

IC 28-2-17

Chapter 17. Interstate Bank Mergers

IC 28-2-17-1

Purpose of chapter

Sec. 1. It is the intent of this chapter to permit interstate branching by merger under Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (P.L. 103-328) in accordance with the provisions set forth in this chapter.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-2

Definitions

Sec. 2. The definitions set forth in sections 3 through 19 of this chapter apply throughout this chapter, unless a different meaning is required by the context.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-3

"Bank" defined

Sec. 3. (a) Except as provided in subsection (b), as used in this chapter, "bank" has the meaning set forth in 12 U.S.C. 1813(h).

(b) Except as provided in subsection (c), the term "bank" does not include any foreign bank (as defined in 12 U.S.C. 3101(7)).

(c) The term "bank" includes any foreign bank organized or reorganized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-4

"Bank holding company" defined

Sec. 4. As used in this chapter, "bank holding company" has the meaning set forth in 12 U.S.C. 1841(a)(1).

As added by P.L.171-1996, SEC.36.

IC 28-2-17-5

"Bank supervisory agency"

Sec. 5. As used in this chapter, "bank supervisory agency" means:

(1) any agency of another state with primary responsibility for organizing and supervising banks; and

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

As added by P.L.171-1996, SEC.36. Amended by P.L.27-2012, SEC.79.

IC 28-2-17-6

"Branch" defined

Sec. 6. As used in this chapter, "branch" has the meaning set forth

in IC 28-2-13-7.
As added by P.L.171-1996, SEC.36.

IC 28-2-17-7

"Control" defined

Sec. 7. As used in this chapter, "control" shall be construed consistently with the provisions of 12 U.S.C. 1841(a)(2).
As added by P.L.171-1996, SEC.36.

IC 28-2-17-8

"Department" defined

Sec. 8. As used in this chapter, "department" refers to the department of financial institutions.
As added by P.L.171-1996, SEC.36.

IC 28-2-17-9

"Director" defined

Sec. 9. As used in this chapter, "director" refers to the director of the department.
As added by P.L.171-1996, SEC.36.

IC 28-2-17-10

"Home state" defined

Sec. 10. As used in this chapter, "home state" means the following:

- (1) With respect to a state bank, the state under the laws of which the bank is organized or reorganized.
- (2) With respect to a national bank, the state in which the main office of the bank is located.
- (3) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. 3103(c).

As added by P.L.171-1996, SEC.36.

IC 28-2-17-11

"Home state regulator" defined

Sec. 11. As used in this chapter, "home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is organized or reorganized.
As added by P.L.171-1996, SEC.36.

IC 28-2-17-12

"Host state" defined

Sec. 12. As used in this chapter, "host state" means a state, other than the home state of a bank, in which the bank:

- (1) maintains; or
- (2) seeks to establish and maintain;

a branch.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-13

"Indiana bank" defined

Sec. 13. As used in this chapter, "Indiana bank" means a bank whose home state is Indiana.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-14

"Indiana state bank" defined

Sec. 14. As used in this chapter, "Indiana state bank" means a bank organized or reorganized under the laws of Indiana.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-15

"Interstate merger transaction" defined

Sec. 15. As used in this chapter, "interstate merger transaction" means:

- (1) the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank;
- or
- (2) the purchase of all the assets (including all of the branches) of a bank whose home state is different from the home state of the acquiring bank that results in the dissolution of the selling bank.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-16

"Out-of-state bank" defined

Sec. 16. As used in this chapter, "out-of-state bank" means a bank whose home state is a state other than Indiana.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-17

"Out-of-state state bank" defined

Sec. 17. As used in this chapter, "out-of-state state bank" means a bank organized or reorganized under the laws of any state other than Indiana.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-18

"Resulting bank" defined

Sec. 18. As used in this chapter, "resulting bank" means a bank that has resulted from an interstate merger transaction under this chapter.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-19

"State" defined

Sec. 19. As used in this chapter, "state" means any of the following:

- (1) Any state of the United States.

- (2) The District of Columbia.
- (3) Puerto Rico.
- (4) Guam.
- (5) American Samoa.
- (6) The Trust Territory of the Pacific Islands.
- (7) The Virgin Islands.
- (8) The Northern Mariana Islands.
- (9) Any territory of the United States.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-20

Interstate merger transactions

Sec. 20. (a) With the prior written approval of the department, an Indiana state bank may establish, maintain, and operate one (1) or more branches in a state other than Indiana pursuant to an interstate merger transaction in which the Indiana state bank is the resulting bank.

(b) Not later than the date on which the required application for the interstate merger transaction is filed with the appropriate federal bank supervisory agency, the applicant Indiana state bank shall file an application with the department on a form prescribed by the director.

(c) An interstate merger transaction must be done in compliance with:

- (1) IC 28-1-7;
- (2) IC 28-1-8; or
- (3) IC 28-3-2.

(d) An interstate merger transaction may be consummated only after the applicant has received the written approval of the department. The department has the authority to establish terms, conditions, and time frames by which the transaction may be consummated.

(e) A savings association or an industrial loan and investment company organized or reorganized under the laws of Indiana may engage in an interstate merger transaction to the same extent and under the same restrictions, conditions, and requirements as an Indiana state bank.

As added by P.L.171-1996, SEC.36. Amended by P.L.79-1998, SEC.65.

IC 28-2-17-20.1

Repealed

(Repealed by P.L.89-2011, SEC.78.)

IC 28-2-17-21

Authority to enter into transaction

Sec. 21. If the conditions and filing requirements of this chapter are met:

- (1) one (1) or more Indiana banks may enter into an interstate merger transaction with one (1) or more out-of-state banks

under this chapter; and

(2) an out-of-state bank resulting from a transaction referred to in subdivision (1) may maintain and operate the branches in Indiana of an Indiana bank that participated in the transaction.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-22

Duties of resulting bank

Sec. 22. An out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving an Indiana state bank shall:

(1) notify the department of the proposed merger; and

(2) provide satisfactory evidence to the department of compliance with applicable requirements of IC 28-1-22.

As added by P.L.171-1996, SEC.36. Amended by P.L.11-1998, SEC.9.

IC 28-2-17-23

Authorized activities; acquisition of additional branches; investigation; provisions and fees

Sec. 23. (a) An out-of-state state bank that establishes and maintains one (1) or more branches in Indiana under this chapter may conduct at the branch or branches only those activities that are expressly authorized under the laws of Indiana for Indiana state banks.

(b) An Indiana state bank may conduct any activities at any branch located outside Indiana that are permissible for a bank organized or reorganized by the host state in which the branch is located. However, if Indiana law specifically prohibits an activity that is permitted by the host state, the department may by order waive the prohibition if the department determines that the involvement of out-of-state branches of Indiana state banks in the particular activities conducted in the host state would not threaten the safety or soundness of banks. This section does not authorize a bank located in Indiana to engage in an activity in Indiana that has been waived under this provision.

(c) An out-of-state bank that has acquired a branch in Indiana under this chapter may establish or acquire additional branches in Indiana to the same extent that any Indiana bank may establish or acquire a branch in Indiana under applicable federal and Indiana law.

(d) With the prior approval of the department, an Indiana state bank that has acquired a branch or branches in a state other than Indiana through an interstate merger transaction may establish or acquire additional branches in the host state to the same extent that a host state state bank may establish or acquire a branch in the host state under the applicable host state law and federal law. An Indiana state bank desiring to establish one (1) or more branches under this section must file a written application with the director. The application must be in the form and must contain the information prescribed by the director. The department may approve or

disapprove the application. Before the department approves the application, the bank must demonstrate to the satisfaction of the department that:

- (1) the applicant state bank will have adequate capital, sound management, and adequate future earnings prospects after the establishment of the branch; and
- (2) the establishment of the proposed branch will not violate the laws of the host state.

(e) The investigation of the department relative to any application as required by this section shall be conducted without a public hearing.

(f) The branch or branches of an out-of-state bank that are established and maintained in Indiana under this chapter shall be subject to the provisions and fees of IC 24-4.5 to the same extent as a bank located in Indiana.

As added by P.L.171-1996, SEC.36. Amended by P.L.192-1997, SEC.8.

IC 28-2-17-24

Examination of branch operations

Sec. 24. (a) To the extent consistent with subsection (b), the department may make the examinations of any branch established and maintained in Indiana pursuant to this chapter by an out-of-state state bank as the department may consider necessary to determine whether the branch is being operated in compliance with the laws of Indiana and in accordance with safe and sound banking practices. The provisions of IC 28-11-3 shall apply to such examinations.

(b) The department may enter into cooperative, coordinating, and information-sharing agreements with any organization enumerated in IC 28-11-3-3 with respect to the periodic examination or other supervision of:

- (1) any branch in Indiana of an out-of-state state bank; or
- (2) any branch of an Indiana state bank in any host state;

and the department may accept the organization's reports of examination and reports of investigation instead of conducting its own examinations or investigations.

(c) The department may enter into agreements with any financial institution supervisory agency that has concurrent jurisdiction over an Indiana state bank or an out-of-state state bank operating a branch in Indiana pursuant to this chapter to:

- (1) engage the services of such agency's examiners at a reasonable rate of compensation; or
- (2) provide the services of the department's examiners to such agency at a reasonable rate of compensation.

Any such agreement shall be entered into under IC 36-1-7.

(d) The department may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch established and maintained in Indiana of an out-of-state state bank or any branch established and maintained by an Indiana state bank in any host state. The

department may at any time take such actions independently if the department considers the actions to be necessary or appropriate to carry out its responsibilities under this chapter or to ensure compliance with the laws of Indiana. In the case of an out-of-state state bank, the department shall recognize:

- (1) the exclusive authority of the home state regulator over corporate governance matters; and
- (2) the primary responsibility of the home state regulator with respect to safety and soundness matters.

(e) Each out-of-state state bank that maintains one (1) or more branches in Indiana is subject to the provisions of IC 28-11-3-5. The fees may be shared with other financial institution supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies in accordance with agreements between those agencies and the department.

(f) For the purposes of this chapter, the provisions of IC 28-1-2-30 apply to the following:

- (1) An out-of-state bank.
- (2) An out-of-state savings association.
- (3) An out-of-state industrial loan and investment company.

As added by P.L.171-1996, SEC.36. Amended by P.L.79-1998, SEC.66.

IC 28-2-17-25

Enforcement actions

Sec. 25. (a) If the department determines that a branch maintained by an out-of-state state bank in Indiana is being operated:

- (1) in violation of any provision of Indiana law relating to activities of a bank; or
- (2) in an unsafe and unsound manner;

the department may take all enforcement actions it would be empowered to take if the branch were an Indiana state bank, including but not limited to enforcement actions under IC 28-11-4.

(b) The department shall:

- (1) promptly give notice to the home state regulator of each enforcement action taken under this section against an out-of-state state bank; and
- (2) to the extent practicable, consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-26

Rules

Sec. 26. The department may adopt policies or adopt rules under IC 4-22-2 it determines necessary or appropriate to implement this chapter.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-27

Notice of actions causing a change of control

Sec. 27. Each out-of-state state bank that establishes and maintains a branch in Indiana pursuant to this chapter, or the home state regulator of such bank, shall give at least thirty (30) days prior written notice, or shorter notice as is consistent with applicable state or federal law, to the department of any merger, consolidation, or other transaction that would cause a change of control with respect to the bank or any bank holding company that controls the bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended (12 U.S.C. 1817(j)) or the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 et seq.) or any successor statutes to those statutes.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-28**Severability**

Sec. 28. The provisions of this chapter are severable in the manner provided in IC 1-1-1-8(b). If:

- (1) any provision of this chapter; or
- (2) the application of any provision of this chapter;

is found by any court with jurisdiction in the United States to be invalid as to any bank, bank holding company, foreign bank, or other person or circumstances, or to be superseded by federal law, the remaining provisions of this chapter shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.

As added by P.L.171-1996, SEC.36.

IC 28-2-17-29**Waiver of concentration limitation**

Sec. 29. (a) Pursuant to 12 U.S.C. 1831u(b)2(D), the statewide concentration limitation as provided for in 12 U.S.C. 1831u(b)2(B) may be waived by order of the department for a particular interstate merger transaction for good cause shown.

(b) When determining good cause for the purposes of this section, the department shall, at a minimum, consider the factors enumerated in IC 28-2-16-17(e).

As added by P.L.171-1996, SEC.36.