal Deposit Insurance Corporation or the Federal Reserve Bank for any two (2) consecutive eighteen-month periods. The commissioner may, but shall not be required to, examine a bank holding company in the same manner as a bank.

SECTION 2. Section 81-3-1, Mississippi Code of 1972, is amended as follows:
81-3-1. Whenever the word "bank" is used in any statute, unless the context clearly shows that it is intended to be limited in its application to a particular character of bank, it shall include trust companies, savings banks, branches of banks and trust companies, and all other institutions subject to the provisions of this title. In addition, the term "bank," when used in this title, includes a bank holding company for the purposes of supervision and regulation by the commissioner. The term "corporation," when used in this title, or "trust company" when used in this title, shall be construed and held to embrace every character of bank, branch bank, trust company or any branch thereof, which is subject to the jurisdiction of the Department of Banking and Consumer Finance. The term "eligible banks," when used in this title, means an institution which is well capitalized as defined by regulations of the Federal Deposit Insurance Corporation, has examination ratings of two (2) or higher, has Community Reinvestment Act (CRA) ratings of satisfactory or higher, and has no supervisory enforcement actions pending.

SECTION 3. Section 81-5-28, Mississippi Code of 1972, is amended as follows:

81-5-28. (1) As used in this section, unless the context clearly requires otherwise:

(a) "Bank" means any company that accepts deposits in Mississippi that are insured under the provisions of the Federal Deposit Insurance Act, 12 USCS 1811 et seq., as amended; provided,
however, that the term "bank" shall not include a company engaged
solely in the trust business, all or substantially all of the
deposits of which are in trust funds and are received in a bona
fide fiduciary capacity.

(b) "Bank holding company" means any company which is a
bank holding company under the provisions of the Federal Bank
Holding Company Act of 1956, 12 USCS 1841 et seq., as amended.

(c) "Company" has the meaning assigned in Section 2(b)
of the Federal Bank Holding Company Act of 1956, 12 USCS 1841(b),
as amended.

(d) "Control" has the meaning assigned in Sections
2(a)(2) and (3) of the Federal Bank Holding Company Act of 1956,
12 USCS 1841(a)(2) and (3), as amended, except that the reference
therein to "the board" shall be deemed to refer to the Mississippi
Commissioner of Banking and Consumer Finance.

(2) No bank holding company shall control a bank unless the
bank is a bank as defined in Section 2(c) of the Federal Bank
Holding Company Act of 1956, 12 USCS 1841(c), as amended.

(3) No company that is not a bank holding company shall
control a bank.

(4) The Mississippi Commissioner of Banking and Consumer
Finance shall have general supervision over bank holding companies
and the operation and business of bank holding companies to the
same extent as the commissioner is authorized to supervise and
regulate state banks. In addition, the commissioner shall have
the power to enforce the prohibitions of this section by seeking to enjoin any violation, by issuing cease and desist orders, by imposing administrative fines or penalties, and by any other remedies that are provided by law.

SECTION 4. Section 81-14-401, Mississippi Code of 1972, is amended as follows:

81-14-401. (1) Notwithstanding any other provision of law, any stock savings bank may simultaneously with its incorporation or conversion to a stock savings bank provide for its ownership by a holding company. In the case of a conversion, members of the converting savings bank shall have the right to purchase capital stock of the holding company in lieu of capital stock of the converted savings bank in accordance with Section 81-14-107(3)(f).

(2) Notwithstanding any other provision of law, any stock savings bank may reorganize its ownership to provide for ownership by a holding company, upon adoption of a plan of reorganization by a favorable vote of not less than two-thirds (2/3) of the members of the board of directors of the savings bank and approval of such plan of reorganization by the holders of not less than a majority of the issued and outstanding shares of stock of the savings bank. The plan of reorganization shall provide that (a) the resulting ownership shall be vested in a Mississippi corporation; (b) all stockholders of the stock savings bank shall have the right to exchange shares; (c) the exchange of stock shall not be subject to state or federal income taxation; (d) stockholders not wishing to
exchange shares shall be entitled to dissenters' rights as provided under Section 79-4-13.01 et seq., Mississippi Code of 1972 * * * and (e) the plan of reorganization is fair and equitable to all stockholders.

(3) Notwithstanding any other provision of law, any mutual savings bank may reorganize its ownership to provide for ownership by a holding company upon adoption of a plan of reorganization by favorable vote of not less than two-thirds (2/3) of the members of the board of directors of the savings bank and approval of the plan of reorganization by a majority of the voting members of the savings bank. The plan of reorganization shall provide: (a) the resulting ownership of one * * * or more subsidiary savings banks shall be evidenced by stock shares; (b) the substantial portion of the assets and all of the insured deposits and part or all of the other liabilities shall be transferred to one * * * or more subsidiary savings banks; (c) the reorganization shall not be subject to state or federal income taxation; and (d) the plan of reorganization is fair and equitable to all members of the savings bank. The commissioner shall promulgate rules regarding the formation of the subsidiary savings banks and the holding company, including the rights of members, levels of investment in the holding company subsidiaries, and stock sales.

(4) A holding company may invest in any investment authorized by its board of directors, except as limited by
regulations promulgated by the commissioner pursuant to this chapter.

(5) Any entity which controls a stock savings bank, or acquires control of a stock savings bank, is a holding company. As used in this section, "entity" means an individual, corporation, partnership, joint venture, trust, estate or unincorporated association.

(6) Holding companies shall be under the supervision of the commissioner. The commissioner shall exercise all powers and responsibilities with respect to holding companies which he exercises with respect to savings banks. * * *

SECTION 5. Section 81-1-127, Mississippi Code of 1972, is amended as follows:

81-1-127. (1) If, in the commissioner's opinion, any director, officer or employee of any bank has participated in, or consented to, any violation of any law, rule, regulation or order, or any unsafe or unsound business practice in the operation of any bank, or any insider loan not specifically authorized by law, or any repeated violation of, or failure to comply with, any bank's bylaws, the commissioner may serve a written notice of charges upon such director, officer or employee and the bank, stating his intent to remove such director, officer or employee. Such notice shall specify the alleged conduct of such director, officer or employee and shall state the place for a hearing before the commissioner. A hearing shall be held no earlier than fifteen
(15) days, but no later than thirty (30) days, after the notice of charges is served. If, after the hearing, the commissioner determines that the charges asserted have been proven by a preponderance of the evidence, the commissioner may issue an order removing the director, officer or employee in question. Such an order shall be effective upon issuance and may include the entire board of directors or all of the officers of the bank.

(2) If it is determined that any director, officer or employee of any bank has knowingly participated in, or consented to, any violation of any law, rule, regulation or order, or engaged in any unsafe or unsound business practice in the operation of any bank, or any repeated violation of, or failure to comply with, any bank's bylaws, and that as a result, a situation exists requiring immediate corrective action, the commissioner may issue an order temporarily removing such person or persons pending a hearing. Such an order shall state its duration on its face and the words "Temporary Order of Removal" and shall be effective upon issuance for a period of fifteen (15) days. Such order may be extended once for a period of fifteen (15) days. A hearing must be held within ten (10) days of the expiration of a temporary order, or any extension thereof, at which time a temporary order may be dissolved or converted to a permanent order.

(3) Any removal pursuant to subsection (1) or (2) of this section shall be effective in all respects as if such removal has
been made by the board of directors and the members or
stockholders of the bank in question.

(4) Without the prior written approval of the commissioner, no director, officer or employee permanently removed pursuant to this section or otherwise removed by a federal agency of proper authority shall be eligible to be elected, reelected or appointed to any position as a director, officer or employee of that bank, nor shall such director, officer or employee be eligible to be elected to or retain a position as a director, officer or employee of any other state bank, bank subsidiary, bank holding company or any other entity regulated by the department.

(5) The commissioner may promulgate rules or regulations and/or cooperate with any other state or federal administrative agencies in order to enforce the prohibitions of this section.

SECTION 6. Section 81-5-29, Mississippi Code of 1972, is amended as follows:

81-5-29. Corporations may be formed to purchase, hold and own bank assets. By and with the consent and approval of the * * * Commissioner of Banking and Consumer Finance, corporations may be formed in this state for the purpose of purchasing, holding, owning, dealing in, lending on and borrowing on assets of banks, either open or in liquidation. From and after July 1, 2014, any proposed transfer of bank assets to be purchased, held or owned by a corporation authorized by this section shall be subject to the prior consent and approval of the
commissioner. By and with the consent and approval of the commissioner, banks and receivers of banks may purchase any stock issued by such corporations, which shall have all the general corporate powers of corporations created under the general corporation laws of this state. By and with the consent and approval of the commissioner, banks may purchase and deal in any obligations of indebtedness issued by such corporations. In addition to general power to issue stock and borrow money, such corporation shall have specific power to issue stocks, common or preferred, to all agencies of the federal government, and to borrow money from and pledge assets to all such agencies.

The commissioner shall have general supervision of the organization, operation and business of such corporation, and may issue and enforce regulations with reference thereto. The name of all such corporations shall include the words "bank securities corporation."

SECTION 7. The following shall be codified as Section 81-1-137, Mississippi Code of 1972:

81-1-137. The department may establish programs for the education of the public with respect to financial literacy, any provision of this title, or any industry regulated by the department. The department and the Office of Consumer Protection under its authority to establish programs for the education of the public under Section 75-24-21 may coordinate their efforts for the
education programs authorized for the department under this section.

SECTION 8. This act shall take effect and be in force from and after July 1, 2014.