Georgia State University Law Review

Volume 13
Issue 1 *November 1996*

Article 14

3-29-2012

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Georgia State University Law Review

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Recommended Citation
Georgia State University Law Review (1996) "BANKING AND FINANCE Financial Institutions: Change Georgia Department of Banking and Finance Regulations by Authorizing Georgia's Adoption of the Federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994," *Georgia State University Law Review*: Vol. 13: Iss. 1, Article 14.
Available at: http://scholarworks.gsu.edu/gsulr/vol13/iss1/14

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BANKING & FINANCE

Financial Institutions: Change Georgia Department of Banking and Finance Regulations by Authorizing Georgia's Adoption of the Federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994

CODE SECTIONS:	O.C.G.A. §§ 7-1-620 to -627 (amended), -628 (new)
BILL NUMBER:	SB 492
ACT NUMBER:	624
GEORGIA LAWS:	1996 Ga. Laws 279
SUMMARY:	This Act conforms current Georgia law to the requirements of the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 in regard to interstate bank acquisitions and mergers. The Act authorizes Georgia banks to participate in interstate bank acquisition and merger transactions, resulting in interstate bank networks similar to the existing Georgia branch networks allowed by law.
EFFECTIVE DATE:	April 1, 1996, O.C.G.A. §§ 7-1-620 to -626[1]; June 1, 1997, § 7-1-628

History

Interstate banking is the act of a bank or bank holding company owning and operating banking subsidiaries in more than one state.[2] When established in different states, each subsidiary of a bank was often forced to exist as a separate corporate entity with its own capital, management, and board of directors.[3] However, each bank must comply with the host state's regulatory reporting structure and supervisory examinations.[4]

Although clear in definition and theory, interstate banking is muddled in practice. Interstate banking has been restricted for over seventy years.[5] Due to increasing pressure from banks wishing to ease

1. This section of the Act became effective upon approval by the Governor.
2. *The Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994: The Challenge for the States*, THE CONFERENCE OF STATE BANK SUPERVISORS, 1994, at iii [hereinafter *Challenge for the States*].
3. *Id.*
4. *Id.*
5. Rodney Ho, *Nationwide Interstate Banking Law Near Reality*, ATLANTA CONST.,

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these restrictions, in the last ten years both Congress and various states have been attempting to design a workable set of interstate banking rules and systems.[6]

Georgia took steps to introduce interstate banking nearly twenty years ago.[7] In the mid 1980s, Georgia was part of a group of eleven southeastern states that formed the Southeast Regional Banking Compact.[8] This compact sought to encourage growth of regional banks in the Southeast, while protecting them from acquisition by banks outside the region.[9] The compact was complete when several of the southern states passed legislation encouraging banking expansion within the region, but restricting bank expansion in other states.[10] In Georgia, the legislation passed in 1984 and became effective on July 1, 1985.[11] This law, along with the tremendous economic growth in the south, allowed such regional banking powers as NationsBank and First Union to begin their astounding growth in the Southeast.[12]

By 1994, the Southeast Regional Banking Compact had fostered the growth of southern banks to tremendous levels, but was now an obstacle to continued growth outside the region.[13] Thus, in 1994, the Georgia General Assembly left the Compact, hoping to create legislation that would allow Georgia-based banks the opportunity to expand to other regions.[14] In that year, Georgia passed its own version of an interstate banking bill, which allowed Georgia banks and bank holding companies to expand into states on a reciprocal basis.[15] Upon its enactment, effective July 1, 1995, Georgia became one of approximately forty other states that allowed reciprocal interstate banking on a national basis.[16]

Meanwhile, Congress attacked this same issue on a national basis, and the Riegle-Neal Interstate Banking and Branching Efficiency Act was signed into law on September 29, 1994.[17] Although the Riegle-

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Aug. 2, 1994, at B1.

6. *Id.*

7. *Id.*

8. *Legislative Review*, 11 GA. ST. U. L. REV. 50 (1994).

9. *Id.*

10. *Id.* at 51.

11. *Id.*; 1984 Ga. Laws 1467 (formerly found at O.C.G.A. §§ 7-1-620 to -626 (Supp. 1995)).

12. Ho, *supra* note 5.

13. *Legislative Review, supra* note 8, at 51.

14. *Id.* at 52.

15. 1994 Ga. Laws 215 (formerly found at O.C.G.A. § 7-1-620 to -627 (Supp. 1995)).

16. *Legislative Review, supra* note 8, at 52.

17. Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338; Correspondence with Sen. Loyce W. Turner, Senate District No. 8 (Apr. 17, 1996) [hereinafter Turner Correspondence] (available in Georgia State University College of Law Library).

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Neal Act dealt with interstate banking on a national basis, it left a number of public policy issues to the individual states.[18] The 1995 General Assembly dealt with several of those issues, but did not deal specifically with acquisitions or with the opt-in/opt-out issue related to merger transactions.[19]

Georgia still needed to conform state law to the acquisition requirements outlined in Riegle-Neal.[20] Because Riegle-Neal prohibits states from enacting interstate laws treating out-of-state banks differently than in-state banks, amendments were needed for any discriminatory provisions existing in Georgia law.[21] Furthermore, the opt-in issue allows a state to choose to apply the federal Riegle-Neal parameters to its own interstate banking laws.[22] Opting in gives any bank the right to merge a lawfully acquired bank into an interstate network, and allows banks to merge operations across state lines.[23] Opting out would prevent Georgia banks from participating in interstate merger transactions, and would place those banks at a competitive disadvantage with banks in other states.[24]

SB 492 deals specifically with those acquisition amendments and opt-in issues left untouched by earlier Georgia legislation.[25] When Riegle-Neal was enacted, every state was well advised to make a decision on where they stood on these interstate banking issues.[26] Furthermore, every state was well advised to opt-in or opt-out of the interstate merger laws.[27] To date, most states have opted in, with only Texas opting out.[28] SB 492 was introduced in order to reinforce and adapt the current statutes on bank acquisitions by bank holding companies, and to opt-in to the Riegle-Neal merger provisions.[29]

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18. Turner Correspondence, *supra* note 17.

19. *Id.; see infra* text accompanying notes 22-24; *see also Legislative Review*, 12 GA. ST. U. L. REV. 1 (1995).

20. Turner Correspondence, *supra* note 17.

21. *Id.*

22. Telephone Interview with Leslie A. Bechtel, Deputy Commissioner for Legal Affairs, Department of Banking and Finance (Apr. 17, 1996) [hereinafter Bechtel Interview].

23. Turner Correspondence, *supra* note 17.

24. *Id.*

25. 1994 Ga. Laws 215 dealt with amending the previous regional banking laws to apply them to nationwide banking. *Legislative Review, supra* note 8, at 50. 1995 Ga. Laws 673 followed many of the Riegle-Neal provisions in amending several Code sections. *Legislative Review, supra* note 19. These broad changes to banks and financial institutions went well beyond the scope of SB 492.

26. Bechtel Interview, *supra* note 22.

27. *Id.*

28. *Id.*

29. *Id.*

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SB 492

SB 492 was introduced in the Senate on January 9, 1996.[30] It was submitted to the Senate Banking and Finance Committee, and a committee substitute was presented to the Senate on February 7, 1996.[31] The changes in the committee substitute were primarily stylistic and contained few substantive changes.[32] The Senate passed this version on February 9, 1996,[33] and the House passed the bill with no revisions on March 7, 1996.[34]

The Act has two sections. Section 1 covers interstate banking acquisitions and reinforces certain portions of Georgia law, which were already in place as the National Interstate Act.[35] It enables Georgia to continue exerting control over bank acquisitions in a manner consistent with federal guidelines.[36] Section 2 of the Act creates a new part 20 of article 2 of the Financial Institutions Code of Georgia.[37] It deals with merger transactions, and allows Georgia state banks to go to other states, which have also opted in, and purchase or merge a bank into their Georgia bank.[38]

Interstate Banking Acquisitions

The Act completely rewrites and rearranges part 19 of article 2 of the Financial Institutions Code of Georgia (the Code).[39] The Code sections were changed to comply with the Riegle-Neal Act and are consistent with the recommendations made by the Conference of State Bank Supervisors (CSBS).[40]

The amended Code section 7-1-620 provides an introductory preamble, defining the purpose of part 19 of the Code.[41] It states that this section covers the acquisition of banks by bank holding companies outside of Georgia, the acquisition of banks outside of the state by Georgia bank holding companies, and it sets forth application, notice,

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30. Final Composite Status Sheet, Mar. 18, 1996.
31. *Id.*
32. Turner Correspondence, *supra* note 17.
33. Final Composite Status Sheet, Mar. 18, 1996.
34. *Id.*
35. O.C.G.A. §§ 7-1-620 to -627 (Supp. 1996). This section of the Act amends part 19 of article 2 of the Financial Institutions Code of Georgia, dealing with bank acquisitions. The Act amends this part of the Code to conform current Georgia law to the requirements of Riegle-Neal. Turner Correspondence, *supra* note 17.
36. Bechtel Interview, *supra* note 22.
37. O.C.G.A. §§ 7-1-628 to -628.15 (Supp. 1996).
38. Bechtel Interview, *supra* note 22.
39. O.C.G.A. §§ 7-1-620 to -626 (Supp. 1996).
40. *See Challenge for the States, supra* note 2.
41. O.C.G.A. § 7-1-620 (Supp. 1996).

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registration and other related requirements.[42] It also specifies that this section is not applicable to acquisitions of Georgia banks by bank holding companies totally residing within Georgia.[43] This expanded the preamble contained in the bill as introduced, which did not specify the different positions relative to bank residency.[44]

Code section 7-1-621 contains the standard definitions for the Act.[45] The Act amends the definition of "bank" to include building and loan associations, savings and loan associations, and federal savings banks.[46] The Act also seeks to clarify the state of origin of the bank by adding definitions such as "Georgia state bank," "home state," and "host state."[47] The Act added an additional definition of "acquire" to include all other merger transactions.[48] The CSBS forms, agreed to by several states, are the source for these definitions.[49]

The Act amends Code section 7-1-622 to describe what acquisitions may occur under this and other relevant sections of the Georgia Code, explicitly stating that a Georgia bank may acquire a bank outside the state, and vice versa.[50] The original language of the bill, as introduced, listed every possible transaction in detail.[51] However, the enacted section simply gives an overview of the same items, opting to delete the more detailed listing.[52] Additionally, this section places limits on bank acquisitions.[53] First, a limit for the acquired bank to have been in existence for five years remains in the Code.[54] Second, a bank affiliated with a depository institution already in the state has certain limitations placed upon it if it intends to acquire another bank.[55] Third, a bank outside of Georgia may not acquire a bank within the state if the resulting entity would control more than thirty percent or more of the deposits in Georgia.[56] Code section 7-1-622 also requires

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42. *Id.*
43. *Id.*
44. *Compare id. with* SB 492, as introduced, 1996 Ga. Gen. Assem.
45. O.C.G.A. § 7-1-621 (Supp. 1996).
46. *Id.* § 7-1-621(2).
47. *Id.* § 7-1-621(11) to (12), (14).
48. *Id.* § 7-1-621(1)(E).
49. Bechtel Interview, *supra* note 22.
50. O.C.G.A. § 7-1-622 (Supp. 1996).
51. SB 492, as introduced, 1996 Ga. Gen. Assem.
52. O.C.G.A. § 7-1-622 (Supp. 1996); *see also* Bechtel Interview, *supra* note 22.
53. O.C.G.A. § 7-1-622 (Supp. 1996).
54. *Id.* § 7-1-622(b)(1). The five year rule applies to both interstate bank acquisitions and interstate bank merger transactions. Turner Correspondence, *supra* note 17.
55. O.C.G.A. § 7-1-622(b)(2) (Supp. 1996).
56. *Id.* § 7-1-622(b)(2)(B). The deposit concentration limit applies to both acquisitions and mergers, and prohibits interstate acquisitions or merger transactions that would result in any one bank holding company controlling more than thirty percent of the deposits in the state. Generally, these limits do not apply to

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compliance with all filing requirements under parts 19 and 20 of the Code.[57]

Code section 7-1-623 is a notice provision, which requires a Georgia bank to give notice at least thirty days prior to acquiring a bank outside of Georgia.[58] However, in certain circumstances a bank holding company acquiring a Georgia bank may comply with this section by giving notice within thirty days following the transaction.[59]

If a bank does not comply with all pertinent sections of the Code, section 7-1-624 provides that Georgia may require divestment of an acquisition.[60]

Other miscellaneous reporting and banking requirements are included in Code section 7-1-625.[61] Code section 7-1-626 details the severability of each individual portion of the Act.[62] In the event a section or provision is deemed invalid by the courts, the remaining provisions will not be affected and will continue to apply to all parties.[63] The Act deletes Code section 7-1-627, which permitted anti-acquisition acts by banks.[64] Previously, Georgia bank directors could vote against acquisition by any bank,[65] but the Act deletes that provision to conform to the Riegle-Neal acquisition provisions.[66]

Opting-in to the Riegle-Neal Merger Provisions

The Act also adds part 20 to article 2 of the Financial Institutions Code of Georgia, dealing with interstate merger transactions.[67] The final language in this portion of the Act did not significantly change the language in the bill as introduced.[68]

Code section 7-1-628 describes the purpose of these new provisions: to allow interstate banking through merger transaction both into and

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transactions of initial entry into Georgia. Turner Correspondence, *supra* note 17.

57. O.C.G.A. § 7-1-622(d) (Supp. 1996).

58. *Id.* § 7-1-623(a).

59. *Id.* § 7-1-623(b).

60. *Id.* § 7-1-624(b).

61. *Id.* § 7-1-625.

62. *Id.* § 7-1-626.

63. *Id.*

64. *Compare id.* §§ 7-1-620 to -626 *with* 1994 Ga. Laws 215, § 7, at 223 (formerly found at O.C.G.A. § 7-1-627 (Supp. 1995)).

65. 1994 Ga. Laws 215, § 7, at 223 (formerly found at O.C.G.A. § 7-1-627 (Supp. 1995)).

66. *Challenge for the States, supra* note 2.

67. O.C.G.A. §§ 7-1-628 to -628.15 (Supp. 1996).

68. Turner Correspondence, *supra* note 17. Stylistic as opposed to substantive changes are evident in the final bill. *Id.* According to Representative Turner, these changes had more to do with "political one-upmanship" than the substantive issues of the bill. *Id.*

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out of the state of Georgia.[69] The intent of this section is to set the groundwork for later challenges to the statute.[70] Code section 7-1-628.1 lists the standard definitions, and contains many of the same definitions found in part 19 of the Code.[71]

Code section 7-1-628.2 explicitly permits interstate merger transactions and contains additional language that identifies the applicable parts of the Code that control bank acquisitions and in-Georgia mergers.[72] This section tells the reader where to look in the Code for the applicable provisions regulating acquisitions and mergers.[73]

Code section 7-1-628.3 places conditions and restrictions on mergers.[74] A merger is not permitted if one of the banks currently has a branch in the state where the merger occurs, if the merger candidate has been in existence for less than five years prior to the merger, or if the resulting entity would control thirty percent or more of the deposits in Georgia.[75]

Code section 7-1-628.4 requires the bank to comply with the current holding company laws and to review certain Code sections when preparing a merger.[76] Code section 7-1-628.5 details notice and registration requirements.[77]

Code section 7-1-628.6 sets out the powers that a merged bank has in the state of Georgia.[78] Likewise, the section states that Georgia banks operating in other states may operate under the same powers as banks in the host state.[79] Branching laws remain in effect for all merged banks under this section.[80]

Code section 7-1-628.7 details miscellaneous examination and reports requirements that all merged banks must follow.[81] Code section 7-1-628.8 defines a "de novo branch" as a branch of a bank that is originally established as a branch, and does not become a branch as the

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69. O.C.G.A. § 7-1-628 (Supp. 1996).
70. Bechtel Interview, *supra* note 22.
71. O.C.G.A. § 7-1-628.1 (Supp. 1996).
72. *Id.* § 7-1-628.2.
73. Bechtel Interview, *supra* note 22.
74. O.C.G.A. § 7-1-628.3 (Supp. 1996).
75. *Id.* The deposit concentration limit applies to both acquisitions and mergers, and prohibits interstate acquisitions or merger transactions that would result in any single bank holding company controlling more than thirty percent of the deposits in the state. Turner Correspondence, *supra* note 17.
76. O.C.G.A. § 7-1-628.4 (Supp. 1996); Bechtel Interview, *supra* note 22.
77. O.C.G.A. § 7-1-628.5 (Supp. 1996).
78. *Id.* § 7-1-628.6.
79. *Id.* § 7-1-628.6(b).
80. *Id.* § 7-1-628.6(c).
81. *Id.* § 7-1-628.7.

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result of an acquisition or merger.[82] By this provision, Georgia has decided not to opt-in to the de novo standard that Riegle-Neal proposed.[83] Likewise, Code section 7-1-628.9 deals with purchasing branches within the state of Georgia, and prohibits the acquisition of a branch unless the entire bank is bought.[84]

The remaining sections of the Act deal with administrative, fiscal and taxing issues.[85] Code section 7-1-628.10 states that the commissioner shall have the authority to take enforcement actions against a bank in violation of state laws.[86] Code section 7-1-628.11 permits the registration of and imposition of fee requirements on banks seeking to merge.[87] Code section 7-1-628.12 allows the Commissioner to require reporting from the bank.[88] Code section 7-1-628.13 details that when control of the bank or holding company changes, the bank must inform the Commissioner.[89] Code section 7-1-628.14 details the severability of each individual portion of the Act.[90] Finally, Code section 7-1-628.15 grants Georgia the authority to tax these interstate branches and banks.[91]

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82. *Id.* § 7-1-628.8(a).
83. Bechtel Interview, *supra* note 22.
84. O.C.G.A. § 7-1-628.9 (Supp. 1996).
85. *See id.* §§ 7-1-628.10 to .15.
86. *Id.* § 7-1-628.10.
87. *Id.* § 7-1-628.11.
88. *Id.* § 7-1-628.12.
89. *Id.* § 7-1-628.13.
90. *Id.* § 7-1-628.14.
91. *Id.* § 7-1-628.15.

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