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CHAPTER 25.

 SOUTH CAROLINA BANKING AND BRANCHING EFFICIENCY ACT OF 1996

ARTICLE 1.

 ACQUISITIONS OF BANKS BY BANK HOLDING COMPANIES

**SECTION 34‑25‑10.** Definitions

For purposes of this article:

(1) “Acquire” means:

(a) for a company to merge or consolidate with a bank holding company;

(b) for a company to assume direct or indirect ownership or control of:

(i) more than twenty‑five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was not a bank holding company prior to such acquisition;

(ii) more than five percent of any class of voting shares of a bank holding company or a bank, if the acquiring company was a bank holding company prior to such acquisition;

(iii) all or substantially all of the assets of a bank holding company or a bank; or

(c) for a company to take any other action that results in the direct or indirect acquisition of control by such company of a bank holding company or a bank.

(2) “Affiliate” has the meaning set forth in Section 2(k) of the Bank Holding Company Act.

(3) “Bank” has the meaning set forth in Section 2(c) of the Bank Holding Company Act.

(4) “Bank holding company”:

(a) has the meaning set forth in Section 2(a) of the Bank Holding Company Act; and

(b) unless the context requires otherwise, includes a South Carolina bank holding company and an out‑of‑state bank holding company.

(5) “Bank Holding Company Act” means the federal Bank Holding Company Act of 1956, as amended.

(6) “Bank supervisory agency” means any of the following:

(a) any agency of another state with primary responsibility for chartering and supervising banks; and

(b) the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies.

(7) “Board” means the State Board of Financial Institutions.

(8) “Branch” means any office at which a bank accepts deposits. The term “branch” does not include, however, the following:

(a) unmanned automatic teller or loan machines, point of sale terminals, or other similar unmanned electronic banking facilities;

(b) offices located outside the United States; or

(c) loan production offices, representative offices, or other offices at which deposits are not accepted.

(9) “Company” has the meaning set forth in Section 2(b) of the Bank Holding Company Act, and includes a bank holding company.

(10) “Control” means and shall be construed consistently with the provisions of Section 2(a) of the Bank Holding Company Act.

(11) “Deposit” has the meaning set forth in 12 U.S.C. Section 1813(1).

(12) “Depository institution” means any institution included for any purpose within the definitions of “insured depository institution” as set forth in 12 U.S.C. Section 1813(c)(2) and (3).

(13) “Home state regulator” means, with respect to an out‑of‑state bank holding company, the bank supervisory agency of the state in which such company maintains its principal place of business.

(14) “South Carolina bank” means a bank that is:

(a) organized under Section 34‑1‑70; or

(b) organized under federal law and having its principal place of business in this State.

(15) “South Carolina state bank” means a bank chartered under the laws of South Carolina.

(16) “South Carolina bank holding company” means a bank holding company that:

(a) had its principal place of business in this State on July 1, 1966, or the date on which it became a bank holding company, whichever is later; and

(b) is not controlled by a bank holding company other than a South Carolina bank holding company.

(17) “Out‑of‑state bank holding company” means a bank holding company that is not a South Carolina bank holding company.

(18) “Principal place of business” of a bank holding company means the state in which the total deposits of its bank subsidiaries were the greatest on the later of July 1, 1966, or the date on which such company became a bank holding company.

(19) “State” means any state, territory, or other possession of the United States, including the District of Columbia.

(20) “Subsidiary” has the meaning set forth in Section 2(d) of the Bank Holding Company Act.

**SECTION 34‑25‑20.** Purpose

This article sets forth the conditions under which a company may acquire a South Carolina bank or a South Carolina bank holding company. This article is intended not to discriminate against out‑of‑state holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act, as amended by Section 101 of the Riegle‑Neal Interstate Banking and Branching Efficiency Act of 1994, Pub.L. No. 103‑328.

**SECTION 34‑25‑30.** Board approval

(a) Except as otherwise expressly permitted by federal law, no company may acquire a South Carolina bank holding company or a South Carolina state bank without the prior approval of the board.

(b) The prohibition in subsection (a) shall not apply where the acquisition is made:

(1) solely for the purpose of facilitating an acquisition otherwise permitted under this article;

(2) in a transaction arranged by the board or another bank supervisory agency to prevent the insolvency or closing of the acquired bank;

(3) in a transaction in which a bank forms its own bank holding company, if the ownership rights of the former bank shareholders are substantially similar to those of the shareholders of the new bank holding company; or

(4) in a transaction in which a bank sells stock to a company organized for the purpose of acquiring such bank, if the acquiring company is not, and is not expected to become, a subsidiary of any other company.

(c) In a transaction for which the board’s approval is not required under this section, the parties shall give written notice to the board at least fifteen days before the effective date of the acquisition, unless a shorter period of notice is required under applicable federal law.

**SECTION 34‑25‑40.** Application

(a) A company that proposes to make an acquisition under this article shall:

(1) file with the board a copy of the notice or application that such company has filed with the responsible federal bank supervisory agency, together with such additional information as the board may prescribe; and

(2) pay to the board the application fee, if any, prescribed by the board.

(b) To the extent consistent with the effective discharge of the board’s responsibilities, the forms established under this article for application and reporting shall conform to those established by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act.

(c) In connection with an application received under this article, the board shall:

(1) require that prior notice of the application be published once in a daily newspaper of general circulation in South Carolina and provide an opportunity for public comment; and

(2) make the application available for public inspection to the extent required or permitted under applicable state or federal law.

(d) If the applicant is an out‑of‑state bank holding company that is not incorporated under the laws of this State, it shall submit with the application proof that the applicant has complied with applicable requirements of Section 33‑15‑101(a), or if not subject to Section 33‑15‑101(a), has appointed an agent for service of process in the State of South Carolina.

**SECTION 34‑25‑50.** Disapproval of application

(a) Except as otherwise expressly provided in this section, the board shall not approve an acquisition under this article if upon consummation of the transaction the applicant, including any depository institution affiliated with the applicant, would control thirty percent or more of the total amount of deposits held by depository institutions in this State.

(b) The board by regulation may promulgate a procedure whereby the limitation on control of deposits set forth in subsection (a) of this section may be waived for good cause shown.

(c) The board shall not approve an application for an acquisition under this article unless the South Carolina bank to be acquired, or all South Carolina bank subsidiaries of the bank holding company to be acquired, has as of the proposed date of acquisition been in existence and in continuous operation for more than five years; provided, however, that this prohibition shall not apply to an acquisition in which a newly organized bank sells stock to an existing bank holding company that has at least one subsidiary that is a South Carolina bank.

**SECTION 34‑25‑60.** Time for decision; public hearing

(a) The board shall decide whether to approve an acquisition under this article within sixty days after receipt of a completed application. However, if the board requests additional information from the applicant following receipt of a completed application, the time limit for decision by the board shall be the later of:

(1) the date set forth in this subsection (a); or

(2) thirty days after the board’s receipt of the requested additional information.

(b) The board in its discretion may hold a public hearing in connection with an application if a significant issue of law or fact has been raised with respect to the proposed acquisition.

(c) If the board holds a public hearing within ninety days after receipt of an application, the time limit specified in subsection (a) shall be extended to thirty days after the conclusion of the public hearing.

(d) An application shall be deemed approved if the board takes no action on the application within the time limits specified in this section.

**SECTION 34‑25‑70.** Reporting

(a) To the extent specified by the board by regulation, order or written request, each bank holding company that directly or indirectly controls a South Carolina state bank or a South Carolina bank holding company, shall submit to the board:

(1) one or more copies of each financial report filed by such company with any bank supervisory agency (except for any report the disclosure of which would be prohibited by applicable federal or state law), within fifteen days after the filing thereof with such agency; and

(2) an annual report, not later than April fifteenth of each year, specifying for each bank and branch in the state controlled by the bank holding company:

(i) the location;

(ii) the amount of deposits held as of the end of the preceding calendar year; and

(iii) the amount of loans made during the preceding calendar year to individuals and entities with addresses in this State.

(b) At the request of the board, to the extent permitted by applicable state or federal law, each bank holding company that controls a South Carolina state bank or a South Carolina bank holding company shall provide to the board copies of the reports of examination of such company or any such South Carolina state bank or South Carolina bank holding company.

(c) The board may examine a South Carolina bank holding company whenever the board has reason to believe that such company is not being operated in compliance with the laws of this State or in accordance with safe and sound banking practices.

**SECTION 34‑25‑80.** Agency agreements; prohibited activity.

(a) Any South Carolina state bank, upon compliance with the requirements of this section, may agree to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, and perform such other services as may receive with the prior approval of the board, as an agent for an affiliated depository institution.

(b) A South Carolina state bank that proposes to enter into an agency agreement under this section shall file with the board, at least fifteen days before the effective date of the agreement, a notice of intention to enter into an agency agreement with an affiliated depository institution.

(c) If any proposed service is not specifically designated in subsection (a) of this section, and has not previously been approved in a regulation promulgated by the board, the board shall decide whether to approve the offering of such service within thirty days after receipt of the notice required by subsection (b). However, if the board requests additional information after reviewing such notice, the time limit for the board’s decision shall be thirty days after receiving such additional information. In deciding whether to approve, either by regulation or order, any proposed service that is not specifically designated in subsection (a), the board shall consider whether such service would be consistent with applicable federal and state law and the safety and soundness of the principal and agent institutions. The board shall give appropriate notice to the public of each approval, by regulation or order, of any proposed service pursuant to this subsection (c).

(d) Any proposed service subject to subsection (c) shall be deemed approved if the board takes no action on the notice required by subsection (b) within the time limits specified in subsection (c).

(e) A South Carolina state bank may not under an agency agreement:

(1) conduct any activity as an agent that it would be prohibited from conducting as a principal under applicable state or federal law; or

(2) have an agent conduct any activity that the bank as principal would be prohibited from conducting under applicable state or federal law.

(f) The board may order a South Carolina state bank or any other depository institution subject to the board’s enforcement powers to cease acting as an agent or principal under any agency agreement with an affiliated depository institution that the board finds to be inconsistent with safe and sound banking practices.

(g) Notwithstanding any other provision of the state law, a South Carolina state bank acting as an agent for an affiliated depository institution in accordance with this section shall not be considered to be a branch of that institution or agent for service of process as to that institution.

**SECTION 34‑25‑90.** Enforcement.

(a) The board may enforce the provisions of this article by any appropriate action in the courts of this State, including an action for injunctive relief, provided that the board promptly shall give notice to the home state regulator of any enforcement action initiated against an out‑of‑state bank holding company and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

(b) Any company which knowingly violates any provision of this chapter, or any regulation or order issued by the board pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars for each day during which the violation continues. Any individual who wilfully participates in a violation of this chapter, or any regulation, or order of the board issued pursuant to this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars. Any officer, director, agent, or employee of a bank holding company or subsidiary of it who makes any false entry in any book, report, record, or statement of the company or subsidiary with the intent to deceive, or who, with like intent wilfully omits to make a true entry of any material pertaining to the business of the company or subsidiary in any book, report, record, or statement of the company or subsidiary, made or kept by him or under his direction, is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than one year, or both.

**SECTION 34‑25‑100.** Board authority.

In order to carry out the purposes of this article, the board may:

(a) promulgate regulations in accordance with the Administrative Procedures Act;

(b) 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;

(c) accept any report of examination or investigation by another bank supervisory agency having concurrent jurisdiction over a South Carolina state bank or a bank holding company that controls a South Carolina state bank in lieu of conducting the board’s own examination or investigation of such bank holding company or bank;

(d) enter into contracts with any bank supervisory agency having concurrent jurisdiction over a South Carolina state bank or a bank holding company that controls a South Carolina state bank to engage the services of such agency’s examiners at a reasonable rate of compensation, or to provide the services of the board’s examiners to such agency at a reasonable rate of compensation; provided that any such contract shall be deemed a sole source contract.

(e) enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any South Carolina state bank or any bank holding company that controls a South Carolina state bank; provided that the board may take any such action independently (except with respect to the examination of an out‑of‑state bank holding company) if the board determines that such action is necessary to carry out its responsibilities under this article or to enforce compliance with the laws of this State; and provided, further that in the case of an out‑of‑state bank holding company, the board shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters; and

(f) assess supervisory and examination fees that shall be payable by South Carolina banks and South Carolina bank holding companies in connection with the board’s performance of its duties under this article and in accordance with regulations promulgated by the board. 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 board.

ARTICLE 3.

 BRANCHING AND BANK MERGERS

**SECTION 34‑25‑210.** Purpose.

It is the intent of this article to permit interstate branching by merger under Section 102 of the Riegle‑Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103‑328, in accordance with the provisions set forth in this article.

**SECTION 34‑25‑220.** Definitions.

For purposes of this article:

(1) “Bank” has the meaning set forth in 12 U.S.C. Section 1813. However, the term “bank” shall not include any “foreign bank” as defined in 12 U.S.C. Section 3101(7), except that this term shall include any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) “Bank holding company” has the meaning set forth in 12 U.S.C. Section 1841(a)(1).

(3) “Bank supervisory agency” means:

(a) any agency of another state with primary responsibility for chartering and supervising banks; and

(b) the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies.

(4) “Branch” means any office at which a bank accepts deposits. The term “branch” does not include, however, the following:

(a) unmanned automatic teller or loan machines, point of sale terminals, or other similar unmanned electronic banking facilities;

(b) offices located outside the United States; or

(c) loan production offices, representative offices, or other offices at which deposits are not accepted.

(5) “Board” means the Board of Financial Institutions.

(6) “Control” means and shall be construed consistently with the provisions of 12 U.S.C. Section 1841(a)(2).

(7) “Deposit” has the meaning set forth in 12 U.S.C. Section 1813(1).

(8) “Home state” means:

(a) with respect to a state bank, the state by which the bank is chartered;

(b) with respect to a national bank, the state in which the main office of the bank is located;

(c) with respect to a foreign bank, the state determined to be the home state of such foreign bank under 12 U.S.C. Section 3103(c).

(9) “Home state regulator” means, with respect to an out‑of‑state bank, the bank supervisory agency of the state in which such bank is chartered.

(10) “Host state” means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.

(11) “Insured depository institution” has the meaning set forth in 12 U.S.C. Section 1813(h).

(12) “Interstate merger transaction” means:

(a) the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(b) the purchase of all or substantially all of the assets (including all or substantially all of the branches) of a bank whose home state is different from the home state of the acquiring bank.

(13) “Out‑of‑state bank” means a bank whose home state is a state other than South Carolina.

(14) “Out‑of‑state state bank” means a bank chartered under the laws of any state other than South Carolina.

(15) “Resulting bank” means a bank that has resulted from an interstate merger transaction under this article.

(16) “State” means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(17) “South Carolina bank” means a bank whose home state is South Carolina.

(18) “South Carolina state bank” means a bank chartered under the laws of South Carolina.

**SECTION 34‑25‑230.** Merger resulting in South Carolina state bank; board approval.

With the prior approval of the board, a South Carolina state bank may establish, maintain, and operate one or more branches in a state other than South Carolina pursuant to an interstate merger transaction in which the South Carolina state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant South Carolina state bank shall file an application on a form prescribed by the board and pay the fee prescribed by the board. The applicant also shall comply with the applicable provisions of the South Carolina Business Corporation Act of 1988. If the board finds that (i) the proposed transaction will not be detrimental to the safety and soundness of the applicant or the resulting bank, (ii) any new officers and directors of the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the resulting bank, and (iii) the proposed merger is consistent with the convenience and needs of the communities to be served by the resulting bank in this State and is otherwise in the public interest, it shall approve the interstate merger transaction and the operation of branches outside of South Carolina by the South Carolina state bank. Such an interstate merger transaction may be consummated only after the applicant has received the board’s written approval.

**SECTION 34‑25‑240.** Merger resulting in out‑of‑state bank; board approval.

(a) One or more South Carolina banks may enter into an interstate merger transaction with one or more out‑of‑state banks under this article, and an out‑of‑state bank resulting from such transaction may maintain and operate the branches in South Carolina of a South Carolina bank that participated in such transaction, provided that the conditions and filing requirements of this article are met.

(b) Except as otherwise expressly provided in this subsection (b), an interstate merger transaction involving two or more banks both having offices in this State shall not be permitted under this article if, upon consummation of such transaction, the resulting bank (including all insured depository institutions that would be “affiliates” as defined in 12 U.S.C. Section 1841(k) of the resulting bank) would control thirty percent or more of the total amount of deposits held by all insured depository institutions in this State. The board by regulation may promulgate a procedure whereby the foregoing limitation on control of deposits may be waived for good cause shown. This subsection shall not apply with respect to any interstate merger transaction involving only affiliated banks.

(c) An interstate merger transaction resulting in the acquisition by an out‑of‑state bank of a South Carolina bank, or all or substantially all of the branches of a South Carolina bank, shall not be permitted under this article unless such South Carolina bank shall have been in continuous operation, on the date of such acquisition, for a period of at least five years.

**SECTION 34‑25‑250.** Application.

Any out‑of‑state bank that will be the resulting bank pursuant to an interstate merger transaction involving a South Carolina state bank shall notify the board of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the board and pay the filing fee, if any, required by the board. Any South Carolina state bank which is a party to such interstate merger transaction shall comply with the South Carolina Business Corporation Act of 1988, and with other applicable state and federal laws. Any out‑of‑state bank which shall be the resulting bank in such an interstate merger transaction shall provide satisfactory evidence to the board of compliance with applicable requirements of Section 33‑15‑101.

**SECTION 34‑25‑260.** Findings of board.

An interstate merger transaction prior to June 1, 1997, involving a South Carolina bank shall not be consummated, and any out‑of‑state bank resulting from such a merger shall not operate any branch in South Carolina, unless the board first (i) finds that the laws of the home state of each out‑of‑state bank involved in the interstate merger transaction permits South Carolina state banks, under substantially the same terms and conditions as are set forth in this article, to acquire banks and establish and maintain branches in that state by means of interstate merger transactions, (ii) concludes that the resulting out‑of‑state bank has complied with all applicable requirements of South Carolina law and has agreed in writing to comply with the laws of this State applicable to its operation of branches in South Carolina, and (iii) certifies to the federal bank supervisory agency having authority to approve the interstate merger transaction that the conditions and requirements of this article have been met.

**SECTION 34‑25‑270.** Applicable law.

(a) An out‑of‑state state bank which establishes and maintains one or more branches in South Carolina under this article may conduct any activities at such branch or branches that are authorized under the laws of this State for South Carolina state banks.

(b) A South Carolina state bank may conduct any activities at any branch outside South Carolina that are permissible for a bank chartered by the host state where the branch is located.

(c) An out‑of‑state bank that has established or acquired a branch in South Carolina under this article may establish or acquire additional branches in South Carolina to the same extent that any South Carolina bank may establish or acquire a branch in South Carolina under state law.

**SECTION 34‑25‑280.** Reporting; board authority.

(a) To the extent consistent with subsection (c) of this section, the board may make such examinations of any branch established and maintained in this State pursuant to this article by an out‑of‑state state bank as the board may deem necessary to determine whether the branch is being operated in compliance with the laws of this State and in accordance with safe and sound banking practices.

(b) The board may prescribe requirements for periodic reports regarding any out‑of‑state bank that operates a branch in South Carolina pursuant to this article. The required reports shall be provided by such bank or by the bank supervisory agency having primary responsibility for such bank. Any reporting requirements prescribed by the board under this subsection (b) shall be (i) consistent with the reporting requirements applicable to South Carolina state banks and (ii) appropriate for the purpose of enabling the board to carry out its responsibilities under this article.

(c) The board may enter into cooperative, coordinating, and information‑sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in South Carolina of an out‑of‑state state bank, or any branch of a South Carolina state bank in any host state, and the board may accept such parties’ reports of examination and reports of investigation in lieu of conducting its own examinations or investigations.

(d) The board may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a South Carolina state bank or an out‑of‑state state bank operating a branch in this State pursuant to this article to engage the services of such agency’s examiners at a reasonable rate of compensation, or to provide the services of the board’s examiners to such agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract.

(e) The board may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in South Carolina of an out‑of‑state state bank or any branch of a South Carolina state bank in any host state; provided that the board at any time may take such actions independently if the board deems such actions to be necessary or appropriate to carry out its responsibilities under this article or to ensure compliance with the laws of this State; and provided, further, that, in the case of an out‑of‑state state bank, the board shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out‑of‑state state bank that maintains one or more branches in this State may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this State and regulations of the board. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the board.

**SECTION 34‑25‑290.** Enforcement.

If the board determines that a branch maintained by an out‑of‑state state bank in this State is being operated in violation of any provision of the laws of this State, or that such branch is being operated in an unsafe and unsound manner, the board shall have the authority to take all such enforcement actions as it would be empowered to take if the branch were a South Carolina state bank; provided that the board promptly shall give notice to the home state regulator of each enforcement action taken against an out‑of‑state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

**SECTION 34‑25‑300.** Promulgation of regulations.

The board may promulgate such regulations as it determines to be necessary or appropriate in order to implement the provisions of this article.

**SECTION 34‑25‑310.** Notice of transaction.

Each out‑of‑state state bank that has established and maintains a branch in this State pursuant to this article, shall give at least thirty days’ prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law) to the board of any merger, consolidation, or other transaction that would cause a change of control with respect to such bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, or the federal Bank Holding Company Act of 1956, as amended, or any successor statutes thereto.