

NEW SECTION. Sec. 9. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 1, 1983.

Passed the House April 17, 1983.

Approved by the Governor April 23, 1983.

Filed in Office of Secretary of State April 23, 1983.

CHAPTER 157

[Senate Bill No. 3182]

FINANCIAL INSTITUTIONS—HOLDING COMPANY ACQUISITIONS— SUPERVISOR OF BANKING—DUTIES

AN ACT Relating to financial institutions; amending section 30.04.060, chapter 33, Laws of 1955 as amended by section 6, chapter 196, Laws of 1982 and RCW 30.04.060; amending section 30.04.110, chapter 33, Laws of 1955 as amended by section 1, chapter 136, Laws of 1969 and RCW 30.04.110; amending section 2, chapter 194, Laws of 1963 and RCW 30.04.128; amending section 30.04.140, chapter 33, Laws of 1955 as amended by section 2, chapter 133, Laws of 1967 and RCW 30.04.140; amending section 30.04.160, chapter 33, Laws of 1955 and RCW 30.04.160; amending section 7, chapter 136, Laws of 1969 and RCW 30.04.215; amending section 30.04.230, chapter 33, Laws of 1955 as last amended by section 7, chapter 196, Laws of 1982 and RCW 30.04.230; adding new sections to chapter 30.04 RCW; repealing section 30.04.150, chapter 33, Laws of 1955 and RCW 30.04.150; repealing section 1, chapter 241, Laws of 1981 and RCW 43.19.095; repealing section 2, chapter 241, Laws of 1981 and RCW 43.19.112; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. There is added to chapter 30.04 RCW a new section to read as follows:

A bank or trust company may purchase for its own account shares of stock of a bank or a holding company that owns or controls a bank if the stock of the bank or company is owned exclusively, except to the extent directly qualifying shares are required by law, by depository institutions and the bank or company and all subsidiaries thereof are engaged exclusively in providing services for other depository institutions and their officers, directors, and employees. In no event may the total amount of such stock held by a bank or trust company in any bank or bank holding company exceed at any time ten percent of its capital stock and paid-in and unimpaired surplus, and in no event may the purchase of such stock result in a bank or trust company acquiring more than twenty-five percent of any class of voting securities of such bank or company. Such a bank or bank holding company shall be called a "banker's bank."

NEW SECTION. Sec. 2. There is added to chapter 30.04 RCW a new section to read as follows:

Sales of federal reserve funds with a maturity of one business day or under a continuing contract are not "loans or obligations" or "liabilities" for the purposes of the loan limits established by RCW 30.04.110. However, sales of federal reserve funds with a maturity of more than one business day are subject to those limits.

For the purposes of this section, "sale of federal reserve funds" means any transaction among depository institutions involving the disposal of immediately available funds resulting from credits to deposit balances at federal reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

Sec. 3. Section 30.04.060, chapter 33, Laws of 1955 as amended by section 6, chapter 196, Laws of 1982 and RCW 30.04.060 are each amended to read as follows:

The supervisor, the deputy supervisor, or a bank examiner, without previous notice, shall visit each bank and each trust company at least once in each year, and oftener if necessary, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation. ~~((Said))~~ The supervisor may make such other full or partial examinations as deemed necessary and may examine any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington and obtain reports of condition for any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington. The supervisor may visit and examine into the affairs of any nonpublicly held corporation in which the bank, trust company, or bank holding company has an investment or any publicly held corporation the capital stock of which is controlled by the bank, trust company, or bank holding company; may appraise and revalue such corporations' investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporations for such purposes. The supervisor may, in his or her discretion, accept in lieu of the examinations required in this section the examinations required under the terms of the federal reserve act for banks which are, or may become, members of a federal reserve bank or the deposits of which are insured by the Federal Deposit Insurance Corporation. Any wilful false swearing in any examination ~~((shall be))~~ is perjury in the second degree.

Sec. 4. Section 30.04.110, chapter 33, Laws of 1955 as amended by section 1, chapter 136, Laws of 1969 and RCW 30.04.110 are each amended to read as follows:

The total liability to any bank or trust company of any person for money borrowed, including in the liabilities of a firm or association the liabilities of the several members thereof, shall not at any time exceed ~~((fifteen))~~ twenty percent of the capital and surplus of such bank or trust company;

but the discount of bills of exchange drawn in good faith against actually existing values and the discount of commercial or business paper of solvent parties, actually owned by the person negotiating the same, shall not be considered as money borrowed by him: PROVIDED, That loans secured by collateral security having an ascertained market value of at least fifteen percent more than the amount of the loans secured, shall not be limited by this section.

Loans or obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

For the purposes of this section, "capital" includes capital notes or debentures issued under chapter 30.36 RCW.

Sec. 5. Section 2, chapter 194, Laws of 1963 and RCW 30.04.128 are each amended to read as follows:

Any state bank or trust company, stock savings bank, or mutual savings bank may invest in the capital stock of banking service corporations (~~((organized for the purpose of performing or providing mechanical, clerical, or record keeping services for two or more banks))~~). The total amount which any such bank may invest in the shares of such corporations may not exceed in the case of a bank or trust company or stock savings bank, ten percent of its paid in or unimpaired capital and unimpaired surplus, or in the case of a mutual savings bank, ten percent of its guaranty fund. Such a bank service corporation may not engage in any activity other than ~~((the performance of services for banks))~~ those permitted by the bank service corporation act, 12 U.S.C. Sec. 1861, et seq., as amended by P.L. 97-320, and in effect on the effective date of this 1983 act. The performance of any service, and any records maintained by any such corporation for a bank, shall be subject to regulation and examination by the supervisor and appropriate federal agencies to the same extent as if such services or records were being performed or maintained by the bank on its own premises.

Sec. 6. Section 30.04.140, chapter 33, Laws of 1955 as amended by section 2, chapter 133, Laws of 1967 and RCW 30.04.140 are each amended to read as follows:

No bank or trust company shall pledge or hypothecate any of its securities or assets to any depositor, ~~((or creditor,))~~ except that it may qualify as depository for United States deposits, postal savings funds or other public funds, or funds held in trust and deposited by any public officer by virtue of his office, or funds held by the United States or the state of Washington, or any officer thereof in trust, or for funds of corporations owned or controlled by the United States, and may give such security for such deposits as are

required by law or by the officer making the same; and it may give security to its trust department for deposits with itself which represent trust funds invested in savings accounts or which represent fiduciary funds awaiting investment or distribution(~~(: PROVIDED, That any bank or trust company may borrow, for temporary purposes, not to exceed in the aggregate amount the paid-in capital and surplus thereof, and may pledge as security therefor assets of such corporation, not exceeding one and one-half times the amount borrowed))~~).

Sec. 7. Section 30.04.160, chapter 33, Laws of 1955 and RCW 30.04.160 are each amended to read as follows:

~~((When it shall appear to the supervisor that any bank or trust company is habitually borrowing for the purpose of reloaning, he may require such corporation to pay off such borrowed money. Nothing herein shall prevent any bank or trust company from rediscounting in good faith and indorsing any of its negotiable notes, but all such moneys borrowed and all such discounts shall at all times show on its books and in its reports. No certificates of deposit shall be issued for the purpose of borrowing money.))~~ No officer of any bank or trust company shall issue the note of such corporation for money borrowed or rediscount any of its notes except when authorized by resolution of its board of directors or by an authorized committee thereof. Violation of any provision of RCW 30.04.140 or 30.04.150 or of this section shall constitute a felony.

Sec. 8. Section 7, chapter 136, Laws of 1969 and RCW 30.04.215 are each amended to read as follows:

In addition to all powers ~~((previously))~~ enumerated by this title, and those necessarily implied therefrom, a bank may engage in other business ~~((activity: PROVIDED, That))~~ activities that have been determined by the board of governors of the federal reserve system or by the United States Congress to be closely related to the business of banking, as of the effective date of this 1983 act. At least thirty days before investment in corporations or other entities under this chapter, notification by letter shall be made to the supervisor in accordance with such terms and conditions as the supervisor might establish by rule. A bank ~~((-which))~~ that desires to perform an activity ~~((which))~~ that is not expressly authorized by ~~((the powers enumerated in))~~ this section~~(:))~~ shall first apply to the supervisor for authorization to conduct such activity. Within thirty days of the receipt of this application, the supervisor shall determine whether the activity is ~~((and appropriate adjunct))~~ closely related to the business of banking, whether the public convenience and advantage will be promoted, whether the activity is apt to create an unsafe or unsound practice by the bank and whether the applicant is capable of performing such an activity. If the supervisor finds the activity to be ~~((an appropriate adjunct))~~ closely related to the business of banking and the bank is otherwise qualified, he shall forthwith inform the applicant

that the activity is authorized. If the supervisor determines that such activity is not ~~((an appropriate adjunct))~~ closely related to the business of banking or the bank is not otherwise qualified, he shall forthwith inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the Administrative Procedure Act, chapter 34.04 RCW ~~((, as now or hereafter amended))~~. In determining whether a particular activity is ~~((an appropriate adjunct))~~ closely related to the business of banking, the supervisor shall be guided by ~~((whether national banks under federal laws and administrative regulations and rulings have the authority to perform such activity))~~ the rulings of the board of governors of the federal reserve system in making determinations in connection with the powers exercisable by bank holding companies, and the activities performed by other commercial banks or their holding companies. Any activity which may be performed by a bank, except the taking of deposits, may be performed by a corporation, all of the outstanding stock of which is owned by the bank. A bank shall not invest a sum greater than twenty-five percent of its capital and surplus in the capital stock of corporations organized to perform activities authorized by this section.

Sec. 9. Section 30.04.230, chapter 33, Laws of 1955 as last amended by section 7, chapter 196, Laws of 1982 and RCW 30.04.230 are each amended to read as follows:

(1) A corporation or association organized under the laws of this state or licensed to transact business in the state, other than a bank or trust company, may acquire any or all shares of stock of any bank, trust company, or national banking association. Nothing in this section shall be construed to prohibit the merger, consolidation, or reorganization of a bank or trust company in accordance with this title ~~((, or to permit a))~~.

(2) Unless the terms of this section are complied with, an out-of-state bank holding company ((the operations of which are principally conducted outside this state to)) shall not acquire more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association the principal operations of which are conducted within this state.

(3) As used in this section a "bank holding company" means a company that is a bank holding company as defined by the Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. 1941 et seq.). An "out-of-state bank holding company" is a bank holding company that principally conducts its operations outside this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a holding company. A "domestic bank holding company" is a bank holding company that principally conducts its operations within this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a bank holding company.

(4) Any such acquisition referred to under subsection (2) of this section by an out-of-state bank holding company requires the express written approval of the supervisor of banking. Approval shall not be granted unless and until the following conditions are met:

(a) An out-of-state bank holding company desiring to make an acquisition referred to under subsection (2) of this section and the bank, trust company, national banking association, or domestic bank holding company parent thereof, if any, proposed to be acquired shall file an application in writing with the supervisor of banking and pay an investigation fee of five thousand dollars to the supervisor of banking. The application shall contain such information as the supervisor of banking may prescribe by rule as necessary or appropriate for the purpose of making a determination under this section. The application and supporting information and all examination reports and information obtained by the supervisor and the supervisor's staff in conducting its investigation shall be confidential and privileged and not subject to public disclosure under chapter 42.17 RCW. The application and information may be disclosed to federal bank regulatory agencies and to officials empowered to investigate criminal charges, subject to legal process, valid search warrant, or subpoena. In any civil action in which such application or information is sought to be discovered or used as evidence, any party may, upon notice to the supervisor and other parties, petition for an in camera review. The court may permit discovery and introduction of only those portions that are relevant and otherwise unobtainable by the requesting party. The application and information shall be discoverable in any judicial action challenging the approval of an acquisition by the supervisor as arbitrary and capricious or unlawful.

(b) The supervisor of banking shall find that:

(i) The bank, trust company, or national banking association that is proposed to be acquired or the domestic bank holding company controlling such bank, trust company, or national banking association is in such a liquidity or financial condition as to be in danger of closing, failing, or insolvency. In making any such determination the supervisor shall be guided by the criteria developed by the federal regulatory agencies with respect to emergency acquisitions under the provisions of 12 U.S.C. Sec. 1828(c);

(ii) There is no state bank, trust company, or national banking association doing business in the state of Washington or domestic bank holding company with sufficient resources willing to acquire the entire bank, trust company, or national banking association on at least as favorable terms as the out-of-state bank holding company is willing to acquire it;

(iii) The applicant out-of-state bank holding company has provided all information and documents requested by the supervisor in relation to the application; and

(iv) The applicant out-of-state bank holding company has demonstrated an acceptable record of meeting the credit needs of its entire community,

including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution.

(c) The supervisor shall consider:

(i) The financial institution structure of this state; and

(ii) The convenience and needs of the public of this state.

(5) Nothing in this section may be construed to prohibit, limit, restrict, or subject to further regulation the ownership by a bank of the stock of a bank service corporation or a banker's bank.

NEW SECTION. Sec. 10. Section 30.04.150, chapter 33, Laws of 1955 and RCW 30.04.150 are each repealed.

****NEW SECTION. Sec. 11. The following acts or parts of acts are each repealed:***

(1) Section 1, chapter 241, Laws of 1981 and RCW 43.19.095; and

(2) Section 2, chapter 241, Laws of 1981 and RCW 43.19.112.

*Sec. 11. was vetoed, see message at end of chapter.

NEW SECTION. Sec. 12. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13. Sections 1 through 10 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 24, 1983.

Passed the House April 24, 1983.

Approved by the Governor April 25, 1983, with the exception of section 11, which is vetoed.

Filed in Office of Secretary of State April 25, 1983.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 11, Senate Bill No. 3182, entitled:

"AN ACT relating to financial institutions."

Section 11 of this bill would repeal the banking examination fund and the savings and loan and credit unions examination fund. The monies in those funds, paid by fees from financial institutions, provide the entire operating budget for the Divisions of Banking and of Savings and Loans, Department of General Administration. The funds are essential to the Department's effective regulation of our financial institutions. Because this bill has an emergency clause, those funds would immediately cease to exist, and the Department would have no money to implement this bill or to perform any other related regulatory function. For these reasons, I have vetoed section 11.

With the exception of section 11, which I have vetoed, Senate Bill No. 3182 is approved."