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NINETY-FIFTH LEGISLATURE

Legislative Document **No. 1089**

H. P. 1482 House of Representatives, March 2, 1951

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Sanborn of Gorham.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED FIFTY-ONE

AN ACT Relating to Merger, Consolidation and Conversion of National Banks and Trust Companies.

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

R. S., c. 55, §§ 139-A - 139-J, additional. Chapter 55 of the revised statutes is hereby amended by adding thereto 10 new sections to be numbered 139-A to 139-J, inclusive, to read as follows:

'Sec. 139-A. Resulting national bank. Nothing in the law of this state shall restrict the right of a trust company to merge with or convert into a resulting national bank. The action to be taken by such merging or converting bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of this state, except that a vote of the holders of 2/3 of each class of voting stock of a trust company shall be required for the merger or conversion, and that on conversion into a national bank the rights of dissenting stockholders shall be those specified hereafter.

Upon the completion of the merger or conversion, the franchise of any merging or converting trust company shall automatically terminate.

Sec. 139-B. Resulting trust company. Upon approval by the bank commissioner banks may be merged to result in a trust company or a national bank may convert into a trust company as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law of the United States which shall also govern the rights of its dissenting shareholders.

Sec. 139-C. Merger procedure; resulting trust company. The board of directors of each merging trust company, shall, by a majority of the entire board, approve a merger agreement which shall contain:

I. The name of each merging bank and location of each office;

II. With respect to the resulting trust company: the name and location of the principal and the other offices; the name and residence of each director to serve until the next annual meeting of the stockholders; the name and residence of each officer; the amount of capital, the number of shares and the par value of each share; whether preferred stock is to be issued and the amount, terms and preferences; the amendments to its charter and by-laws;

III. Provisions governing the manner of converting the shares of the merging banks into shares of the resulting trust company;

IV. A statement that the agreement is subject to approval by the state bank commissioner and by the stockholders of each merging bank;

V. Provisions governing the manner of disposing of the shares of the resulting trust company not taken by dissenting shareholders of merging banks;

VI. Such other provisions as the bank commissioner requires to enable it to discharge its duties with respect to the merger.

After approval by the board of directors of each merging trust company, the merger agreement shall be submitted to the bank commissioner for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank.

Within 30 days after receipt by the bank commissioner of such papers, the bank commissioner shall approve or disapprove the merger agreement, and if no action is taken, the agreement shall be deemed approved. The bank commissioner shall approve the agreement if it appears that the

resulting trust company meets the requirements of state law as to the formation of a new trust company, provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting trust company and its other activities which are to continue or are to be undertaken, is fair, and the merger is not contrary to the public interest.

If the bank commissioner disapproves an agreement, he shall state his objections and give an opportunity to the merging banks to amend the merger agreement to obviate such objections.

Sec. 139-D. Merger; approval by stockholders of trust companies. To be effective, a merger which is to result in a trust company must be approved by the stockholders of each merging trust company by a vote of 2/3 of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and by-laws of the resulting trust company, including the amendments in the merger agreement.

Unless waived in writing, notice of the meeting of stockholders shall be given by publication in a newspaper of general circulation in the place where the principal office of each merging bank is located, at least once a week for 4 successive weeks, and by mail, at least 15 days before the date of the meeting, to each stockholder of record of each merging bank at his address on the books of his bank; no notice by publication need be given if written waivers are received from the holders of 2/3 of the outstanding shares of each class of stock. The notice shall state that dissenting stockholders will be entitled to payment of the value of only those shares which are voted against approval of the plan.

Sec. 139-E. Effective date of merger; filing of approved agreement; certificate of merger as evidence. A merger which is to result in a trust company shall, unless a later date is specified in the agreement, become effective upon the filing with the bank commissioner of the executed agreement together with copies of the resolutions of the stockholders of each merging bank approving it, certified by the bank's president or a vice-president and a secretary. The charters of the merging banks, other than the resulting bank, shall thereupon automatically terminate.

The bank commissioner shall thereupon issue to the resulting bank a certificate of merger specifying the name of each merging bank and the name of the resulting trust company. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the record-

ing of deeds to evidence the new name in which the property of the merging banks is held.

Sec. 139-F. Conversion of national bank into trust company. A national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank, shall be granted a state charter by the bank commissioner if he finds that the bank meets the standards as to location of offices, capital structure and business experience and character of officers and directors for the incorporation of a trust company.

The national bank may apply for such charter by filing with the bank commissioner a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of the national to a state bank, and the articles of incorporation, approved by the stockholders, for the government of the bank as a trust company.

Sec. 139-G. Continuation of corporate entity; use of old name. A resulting trust company or national bank shall be the same business and corporate entity as each merging bank or as the converting bank with all the property, rights, powers and duties of each merging bank or the converting bank, except as affected by the state law in the case of a resulting trust company or the federal law in the case of a resulting national bank, and by the charter and by-laws of the resulting bank.

A resulting bank shall have the right to use the name of any merging bank or of the converting bank whenever it can do any act under such name more conveniently.

Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of such writing.

Sec. 139-H. Dissenting stockholders. The owner of shares of a trust company which were voted against a merger to result in a trust company, or against the conversion of a trust company into a national bank, shall be entitled to receive their value in cash, if and when the merger or conversion becomes effective, upon written demand, made to the resulting trust company or national bank at any time within 30 days after the effective date of the merger or conversion accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of

the shareholders' meeting approving the merger or conversion, by 3 appraisers, one to be selected by the owners of 2/3 of the shares involved, one by the board of directors of the resulting trust company or national bank, and the third by the 2 so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within 90 days after the merger or conversion becomes effective the bank commissioner shall cause an appraisal to be made.

The expenses of appraisal shall be paid by the resulting trust company.

The resulting trust company or national bank may fix an amount which it considers to be not more than the fair market value of the shares of a merging or the converting bank at the time of the stockholders' meeting approving the merger or conversion, which it will pay dissenting shareholders of that bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting trust company or national bank.

Sec. 139-I. Non-conforming assets or business. If a merging or converting bank has assets which do not conform to the requirements of state law for the resulting trust company or carriers on business activities which are not permitted for the resulting trust company, the bank commissioner may permit a reasonable time to conform with state law.

Sec. 139-J. Book value of assets. Without approval by the bank commissioner no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of the merging or converting bank at the time of its last examination by a state or national bank examiner before the effective date of the merger or conversion.'