

524.1802 Limitation.

1. For purposes of this section, unless the context otherwise requires:

a. "Acquisition" means any of the following:

(1) Obtaining direct or indirect ownership or control of more than twenty-five percent of any class of the voting shares of a depository institution.

(2) Obtaining the power to directly or indirectly control in any manner the election of a majority of the directors, trustees, or other persons exercising similar functions of a depository institution.

(3) Obtaining direct or indirect ownership or control of, or acquisition or assumption of, the deposits of a depository institution or the deposits of any branch, office, or other facility of a depository institution.

b. "Affiliate" of a depository institution or holding company includes a corporation, limited liability company, trust, estate, association, or other similar organization which satisfies any of the following:

(1) The depository institution or holding company directly or indirectly owns or controls either twenty-five percent of the voting shares or more than twenty-five percent of the number of shares voted for the election of such entity's directors, trustees, or other individuals exercising similar functions, or controls in any manner the election of a majority of its directors, trustees, or other individuals exercising similar functions.

(2) Control is held directly or indirectly in such entity through share ownership, or in any other manner, by the shareholders of the depository institution or holding company who own or control either twenty-five percent of the shares of such depository institution or holding company or more than twenty-five percent of the number of shares voted for the election of directors, trustees, or other individuals exercising similar functions of such depository institution or holding company, or by trustees for the benefit of the shareholders of any such depository institution or holding company.

(3) A majority of such entity's directors, trustees, or other individuals exercising similar functions are directors of the depository institution or holding company.

(4) Directly or indirectly owns or controls either twenty-five percent of the voting shares of the depository institution or holding company or more than twenty-five percent of the number of shares voted for the election of directors, trustees, or other individuals exercising similar functions of the depository institution or holding company, or controls in any manner the election of a majority of the directors, trustees, or other individuals exercising similar functions of the depository institution or holding company, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of the depository institution or holding company are held by trustees.

c. "Deposit" means deposit as defined in 12 U.S.C. § 1813.

d. "Deposit in this state" means a deposit properly shown in a deposit report or in a statement under subsection 4, paragraph "c", "d", "h", or "i", as a deposit at a depository institution in this state or at a branch, office, or other facility of the depository institution in this state, without regard to the location of the depositor.

e. "Deposit report" means the annual report that identifies deposits by branch, office, or other facility and that is filed by a depository institution with the federal deposit insurance corporation or the office of thrift supervision. For a depository institution not required to file an annual report that identifies deposits by branch, office, or other facility, "deposit report" means the quarterly report of condition filed by the depository institution for the quarter that ends on or nearest to the date as of which deposits are stated in a deposit report that identifies deposits by branch, office, or other facility and that is required to be filed by other depository institutions having the same type of charter. The date of a deposit report means the date as of which deposits are stated in the deposit report.

f. "Depository institution" means a depository institution as defined in 12 U.S.C. § 1813.

g. "Holding company" means a bank holding company as defined in section 524.1801 and a savings and loan holding company as defined in 12 U.S.C. § 1467a.

h. "Incorporated in any state" means a limited liability company organized as a state bank under this chapter and a limited liability company organized as a state bank under the laws of any state as defined in 12 U.S.C. § 1813(a)(3).

i. "Series of acquisitions" means both of the following:

(1) All acquisitions made at any time after the date of the most recent available deposit report and prior to the date of a statement under subsection 4, and all acquisitions made during such time by any depository institution or holding company that is acquired by the depository institution or holding company making the statement, and all acquisitions made during such time by any such depository institution or holding company so acquired.

(2) All acquisitions made at any time between the dates of the two most recent available deposit reports, that are not shown on the most recent available deposit report, by a depository institution or holding company making a statement under subsection 4, and all acquisitions made during such time by any depository institution or holding company that is acquired by the depository institution or holding company making the statement, and all acquisitions made during such time by any such depository institution or holding company so acquired.

2. A depository institution or holding company shall not directly or indirectly acquire a depository institution or the deposits of a depository institution if any of the following apply:

a. The acquirer is a depository institution and, upon the acquisition, the total deposits in this state directly or indirectly controlled by the depository institution would exceed fifteen percent of the total deposits in this state, as determined under this section.

b. The acquirer is a holding company and, upon the acquisition, the total deposits in this state directly or indirectly controlled by the holding company would exceed fifteen percent of the total deposits in this state, as determined under this section.

c. The acquirer is a depository institution or a holding company which is directly or indirectly owned or controlled by a holding company and, upon the acquisition, the total deposits in this state directly or indirectly controlled by the holding company which owns or controls the acquiring depository institution or holding company would exceed fifteen percent of the total deposits in this state, as determined under this section.

3. On or after January 1, 2000, a depository institution shall not directly or indirectly cause or permit the transfer, assignment, or other disposition of deposits, or the conversion of deposits to nondeposit investments or other nondeposit products, whether by written agreement or otherwise, for the purpose of achieving compliance with the deposit limitation set forth in subsection 2. The following transfers or conversions by a depository institution shall not be deemed to be made for the purpose of achieving such compliance:

a. A transfer or conversion in the ordinary course of business, such as compliance with a contract to transfer funds from deposit accounts into repurchase agreements, mutual funds, or other nondeposit investments.

b. A transfer or conversion of deposits held in the name of an affiliate as a depositor of the depository institution.

c. A transfer of deposits, which are not subject to reacquisition, in an acquisition by an entity that is not an affiliate of the depository institution.

4. If the superintendent determines that an acquisition may involve a question of compliance with the deposit limitation set forth in subsection 2, the superintendent shall require that each depository institution and holding company involved in the acquisition submit to the superintendent a statement certified by its president, chief executive officer, or chief financial officer, which states that a transfer, assignment, or other disposition of deposits prohibited by subsection 3 has not been made. The statement, in sufficient detail to permit the superintendent to make the determinations required under subsections 5 and 6, shall also set forth the following:

a. The total amount of deposits in this state directly or indirectly held or controlled by the depository institution making the statement, or the deposits in this state directly or indirectly held or controlled by all depository institutions that are directly or indirectly owned or controlled by the holding company, on the date of the most recent available deposit reports of the depository institutions.

b. If all of the deposits of a depository institution making a deposit report were directly or indirectly acquired since the date of the most recent available deposit report in an acquisition or as a result of a series of acquisitions, the statement shall set forth the amount of the deposits in this state acquired from each such other depository institution measured as of the date of

the most recent available deposit report of each such depository institution made prior to the acquisition.

c. If less than all of the deposits of a depository institution were directly or indirectly acquired since the date of the most recent available deposit report in an acquisition or as a result of a series of acquisitions, the statement shall set forth the total amount of deposits in this state directly or indirectly acquired in such acquisitions.

d. The total amount of deposits in this state directly or indirectly owned or controlled by the depository institution or holding company making the statement that have been directly or indirectly transferred or assigned in a transaction since the date of the most recent available deposit report to an entity that is not an affiliate of the depository institution or holding company making the statement, and that are not subject to reacquisition.

e. The total amount of deposits in this state set forth in paragraph "a" plus the deposits described in paragraphs "b" and "c", and less the deposits described in paragraph "d".

f. The total amount of deposits in this state directly or indirectly held or controlled by the depository institution making the statement, or in the case of a statement by a holding company, the total amount of deposits in this state directly or indirectly held or controlled by all depository institutions that are directly or indirectly owned or controlled by the holding company, on the date of the earlier of the two most recent available deposit reports of the depository institutions.

g. If all of the deposits of any other depository institution making a deposit report were acquired between the dates of the two most recent available deposit reports in an acquisition or as a result of a series of acquisitions, the statement shall set forth the amount of the deposits in this state acquired from each such other depository institution measured as of the date of the earlier of the two most recent available deposit reports of each such depository institution made prior to the acquisition.

h. If less than all of the deposits of any depository institution were directly or indirectly acquired between the dates of the two most recent available deposit reports in an acquisition or as a result of a series of acquisitions, the statement shall set forth the total amount of deposits in this state directly or indirectly acquired in such acquisitions.

i. The total amount of deposits in this state directly or indirectly owned or controlled by the depository institution or holding company making the statement that have been directly or indirectly transferred or assigned in a transaction between the dates of the two most recent available deposit reports to an entity that is not an affiliate of the depository institution or holding company making the statement, and that are not subject to reacquisition.

j. The total amount of deposits in this state set forth in paragraph "f" plus the deposits described in paragraphs "g" and "h", and less the deposits described in paragraph "i".

5. The superintendent may conduct such review as the superintendent considers necessary to verify the statements submitted under subsection 4, paragraphs "a", "b", "c", and "d". The superintendent shall calculate the following fraction:

a. The numerator is the sum of the deposits in this state directly or indirectly owned or controlled by the depository institutions involved in the acquisition and the deposits in this state directly or indirectly owned or controlled by all other depository institutions directly or indirectly owned or controlled by a holding company involved in the acquisition, as stated in subsection 4, paragraph "e".

b. The denominator is the deposits in this state of all depository institutions as stated in the most recent available deposit reports.

6. The superintendent may conduct such review as the superintendent considers necessary to verify the statements submitted under subsection 4, paragraphs "f", "g", "h", and "i". The superintendent shall calculate the following fraction:

a. The numerator is the average of the sum of the deposits in this state directly or indirectly owned or controlled by the depository institutions involved in the acquisition and the deposits in this state directly or indirectly owned or controlled by all other depository institutions directly or indirectly owned or controlled by a holding company involved in the acquisition, as stated in subsection 4, paragraphs "e" and "j".

b. The denominator is the average of the deposits in this state of all depository institutions as stated in the two most recent available deposit reports.

7. If the quotient determined by the calculation in either subsection 5 or 6 exceeds fifteen percent, the proposed acquisition does not comply with the limitation of subsection 2.

[C73, 75, 77, 79, 81, §524.1802; 82 Acts, ch 1253, §3]

84 Acts, ch 1230, §25; 90 Acts, ch 1002, §2; 97 Acts, ch 23, §64; 2000 Acts, ch 1094, §1, 2; 2004 Acts, ch 1141, §72

Referred to in §524.1807