

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1119

S.P. 341

In Senate, February 18, 1997

An Act to Provide for International Banking in the State and Enhanced Enforcement Authority over Financial Institution Holding Companies.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator KIEFFER of Aroostook.
Cosponsored by Representative DAVIDSON of Brunswick and
Senator MURRAY of Penobscot, Representative: BRUNO of Raymond.

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 9-B MRSA §131, sub-§19-A is enacted to read:

19-A. Foreign bank. "Foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands that engages directly in the banking business. "Foreign bank" includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in usual banking activities in connection with the banking business in the countries where the foreign institutions are organized or operating.

Sec. A-2. 9-B MRSA §316, sub-§1, ¶B, as enacted by PL 1975, c. 500, §1, is amended to read:

B. At least 2/3 of the directors provided for shall ~~must~~ be residents of this State and any director ~~removing himself from~~ leaving this State shall ~~must~~ immediately be replaced if such removal results in a reduction of the number of resident directors below 2/3. The superintendent may approve in writing, upon application by an institution and for good cause shown, a lower proportion of directors who must be residents of this State.

Sec. A-3. 9-B MRSA §316, sub-§1, ¶F, as amended by PL 1985, c. 642, §1, is further amended to read:

F. The board of directors, by a majority vote of the directors then in office, may appoint from the full board of directors an executive committee of not less than 5 members, 2/3 of whom shall ~~must~~ be residents of this State and may delegate to the committee the powers of the directors in regard to the ordinary operations of the business of the institution. The superintendent may approve in writing, upon application by an institution and for good cause shown, a lower proportion of executive committee members who must be residents of this State.

Sec. A-4. 9-B MRSA §1011, sub-§3, as enacted by PL 1975, c. 500, §1, is amended to read:

3. Company. "Company" means a corporation, partnership, business trust, association or similar organization organized under the laws of the United States, any political subdivisions of the United States or a country other than the United States.

2 **Sec. A-5. 9-B MRSA §1011, sub-§10**, as enacted by PL 1985, c.
642, §4, is amended to read:

4 **10. Person.** "Person" means an individual or individuals
6 acting in concert, including individuals who are citizens of one
or more countries, and any colonies, dependencies or possessions
8 of those countries, other than the United States.

10 **Sec. A-6. 9-B MRSA §1011, sub-§13** is enacted to read:

12 **13. Foreign bank holding company.** "Foreign bank holding
14 company" means any company that controls, directly or indirectly,
16 a foreign bank.

18 **Sec. A-7. 9-B MRSA §1013, sub-§1, ¶B**, as repealed and replaced
20 by PL 1989, c. 16, §1, is amended to read:

22 B. Acquisition of more than 5% of the voting shares of a
24 Maine financial institution or any financial institution or
26 financial institution holding company controlling, directly
28 or indirectly, a Maine financial institution, by a financial
30 institution or, financial institution holding company,
foreign bank or foreign bank holding company; or

32 **Sec. A-8. 9-B MRSA §1013, sub-§1, ¶C**, as amended by PL 1995,
34 c. 628, §30, is further amended to read:

36 C. Acquisition of more than 5% of the voting shares of a
38 financial institution, whose home state is not this State,
40 or a foreign bank by a Maine financial institution or a
42 Maine financial institution holding company.

44 **Sec. A-9. 9-B MRSA §1013, sub-§3**, as amended by PL 1995, c.
46 628, §32, is further amended to read:

48 **3. Requirements for acquisition or establishment.** A
50 financial institution holding company, foreign bank or foreign
bank holding company may establish, acquire or maintain control
of a Maine financial institution or Maine financial institution
holding company with prior approval of the superintendent,
subject to the following conditions.

A. The Maine financial institution or Maine financial
institution holding company to be established or acquired
shall enter into an agreement with the superintendent to
provide reports and permit examination of its records to the
extent considered necessary by the superintendent to ensure
compliance with this section and other relevant provisions
of this Title and any rules adopted under this Title. If
the financial institution to be established or acquired is

2 federally chartered, the agreement may provide that
3 compliance examination information must be provided by the
4 federal agency responsible for supervision of that financial
5 institution. The superintendent may specify the information
6 that requires verification, and must be provided a report of
7 that status of compliance by the federal agency.

8 B. A Maine financial institution or Maine financial
9 institution holding company, control of which is to be
10 acquired or held, must have, on the date of acquisition or
11 establishment, and shall maintain a minimum equity capital
12 that the superintendent determines acceptable given the
13 market area to be served and the general plan of business of
14 the Maine financial institution or Maine financial
15 institution holding company. Equity capital must be
16 maintained consistent with sound banking practices.

17 C. A financial institution holding company, foreign bank or
18 foreign bank holding company may not consolidate or merge
19 with or acquire all or part of a Maine financial institution
20 or Maine financial institution holding company if, as the
21 result of the consolidation, acquisition or merger, the
22 financial institution holding company, foreign bank or
23 foreign bank holding company would hold or control more than
24 30% of the total amount of deposits of financial
25 institutions authorized to do business in this State;
26 except, upon consideration of the decision-making criteria
27 found in section 253, the superintendent may waive the 30%
28 deposit concentration limits on a case-by-case basis. In
29 calculating the amount of deposits that a financial
30 institution holding company, foreign bank or foreign bank
31 holding company may hold or control under this section,
32 credit union shares are added to the amount of deposits of
33 financial institutions authorized to do business in this
34 State. However, the 30% deposit concentration limit does
35 not apply to credit unions authorized to do business in this
36 State.

37
38 **Sec. A-10. 9-B MRSA §1015, sub-§1, ¶B,** as repealed and
39 replaced by PL 1989, c. 16, §3, is amended to read:

40
41 B. Acquisitions by a financial institution or financial
42 institution holding company, foreign bank or foreign bank
43 holding company of interests in a Maine financial
44 institution or any financial institution or financial
45 institution holding company controlling, directly or
46 indirectly, a Maine financial institution in excess of 5% of
47 the voting shares of such financial institution or financial
48 institution holding company;

2 **Sec. A-11. 9-B MRSA §1015, sub-§1, ¶¶C and E**, as enacted by PL
1975, c. 500, §1, are amended to read:

4 C. Acquisition or establishment by a Maine financial
institution holding company of a financial institution
6 outside of the State of Maine, including a foreign bank, in
excess of 5% of the voting shares of such institution;

8 E. Authority for any financial institution holding company,
10 foreign bank or foreign bank holding company controlling a
Maine financial institution to engage in a closely-related
12 activity in Maine, or acquisition or establishment of a
subsidiary in Maine to engage in a closely-related activity.

14 **Sec. A-12. 9-B MRSA §1015, sub-§2**, as amended by PL 1995, c.
16 628, §34, is further amended to read:

18 **2. Criteria for approval.** Applications for approvals
required in subsection 1 must be filed pursuant to procedures
20 established by the superintendent. Action on those applications
must be taken in accordance with the requirements of section 252
22 and is subject to the standards set forth in section 253. In
addition, applications for approvals required in subsection 1 by
24 foreign banks are subject to the following additional criteria:

26 A. The foreign bank or foreign bank holding company engages
in the banking business outside of the United States and is
28 subject to comprehensive supervision or regulation on a
consolidated basis by the appropriate authorities in its
30 home country, or the superintendent finds that the
appropriate authorities in the home country of the foreign
32 bank are actively working to establish arrangements for the
consolidated supervision of such bank; and

34 B. Whether the foreign bank or foreign bank holding company
36 has provided the superintendent with adequate assurances
that it will make available to the superintendent such
38 information on the operations or activities of the foreign
bank, foreign bank holding company and any affiliate of the
40 foreign bank or foreign bank holding company that the
superintendent considers necessary to determine and enforce
42 compliance with this Title and other applicable state law.

44 **Sec. A-13. 9-B MRSA §§1016 and 1017**, as enacted by PL 1975,
c. 500, §1, are amended to read:

46 **§1016. Reports and examinations**

48 The superintendent may require any financial institution
50 holding company that controls a Maine financial institution to

2 furnish such reports as he ~~deems~~ the superintendent considers
3 appropriate to the proper supervision of such companies. Unless
4 the superintendent determines otherwise, reports prepared for
5 Federal authorities or, in the case of a foreign bank or foreign
6 bank holding company, reports prepared for the home country
7 regulatory authorities and translated to English may be submitted
8 by such holding company in satisfaction of the requirements of
9 this section. If such information and reports are inadequate in
10 his the superintendent's judgment for that purpose, the
11 superintendent may examine such financial institution holding
12 company and any subsidiary doing business in Maine. Section 214
13 ~~shall apply~~ applies with respect to any such examination.

14 **§1017. Conformity with Federal procedures**

15 To the maximum extent consistent with the effective
16 discharge of the superintendent's responsibilities, the forms
17 established under this chapter for registration, applications and
18 reports ~~shall~~ must conform with those established under either
19 the Bank Holding Company Act of 1956 or ~~section~~ section 408 of the
20 National Housing Act, or the federal International Banking Act of
21 1978 and regulations promulgated under the federal International
22 Banking Act of 1978.

23 **Sec. A-14. 9-B MRSA §1019, sub-§2**, as amended by PL 1985, c.
24 642, §9, is further amended to read:

25 2. **Penalties.** Any person or company violating any provision
26 of this chapter, or any regulation promulgated thereunder, shall
27 be is subject to a penalty of not more than \$1,000 per day for
28 each day the violation continues, to be recovered in a civil
29 action in the name of the State.

30 Any company or Maine financial institution violating section
31 1013, subsection 3 ~~or~~ 4, or any regulation promulgated under that
32 section, ~~shall be~~ is subject to a penalty of not more than \$1,000
33 a day for each day the violation continues. The superintendent
34 shall report the violation forthwith, with such remarks as he
35 ~~deems~~ the superintendent determines appropriate, to the Attorney
36 General, who may forthwith institute a civil action therefor on
37 behalf of the State.

42 **PART B**

43 **Sec. B-1. 9-B MRSA §131, sub-§20-A, ¶¶A and B**, as enacted by
44 PL 1995, c. 628, §8, are amended to read:

45 A. With respect to a financial institution or out-of-state
46 financial institution, the state under whose laws the
47

2 financial institution or out-of-state financial institution
is organized; or

4 B. With respect to a national bank or federal association,
6 the state in which the main office of the national bank or
federal association is deemed to be located under federal
law; or

8
10 **Sec. B-2. 9-B MRSA §131, sub-§20-A, ¶C** is enacted to read:

12 C. With respect to a foreign bank, the state that the
foreign bank has designated as its home state in accordance
with Section 5 of the federal International Banking Act of
14 1978.

16 **Sec. B-3. 9-B MRSA c.110** is enacted to read:

18 **CHAPTER 110**

20 **FOREIGN BRANCHES, AGENCIES AND**
22 **REPRESENTATIVE OFFICES**

24 **§1101. Definitions**

26 As used in this chapter, unless the context otherwise
indicates, the following terms have the following meanings.

28 1. Agency. "Agency" means any office or any place of
business of a foreign bank located in any state of the United
30 States at which credit balances are maintained incidental to or
arising out of the exercise of banking powers, checks are paid,
32 or money is lent, but at which deposits may not be accepted from
persons who are citizens or residents of the United States.

34 2. Branch. "Branch" means any office or any place of
36 business of a foreign bank located in any state of the United
States at which deposits are received.

38 3. Federal agency. "Federal agency" means an agency of a
40 foreign bank established and operating pursuant to Section 4 of
the federal International Banking Act of 1978.

42 4. Federal branch. "Federal branch" means a branch of a
44 foreign bank established and operating pursuant to Section 4 of
the federal International Banking Act of 1978.

46 5. Maine agency. "Maine agency" means an agency of a
48 foreign bank located in this State and established and operating
pursuant to the provisions of this chapter.

2 6. Maine branch. "Maine branch" means a branch of a
foreign bank located in this State and established and operating
pursuant to the provisions of this chapter.

4
6 7. Maine foreign bank. "Maine foreign bank" means a
foreign bank that operates a Maine branch or Maine agency and for
which Maine is the home state, in accordance with Section 5 of
8 the federal International Banking Act of 1978.

10 8. Maine representative office. "Maine representative
office" means a representative office located in this State and
12 established and operating pursuant to the provisions of this
chapter.

14
16 9. Out-of-state foreign bank. "Out-of-state foreign bank"
means a foreign bank for which a state other than Maine is the
home state, in accordance with Section 5 of the federal
18 International Banking Act of 1978.

20 10. Representative office. "Representative office" means
any office of a foreign bank that is located in any state and is
22 not a federal branch, federal agency, state branch, state agency
or subsidiary of a foreign bank.

24 §1102. Branches and agencies of foreign banks

26
28 1. Establishment. A foreign bank that is or will become a
Maine foreign bank and engages directly in the banking business
outside the United States may, with the prior approval of the
30 superintendent, establish a branch or agency. The establishment
of a branch or agency may be de novo or through merger or
32 acquisition.

34 2. Criteria for approval. Applications for approvals
required in subsection 1 must be filed pursuant to procedures
36 established by the superintendent. Action on those applications
must be taken in accordance with the requirements of section 252
38 and is subject to the standards set forth in section 253. Those
applications are subject to the following additional criteria:

40
42 A. The foreign bank must directly engage in the banking
business outside of the United States and be subject to
comprehensive supervision or regulation on a consolidated
44 basis by the appropriate authorities in its home country, or
the superintendent finds that the appropriate authorities in
46 the home country of the foreign bank are actively working to
establish arrangements for the consolidated supervision of
48 the bank; and

2 B. The foreign bank has provided the superintendent with
4 adequate assurances that it will make available to the
6 superintendent any information on the operations or
8 activities of the foreign bank and any of its affiliates
10 that the superintendent considers necessary to determine and
12 enforce compliance with this Title and other applicable
14 state law.

16 3. Application fee. An application for approval required in
18 subsection 1 may not be considered complete by the superintendent
20 unless accompanied by an application fee to be credited and used
22 as provided in section 214. The superintendent shall establish
24 the amount of the fee, which may not exceed \$7,500.

26 §1103. Federal branches and agencies

28 1. Permissibility of federal branches and agencies.
30 Nothing in this Title may be construed to prohibit the operation
32 of a federal branch or a federal agency in this State.

34 2. No concurrent maintenance of federal branches or
36 agencies. No foreign bank authorized to operate a Maine branch
38 or Maine agency pursuant to section 1102 may maintain
40 concurrently a federal branch or federal agency in this State.

42 §1104. Powers of Maine branches and agencies

44 1. General powers. Except as otherwise specifically
46 provided in this chapter or in orders or rules adopted by the
48 superintendent, and notwithstanding any other law or rule of this
50 State to the contrary, operations of a foreign bank at a Maine
branch or Maine agency must be conducted with the same rights,
privileges and powers accorded a trust company at the same
location and are subject to all the same duties, restrictions,
penalties, liabilities, conditions and limitations that apply
under the laws of this State to a trust company doing business at
the same location.

2. Exceptions. The following are exceptions to the
provisions of subsection 1.

A. A Maine branch may not accept from citizens or residents
of the United States deposits, other than credit balances
that are incidental to or arise out of its exercise of other
lawful banking powers, of less than \$100,000, except to the
extent that those deposits are determined by the Federal
Deposit Insurance Corporation not to constitute "domestic
retail deposit activities requiring deposit insurance
protection" within the meaning of Section 6 of the federal
International Banking Act of 1978.

2 B. A Maine agency may not accept any deposits from citizens
4 or residents of the United States, other than credit
6 balances that are incidental to or arise out of its exercise
of other lawful banking powers, but it may accept deposits
from persons who are neither citizens nor residents of the
United States.

8 C. A Maine branch or Maine agency is not required to
10 maintain deposit insurance pursuant to section 422.

12 D. Any limitation or restriction based on the capital and
14 surplus of a financial institution is deemed to refer, as
16 applied to a Maine branch or Maine agency, to the United
18 States dollar equivalent of the capital and surplus of the
foreign bank and, if the foreign bank has more than one
branch or agency in the United States, the business
transacted by all such branches and agencies must be
aggregated in determining compliance with the limitation.

20 E. Unless otherwise provided by the superintendent, any
22 provision in this Title and rules adopted under this Title
24 that require a financial institution to obtain the approval
of its board of directors are deemed to require a Maine
branch or Maine agency to obtain the approval of parent
foreign bank senior management.

26 **§1105. Representative offices**

28
30 1. Notification required. A foreign bank may establish a
32 representative office in this State with 30 days' prior notice to
34 the superintendent. A foreign bank may not establish a
representative office in this State without the prior approval of
the Board of Governors of the Federal Reserve System pursuant to
Section 10 of the federal International Banking Act of 1978.

36 2. Permitted activities. Foreign banks may conduct the
38 following activities through representative offices:

40 A. Solicitation for loans and in connection with those
42 loans the assembly of credit information, making of property
44 inspections and appraisals, securing of title information,
46 preparation of applications for loans including making
recommendations with respect to action on those
applications, solicitation of investors to purchase loans
from the foreign bank and the search for investors to
contract with the foreign bank for servicing of those loans;

48 B. The solicitation of new business;

50 C. The conduct of research;

2 D. Back office administrative functions; and

4 E. Any other activity that may be permitted by the
6 superintendent by rule or order.

8 **§1106. Trust activities**

10 1. Authority. A foreign bank that has established a Maine
12 branch or Maine agency in accordance with section 1102 may engage
14 in trust activities at that Maine branch or Maine agency upon 30
16 days' prior notification to the superintendent.

18 2. Territorial application. All trust activities entered
20 into between a foreign bank that has established a Maine branch
22 or Maine agency and persons residing or domiciled in this State
24 or that involve property located in this State are governed by
26 the laws of this State.

28 **§1107. Service of process**

30 A foreign bank having a Maine agency, Maine branch or Maine
32 representative office shall maintain a registered office and is
34 subject to service of process in the manner provided for in Title
36 13-A, chapter 12.

38 **§1108. Deposit requirements; asset requirements**

40 1. Deposit requirement. Upon the opening of a Maine branch
42 or Maine agency and thereafter, a foreign bank shall keep on
44 deposit, in accordance with rules the superintendent may
46 prescribe, with a financial institution authorized to do business
48 in the State, except for a foreign bank, United States dollar
50 deposits or investment securities of a type that may be
prescribed by the superintendent in an amount as set forth in
this section. The financial institution must be approved by the
superintendent.

2. Amount of deposit. The aggregate amount of deposited
investment securities, calculated on the basis of principal
amount or market value, whichever is lower, and United States
dollar deposits for each Maine branch or Maine agency established
and operating under this chapter may not be less than the amount
prescribed by section 412-A or rules adopted under section 412-A
as applied to total liabilities of the Maine branch or Maine
agency, including acceptances, but excluding accrued expenses,
and amounts due and other liabilities to offices, branches,
agencies and subsidiaries of the foreign bank. The
superintendent may require that the assets deposited pursuant to
this subsection must be maintained in such amounts as the

2 superintendent may consider necessary or desirable for the
3 maintenance of a sound financial condition, the protection of
4 depositors and the public interest. The superintendent may
5 consider reserves or other assets deposited with or on behalf of
6 a federal banking agency in determining the amount of deposit.

7 3. Deposit agreement. The deposit must be maintained with
8 the financial institution selected according to subsection 1
9 pursuant to a deposit agreement in such form and containing such
10 limitations and conditions as the superintendent may prescribe.
11 So long as it continues business in the ordinary course a foreign
12 bank may be permitted to collect income on the securities and
13 funds so deposited and examine and exchange those securities.

14 4. Asset maintenance. Subject to such conditions and
15 requirements as may be prescribed by the superintendent, each
16 foreign bank operating a Maine branch or Maine agency shall hold
17 in this State assets of such types and in such amounts as the
18 superintendent may prescribe by general or specific rule or
19 ruling as necessary or desirable for the maintenance of a sound
20 financial condition, the protection of depositors and creditors
21 and the public interest. In determining compliance with any such
22 prescribed asset requirements, the superintendent shall give
23 credit to assets required to be maintained pursuant to subsection
24 1, reserves required to be maintained with the Federal Reserve
25 System and assets pledged and surety bonds payable to the Federal
26 Deposit Insurance Corporation to secure the payment of domestic
27 deposits.

28 **§1109. Record keeping and reporting**

29 1. General. A Maine branch, Maine agency or Maine
30 representative office shall comply with applicable record-keeping
31 and reporting requirements that apply to financial institutions
32 organized under this Title and with any additional requirements
33 that may be prescribed by the superintendent. A Maine branch,
34 Maine agency, Maine representative office and the parent foreign
35 bank shall furnish information relating to the affairs of the
36 parent foreign bank and its affiliates that the superintendent
37 may from time to time request. The superintendent may modify
38 record-keeping and reporting requirements if the superintendent
39 determines that circumstances warrant a modification.

40 2. Reports filed with other agencies. The reporting
41 requirements imposed by this section may be complied with by
42 submitting to the superintendent copies of reports prepared for
43 federal regulatory agencies by the institution, which contain the
44 information requested, unless the superintendent requires
45 otherwise.

2 3. Maintenance of accounts, books and records. A Maine
3 branch, Maine agency or Maine representative office shall
4 maintain a set of accounts and records reflecting its
5 transactions that are separate from those of the foreign bank and
6 any other branch, agency or representative office. The Maine
7 branch, Maine agency or Maine representative office shall keep a
8 set of accounts and records in English sufficient to permit the
9 superintendent to examine the condition of the branch, agency or
10 representative office and the branch's, agency's or
11 representative office's compliance with applicable laws and
12 rules. The Maine branch, Maine agency or Maine representative
13 office shall promptly provide any additional records requested by
14 the superintendent for examination or supervisory purposes.

15 4. More than one Maine branch or Maine agency. A foreign
16 bank with more than one Maine branch or Maine agency shall
17 designate one of those branches or agencies to maintain
18 consolidated asset, liability and capital equivalency accounts
19 for all Maine branches or Maine agencies.

20 §1110. Disclosure of lack of deposit insurance

21 Each foreign bank operating a Maine branch or Maine agency
22 shall, in a manner established by the superintendent, give notice
23 that deposits and credit balances in that branch or agency are
24 not insured by the Federal Deposit Insurance Corporation.

25 §1111. Notice of changes in name and location

26 1. Notice. A foreign bank maintaining a Maine branch,
27 Maine agency or Maine representative office shall provide the
28 superintendent with prior notice of the following events:

29 A. A change in corporate name;

30 B. A change of mailing address;

31 C. A relocation of office in Maine;

32 D. A conversion of a Maine branch or Maine agency to a
33 federal branch or agency; and

34 E. Any changes in the designation of home state.

35 2. Timing and form of notice. The superintendent shall
36 determine the form and timing of notice of these events.

37 §1112. Change of control of foreign bank

2 A foreign bank that is licensed to establish and maintain a
3 Maine branch, Maine agency or Maine representative office shall
4 file with the superintendent a notice, in such form and
5 containing such information as the superintendent may prescribe,
6 no later than 14 calendar days after that foreign bank becomes
7 aware of any acquisition of control of that foreign bank or
8 merges with another foreign bank.

10 **§1113. Voluntary closure of Maine branch, Maine agency or Maine**
11 **representative office**

12 1. Maine branch or Maine agency. A foreign bank may
13 voluntarily close a Maine branch or Maine agency in accordance
14 with section 335, subsection 2.

16 2. Maine representative office. A foreign bank may
17 voluntarily close a Maine representative office upon 30 days'
18 prior notice to the superintendent.

20 **§1114. Conversions**

22 1. Authority. A foreign bank may convert a Maine
23 representative office to a Maine agency or Maine branch, or
24 convert a Maine agency to a Maine representative office or a
25 Maine branch, or convert a Maine branch to a Maine agency or
26 Maine representative office with the prior approval of the
27 superintendent. A foreign bank may also convert a federal branch
28 or agency to a Maine branch or Maine agency.

30 2. Applications. Applications for prior approval of
31 conversions must be processed in accordance with sections 252 and
32 253 or section 1105 as appropriate.

34 **§1115. Assessment, examination and enforcement**

36 1. Assessment. A foreign bank operating a Maine branch or
37 a Maine agency shall pay assessments to the superintendent in
38 accordance with section 214, subsection 2.

40 2. Examination. The superintendent may examine each Maine
41 branch, Maine agency or Maine representative office pursuant to
42 section 221 and is compensated for those examinations according
43 to the provisions of section 214, subsection 1.

44 3. Enforcement. The superintendent may enforce the
45 provisions of this chapter pursuant to the enforcement authority
46 under sections 231 and 232.

48 **§1116. Involuntary termination of authority and receivership**

50

2 1. Involuntary termination of authority to operate Maine
3 branch, Maine agency or Maine representative office. The
4 involuntary termination of authority to operate a Maine branch,
5 Maine agency or Maine representative office is governed by the
6 following.

7 A. Authority to operate a Maine branch, Maine agency or
8 Maine representative office terminates when the parent
9 foreign bank is dissolved or its authority or existence is
10 otherwise terminated or canceled in the country of its
11 organization.

12 B. The superintendent may terminate a foreign bank's
13 authority to operate a Maine branch, Maine agency or Maine
14 representative office if the superintendent determines that
15 or has reasonable cause to believe that:

16 (1) The foreign bank has violated or failed to comply
17 with any of the provisions of this chapter or any of
18 the rules or orders of the superintendent made pursuant
19 to this chapter; or

20 (2) A conservator is appointed for the foreign bank or
21 a similar proceeding is initiated in the foreign bank's
22 country of organization.

23 C. A foreign bank whose authority to operate a Maine
24 branch, Maine agency or Maine representative office is
25 revoked by the superintendent may bring an action
26 challenging the superintendent's revocation in Superior
27 Court within 10 days of that revocation. The court must
28 uphold the superintendent's revocation of a foreign bank's
29 authority to operate a Maine branch, Maine agency or Maine
30 representative office unless the court finds that the
31 superintendent's action was arbitrary and capricious.

32 2. Receivership. Whenever the superintendent revokes a
33 foreign bank's authority to operate a Maine branch or Maine
34 agency or whenever any creditor of that foreign bank has obtained
35 a judgment against the foreign bank arising out of a transaction
36 with a branch or agency in any court of record of the United
37 States or any state of the United States and made application,
38 accompanied by a certificate from the clerk of the court stating
39 that that judgment has been rendered and has remained unpaid for
40 a period of 30 days, or whenever the superintendent becomes
41 satisfied that that foreign bank is insolvent, the superintendent
42 may, after due consideration of its affairs, appoint a receiver
43 who shall take possession of all the property and assets of that
44 foreign bank in Maine pursuant to provisions of chapter 36.

50

2 **§1117. Interstate operations of Maine foreign banks**

4 1. Establishment. A Maine foreign bank may establish and
6 operate a branch in another state in accordance with section
1102. The establishment of that branch may be de novo or through
merger, acquisition or other consolidation.

8 2. Activities. A Maine foreign bank may conduct any
10 activity at that branch that is permissible for a foreign bank in
that host state, as defined in section 131, subsection 20-B.

12 **§1118. Interstate operations of out-of-state foreign banks**

14 1. Establishment. An out-of-state foreign bank may
16 establish a branch or agency in this State in accordance with the
procedures set forth in section 373, subsection 3. The
18 establishment of that branch or agency may be de novo or through
merger, acquisition or other consolidation.

20 2. Activities. The activities of branches or agencies
22 located in this State by out-of-state foreign banks are governed
by the provisions of this chapter and section 376, subsection 2.

24 **§1119. Rule-making authority**

26 The superintendent may adopt rules to supplement the
28 requirements of this chapter. Rules adopted pursuant to this
section are routine technical rules as defined in Title 5,
30 chapter 375, subchapter II-A.

32 **PART C**

34 **Sec. C-1. 9-B MRSA §232, first ¶,** as amended by PL 1995, c.
628, §17, is further amended to read:

36 The superintendent may remove any officer or director of a
38 financial institution organized pursuant to this Title or any
officer of a branch of an out-of-state financial institution
40 authorized to do business in this State, or any officer or
director of a financial institution holding company, in
42 accordance with the procedures and subject to the conditions and
limitations set forth in this section.

44 **Sec. C-2. 9-B MRSA §232, sub-§1,** as repealed and replaced by
46 PL 1993, c. 538, §2, is amended to read:

48 1. Grounds for removal. The superintendent may serve
50 written notice of intent to remove an officer or director from
office or to prohibit further participation by the officer or

2 director in any manner in the conduct of the affairs of a
3 financial institution or financial institution holding company if:

4 A. In the opinion of the superintendent, that officer or
5 director has directly or indirectly:

6 (1) Violated a law, rule, regulation or cease and
7 desist order that has become final;

10 (2) Engaged in or participated in any unsafe or
11 unsound practice; or

12 (3) Committed or engaged in any act, omission, or
13 practice that constitutes a breach of the fiduciary
14 duty of the officer or director;

15 B. By reason of the violation, practice or breach of
16 fiduciary duty described in paragraph A:

17 (1) The financial institution or financial institution
18 holding company has suffered or will probably suffer
19 financial loss or other damage;

22 (2) The interests of the financial institution's
23 depositors have been or could be prejudiced; or

24 (3) The officer or director has received financial
25 gain or other benefit by reason of the violation,
26 practice or breach of fiduciary duty;

27 C. The violation, practice or breach of fiduciary duty
28 described in paragraph A involves personal dishonesty on the
29 part of the officer or director or demonstrates willful or
30 continuing disregard by the officer or director for the
31 safety or soundness of the financial institution or
32 financial institution holding company; and

33 D. In the opinion of the superintendent, that officer or
34 director has evidenced personal dishonesty and unfitness to
35 continue as an officer or director of the financial
36 institution or financial institution holding company by
37 conduct with respect to another business entity that
38 resulted, or is likely to result, in substantial financial
39 loss or other damage.

40 **Sec. C-3. 9-B MRSA §232, sub-§2, ¶B**, as amended by PL 1977, c.
41 694, §156, is further amended to read:

42 B. The superintendent shall serve such written notice in
43 accordance with Rule 4 of the Maine Rules of Civil Procedure
44

2 upon the officer or director involved and copies of such
notice shall must be served upon the financial institution
4 or financial institution holding company of which he the
person is an officer or director or in the conduct of whose
6 affairs he the person has participated.

8 **Sec. C-4. 9-B MRSA §232, sub-§3, ¶A**, as enacted by PL 1975, c.
500, §1, is amended to read:

10 A. If the superintendent deems considers it necessary for
12 the protection of the financial institution or financial
institution holding company or the interests of its
14 depositors or shareholders, such written notice may suspend
the officer or director from office or prohibit ~~him~~ the
16 officer or director from further participation in any manner
in the conduct of the affairs of the financial institution
or financial institution holding company.

18 **Sec. C-5. 9-B MRSA §232, sub-§5, ¶C**, as enacted by PL 1975, c.
20 500, §1, is amended to read:

22 C. In the event of consent pursuant to paragraph B, or if
upon the record made at any such hearing the superintendent
24 ~~shall-find~~ finds that any of the grounds specified in the
notice have been established, he the superintendent may
26 issue such orders of suspension or removal from office or
prohibition from participation in the conduct of the affairs
28 of the financial institution or financial institution
holding company, as ~~he-may-deem~~ the superintendent considers
30 appropriate.

32 **Sec. C-6. 9-B MRSA §232, sub-§6, ¶A**, as enacted by PL 1975, c.
34 500, §1, is amended to read:

A. Any order issued pursuant to subsection 5 ~~shall-become~~
36 becomes effective at the expiration of 30 days after service
upon the officer or director and the financial institution
38 or financial institution holding company concerned; provided
that an order issued upon consent ~~shall--become~~ becomes
40 effective within the time specified therein.

42 **Sec. C-7. 9-B MRSA §232, sub-§7, ¶B**, as enacted by PL 1975, c.
44 500, §1, is amended to read:

46 B. At such time as a judgment of conviction with respect to
such offense is entered against such officer or director,
and such judgment is not subject to further appellate
48 review, the superintendent may issue and serve upon such
officer or director an order removing ~~him~~ the officer or
50 director from such office or prohibiting ~~him~~ the officer or

2 director from further participation in the conduct of the
 4 affairs of the financial institution or financial
 6 institution holding company except with the written consent
 of the superintendent. Such order ~~shall--become~~ becomes
 effective after service upon the officer or director and the
 financial institution or financial institution holding
company.

SUMMARY

12 Governor Angus S. King, Jr., established by Executive Order
 dated August 2, 1995 the Maine Task Force on Interstate Banking
 14 and Branching. The task force consisted of the Commissioner of
 Professional and Financial Regulation, the Superintendent of the
 16 Bureau of Banking, the 2 co-chairs of the Joint Standing
 Committee on Banking and Insurance, 5 members representing the
 18 Maine banking industry and 5 members representing the business
 community and the general public. The mission of the task force
 20 was to make recommendations regarding the State's response to the
 Riegler-Neal Interstate Banking and Branching Efficiency Act of
 22 1994. The task force issued its report on November 30, 1995,
 including proposed legislation implementing the recommendations
 24 of the task force. Ultimately, L.D. 1750, "An Act to Implement
 the Recommendations of the Maine Task Force on Interstate Banking
 26 and Branching," was enacted into law during the Second Regular
 Session of the 117th Legislature.

28 While L.D. 1750 contained most of the legislation necessary
 30 to respond to Riegler-Neal, the task force concluded it lacked the
 time and resources to fully explore an appropriate response to
 32 the provisions of Riegler-Neal regarding foreign banking and
 branching. The task force recommended that the Bureau of Banking
 34 study the issue of foreign banking and branching and, in
 consultation with the Maine banking industry, develop an
 36 appropriate legislative response.

38 Parts A and B of this bill constitute the recommended
 response to the issue of foreign banking and branching.
 40 Specifically, Part A clarifies that foreign banks and foreign
 bank holding companies can establish or acquire Maine financial
 42 institutions and financial institution holding companies subject
 to the prior approval of the Superintendent of Banking. Part B
 44 of the bill creates the Maine Revised Statutes, Title 9-B,
 chapter 107 to provide for the establishment of branches,
 46 agencies and representative offices of foreign banks in Maine and
 the regulatory scheme for their operation. The powers, duties
 48 and obligations of foreign banks operating such offices in Maine
 are comparable to those of financial institutions organized
 50 pursuant to Title 9-B as modified by provisions comparable to

2 those contained in the federal International Banking Act of
3 1978. The primary difference between a financial institution
4 organized pursuant to Title 9-B and a foreign bank branch is that
5 the foreign bank branch may not solicit deposits of less than
6 \$100,000 and is not required to maintain federal deposit
7 insurance.

8 Part C of the bill amends Title 9-B, section 232 to provide
9 the Superintendent of Banking with the authority to remove
10 directors and officers of financial institution holding
11 companies. During 1996, the Bureau of Banking successfully
12 completed the Conference of State Bank Supervisors' accreditation
13 process for state banking departments. The Accreditation Review
14 Team, however, recommended in its report of accreditation that
15 director and officer removal authority be extended to financial
16 institution holding companies.