49.411 INTERSTATE BANK MERGERS AFFECTING INTERSTATE BRANCHING.

Subdivision 1. **Purpose.** It is the express intent of this section to permit interstate branching by mergers under section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103-328, according to this section.

Subd. 2. **Definitions.** As used in this section, unless the context clearly indicates otherwise, the following terms have the meanings given them.

(a) "Bank" has the meaning given in United States Code, title 12, section 1813(h) with the following exceptions: (1) the term does not include a foreign bank as defined in United States Code, title 12, section 3101(7); and (2) the term includes a foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(b) "Bank holding company" has the meaning given in United States Code, title 12, section 1841(a)(1).

(c) "Bank supervisory agency" means:

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

(2) the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies.

(d) "Branch" has the meaning given in United States Code, title 12, section 1813(o).

(e) "Commissioner" means the commissioner of commerce.

(f) "Control" has the meaning given in section 46.048, subdivision 1.

(g) "Home state" has the meaning given in section 48.92, subdivision 6, except in relation to foreign banks, for which home state means the state determined to be the home state of the foreign bank under United States Code, title 12, section 3103(c).

(h) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is chartered.

(i) "Host state" means a state other than the home state of a bank in which the bank maintains or seeks to establish and maintain a branch.

(j) "Interstate merger transaction" means:

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

(2) the purchase of all or substantially all of the assets including all or substantially all of the branches of a bank whose home state is different from the home state of the acquiring bank.

(k) "Out-of-state bank" has the meaning given in section 48.92, subdivision 11.

(l) "Out-of-state state bank" means a bank chartered under the laws of any state other than Minnesota.

(m) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

(n) "State" means any state of the United States, the District of Columbia, or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(o) "Minnesota bank" means a bank whose home state is Minnesota.

(p) "Minnesota state bank" means a bank chartered under the laws of Minnesota.

Subd. 3. **Authority of state banks to establish interstate branches by merger.** With the prior approval of the commissioner, a Minnesota state bank may establish, maintain, and operate one or more branches in a state other than Minnesota as a result of an interstate merger transaction in which the Minnesota state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant Minnesota state bank shall file with the commissioner an application on a form prescribed by the commissioner and pay the fee prescribed by section 49.36. The applicant shall also comply with the applicable provisions of sections 49.33 to 49.41. After considering the criteria in section 49.36, subdivision 3, the commissioner may approve the interstate merger transaction and the operation of branches outside of Minnesota by the Minnesota state bank. Such an interstate merger transaction may be consummated only after the applicant has received the commissioner's written approval.

Subd. 4. **Interstate merger transactions and branching permitted.** (a) One or more Minnesota banks may enter into an interstate merger transaction with one or more out-of-state banks under this section, and an out-of-state bank resulting from the transaction may maintain and operate the branches in Minnesota of a Minnesota bank that participated in the transaction if the conditions and filing requirements of this section are met.

(b) An interstate merger transaction resulting in the acquisition by an out-of-state bank of a Minnesota state bank, or all or substantially all of the branches of a Minnesota state bank, shall not be permitted under this section unless the Minnesota state bank has been in continuous operation, on the date of the acquisition, for at least five years. For purposes of this paragraph, a bank that has been chartered solely for the purpose of, and does not open for business before, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank is considered to have been in existence for the same period of time as the bank to be acquired. For determining the time period of existence of a bank, the time period begins after the issuance of a certificate of authorization and from the date the approved bank actually opens for business.

Subd. 5. **Notice and filing requirement.** An out-of-state bank that will be the resulting bank under an interstate merger transaction involving a Minnesota state bank shall notify the commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay the filing fee, if any, required by the commissioner. A Minnesota state bank that is a party to an interstate merger transaction shall comply with sections 49.33 to 49.41 and with other applicable state and federal laws. An out-of-state bank that is the resulting bank in such an interstate merger transaction shall provide satisfactory evidence to the commissioner of compliance with applicable requirements of the bank's home state.

Subd. 6. **Powers; additional branches.** (a) An out-of-state state bank that establishes and maintains one or more branches in Minnesota under this section may conduct any activities at the branch or branches that are authorized under the laws of this state for Minnesota state banks.

(b) A Minnesota state bank may conduct any activities at or in connection with a branch outside Minnesota that are permissible for a bank chartered by the host state where the branch is located, except to the extent

that the activities are expressly prohibited by the laws of this state or by any rule or order of the commissioner applicable to the Minnesota state bank. The commissioner may waive the prohibition if the commissioner determines, by rule or order, that the involvement of out-of-state branches of Minnesota state banks in particular activities would not threaten the safety or soundness of the banks.

(c) An out-of-state bank that has established or acquired a branch in Minnesota under this section may establish or acquire additional branches in Minnesota to the same extent that a Minnesota bank may establish or acquire a branch in Minnesota under applicable federal and state law where a bank involved in the transaction could have established, acquired, or operated the additional branches if the bank had not been a party to the merger transaction.

Subd. 7. **Examinations; periodic reports; cooperative agreements; assessment of fees.** (a) To the extent consistent with paragraph (c), the commissioner may make examinations of a branch established and maintained in this state under this section by an out-of-state state bank as the commissioner considers necessary to determine whether the branch is being operated in compliance with the laws of this state and according to safe and sound banking practices. Section 46.04 applies to the examinations.

(b) The commissioner may prescribe requirements for periodic reports regarding an out-of-state bank that operates a branch in Minnesota under this section. The required reports must be provided by the bank or by the bank supervisory agency having primary responsibility for the bank. Reporting requirements prescribed by the commissioner under this paragraph must be: (1) consistent with the reporting requirements applicable to Minnesota state banks; and (2) appropriate for the purpose of enabling the commissioner to carry out responsibilities under this section.

(c) The commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of a branch in Minnesota of an out-of-state state bank, or a branch of a Minnesota state bank in a host state. The commissioner may accept the parties' reports of examination and reports of investigation in lieu of conducting the commissioner's own examinations or investigations.

(d) The commissioner may enter into contracts with a bank supervisory agency that has concurrent jurisdiction over a Minnesota state bank or an out-of-state state bank operating a branch in this state under this section to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to the agency at a reasonable rate of compensation.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over a branch in Minnesota of an out-of-state state bank or a branch of a Minnesota state bank in a host state. However, the commissioner may at any time take the actions independently if the commissioner considers the actions to be necessary or appropriate to carry out responsibilities under this section or to ensure compliance with the laws of this state. In the case of an out-of-state state bank, the commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state state bank that maintains one or more branches in this state may be assessed and charged according to section 46.131 as if it were a Minnesota state bank and, if assessed, shall pay supervisory and examination fees according to the laws of this state and rules of the commissioner. The fees may be shared with other bank supervisory agencies or an organization affiliated with or representing one or more bank supervisory agencies according to agreements between the parties and the commissioner.

Subd. 8. **Enforcement.** If the commissioner determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of the laws of this state, or that the branch is being operated in an unsafe and unsound manner, the commissioner has the authority to take all enforcement actions the commissioner would be empowered to take if the branch were a Minnesota state bank. The commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving enforcement action.

Subd. 9. **Notice of subsequent merger.** Each out-of-state state bank that has established and maintains a branch in this state under this section shall give at least 60 days' prior written notice or, in the case of an emergency transaction, shorter notice as is consistent with applicable state or federal law to the commissioner of any merger, consolidation, or other transaction that would cause a change of control with respect to the bank or any bank holding company that controls the bank, with the result that an application would be required to be filed under United States Code, title 12, section 1817(j), or the federal Bank Holding Company Act of 1956, as amended, United States Code, title 12, section 1841, et seq.

Subd. 10. **Severability.** If a provision of this section, or the application of the provision, is found by any court of competent jurisdiction in the United States to be invalid as to a bank, bank holding company, foreign bank, or other person or circumstances, or to be superseded by federal law, the remaining provisions of this section shall not be affected and shall continue to apply to a bank, bank holding company, foreign bank, or other person or circumstance.

History: *1996 c 414 art 3 s 7*