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**SUBSTITUTE HOUSE BILL 2128**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Kirby and Roach)

READ FIRST TIME 03/04/05.

1 AN ACT Relating to banks, savings banks, and mutual savings banks  
2 branches; amending RCW 30.38.005, 30.38.010, 32.04.030, and 32.32.228;  
3 and adding a new section to chapter 30.38 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 30.38.005 and 1996 c 2 s 10 are each amended to read  
6 as follows:

7 As used in this chapter, unless a different meaning is required by  
8 the context, the following words and phrases have the following  
9 meanings:

10 (1) "Bank" means any national bank, state bank, and district bank,  
11 as those terms are defined in 12 U.S.C. Sec. 1813(a), and any savings  
12 association, as defined in 12 U.S.C. Sec. 1813(b).

13 (2) "Bank holding company" has the meaning set forth in 12 U.S.C.  
14 Sec. 1841(a)(1), and also means a savings and loan holding company, as  
15 defined in 12 U.S.C. Sec. 1467a.

16 (3) "Bank supervisory agency" means:

17 (a) Any agency of another state with primary responsibility for  
18 chartering and supervising banks; and

1 (b) The office of the comptroller of the currency, the federal  
2 deposit insurance corporation, the board of governors of the federal  
3 reserve system, and any successor to these agencies.

4 (4) "Control" shall be construed consistently with the provisions  
5 of 12 U.S.C. Sec. 1841(a)(2).

6 (5) "Home state" means with respect to a:

7 (a) State bank, the state by which the bank is chartered; or

8 (b) (~~National~~) Federally chartered bank, the state in which the  
9 main office of the bank is located under federal law.

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

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

16 (8) "Interstate combination" means the:

17 (a) Merger or consolidation of banks with different home states,  
18 and the conversion of branches of any bank involved in the merger or  
19 consolidation into branches of the resulting bank; or

20 (b) Purchase of all or substantially all of the assets, including  
21 all or substantially all of the branches, of a bank whose home state is  
22 different from the home state of the acquiring bank.

23 (9) "Out-of-state bank" means a bank whose home state is a state  
24 other than Washington.

25 (10) "Out-of-state state bank" means a bank chartered under the  
26 laws of any state other than Washington.

27 (11) "Resulting bank" means a bank that has resulted from an  
28 interstate combination under this chapter.

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

33 (13) "Washington bank" means a bank whose home state is Washington.

34 (14) "Washington state bank" means a bank organized under  
35 Washington banking law.

36 (15) "Branch" means an office of a bank through which it receives  
37 deposits, other than its principal office. Any of the functions or

1 services authorized to be engaged in by a bank may be carried out in an  
2 authorized branch office.

3 (16) "De novo branch" means a branch of a bank located in a host  
4 state which:

5 (a) Is originally established by the bank as a branch; and

6 (b) Does not become a branch of the bank as a result of:

7 (i) The acquisition of another bank or a branch of another bank; or

8 (ii) A merger, consolidation, or conversion involving any such bank  
9 or branch.

10 **Sec. 2.** RCW 30.38.010 and 1996 c 2 s 11 are each amended to read  
11 as follows:

12 (1) An out-of-state bank may engage in banking in this state  
13 without violating RCW 30.04.280 only if the conditions and filing  
14 requirements of this chapter are met and the bank was lawfully engaged  
15 in banking in this state on June 6, 1996, or the bank's in-state  
16 banking activities:

17 (a) Resulted from an interstate combination pursuant to RCW  
18 30.49.125 or 32.32.500(~~(1-04)~~);

19 (b) Resulted from a relocation of a head office of a state bank  
20 pursuant to 12 U.S.C. Sec. 30 and RCW 30.04.215(3)(~~(1-04)~~);

21 (c) Resulted from a relocation of a main office of a national bank  
22 pursuant to 12 U.S.C. Sec. 30(~~(1-04)~~);

23 (d) Resulted from the establishment of a branch of a savings bank  
24 in compliance with RCW 32.04.030(2); or

25 (e) Resulted from interstate branching under section 3 of this act.

26 Nothing in this section affects the authorities of alien banks as  
27 defined by RCW 30.42.020 to engage in banking within this state.

28 (2) The director, consistent with 12 U.S.C. Sec. 1831u(b)(2)(D),  
29 may approve an interstate combination if the standard on which the  
30 approval is based does not discriminate against out-of-state banks,  
31 out-of-state bank holding companies, or subsidiaries of those banks or  
32 holding companies.

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 30.38 RCW  
34 to read as follows:

35 (1) An out-of-state bank that does not have a branch in Washington  
36 may, under this chapter, establish and maintain:

1 (a) A de novo branch in this state; or

2 (b) A branch in this state through the acquisition of a branch.

3 (2) An out-of-state bank desiring to establish and maintain a de  
4 novo branch or to acquire a branch in this state shall provide written  
5 application of the proposed transaction to the director, accompanied by  
6 the fee prescribed by the director, not later than three days after the  
7 date of filing with the responsible federal bank supervisory agency for  
8 approval to establish or acquire the branch.

9 (3) The director may not approve an application under subsection  
10 (2) of this section unless it is found that:

11 (a) In the case of a de novo branch, the laws of the home state of  
12 the out-of-state bank permit Washington banks to establish and maintain  
13 de novo branches in that state under substantially the same, or at  
14 least as favorable, terms and conditions as set forth in this chapter;  
15 or

16 (b) In the case of a branch established through the acquisition of  
17 a branch, the laws of the home state of the out-of-state bank permit  
18 Washington banks to establish and maintain branches in that state  
19 through the acquisition of branches under terms and conditions that are  
20 substantially the same, or at least as favorable, as set forth in this  
21 chapter.

22 **Sec. 4.** RCW 32.04.030 and 1996 c 2 s 21 are each amended to read  
23 as follows:

24 (1) A savings bank may not, without the written approval of the  
25 director, establish and operate branches in any place.

26 (2) A savings bank headquartered in this state desiring to  
27 establish a branch shall file a written application with the director,  
28 who shall approve or disapprove the application.

29 (3) The director's approval shall be conditioned on a finding that  
30 the savings bank has a satisfactory record of compliance with  
31 applicable laws and has a satisfactory financial condition. In making  
32 such findings, the director may rely on an application in the form  
33 filed with the federal deposit insurance corporation pursuant to 12  
34 U.S.C. Sec. 1828(d). If the application for a branch is not approved,  
35 the savings bank shall have the right to appeal in the same manner and  
36 within the same time as provided by RCW 32.08.050 and 32.08.060. The  
37 savings bank when delivering the application to the director shall

1 transmit to the director a check in an amount established by rule to  
2 cover the expense of the investigation. A savings bank headquartered  
3 in this state shall not move its headquarters or any branch more than  
4 two miles from its existing location without prior approval of the  
5 director. On or before the date on which it opens any office at which  
6 it will transact business in any state, territory, province, or other  
7 jurisdiction, a savings bank shall give written notice to the director  
8 of the location of this office. No such notice shall become effective  
9 until it has been delivered to the director.

10 (4) The board of trustees of a savings bank, after notice to the  
11 director, may discontinue the operation of a branch. The savings bank  
12 shall keep the director informed in the matter and shall notify the  
13 director of the date operation of the branch is discontinued.

14 ~~((+1))~~ (5) A savings bank that is headquartered in this state and  
15 is operating branches in another state, territory, province, or other  
16 jurisdiction may provide copies of state examination reports and  
17 reports of condition of the savings bank to the regulator having  
18 oversight responsibility with regard to its operations in that other  
19 jurisdiction, including the regulator of savings associations in the  
20 event such a savings bank is transacting savings and loan business  
21 pursuant to RCW 32.08.142 in that other jurisdiction.

22 ~~((+2))~~ (6) No savings bank headquartered in another state may  
23 establish, or acquire pursuant to RCW 32.32.500, and operate branches  
24 as a savings bank in any place within the state unless:

25 (a) The savings bank has filed with the director an agreement to  
26 comply with the requirements of RCW 30.38.040 for periodic reports by  
27 the savings bank or by the appropriate state superintendent or  
28 equivalent regulator of the savings bank under the laws of the state in  
29 which the savings bank is incorporated, unless the laws expressly  
30 require the provision of all the reports to the director;

31 (b) The savings bank has filed with the director (i) a duly  
32 executed instrument in writing, by its terms of indefinite duration and  
33 irrevocable, appointing the director and his or her successors its true  
34 and lawful attorney, upon whom all process in any action or proceeding  
35 against it in a cause of action arising out of business transacted by  
36 such savings bank in this state, may be served with the same force and  
37 effect as if it were a domestic corporation and had been lawfully  
38 served with process within the state, and (ii) a written certificate of

1 designation, which may be changed from time to time by the filing of a  
2 new certificate of designation, specifying the name and address of the  
3 officer, agent, or other person to whom such process shall be forwarded  
4 by the director; (~~and~~)

5 (c) The savings bank has supplied the director with such  
6 information as he or she shall require by rule, not to exceed the  
7 information on which the director may rely in approving a branch  
8 application pursuant to this section by a savings bank headquartered in  
9 this state; and

10 (d) The laws of the state in which the out-of-state savings bank is  
11 chartered permit savings banks chartered under this title to establish  
12 or acquire, and maintain branches in that state, under terms and  
13 conditions that are substantially the same as, or at least as favorable  
14 to, the terms and conditions for the chartering of savings banks under  
15 this title.

16 (7) A savings bank headquartered in another state may not establish  
17 and operate branches as a foreign savings association in any place  
18 within the state except upon compliance with chapter 33.32 RCW.

19 (8) Notwithstanding any provision of this title to the contrary, an  
20 out-of-state depository institution may not branch in the state of  
21 Washington, unless a Washington state bank, bank holding company,  
22 savings bank, savings bank holding company, savings and loan  
23 association, or savings and loan holding company is permitted to branch  
24 in the state in which that out-of-state depository institution is  
25 chartered or in which its principal office is located, under terms and  
26 conditions that are substantially the same as, or at least as favorable  
27 to entry as, the terms and conditions for branching of savings banks  
28 under this title. As used in this subsection, "out-of-state depository  
29 institution" means a bank or bank holding company, or a converted  
30 mutual savings bank or the holding company of a mutual savings bank,  
31 which is chartered in or whose principal office is located in another  
32 state, or a savings and loan association or the holding company of a  
33 savings and loan association, which is chartered in another state.

34 **Sec. 5.** RCW 32.32.228 and 1994 c 92 s 366 are each amended to read  
35 as follows:

36 (1) As used in this section, the following definitions apply:

1 (a) "Control" means directly or indirectly alone or in concert with  
2 others to own, control, or hold the power to vote twenty-five percent  
3 or more of the outstanding stock or voting power of the controlled  
4 entity;

5 (b) "Acquiring depository institution" means a bank or bank holding  
6 company, or a converted mutual savings bank or the holding company of  
7 a mutual savings bank, or a savings and loan association or the holding  
8 company of a savings and loan association, which is chartered in or  
9 whose principal office is located in another state, and which seeks to  
10 acquire control of a Washington savings bank;

11 (c) "Acquiring party" means the person acquiring control of a bank  
12 through the purchase of stock;

13 ((+e)) (d) "Person" means any individual, corporation,  
14 partnership, group acting in concert, association, business trust, or  
15 other organization.

16 (2)(a) It is unlawful for any person to acquire control of a  
17 converted savings bank until thirty days after filing with the director  
18 a completed application. The application shall be under oath or  
19 affirmation, and shall contain substantially all of the following  
20 information plus any additional information that the director may  
21 prescribe as necessary or appropriate in the particular instance for  
22 the protection of bank depositors, borrowers, or shareholders and the  
23 public interest:

24 (i) The identity and banking and business experience of each person  
25 by whom or on whose behalf acquisition is to be made;

26 (ii) The financial and managerial resources and future prospects of  
27 each person involved in the acquisition;

28 (iii) The terms and conditions of any proposed acquisition and the  
29 manner in which the acquisition is to be made;

30 (iv) The source and amount of the funds or other consideration used  
31 or to be used in making the acquisition, and a description of the  
32 transaction and the names of the parties if any part of these funds or  
33 other consideration has been or is to be borrowed or otherwise obtained  
34 for the purpose of making the acquisition;

35 (v) Any plan or proposal which any person making the acquisition  
36 may have to liquidate the bank, to sell its assets, to merge it with  
37 any other bank, or to make any other major change in its business or  
38 corporate structure or management;

1 (vi) The identification of any person employed, retained, or to be  
2 compensated by the acquiring party, or by any person on its behalf, who  
3 makes solicitations or recommendations to shareholders for the purpose  
4 of assisting in the acquisition and a brief description of the terms of  
5 the employment, retainer, or arrangement for compensation;

6 (vii) Copies of all invitations for tenders or advertisements  
7 making a tender offer to shareholders for the purchase of their stock  
8 to be used in connection with the proposed acquisition; and

9 (viii) Such additional information as shall be necessary to satisfy  
10 the director, in the exercise of the director's discretion, that each  
11 such person and associate meets the standards of character,  
12 responsibility, and general fitness established for incorporators of a  
13 savings bank under RCW 32.08.040.

14 (b)(i) Notwithstanding any other provision of this section, (~~a~~  
15 ~~bank or bank holding company which has been in operation for at least~~  
16 ~~three consecutive years or a converted mutual savings bank or the~~  
17 ~~holding company of a mutual savings bank need only notify~~) and subject  
18 to (b)(ii) of this subsection, an acquiring depository institution must  
19 apply to the director and notify the savings bank to be acquired of an  
20 intent to acquire control and the date of the proposed acquisition of  
21 control at least thirty days before the date of the acquisition of  
22 control.

23 (ii) Except to the extent of any conflict with applicable federal  
24 law, (b)(i) of this subsection does not apply to an acquiring  
25 depository institution that is seeking to acquire control of a  
26 Washington savings bank unless the home state of the acquiring  
27 depository institution permits a Washington converted mutual savings  
28 bank, or the Washington-chartered holding company of a mutual savings  
29 bank, to acquire control of a controlled entity that is chartered in or  
30 whose principal office is located in that home state, unless under  
31 terms and conditions that are substantially the same as, or at least as  
32 favorable to entry as, those provided under (b)(i) of this subsection.

33 (c) When a person, other than an individual or corporation, is  
34 required to file an application under this section, the director may  
35 require that the information required by (a)(i), (ii), (vi), and (viii)  
36 of this subsection be given with respect to each person, as defined in  
37 subsection (1)(~~e~~) (d) of this section, who has an interest in or  
38 controls a person filing an application under this subsection.

1 (d) When a corporation is required to file an application under  
2 this section, the director may require that information required by  
3 (a)(i), (ii), (vi), and (viii) of this subsection be given for the  
4 corporation, each officer and director of the corporation, and each  
5 person who is directly or indirectly the beneficial owner of twenty-  
6 five percent or more of the outstanding voting securities of the  
7 corporation.

8 (e) If any tender offer, request, or invitation for tenders or  
9 other agreements to acquire control is proposed to be made by means of  
10 a registration statement under the securities act of 1933 (48 Stat. 74,  
11 15 U.S.C. Sec. 77(a)), as amended, or in circumstances requiring the  
12 disclosure of similar information under the securities exchange act of  
13 1934 (48 Stat. 881, 15 U.S.C. Sec. 78(a)), as amended, the registration  
14 statement or application may be filed with the director in lieu of the  
15 requirements of this section.

16 (f) Any acquiring party shall also deliver a copy of any notice or  
17 application required by this section to the savings bank proposed to be  
18 acquired within two days after such notice or application is filed with  
19 the director.

20 (g) Any acquisition of control in violation of this section shall  
21 be ineffective and void.

22 (h) Any person who willfully or intentionally violates this section  
23 or any rule adopted under this section is guilty of a gross misdemeanor  
24 pursuant to chapter 9A.20 RCW. Each day's violation shall be  
25 considered a separate violation, and any person shall upon conviction  
26 be fined not more than one thousand dollars for each day the violation  
27 continues.

28 (3) The director may disapprove the acquisition of a savings bank  
29 within thirty days after the filing of a complete application pursuant  
30 to subsections (1) and (2) of this section or an extended period not  
31 exceeding an additional fifteen days if:

32 (a) The poor financial condition of any acquiring party might  
33 jeopardize the financial stability of the savings bank or might  
34 prejudice the interest of depositors, borrowers, or shareholders;

35 (b) The plan or proposal of the acquiring party to liquidate the  
36 savings bank, to sell its assets, to merge it with any person, or to  
37 make any other major change in its business or corporate structure or

1 management is not fair and reasonable to its depositors, borrowers, or  
2 stockholders or is not in public interest;

3 (c) The banking and business experience and integrity of any  
4 acquiring party who would control the operation of the savings bank  
5 indicates that approval would not be in the interest of the savings  
6 bank's depositors, borrowers, or shareholders;

7 (d) The information provided by the application is insufficient for  
8 the director to make a determination or there has been insufficient  
9 time to verify the information provided and conduct an examination of  
10 the qualification of the acquiring party; or

11 (e) The acquisition would not be in the public interest.

12 An acquisition may be made prior to expiration of the disapproval  
13 period if the director issues written notice of intent not to  
14 disapprove the action.

15 The director shall set forth the basis for disapproval of any  
16 proposed acquisition in writing and shall provide a copy of such  
17 findings and order to the applicants and to the bank involved. Such  
18 findings and order shall not be disclosed to any other party and shall  
19 not be subject to public disclosure under chapter 42.17 RCW unless the  
20 findings and/or order are appealed pursuant to chapter 34.05 RCW.

21 Whenever such a change in control occurs, each party to the  
22 transaction shall report promptly to the director any changes or  
23 replacement of its chief executive officer or of any director occurring  
24 in the next twelve-month period, including in its report a statement of  
25 the past and current business and professional affiliations of the new  
26 chief executive officer or directors.

27 (4)(a) For a period of ten years following the acquisition of  
28 control by any person, neither such acquiring party nor any associate  
29 shall receive any loan or the use of any of the funds of, nor purchase,  
30 lease, or otherwise receive any property from, nor receive any  
31 consideration from the sale, lease, or any other conveyance of property  
32 to, any savings bank in which the acquiring party has control except as  
33 provided in (b) of this subsection.

34 (b) Upon application by any acquiring party or associate subject to  
35 (a) of this subsection, the director may approve a transaction between  
36 a converted savings bank and such acquiring party, person, or  
37 associate, upon finding that the terms and conditions of the

1 transaction are at least as advantageous to the savings bank as the  
2 savings bank would obtain in a comparable transaction with an  
3 unaffiliated person.

4 (5) Except with the consent of the director, no converted savings  
5 bank shall, for the purpose of enabling any person to purchase any or  
6 all shares of its capital stock, pledge or otherwise transfer any of  
7 its assets as security for a loan to such person or to any associate,  
8 or pay any dividend to any such person or associate. Nothing in this  
9 section shall prohibit a dividend of stock among shareholders in  
10 proportion to their shareholdings. In the event any clause of this  
11 section is declared to be unconstitutional or otherwise invalid, all  
12 remaining dependent and independent clauses of this section shall  
13 remain in full force and effect.

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