

March 2012

## BANKING AND FINANCE Financial Institutions: Change and Liberalize Branch Ranking Restrictions in Georgia

Georgia State University Law Review

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### Recommended Citation

Georgia State University Law Review (2012) "BANKING AND FINANCE Financial Institutions: Change and Liberalize Branch Ranking Restrictions in Georgia," *Georgia State University Law Review*: Vol. 13 : Iss. 1 , Article 13.  
Available at: <http://readingroom.law.gsu.edu/gsulr/vol13/iss1/13>

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## BANKING & FINANCE

### *Financial Institutions: Change and Liberalize Branch Banking Restrictions in Georgia*

CODE SECTION: O.C.G.A § 7-1-601 (amended)  
BILL NUMBER: SB 165  
ACT NUMBER: 797  
GEORGIA LAWS: 1996 Ga. Laws 642  
SUMMARY: The Act eases restrictions on interstate branch banking in Georgia in two phases over the next two years. Specifically, the Act amends and rewrites the former Georgia banking law, which heretofore restricted the establishment of branch banks in particular counties to very limited circumstances. The Act allows a bank to establish de novo<sup>1</sup> branch banks on a limited basis between July 1, 1996 and June 30, 1998 and allows a bank to establish de novo branches with no limits after July 1, 1998.  
EFFECTIVE DATE: July 1, 1996<sup>2</sup>

#### *History*

In 1807, the Georgia General Assembly permitted the Planter's Bank of the State of Georgia, located in Savannah, to operate a branch in Augusta, thus introducing branch banking in Georgia.<sup>3</sup> Although it granted Planter's Bank the authority to open a branch, the General Assembly imposed restrictions on the branch such as the requirement that the parent bank establish a separate board of directors for the branch.<sup>4</sup> Several branch banks were subsequently chartered and authorized by separate General Assembly Acts, but the General

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1. De novo branching is defined as allowing a bank to establish a new branch when no previous banking location in that county exists. Telephone Interview with Leslie A. Bechtel, Deputy Commissioner for Legal Affairs, Department of Banking and Finance (Apr. 17, 1996) [hereinafter Bechtel Interview]. In an interstate context, the same is true but the entry would be across state lines, and subject to the new state's law. *Id.*

2. Subsection (c) of O.C.G.A. § 7-1-601 will be further amended by the Act on July 1, 1998, to provide for de novo branching with no limits. 1996 Ga. Laws 642, § 3, at 645.

3. *First Nat'l Bank of Commerce v. Community Bankers Ass'n of Ga.*, 260 Ga. 371, 394 S.E.2d 95 (1990).

4. *Id.* at 374 n.2, 394 S.E.2d at 97 n.2.

Assembly continued to limit the specific powers of and impose additional limitations on the branches.<sup>5</sup> It was not until the 1861 Code of Georgia that general regulations for banking were created,<sup>6</sup> and successive codes in 1866, 1868, 1873, 1882, 1895 and 1910 all carried the same language defining banking and did little, if anything, to alter the branching scheme created in 1861.<sup>7</sup>

A 1919 Act both broadened and restricted branch banking by clarifying the definition of "bank" and stating that "[t]he term 'bank' shall include a branch bank unless the context indicates that it does not."<sup>8</sup> However, the 1919 Act gave a state regulatory agency power over banks for the first time and imposed capital allocation requirements on the parent bank.<sup>9</sup>

A 1960 Act amended branch banking by eliminating the capital allocation requirements and by enlarging the definition of a "bank" to include "parent bank," "branch bank," and "bank holding company."<sup>10</sup> A branch bank essentially operates in the same way as a bank, and is, in effect, the same entity as the parent bank.<sup>11</sup> A branch bank has no assets, because those are held in the parent bank.<sup>12</sup>

With the passage of the 1960 Act and the establishment of state banking laws, Georgia established an historic prohibition against new or additional branch banks.<sup>13</sup> The 1960 Act prohibited the establishment of any new or additional branch banks and defined branch bank as "any additional place of business of any parent bank not located in the particular city, town or village where its parent bank was chartered."<sup>14</sup> The intent was to keep banking units from expanding into areas separate geographically from their home base,<sup>15</sup> out of fear that control of more than one bank by large financial interests would ultimately destroy independent banks.<sup>16</sup>

5. *Id.* app. at 374-76, 394 S.E.2d app. at 97-98.

6. *Id.* app. at 375, 394 S.E.2d app. at 98.

7. *Id.* app. at 375 n.3, 394 S.E.2d app. at 98 n.3. The Code of Georgia of 1861 provided: "The term bank includes the parent bank, its branches, if any, and agencies, its officers of every description, and agents, in construing the violation of an obligation or the imposing a penalty for the acts of whom the bank or branches, as the case may be, is bound." *Id.* app. at 375, 394 S.E.2d app. at 98 (citing GA. CODE § 1433 (1861)).

8. *Id.* app. at 375, 394 S.E.2d app. at 98 (citing 1919 Ga. Laws 135).

9. *Id.* (citing 1919 Ga. Laws 135, 136).

10. 1960 Ga. Laws 67, § 3, at 70-71; *First Nat'l Bank of Commerce*, 260 Ga. 371 app. at 375, 394 S.E.2d 95 app. at 98.

11. *First Nat'l Bank of Commerce*, 260 Ga. 371 app. at 376, 394 S.E.2d 95 app. at 98.

12. *Id.* app. at 376 n.4, 394 S.E.2d app. at 98 n.4.

13. *Id.* at 378, 394 S.E.2d at 100 (Fletcher, J., dissenting).

14. 1960 Ga. Laws 67, § 3, at 70.

15. *Id.* § 1, at 68.

16. *First Nat'l Bank of Commerce*, 260 Ga. at 378, 394 S.E.2d at 100 (Fletcher, J.,

Since the 1960 Act, however, banking legislation has reflected a trend that supports big banks and financial interests, which can provide a larger base of services and have better access to capital.<sup>17</sup> A 1970 Act redefined a branch bank as being any additional place of business outside the county of the parent.<sup>18</sup> This change allowed local banks to provide units within their home county in order to meet the needs of their customers. The intent was to establish a broader, county-wide territorial limit to branching, as opposed to the historical municipal territorial limits.<sup>19</sup> No new branch banks were to be established beyond those allowed by the county/municipal change, however.<sup>20</sup>

Beginning in 1973, Georgia began to recognize exceptions to the branch banking limits. That year, the General Assembly recognized an exception for a company becoming a bank holding company through a corporate reorganization.<sup>21</sup> In 1974, with the passage of the Financial Institutions Code, the General Assembly allowed such institutions to expand services to be responsive to their customers.<sup>22</sup> In 1975, the General Assembly established an exception to the general branch restriction that would allow a bank located in a county with a population of at least 400,000 to establish branches in adjacent counties.<sup>23</sup> In addition, the 1975 General Assembly created the merger exception, generally allowing the establishment of a branch bank through merger, consolidation, or sale of assets when one of the banks had become insolvent.<sup>24</sup> In 1976, the Holding Company Act was passed, which reversed the intent of the 1960 Act.<sup>25</sup> The 1976 Act allowed the establishment of statewide banking organizations under a bank holding company, and generally opened up the acquisition of banks throughout the state.<sup>26</sup>

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dissenting) (citing *Independent Bankers Ass'n v. Dunn*, 230 Ga. 345, 360, 197 S.E.2d 129, 138 (1973)).

17. *Id.*

18. 1970 Ga. Laws 954, § 2, at 955 (codified at O.C.G.A. § 7-1-600(5) (1989)).

19. *Id.* § 1, at 954-55.

20. *Id.*

21. 1973 Ga. Laws 281; *First Nat'l Bank of Commerce*, 260 Ga. at 379, 394 S.E.2d at 100-01 (Fletcher, J., dissenting).

22. 1974 Ga. Laws 705 (codified at O.C.G.A. § 7-1-3(a)(5) (1989)).

23. 1975 Ga. Laws 474 (codified at O.C.G.A. § 7-1-601(c)(2) (1989)).

24. *Id.* (codified at O.C.G.A. § 7-1-601(c)(3) (1989)).

25. *First Nat'l Bank of Commerce*, 260 Ga. at 380, 394 S.E.2d at 101 (Fletcher, J., dissenting).

26. 1976 Ga. Laws 168; *First Nat'l Bank of Commerce*, 260 Ga. at 380, 394 S.E.2d at 101 (Fletcher, J., dissenting).

In 1980, the branch banking exception was enacted<sup>27</sup> and it was subsequently amended in 1985.<sup>28</sup> Finally, in 1987, this exception was formally recognized as an independent exception to the general branch banking prohibition.<sup>29</sup> Thus, although Georgia had a prohibition against branch banks, there were exceptions to the general prohibition against the establishment of new or additional branch banks. First, the Code allowed the establishment of branch banks pursuant to mergers or other consolidations.<sup>30</sup> Second, the Code allowed bank holding companies to have the same authority as banks to purchase a bank and establish branch banks.<sup>31</sup> Lastly, a parent bank could branch in adjacent counties with populations of at least 400,000.<sup>32</sup>

In an effort to encourage a banking structure capable of fulfilling local, regional, and national needs, the 1996 Georgia General Assembly altered public policy regarding interstate branch banking. Several factors were instrumental in changing public policy in this state. First, Georgia had felt increasing pressure to opt-in to the Federal Riegle-Neal Act,<sup>33</sup> thus complying with the nationwide trend in interstate banking, and specifically branch banking.<sup>34</sup> Second, because the Comptroller of the Currency had dramatically broadened the powers of national banks, it was only a matter of time before branching for national banks existed in Georgia anyway.<sup>35</sup> These two factors combined to precipitate the introduction of SB 165 and the establishment of the de novo branch bank as an acceptable means of bank expansion.<sup>36</sup>

27. 1980 Ga. Laws 542.

28. 1985 Ga. Laws 1506 (codified at O.C.G.A. § 7-1-606(e) (1989)).

29. 1987 Ga. Laws 1586, § 9, at 1593 (formerly found at O.C.G.A. § 7-1-601(c)(1) (1989)); *First Nat'l Bank of Commerce*, 260 Ga. at 380, 394 S.E.2d at 101 (Fletcher, J., dissenting).

30. 1987 Ga. Laws 1586, § 1, at 1593 (formerly found at O.C.G.A. § 7-1-601(c)(1) (1989)).

31. 1985 Ga. Laws 1506 (codified at O.C.G.A. § 7-1-606(e) (1989)).

32. 1975 Ga. Laws 474 (codified at O.C.G.A. § 7-1-601(c)(2) (1989)).

33. Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 [hereinafter Riegle-Neal Act]. The Riegle-Neal Act, in its broadest terms, is a federal law that clears interstate banking and branching restrictions placed upon banks by individual states. *Id.* It overturns a 1956 law that allowed states to impose restrictions on banks from buying banks in other states. *Id.*

34. Bechtel Interview, *supra* note 1. Georgia needed to change its existing branching laws, which were outdated, in order to react to national banking companies seeking to branch into Georgia and to give state banks a level playing field with national banks and thrifts who used various statutes and preemptive loopholes to de novo branch. *Legislative Review*, 12 GA. ST. U. L. REV. 1, 2 (1995). Georgia has until June 1997 to prepare for interstate branching consistent with the Riegle-Neal Act. *Id.*

35. Bechtel Interview, *supra* note 1.

36. *Id.*

*SB 165**The Bill's Origin in the 1995 General Assembly*

SB 165 was introduced on January 24, 1995 by Senator Don Cheeks.<sup>37</sup> The original bill was very comprehensive, attempting to rewrite many provisions of the Georgia Code affecting branch banking, bank holding companies, bank activities, and overall compliance; the bill, as introduced, amended Code sections 7-1-600 through 7-1-608.<sup>38</sup> The bill contained a preamble stating that its primary purpose was to react to the sweeping changes in interstate banking, which required an overhaul of Georgia branch banking laws.<sup>39</sup> These laws had not been subjected to a comprehensive review and update for over twenty-five years.<sup>40</sup> The preamble hinted that the bill would not only help national banks, but also current Georgia community banks seeking to branch into adjacent counties and communities.<sup>41</sup>

The original version of SB 165 would have amended Code section 7-1-600 by redefining basic banking definitions, by deleting all references to cities, towns and municipalities, and by easing virtually all current restrictions.<sup>42</sup> It also lessened the burden of the board of directors of a parent bank to provide officers and manage the branch bank,<sup>43</sup> and deleted the county population requirements for adjacent county branching.<sup>44</sup> The original bill inserted provisions that would have allowed banks to establish branches in counties not currently served by any bank and to form a branch if the new location was not over thirty miles away from the parent.<sup>45</sup> The original bill would have amended Code section 7-1-603 to ease restrictions on automatic teller machines (ATMs), cash dispensing machines, and point-of-sale terminals.<sup>46</sup> The bill would have allowed the various bank machinery to be located freely throughout the state.<sup>47</sup>

The Senate Committee on Banks and Financial Institutions reported favorably on SB 165, and the bill returned to the Senate, where Senator Turner introduced a floor amendment, providing an effective date of

37. SB 165, as introduced, 1995 Ga. Gen. Assem.

38. Telephone Interview with Sen. Charles "Chuck" Clay, Senate District No. 37 (Apr. 17, 1996) [hereinafter Clay Interview]. Senator Clay stated that the drafters knew the bill was comprehensive, perhaps overly so, and that they expected to have the bill substantially shortened on further examination by the House. *Id.*

39. SB 165, as introduced, 1995 Ga. Gen. Assem.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

January 1, 1997 for the bill.<sup>48</sup> Senators Thompson and Cheeks presented an additional floor amendment, clarifying language that described which banks were affected and increasing the adjacent county population requirement from 100,000 to 250,000.<sup>49</sup> Both amendments were adopted by the Senate.<sup>50</sup>

The House Committee on Banks and Banking accepted SB 165 during the 1995 session, but because the committee intended to make major changes to the bill and sensed opposition to the sweeping changes introduced, they tabled the bill until the 1996 session.<sup>51</sup> While potentially grounded in specific changes the House committee wanted to make, this holdover was also related to politics and the political process.<sup>52</sup> The bill simply did not have enough votes before the recess, and many sponsors and supporters felt it necessary to use the summer recess to garner additional support for the bill.<sup>53</sup> Additionally, many felt that the general banking atmosphere in the community was changing.<sup>54</sup> When the 1996 session began, the House and Senate legislators had struck a compromise.<sup>55</sup>

#### *The Bill's Rebirth in the 1996 General Assembly*

In the 1996 session, the House Committee on Banks and Banking made drastic changes to SB 165.<sup>56</sup> The new bill only impacted Code section 7-1-601, relating to branch banking.<sup>57</sup> The scope of the bill was narrowed by deleting the previous amendments to various other banking topics, focusing instead on provisions governing the management, ownership, and creation of branch banks.<sup>58</sup>

The House committee substitute re-inserted a provision requiring parent banks to maintain control over the branches by electing cashiers and other officers.<sup>59</sup> The substitute also introduced the concept of de novo branching,<sup>60</sup> striking the previous requirements of merger and consolidation, and, for the first time, establishing a limit on the number

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48. SB 165 (SFA), 1995 Ga. Gen. Assem.

49. *Id.*

50. Final Composite Status Sheet, Mar. 18, 1996.

51. Clay Interview, *supra* note 38.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. SB 165 (HCS), 1996 Ga. Gen. Assem.

57. *Id.*

58. *Id.*

59. O.C.G.A. § 7-1-601(a) (Supp. 1996); SB 165 (HCS), 1996 Ga. Gen. Assem.

60. Bechtel Interview, *supra* note 1. De novo branching would allow banks to open up branches in the state without meeting previous requirements such as merging with or acquiring other banks. *Id.*

of branches allowed.<sup>61</sup> A phase-in period would allow three new or additional branch banks in the two-year period between July 1, 1996 and June 30, 1998.<sup>62</sup> Unrestricted de novo branching was to be allowed beginning on July 1, 1998.<sup>63</sup> These provisions allowed Georgia to join the national trend.<sup>64</sup>

The House committee substitute came before the full House on January 22, 1996, where several floor amendments were offered.<sup>65</sup> The first, by Representative Dan Lakly, sought to amend the definition of banks, branches, offices, and holding companies to "banks and trust companies."<sup>66</sup> This change was simply an attempt to change the wording in the bill, and it was defeated.<sup>67</sup> The second, by Representative Roy Barnes, contained a very substantial change to the nature of the bill.<sup>68</sup> This amendment was based on the assumption that branch banking was proceeding too fast.<sup>69</sup> Representative Barnes sought to limit the branching ability of a bank by limiting a bank to the establishment of one adjacent county branch within a five-year period.<sup>70</sup> He reasoned that his amendment would allow the smaller, community banks a market advantage for a short period of time.<sup>71</sup> This amendment was also defeated.<sup>72</sup> Comments from the amendment's opponents in the House indicated that several lawmakers believed smaller banks could compete with the bigger banks and, ironically, would also benefit from the ability to branch into other counties.<sup>73</sup>

Representative Barnes then offered a floor substitute to SB 165, which would have implemented the five-year, one-shot limit.<sup>74</sup> Again, he intended to protect the smaller community banks, but this substitute was defeated.<sup>75</sup> The House final version contained one minor

61. O.C.G.A. § 7-1-601(c)(1) (Supp. 1996); SB 165 (HCS), 1996 Ga. Gen. Assem.

62. O.C.G.A. § 7-1-601(c)(1) (Supp. 1996); 1996 Ga. Laws 642, §§ 2-3, at 645; SB 165 (HCS), 1996 Ga. Gen. Assem.

63. 1996 Ga. Laws 642, §§ 2-3, at 645; SB 165 (HCS), 1996 Ga. Gen. Assem.; Bechtel Interview, *supra* note 1.

64. Bechtel Interview, *supra* note 1.

65. Final Composite Status Sheet, Mar. 18, 1996.

66. Journal of the House, 1996 Ga. Gen. Assem., Jan. 25, 1996, at 245-46.

67. Clay Interview, *supra* note 37.

68. Journal of the House, 1996 Ga. Gen. Assem., Jan. 25, 1996, at 246-47.

69. Telephone Interview with Sen. Steve Thompson, Senate District No. 33 (Apr. 17, 1996) [hereinafter Thompson Interview].

70. Journal of the House, 1996 Ga. Gen. Assem., Jan. 25, 1996, at 246-47.

71. Record of Proceedings in the House General Session (Jan. 25, 1996) (remarks by Rep. Barnes) (available in Georgia State University College of Law Library).

72. Journal of the House, 1996 Ga. Gen. Assem., Jan. 25, 1996, at 246-47.

73. Record of Proceedings in the House General Session (Jan. 25, 1996) (remarks by various lawmakers) (available in Georgia State University College of Law Library).

74. Journal of the House, 1996 Ga. Gen. Assem., Jan. 25, 1996, at 246-47.

75. Thompson Interview, *supra* note 69.



amendment from the previous Committee on Banks and Banking version.<sup>76</sup> A clause requiring that all banks shall serve the needs of the community and comply with the Community Reinvestment Act was inserted.<sup>77</sup>

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76. Journal of the House, 1996 Ga. Gen. Assem., Jan. 25, 1996, at 245-46.

77. O.C.G.A. § 7-1-601(c)(1) (Supp. 1996); SB 165 (HCSFA), 1996 Ga. Gen. Assem.