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HOUSE BILL 38

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

MURRAY RYAN

AN ACT

RELATING TO INTERSTATE BANKING; PROVIDING FOR THE INTERSTATE ACQUISITION OF NEW MEXICO BANKS AND NEW MEXICO BANK HOLDING COMPANIES AND FOR INTERSTATE BANK BRANCHING BY MERGER; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1 through 12 of this act may be cited as the "Interstate Bank Acquisition Act".

Section 2. [NEW MATERIAL] DEFINITIONS. --As used in the Interstate Bank Acquisition Act:

A. "acquire" means:

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

(2) for a company to assume direct or indirect

1 ownership or control of:

2 (a) more than twenty-five percent of any
3 class of voting shares of a bank holding company or a bank, if
4 the acquiring company was not a bank holding company prior to
5 the acquisition;

6 (b) more than five percent of any class
7 of voting shares of a bank holding company or a bank, if the
8 acquiring company was a bank holding company prior to the
9 acquisition; or

10 (c) all or substantially all of the
11 assets of a bank holding company or a bank; or

12 (3) for a company to take any other action that
13 results in the direct or indirect acquisition by the company of
14 control of a bank holding company or a bank;

15 B. "affiliate" means that term as defined in 12
16 U. S. C. A. Section 371c(b);

17 C. "bank" means that term as defined in 12 U. S. C. A.
18 Section 1841(c);

19 D. "bank holding company" means that term as defined
20 in 12 U. S. C. A. Section 1841(a) and includes a New Mexico bank
21 holding company, an out-of-state bank holding company and a
22 foreign bank holding company;

23 E. "Bank Holding Company Act" means the federal Bank
24 Holding Company Act of 1956, 12 U. S. C. A. Section 1841 et seq.;

25 F. "bank supervisory agency" means:

1 (1) an agency of another state with primary
2 responsibility for chartering and supervising banks; and

3 (2) the office of the comptroller of the
4 currency, the federal deposit insurance corporation, the board
5 of governors of the federal reserve system and any successor to
6 these agencies;

7 G. "branch" means that term as defined in Subsection
8 C of Section 58-5-2 NMSA 1978;

9 H. "company" means that term as defined in 12
10 U. S. C. A. Section 1841(b);

11 I. "control" means that term as defined in 12
12 U. S. C. A. Section 1841(a) (2);

13 J. "deposit" means that term as defined in 12
14 U. S. C. A. Section 1813(1);

15 K. "depository institution" means an institution
16 defined as an "insured depository institution" in 12 U. S. C. A.
17 Sections 1813(c) (2) and (c) (3);

18 L. "director" means the director of the financial
19 institutions division of the regulation and licensing
20 department;

21 M. "foreign bank holding company" means a bank
22 holding company that is organized under the laws of a country
23 other than the United States or a territory or possession of the
24 United States;

25 N. "home state regulator" means, with respect to an

1 out-of-state bank holding company, the primary bank supervisory
2 agency of the state in which the company maintains its principal
3 place of business;

4 O. "New Mexico bank" means a bank that is:

5 (1) organized under the laws of this state; or

6 (2) organized under federal law and having its
7 principal place of business in this state;

8 P. "New Mexico bank holding company" means a bank
9 holding company that:

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

13 (2) is not controlled by an out-of-state bank
14 holding company;

15 Q. "New Mexico state bank" means a bank chartered by
16 the state of New Mexico;

17 R. "out-of-state bank holding company" means a bank
18 holding company that is not a New Mexico bank holding company;

19 S. "principal place of business" of a bank holding
20 company means the state in which the largest percentage of the
21 total deposits of its bank subsidiaries was deposited on the
22 later of July 1, 1966 or the date on which the company became a
23 bank holding company;

24 T. "state" means the District of Columbia or a
25 state, territory or possession of the United States; and

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1 U. "subsidiary" means that term as defined in 12
2 U. S. C. A. Section 1841(d).

3 Section 3. [NEW MATERIAL] PURPOSE AND INTENT OF ACT. --

4 The purpose of the Interstate Bank Acquisition Act is to
5 establish the conditions under which a company may acquire a New
6 Mexico bank or a New Mexico bank holding company. In enacting
7 it the legislature intends to avoid discrimination against out-
8 of-state bank holding companies or foreign bank holding
9 companies in any manner that would violate Section 3(d) of the
10 Bank Holding Company Act.

11 Section 4. [NEW MATERIAL] PERMITTED ACQUISITIONS. --

12 A. Except as provided in Subsection B of this
13 section, a company may not acquire a New Mexico state bank or a
14 New Mexico bank holding company without the prior approval of
15 the director unless federal law expressly permits the
16 acquisition without that approval.

17 B. The prohibition of Subsection A of this section
18 does not apply if the acquisition is made:

19 (1) solely for the purpose of facilitating an
20 acquisition otherwise permitted pursuant to the Interstate Bank
21 Acquisition Act;

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

25 (3) in a transaction in which a bank forms its

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1 own bank holding company, if the ownership rights of the former
2 bank shareholders are substantially similar to those of the
3 shareholders of the new bank holding company.

4 C. In a transaction for which the director's
5 approval is not required under this section, the acquiring
6 company shall give written notice to the director at least
7 ninety days before the effective date of the acquisition unless
8 a shorter period of notice is required under applicable federal
9 law.

10 Section 5. [NEW MATERIAL] REQUIRED APPLICATION-- FORMS. --

11 A. A company that proposes to make an acquisition
12 pursuant to the Interstate Bank Acquisition Act shall:

13 (1) file with the director a copy of the
14 application that the company has filed with the responsible
15 federal bank supervisory agency and any additional information
16 prescribed by the director; and

17 (2) pay to the director any application fee
18 prescribed by the director.

19 B. As long as they are consistent with the effective
20 discharge of the director's responsibilities, the application
21 and reporting forms established pursuant to the Interstate Bank
22 Acquisition Act shall conform to those established for the same
23 purposes by the board of governors of the federal reserve system
24 pursuant to the Bank Holding Company Act.

25 Section 6. [NEW MATERIAL] STANDARDS FOR APPROVAL. --

1 A. In deciding whether to approve an application for
2 a proposed acquisition pursuant to the Interstate Bank
3 Acquisition Act, the director shall consider whether the
4 acquisition may:

5 (1) be detrimental to the safety and soundness
6 of the New Mexico state bank or the New Mexico bank holding
7 company to be acquired;

8 (2) result in a substantial reduction of
9 competition in this state; or

10 (3) have a significantly adverse effect on the
11 convenience and needs of a community in this state served by the
12 New Mexico state bank or the New Mexico bank holding company to
13 be acquired.

14 B. Except as otherwise expressly provided in this
15 section, the director shall not approve an acquisition pursuant
16 to the Interstate Bank Acquisition Act if upon effecting the
17 transaction it would result in the applicant, including a
18 depository institution affiliated with the applicant, holding an
19 undue concentration of deposits totaling forty percent or more
20 of the total deposits in all depository institutions in New
21 Mexico.

22 C. The director may adopt a regulation establishing
23 a procedure authorizing the waiver of the limitation on deposit
24 concentration set forth in Subsection B of this section to
25 prevent the insolvency or closing of a New Mexico state bank.

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1 D. The director shall not approve an application for
2 an acquisition pursuant to the Interstate Bank Acquisition Act
3 unless either the New Mexico bank to be acquired, or at least
4 one New Mexico bank subsidiary of the bank holding company to be
5 acquired, has as of the proposed date of acquisition been in
6 existence and in continuous operation under an active charter
7 for a period of at least five years, except that the director
8 may approve an application for an acquisition of a consumer
9 credit bank chartered pursuant to the Consumer Credit Bank Act
10 even though the consumer credit bank has not been in continuous
11 operation under an active charter for a period of at least five
12 years.

13 Section 7. [NEW MATERIAL] PROCEDURES RELATING TO
14 APPLICATIONS. --

15 A. The director shall approve or disapprove an
16 application for acquisition pursuant to the Interstate Bank
17 Acquisition Act within ninety days after receipt of a completed
18 application unless the director requests additional information
19 from the applicant following receipt of a completed application
20 in which case the time limit for decision by the director is the
21 later of:

- 22 (1) the date set forth in this subsection; or
23 (2) thirty days after the director's receipt of
24 the requested additional information.

25 B. The director may hold a public hearing in

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1 connection with an application if a significant issue of law or
2 fact has been raised with respect to the proposed acquisition.

3 C. If the director holds a public hearing in
4 connection with an application, the time limit specified in
5 Subsection A of this section shall be extended to thirty days
6 after the conclusion of the public hearing.

7 D. An application is deemed approved if the director
8 takes no action on the application within the time limits
9 specified in this section.

10 Section 8. [NEW MATERIAL] REPORTS--EXAMINATIONS.--

11 A. To the extent specified by the director by
12 regulation, order or written request, each bank holding company
13 that directly or indirectly controls a New Mexico state bank or
14 a New Mexico bank holding company, or the home state regulator
15 of the company, shall submit to the director copies of each
16 financial report filed by the company with any bank supervisory
17 agency within fifteen days after the report is filed with the
18 agency unless the report is one the disclosure of which is
19 prohibited by federal or state law.

20 B. To the extent disclosure is permitted by state or
21 federal law, a bank holding company that controls a New Mexico
22 state bank or a New Mexico bank holding company, or the home
23 state regulator of the controlling bank holding company, shall
24 provide the director copies of any reports of examination of
25 that bank holding company or of the New Mexico bank holding

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1 company.

2 C. The director may examine a New Mexico bank
3 holding company whenever the director has reason to believe that
4 the company is not being operated in compliance with the laws of
5 this state or in accordance with safe and sound banking
6 practices. The provisions of Section 58-1-46 NMSA 1978 shall
7 apply to the examination.

8 Section 9. [NEW MATERIAL] AGENCY ACTIVITIES. --

9 A. If it complies with the requirements of this
10 section, a New Mexico state bank may agree to act as an agent
11 for any affiliated bank depository institution to receive
12 deposits, renew time deposits, close loans, service loans,
13 receive payments on loans and other obligations and perform
14 other services for which it has received the prior approval of
15 the director.

16 B. A New Mexico state bank that proposes to enter
17 into an agency agreement pursuant to this section shall file
18 with the director, at least thirty days before the effective
19 date of the agreement:

20 (1) a notice of intention to enter into an
21 agency agreement with an affiliated depository institution;

22 (2) a description of the services proposed to
23 be performed under the agency agreement; and

24 (3) a copy of the agency agreement.

25 C. If any proposed service is not specifically

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1 designated in Subsection A of this section and has not been
2 approved previously in a regulation issued by the director, the
3 director shall decide, within thirty days after receipt of the
4 notice required by Subsection B of this section, whether to
5 approve the offering of the service. If the director requests
6 additional information after reviewing the notice, the time
7 limit for the director's decision is thirty days after receiving
8 the additional information. In deciding whether to approve a
9 proposed service, the director shall consider whether the
10 service would be consistent with state and federal law and the
11 safety and soundness of the principal and agent institutions.
12 The New Mexico state bank shall give appropriate notice to the
13 public of each approval.

14 D. Any proposed service offered pursuant to
15 Subsection C of this section is deemed approved if the director
16 takes no action after receiving the notice required by
17 Subsection B of this section within the time limits specified in
18 Subsection C of this section.

19 E. A New Mexico state bank may not pursuant to an
20 agency agreement:

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

24 (2) have an agent conduct any activity that the
25 bank as principal would be prohibited from conducting under

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1 applicable state or federal law.

2 F. The director may order a New Mexico state bank or
3 any other depository institution that is subject to the
4 director's enforcement powers to cease acting as an agent or
5 principal under an agency agreement with an affiliated
6 depository institution if the director finds the provisions of
7 the agency agreement or the actions of the parties pursuant to
8 it to be inconsistent with safe and sound banking practices.

9 G. A New Mexico state bank acting as an agent for an
10 affiliated depository institution in accordance with this
11 section is not a branch bank of that institution.

12 Section 10. [NEW MATERIAL] AUTHORITY TO ISSUE
13 REGULATIONS--COOPERATIVE AGREEMENTS--FEES.--To carry out the
14 purposes of the Interstate Bank Acquisition Act, the director
15 may:

16 A. adopt regulations;

17 B. enter into cooperative, coordinating or
18 information-sharing agreements with a bank supervisory agency or
19 an organization affiliated with or representing a bank
20 supervisory agency;

21 C. accept a report of examination or investigation
22 by a bank supervisory agency having concurrent jurisdiction over
23 a New Mexico state bank or a bank holding company that controls
24 a New Mexico state bank in lieu of conducting an examination or
25 investigation of the bank or bank holding company;

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1 D. enter into a sole source contract pursuant to
2 Section 13-1-126 NMSA 1978 with a bank supervisory agency having
3 concurrent jurisdiction over a New Mexico state bank or a bank
4 holding company that controls a New Mexico state bank to engage
5 the services of that agency's examiners at a reasonable rate of
6 compensation, or to provide the services of the director's
7 examiners to that agency at a reasonable rate of compensation;

8 E. conduct joint examinations or joint enforcement
9 actions with a bank supervisory agency having concurrent
10 jurisdiction over a New Mexico state bank or a bank holding
11 company that controls a New Mexico state bank, but if the
12 examination or enforcement action involves an out-of-state bank
13 holding company, the director shall recognize the exclusive
14 authority of the home state regulator over corporate governance
15 matters and the primary responsibility of the home state
16 regulator with respect to safety and soundness matters;

17 F. conduct examinations and enforcement actions of a
18 New Mexico state bank or a New Mexico bank holding company that
19 controls a New Mexico state bank if the director determines
20 that the action is necessary to carry out the director's
21 responsibilities pursuant to the Interstate Bank Acquisition Act
22 or to enforce compliance with the laws of this state; and

23 G. include in regulations adopted provisions for:

24 (1) the assessment of supervisory and
25 examination fees to be paid by New Mexico banks and New Mexico

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1 bank holding companies in connection with the director's
2 performance of his duties; and

3 (2) sharing of fees assessed pursuant to
4 Paragraph (1) of this subsection with a bank supervisory agency
5 or an organization affiliated with or representing a bank
6 supervisory agency in accordance with an agreement between it
7 and the director.

8 Section 11. [NEW MATERIAL] ENFORCEMENT.--The director may
9 enforce the provisions of the Interstate Bank Acquisition Act by
10 an action for injunctive relief in the district court of Santa
11 Fe county. The director shall give notice promptly to the home
12 state regulator of any action commenced by the director against
13 an out-of-state bank holding company and, to the extent
14 practicable, shall consult and cooperate with that regulator in
15 pursuing and resolving the enforcement action.

16 Section 12. [NEW MATERIAL] SEVERABILITY.--If any part or
17 application of the Interstate Bank Acquisition Act is held
18 invalid or to be superseded, the remainder or its application to
19 other situations or persons shall not be affected.

20 Section 13. Section 58-26-4 NMSA 1978 (being Laws 1988,
21 Chapter 5, Section 4, as amended) is amended to read:

22 "58-26-4. INTERSTATE ACQUISITIONS PERMITTED.--
23 Notwithstanding the provisions of Section 58-5-11 NMSA 1978
24 restricting interstate acquisition:

25 A. interstate acquisitions of domestic depository

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1 institutions that are savings institutions or domestic holding
2 companies whose subsidiary depository institutions are savings
3 institutions are permitted by out-of-state depository
4 institutions and out-of-state holding companies effective
5 January 1, 1989; provided, however, until July 1, 1992, if a
6 domestic depository institution is to be so acquired, [~~such~~] the
7 acquired institution shall have been continuously operated for
8 at least five years, or if a domestic holding company is to be
9 so acquired, at least one of its subsidiary depository
10 institutions shall have been continuously operated for at least
11 five years; and

12 ~~[B. interstate acquisitions of domestic depository~~
13 ~~institutions that are banks or domestic holding companies whose~~
14 ~~subsidiary depository institutions are banks are permitted by~~
15 ~~out-of-state depository institutions and out-of-state holding~~
16 ~~companies; provided, however, until July 1, 1992, if a domestic~~
17 ~~depository institution is to be so acquired, such acquired~~
18 ~~institution shall have been continuously operated for at least~~
19 ~~five years, or if a domestic holding company is to be so~~
20 ~~acquired, at least one of its subsidiary depository institutions~~
21 ~~shall have been continuously operated for at least five years;~~
22 ~~and~~

23 ~~C.]~~ B. an interstate acquisition pursuant to this
24 section may not otherwise be contrary to law and shall not
25 result in undue concentration of deposits totaling forty percent

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1 or more of the total deposits in all financial institutions in
2 New Mexico. "

3 Section 14. [NEW MATERIAL] SHORT TITLE. -- Sections 14
4 through 27 of this act may be cited as the "Interstate Bank
5 Branching Act".

6 Section 15. [NEW MATERIAL] PURPOSE. -- The purpose of the
7 Interstate Bank Branching Act is to permit interstate bank
8 branching by merger pursuant to the provisions of the federal
9 Rege-Neal Interstate Banking and Branching Efficiency Act of
10 1994, PL. 103-328.

11 Section 16. [NEW MATERIAL] DEFINITIONS. -- As used in the
12 Interstate Bank Branching Act:

13 A. "bank" means that term as defined in 12 U. S. C. A.
14 Section 1813(h), but "bank" does not include any "foreign bank"
15 as defined in 12 U. S. C. A. Section 3101(7), unless the foreign
16 bank is organized under the laws of a territory of the United
17 States, Puerto Rico, Guam, American Samoa or the Virgin Islands
18 and its deposits are insured by the federal deposit insurance
19 corporation;

20 B. "bank holding company" means that term as defined
21 in 12 U. S. C. A. Section 1841(a)(1);

22 C. "bank supervisory agency" means:

23 (1) an agency of another state with primary
24 responsibility for chartering and supervising banks; and

25 (2) the office of the comptroller of the

1 currency, the federal deposit insurance corporation, the board
2 of governors of the federal reserve system, and any successor to
3 these agencies;

4 D. "branch" means that term as defined in Subsection
5 C of Section 58-5-2 NMSA 1978;

6 E. "control" means that term as defined in 12
7 U. S. C. A. Section 1841(a) (2);

8 F. "director" means the director of the financial
9 institutions division of the regulation and licensing
10 department;

11 G. "home state" means:

12 (1) with respect to a state bank, the state in
13 which the bank is chartered;

14 (2) with respect to a national bank, the state
15 in which the main office of the bank is located; and

16 (3) with respect to a foreign bank, the state
17 determined to be the home state of the foreign bank pursuant to
18 12 U. S. C. A. Section 3103(c);

19 H. "home state regulator" means the bank supervisory
20 agency of the state in which an out-of-state state bank is
21 chartered;

22 I. "host state" means a state, other than the home
23 state of a bank, in which the bank maintains, or seeks to
24 establish and maintain, a branch;

25 J. "insured depository institution" means that term

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1 as defined in 12 U.S.C.A. Section 1813(c)(2);

2 K. "interstate merger transaction" means:

3 (1) the merger or consolidation of banks with
4 different home states and the conversion of branches of any bank
5 involved in the merger or consolidation into branches of the
6 resulting bank; or

7 (2) the purchase of all or substantially all of
8 the assets and branches of a bank whose home state is different
9 from the home state of the acquiring bank;

10 L. "main office" means the office declared by a
11 bank to its chartering bank supervisory agency to be its main
12 office;

13 M. "New Mexico bank" means a bank whose home state
14 is New Mexico;

15 N. "New Mexico state bank" means a bank chartered
16 under the laws of New Mexico;

17 O. "out-of-state bank" means a bank whose home state
18 is a state other than New Mexico;

19 P. "out-of-state state bank" means a bank chartered
20 under the laws of any state other than New Mexico;

21 Q. "resulting bank" means a bank that has resulted
22 from an interstate merger transaction under the Interstate Bank
23 Branching Act; and

24 R. "state" means a state of the United States, the
25 District of Columbia, a territory of the United States,

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1 Puerto Rico, Guam, American Samoa, the Trust Territory of the
2 Pacific Islands, the Virgin Islands or the Northern Mariana
3 Islands.

4 Section 17. [NEW MATERIAL] AUTHORITY OF STATE BANKS TO
5 ESTABLISH INTERSTATE BRANCHES BY MERGER. --

6 A. If it obtains the prior approval of the director,
7 a New Mexico state bank may establish, maintain and operate one
8 or more branches in a state other than New Mexico pursuant to an
9 interstate merger transaction in which the New Mexico state bank
10 is the resulting bank.

11 B. Not later than the date on which the required
12 application for the interstate merger transaction is filed with
13 the responsible federal bank supervisory agency, the applicant
14 New Mexico state bank shall file the documents and information
15 required by Subsections A and B of Section 58-4-4 NMSA 1978 and
16 pay a fee in an amount that shall be prescribed by the director
17 by rule.

18 C. The director shall approve the interstate merger
19 transaction and the operation of branches outside of New Mexico
20 by the New Mexico state bank if he finds that:

21 (1) the proposed transaction will not be
22 detrimental to the safety and soundness of the applicant or the
23 resulting bank;

24 (2) any new officers and directors of the
25 resulting bank are qualified by character, experience and

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1 financial responsibility to direct and manage the resulting
2 bank; and

3 (3) the proposed merger is consistent with the
4 convenience and needs of the communities to be served by the
5 resulting bank in this state and is otherwise in the public
6 interest.

7 D. The interstate merger transaction may be effected
8 only after the applicant has received the director's written
9 approval.

10 Section 18. [NEW MATERIAL] INTERSTATE MERGER TRANSACTIONS
11 AND BRANCHING PERMITTED. --

12 A. One or more New Mexico banks may enter into an
13 interstate merger transaction with one or more out-of-state
14 banks pursuant to the Interstate Bank Branching Act, and an
15 out-of-state bank resulting from the transaction may maintain
16 and operate as branches in New Mexico the former New Mexico
17 banks that participated in the transaction if the conditions and
18 filing requirements of that act are met.

19 B. Except as otherwise expressly provided in this
20 subsection, an interstate merger transaction is not permitted
21 pursuant to the Interstate Bank Branching Act if, upon effecting
22 the transaction, the resulting bank, including all insured
23 depository institutions that would be affiliates, as defined in
24 12 U. S. C. A. Section 1841(k), of the resulting bank, would result
25 in an undue concentration of deposits totaling forty percent or

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1 more of the total deposits in all depository institutions in New
2 Mexico. The director may by regulation adopt a procedure to
3 waive the foregoing prohibition to prevent the insolvency or
4 closing of a New Mexico state bank.

5 C. An interstate merger transaction resulting in the
6 acquisition by an out-of-state bank of a New Mexico bank is not
7 permitted pursuant to the Interstate Bank Branching Act, unless
8 the New Mexico bank on the date of the acquisition has been in
9 continuous operation under an active charter for a period of at
10 least five years.

11 Section 19. [NEW MATERIAL] DE NOVO BRANCHING AND
12 ACQUISITION OF INDIVIDUAL BRANCHES NOT PERMITTED. -- Interstate
13 branching, either de novo or by acquisition of one or more
14 branches, not involving all or substantially all of the assets
15 and branches of a New Mexico bank is prohibited.

16 Section 20. [NEW MATERIAL] NOTICE AND FILING
17 REQUIREMENTS. -- An out-of-state bank that will be the resulting
18 bank pursuant to an interstate merger transaction involving a
19 New Mexico state bank shall notify the director of the proposed
20 merger no later than the date on which it files an application
21 for an interstate merger transaction with the responsible
22 federal bank supervisory agency. The out-of-state bank shall
23 submit a copy of that application to the director and pay a fee
24 in an amount that the director shall prescribe by regulation.
25 Any New Mexico state bank that is a party to the interstate

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1 merger transaction shall comply with all applicable state and
2 federal laws.

3 Section 21. [NEW MATERIAL] CONDITION FOR INTERSTATE
4 MERGER PRIOR TO JUNE 1, 1997.--An interstate merger transaction
5 prior to June 1, 1997 resulting in a New Mexico branch of an
6 out-of-state bank shall not be consummated and any out-of-state
7 bank resulting from such a merger shall not operate a branch in
8 New Mexico, unless the director first:

9 A. finds that the laws of the home state of each
10 out-of-state bank involved in the interstate merger transaction
11 permit New Mexico state banks, under substantially the same
12 terms and conditions as are set forth in the Interstate Bank
13 Branching Act, to acquire banks and establish and maintain
14 branches in that state by means of interstate merger
15 transactions;

16 B. concludes that the resulting out-of-state bank
17 has complied with all applicable requirements of New Mexico law
18 and has agreed in writing to comply with the laws of this state
19 applicable to its operation of branches in New Mexico; and

20 C. certifies to the federal bank supervisory agency
21 having authority to approve the interstate merger transaction
22 that the conditions and requirements of the Interstate Bank
23 Branching Act have been met.

24 Section 22. [NEW MATERIAL] POWERS-- ADDITIONAL BRANCHES. --

25 A. An out-of-state state bank with branches in New

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1 Mexico authorized pursuant to the Interstate Bank Branching Act
2 may conduct any activities at its branches that are authorized
3 pursuant to the laws of this state for New Mexico state banks.

4 B. A New Mexico state bank may conduct any
5 activities at any branch outside New Mexico that are permissible
6 for a bank chartered by the host state where the branch is
7 located.

8 C. An out-of-state bank that has acquired branches
9 in New Mexico under the Interstate Bank Branching Act may
10 establish or acquire additional branches in New Mexico to the
11 same extent that any New Mexico bank may establish or acquire a
12 branch in New Mexico pursuant to applicable federal and state
13 law.

14 Section 23. [NEW MATERIAL] EXAMINATIONS--PERIODIC
15 REPORTS--COOPERATIVE AGREEMENTS--ASSESSMENT OF FEES.--

16 A. To the extent consistent with Subsection C of
17 this section, the director may make examinations of any branch
18 established and maintained in this state by an out-of-state
19 state bank pursuant to the Interstate Bank Branching Act as the
20 director deems necessary to determine whether the branch is
21 being operated in compliance with the laws of this state and in
22 accordance with safe and sound banking practices. The
23 provisions of Section 58-1-46 NMSA 1978 shall apply to the
24 examinations.

25 B. The director may prescribe requirements for

1 periodic reports concerning an out-of-state bank that operates a
2 branch in New Mexico pursuant to the Interstate Bank Branching
3 Act. The required reports shall be provided by the bank or by
4 the bank supervisory agency having primary responsibility for
5 the bank. Reporting requirements prescribed by the director
6 pursuant to this subsection shall be:

7 (1) consistent with the reporting requirements
8 applicable to New Mexico state banks; and

9 (2) appropriate for the purpose of enabling the
10 director to carry out his responsibilities under the Interstate
11 Bank Branching Act.

12 C. The director may enter into cooperative,
13 coordinating and information-sharing agreements with any other
14 bank supervisory agencies or any organization affiliated with or
15 representing one or more bank supervisory agencies with respect
16 to the periodic examination or other supervision of any branch
17 in New Mexico of an out-of-state state bank, or any branch of a
18 New Mexico state bank in any host state, and the director may
19 accept the parties' reports of examination and reports of
20 investigation in lieu of conducting his own examinations or
21 investigations.

22 D. The director may enter into a sole source
23 contract pursuant to Section 13-1-126 NMSA 1978 with a bank
24 supervisory agency having concurrent jurisdiction over a New
25 Mexico state bank or an out-of-state state bank operating

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1 branches in this state pursuant to the Interstate Bank Branching
2 Act to engage the services of the agency's examiners or to
3 provide the services of the director's examiners to the agency.

4 E. The director may conduct joint examinations or
5 participate in joint enforcement actions with a bank supervisory
6 agency having concurrent jurisdiction over any branch in New
7 Mexico of an out-of-state state bank or any branch of a New
8 Mexico state bank in any host state. The director may take the
9 actions independently if the director deems the actions
10 necessary or appropriate to carry out his responsibilities under
11 the Interstate Bank Branching Act or to ensure compliance with
12 the laws of this state, but, in the case of an out-of-state
13 state bank, the director shall recognize the exclusive authority
14 of the home state regulator over corporate governance matters
15 and the primary responsibility of the home state regulator with
16 respect to safety and soundness matters.

17 F. An out-of-state state bank that maintains
18 branches in this state may be assessed and shall pay supervisory
19 and examination fees in accordance with the laws of this state
20 and regulations of the director. The fees may be shared with
21 other bank supervisory agencies or any organization affiliated
22 with or representing one or more bank supervisory agencies in
23 accordance with agreements between those entities and the
24 director.

25 Section 24. [NEW MATERIAL] ENFORCEMENT.--If the director

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1 determines that a branch maintained by an out-of-state state
2 bank in this state is being operated in violation of the laws of
3 this state, is not reasonably meeting the credit needs of the
4 community served or is being operated in an unsafe and unsound
5 manner, the director may take the same enforcement actions he
6 could take if the branch were a New Mexico state bank. The
7 director shall give notice promptly to the home state regulator
8 of an enforcement action taken against an out-of-state state
9 bank and, to the extent practicable, shall consult and cooperate
10 with the home state regulator in pursuing and resolving the
11 enforcement action.

12 Section 25. [NEW MATERIAL] REGULATIONS. -- The director may
13 adopt regulations necessary or appropriate to implement the
14 provisions of the Interstate Bank Branching Act.

15 Section 26. [NEW MATERIAL] NOTICE OF SUBSEQUENT MERGER
16 AND OTHER TRANSACTIONS. -- An out-of-state state bank that has
17 established and maintains a branch in this state pursuant to the
18 Interstate Bank Branching Act shall give at least thirty days
19 prior written notice or, in the case of an emergency
20 transaction, shorter notice consistent with applicable state or
21 federal law to the director of any merger, consolidation or
22 other transaction that would cause a change of control with
23 respect to the bank or any bank holding company that controls
24 the bank if the result of the transaction would require an
25 application to be filed pursuant to the federal Change in Bank

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[bracketed material] = delete

1 Control Act of 1978, 12 U.S.C.A. Section 1817(j) or the federal
2 Bank Holding Company Act of 1956, 12 U.S.C.A. Section 1841 et
3 seq.

4 Section 27. [NEW MATERIAL] SEVERABILITY. -- If any part or
5 application of the Interstate Bank Branching Act is held invalid
6 or to be superseded, the remainder or its application to other
7 situations or persons shall not be affected.

8 Section 28. Section 58-16-1 NMSA 1978 (being Laws 1990,
9 Chapter 123, Section 1) is amended to read:

10 "58-16-1. SHORT TITLE. -- ~~[This act]~~ Chapter 58, Article 16
11 NMSA 1978 may be cited as the "Remote Financial Service Unit
12 Act". "

13 Section 29. Section 58-16-3 NMSA 1978 (being Laws 1990,
14 Chapter 123, Section 3, as amended) is amended to read:

15 "58-16-3. DEFINITIONS. --

16 A. As used in the Remote Financial Service Unit Act:

17 (1) "account" means an account maintained by a
18 cardholder or merchant with a financial institution, which term
19 shall include demand deposit, checking, negotiable order of
20 withdrawal (NOW) share, share draft or other consumer or asset
21 accounts or pre-authorized credit card accounts;

22 (2) "account transfer" means a transaction that
23 enables movement of funds by a cardholder from one account to
24 another account within the same financial institution;

25 (3) "acquirer" means the intercept processor

1 that acquires financial data relating to a transaction from a
2 card acceptor or a merchant and puts the data into a network
3 system and means "agent acquirer" unless specifically indicated
4 otherwise;

5 (4) "agent acquirer" means any financial
6 institution acting as an authorized agent of the acquirer in
7 enabling financial data relating to a POS transaction to be
8 acquired by the acquirer from a card acceptor or merchant and
9 means "acquirer" unless specifically indicated otherwise;

10 (5) "ATM transaction" means any one or more of
11 the following transactions undertaken at an automated teller
12 machine (ATM):

- 13 (a) a cash advance from an account;
- 14 (b) a cash advance from an authorized
15 line of credit;
- 16 (c) a deposit to an account;
- 17 (d) a balance inquiry;
- 18 (e) an account transfer; and
- 19 (f) a normal financial transaction for a
20 cardholder involving the issuance of non-cash or cash-equivalent
21 items; provided, however, that normal financial transactions at
22 an ATM will expressly exclude any POS transaction;

23 (6) "authorization" means the issuance of
24 approval, by or on behalf of the financial institution holding
25 the cardholder's account, to complete a transaction initiated or

1 authorized by the cardholder;

2 (7) "automated teller machine" or "ATM" means
3 an unmanned device that is activated by the cardholder through a
4 specially prepared card or by the transmission of a code via a
5 keyboard or keyset or both and is capable of one or more of the
6 following transactions:

7 (a) dispensing cash to any cardholder
8 from an account or against a preauthorized line of credit;

9 (b) accepting deposits;

10 (c) account transfers;

11 (d) satisfying a balance inquiry in the
12 cardholder's account or accounts; and

13 (e) conducting normal financial
14 transactions involving the issuance of non-cash or cash-
15 equivalent items; provided, however, that normal financial
16 transactions at an ATM will expressly exclude a transaction that
17 can only be initiated and completed at a POS terminal;

18 (8) "balance inquiry" means a transaction that
19 permits a cardholder to obtain the current balance of the
20 cardholder's account or accounts;

21 (9) "card" means a plastic card or other
22 instrument or any other access device issued by a financial
23 institution to a cardholder that enables the cardholder to have
24 access to and that processes transactions against one or more
25 accounts, and the term shall be used when referring either to an

1 ATM access card, a debit card or a credit card identifying a
2 cardholder who has established a pre-approved credit line with
3 the issuer of the credit card;

4 (10) "card acceptor" means the party accepting
5 the card and presenting transaction data to an acquirer;

6 (11) "cardholder" means a person to whom a card
7 has been issued by a financial institution or who is authorized
8 to use the card;

9 (12) "cash advance" means any transaction
10 resulting in a cardholder receiving cash, whether initiated
11 through an ATM or a POS terminal;

12 (13) "chargeback" means the credit of all or a
13 portion of an amount previously posted to a cardholder's
14 account;

15 (14) "clearing account" means an account or
16 several accounts maintained for the purpose of settlement and
17 payment of fees to the network manager;

18 (15) "credit" means a claim for funds by the
19 cardholder for the credit of the cardholder's account and
20 provides details of funds acknowledged as payable by the
21 acquirer or card acceptor to the issuer for credit to the
22 cardholder's account;

23 (16) "credit card cash advance" means a cash
24 loan obtained by a cardholder against a pre-authorized line of
25 credit through presentation of a card;

1 (17) "data interchange" means the exchange of
2 transaction data, authorization requests, transaction records or
3 other data between intercept processors and acquirers and
4 issuers through a shared system or network;

5 (18) "debit" means a transaction initiated by a
6 cardholder that results in the debit to the cardholder's
7 account, through use of a card or otherwise, and results in a
8 claim for funds made by the acquirer or card acceptor against
9 the issuer;

10 (19) "director" means the director of the
11 financial institutions division of the regulation and licensing
12 department;

13 (20) "electronic funds transfer" or "EFT" means
14 a system designed to facilitate the exchange of monetary value
15 via electronic media utilizing electronic or mechanical signals
16 or impulses or a combination of electronic or mechanical
17 impulses and audio, radio or microwave transmissions;

18 (21) "financial institution" means an insured
19 state or national bank, a state or federal savings and loan
20 association or savings bank, a state or federal credit union or
21 authorized branches of each of the foregoing;

22 (22) "in-state financial institutions" means a
23 financial institution authorized to engage in and engaged in
24 business in New Mexico and having its [~~principal and~~] main
25 office or a staffed branch within the state;

1 (23) "intercept processor" means any electronic
2 data processor operating for a financial institution that passes
3 transactions;

4 (24) "issuer" means a financial institution
5 that issues cards or accepts transactions for a card, is the
6 acceptor of a transaction and is typically, but not always, the
7 entity that maintains the account relationship with the
8 cardholder;

9 (25) "lobby or teller-line ATM" means any ATM
10 located within the lobby of a financial institution or in its
11 teller line, access to which is available only during regular
12 banking hours;

13 (26) "merchant" means a seller of goods or
14 services, retailer or other person who, pursuant to an agreement
15 with a financial institution, agrees to accept or causes its
16 outlets to accept cards for EFT transactions when properly
17 presented, is usually a card acceptor and is a seller of goods
18 and services who is regularly and principally engaged in the
19 business of selling, leasing or renting goods, selling or
20 leasing services for any purpose or selling insurance, whether
21 the business is a wholesale or retail business and whether the
22 goods or services are for business, agricultural, personal,
23 family or household purposes. "Merchant" includes a
24 professional licensed by the state of New Mexico, but does not
25 include financial institutions;

1 (27) "modem" is a contraction of "modulator-
2 demodulator" and means a functional unit that enables digital
3 data to be transmitted over analog transmission facilities such
4 as telephone lines, radio or microwave transmissions;

5 (28) "network" means a computer-operated system
6 of transmitting items and messages between ATM or POS terminals,
7 intercept processor and financial institutions, and settling
8 transactions between financial institutions, and includes
9 without limitation, ATMs, POS terminals, all related computer
10 hardware and software, modems, logos and service marks;

11 (29) "network manager" means the person
12 managing the business of a network;

13 (30) "off-line" means not on-line;

14 (31) "off-premise ATM" means ATMs installed
15 away from the building or lobby of a financial institution by a
16 distance of not less than five hundred feet;

17 (32) "on-line" means a system in which all
18 input data enters the computer at a financial institution, an
19 intercept processor or the network from its point of origin and
20 that is capable of transmitting information back to the point of
21 origin after all input data is processed;

22 (33) "on-premise ATM" means an ATM that stands
23 in or immediately adjacent to the financial institution's
24 building, such as in the financial institution's lobby, through
25 the wall or a drive-up ATM within five hundred feet of the

1 financial institution's building;

2 (34) "person" means an individual, partnership,
3 joint venture, corporation or other legal entity however
4 organized;

5 (35) "personal identification number" or "PIN"
6 means a series of numbers or letters selected for or by the
7 cardholder and used by the cardholder as a code or password in
8 conjunction with a card to perform a transaction;

9 (36) "point-of-sale or POS terminal" means an
10 information processing device or machine, located upon the
11 premises occupied by one or more merchants, through which
12 transaction messages are initiated and electronically
13 transmitted to an acquirer to effectuate a POS transaction and
14 that accepts debit cards and credit cards;

15 (37) "POS transaction" means any of the
16 following transactions undertaken at a POS terminal:

- 17 (a) purchases;
- 18 (b) purchases that include cash back to
19 the cardholder;
- 20 (c) cash advances at POS terminals;
- 21 (d) returned item transaction message
22 resulting in a credit to the cardholder's account;
- 23 (e) a credit;
- 24 (f) an authorization;
- 25 (g) chargebacks at POS terminals;

1 (h) card verification whereby the
2 validity of a card is determined at POS terminals;

3 (i) balance inquiries at POS terminals;
4 and

5 (j) force post financial advice at POS
6 terminals whereby any other transaction authorized by an issuer-
7 approved stand-in processor requires settlement resulting in a
8 debit to the cardholder's account.

9 Nothing in this paragraph shall be construed to include
10 credit card transactions;

11 (38) "purchase" means a transaction that, if
12 approved, results in a debit transaction for the payment of
13 goods and services or may include cash paid to the cardholder of
14 some part of the amount of the transaction;

15 (39) "receipt" means a hard-copy description of
16 a transaction:

17 (a) for the purposes of the Remote
18 Financial Service Unit Act, if the transaction is an ATM
19 transaction, the receipt shall contain, at a minimum: 1) the
20 date of the ATM transaction; 2) the amount of the ATM
21 transaction, if any; 3) the account number; 4) the type of
22 account accessed; 5) the location of the ATM used in the ATM
23 transaction; 6) the identity of any party or account to which
24 funds are transferred; and 7) the type of ATM transaction
25 completed; and

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1 (b) for the purposes of the Remote
2 Financial Service Unit Act, if the transaction is a POS
3 transaction, the receipt shall contain, at a minimum: 1) the
4 date of the POS transaction; 2) the amount of the POS
5 transaction, if any; 3) the account number; 4) the type of
6 account accessed; 5) the merchant's name and location; and
7 6) the type of POS transaction completed;

8 (40) "remote financial service unit" means a POS
9 terminal or an ATM;

10 [~~(40)~~] (41) "returned item transaction message"
11 means a credit message generated by the acquirer or by the
12 merchant that returns the value of the returned item to the
13 cardholder's account;

14 [~~(41)~~] ~~"remote financial service unit" means a~~
15 ~~POS terminal or an ATM]~~

16 (42) "settlement" means the process by which
17 funds are transferred between financial institutions, intercept
18 processors or networks in the flow of a transaction or in the
19 payment of fees associated with the transaction;

20 (43) "shared ATM or POS terminals" means ATM or
21 POS terminals that are shared among financial institutions by
22 formal agreement for the purposes of cardholder convenience,
23 reduction of capital investment and marketing advantage;

24 (44) "single subscriber terminal" means any
25 terminal or set of terminals used to connect a single customer

1 of a financial institution to its financial institution through
2 which EFT messages are sent and completed, other than
3 transactions;

4 (45) "switch" means a routing mechanism and any
5 device attached thereto that is necessary for the processing of
6 a transaction used to communicate information and transactions
7 among participating financial institutions or their intercept
8 processors in a shared system or network;

9 (46) "transaction" means a collection of
10 electronic messages concluded by:

11 (a) a debit to or a credit from an
12 account;

13 (b) a balance inquiry;

14 (c) the consummation of a normal
15 financial transaction; or

16 (d) a rejected attempt of any one of
17 those matters provided in Subparagraphs (a) through (c) of this
18 paragraph;

19 (47) "unauthorized use of the card of another"
20 means the utilization of the card in or through a remote
21 financial service unit to affect the balance of or obtain
22 information concerning the account of the cardholder by a person
23 other than the cardholder, which person does not have the
24 permission of the cardholder for such use; and

25 (48) "unauthorized withdrawal from the account

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1 of another" means the debiting of or removal of funds from a
2 cardholder's account, accomplished by means of the utilization
3 of a remote financial service unit by a person other than the
4 cardholder, which person does not have actual, implied or
5 apparent authority for the debiting or removal and from which
6 debiting or removal the cardholder receives no benefit.

7 B.

8 (1) Any of the information provided pursuant to
9 Subparagraphs (a) and (b) of Paragraph (39) of Subsection A of
10 this section may be provided using codes, numbers or other
11 uniform explanations so long as they are explained elsewhere on
12 the receipt.

13 (2) No receipt shall be required in any
14 transaction involving a negotiable instrument that will itself
15 become a receipt.

16 C. Any term used in the Remote Financial Service
17 Unit Act but not specifically defined shall have the meaning
18 given to that term by the Uniform Commercial Code. "

19 Section 30. Section 58-16-11 NMSA 1978 (being Laws 1990,
20 Chapter 123, Section 11, as amended) is amended to read:

21 "58-16-11. ~~[INTERCOUNTY]~~ RESTRICTIONS ON OWNING, LEASING
22 AND OPERATING. --

23 A. Notwithstanding any provision to the contrary in
24 the Remote Financial Service Unit Act, no ATM shall be owned or
25 leased by a person other than an in-state financial institution

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1 ~~[having its main office, a manned branch office or any other~~
2 ~~authorized branch in the county in which the ATM is located].~~

3 B. Notwithstanding any provision to the contrary in
4 the Remote Financial Service Unit Act, no POS terminal shall be
5 operated by any person other than a merchant or an in-state
6 financial institution.

7 ~~[C. Notwithstanding the provisions of Subsection A~~
8 ~~of this section, an off premises ATM may be owned and operated~~
9 ~~by an in-state financial institution not having its main office,~~
10 ~~a manned branch office or any authorized branch in the county in~~
11 ~~which the ATM is located if:~~

12 ~~(1) the financial institutions located in the~~
13 ~~county do not provide off-premises ATM service; and~~

14 ~~(2) the director approves the application of~~
15 ~~the in-state financial institutions to install and operate an~~
16 ~~off-premises ATM in the county.] "~~

17 Section 31. EFFECTIVE DATE. -- The effective date of the
18 provisions of this act is June 1, 1996.

State of New Mexico House of Representatives

FORTY- SECOND LEGISLATURE

SECOND SESSION, 1996

January 25, 1996

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
been referred

HOUSE BILL 38

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Fred Luna, Chairman

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Hobbs, Olguin, Varela

Absent: None

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

February 6, 1996

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
whom has been referred

HOUSE BILL 38

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Roman M. Maes, III, Chairman

Adopted _____ Not Adopted _____

Underscored material = new
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FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

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(Chief Clerk)

Date _____

The roll call vote was 5 For 1 Against

Yes: 5

No: Rawson

Excused: Maloof, Robinson, Riley

Absent: None

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Underscored material = new
[bracketed material] = delete