PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1450

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

"Section 1. Section 6-101, Arizona Revised Statutes, is amended to
read:

6-101. Definitions
In this title, unless the context otherwise requires:
1. "Automated teller machine" means an automated device that is
established by a bank, savings and loan association or credit union and that
facilitates customer-bank communications activities, including taking
deposits and disbursing cash drawn against a customer's deposit account or a
customer's preapproved loan account, at a location separate from the home
office or a branch.

2. "Bank" means a corporation that holds a banking permit issued
pursuant to chapter 2 of this title.

3. "Banking office" means any place of business of the bank at which
deposits are received, checks are paid or money is loaned but does not
include the premises used for computer operations, proofing, record keeping
RECORDKEEPING, accounting, storage, maintenance or other administrative or
service functions.

4. "Branch" means any banking office other than the principal banking
office.

5. "Department" means the department of financial institutions.

6. "Enterprise" means any person under the jurisdiction of the
department other than a financial institution.

7. "Federal deposit insurance corporation" includes any successor to
the corporation or other agency or instrumentality of the United States which
THAT undertakes to discharge the purposes of the corporation.

8. "Financial institution" means banks, trust companies, savings and
loan associations, credit unions, consumer lenders, international banking
House Amendments to S.B. 1450

facilities and financial institution holding companies under the jurisdiction of the department.

9. "Home state" means the state that has granted the bank its charter, permit or license to operate.

10. "Host state" means the state in which a financial institution is doing business and not the state that has granted the bank its charter, permit or license to operate.

11. "In-state financial institution" means a state or federal bank, savings bank, savings and loan association or holding company with its home office located in this state.

12. "INSURING ORGANIZATION" MEANS THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE NATIONAL CREDIT UNION ADMINISTRATION OR ITS SUCCESSOR OR ANY OTHER EQUIVALENT DEPOSIT INSURER APPROVED BY THE SUPERINTENDENT.

13. "International banking facility" means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an edge corporation organized under section 25(a) of the federal reserve act (12 United States Code sections 611 through 631) or an agreement corporation having an agreement or undertaking with the board of governors of the federal reserve system under section 25 of the federal reserve act (12 United States Code sections 601 through 604(a)) that includes only international banking facility time deposits and international banking facility extensions of credit as defined in 12 Code of Federal Regulations part 204.

14. "National credit union administration" includes any successor to the organization or other agency or instrumentality of the United States which undertakes to discharge the purposes of the organization.

15. "Out-of-state bank" means a bank, savings bank or savings and loan association that is approved by the superintendent pursuant to section 6-322 and that has a charter, a permit or any other license to operate that is issued by a state other than this state.
15. "Out-of-state financial institution" means a state or federal bank, savings bank, savings and loan association or holding company with its home office in a state other than this state.

16. "Superintendent" means the superintendent of financial institutions.

17. "Title" includes this title, title 32, chapter 9 and title 44, chapter 2.1.

Sec. 2. Section 6-184, Arizona Revised Statutes, is amended to read:

6-184. General corporate and banking powers; incidental powers; insurance; federal reserve and home loan bank membership; agency relationship

A. A corporation holding a banking permit under this chapter may:

1. Except as prohibited by law, exercise the powers derived from its existence as an Arizona corporation.

2. Except as prohibited by law, exercise any power and engage in any activity which THAT it could exercise or engage in if it were a national banking association with a banking office in this state.

3. Directly or through a bank subsidiary engage in any lawful activity which THAT is reasonably related or incidental to banking. All activities in which any bank was lawfully engaged directly or through a subsidiary on December 31, 1971 are declared to be incidental and related to banking for the purposes of this paragraph.

4. Do the acts necessary to obtain and maintain insurance of its deposits by the federal deposit insurance corporation AN INSURING ORGANIZATION.

5. Do the acts necessary to acquire and hold membership in the federal reserve system or the federal home loan bank.

6. Except as prohibited by law, directly or through a bank subsidiary, make any loan or investment, offer accounts or engage in any business activity authorized for national banking associations, federal savings banks, or state or federally chartered or licensed savings and loan associations doing business in this state. This paragraph is subject to section 33-1571.
7. Except as prohibited by law and subject to such rules as the superintendent may adopt, through a bank subsidiary, invest in real estate in the state or interests therein, including corporations, partnerships, and joint ventures which acquires, develop, improve, hold, lease, operate and sell real estate. This paragraph is subject to section 33-1571.

B. An in-state financial institution or an out-of-state financial institution may act as an agent of any other in-state financial institution or out-of-state financial institution that is a subsidiary of the same holding company for purposes of conducting the activities authorized by this subsection. This subsection applies regardless of whether the affiliated entities share the same home state. An in-state financial institution or an out-of-state financial institution entering into an agency relationship shall notify the superintendent of that agency relationship at least ten days before the effective date of that agency relationship. Agency relationships among affiliates shall be consistent with safe and sound business practices and shall comply with all applicable laws and rules. An in-state financial institution or an out-of-state financial institution acting as an agent is not deemed to be a branch of the affiliate solely because of activities lawfully conducted pursuant to this subsection. An in-state financial institution or an out-of-state financial institution that is acting as an agent for an affiliated entity may do any of the following:

1. Receive deposits.
2. Renew time deposits.
3. Service loans.
4. Receive payments on loans and other obligations.
5. Perform other customary banking services with the prior approval of the superintendent.

C. An in-state financial institution or an out-of-state financial institution acting as an agent as prescribed by subsection B of this section on behalf of an affiliated financial institution may not do any of the
House Amendments to S.B. 1450

1 following:

1. Open demand, savings or time accounts.
2. Evaluate or approve loans.
3. Disburse loan monies.
4. Conduct any activity as an agent that it is prohibited from conducting as a principal under any applicable law or rule.

D. An in-state financial institution or an out-of-state financial institution that is acting as a principal as prescribed by subsection B of this section may not have its affiliated entity act as an agent on its behalf in conducting any of the following:

1. Any activity that is prohibited to the principal.
2. Any activity that is prohibited to the agent.

Sec. 3. Section 6-204, Arizona Revised Statutes, is amended to read:

6-204. Issuance of banking permit; trust business; conditional approval; hearing; banker’s bank; definitions

A. Upon the filing of an application for a banking permit the superintendent shall make or cause to be made an investigation and examination of the facts concerning the applicant. Except as provided in subsection F OF THIS SECTION, the superintendent shall issue the permit if, but only if, the SUPERINTENDENT finds:

1. The applicant is a corporation organized under the laws of this state having powers and purposes to engage in the banking business.
2. The deposits of the bank will be insured by the federal deposit insurance corporation AN INSURING ORGANIZATION when the bank commences business.
3. The ability and integrity of the persons involved in the organization and management of the proposed bank are such as to demonstrate that it will be operated in a sound and lawful manner.
4. The applicant has paid in capital which THAT is adequate for its prospective business.
5. The need for the bank in the community or area where the bank will be located is such as to demonstrate the favorable prospect for a sound banking operation.

B. An application which THAT is not denied or approved by the superintendent within ninety days after the application is filed with the superintendent is deemed to be approved by the superintendent as of the first day after the period.

C. A banking permit may initially or by amendment include the authority of a bank to engage in the trust business.

D. The superintendent may approve the application conditioned upon specific requirements being met, but a permit shall not be issued unless such conditions have been met within the time specified in the order or any extension.

E. The permit may be granted or denied without a hearing, but the superintendent may, and shall at the request of the applicant, fix a date for a hearing on the application. At the hearing any person may be heard with reference to the facts to be investigated.

F. The superintendent shall not issue a banking permit pursuant to subsection A OF THIS SECTION for a banker's bank unless all of the following apply:

1. The stock of the applicant is owned exclusively by one or more state or nationally chartered banks or, if the stock is owned by a holding company, the holding company's stock is owned exclusively by one or more state or nationally chartered banks.

2. The applicant engages in or will engage exclusively in providing banking services to or for other depository institutions or their holding companies and the directors, officers or employees of the depository institutions.

3. The applicant offers or will offer correspondent banking services for other depository institutions or their holding companies.

4. The applicant is fully insured by the federal deposit insurance corporation AN INSURING ORGANIZATION.
5. No single entity acquires or retains at any time ownership, control or power to vote more than ten percent of any class of voting securities of the banker's bank.

G. For purposes of this section:

1. "Banker's bank" means an entity that is owned exclusively by one or more state or nationally chartered banks or bank holding companies and that exclusively provides banking services to or for other depository institutions and their holding companies.

2. "Nationally chartered bank" means a bank or savings bank chartered by the office of the comptroller of the currency or the office of thrift supervision.

Sec. 4. Section 6-231, Arizona Revised Statutes, is amended to read:

6-231. Deposit accounts

A bank may maintain all types of deposit accounts and prescribe such terms and conditions relating to the accounts as are permissible for the bank to maintain the insurance on its deposits by the federal deposit insurance corporation.

Sec. 5. Section 6-245, Arizona Revised Statutes, is amended to read:

6-245. Pledge of assets; rediscount; exception to requirement of security

A. A bank may pledge, mortgage or otherwise hypothecate its assets:

1. To qualify the bank to act as a fiscal agent for any governmental entity.

2. To secure deposits which are required by law to be secured.

3. To secure borrowings from one business day to the next from another bank.

4. To secure borrowings from a federal reserve bank or any federal agency.

5. To secure other obligations, exclusive of deposits, provided the aggregate value of the assets as carried on the books of the bank encumbered for purposes other than those specified in paragraphs 1 through 4 of this
subsection shall not exceed the capital account of the bank except with the
approval of the superintendent.

B. The provisions of subsection A OF THIS SECTION shall not prohibit
or limit the sale or rediscount of commercial paper or securities with
endorsement, guarantee or agreement to repurchase.

C. Whenever by the law of this state a bank is required to provide
security for deposits in the form of collateral, surety bond or any other
form, such security is not required to the extent such deposits are insured
by the federal deposit insurance corporation AN INSURING ORGANIZATION. For
the purposes of this subsection, acceptable security for deposits includes:

1. Certificates of deposit insured by an agent or instrumentality of
the United States.

2. Interest bearing savings deposits in banks and savings and loan
associations doing business in this state whose accounts are federally
insured.

3. United States government obligations.

4. Municipal bonds and bonds issued by a state, county or school
district.

5. Obligations for which the payment of principal and interest is
guaranteed by the United States or by an agency or instrumentality of the
United States.

6. Registered warrants if offered as security for monies of the county
by which they are issued.

7. First mortgages and trust deeds together with the promissory notes
or other evidences of indebtedness described in the instruments on improved,
otherwise unencumbered real estate located in this state if no single
mortgage or trust deed represents more than ten percent PERCENT of the total
collateral security and the promissory note or other evidence of indebtedness
secured by the mortgage or trust deed has been in existence for at least
three years and no default with respect to the promissory note or other
evidence of indebtedness has occurred during its existence.
Sec. 6. Section 6-273, Arizona Revised Statutes, is amended to read:

6-273. Form of reserves; limitations

Legal reserves shall consist of:

1. Cash.

2. Cash items in the process of collection payable immediately upon ON presentation in the United States.

3. Unpledged obligations of the United States maturing not more than six months from AFTER the date such obligation is used for reserve purposes at par.

4. Net deposit balances with each reserve depository in this state, exclusive of deposits not payable on demand unless evidenced by a negotiable certificate of deposit maturing not more than six months from AFTER the date the certificate is used for reserve purposes.

5. Net deposit balances with each out-of-state reserve depository, exclusive of deposits not payable on demand unless evidenced by a negotiable certificate of deposit maturing not more than six months from AFTER the date the certificate is used for reserve purposes, in an amount either approved by the superintendent in writing or not more than the amount fully insured by the federal deposit insurance corporation or the national credit union administration or any successor agency.

Sec. 7. Section 6-322, Arizona Revised Statutes, is amended to read:

6-322. Interstate acquisitions; approval of superintendent; exception

A. Except as otherwise expressly permitted by federal law, an out-of-state financial institution shall not acquire an in-state financial institution unless the superintendent has approved the acquisition. The superintendent shall not approve an acquisition unless the superintendent has determined that deposits held in this state will be insured by the federal deposit insurance corporation or any successor agency.

B. For those out-of-state financial institutions required to obtain approval from the superintendent as prescribed by subsection A OF THIS
SECTION, the acquiring financial institution shall submit to the superintendent a written application for approval in the form the superintendent prescribes. The acquiring financial institution shall accompany the application with such information, data and records as the superintendent may require in order to make the determination. In an interstate transaction, the superintendent may accept an application that is in the form and manner prescribed by the state or federal agency that is the primary regulator of the applicant and that is supplemented as necessary to allow the superintendent to determine whether to deny or approve the application. The superintendent shall adopt rules prescribing the form and the information, data or records that the superintendent requires. In evaluating applications for acquisition pursuant to subsection F OF THIS SECTION, the superintendent may give consideration to the potential impact of the acquisition on the financial stability of the acquiring institution.

C. A newly established in-state financial institution created for the purpose of acquiring all or substantially all the assets of a former in-state financial institution from an out-of-state financial institution shall not constitute a de novo entry if the acquisition by the newly established in-state financial institution is completed within ninety days after the date on which the out-of-state financial institution acquired all or substantially all of the assets of the former in-state financial institution.

D. In the case of an out-of-state financial institution that is not required to obtain the approval of the superintendent, the out-of-state financial institution shall give written notice of the acquisition to the superintendent ten days before the effective date of the acquisition, unless a shorter time is prescribed by federal law.

E. From and after August 31, 2001, an out-of-state financial institution may acquire a branch of an in-state financial institution for operation as a branch without acquiring the entire in-state financial institution or its permit. A branch of an in-state financial institution is not eligible to be acquired unless it has been in continuous operation five or more years.
F. Notwithstanding subsection E OF THIS SECTION, an out-of-state financial institution may acquire a branch of an in-state financial institution without acquiring the entire institution if all of the following apply:

1. The financial institution proposed to be acquired is in danger of being placed in receivership.
2. The acquisition is necessary to protect the financial interests of the in-state financial institution's depositors and creditors.
3. The terms of the acquisition are acceptable to the relevant federal agency.
4. The superintendent approves the acquisition pursuant to this section in writing.

Sec. 8. Section 6-384, Arizona Revised Statutes, is amended to read:

6-384. Deposit of fiduciary funds
Cash held by a bank as fiduciary may be deposited to the credit of the bank as such fiduciary on time or demand account with itself or with any other bank the deposits of which are insured by the federal deposit insurance corporation AN INSURING ORGANIZATION. Unless otherwise provided by the writing creating the trust, if such funds are deposited with itself the bank shall secure such deposits with securities described in section 6-352, subsection A D, paragraph 2, or other security approved by the superintendent for the purpose, in the amount of the deposit, subject to subsection C of section 6-245, SUBSECTION C.

Sec. 9. Section 6-395, Arizona Revised Statutes, is amended to read:

6-395. Possession by superintendent and receivership
If the status of a bank as an insured bank is terminated by the federal deposit insurance corporation AN INSURING ORGANIZATION or the superintendent finds that a bank is in such an unsafe or unsound condition that it is or will become unable to meet the anticipated demands of its depositors and that the condition cannot be corrected by the procedures of chapter 1, article 5 of this title or section 6-137, the superintendent may immediately take possession and control of the bank and in such event shall, through the
attorney general, apply to the superior court for the appointment of a receiver for the bank. The court may act upon the application forthwith and without notice to any person. If at any time the court finds that no ground for receivership exists, the receivership shall be dissolved and the superintendent's possession terminated.

Sec. 10. Section 6-395.06, Arizona Revised Statutes, is amended to read:

6-395.06. Rights, powers and duties of a receiver

A. After taking possession of the bank, the receiver may do any of the following in its own name, in the name of the bank, in the name of both or otherwise:

1. Collect all obligations and money due the bank.

2. Exercise and possess all the rights, powers and privileges of the bank and its officers and directors.

3. Institute or otherwise participate in any legal proceeding by or against the receiver or the bank, or in which the bank or its creditors have an interest, and in every way represent the bank and its creditors.

4. Be the custodian of all monies coming into the receiver's possession, but it may deposit any part of those monies in a bank instituted by the federal deposit insurance corporation AN INSURING ORGANIZATION.

5. Invest or reinvest those portions of the monies and assets of the bank as the receiver deems appropriate.

6. Revise or settle any obligation on those terms and conditions that the receiver deems appropriate.

7. Sell, compound, compromise or assign debts due the bank on those terms and conditions that the receiver deems appropriate.

8. Negotiate settlements of claims against the bank on those terms and conditions that the receiver deems appropriate.

9. Settle, compromise or obtain the release of claims against the bank for cash or other consideration.

10. Sell, exchange, encumber or otherwise deal with any real or personal property that has come into the bank's possession by any means on
the basis of reasonable market value without notice for cash or on those
terms and conditions that the receiver deems appropriate.

11. Execute, acknowledge and deliver any deed or other instrument
necessary or proper for any purpose.

B. Any deed or other instrument executed pursuant to subsection A,
paragraph 11 OF THIS SECTION is valid for all purposes as if it had been
executed as the act and deed of the bank.

C. The receiver may disburse monies for any of the following:
   1. The discharge of any taxes, assessments or charges of any nature
      against the bank or the receiver or on any asset or other property in which
      the bank or the receiver has an interest.
   2. The protection or improvement of any asset or other property of the
      bank.
   3. The costs and expenses of the liquidation and for exercising the
      receiver's rights, powers, privileges and duties.
   4. Debts and interest owed by the bank that arise out of the
      liquidation or otherwise.
   5. The costs and expenses of the operation of the bank.

D. Notwithstanding the grant or denial of any power or duty prescribed
in this chapter, the receiver has those rights, powers, privileges, immunities and duties authorized or imposed from time to time in specific
cases by order of the court.

Sec. 11. Section 6-395.07, Arizona Revised Statutes, is amended to
read:

6-395.07. Sale of bank assets; authority to borrow monies;
injunction; hearing

A. The receiver may sell all or any part of the bank's assets to
another bank, to a savings and loan association, to the federal deposit
insurance corporation AN INSURING ORGANIZATION or to an instrumentality of
the United States government. The receiver may borrow from the federal
deposit insurance corporation AN INSURING CORPORATION, an instrumentality of
the United States government or a private insurer which THAT insures or
guarantees the bank's investment certificates any amount necessary to facilitate the assumption of investment certificate liabilities by a newly chartered or existing bank, assigning any part or all of the assets of the bank as security for that loan.

B. If the receiver has taken possession of the property and business of a bank, that bank, within ten days after the taking, if it deems itself aggrieved, may apply to the court in the county in which the principal place of business of the bank is located to enjoin further proceedings. The receiver may exercise all powers granted by this article during the ten day period after taking possession of the property and business of the bank. The court, after ordering the receiver to show cause why further proceedings should not be enjoined and after a hearing and a determination of the facts on the merits, may dismiss the application or enjoin the receiver from further proceedings and direct the receiver to surrender the property and business to the bank or make such further order as the court determines.

Sec. 12. Section 6-395.09, Arizona Revised Statutes, is amended to read:

6-395.09. Notice to claimants on liquidation

As soon after the commencement of liquidation as practicable the receiver shall cause notice of the liquidation to be published in a newspaper of general circulation in each county in which the bank has an office, once a week for eight successive weeks. The notice shall demand that all persons who have claims against the bank present them to the receiver and make legal proof thereof, in accordance with the procedure prescribed in the notice. The receiver shall mail a copy of the notice at the address shown on the records of the bank, to each person who appears from the records to be a creditor of the bank, with the advice of the nature and amount of the purported indebtedness, provided that the notice in respect to any indebtedness to which the federal deposit insurance corporation claims complete subrogation need be made only to the corporation. The receiver's advice of a purported indebtedness
shall not bind the receiver on the validity or the amount of any claim based thereon."

Amend title to conform