3/15/18 2:30 p.m.

Chapter No. 354
18/HR26/R1852
EH / CST

HOUSE BILL NO. 1338

Originated in House _____ Clerk

HOUSE BILL NO. 1338

AN ACT TO AMEND SECTION 81-5-85, MISSISSIPPI CODE OF 1972, TO REVISE PROVISIONS REGARDING THE BANK MERGER PROCESS TO MAKE THEM CONSISTENT WITH THE MISSISSIPPI BUSINESS CORPORATION ACT; TO AMEND SECTION 81-5-1, MISSISSIPPI CODE OF 1972, TO AUTHORIZE MISSISSIPPI CHARTERED OR DOMICILED BANKS OFFERING OPEN-END CREDIT TO ASSESS FINANCE CHARGES AND OTHER CHARGES AT RATES NOT MORE THAN THE RATES IMPOSED BY OUT-OF-STATE BANKS ON MISSISSIPPI CUSTOMERS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 81-5-85, Mississippi Code of 1972, is amended as follows:

81-5-85. Any two (2) or more state-chartered banks, or any national bank and any state-chartered bank, or any state or federal savings and loan association and any state-chartered bank, or any state or federal savings bank and any state-chartered bank, may, with the approval of the commissioner, consolidate with or merge into one (1) state-chartered bank, under the charter of the existing state bank, on such terms and conditions, as may be lawfully agreed upon * * *, adopted and approved in a merger plan in accordance with Article 11, Chapter 4 of Title 79, Mississippi

Code of 1972. Following receipt of the required corporate approvals and approval of the merger plan by the commissioner, the resulting amendments to charters of any state-chartered bank that is a party to the merger plan shall be approved and filed with other state officials in accordance with Section 81-3-15. The capital stock of such consolidated bank shall not be less than that required under the Mississippi banking laws for the organization of a bank in the place in which it is located. And all the rights, franchises and interests of the institutions so consolidated in and to every species of property, personal and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such bank into which they are consolidated without any deed or other transfer, and the said consolidated bank shall hold and enjoy the same and all rights of property, franchises and interests in the same manner and to the same extent as were held and enjoyed by the institutions so consolidated therewith.

Any national bank, state or federal savings and loan association, or state or federal savings bank may apply for conversion into a state-chartered bank upon the affirmative vote of the shareholders owning at least two-thirds (2/3) of its capital stock outstanding, or of fifty-one percent (51%) or more of the total number of the members, at a meeting called by the directors * * *, notice of which, specifying the purpose, shall be given the manner required by the bylaws, or in the absence of such

bylaw, then by sending the notice to each shareholder of record by registered mail at least ten (10) days before the meeting. Upon such affirmative vote, the converting institution may apply for a certificate of authority by filing with the commissioner a certificate signed by its president and cashier which sets forth the corporate action herein prescribed and asserts that the institution has complied with the provisions of the laws of the United States. The converting institution shall also file with the commissioner the plan of conversion and the proposed amendments to its articles of incorporation as approved by the stockholders for the operation of the institution as a state bank. Upon receipt of the prescribed application, the commissioner shall examine all facts associated with the conversion. The expenses and cost incurred for such special examination shall be paid by the institution applying for permission to convert. The commissioner shall present his findings and recommendations to the State Board of Banking Review for consideration. Upon approval by the State Board of Banking Review, the commissioner shall issue a certificate of authority to the applicant allowing the conversion to proceed.

Any bank, savings and loan association or savings bank chartered by the State of Mississippi is hereby authorized to convert into, consolidate with, or merge with a national bank domiciled in the State of Mississippi, with the national bank charter surviving, without approval of the Department of Banking

and Consumer Finance, the Commissioner of Banking and Consumer Finance, or any state authority whatsoever.

SECTION 2. Section 81-5-1, Mississippi Code of 1972, is amended as follows:

81-5-1. (1) All banking corporations are prohibited, either through their officers or as a banking agency, from participating, directly or indirectly, in the operation of any underwriting syndicate which handles securities for resale. However, this inhibition shall not apply to bonds issued by federal, state, county or other governmental agencies.

(2) The executive officers of banking corporations now existing or hereafter organized under the laws of the State of Mississippi, are prohibited from owning stock in private banking houses or other agencies engaged in the business of underwriting securities for resale.

(3) The Commissioner of Banking and Consumer Finance is authorized, empowered and directed to promulgate rules and regulations, relative to withdrawals of deposits from savings banks, trust companies and other banking institutions, and the commissioner may, in cases of emergency, declare bank holidays and do any and all things necessary to insure, protect and conserve the resources of such banks.

(4) All state banking corporations are prohibited from making loans to state, county, municipal and district governmental agencies, unless such loans are made in strict compliance with

legal enactments and regulations which govern, and such banking corporations are further prohibited from transferring funds from one state, county, municipal or district account to another unless authorized by warrant issued by proper authority, and such banking corporations are prohibited from discounting state, county, municipal, district or other public certificates and warrants, but such certificates and warrants may be used as collateral to guarantee the payment of notes or other obligations.

(5) The board of directors of any banking corporation created under the laws of this state may, at its option, require any or all employees of such to file with the board of directors a sworn financial statement semiannually or more often if it so desires.

(6) Any bank may, at its option, pay all checks drawn on it with currency or valid exchange drawn on a bank in a reserve city not more than five hundred (500) miles distant from such bank; but each depositor is entitled to have his checks paid each day in currency to the total extent of ten percent (10%) of his deposit if it exceeds One Thousand Dollars ($1,000.00) and at least One Hundred Dollars ($100.00) each day if his balance is over One Hundred Dollars ($100.00) and less than One Thousand Dollars ($1,000.00), and may demand his entire balance in currency at any time if One Hundred Dollars ($100.00) or less.

(7) All state banking corporations may purchase for the account of their customers bonds, stocks and other securities, and

such banking corporations may charge for their service in connection with the handling of such transactions only actual expenses plus the usual broker's fees allowed for similar service by national banks.

(8) Any state bank may purchase, lease or otherwise acquire automatic data processing computers and related machinery and equipment, and such bank may utilize and operate such computers, machinery and equipment in performing for itself, its customers or any other bank such services as may be desired including, but not limited to, check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical or similar functions performed by and for a bank. Corporations may be organized under the laws of the State of Mississippi for the purpose of owning and operating, by purchase, lease or otherwise, such computers, related machinery and equipment as aforesaid, and such corporations may perform for any bank those services as above mentioned; and stock of such corporations shall be legal investments for state banks to the same extent that stock of bank service corporations is eligible for acquisition by national banks under the provisions of the Bank Service Corporation Act, Public Law 87-856, 76 Stat. 1132.

(9) In addition to other powers, a state-chartered bank shall have and possess such of the rights, powers, privileges,

immunities, duties and obligations of a national bank having its principal place of business in this state as may be prescribed by the State Board of Banking Review by general regulation under the circumstances and conditions set out therein. In the event of a conflict between the provisions of this subsection (9) and the provisions of any other act or acts, directly or indirectly, governing or regulating the activities of state-chartered banks, the provisions of this subsection (9) shall control, and insurance activities of all banks, their subsidiaries, affiliates, branches, officers and employees doing business in this state shall be governed by the provisions of Title 83, Mississippi Code of 1972, only to the extent that Title 83, Mississippi Code of 1972, applies to national banks in Mississippi.

(a) The purpose of this subsection (9) is to provide for parity among Mississippi chartered or domiciled banks extending open-end credit in this state, as well as to promote the retention of existing financial services within the state by encouraging Mississippi chartered or domiciled banks to continue their open-end credit operations in this state, rather than relocating those operations to other states with interest rates, fees and credit terms that may not be available under Mississippi law and exporting such interest rates, fees and credit terms back to Mississippi under the most favored lender doctrine of federal law.

(b) For the purpose of this subsection, "open-end credit account" means an arrangement between a creditor and a customer in which:

(i) The creditor permits the customer to obtain credit advances on a pre-authorized basis;

(ii) The creditor reasonably contemplates repeated transactions;

(iii) The creditor assesses interest on the outstanding unpaid balance of the customer's account; or

(iv) The amount of credit that may be extended to the customer, up to any limit set by the creditor, is made available to the extent that any unpaid balance is repaid.

(c) A Mississippi chartered or domiciled bank that seeks to use the provisions of this subsection shall set forth the rates and fees to be charged, the state where the rates and fees are permissible and the identity of one or more of the financial institutions.

(d) Notwithstanding any other provision of law to the contrary, Mississippi chartered or domiciled banks offering open-end credit may assess finance charges, credit service charges and fees and charges that are material to the determination of the interest rate in connection with open-end accounts at rates and amounts that are equal to or are less than the amounts that financial institutions domiciled in other states are permitted to

impose and collect when extending credit to Mississippi customers as a result of the most favored lender doctrine of federal law.

(e) Notwithstanding any other provision of law to the contrary, for purposes of this subsection and Title 12, Sections 85, 1831d and 1730g of the United States Code, as applicable to the exportation of interest rates and any fees and charges that are material to their determination, any interest rates, finance charges, credit service charges and other fees and charges, in amount, as well as manner and method of computation, imposed by Mississippi chartered or domiciled banks under this subsection shall be authorized by Mississippi law.

(f) Notwithstanding any other provision of law to the contrary, any interest, finance charges, credit service charges or other fees or charges that are adopted from another state by a Mississippi chartered or domiciled bank, including those that are otherwise permissible in an amount under Mississippi law, may be assessed, accrued, earned or changed in the same manner or method as permitted under the law of the state from which they have been adopted, regardless of whether such manner or method is material to the determination of the interest rate under the law of that state.

(g) For purposes of this subsection, Mississippi chartered or domiciled banks may impose interest, finance charges, credit service charges or other fees and charges from one or more

open-end credit accounts offered by financial institutions in other states in connection with a single open-end credit account.

SECTION 3. This act shall take effect and be in force from and after July 1, 2018.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 1, 2018

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 5, 2018

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

3/15/18
2:36 pm