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BANKING AND FINANCE Financial Institutions: Provide for Nationwide Reciprocal Banking

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BANKING AND FINANCE

Financial Institutions: Provide for Nationwide Reciprocal Banking

CODE SECTIONS: O.C.G.A. §§ 7-1-620 to -626 (amended), -627
(new)
BILL NUMBER: SB 451
ACT NUMBER: 766
SUMMARY: Ending Georgia's participation in the Southeast
Regional Banking Compact, the Act allows
Georgia banks and bank holding companies to
expand into any state that allows interstate
banking and allows banks and bank holding
companies from such states to expand into
Georgia. The Act may be preempted, however,
by pending federal legislation.
EFFECTIVE DATE: July 1, 1995

History

In the mid-1980s, a group of eleven southern states and the District of Columbia formed what became known as the Southeast Regional Banking Compact, or the Southeast Compact.¹ The purpose of the compact was to encourage the growth of regional banks in the Southeast and to protect southeastern banks from acquisition by large bank holding companies based in other regions of the nation.² Many people felt that a gradual approach to interstate banking should be adopted so that southeastern banks would have the opportunity to become established and grow into regional banks.³ As an indicator of the relatively small size of southeastern banks at the time, in 1984 Georgia's largest bank, C&S, was one-twentieth the size of the nation's largest bank, Citicorp.⁴ "Critical decisions regarding the financing of [the Southeast's] regional businesses" were being made in financial centers outside the region, in states such as New York and California.⁵

1. James Greiff, *Banking Compact Slowly Crumbling*, ATLANTA CONST., Feb. 24, 1994, at D2; see also Rodney Ho & Shelley Emling, *Interstate Banking Approved*, ATLANTA CONST., Mar. 17, 1994, at K1; Jim King, *Banking Regional Wall is Crumbling, All Sizes of Banks Lean Toward Easing of Geographic Constraints*, ATLANTA CONST., Dec. 26, 1993, at R1.

2. Daniel B. Hodgson & John L. Douglas, *Georgia's Interstate Banking Legislation*, 20 GA. ST. B.J. 186, 186-87 (1984); Ho & Emling, *supra* note 1, at K1.

3. Telephone Interview with Steve Bridges, Deputy Commissioner of Banking and Finance (May 25, 1994) [hereinafter Bridges Interview].

4. Hodgson & Douglas, *supra* note 2, at 186.

5. *Id.*

Newly-developing southeastern regional banks, such as Wachovia, SunTrust, First Union, and NationsBank, wanted to grow within the region and at the same time avoid being acquired by large banks and bank holding companies outside the region.⁶

In response to lobbying by these southeastern regional banks, the participating southeastern states created the compact by passing legislation that encouraged bank expansion within the region but restricted bank expansion involving a non-regional state.⁷ For example, such legislation made it relatively easy for a North Carolina bank to acquire a Georgia bank.⁸ Such legislation, however, sharply restricted the ability of, for example, a New York bank holding company to acquire a Georgia bank.⁹ Such legislation likewise restricted the ability of a southeastern regional bank to acquire a bank outside the region: eighty percent of a southeastern region bank or bank holding company's deposits had to be located in southeastern region states.¹⁰

The enabling legislation varied from state to state.¹¹ In Georgia, a committee appointed by then-Governor Joe Frank Harris attempted to create a "carefully crafted" and "workable" bill that would operate in the best interest of the state.¹² The subsequent Georgia legislation,¹³ passed in 1984 and effective on July 1, 1985,¹⁴ became a model for southeastern region banking laws in Florida and South Carolina.¹⁵

By 1994, ten years later, the Southeast Compact had "served its purpose" of fostering the growth of southeastern regional banks¹⁶ and had become an obstacle to large southeastern banks, such as Charlotte, North Carolina-based NationsBank and First Union Corporation, and Synovus Financial Corporation of Columbus, Georgia, that wanted to expand beyond the region.¹⁷ These companies and others successfully lobbied in compact states for new legislation, ending their commitment to the compact.¹⁸ In Georgia many people felt the time had come for

6. King, *supra* note 1, at R1.

7. King, *supra* note 1; [U.S.] *Senate Panel OKs Interstate Banking*, ATLANTA CONST., Feb. 24, 1994, at D1 [hereinafter *Senate Panel*].

8. Ho & Emling, *supra* note 1, at K1.

9. *Id.*

10. Greiff, *supra* note 1.

11. Hodgson & Douglas, *supra* note 2, at 187.

12. *Id.* at 187-88.

13. O.C.G.A. §§ 7-1-620 to -626 (1989), amended by *id.* §§ 7-1-620 to -627 (Supp. 1994). The 1989 Code sections were added as a new part 19 of article 2 of chapter 1 of title 7 entitled "Regional Interstate Banking." 1984 Ga. Laws 1467.

14. 1984 Ga. Laws 1467.

15. Hodgson & Douglas, *supra* note 2, at 193.

16. Jim Lientz, President of the Georgia Subsidiary of NationsBank, *quoted in* King, *supra* note 1, at R1.

17. Greiff, *supra* note 1, at D2; *Senate Panel*, *supra* note 7, at D1.

18. Ho & Emling, *supra* note 1, at K1; Brad Kuhn, *Synovus Joins Effort for Interstate Banking, N.C. Giants to Try Luck State-by-State*, ATLANTA J., Jan. 21, 1994,

southeastern banking to compete over a wider region.¹⁹ In 1994, the Georgia General Assembly followed North Carolina and Virginia in leaving the compact, and other southeastern states seemed ready to follow.²⁰

Georgia has now joined approximately forty other states in allowing reciprocal interstate banking on a nationwide basis.²¹ After passage of the Act, some speculated that a series of bank acquisitions would occur in Georgia as large regional banks take advantage of the new law to try to acquire small community banks throughout Georgia and perhaps even large Atlanta-based BankSouth.²² The new law, however, does not take effect until July 1, 1995.²³ Moreover, a provision of the new law allows the directors of a Georgia bank or bank holding company to choose not to be acquired.²⁴

As of September 13, 1994, a federal bill on nationwide interstate banking had been approved by both houses of Congress and was awaiting the expected signature of President Clinton; if this bill becomes law as expected, it will, when its provisions go into effect, effectively supersede existing state laws on interstate banking, including Georgia's new law.²⁵

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The new law retains most of the organization and language of the previous statute, but applies them to nationwide banking, rather than to regional banking. Also, a new Code section 7-1-627 is added.²⁶

at C8.

19. Bridges Interview, *supra* note 3.

20. Ho & Emling, *supra* note 1, at D1.

21. *Id.*

22. Rodney Ho, *Bank South More Likely To Be Target of a Buyout*, ATLANTA CONST., Mar. 17, 1994, at K1; Rodney Ho, *Spotlight is on Bank South, Company Downplaying Takeover Talk*, ATLANTA CONST., Apr. 1, 1994, at D1; King, *supra* note 1, at R1; Robert Luke, *Insider Trading, Some Bank South Directors Have Been Raising Their Stakes, Profitability Adds to Stock's Allure*, ATLANTA CONST., Mar. 28, 1994, at E4.

23. 1994 Ga. Laws 215, § 8.

24. O.C.G.A. § 7-1-627(a) (Supp. 1994).

25. Albert R. Karr, *Bank Measure Clears the Senate, Goes to Clinton*, WALL ST. J., Sept. 14, 1994, at A20 [hereinafter *Bank Measure Clears Senate*]; *Senate OKs Interstate Banking Bill, Big Institutions Eager to Expand*, ATLANTA CONST., Sept. 14, 1994, at B3; Rodney Ho, *Nationwide Interstate Banking Law Nears Reality*, ATLANTA CONST., Aug. 2, 1994, at B1. The Georgia Law goes into effect on July 1, 1995. 1994 Ga. Laws 215, § 8. Under the federal bill, banks would be able to "purchase or establish subsidiary banks" in any state, beginning one year after enactment. *Bank Measure Clears Senate, supra*. Also under the federal bill, beginning in "mid-1997," banks would be "allowed to turn existing banks into branches," but "states could pass laws to permit interstate branching before then." *Id.*

26. See O.C.G.A. § 7-1-627 (Supp. 1994).

In Code section 7-1-620, which sets forth definitions, the terms "Southern Region bank"²⁷ and "Southern Region bank holding company" have been deleted,²⁸ while definitions have been added for "out-of-state bank" and "out-of-state bank holding company."²⁹ Also, one element of the definition of a "Georgia bank holding company" has been deleted: a Georgia bank holding company is no longer required to keep more than eighty percent of its deposits in Southern Region subsidiaries.³⁰

Code section 7-1-621, which "establishes the statutory framework"³¹ within which out-of-state bank holding companies may expand into Georgia and within which Georgia bank holding companies may expand into other states, is unchanged in its essentials, but the term "Southern Region" has been replaced by the term "out-of-state."³² For example, Code section 7-1-621(a)(2), which defines permissible acquisitions, now reads that "[a] Georgia bank holding company may acquire an *out-of-state* bank holding company or an *out-of-state* bank [subject to approval by the Commissioner of Banking and Finance]."³³ Similarly, Code section 7-1-621(c), which specifies the "reciprocity rule," now reads that "an *out-of-state* bank holding company" not having a Georgia bank subsidiary will not be allowed to acquire a Georgia bank unless the laws of the state in question would allow a similar Georgia bank holding company to acquire a similar bank in that state.³⁴

27. The previous statute referred to Southeast Compact states as the "Southern Region." 1984 Ga. Laws 1471 (codified at O.C.G.A. § 7-1-620(11)-(12) (1989)), *amended* by 1994 Ga. Laws 215 (codified at O.C.G.A. § 7-1-620 (Supp. 1994)).

28. 1984 Ga. Laws 1471 (codified at O.C.G.A. § 7-1-620(10)-(11) (1989)).

29. O.C.G.A. § 7-1-620(9)-(10) (Supp. 1994). The new Code section provides:

(7) "Georgia bank" means a bank organized under the laws of this state or of the United States and, in either event, having banking offices located only in this state.

(8) "Georgia bank holding company" means a bank holding company that:

(A) Has its principal place of business in the State of Georgia; and

(B) Is not controlled by a bank holding company other than a Georgia bank holding company.

(9) "Out-of-state bank" means a bank other than a Georgia bank.

(10) "Out-of-state bank holding company" means a bank holding company other than a Georgia bank holding company.

Id. § 7-1-620(7)-(10) (Supp. 1994).

30. Compare 1984 Ga. Laws 1470 (codified at O.C.G.A. § 7-1-620(8)(b) (1989)) with O.C.G.A. § 7-1-620(8) (Supp. 1994).

31. Hodgson & Douglas, *supra* note 2, at 189.

32. O.C.G.A. § 7-1-621 (Supp. 1994).

33. *Id.* § 7-1-621(a)(2) (Supp. 1994) (emphasis added).

34. *Id.* § 7-1-621(c) (Supp. 1994) (emphasis added). See generally Hodgson & Douglas, *supra* note 2, at 189-90.

Code section 7-1-622, which "sets forth the limited circumstances"³⁵ under which a bank may be acquired without having to meet the requirements of Code section 7-1-621, underwent some revision beyond replacing "Southern region" with "out-of-state." Subsection (a) of Code section 7-1-622, which now applies to the acquisition of an out-of-state bank by a Georgia bank, a Georgia bank holding company, or an out-of-state bank holding company having Georgia bank subsidiaries, sets forth three limited exceptions. The amended Code section retains these three exceptions but amends one of them.³⁶ The exception pertaining to an acquisition "consummated in the regular course of securing or collecting a debt" no longer requires divestiture within two years.³⁷ In addition, the amended Code section now contains a thirty-day notice requirement.³⁸

Subsection (b) of Code section 7-1-622, which now applies to an out-of-state bank or bank holding company acquiring a Georgia bank, specifies an exception similar to Code section 7-1-622(a)(2) for an acquisition in the course of securing or collecting a debt.³⁹ However, unlike the new Code section, subsection (b) does require divestiture within two years.⁴⁰

In Code section 7-1-623, the old subsection (a) has been deleted, which formerly prohibited acquisitions outside the Southern Region except as allowed by Code section 7-1-622.⁴¹ The new subsection (a), an expansion of the old subsection (b),⁴² prohibits acquisition of a Georgia bank, a Georgia bank holding company, or an out-of-state bank holding company controlling a Georgia bank except as permitted under Code sections 7-1-621 and -622.⁴³

In Code section 7-1-624, subsection (a) now reads that any Georgia bank holding company and any "out-of-state," rather than "Southern Region," bank holding company shall be subject to the provisions of Code section 7-1-607⁴⁴ and the rules and regulations of the Department of Banking and Finance (the Department).⁴⁵

35. Hodgson & Douglas, *supra* note 2, at 192.

36. See O.C.G.A. § 7-1-622(a)(1)-(3) (Supp. 1994).

37. Compare *id.* § 7-1-622(a)(2) (Supp. 1994) with *id.* § 7-1-622(a)(2) (1989).

38. *Id.* § 7-1-622(a) (Supp. 1994). Notice must be given to Department of Banking and Finance. *Id.*

39. *Id.* § 7-1-622(a)-(b) (Supp. 1994).

40. *Id.*

41. 1984 Ga. Laws 1475 (codified at O.C.G.A. § 7-1-623(a) (1989)).

42. 1984 Ga. Laws 1475 (codified at O.C.G.A. § 7-1-623(b) (1989)).

43. O.C.G.A. § 7-1-623(a) (Supp. 1994).

44. O.C.G.A. § 7-1-607 grants the Commissioner the authority to regulate and examine bank holding companies doing business in Georgia. See *id.* § 7-1-607 (1989).

45. *Id.* § 7-1-624(a) (Supp. 1994).

A new Code section 7-1-627 was added as the result of a House amendment.⁴⁶ This amendment was a compromise designed to ensure passage of the bill this year.⁴⁷

The key subsection of this Code section is 7-1-627(a), which permits the board of directors of a Georgia bank or bank holding company to prevent the bank or bank holding company from being acquired, by filing with the Department a "resolution to except such bank or bank holding company from being acquired pursuant to the provisions of this part."⁴⁸ Such a resolution could at least delay an attempt at a hostile takeover of a bank or bank holding company, or could prevent a takeover entirely if the shareholders are not willing to openly disagree with the board of directors regarding such a takeover attempt.⁴⁹ A board of directors may also revoke such a resolution.⁵⁰

Some attorneys believed that subsection (a) might be found unconstitutional.⁵¹ Consequently, subsection (b) contains a severability clause, which protects all provisions of part 19 (Interstate Banking) of article 2 from being invalidated by a finding that a provision of Code section 7-1-627 is invalid or unconstitutional.⁵²

Finally, as the result of another House amendment, the bill provides that the new law will not become effective until July 1, 1995.⁵³ This extension will provide time for Georgia banks and bank holding companies to assess the new marketplace of acquisition.⁵⁴

SB 451 enjoyed the support of large Southern Region bank holding companies that wanted "the freedom to head anywhere in the nation, buy other banks and keep growing."⁵⁵ Proponents of the bill argued that interstate banking would allow large bank holding companies to operate more efficiently and would therefore lower banking costs for consumers.⁵⁶ Opponents of the bill argued that it ceded control of local financial interests to non-local business interests.⁵⁷

46. See *infra* notes 66-68 and accompanying text.

47. Bridges Interview, *supra* note 3.

48. O.C.G.A. § 7-1-627(a) (Supp. 1994).

49. Bridges Interview, *supra* note 3.

50. O.C.G.A. § 7-1-627(a) (Supp. 1994).

51. Bridges Interview, *supra* note 3.

52. O.C.G.A. § 7-1-627(b) (Supp. 1994).

53. 1994 Ga. Laws 215, § 8.

54. See *supra* notes 23-24 and accompanying text.

55. Greiff, *supra* note 1, at D2; see also Kuhn, *supra* note 18, at C8; Robert Luke, *Business Report on Banking, Legislation Would Let State's Banks Grow*, ATLANTA CONST., Oct. 15, 1993, at G2.

56. King, *supra* note 1, at R1; see also Greiff, *supra* note 1, at D2; *Senate Panel*, *supra* note 7, at D1.

57. Ho & Emling, *supra* note 1, at K1; cf. Kuhn, *supra* note 18, at C8 (stating that some Florida banks shun out-of-state banks because of the dramatic intrastate growth).

Community banks were expected to oppose the expansion of large out-of-state banks into their areas.⁵⁸ However, many did not oppose the bill because community banks have found they can compete in their home towns against regional banks.⁵⁹ Furthermore, the opening of a "market" of Georgia banks available to out-of-state buyers may raise the value of Georgia banks, whether acquired or not.⁶⁰ Moreover, as provided in the former Code section and preserved in the new law, an out-of-state bank holding company cannot acquire a Georgia bank unless the Georgia bank has been in existence for five years or more.⁶¹ This rule compels an out-of-state bank holding company that wants a banking presence in Georgia to purchase an existing Georgia bank rather than build and open a new branch in competition with existing banks.⁶² Continuing the prohibition of "de novo branching" on an interstate basis assures that a Georgia bank will not lose franchise value due to an out-of-state bank opening a new branch in the Georgia bank's trade area.⁶³

SB 451 was introduced into the Senate Committee on Banking and Financial Institutions by Senator Loyce Turner, Chairman of the Committee, and by Senators Paul C. Broun, Terrell Starr, and others.⁶⁴ The Senate Committee on Banking and Financial Institutions substituted a bill which made one change: it deleted subsection 7-1-620(8)(B), which was a fragment of the previous Code section 7-1-620(8) referring to statewide banking.⁶⁵

The House added two new sections to the bill by two floor amendments. The first amendment, submitted by Representative Charlie Watts, added a section setting the effective date of the bill as July 1, 1995, instead of July 1, 1994.⁶⁶ The second amendment, submitted by Representative Johnny Floyd, added Code section 7-1-627(a), which allows a Georgia bank or bank holding company to avoid being acquired by an out-of-state bank by adopting a resolution to

58. King, *supra* note 1.

59. *Id.*; Bridges Interview, *supra* note 3; *see, e.g.*, Ernest Holsendolph, *Banker Ready to be a Minnow in Sea of Whales*, ATLANTA CONST., Mar. 18, 1994, at B1.

60. King, *supra* note 1, at R1.

61. Compare O.C.G.A. § 7-1-621(d)(2) (1989) with *id.* § 7-1-621(d)(2) (Supp. 1994). This provision is commonly referred to as the "five year rule." Hodgson & Douglas, *supra* note 2, at 192.

62. *See* Hodgson & Douglas, *supra* note 2, at 192.

63. Bridges Interview, *supra* note 3.

64. SB 451, as introduced, 1994 Ga. Gen. Assem.

65. SB 451 (SCS), 1994 Ga. Gen. Assem. The previous Code section 7-1-620(8)(B) required a Georgia bank holding company to maintain in Georgia eighty percent of the total deposits of all its subsidiaries nationwide. 1984 Ga. Laws 1470 (codified at O.C.G.A. § 7-1-620(8)(B) (1989)).

66. SB 451 (HFA), 1994 Ga. Gen. Assem.

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that effect.⁶⁷ This amendment also added Code section 7-1-627(b), which states that in the event a provision of Code section 7-1-627(a) is found to be invalid or unconstitutional, the rest of part 19 of article 2 will remain in force.⁶⁸ The House and Senate passed the amended version.

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67. SB 451 (HFA), 1994 Ga. Gen. Assem.

68. *Id.*; *see supra* notes 51-52 and accompanying text.