Survey of The State Laws Governing Branching and Other Modes of Bank Expansion in Alabama, Florida, and Georgia

Alan Bertini

Follow this and additional works at: http://repository.law.miami.edu/umlr

Recommended Citation
Available at: http://repository.law.miami.edu/umlr/vol35/iss5/8

This Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.
A Survey of The State Laws Governing Branching and Other Modes of Bank Expansion in Alabama, Florida, and Georgia

ALAN BERTINI*

In this brief review of the state statutes governing banking activities in Florida, Georgia, and Alabama, the author concisely summarizes the methods by which banks may expand banking services.

I. INTRODUCTION ............................................................. 1067

II. BRANCHING .............................................................. 1067

III. DRIVE-IN OR WALK-UP MANNED TELLER FACILITIES .......... 1073

IV. UNMANNED FACILITIES ............................................. 1076

V. MERGERS, CONSOLIDATIONS, AND TRANSFERS OF ASSETS AND LIABILITIES ............ 1080

VI. LOAN PRODUCTION OFFICES ........................................ 1086

VII. BANK HOLDING COMPANIES ....................................... 1089

VIII. ACTIVITIES INCIDENTAL TO THE BUSINESS OF BANKING ...... 1092

IX. CONCLUSION ............................................................ 1097

I. INTRODUCTION

The business of banking is rapidly evolving from its staid origins to a dynamic, consumer-oriented enterprise. Before commercial banks may expand their network of operations, however, they must comply with a host of legislative limitations and conditions. These limitations vary in nature and scope among jurisdictions and reflect the particular balance of competing interests existing within each state. This article compares the alternative modes of bank expansion that are permitted under the banking codes of Alabama, Florida, and Georgia.

II. BRANCHING

Florida

Section 658.26(2) of the Florida Statutes, part of the Florida Banking Code, permits banks to establish branches only under certain conditions.¹ This statute and its immediate predecessors re-

¹ Mr. Bertini was a student at the University of Miami School of Law, Coral Gables, Florida.
reflect recent major changes in Florida's branching policy. Florida's rapid development and urbanization, as well as other changing economic and social conditions, have prompted the policy shift in the banking laws.

Florida has only recently allowed its banks to establish branches. As late as 1974, the Florida Banking Code limited a bank or trust company to only one "place of doing business." In 1975, an amendment to the Banking Code introduced a limited system of branching. The amendment, which did not become effective until January 1, 1977, allowed banks to establish a maximum of two new branches per calendar year within the limits of the county in which the parent bank was located, or to establish branches by merging with other banks located within the same county.

In 1979, the legislature again revised the Banking Code's branching provisions. The 1979 revision continued to allow banks to establish up to two branches per year in the parent bank's county. The new laws went beyond the old provisions, however, by authorizing banks to open branches by merging with any other bank in the state. The old provisions had only permitted mergers within the same county. Merging banks under the 1979 revised provisions could open a maximum of two branches per year within the county in which the branch was established by merger. The 1979 revision expressly prohibited banks that had been incorporated for less than three years from merging with banks located in other counties.

In 1981, the Florida Legislature further loosened banking expansion by removing all limitations on the number of branches a

---

6. Id. § 3.
7. Id. § 1.
10. Id.
13. Id.
bank may open per year. The 1981 revision still prohibits banks incorporated for less than three years from merging with banks in other counties. The cumulative effect of these revisions over the last six years has been to produce a scheme of state-wide branch banking out of statutory whole-cloth.

Georgia

The ability of Georgia banks to branch is a function of the type of branch facility desired and the intercounty or intracounty nature of the branching. Because the generic terms, such as “branching” and “branch banking,” used in Georgia’s scheme can be very misleading, an understanding of the terms is important.

Section 13-201.1 of the Georgia Code defines the terms used in connection with branch banking. A “parent bank” means a bank’s principal place of business in the municipality specified in its charter. A “branch bank” is any additional place of business in a county other than the one in which the parent bank is located. A “bank office” is defined as any additional place of banking business located in the same county as either the parent or a branch bank, and which has a permit to conduct complete banking services. A “bank facility,” like a “bank office,” is located in the same county as the parent or branch, but may conduct only limited banking services.

Georgia’s scheme of branch banking is divided into a dual classification system: intercounty expansion and intracounty expansion. “Branch banks” are opened in intercounty expansion, while “bank offices” or “bank facilities” are opened in intracounty expansion. Separate statutes govern the two types of expansion—section 13-203 regulates intercounty expansion and section 13-203.1 regulates intracounty expansion.

Section 13-203(c) generally prohibits banks from intercounty expansion, but outlines three exceptions. The first exception, in section 13-203(c)(1), is mandatory, while the second and third ex-

15. Id.
17. Id. § 13-201.1(a).
18. Id. § 13-201.1(b).
19. Id. § 13-201.1(c).
20. Id. § 13-201.1(d).
21. Id. § 13-203.
22. Id. § 13-203.1.
23. Id. § 13-203(c)(1).
Exceptions permit banks to establish branches if certain prerequisites are met.\textsuperscript{24} The first exception requires any parent or branch bank operating a bank office in another county to designate one bank in that county as a branch bank, if that county has a population of 250,000 or more.\textsuperscript{25} This exception presently applies only to banks in DeKalb, Cobb, and Fulton Counties because they are the only Georgia counties that meet the statute's population requirements.\textsuperscript{26}

The second exception permits any parent bank located in a county with a population of at least 400,000 to establish a branch bank in any adjacent county that has a minimum population of 400,000.\textsuperscript{27} This exception also currently applies only to DeKalb, Cobb, and Fulton Counties because no other county in Georgia has a population approaching the requisite minimum.\textsuperscript{28}

The third exception to the general prohibition on intercounty bank expansion is not based on population. Rather, the exception allows a bank to establish a branch by either merging with a failed bank or buying its assets.\textsuperscript{29} Because of its emergency character, this exception is only a limited means of intercounty expansion. Banks must satisfy several conditions precedent to use this exception. First, the target bank must be a "failed bank" within the meaning of section 13-203(c)(3)(B): a bank deemed insolvent or in an unsound condition.\textsuperscript{30} Second, the acquiring bank must be "qualified," i.e., it must possess sufficient capital and management resources to enable it to operate soundly following the acquisition.\textsuperscript{31} Third, if the acquiring bank presently maintains a bank in the same county as the failed bank, it may acquire the failed bank and operate it as a branch.\textsuperscript{32} If the acquiring bank maintains a bank in a county adjacent to that of the failed bank, it may acquire the failed bank only if no other qualified bank in the failed bank's county wishes to acquire it; if the acquiring bank does not maintain a bank in the same county as the failed bank, or in an adjacent county, the acquiring bank may acquire the failed bank only

\begin{thebibliography}{9}
\bibitem{24} Id. \textsection 13-203(c)(2)-(3).
\bibitem{25} Id. \textsection 13-203(c)(1).
\bibitem{26} See \textit{The World Almanac and Book of Facts} 1981, at 960 (Newspaper Enterprise Ass'n, Inc. publisher).
\bibitem{28} See note 26 \textit{supra}.
\bibitem{30} Id. \textsection 13-203(c)(3)(B).
\bibitem{31} Id. \textsection 13-203(c)(3)(C).
\bibitem{32} Id. \textsection 13-203(c)(3)(A)(ii)(aa).
\end{thebibliography}
if no other qualified banks in the same county as the failed bank,
or in an adjacent county, wishes to acquire the failed bank.\textsuperscript{33} Finally, the acquiring bank must comply with the bank merger and consolidation provisions of the Financial Institutions Code of Georgia.\textsuperscript{34}

Despite the restrictive conditions imposed on intercounty bank expansions, a 1980 amendment to the Georgia Bank Holding Company Act\textsuperscript{35} permits a bank that has become a subsidiary of a bank holding company to be operated as a branch of another bank subsidiary of the bank holding company. The parent holding company must first secure the approval of the Georgia Commissioner of Banking and Finance.\textsuperscript{36} The amendment supersedes any conflicting restrictions imposed on bank expansion by section 13-203(c) of the Georgia Code.\textsuperscript{37}

Intracounty expansion is addressed separately by section 13-203.1, which allows a parent or branch bank to establish bank offices or bank facilities within the county in which the parent or branch bank is situated. The number of branch facilities is limited by reference to the county’s population.\textsuperscript{38} In addition to these provisions, section 13-203.1(e) permits a resulting bank in a merger to retain and operate any business location of each merged bank as either a branch bank, bank office, or bank facility.\textsuperscript{39}

\textit{Alabama}

Banks in Alabama may not establish branches unless specifically authorized by local laws or general laws of local application.\textsuperscript{40} This scheme of general prohibition with legislatively created exceptions has been in effect, with only slight changes, since 1911.\textsuperscript{41} In 1980, the Alabama legislature undertook a major revision of its

banking laws, the result was the Alabama Banking Code. The new Code does not alter the established general ban on branch banks. The Code is flawed, however, because it fails to define clearly its important terms, such as "branch bank," "office," or "principal place of business."

The leading case interpreting Alabama's general prohibition of branch banking is Security Trust & Savings Bank v. Macon County Banking Co. In Security Trust, an Alabama bank sought a declaratory judgment to determine the right of a competing bank to open branch banks in Alabama. The Supreme Court of Alabama held that the authority to branch must come from an express legislative provision and that the power of a bank to branch does not follow by implication as a reasonable or necessary incident to doing business.

Despite Alabama's general ban on bank branching, banks may establish branches under the express authority of local laws or state laws of local application. As of 1979, some form of branch banking has been authorized in fifty-eight of Alabama's sixty-seven counties. These local laws frequently impose special limitations on a bank before allowing it to branch. Common limitations include minimum bank capital requirements, limitations on the

44. Gulledge-Cates Banking Reform Act of 1980, Act No. 80-658, § 5-5-20, 1980 Ala. Acts 1259, 1286 (codified at ALA. CODE § 5-5A-20 (1981)). The new Code did add a sentence to the general ban that states: "All existing banks are hereby validated." Id. The comment to the Code section indicates that the purpose of the addition "is to clearly state that all branch banks previously authorized by local laws or general laws of local application are validated." ALA. CODE § 5-5A-20 comment.
45. The Code does provide a circular definition of the term "bank": "Any banking corporation or trust company organized under the laws of this state . . . or under the laws of the United States having its principal place of business in this state." ALA. CODE § 5-1A-2(1) (1981).
46. 287 Ala. 507, 253 So. 2d 17 (1971).
47. Id. at 509-10, 253 So. 2d at 18.
48. Id. at 512-13, 253 So. 2d at 20-21.
49. Id.
number of branches that may be opened in the county, and provisions that restrict branches to a particular geographic area in the county. These local laws allow Alabama communities to circumscribe carefully bank expansion within their boundaries. Branch banking in Alabama is thus more controlled than in Florida or Georgia, but it is also more difficult for banks to expand rapidly to serve customer needs.

III. Drive-In or Walk-Up Manned Teller Facilities

\textit{Florida}

Section 658.26 of the Florida Statutes regulates how Florida banks may establish drive-in or walk-up manned teller facilities. The statute provides that the main office of a bank or any branch office may operate "facilities providing services to customers." Although not expressly stated, the "facilities" referred to in the statute are manned facilities because unmanned remote financial service units are treated separately. The statute does not treat manned teller facilities established pursuant to section 658.26(6) as additional banking offices for which branch applications are necessary, but instead deems them extensions of the main or branch office.

The statute provides that it is not necessary for any manned facility to be physically connected to the main or branch office if the facility is located either on the same or contiguous property. Section 658.26(6) provides a technical definition of the term "contiguous property." The rules of the Department of Banking and Finance elaborate the definition:

Contiguous property will be established only (1) where lateral

\begin{enumerate}
\item \textit{FLA. STAT. § 658.26(6) (1981). Although the generic terminology of "facilities providing services for customers" is widely regarded as authorizing a bank to establish manned teller facilities, the ambiguous language may also authorize other types of service facilities such as installment loan or trust offices, provided that the statute's geographical requirements are satisfied.}
\item \textit{See FLA. STAT. § 658.65 (1981).}
\item \textit{Because a physical connection between the manned teller facility and the bank is not required under the Florida scheme, the Florida Banking Code contains no provisions concerning the nature and characteristics of the means of connection.}
\end{enumerate}
property lines of the main banking house and the facility property are common at any point; or (2) where the main banking house property and the facility property occupy diagonally opposing corners of the intersection of property lines or of one street and one or more walkways or alleyways; or (3) where the main banking house property and the facility property are separated only by one street and one or more walkways or alleyways. 58

In addition, the rules require that the entire facility be physically located on the property relied on to establish contiguity. 59 Operating a manned teller facility in a location other than as provided by the rules violates section 658.26(1) of the Florida Statutes, which limits a bank to only one principal place of business unless it obtains approval to conduct business at other branch office locations. 60

Georgia

Section 13-203.2 of the Georgia Code governs how banks may establish drive-in or walk-up manned teller facilities in Georgia. 61 Such facilities, if established in accordance with the statutory conditions, are deemed expansions or extensions of the existing parent bank, branch bank, bank office, or bank facility. 62 The statute does not limit the number of facilities that a bank may operate as an extension. When the specific conditions of section 13-203.2 are not met, however, the manned teller facility is considered an additional

62. Id. The state law classifying a manned teller facility as an extension of an existing bank is not determinative of whether a separate branch exists within the meaning of section 1813(o) of the Federal Deposit Insurance Act and hence, whether the approval required by section 1828(d) of the Act applies. See 12 U.S.C. §§ 1813(o), 1828(d) (1976 & Supp. IV 1980). A manned teller facility meeting the distance requirements of section 13-203.2(c) of the Georgia Code on property adjoining the bank's property, but not physically connected to it, would be considered as a separate branch by the FDIC unless the bank has exclusive use and control over all such adjoining areas without the interference of public streets or other public areas. See 12 U.S.C. §§ 1813(o), 1828(d) (1976 & Supp. IV 1980).
bank facility, and must meet the requirements of section 13-203.1(c).\textsuperscript{63}

Subsections 13-203.2(a), (b), and (c) of the Georgia Code identify the three locations where a manned teller facility is deemed an extension of an existing bank. Subsection (a) provides that a manned teller facility may be established within the boundary lines of a single contiguous piece of property occupied as a banking business by a parent bank, branch bank, bank office, or bank facility, whether or not the teller facility is physically connected to the bank. The subsection does not, however, distinguish between a manned teller facility housed in a separate structure on bank property and one attached to the banking house itself. If the conditions of this subsection are met, a bank need not secure the approval of the Department of Banking and Finance to establish a manned teller facility.

Subsection (b) provides that a manned teller facility may be established across a street, alley, railroad right-of-way, or thoroughfare from an existing bank. At such a location, however, the manned teller facility must be physically connected to the existing bank by a private, enclosed, secure overhead passageway or by an underground tunnel. As with subsection (a), if the requirements of subsection (b) are satisfied, banks may establish a manned teller facility without departmental approval.

Subsection (c) allows banks to establish a manned teller facility within 200 yards of an existing bank, whether or not the facility is physically connected to the banking house. Before a bank may establish a facility under this provision, it must obtain the prior written approval of the Department of Banking and Finance. Under this provision, a manned teller facility could be established across or down the street from the existing bank, without being physically connected to the bank, and yet be deemed an extension of the bank. Distance is the sole criterion under this provision. Any increased flexibility in site selection gained under this provision, however, must be balanced against the requirement of prior departmental approval.

\textsuperscript{63} GA. CODE ANN. \S 13-203.1(c) (Harrison Supp. 1981). If the manned teller facility is deemed an additional bank facility, the numerical limitations of section 13-203.1(c)(2) are applicable unless the facility is located in a county with a population in excess of 120,000, in which case section 13-203.1(c)(3) imposes no numerical limitations. See text accompanying notes 25-28 \textit{supra}. 
Alabama

The Alabama Banking Code does not specifically address when banks may establish drive-in or walk-up manned teller facilities. Such facilities are regarded as branches and are governed accordingly, unless the state banking department deems otherwise. The department claims the right to determine whether a branch application is necessary in a given situation, as a corollary to its authority to accept and process branch applications. The department does not require a branch application from a bank that plans to establish a manned teller facility on bank property, or on property other than bank property, if the teller facility and the bank are physically connected. A manned teller facility established in accordance with this policy is deemed a part or extension of the bank, not a separate branch requiring departmental approval. The department has not set standards for the requisite physical connection between banks and teller facilities established on nonbank property.

IV. UNMANNED FACILITIES

Florida

Section 658.65 of the Florida Statutes authorizes banks and other financial depository institutions having their principal office and place of business in Florida to establish unmanned banking facilities in the state. This grant of authority is designed to allow banks to provide more convenient customer service, not to enlarge banking powers. This section also expressly provides that unmanned facilities are not to be regarded as bank branches. Accordingly, banks may operate unmanned facilities without violating Florida's branch banking scheme.

---

64. According to the state banking department, the power to make such a determination is derived from section 5-2A-1 of the Alabama Code, which vests the department with authority to administer the banking laws of the state. See Ala. Code § 5-2A-1 (1981).

65. Fla. Stat. § 658.65 (1981). The term "unmanned facilities" in this article refers to, inter alia, such facilities as customer bank communication terminals, automated teller machines, and point-of-sale terminals. For a definition of "point-of-sale terminal," see text accompanying notes 73-75 infra. The terminology used to describe such facilities varies from state to state. Even though point-of-sale terminals ordinarily require manual operation, this article uses the general designation "unmanned facilities" to distinguish them from manned teller facilities such as drive-in, walk-up, or auxiliary teller windows.


67. Id. § 658.65(6).

68. See id.
Section 658.65 uses the generic designation "remote financial service unit" to describe unmanned facilities. The section allows banks to operate two types of unmanned facilities: "remote service terminals" and "point-of-sale" terminals. The statute defines a remote service terminal as an unmanned information processing device that accomplishes transactions with or among one or more financial depository institutions by electronic, automated, or mechanical signals and impulses. A remote service terminal may be located on bank premises. A point-of-sale terminal is an information processing device not located at a financial depository institution's place of business. Like a remote service terminal, a point-of-sale terminal can accomplish transactions with or among one or more financial depository institutions through electronic or automated signals or impulses. A point-of-sale terminal can, however, also accomplish such transactions by human voice. Although the statute bars an agent or employee of the financial depository institution from operating a point-of-sale terminal, the prohibition does not extend to an agent or employee of the business establishment in which a point-of-sale terminal is located. For purposes of this section, such a person is not deemed to be an agent or employee of the financial depository institutions. Finally, section 658.65 defines the term "owner of a remote financial service unit" as the person having the right to determine which financial depository institutions will be permitted to use a remote financial service unit. This definition implies that persons or entities other than financial depository institutions may own unmanned facilities, provided that such facilities are operated according to the provisions of section 658.65.

Because there are no numerical or geographic limitations on the remote financial service units a financial depository institution may operate, the institution is free to determine the number and location of these units. A remote financial service unit need not

69. Id. § 658.65(1)(c).
70. Id. § 658.65(2). For purposes of this section, a "bank" is defined as any entity authorized by Florida or federal law to do a banking business, with its principal office and main banking house in Florida. Compare Fla. Stat. § 658.65(1)(a) (1981) with Fla. Stat. § 658.12(3) (1981).
71. Id. § 658.65(1)(f).
72. See id.
73. Id. § 658.65(1)(e).
74. Id.
75. Id.
76. Id. § 658.65(1)(d).
77. Id. § 658.65(2).
be part of, or physically connected to, a financial depository institution; it need not even be located on the same or contiguous property.\textsuperscript{78} Although the statute does not require that the financial depository institution hold legal title to the remote financial service unit, the owner of the unit is subject to the provisions of section 658.65.\textsuperscript{79} The only procedural requirement of section 658.65 is that the financial depository institution give not less than thirty days written notice to the Department of Banking and Finance of its intention to establish a remote financial service unit.\textsuperscript{80} Financial depository institutions having their principal office and place of business outside of Florida are prohibited from using or establishing remote financial service units in the state.\textsuperscript{81} No corresponding provision restricts Florida banks and other financial depository institutions from establishing or using such facilities outside the state.\textsuperscript{82}

\textit{Georgia}

Section 13-203 of the Georgia Code governs the establishment of manned and unmanned teller facilities in the state.\textsuperscript{83} If the facilities are established in accordance with this section, they are regarded as extensions of the existing parent bank, branch bank, bank office, or bank facility that operates them.\textsuperscript{84} Georgia law recognizes two types of unmanned facilities: "automated teller facilities" and "point-of-sale terminals." The Georgia Code defines automated teller facilities as electronic or mechanical equipment that perform routine banking transactions for the public at locations off the bank premises.\textsuperscript{85} Point-of-sale terminals are electronic or mechanical equipment located in non-bank business outlets that record, directly with a bank, transactions occurring as a result of the sale of goods or services.\textsuperscript{86}

Unmanned teller facilities are subject to the location conditions contained in Georgia Code section 13-203.2(a)-(c), which reg-

\textsuperscript{78} \textit{Id.}
\textsuperscript{79} \textit{Id.}
\textsuperscript{80} \textit{Id.} § 658.65(3)(a). Remote unmanned facilities are, however, still subject to branch treatment under section 3(o) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(o) (1976 & Supp. IV, 1980). See note 58 supra.
\textsuperscript{81} \textit{Fla. Stat.} § 658.65(9) (1981).
\textsuperscript{82} \textit{See id.} § 658.65.
\textsuperscript{84} \textit{Id.}
\textsuperscript{85} \textit{Id.} § 13-203.2(d).
\textsuperscript{86} \textit{Id.}
ulates manned teller facilities. Additionally, unmanned facilities can be established anywhere within the county in which a parent or branch bank is located. The statute does not restrict the number of such facilities within any given geographical area. The Department of Banking and Finance does, however, prohibit banks from establishing unmanned facilities on an interstate basis, both in Georgia by out-of-state banks, and in other states by Georgia banks.

Alabama

The Electronic Funds Transfer Systems Regulations authorize financial institutions headquartered in Alabama to use electronic funds transfer systems and remote unmanned service units to serve their customers more effectively. The regulations define the term "financial institution" as any federally or state chartered bank, savings and loan association, or credit union. A "remote service unit" is any off-premises device or procedure used for electronic funds transfer services. A "point-of-sale terminal" describes equipment operated by a third party, such as a retail store, which handles financial transactions involving a financial institution. An "automated teller machine" is an unmanned off-premises terminal that is capable of processing withdrawals from deposit accounts, transferring funds from one account to another, accepting deposits, and performing other related banking services. Finally, the term "automated clearing house" refers to an organization that clears electronic or paperless transactions between financial institutions.

The regulations do not expressly characterize unmanned facilities as extensions of existing banks, but such facilities are in fact treated as extensions, not as separate branches. The state banking

---

87. For a discussion of these provisions, see text following note 63 supra.
88. GA. CODE ANN. § 13-203.2(d).
Despite the extension treatment accorded an unmanned facility under Georgia law, if such a facility is not physically connected to or located on bank property, the FDIC will treat it as a "branch" unless it is located on adjoining property over which the bank has exclusive control without the intervention of public streets or public areas. See note 58 supra.
89. ALABAMA STATE BANKING DEPARTMENT, ELECTRONIC FUNDS TRANSFER SYSTEMS REGULATIONS (1975) [hereinafter ALA. REGS.].
90. Id. Reg. No. 3.
91. Id.
92. Id.
93. Id.
94. Id.
The department must approve a written application before a financial institution may establish a remote service unit. The regulations contain no numerical limitations on such facilities; population and distance criteria are expressly excluded as factors in reviewing applications. Despite language in the regulations that could be interpreted as sanctioning the statewide establishment of unmanned facilities, the department restricts them to the "trade area" of the financial institution. Alabama financial institutions may establish unmanned facilities in other states upon written approval of both the Alabama Superintendent of Banks and the corresponding authority of the state in which the facility is to be located. Out-of-state financial institutions may establish such facilities in Alabama with the written approval of the Alabama Superintendent of Banks.

V. Mergers, Consolidations, and Transfers of Assets and Liabilities

Florida

The Florida Banking Code authorizes banks and trust companies located in Florida to merge with, consolidate with, or purchase the assets and assume the liabilities of other banks and trust companies situated within the state. Bank participation in such arrangements is subject to the conditions set forth in Chapter 658 of the Florida Banking Code, and Chapter 3C-14 of the Rules of the Department of Banking and Finance.

The Florida Banking Code defines certain terms used in connection with the treatment of bank mergers. The definition of "bank" includes both state and national institutions that engage in the commercial banking business. The term "merger," as used in

95. Id. Reg. No. 4.
96. Id. Reg. No. 7.
97. Because the "trade area" concept is an unwritten policy of the state banking department, there are no precise definitions or guidelines on which applicants may rely. The department has indicated, however, that the "trade area" of a financial institution is generally regarded as the metropolitan area where the institution is located, or a thirty to forty mile radius surrounding it. One factor the Department does weigh is the percentage of a bank's deposits derived from the area in which the proposed unmanned facility is to be established.
98. ALABAMA REGULATIONS, supra note 89, Reg. No. 4.
102. Id. § 658.12(3).
this context, includes consolidation.\textsuperscript{103} The term "constituent bank or state trust company" describes a bank or trust company that is a party to a merger.\textsuperscript{104} The Code provides different definitions for the term "resulting bank or state trust company" depending on whether the transaction is a merger or a consolidation.\textsuperscript{105} In the context of a merger, the term is defined as the bank or state trust company into which other constituent banks or state trust companies will be merged. In the context of a consolidation, the term describes the bank or trust company that will carry on business upon completion of the consolidation.\textsuperscript{106} The term "successor institution," which the Florida Banking Code uses to designate a phantom or interim bank, is a banking corporation or trust company organized under the laws of Florida for the sole purpose of becoming a resulting bank or trust company in a merger.\textsuperscript{107} To obtain a charter or a certificate of authorization to conduct a banking business, the interim bank must also obtain a certificate of merger.\textsuperscript{108}

Section 658.41(1) authorizes state or national banks and state trust companies to merge with a resulting state bank or state trust company.\textsuperscript{109} Additionally, the section expressly provides that nothing under Florida law shall restrict the right of a state bank or state trust company to merge with a resulting national bank.\textsuperscript{110} These provisions implicitly authorize consolidations and purchases of assets and assumptions of liabilities between the various entities.

The Florida Banking Code also authorizes straight and triangular mergers.\textsuperscript{111} When the triangular form is used, certain statutory requirements must be met.\textsuperscript{112} A phantom entity (referred to as a "successor institution") may be included in the merger plan if it

\begin{footnotes}
\item[103] Id. § 658.40(5).
\item[105] Id. § 658.40(6).
\item[106] Id.
\item[107] Id. § 658.40(4).
\item[108] Id.
\item[109] Id. § 658.41(1).
\item[110] Id. § 658.41(2).
\item[111] FLA. STAT. § 658.42 (1981). Prior to the amendment of the statute in 1980, Florida permitted national banks in the state to enter into such arrangements on the basis that the form or structure of a merger is a matter of procedure, and as such, federal law would preempt any conflicting state law.
\item[112] Id. § 658.42(2).
\end{footnotes}
is located in the same county as one of the other constituent banks or trust companies. In a triangular merger, the successor institution must also be the resulting institution. Therefore, all triangular mergers of banks under Florida law must be forward triangular mergers.

If one or more of the parties to the merger is a state trust company or bank having an existing trust department, trust powers pass to the resulting state bank without the need of a separate trust powers application. If the name of the resulting state bank differs from that of the constituent state trust company or constituent bank, however, the Department of Banking and Finance issues a certificate to the resulting state bank indicating its right to exercise the trust powers previously granted to the constituent banks or trust companies.

**Georgia**

The Financial Institutions Code of Georgia permits Georgia banks and trust companies to merge or consolidate with, or purchase the assets of other banks or trust companies in the state. As in Florida, no merger can be accomplished when its effect would violate the state's scheme of intercounty and intracounty bank expansion. Specifically, merging institutions must comply with Georgia's restrictions on the establishment of branch banks and numerical limitations on the establishment of bank offices and bank facilities.

The Georgia Code treats separately mergers and consolidations solely between state institutions and mergers and consoli-

---

113. *Id.* § 658.40(4). This section defines a successor institution as a banking corporation or a trust company organized under the laws of Florida which has not been issued a certificate of authorization.

114. *Id.* §§ 658.40(4), .42(2).

115. The terms “forward” and “reverse” are used in this context to describe the particular structure of a triangular merger. The merger of a target corporation into a surviving subsidiary of a parent corporation is commonly described as a “forward” triangular merger. *See*, e.g., I.R.C. § 368(a)(2)(D) (Supp. IV 1980). Conversely, a “reverse” triangular merger occurs when the subsidiary of a parent corporation merges into a surviving target corporation. *See*, e.g., I.R.C. § 368(a)(2)(E).


117. *Id.*


120. *Id.* § 13-203.1. For a discussion of the numerical restrictions on the establishment of bank offices and bank facilities, see notes 25-28 and accompanying text *supra*. 
tions involving national banks. Section 41A-2401(a) generally allows one or more banks or trust companies to merge or consolidate, but an institution that exercises only trust powers may merge or consolidate only with another such institution. Subsection (b) authorizes the merger or consolidation of state banks or trust companies and nonbank corporations subject to certain requirements; in particular, the resulting institution must be a bank or trust company.

Section 41A-2401(a) also permits both straight and triangular mergers. There is, however, an important limitation on triangular mergers of a bank subsidiary of a bank holding company and a target state bank. Georgia law prohibits bank holding companies from owning more than five percent of the voting shares of any bank not continuously operating for at least five years. The Georgia Department of Banking and Finance has logically construed this prohibition to bar bank subsidiaries from acquiring banks that have not been in continuous operation for the requisite period. The department has also interpreted the limitation to prohibit bank holding companies from chartering new bank subsidiaries. Therefore, a bank subsidiary that has been in existence for the requisite five-year period is the vehicle a bank holding company must use to effectuate a triangular merger. A bank holding company’s only other alternative is to charter a phantom or interim bank. A phantom or interim bank organized solely for the purpose of facilitating the acquisition of a bank that meets the statutory operation requirements is an exception to the general ban on bank holding company ownership of new banks.

Section 41A-2401(b) sanctions the use of a nonbank corporate shell as an alternative means of effectuating a triangular merger, if certain conditions are met. The most important condition is that

122. Id. § 41A-2401(a) (Harrison 1974).
123. Id. § 41A-2401(b).
124. Id. § 41A-2401(a). For definitions of “forward” and “reverse” triangular mergers, see notes 111 and 115 supra.
126. Id.
127. A corporation other than a bank or trust company may be merged into or consolidated with a bank or trust company provided that: (1) the resulting institution is a bank or trust company; (2) the resulting institution holds only assets and liabilities and is engaged only in activities which may be held or engaged in by a bank or trust company; (3) the merger or consolidation is not otherwise
the resulting institution be a state bank or trust company.\textsuperscript{128} Thus, triangular mergers using nonbank corporate shells must be reverse triangular mergers.

Section 41A-2501 provides parallel authorization for mergers, consolidations, or conversions involving national banks and state banks or trust companies.\textsuperscript{129} In addition, section 41A-2508 expressly provides for the merger or consolidation of a nonbank corporation and a national bank.\textsuperscript{130} This type of arrangement is, however, implicitly barred under the National Bank Act.\textsuperscript{131} Because of this apparent federal bar, a nonbank corporate shell may not be used to facilitate a triangular merger when a national bank is a party. The only vehicle that could be employed in this context would be a phantom or interim bank.

As an alternative to merger or consolidation, a bank may purchase the property and assets of a target bank or trust company, as authorized by section 41A-2602.\textsuperscript{132} This section also implicitly authorizes a purchaser to assume the liabilities of the bank or trust company.\textsuperscript{133} When one bank purchases substantially all of the assets of another bank, and both the selling and the purchasing banks have either a parent bank or a branch bank in the same county, the purchasing bank may retain and continue to operate all places of business of the selling bank as either a branch bank, bank office, or a bank facility.\textsuperscript{134} All such carry-overs of existing facilities of acquired banks must be consistent with the Title 13 scheme of intercounty and intracounty bank expansion.\textsuperscript{135} The 1980 amendment to Title 13 does, however, provide a narrow ex-
emtion from the existing scheme: when a bank holding company elects to merge one of its existing subsidiaries with a bank it seeks to acquire, it may operate one as the branch of the other. Thus, statewide branching is possible in Georgia under a bank holding company format.

Alabama

Section 5-7A-1 of the Alabama Code authorizes Alabama banks to merge or consolidate with, or transfer assets and liabilities to, another bank in the state. Section 5-7A-40 provides duplicate authorization for consolidations between state banks and national banks. Chapter 7 of the Alabama Banking Code establishes the conditions for such arrangements: it permits no merger, consolidation, or transfer of assets and liabilities when the effect would contravene the state's scheme of branch banking.

The grant of authority to merge, consolidate, or transfer assets and liabilities in section 5-7A-1 is phrased in singular language. Read literally, it authorizes such arrangements only when two banks are involved. The state banking department has, however, construed this provision broadly, permitting mergers involving more than two banks. The phrase "any bank" used in this provision is interpreted in accordance with section 5-1A-2(1) which includes both state and national banks in the definition of "bank." Thus, section 5-7A-1 authorizes mergers, consolidations, and arrangements between state institutions and national banks.

The Alabama Banking Code permits both straight and triangular mergers between banks. The Code does not, however, expressly provide for mergers between banks and nonbank corporations; thus, the subsidiary used to effectuate a triangular merger must be a bank. The bank used may be a phantom entity incorporated solely to effectuate the merger. In practice, triangular mergers using phantom banks are usually forward triangular mergers:

---

136. Id. § 13-207.1(e).
138. Id. § 5-7A-40.
139. See id. § 5-7A-5. For a more detailed discussion of the state's scheme of branch banking, see notes 40-54 and accompanying text supra.
141. The term "bank" is defined as "[a]ny banking corporation or trust company organized under the laws of this state under the jurisdiction of the superintendent of banks of this state or organized under the laws of the United States having its principal place of business in this state." Id. § 5-1A-2(1).
142. See id. § 5-7A-1.
the acquired bank is normally merged into the surviving phantom bank. The Code does not, however, prohibit reverse triangular mergers in which the phantom bank is merged into the surviving acquired bank.

VI. LOAN PRODUCTION OFFICES

Florida

In Florida, the establishment of loan production offices is controversial and of great economic importance. This is reflected in section 658.74 of the Florida Statutes, which prohibits out-of-state banks from maintaining loan production offices in Florida. This statute is of questionable constitutionality following Lewis v. BT Investment Managers, Inc., in which the Supreme Court of the United States invalidated a Florida statute that prohibited out-of-state banks from owning investment advisory services in Florida. The Court held that the statute unconstitutionally burdened interstate commerce.

The Florida Banking Code does not expressly authorize Florida banks to establish loan production offices. But because section 658.74 prohibits only out-of-state banks from establishing loan offices, it implies that domestic banks are not so constrained. The language of section 658.74 contains serious drafting defects. It does not define the facilities prohibited, except for a reference to “an office or place of business . . . for the purpose of engaging in the business of lending money or soliciting for such purpose.” Although the phrase “for such purpose” clearly refers to the preceding phrase “engaging in the business of lending money,” the section provides no insight into the meaning of the terms “business of lending money” and “soliciting.” It is also unclear whether the term “soliciting” encompasses the making of credit decisions or the disbursement of funds. Although the disjunctive language in section 658.74(2)(b) clearly contemplates a distinction between the actual lending of money and the mere solicitation of loans, the

144. 447 U.S. 27 (1980).
146. 447 U.S. at 43-44. See also text accompanying notes 149-50 infra.
147. Section 658.74(2)(b) provides in pertinent part: “No bank, other than a state bank or a national bank having its principal place of business in this state, shall establish or maintain an office or place of business in this state for the purpose of engaging in the business of lending money or soliciting for such purpose.” Fla. Stat. § 658.74(2)(b) (1981).
148. Id.
Banking Code's failure to define the terms obscures the line of demarcation between such activities.

Prohibiting out-of-state banks from establishing loan production offices in Florida may be an unconstitutional burden on interstate commerce. Although the Supreme Court's decision in Lewis v. BT Investment Managers, Inc.\(^{149}\) only enjoined the enforcement of a Florida statute that prohibited out-of-state bank holding companies from owning investment advisory services in Florida, the opinion's broad pro-competitive language suggests that the Court would view with suspicion attempts by states to isolate certain activities from out-of-state competition.

Commentators who read Lewis broadly stress that the Court is inclined to examine the economic realities underlying a challenged statute; the critical inquiry, the commentators argue, is whether the statute is "economic protectionist" legislation.\(^{150}\) Under such an analysis, section 658.74(2)(b) may be considered "parochial" and thus an unconstitutional burden on interstate commerce. The prohibition of in-state lending is less susceptible to attack than the prohibition of in-state soliciting because the former activity has traditionally been regarded as a banking function subject to state police power.

**Georgia**

Georgia permits domestic and out-of-state banks to establish loan production offices in the state. The only section of the Financial Institutions Code of Georgia expressly referring to loan production offices is section 13-203.2(e).\(^{151}\) This section provides that a loan production office is not to be regarded as a parent bank, branch bank, bank office, or bank facility.\(^{152}\) Section 80-1-1-.06(3) of the rules of the Department of Banking and Finance, in turn, provides that the term loan production office, as used in section 13-203.2(e), means a place of banking business established outside of a county in which the bank is otherwise authorized to maintain a bank office, and established for the sole purpose of soliciting loans or leases of personal property.\(^{153}\) The rule further provides

---

149. 447 U.S. 27 (1980).
152. Id.
153. GEORGIA DEPARTMENT OF BANKING AND FINANCE, RULES OF THE DEPARTMENT OF BANKING AND FINANCE § 80-1-1-.06 (1975) [hereinafter GEORGIA RULES].
that loans solicited through a loan production office must be dis-
bursed from an authorized bank office, and that the bank may not
establish a depository relationship with the borrower as a direct
result of the transaction.  

The Financial Institutions Code of Georgia does not impose
numerical limitations on loan production offices; the numerical re-
strictions the Code places on branch banks do not apply because
section 13-203(e) expressly provides that loan production offices
are not to be considered branch banks. The only geographical
restriction on loan production offices is the requirement in section
80-1-1-.06(3) of the Department of Banking and Finance Rules
that they can only be located outside of the county in which the
bank is authorized to maintain a bank office.

Alabama

Although the Alabama Banking Code does not expressly au-
thorize loan production offices, they are nonetheless implicitly per-
mitted under the state’s banking scheme. Section 5-1-4 of the Code
implicitly defines the term “engaging in banking business” as lend-
ing money and either receiving deposits or paying checks at a prin-
cipal office or branch in the state. Under this definition, loan
production offices do not “engage in banking business,” because
traditionally their only function is to solicit loans. Even when a
loan production office makes credit decisions and disburses funds
(i.e., lends money), it is not engaged in the business of banking.
The second half of the state test is disjunctive and requires that
either deposits be received or checks paid. Hence, loan produc-
tion offices are not engaged in banking business under the Code
and are not restricted by its provisions.

Similarly, Alabama’s restrictions on branching are inapplicable
to loan production offices. Section 5-5-20 only applies to the estab-
lishment of a “branch or office for the transaction of the banking.

---

154. Id.
156. GEORGIA RULES, supra note 153, § 80-1-1-.06(3).
158. Id. If loans are closed in a loan production office it will be regarded as a “domestic
branch” by the FDIC. Section 3(o) of the Federal Deposit Insurance Act, 12 U.S.C. §
1813(o) (1976 & Supp. IV 1980), in contrast to the partially conjunctive and partially dis-
junctive test for “banking business” under Alabama law, enunciates a strictly disjunctive
definition of “branch”: A facility is a branch for insurance purposes if it receives deposits,
pays checks, or lends money. Accordingly, if a loan production office makes credit decisions
and disburses funds, then it is a bank branch for purposes of this section.
Because state law does not impose any other geographical or numerical limitations on the establishment of loan production offices, they may be established on an unlimited basis throughout the state. And, unlike Florida, Alabama does not distinguish between domestic and out-of-state banks with respect to the establishment of loan production offices. Out-of-state banks, like other foreign corporations must still register with the Secretary of State to do business in Alabama pursuant to section 10-2250 of the Alabama Code.160

VII. BANK HOLDING COMPANIES

**Florida**

Florida banks can also expand their in-state operations by operating subsidiaries through a bank holding company. This organizational format has traditionally been used by expansion-oriented banks to circumvent the state’s longstanding unit-banking requirement. The need for this option has diminished, however, with the advent of major substantive changes in Florida’s branch banking laws.161 Nevertheless, it remains an alternative to statewide merger for banks that intend to operate statewide, yet wish to retain a degree of independent control over their own operations.

Section 658.27(1)(a) of the Florida Banking Code defines the term “bank holding company” as “any business organization which has or acquires control over any bank or trust company.”162 This phrasing is similar to the definition of “bank holding company” in section 1841(a)(1) of the federal Bank Holding Company Act of 1956.163 Florida law differs from federal law in that it includes trust companies as entities that a bank holding company can control and uses the term “business organization” rather than the federal term “company.”164 Aside from these nominal distinctions, the Florida definitions track their federal counterparts fairly closely.165

The Bank Holding Company Act requires the prior approval of the Board of Governors of the Federal Reserve System (“Federal Reserve Board”) before any company may become a bank holding company or before any bank may become a subsidiary of a

---

161. *See text accompanying notes 14-15 supra.*
162. **FLA. STAT.** § 658.27(1)(a) (1981).
164. **FLA. STAT.** § 658.27(1)(a) (1981).
The Board's authority over bank holding companies is not exclusive. As one investigation of the Act's legislative history concluded, Congress did not intend to preempt state authority in the field. The Act itself expressly reserves to the states power to regulate banks and bank holding companies. A 1972 release by the Federal Reserve Board noted that their authority over state bank holding companies' acquisitions is concurrent with state authority. Before approving bank acquisitions by holding companies, the Board must determine if the acquisition will violate applicable state banking laws, especially those regulating branch banking. Thus, state laws remain crucial considerations for potential acquisitions.

Controversy surrounds the acquisition of certain nonbanking organizations whose activities are closely related to banking. The Supreme Court of the United States, in Lewis v. BT Investment Managers, Inc., enjoined the enforcement of a Florida statute that prohibited out-of-state banks and holding companies from owning or acquiring any Florida business organization that furnished investment advisory services. Another Florida statute is in constitutional jeopardy following Lewis: section 626.988(2) prohibits “insurance agency activities” by all officers and employees of financial institutions. But unlike the ban on out-of-state ownership of investment advisory services, this section does not distin-

166. 12 U.S.C. § 1842(a) (Supp. IV 1980). The Act lists a number of exemptions to this general requirement. See id. § 1843(c) (1976 & Supp. IV 1980). The Federal Reserve Board examines several factors in reviewing applications for acquisitions under the Act. See id. § 1842(c) (Supp. IV 1980). A detailed examination of those factors is beyond the scope of this article.


The release stated:

The Board of Governors has adopted procedures with respect to an application for the acquisition of voting shares of a bank by a bank holding company in circumstances where approval by the appropriate state banking authority is required but has been denied.

. . . In these circumstances, the Board of Governors regards the application as moot. . . . The application will be dismissed without prejudice and the case will be closed.


172. FLA. STAT. § 659.141(1) (1979) (current version at FLA. STAT. § 658.29(1) (1981)).

173. 447 U.S. at 44. See also text accompanying notes 149-50 supra.

guish between out-of-state banks and state banks. The effect of the insurance activity prohibition is thus evenhanded and most probably a constitutional exercise of state police power.  

The Florida Banking Code also prohibits out-of-state banks from acquiring Florida banks or trust companies. This prohibition is unnecessary because the federal Bank Holding Company Act permits interstate acquisition of banks and trust companies only when expressly authorized by state enabling legislation. The prohibition is, however, indicative of Florida’s protectionist posture in the state banking area.

Georgia

Georgia has not exercised its reserve powers over bank holding companies as permitted by the Bank Holding Company Act. As such, there are no state restrictions imposed on conducting activities closely related to the business of banking through a bank holding company format. The Bank Holding Company Act does require, however, that such activities be conducted through separate nonbank subsidiaries. Thus, bank holding companies organized in Georgia are regulated only by federal law.

Alabama

Operating banking subsidiaries through a bank holding company allows banks to achieve a measure of statewide expansion in Alabama, despite the state’s restrictive branch banking scheme. Although the holding company format does not allow as great a degree of centralization as state-wide branching, it does allow banks to effectively penetrate new markets throughout the state.

Bank holding companies in Alabama usually acquire bank subsidiaries by triangular mergers using phantom banks (the so-called “phantom mergers”). To a lesser extent, holding compa-
nies also gain control of target subsidiaries by purchasing their stock and assets and assuming their liabilities. Acquisitions under the Bank Holding Company Act require the prior approval of the Federal Reserve Board. As previously noted, the Board's authority over bank holding companies is not exclusive, but is concurrent with state authority.

The provisions of the Alabama Banking Code governing bank examinations adopt the definition of "bank holding company" found in the Bank Holding Company Act. The Code does not restrict the use of bank holding companies as a means of bank expansion. As for interstate expansion, Alabama has not passed express enabling legislation authorizing out-of-state bank holding companies to acquire state banks. The Federal Reserve Board requires this express authorization before it will approve a bank holding company's acquisition of a state bank.

VIII. ACTIVITIES INCIDENTAL TO THE BUSINESS OF BANKING

Florida

Conducting activities incidental to the business of banking on bank premises or at other locations throughout the state is another method of bank expansion in Florida. Banks in the state may conduct incidental activities either directly or through corporate subsidiaries. Section 658.67(6) of the Florida Statutes provides:

With the approval of the [Department of Banking and Finance] a bank may invest in the stock of one or more wholly owned subsidiary corporations organized for any of the following purposes:
(a) Owning and servicing real estate mortgages;
(b) Owning and leasing real and personal property
(c) Issuing credit cards;
(d) Operating a credit bureau;
(e) Operating a trust company; or
(f) Any other purpose the department may, by rule, determine is closely related to banking or managing or controlling banks.

of third parties or government regulatory agencies.

182. See note 166 and accompanying text supra.
183. See notes 167-70 and accompanying text supra.
In addition to authorizing banks to conduct incidental activities through corporate subsidiaries, section 655.061 of the Florida Statutes authorizes state chartered banks to exercise any powers that nationally chartered banks located in Florida are authorized to exercise.\(^{187}\) Granting parity to state banks enables them to directly conduct a wide variety of incidental activities without having to charter separate corporate subsidiaries. Moreover, banks do not need the specific approval of the Department of Banking and Finance to conduct activities in which national banks are authorized to engage.\(^{188}\)

Neither the Florida Banking Code nor the Rules of the Department of Banking and Finance impose any geographical or numerical limitations on the conduct of incidental activities.\(^{189}\) Because incidental activities do not constitute the receipt of deposits, the payment of checks, or the lending of money, they are not within Florida's definition of "banking."\(^{190}\) Hence, restrictions on branching under Florida law do not apply.

Florida has exercised its reserved powers over bank holding companies, as provided in the Bank Holding Company Act,\(^{191}\) to

---

187. Id. § 655.061.


Among the more important federal decisions interpreting such rules are: Investment Co. Inst. v. Camp, 401 U.S. 617 (1971) (prohibiting a national bank from operating a mutual investment fund); Data Processing Serva., Inc. v. Camp, 397 U.S. 150 (1970) (prohibiting a national bank from providing full data processing services); First Nat'l Bank v. Dickinson, 396 U.S. 122 (1969) (holding that an armored car service and deposit receptacles constitute branch banking for federal purposes and prohibiting a national bank from using them when violative of state branching laws); Arnold Tours, Inc. v. Camp, 472 F.2d 427 (1st Cir. 1972) (prohibiting a national bank from performing full travel agency services); Baker, Watta & Co. v. Saxon, 261 F. Supp. 247 (D.D.C. 1966) (prohibiting a national bank from underwriting local government securities), aff'd, 392 F.2d 497 (D.C. Cir. 1968).

189. Although the Florida Banking Code does not impose geographical limitations on incidental activities, the only incidental activities specifically authorized are the sale of travelers checks, money orders, or other instruments for the transmission or payment of money. Fla. Stat. § 658.74 (1981).

190. See text accompanying note 148 supra.

restrict the conduct of certain activities "closely related to banking or managing or controlling banks."\(^{192}\) Section 626.988(2) of the Florida Statutes\(^ {193}\) prohibits a "financial institution" from engaging in insurance agency activities. Bank holding companies and their subsidiaries are included within the classification of a "financial institution," precluding their involvement in such activities.\(^ {194}\) Another Florida statute,\(^ {195}\) which prohibited out-of-state bank holding companies from owning investment advisory subsidiaries in Florida, was held unconstitutional in *Lewis v. BT Investment Managers, Inc.*\(^ {196}\) Unlike the ban on insurance agency activities, this prohibition favored Florida institutions since its restrictive impact was limited to out-of-state institutions.\(^ {197}\) In the absence of other state law restrictions, bank holding companies may engage in closely related activities through nonbanking subsidiaries, with the prior approval of the Federal Reserve Board.\(^ {198}\)

**Georgia**

Section 41A-1202(i) of the Georgia Code grants banks and trust companies the power "to exercise all incidental powers as shall be necessary to carry on the banking or trust business, as the case may be, when approved by the Commissioner of Banking and Finance."\(^ {199}\) This section departs from prior law\(^ {200}\) in that the incidental powers are not limited to those available to national banks.\(^ {201}\) Because the Supreme Court of Georgia, in *Featherstone v. Norman*,\(^ {202}\) prohibited prospective incorporation of federal statutes or regulations into Georgia law, such a limitation would weaken the grant of incidental powers to Georgia banks. It would appear to freeze the incidental powers available to state banks to those existing under federal regulations at the time of the statute's enactment. This would defeat the primary purpose of the grant of incidental powers: To allow state institutions to remain competi-

---

192. Id. § 1843(c)(8).
194. Id. § 626.988(1)(a). See text accompanying notes 174-75 supra.
195. FLA. STAT. § 659.141(1) (1979) (current version at FLA. STAT. § 658.29(1) (1981)).
197. See text accompanying notes 171-73 supra.
199. GA. CODE ANN. § 41A-1202(j) (Harrison 1974).
200. Id. § 13-1802 (Harrison 1972) (current version at GA. CODE ANN. § 41A-1202 (Harrison 1974)).
201. See GA. CODE ANN. § 41A-1202 Comment (Harrison 1974).
202. 170 Ga. 370, 393, 15 S.E. 58, 81 (1930).
ive with federal institutions when federal authorities recognize additional incidental powers. The statute also quotes nearly verbatim from the corporate powers section of the National Bank Act. The parallel language enhances the persuasive value of the federal decisions and regulations interpreting this provision. Georgia law imposes no geographical or numerical restrictions on the conduct of incidental activities. When these provisions are read in conjunction with the statutory definition of the term "bank," it is apparent that they are not applicable to incidental activities. Banks may conduct such activities on their own premises or at other locations throughout the state. Further, they are not required to conduct such activities through separate corporate subsidiaries.

Georgia has not exercised its reserve powers over bank holding companies, as permitted by the Bank Holding Company Act, to restrict bank holding companies to activities that are "so closely related to the business of banking or managing or controlling a bank as to be a proper incident thereto." If bank holding companies elect to engage in incidental activities as authorized by the Act, such activities must be conducted through separate nonbank subsidiaries.

Alabama

Section 5-5A-18(11) of the Alabama Code authorizes corporations formed for the purpose of doing business as a bank to "do any business and exercise any powers incidental to the business of banks." In addition, banks are specifically authorized to perform computer, management, and travel agency services. The Advisory Committee comments to section 5-5A-18(11) state that the section "empowers a bank to exercise any powers incidental to the

203. 12 U.S.C. § 24 (1976 & Supp. IV 1980). The relevant portion grants "all such incidental powers as shall be necessary to carry on the business of banking." Id.
204. For examples of such interpretative decisions, see note 188 supra.
206. Id. § 13-201.1.
208. Id. § 1843(c)(8).
209. Id.
211. Id. § 5-5A-18(9). It appears that the legislature's intent in granting such powers was to prevent state courts from adopting federal precedents such as Arnold v. Camp, 472 F.2d 427 (1st Cir. 1972). That case held that the operation of a travel agency by a national bank was not an exercise of incidental powers, as referred to in the incidental powers clause of the National Banking Act, 12 U.S.C. § 24 (1976 & Supp. IV 1980).
business of banking and would include all powers granted to business corporations which have not been prohibited to banks.\(^{22,12}\) Although Alabama banks may engage in incidental activities without prior departmental approval, they are not granted total freedom from regulation. The Superintendent of Banks is authorized, with the concurrence of a majority of the members of the state banking board, to promulgate regulations to carry out the provisions of the Alabama Banking Code.\(^{21,3}\) This authority may be used to prohibit or regulate certain incidental activities. Conversely, the Code also authorizes the Superintendent to expand the banking powers of Alabama banks to accommodate and exploit changing technologies, and to ensure that Alabama banks are able to respond to changing consumer and business demands.\(^{21,4}\)

There are no geographic or numerical limitations on the conduct of incidental activities authorized by section 5-5A-18(9).\(^{21,5}\) Because incidental activities do not constitute “banking business” as defined in section 5-1A-4,\(^{21,6}\) the restrictions on branching do not apply. Thus, banks may conduct such activities on their own premises or at other locations throughout the state. They are not required to conduct such activities through corporate subsidiaries. Finally, Alabama has not exercised its reserve powers over bank holding companies as permitted by the Bank Holding Company Act.\(^{21,7}\)

**IX. CONCLUSION**

The emerging state trend allowing banks new avenues for expansion is underscored by a basic normative conflict: the need for banks to respond effectively to new technologies and changing customer needs versus the established policy of restricting banks to a few, carefully defined activities. The banks’ needs are currently


\(^{214}\) Id. § 5-2A-7(b).

\(^{215}\) Id. § 5-5A-18(9).

\(^{216}\) Id. § 5-1A-4. The restrictive scheme set forth in the Alabama Banking Code applies only to branch offices established “for the transaction of banking business.” Ala. Code § 5-5A-20 (1981). The term “banking business” is defined in the Code as the lending of money and either the receipt of deposits or the payment of checks. Id. § 5-1A-4. Incidental activities are not “banking business” under this definition. See also text accompanying note 158 supra.

more pressing than tight control over banks, for state legislatures are steadily, if perhaps grudgingly, allowing banks greater freedom in structuring the scope of their activities. Florida, for example, has in eight years radically reversed its conservative banking policy to allow virtually unfettered branch banking. This reversal came, however, only after three separate legislative revisions. A carefully struck balance between bank expansion and bank regulation can capably serve both the banking industry and its consumers.