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Midwest Regional Interstate Banking

By Ronald B. Given*

I. INTRODUCTION

On November 25, 1985, Governor Thompson signed Public Law 84-1036, by which the Illinois General Assembly amended the Illinois Bank Holding Company Act with the intention of providing "a unified and orderly method of permitting limited interstate banking on a regional basis" commencing July 1, 1986. Public Law 84-1036 is one of the most controversial and intensely lobbied pieces of banking legislation in the state's history. The law reflects both a rejection of nationwide interstate banking and a political compromise between proponents who viewed regional interstate banking as a means of increasing banking services, credit and competition and opponents who believed that the law would lead to a flurry of takeovers of small banks by large out-of-state institutions insensitive to local needs. The law also repeals geographical restrictions on intrastate bank acquisitions and contains a number of consumer oriented provisions which are applicable to all Illinois banks and savings and loan institutions.

The Illinois legislation becomes increasingly important as more


1. 1985 Ill. Laws 84-1036 (codified as amended at ILL. REV. STAT. ch. 17 (1985)). The provisions of Public Law 84-1036 relating to interstate banking were, in effect, restated by Public Law 84-1123, which was signed by Governor Thompson on June 30, 1986. Unless otherwise noted, citations will be to Public Law 84-1123.

2. 1986 Ill. Laws 84-1123, § 5(b) (to be codified as amended at ILL. REV. STAT. ch. 17, § 2512).

3. Unlike the interstate banking laws passed in Kentucky and Michigan, Public Law 84-1123 does not have a national trigger. See infra notes 48, 72 and accompanying text. Senator Bloom's amendment, which after two years would have allowed banks outside of the midwestern region to buy and sell banks within Cook County, was defeated in the Senate. 84th Ill. Gen. Assem., S. REP. at 79 (May 22, 1985). However, Senator Rock believed that the bill that became Public Law 84-1123 was "a first step but a very necessary step toward . . . full interstate banking." Id. at 40 (May 23, 1985). There was recognition among the legislators that they had not heard the last word on interstate banking. Speaker Greiman seemed to acknowledge that fact when, at the close of the vote on regional interstate banking in the House of Representatives, he said: "I suspect we are never rid of the bankers." 84th Ill. Gen. Assem., H.R. REP. at 19 (Oct. 31, 1985).
midwestern states enact reciprocal interstate banking laws. This article will summarize the provisions of the Illinois legislation and similar laws that already have been passed in Kentucky, Indiana, Michigan, Wisconsin and Missouri.

II. THE AMENDED ILLINOIS BANK HOLDING COMPANY ACT

Subject to the conditions of the Illinois Bank Holding Company Act, as amended by Public Law No. 84-1036 (the “Amended Illinois Act”), a “Midwest bank holding company” may, commencing July 1, 1986, acquire by stock purchase, asset purchase, merger or consolidation one or more banks having a principal place of business in Illinois or the holding companies of such banks. To qualify as a “Midwest bank holding company,” the bank subsidiaries of a bank holding company must hold a majority of their total deposits in Indiana, Iowa, Kentucky, Michigan, Missouri or Wisconsin.

Banking organizations from other states cannot “leapfrog” into the benefits of the Amended Illinois Act merely by owning a Midwest bank holding company. The Amended Illinois Act provides that a bank holding company does not qualify as a “Midwest bank holding company” if another bank holding company with a principal place of business outside of Indiana, Iowa, Kentucky, Michigan, Missouri or Wisconsin, or a banking institution organized under the laws of a foreign country (unless Illinois is the “home state” of the institution under the International Banking Act of 1978), (1) directly or indirectly owns or controls, or has power to

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5. 1986 Ill. Laws 84-1123, § 3.071(a) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2510.01).
6. Id. at §§ 2(p), 2(q), 2(r) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2502).

The international Banking Act of 1978, 12 U.S.C. § 3103(c) (1982), provides that the home state of a foreign bank that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination thereof, in more than one State, is whichever of such states is so determined by election of the foreign bank, or, in default of such election, by the [Federal Reserve Board]. Id.

vote, 25% or more of the voting shares of any class of the regional holding company's voting securities; (2) controls in any manner the election of a majority of the regional holding company's directors or trustees; (3) has shareholders, members or employees for whose benefit a trustee holds 25% or more of the regional holding company's voting shares; or (4) has been determined by the Board of Governors of the Federal Reserve System (the "Federal Reserve Board") to directly or indirectly exercise a controlling influence over the regional holding company's management or policies.8

A. Objective Criteria

The primary objective test of the Amended Illinois Act, which applies to acquisitions of Illinois banks by other Illinois bank holding companies or by Midwest bank holding companies, is that the total capital of the acquiring holding company must not be less than 7% of its total assets, both before and after the transaction is effected.9 The 7% total capital requirement was intended to add fiscal discipline to all Illinois bank acquisitions and to obviate the concern of some legislators that acquisitions would occur for the purpose of draining capital from acquired banks. This test will become the primary legislative restriction upon intrastate bank acquisitions of existing banks in Illinois because the provisions of prior law that divided Illinois into five banking regions and limited an Illinois bank holding company's acquisitions to banks in its home region and one contiguous region are repealed by the Amended Illinois Act.

It should be noted that the 7% capital requirement under the Amended Illinois Act relates to the total capital of a bank holding company, which presumably includes both the "primary" and

8. 1986 Ill. Laws 84-1123, §§ 2(h), 2(p)(3) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2502). Public Law 84-1036 did not appear to preclude specifically the situation where a Midwest bank holding company which has already acquired an Illinois bank is itself subsequently acquired by a non-Midwest bank holding company. Public Law 84-1123 specifically contemplates such a case and requires divestiture of the Illinois bank. 1986 Ill. Laws 84-1123, § 3.071(g) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2510.01).
9. The 7% ratio is to be calculated according to the guidelines of the Federal Reserve Board. 1986 Ill. Laws 84-1123, §§ 3.02(a)(6), 3.02(a)(7) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2505).
"secondary" components of capital. The current capital adequacy guidelines of the Federal Reserve Board (the "Capital Adequacy Guidelines") require bank holding companies to maintain a minimum ratio of primary capital to total assets of 5.5%, and a minimum ratio of total capital to total assets of 6%. There appears to be no reason why a bank holding company already in compliance with the 5.5% primary capital ratio of the Capital Adequacy Guidelines could not satisfy the Amended Illinois Act's additional capital requirement with secondary capital.

The Capital Adequacy Guidelines are generally applied on a consolidated basis and, accordingly, it will presumably be necessary under the Amended Illinois Act to prepare pro-forma consolidated financial statements of the acquiring bank holding company to demonstrate that the 7% total capital requirement will be satisfied upon completion of the transaction. It should be noted that the Amended Illinois Act does not appear to preclude an Illinois bank holding company from making acquisitions of out-of-state banks in order to bolster its capital position and make itself eligible for intrastate acquisitions under the Amended Illinois Act.

Two other objective tests for determining whether an Illinois bank can be acquired under the Amended Illinois Act provide that (1) acquisition of an Illinois bank chartered after January 1, 1982 will not be permitted until that institution has been engaged in the

10. The Federal Reserve Board's current capital adequacy guidelines, App. A, 12 C.F.R. § 225 (1986), establish the following as primary capital: (i) common stock, (ii) perpetual preferred stock (i.e., preferred stock without a stated maturity date which may not be redeemed at the holder's option), (iii) surplus (excluding surplus relating to limited-life preferred stock), (iv) undivided profits, (v) contingency and other capital reserves, (vi) mandatory convertible instruments, (vii) allowance for possible loan and lease losses (exclusive of allocated transfer risk reserves), and (viii) minority interests in equity accounts of consolidated subsidiaries. Id. The Federal Reserve Board has also proposed that "perpetual debt securities" be considered primary capital. 50 Fed. Reg. 47,754 (1985).

11. The current guidelines establish the following as secondary capital: (i) limited-life preferred stock (including related surplus) and (ii) subordinated notes and debentures of banks and unsecured long-term debt of holding companies and their nonbank subsidiaries. App. A, 12 C.F.R. § 225 (1986).
12. Id.
13. The Indiana interstate banking law permits Indiana authorities to impose on acquisitions in Indiana by out-of-state institutions the same conditions that would apply if an Indiana institution made an acquisition in the acquiring institution's state, IND. CODE ANN. § 28-2-15(19)(f) (West 1985), and the Indiana authorities might impose the 7% capital adequacy requirement under the circumstances discussed in the text. The Amended Illinois Act has a similar provision. 1986 Ill. Laws 84-1123, § 3.071(e) (to be codified at ILL. REV. STAT. ch. 17, § 2510.01). The Kentucky, Michigan, Missouri and Wisconsin laws do not have such provisions.
banking business for at least ten years, and (2) if Federal Reserve Board approval is required, such approval must contain an assessment of the applicant's compliance with the Community Reinvestment Act of 1977 ("CRA").

B. Determinations by the Illinois Commissioner

In addition to providing objective criteria, the Amended Illinois Act requires that the Illinois Commissioner of Banks and Trust Companies (the "Illinois Commissioner") make the following two determinations before an Illinois bank can be acquired. First, the Illinois Commissioner must find that the laws of the state of the acquiring Midwest bank holding company permit an Illinois bank holding company to acquire banks and holding companies of that state under conditions which are not unduly restrictive when compared to those imposed by Illinois law. The Amended Illinois Act directs the Illinois Commissioner to make the acquisition subject to any conditions, restrictions, requirements or other limitations that would be applicable to acquisitions by Illinois bank holding companies in the other state but would not be applicable to intrastate transactions in that state. To date, Kentucky, Indiana, Michigan, Wisconsin and Missouri have passed reciprocal banking legislation. The Illinois Commissioner may attempt to enter into cooperative agreements with the regulatory authorities of these states; such agreements will generally recognize the reciprocity of each state's law.

Second, the Illinois Commissioner must determine that the banks already controlled by the acquiring Midwest bank holding

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14. 1986 Ill. Laws 84-1123, § 3.05(a) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2508).
15. Id. at § 3.02(b)(2)(A) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2505). See 12 U.S.C. §§ 2901-2905 (1982); infra note 21 and accompanying text.
17. 1986 Ill. Laws 84-1123, § 3.071(a)(1) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2510.01. Under the so-called "mirror image test" set forth in the Amended Illinois Act, the Illinois Commissioner cannot approve the acquisition of an Illinois bank by a Midwest bank holding company unless (1) the laws of the state of the acquiring Midwest bank holding company would permit that Illinois bank or bank holding company to acquire that Midwest bank holding company, and (2) if that Illinois bank or bank holding company were located in that Midwest state, its acquisition by another Illinois bank holding company would be permitted. Id.
18. Id. at § 3.071(e) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2510.01).
19. See infra note 6 and accompanying text.
company are in compliance with the CRA and that the Illinois bank or bank holding company to be acquired will be operated in compliance with the CRA after the acquisition. The CRA is a federal statute which requires federal financial supervisory agencies to encourage the institutions they regulate to serve the convenience and needs of their communities, including the need for credit and deposit services. The legislative history of the Amended Illinois Act indicates that this provision was expressly intended to ensure that banks acquired under the Amended Illinois Act would remain responsive to the needs of their local communities. The Amended Illinois Act provides that the Illinois Commissioner is to receive the following information "where applicable," both as to the acquiring institution and the institution to be acquired:

1. activities conducted . . . to ascertain the credit needs of [the institution’s] community, including the extent of the [institution’s] efforts to communicate with members of its community regarding the credit services being provided by the [institution];
2. the extent of . . . marketing and special credit-related programs [provided] to make members of the community aware of the [institution’s] credit services . . .;
3. the extent of participation by the [institution’s] board of directors in formulating . . . policies and reviewing . . . performance with respect to the purposes of the [CRA];
4. any practices intended to discourage applications for types of credit . . .;
5. the geographic distribution of the [institution’s] credit extensions, credit applications and credit denials;
6. evidence of prohibited discriminatory or other illegal credit practices;
7. the [institution’s] record of opening and closing offices and providing services at offices;
8. the [institution’s] participation, including investments, in local community development and redevelopment projects or programs;
9. the [institution’s] origination [or purchase] of residential mortgage loans, housing rehabilitation loans, home improvement loans and small business or small farm loans within its community . . .;
10. the [institution’s] participation in governmentally-in-

21. 1986 Ill. Laws 84-1123, § 3.071(a)(2)(B), (C) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2510.01).
23. 1986 Ill. Laws 84-1123, § 3.071(b)(1)-11) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2510.01).
sured, guaranteed or subsidized loan programs for housing, small businesses or small farms; and

(11) the [institution's] ability to meet various community credit needs based on its financial condition and size, legal impediments, local economic conditions and other factors.\textsuperscript{24}

These items closely parallel the provisions of Regulation BB,\textsuperscript{25} promulgated by the Federal Reserve Board to implement the CRA, although there is no requirement that the statements used to satisfy the federal regulation specifically address all of these matters. It would obviously be expedient if, for purposes of determining compliance with these provisions of the Amended Illinois Act, the Illinois Commissioner were to accept documentation already prepared for the federal regulators. Such a course of action would seem to satisfy the policy concerns of the Amended Illinois Act.\textsuperscript{26}

The Amended Illinois Act also provides that the Illinois Commissioner is to receive information "that addresses the issue of how the transaction will bring new net benefits to Illinois."\textsuperscript{27} The legislative history of the Amended Illinois Act clearly indicates that the

\textsuperscript{24} Id.

\textsuperscript{25} 12 C.F.R. § 228.4(a), (b) (1986) requires that each state member bank adopt a Community Reinvestment Act (CRA) statement for each delineated local community. Each CRA statement must, at minimum, include the following:

(1) The delineation of the local community;

(2) a list of the specific types of credit, within certain categories, that the bank is prepared to extend within the local community (terms and conditions on which loans will be granted need not be included); and

(3) a copy of the CRA notice, 12 C.F.R. § 228.6 (1986), which must be posted for the public.

In addition to these minimum requirements, 12 C.F.R. § 228.4(c) (1986) encourages member banks to include the following in each CRA statement:

(1) A description of how the bank's current efforts, including special credit-related programs, help to meet community credit needs; and

(2) a periodic report regarding the bank's record of helping to meet community credit needs; and

(3) a description of the bank's efforts to ascertain the credit needs of its community, including efforts to communicate with community members regarding credit services.

In accordance with 12 C.F.R. § 228.4(d) (1986), the bank's board of directors must review each CRA statement at least once a year, and if any material change in the statement is made between meetings, the board must approve or disapprove it at its next regular meeting. \textit{Id.}

\textsuperscript{26} The Michigan legislators agreed with this expediency argument and drafted their interstate banking law with the requirement that the acquiring bank supply the Michigan Commissioner with information and disclosures that have already been prepared for purposes of compliance with the CRA. \textsc{Mich. Comp. Laws Ann.} § 487.430b(12) (West Supp. 1986).

\textsuperscript{27} 1986 Ill. Laws 84-1123, § 3.071(a)(2)(D) (to be codified at \textit{Ill. Rev. Stat.} ch. 17, ¶ 2510.01).
Illinois Commissioner’s determination is an important one. How-
however, there appear to be no clear guidelines to govern the exercise
of the Illinois Commissioner’s discretion in this area. The informa-
tion the Illinois Commissioner is to receive includes “the Midwest
bank holding company’s initial capital investments, loan policies,
investment policies, and general plan of business.” The Amended Illinois Act mandates that the acquiring Midwest bank
holding company file, after the acquisition, annual reports which
update and detail compliance with the initial plans and policies.

C. Application Procedures

The Amended Illinois Act requires that the Illinois Commis-
sioner approve or disapprove all acquisitions (including all of the
terms and conditions thereof) within sixty days of acceptance of a
completed application (or, if the Illinois Commissioner elects to
hold a public hearing, within thirty days of the hearing). Upon
receipt of an application, the Illinois Commissioner will cause no-
tice of the proposed acquisition to be published in the Illinois Reg-
ister and invite written comments to be tendered within fourteen
days of the publication date. The Illinois Commissioner is given
discretion to hold a public hearing regarding the application, and
the application itself is to be available for public inspection pursu-
ant to the requirements and exemptions of the Illinois Freedom of
Information Act.

Because of the competitive sensitivity of some of the information
required to be contained in applications, the extent to which such
information can be withheld for public inspection on grounds of
confidentiality may become an issue under the Amended Illinois
Act. The Illinois Freedom of Information Act requires that
“[e]ach public body shall make available to any person for inspec-
tion or copying all public

records.” Section 207 of that act exem-


28. Id.
29. Id. at § 3.071(c) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2510.01).
30. Id. at § 3.07(f)(2)(A), (B) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2510.01).
31. Id. at § 3.071(d) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2510.01). Notices
are also to be posted in the offices of the acquired bank. Id.
32. Id.
33. ILL. REV. STAT. ch. 116, ¶ 203 (1985). Paragraph 202(c) defines “public
records” as all “materials . . . of physical form or characteristics, having been prepared or
having been or being used, received, possessed or under the control of any public body.”
Id. at ¶ 202(c).
where disclosure of such trade secrets or information may cause competitive harm.” The language of this exemption is very broad, and a literal application of its terms could frustrate the disclosure provision of the Amended Illinois Act since publication of any of the information contained in the application could arguably cause competitive harm. As a result, the Illinois Commissioner may follow the position taken by the Federal Reserve Board with respect to acquisition applications. The Federal Reserve Board's application form for an acquisition pursuant to the Bank Holding Company Act contains an instruction section pertaining to confidentiality. This section provides that “[i]f [an] applicant is of the opinion that disclosure of commercial or financial information would likely result in substantial harm to the competitive position of the holding company . . . confidential treatment of such information may be requested.” The request must be submitted in writing with the application, and must discuss in detail the applicant's justifications for confidential treatment. The “reasons for requesting confidentiality should demonstrate specifically the harm that would result from public release of the information.” The determination as to whether the information will be regarded as confidential is left to the Federal Reserve Board's discretion. Moreover, if the Federal Reserve Board decides against confidential treatment, it can disclose the information without prior notice to the applicant.

D. Consumer Provisions

As part of the pro-consumer packaging that was necessary for its passage, Public Law 84-1036 also amended other Illinois banking laws. These amendments require all banks and savings and loan associations operating in Illinois to (1) provide ongoing consumer disclosure of the conditions, interest rates and fees applicable to deposit accounts, as well as information regarding other available

34. Id. at ¶ 207(a) (emphasis added).
37. Id.
38. Id.
39. Id.
40. Id.
41. Id.
services,\textsuperscript{42} (2) offer checking accounts to individuals over sixty-five with a minimum initial deposit of $100 (or a written agreement to deposit directly monthly recurring third-party payments) and with no activity charges for the first ten checks each month,\textsuperscript{43} and (3) conform to the following check clearing periods with respect to customers who have had accounts with the institution for at least ninety days (except in the case of setoff or when there is a good faith belief that an item may be dishonored and the customer is so informed): (a) one banking day for U.S. Treasury, State of Illinois, and local Illinois government checks endorsed only by the payee; (b) four banking days when the payor bank is located in Illinois; and (c) seven banking days when the payor bank is located in the United States outside of Illinois.\textsuperscript{44}

III. OTHER MIDWEST INTERSTATE BANKING LAWS

A. Kentucky

The Kentucky interstate banking law (the "Kentucky Law") became effective July 13, 1984 and was the first of its kind in the Midwest.\textsuperscript{45} The Kentucky Law allows any bank holding company having its principal place of business\textsuperscript{46} in a state contiguous to Kentucky (namely, Illinois, Indiana, Ohio or Tennessee) to acquire control of a bank or bank holding company which has its principal place of business in Kentucky and which has been in existence for more than five years. The state in which the acquiring bank has its principal place of business must, however, authorize Kentucky bank holding companies to acquire banks in that state under similar conditions.\textsuperscript{47} Unlike the Amended Illinois Act, the Kentucky Law contains a national trigger, effective July 13, 1986, which provides for complete interstate banking by allowing bank holding companies in noncontiguous states to acquire control of Kentucky banks or bank holding companies, provided that the acquiring bank holding company's state has enacted reciprocal interstate banking legislation.\textsuperscript{48}

\textsuperscript{42} 1985 Ill. Laws 84-1036, §§ 1-5 (codified as amended at ILL. REV. STAT. ch. 17, §§ 501-505 (1985)).
\textsuperscript{43} Id. at § 4(a)-(d) (codified as amended at ILL. REV. STAT. ch. 17, § 504 (1985)).
\textsuperscript{44} Id. at § 4-213 (codified as amended at ILL. REV. STAT. ch. 26, § 4-213 (1985)).
\textsuperscript{45} KY. REV. STAT. §§ 287.900(7) (Supp. 1984).
\textsuperscript{46} A bank holding company is deemed to have its principal place of business in the state in which the total deposits of its bank subsidiaries are largest. KY. REV. STAT. § 287.900(6)(c) (Supp. 1984); see 12 U.S.C. § 1842(d) (1982).
\textsuperscript{47} KY. REV. STAT. § 287.900(6)(a) (Supp. 1984).
\textsuperscript{48} Id. at § 287.900(6)(b).
The Kentucky Law's primary objective test which determines whether a bank or bank holding company can acquire control of a Kentucky banking institution is that following the acquisition, the bank holding company cannot control banks in Kentucky that hold more than 15% of the total deposits in all banks in the state.\(^{49}\) In addition, until July 13, 1989, no bank holding company may acquire control of more than three banks in Kentucky during any twelve-month period.\(^{50}\)

The Kentucky Law also requires that the Commissioner of Financial Institutions (the "Kentucky Commissioner") approve the proposed acquisition.\(^{51}\) The Kentucky Law, unlike the Amended Illinois Act, does not require any determination that the acquiring bank holding company is in compliance with the CRA. Rather, it requires that the Kentucky Commissioner approve the acquisition within sixty days of application unless he finds that: "1) [t]he financial condition or the competence, experience and integrity of the acquiring company would jeopardize the financial stability of the bank or bank holding company to be acquired; or 2) [p]ublic convenience and advantage would not be served by the acquisition."\(^{52}\)

As of June 13, 1986, the Kentucky Commissioner has approved seven acquisitions of Kentucky banks by bank holding companies located in Ohio, Indiana and Tennessee.\(^{53}\) Four other interstate applications are currently pending.\(^{54}\) During the past two years, the Kentucky Commissioner has also approved thirty-eight intra-state acquisitions, and one additional application is currently pending. Most of these applications were submitted by larger banks from the Louisville and Lexington areas. Thus far only one intra-state application has been denied, and that denial was based on antitrust considerations.\(^{55}\)

B. Indiana

The Banking Structure Reform Act\(^{56}\) added a new chapter on regional interstate banking (the "Indiana Law") to the Indiana

\(^{49}\) *Id.* at § 287.900(3).
\(^{50}\) *Id.* at § 287.900(4).
\(^{51}\) *Id.* at § 287.905.
\(^{52}\) *Id.* at § 287.905(1)(b), (c).
\(^{53}\) Conversation with Larry Lander, Div. of Banking, Ky. Fin. & Admin. Cabinet (June 1986).
\(^{54}\) *Id.*
\(^{55}\) *Id.*
Code. The Indiana Law allows a bank holding company having its principal place of business in Ohio, Kentucky, Illinois or Michigan to acquire one or more Indiana banks or Indiana bank holding companies that have been in existence for at least five years. Acquisitions must be approved by the Indiana Department of Financial Institutions (the "Indiana Commissioner"). An acquisition will not be allowed unless the laws of the state in which the regional bank holding company has its principal place of business permit Indiana bank holding companies to acquire banks and bank holding companies in that state. The Indiana Law does not contain a national trigger.

The Indiana Law has an objective test similar to that found in the Kentucky Law. Acquisitions will be disallowed if, following the acquisition, the acquired bank or the Indiana banks controlled by the acquired bank holding company would hold more than (a) 10% of the total deposits in all Indiana banks before July 1, 1986, (b) 11% of the total deposits in all Indiana banks after June 30, 1986 and before July 1, 1987, or (c) 12% of the total deposits in all Indiana banks after June 30, 1987.

The Indiana Law requires the Indiana Commissioner to make determinations relating to CRA compliance which are similar to the Amended Illinois Act requirements. The Indiana Commissioner must determine whether the banks already controlled by the applicant provide adequate services including those contemplated by the CRA. The remaining determinations differ from those required under the Amended Illinois Act in that the Indiana Commissioner focuses on the financial condition and capital structure of the bank holding company.

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57. Id. at § 28-2-15(17). A bank holding company is qualified to make acquisitions only if more than 80% of the total deposits of its bank subsidiaries are held by regional banks located within Ohio, Kentucky, Illinois, Indiana or Michigan. Id. at § 28-2-15(16). A holding company is not qualified to make acquisitions if it is "controlled" by another holding company that does not meet this deposit test. Id. "Control" means to directly or indirectly:

1. own, control, or hold, with power to vote, 25% or more of the voting shares of a bank or company;
2. control in any manner the election of a majority of the directors or trustees of a bank or company;
3. exercise a controlling influence over the management or policies of a bank or company, as determined by the Federal Reserve Board after notice and opportunity for hearing.

Id. at § 28-2-15(6).

58. Id. at § 28-2-15(18)(e).
59. Id. at § 28-2-15(18)(a), (b).
60. Id. at § 28-2-15(19)(e).
of the applicant rather than on the credit and deposit services offered by the applicant. The Indiana Commissioner must approve or disapprove acquisition applications within eighty-five days of filing or thirty days after a public hearing (the Commissioner may elect to hold such a hearing).

To date, the Indiana Commissioner has approved twenty-six intrastate acquisitions. The two largest banks in the state acquired three banks each. These larger institutions, however, are effectively controlled by the ceiling imposed on the percentage of total state deposits maintained by commonly-owned Indiana banks. Presently, several of the larger Indiana banks are seeking to have the deposit ceiling raised to 12% to 15% of total state deposits.

Regional acquisitions under the Indiana Law began on January 1, 1986. Nine interstate acquisitions have been approved as of June 25, 1986. Seven other proposed acquisitions have been announced by Ohio bank holding companies, two by Michigan bank holding companies, and two by Kentucky bank holding companies. All but three of these announced acquisitions involve Indiana banks with assets of less than 100 million dollars. Two acquisitions of out-of-state banks have been announced by Indiana bank holding companies located in Evansville, Indiana. This is thus far the only activity involving Indiana bank acquisition of an out-of-state

61. Section 19(e) states that in deciding whether to approve an acquisition, the Indiana Commissioner shall consider, among others, the following factors:

1. Whether the banks already controlled by the applicant are operated in a safe, sound and prudent manner;

2. Whether the financial condition of the applicant or any of its affiliates will jeopardize the financial stability of the Indiana bank or Indiana bank holding company proposed to be acquired;

3. Whether the proposed merger or acquisition will result in an Indiana bank that has inadequate capital, unsatisfactory management or poor earnings prospects;

4. Whether the management or other principals of the applicant are qualified by character and financial responsibility to control or operate in a legal and proper manner the Indiana bank or Indiana bank holding company proposed to be acquired;

5. Whether the interest of the depositors and creditors of the Indiana bank or Indiana bank holding company proposed to be acquired and the interest of the public generally will be jeopardized by the proposed acquisition. Id.

62. Id. at § 28-2-15(19)(c).


64. Conversation with James Cooper, Office of Gen. Counsel, Ind. Dep't of Fin. Inst. (June 1986).

65. Id.
Because of this disparity, some Indiana bank holding companies are advocating an increase in the total deposit ceiling for intrastate acquisitions, but not for regional acquisitions. This proposal, if enacted, may cause difficulty with the reciprocity requirements of the Illinois, Kentucky and Michigan laws.

C. Michigan

Another recent midwestern regional interstate banking law is the Michigan law (the "Michigan Law") which amends the Michigan Banking Code of 1969. The Michigan Law provides that effective January 1, 1986, with the approval of the Commissioner of the Financial Institutions Bureau (the "Michigan Commissioner"), a regional bank holding company located in Illinois, Indiana, Minnesota, Ohio or Wisconsin may, directly or indirectly, acquire control of any or all of the voting shares of the capital stock of any number of Michigan banking institutions if the Michigan Commissioner determines that all of the following conditions are met:

1) The laws of the state in which the acquiring bank holding company has its principal place of business permit a Michigan bank holding company to acquire control of one or more banking institutions located in that state;
2) The acquisition would not restrict the powers or privileges of the acquired banking institution; and
3) The acquisition is unlikely to impair the safety and the soundness of the acquired Michigan banking institution.

The Michigan Law requires the Michigan Commissioner to assess the applicant's record with regard to the factors considered by the Federal Reserve Board pursuant to the CRA; moreover, the applicant must supply the Michigan Commissioner with information and disclosures prepared in compliance with the CRA. The Michigan Commissioner is to approve or disapprove applications within sixty days. Like the Kentucky Law, the Michigan Law has a

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69. A bank holding company is deemed to be located in the state in which the total deposits of all of its bank subsidiaries are largest. Id. at § 487.430b(1)(i). A bank holding company is not qualified to make acquisitions if it is "controlled" by another bank holding company that does not meet this deposit test. Id. at § 487.430b(1)(g). The "control" test is the same as that found in the Indiana Law. See supra note 57.
71. Id. at § 487.430b(12). The Michigan Commissioner is to approve or disapprove applications within 60 days. Id. at § 487.430b(7).
national trigger, effective October 10, 1988, which will allow any out-of-state bank holding company to acquire control of a Michigan banking institution provided that the laws of the other state permit Michigan bank holding companies to acquire banks in that state.\textsuperscript{72}

The Michigan Law also includes certain consumer protection provisions. One such provision provides that every applicant must sign an agreement which states that the applicant and its subsidiaries agree to comply with Michigan’s maximum-interest-rate laws and other consumer protection provisions when they make a consumer loan to a Michigan resident who does not physically travel out of the state in order to obtain the loan. Credit card and other unsecured credit will not be affected because a federal exemption is specifically recognized. Applicants, however, must waive the federal exemption with respect to secured open-end credit (for example, home equity) and all closed-end credit (for example, auto loans).\textsuperscript{73} Another section of the Michigan Law provides that if an out-of-state lender takes a security interest on a consumer loan with a rate of interest in excess of the rate allowed by Michigan law, or otherwise violates Michigan’s consumer protection laws relating to that type of consumer loan, the security interest will not be enforceable in Michigan unless the violation was unintentional.\textsuperscript{74} To date, only two applications from out-of-state bank holding companies have been filed in Michigan. Approval was granted by the Michigan Commissioner for an Elkhart, Indiana bank holding company to acquire a Michigan bank. The only other application is currently pending.\textsuperscript{75}

\textbf{D. Wisconsin}

The Wisconsin interstate banking legislation was enacted on April 30, 1986, and will become effective on January 1, 1987.\textsuperscript{76} The states included in the Wisconsin statute are Illinois, Iowa, Minnesota, Missouri and Ohio. The statute provides that the following conditions must be met before a regional bank holding company may acquire, or merge with, a Wisconsin banking institution:

\textsuperscript{72} Id. at § 487.430b(4).
(1) the statutes of the state in which the regional bank holding company is located must permit Wisconsin bank holding companies both to acquire or merge with one or more regional state banks and bank holding companies; (2) the Wisconsin Banking Commissioner (the "Wisconsin Commissioner") must determine that the regional bank holding company has provided adequate and appropriate services as contemplated by the CRA; (3) the Wisconsin Commissioner must be provided with a copy of any original application that seeks any federal agency's approval; and (4) the Wisconsin Commissioner must enter into an agreement with the applicant stating that the latter agrees to comply with the laws of Wisconsin regulating consumer credit finance charges, other charges and related disclosure requirements.77

Like the Michigan Law, the proposed Wisconsin law contains no objective tests. As of June 1986 two proposals by Wisconsin banks have been made to acquire out-of-state banks. The first proposal, to acquire a bank located in Arizona, could be ratified at any time since Arizona has a nonreciprocal interstate banking statute. The second proposal is directed at a bank in Minnesota. Because of the reciprocity requirement of the Minnesota interstate banking legislation, this proposal cannot become effective until at least January of 1987, when Wisconsin's interstate banking legislation takes effect.78

E. Missouri

The Missouri interstate banking legislation was passed on May 1, 1986 and became effective on August 13, 1986. The legislation provides that Missouri banks and bank holding companies may be acquired by "adjoining state bank holding companies." Adjoining states include Illinois, Kentucky, Tennessee, Arkansas, Oklahoma, Kansas, Nebraska and Iowa.79 A copy of the adjoining state bank holding company's application to the Federal Reserve Board must be filed with the Missouri Director of Finance. Other than a reciprocity requirement and a requirement that the acquiring bank holding company must not control more than 13% of the total deposits in Missouri, the legislation has no objective or subjective tests.80

78. Conversation with Jennifer McKinzie, Deputy Comm’r of Banking, Wis. Banking Comm’n (June 1986).
79. Conversation with Steve Geary, Gen. Counsel, Mo. Dep’t of Banking (June 1986).
F. Iowa

In Iowa, interstate banking legislation was introduced in the form of proposed Senate File 2121 and its House counterpart, House File 2238. The Iowa legislature adjourned without having voted on the legislation and thus no action will be taken on the bill until January of 1987 when the legislature meets again. The Iowa interstate banking proposals appear to be unique in that if the proposals were enacted, Iowa banks located in towns with populations of less than 5,000 could not be acquired by out-of-state bank holding companies. The proposed legislation would also require that the Iowa Superintendent of Banking establish minimum community investment standards for banks acquired by bank holding companies. Because of the predominance of agricultural concerns in Iowa, the prospects of passing an interstate banking law at this time appear remote.

IV. OPT-OUT PROVISIONS

The Illinois Amended Act provides that an Illinois bank or bank holding company can temporarily opt out of the new law, thus making itself ineligible for acquisition by a Midwest bank holding company until July 1, 1988. This can be accomplished by means of an irrevocable directors' resolution adopted prior to September 1, 1986 (a certified copy must be filed with the Illinois Commissioner before that date). Any Illinois bank or bank holding company making this election will not be permitted, prior to July 1, 1988, to make acquisitions in Indiana, Iowa, Kentucky, Michigan, Missouri or Wisconsin by virtue of the reciprocity accorded by the Amended Illinois Act.

Indiana is the only other midwestern state to include an irrevocable opt-out provision in its regional interstate banking law. The Indiana provision differs from that contained in the Amended Illinois Act. Under the Indiana Law, if a bank or bank holding company opted out of regional acquisitions, then prior to July 1, 1985, it could also have adopted a resolution exempting itself from

82. Id.
83. Id. at § 5.
84. Conversation with Howard Hall, Iowa Banking Dep't (Mar. 1986).
85. 1986 Ill. Laws 84-1123, § 3.073(c) (to be codified at ILL. REV. STAT. ch. 17, ¶ 2510.03).
86. Id.
87. Id.
88. IND. CODE ANN. § 28-6-2.19-9(a)-(e) (exp. July 1, 1986).
intrastate acquisitions until July 1, 1987. Fifteen small community banks opted out of regional and intrastate acquisitions under the Indiana Law. One large Indiana bank opted out of only regional acquisitions. To date, no shareholder suits have been filed contesting the opt-out resolutions.89

The Illinois opt-out provision seems more susceptible to shareholder suits than its Indiana counterpart. Under the Illinois law, an opt-out decision will not insulate an institution from acquisition by an Illinois bank holding company. Illinois boards of directors, as a consequence, must be in a position to defend their decisions to foreclose any possibility of regional bids. Therefore, except perhaps in the case of very closely held institutions with a cohesive and supportive shareholder group, an Illinois board of directors considering whether to take advantage of this provision under the Amended Illinois Act should carefully consider what legitimate business purpose would be served by the election.

V. CONSTITUTIONAL ISSUES

When regional interstate banking laws began appearing in the early 1980's, critics believed that such laws were unconstitutional because they violated the Commerce, the Compact and the Equal Protection Clauses of the United States Constitution.90 However, the United States Supreme Court ended the controversy with its decision in Northeast Bancorp v. Board of Governors of the Federal Reserve System.91 In the course of holding that the Connecticut and Massachusetts regional interstate banking laws were constitutional, the Court addressed the effect of the Douglas Amendment to the Bank Holding Company Act on these laws. The Douglas Amendment prohibits the Federal Reserve Board from approving a bank holding company's application to acquire a bank located in another state unless the acquisition "is specifically authorized by the statute laws of the state in which such bank is located, by language to that effect and not merely by implication."92 The Court

89. Conversation with John P. Goddard, Office of Gen. Counsel, Ind. Dep't of Fin. Inst. (Dec. 1985). Mr. Goddard informed the writer that his department set up seminars on the effects of the legislation. The department recommended that the bank board of directors form a committee to consider opting out and generate a public record. The department also recommended that the bank contact as many shareholders as possible before exercising opt-out provisions. Id.
reasoned that while the Douglas Amendment does not specifically indicate that a state may partially lift the ban on such interstate acquisitions, neither does it specifically indicate that a state is allowed only the alternatives of leaving the federal ban in place or lifting it completely. The Court found that the legislative history of the Douglas Amendment indicates that Congress intended to allow each state some flexibility in its approach. The Court then found that the regional interstate banking laws at issue were consistent with the purpose of the Bank Holding Company Act: to retain local, community-based control over banking. Moreover, these laws, as contemplated by the Douglas Amendment, lifted bars against interstate acquisition. Therefore, the Court stated that "when Congress so chooses, state actions . . . plainly authorized are invulnerable to constitutional attack under the Commerce Clause." With respect to the Compact Clause, which provides that "no state, without Congress' consent, shall enter into an agreement or compact with another state," the Court found that even if these regional interstate banking laws constituted a compact, they did not violate the Compact Clause since they neither infringed upon federal supremacy nor enhanced the political power of some states at the expense of other states.

Finally, the Court concluded that these statutes did not violate the Equal Protection Clause because they satisfied the traditional rational basis test for judging equal protection claims. The Court found that the state legislatures had determined that "interstate banking on a regional basis [combined] the beneficial effect of increasing the number of banking competitors with the need to preserve a close relationship between those in the community who need credit and those who provide credit." The Court held that these were profound local interests sufficient to justify the discriminatory effect of these laws on some bank holding companies.

VI. CONCLUSION

Public Law 84-1036 is a significant step toward interstate banking in Illinois. Although the minimum capital requirement may

93. 105 S. Ct. at 2552.
94. Id. at 2553.
95. Id. at 2554.
96. U.S. CONST. art. I, § 10, cl. 3.
97. 105 S. Ct. at 2554-55.
98. U.S. CONST. amend. XIV.
99. 105 S. Ct. at 2555.
exclude some interested parties, and although it remains to be seen how the discretion given the Illinois Commissioner will be exercised, Public Law 84-1036 and its counterparts in the other midwestern states should provide many new opportunities for Illinois and other regional bank holding companies.